

FINAL BILL REPORT

2SSB 5649

C 233 L 22

Synopsis as Enacted

Brief Description: Modifying the Washington state paid family and medical leave act.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Robinson, Conway, Lovick, Randall and Wilson, C.).

Senate Committee on Labor, Commerce & Tribal Affairs

Senate Committee on Ways & Means

House Committee on Labor & Workplace Standards

House Committee on Appropriations

Background: Paid Family and Medical Leave Overview. In 2017, the Paid Family and Medical Leave (PFML) program was enacted to provide partial wage replacement to employees on leave for specified family and medical reasons. Employees are eligible for PFML benefits after working 820 hours in a qualifying period. Premium collection began on January 1, 2019, and benefits were payable as of January 1, 2020. The Employment Security Department (ESD) administers the PFML program.

Qualified employees are eligible for the following maximum leave amounts per calendar year:

- up to 12 weeks of paid family or medical leave;
- up to 16 weeks of leave when family and medical leave are used in combination; and
- an additional two weeks of leave due to pregnancy complications.

Paid Family Leave. Paid family leave benefits are provided when an employee is bonding after the birth or placement of a child under the age of 18; because of a family member's serious health condition; or for a military exigency.

Paid Medical Leave. Paid medical leave benefits are provided for an employee's own serious health condition. A serious health condition is defined by statute and has the same meaning as in the federal Family and Medical Leave Act and its regulations. A serious health condition includes, among other things, any period of incapacity due to pregnancy or

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

for prenatal care.

Certification of Serious Health Condition. If applicable, when applying for paid family or medical leave, ESD requires the employee to submit a certification of a serious health condition form. The form contains information provided by the employee and their health care provider.

Collective Bargaining Agreements. The PFML program does not require any party to a collective bargaining agreement (CBA) in existence on October 19, 2017, to reopen negotiations of the CBA or to apply any of the rights and responsibilities under the PFML program unless and until the existing CBA is reopened, renegotiated by the parties, or expires.

Confidential Records. Information or records relative to the administration of the PFML program are private and confidential, however, there are certain exceptions determined by where the request originates. Based on this confidentiality, ESD does not publicly list employers that have approved voluntary plans under the PFML program.

Joint Legislative Audit and Review Committee. The Joint Legislative Audit and Review Committee (JLARC) is a committee comprised of an equal number of House and Senate members, Democrats and Republicans. JLARC conducts performance audits, program evaluations, sunset reviews, and other analyses. Assignments to conduct studies are made by the Legislature and JLARC itself. Based on these assignments, JLARC's non-partisan staff auditors, under the direction of the Legislative Auditor, independently seek answers to audit questions and issue recommendations to improve performance. JLARC's audits are directed to be independent, objective, and accurate.

Summary: "Postnatal" means the first six weeks after birth.

Paid Family Leave. Paid family leave benefits are provided during the seven calendar days following the death of the family member for whom the employee would have:

- qualified for medical leave for the birth of their child; or
- qualified for family leave to bond with their child during the first 12 months after birth, or during the first 12 months after the placement of a child under age 18 with the employee.

Paid Medical Leave. Any paid leave benefits used in the postnatal period by an employee eligible for benefits based on a period of incapacity due to pregnancy or for prenatal care must be medical leave unless the employee chooses to use family leave during the postnatal period. The maximum and minimum weekly benefits, duration, and other conditions and limitations established in the PFML program still apply.

Certification of Serious Health Condition. A certification of a serious health condition form is not required for paid leave benefits used in the postnatal period by an employee eligible

for benefits based on a period of incapacity due to pregnancy or for prenatal care.

Collective Bargaining Agreements. The CBA exception in the PFML program expires December 31, 2023.

Confidential Records. ESD must publish on its website, a current list of all employers that have approved voluntary plans under the PFML program.

Actuarial Services, Reports. *Calendar Year 2022.* The Office of Financial Management (OFM) must enter into a contract with a public or private entity for actuarial services to provide a report to the Legislature by October 1, 2022, on the following:

- the experience and financial condition of the Family and Medical Leave Insurance Account (Account);
- recommendations to modify the premium provisions in the PFML program to maintain long-term stability and solvency of the Account; and
- comparing PFML premium provisions with similar provisions in other states with both paid medical and family leave insurance.

This contract is exempt from competitive procurement requirements. OFM and ESD may request assistance from the Office of the State Actuary (State Actuary), including forming a data-sharing agreement between the State Actuary and ESD for PFML actuarial purposes. ESD may share PFML program data with OFM to conduct actuarial services.

Calendar Year 2023. The Office of Actuarial Services (Office) is established within ESD. Beginning January 1, 2023, the Office must report annually, by November 1st, to the Paid Family and Medical Leave Advisory Committee (Advisory Committee) on the:

- financial condition of the Account; and
- lowest future premium rates necessary to maintain Account solvency in the next four years while limiting premium rate fluctuations.

The report must be submitted to the Legislature in calendar years 2023 through 2028. Beginning October 1, 2023, ESD must report quarterly to the Advisory Committee on premium collections, benefit payments, the Account balance, and other program expenditures.

Legislative Task Force. A legislative task force on PFML program premiums (Task Force) is created with members from both chambers and parties of the Legislature, the voting members of the Advisory Committee, and Governor appointees representing the Governor's Office and ESD. Staff support for the Task Force must be provided by nonpartisan legislative staff. The Task Force must issue a final report to the Governor and Legislature by January 4, 2023. The Task Force must review the reports to the Legislature and make recommendations for legislative changes to the premium provisions to ensure the lowest premium rates necessary to maintain Account solvency while limiting fluctuations in rates.

Joint Legislative Audit and Review Committee. By October 1, 2024, JLARC must conduct a performance audit analyzing the implementation of the PFML program. The analysis must include, at a minimum, the following components:

- evaluation of ESD's decision making and communication methods;
- determination of whether current organization and service delivery models are the most efficient available, and whether they meet the needs of current and future workers;
- evaluation of whether ESD prepares financial information in accordance with generally accepted accounting principles;
- evaluation of Account solvency; and
- recommending administrative and legislative changes to improve PFML program efficiency.

ESD may share PFML program data with JLARC to conduct the performance audit.

Other. Beginning July 1, 2022, and until 12 months after the COVID state of emergency ends, ESD must ask PFML program applicants whether their requested leave was related to the COVID-19 pandemic. Such disclosures are limited to monitoring potential impacts on the solvency and stability of the Account and subject to certain privacy and data sharing provisions.

Votes on Final Passage:

Senate	42	7	
House	96	2	(House amended)
Senate	42	7	(Senate concurred)

Effective: June 9, 2022

March 30, 2022 (Section 8)