
SECOND SUBSTITUTE SENATE BILL 5649

State of Washington

67th Legislature

2022 Regular Session

By Senate Ways & Means (originally sponsored by Senators Robinson, Conway, Lovick, Randall, and C. Wilson)

READ FIRST TIME 02/07/22.

1 AN ACT Relating to modifying the Washington state paid family and
2 medical leave act; amending RCW 50A.05.010, 50A.05.090, 50A.15.020,
3 50A.25.020, 50A.15.040, 50A.05.050, 44.44.040, and 50A.25.070; adding
4 new sections to chapter 50A.05 RCW; creating new sections; providing
5 expiration dates; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 50A.05.010 and 2021 c 232 s 2 are each amended to
8 read as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this title.

11 (1) (a) "Casual labor" means work that:

12 (i) Is performed infrequently and irregularly; and

13 (ii) If performed for an employer, does not promote or advance
14 the employer's customary trade or business.

15 (b) For purposes of casual labor:

16 (i) "Infrequently" means work performed twelve or fewer times per
17 calendar quarter; and

18 (ii) "Irregularly" means work performed not on a consistent
19 cadence.

20 (2) "Child" includes a biological, adopted, or foster child, a
21 stepchild, a child's spouse, or a child to whom the employee stands

1 in loco parentis, is a legal guardian, or is a de facto parent,
2 regardless of age or dependency status.

3 (3) "Commissioner" means the commissioner of the department or
4 the commissioner's designee.

5 (4) "Department" means the employment security department.

6 (5) (a) "Employee" means an individual who is in the employment of
7 an employer.

8 (b) "Employee" does not include employees of the United States of
9 America.

10 (6) "Employee's average weekly wage" means the quotient derived
11 by dividing the employee's total wages during the two quarters of the
12 employee's qualifying period in which total wages were highest by
13 twenty-six. If the result is not a multiple of one dollar, the
14 department must round the result to the next lower multiple of one
15 dollar.

16 (7) (a) "Employer" means: (i) Any individual or type of
17 organization, including any partnership, association, trust, estate,
18 joint stock company, insurance company, limited liability company, or
19 corporation, whether domestic or foreign, or the receiver, trustee in
20 bankruptcy, trustee, or the legal representative of a deceased
21 person, having any person in employment or, having become an
22 employer, has not ceased to be an employer as provided in this title;
23 (ii) the state, state institutions, and state agencies; and (iii) any
24 unit of local government including, but not limited to, a county,
25 city, town, municipal corporation, quasi-municipal corporation, or
26 political subdivision.

27 (b) "Employer" does not include the United States of America.

28 (8) (a) "Employment" means personal service, of whatever nature,
29 unlimited by the relationship of master and servant as known to the
30 common law or any other legal relationship performed for wages or
31 under any contract calling for the performance of personal services,
32 written or oral, express or implied. The term "employment" includes
33 an individual's entire service performed within or without or both
34 within and without this state, if:

35 (i) The service is localized in this state; or

36 (ii) The service is not localized in any state, but some of the
37 service is performed in this state; and

38 (A) The base of operations of the employee is in the state, or if
39 there is no base of operations, then the place from which such
40 service is directed or controlled is in this state; or

1 (B) The base of operations or place from which such service is
2 directed or controlled is not in any state in which some part of the
3 service is performed, but the individual's residence is in this
4 state.

5 (b) "Employment" does not include:

6 (i) Self-employed individuals;

7 (ii) Casual labor;

8 (iii) Services for remuneration when it is shown to the
9 satisfaction of the commissioner that:

10 (A) (I) Such individual has been and will continue to be free from
11 control or direction over the performance of such service, both under
12 his or her contract of service and in fact; and

13 (II) Such service is either outside the usual course of business
14 for which such service is performed, or that such service is
15 performed outside of all the places of business of the enterprises
16 for which such service is performed; and

17 (III) Such individual is customarily engaged in an independently
18 established trade, occupation, profession, or business, of the same
19 nature as that involved in the contract of service; or

20 (B) As a separate alternative:

21 (I) Such individual has been and will continue to be free from
22 control or direction over the performance of such service, both under
23 his or her contract of service and in fact; and

24 (II) Such service is either outside the usual course of business
25 for which such service is performed, or that such service is
26 performed outside of all the places of business of the enterprises
27 for which such service is performed, or the individual is
28 responsible, both under the contract and in fact, for the costs of
29 the principal place of business from which the service is performed;
30 and

31 (III) Such individual is customarily engaged in an independently
32 established trade, occupation, profession, or business, of the same
33 nature as that involved in the contract of service, or such
34 individual has a principal place of business for the work the
35 individual is conducting that is eligible for a business deduction
36 for federal income tax purposes; and

37 (IV) On the effective date of the contract of service, such
38 individual is responsible for filing at the next applicable filing
39 period, both under the contract of service and in fact, a schedule of

1 expenses with the internal revenue service for the type of business
2 the individual is conducting; and

3 (V) On the effective date of the contract of service, or within a
4 reasonable period after the effective date of the contract, such
5 individual has established an account with the department of revenue,
6 and other state agencies as required by the particular case, for the
7 business the individual is conducting for the payment of all state
8 taxes normally paid by employers and businesses and has registered
9 for and received a unified business identifier number from the state
10 of Washington; and

11 (VI) On the effective date of the contract of service, such
12 individual is maintaining a separate set of books or records that
13 reflect all items of income and expenses of the business which the
14 individual is conducting; or

15 (iv) Services that require registration under chapter 18.27 RCW
16 or licensing under chapter 19.28 RCW rendered by an individual when:

17 (A) The individual has been and will continue to be free from
18 control or direction over the performance of the service, both under
19 the contract of service and in fact;

20 (B) The service is either outside the usual course of business
21 for which the service is performed, or the service is performed
22 outside of all the places of business of the enterprise for which the
23 service is performed, or the individual is responsible, both under
24 the contract and in fact, for the costs of the principal place of
25 business from which the service is performed;

26 (C) The individual is customarily engaged in an independently
27 established trade, occupation, profession, or business, of the same
28 nature as that involved in the contract of service, or the individual
29 has a principal place of business for the business the individual is
30 conducting that is eligible for a business deduction for federal
31 income tax purposes, other than that furnished by the employer for
32 which the business has contracted to furnish services;

33 (D) On the effective date of the contract of service, the
34 individual is responsible for filing at the next applicable filing
35 period, both under the contract of service and in fact, a schedule of
36 expenses with the internal revenue service for the type of business
37 the individual is conducting;

38 (E) On the effective date of the contract of service, or within a
39 reasonable period after the effective date of the contract, the
40 individual has an active and valid certificate of registration with

1 the department of revenue, and an active and valid account with any
2 other state agencies as required by the particular case, for the
3 business the individual is conducting for the payment of all state
4 taxes normally paid by employers and businesses and has registered
5 for and received a unified business identifier number from the state
6 of Washington;

7 (F) On the effective date of the contract of service, the
8 individual is maintaining a separate set of books or records that
9 reflect all items of income and expenses of the business that the
10 individual is conducting; and

11 (G) On the effective date of the contract of service, the
12 individual has a valid contractor registration pursuant to chapter
13 18.27 RCW or an electrical contractor license pursuant to chapter
14 19.28 RCW.

15 (9) "Employment benefits" means all benefits provided or made
16 available to employees by an employer, including group life
17 insurance, health insurance, disability insurance, sick leave, annual
18 leave, educational benefits, and pensions.

19 (10) "Family leave" means any leave taken by an employee from
20 work:

21 (a) To participate in providing care, including physical or
22 psychological care, for a family member of the employee made
23 necessary by a serious health condition of the family member;

24 (b) To bond with the employee's child during the first twelve
25 months after the child's birth, or the first twelve months after the
26 placement of a child under the age of eighteen with the employee;
27 ((~~or~~))

28 (c) Because of any qualifying exigency as permitted under the
29 federal family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(E)
30 and 29 C.F.R. Sec. 825.126(b)(1) through (9), as they existed on
31 October 19, 2017, for family members as defined in subsection (11) of
32 this section; or

33 (d) During the seven calendar days following the death of the
34 family member for whom the employee:

35 (i) Would have qualified for medical leave under subsection (15)
36 of this section for the birth of their child; or

37 (ii) Would have qualified for family leave under (b) of this
38 subsection.

39 (11) "Family member" means a child, grandchild, grandparent,
40 parent, sibling, or spouse of an employee, and also includes any

1 individual who regularly resides in the employee's home or where the
2 relationship creates an expectation that the employee care for the
3 person, and that individual depends on the employee for care. "Family
4 member" includes any individual who regularly resides in the
5 employee's home, except that it does not include an individual who
6 simply resides in the same home with no expectation that the employee
7 care for the individual.

8 (12) "Grandchild" means a child of the employee's child.

9 (13) "Grandparent" means a parent of the employee's parent.

10 (14) "Health care provider" means: (a) A person licensed as a
11 physician under chapter 18.71 RCW or an osteopathic physician and
12 surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced
13 registered nurse practitioner under chapter 18.79 RCW; or (c) any
14 other person determined by the commissioner to be capable of
15 providing health care services.

16 (15) "Medical leave" means any leave taken by an employee from
17 work made necessary by the employee's own serious health condition.

18 (16) "Paid time off" includes vacation leave, personal leave,
19 medical leave, sick leave, compensatory leave, or any other paid
20 leave offered by an employer under the employer's established policy.

21 (17) "Parent" means the biological, adoptive, de facto, or foster
22 parent, stepparent, or legal guardian of an employee or the
23 employee's spouse, or an individual who stood in loco parentis to an
24 employee when the employee was a child.

25 (18) "Period of incapacity" means an inability to work, attend
26 school, or perform other regular daily activities because of a
27 serious health condition, treatment of that condition or recovery
28 from it, or subsequent treatment in connection with such inpatient
29 care.

30 (19) "Postnatal" means the first six weeks after birth.

31 (20) "Premium" or "premiums" means the payments required by RCW
32 50A.10.030 and paid to the department for deposit in the family and
33 medical leave insurance account under RCW 50A.05.070.

34 ~~((20))~~ (21) "Qualifying period" means the first four of the
35 last five completed calendar quarters or, if eligibility is not
36 established, the last four completed calendar quarters immediately
37 preceding the application for leave.

38 ~~((21))~~ (22) (a) "Remuneration" means all compensation paid for
39 personal services including commissions and bonuses and the cash
40 value of all compensation paid in any medium other than cash.

1 (b) Previously accrued compensation, other than severance pay or
2 payments received pursuant to plant closure agreements, when assigned
3 to a specific period of time by virtue of a collective bargaining
4 agreement, individual employment contract, customary trade practice,
5 or request of the individual compensated, is considered remuneration
6 for the period to which it is assigned. Assignment clearly occurs
7 when the compensation serves to make the individual eligible for all
8 regular fringe benefits for the period to which the compensation is
9 assigned.

10 (c) Remuneration also includes settlements or other proceeds
11 received by an individual as a result of a negotiated settlement for
12 termination of an individual written employment contract prior to its
13 expiration date. The proceeds are deemed assigned in the same
14 intervals and in the same amount for each interval as compensation
15 was allocated under the contract.

16 (d) Remuneration does not include:

17 (i) The payment of tips;

18 (ii) Supplemental benefit payments made by an employer to an
19 employee in addition to any paid family or medical leave benefits
20 received by the employee; or

21 (iii) Payments to members of the armed forces of the United
22 States, including the organized militia of the state of Washington,
23 for the performance of duty for periods not exceeding seventy-two
24 hours at a time.

25 (~~(22)~~) (23)(a) "Serious health condition" means an illness,
26 injury, impairment, or physical or mental condition that involves:

27 (i) Inpatient care in a hospital, hospice, or residential medical
28 care facility, including any period of incapacity; or

29 (ii) Continuing treatment by a health care provider. A serious
30 health condition involving continuing treatment by a health care
31 provider includes any one or more of the following:

32 (A) A period of incapacity of more than three consecutive, full
33 calendar days, and any subsequent treatment or period of incapacity
34 relating to the same condition, that also involves:

35 (I) Treatment two or more times, within thirty days of the first
36 day of incapacity, unless extenuating circumstances exist, by a
37 health care provider, by a nurse or physician's assistant under
38 direct supervision of a health care provider, or by a provider of
39 health care services, such as a physical therapist, under orders of,
40 or on referral by, a health care provider; or

1 (II) Treatment by a health care provider on at least one occasion
2 which results in a regimen of continuing treatment under the
3 supervision of the health care provider;

4 (B) Any period of incapacity due to pregnancy, or for prenatal
5 care;

6 (C) Any period of incapacity or treatment for such incapacity due
7 to a chronic serious health condition. A chronic serious health
8 condition is one which:

9 (I) Requires periodic visits, defined as at least twice a year,
10 for treatment by a health care provider, or by a nurse under direct
11 supervision of a health care provider;

12 (II) Continues over an extended period of time, including
13 recurring episodes of a single underlying condition; and

14 (III) May cause episodic rather than a continuing period of
15 incapacity, including asthma, diabetes, and epilepsy;

16 (D) A period of incapacity which is permanent or long term due to
17 a condition for which treatment may not be effective. The employee or
18 family member must be under the continuing supervision of, but need
19 not be receiving active treatment by, a health care provider,
20 including Alzheimer's, a severe stroke, or the terminal stages of a
21 disease; or

22 (E) Any period of absence to receive multiple treatments,
23 including any period of recovery from the treatments, by a health
24 care provider or by a provider of health care services under orders
25 of, or on referral by, a health care provider, either for: (I)
26 Restorative surgery after an accident or other injury; or (II) a
27 condition that would likely result in a period of incapacity of more
28 than three consecutive, full calendar days in the absence of medical
29 intervention or treatment, such as cancer, severe arthritis, or
30 kidney disease.

31 (b) The requirement in (a)(i) and (ii) of this subsection for
32 treatment by a health care provider means an in-person visit to a
33 health care provider. The first, or only, in-person treatment visit
34 must take place within seven days of the first day of incapacity.

35 (c) Whether additional treatment visits or a regimen of
36 continuing treatment is necessary within the thirty-day period shall
37 be determined by the health care provider.

38 (d) The term extenuating circumstances in (a)(ii)(A)(I) of this
39 subsection means circumstances beyond the employee's control that
40 prevent the follow-up visit from occurring as planned by the health

1 care provider. Whether a given set of circumstances are extenuating
2 depends on the facts. For example, extenuating circumstances exist if
3 a health care provider determines that a second in-person visit is
4 needed within the thirty-day period, but the health care provider
5 does not have any available appointments during that time period.

6 (e) Treatment for purposes of (a) of this subsection includes,
7 but is not limited to, examinations to determine if a serious health
8 condition exists and evaluations of the condition. Treatment does not
9 include routine physical examinations, eye examinations, or dental
10 examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of
11 continuing treatment includes, but is not limited to, a course of
12 prescription medication, such as an antibiotic, or therapy requiring
13 special equipment to resolve or alleviate the health condition, such
14 as oxygen. A regimen of continuing treatment that includes taking
15 over-the-counter medications, such as aspirin, antihistamines, or
16 salves, or bed rest, drinking fluids, exercise, and other similar
17 activities that can be initiated without a visit to a health care
18 provider, is not, by itself, sufficient to constitute a regimen of
19 continuing treatment for purposes of this title.

20 (f) Conditions for which cosmetic treatments are administered,
21 such as most treatments for acne or plastic surgery, are not serious
22 health conditions unless inpatient hospital care is required or
23 unless complications develop. Ordinarily, unless complications arise,
24 the common cold, the flu, ear aches, upset stomach, minor ulcers,
25 headaches other than migraines, routine dental or orthodontia
26 problems, and periodontal disease are examples of conditions that are
27 not serious health conditions and do not qualify for leave under this
28 title. Restorative dental or plastic surgery after an injury or
29 removal of cancerous growths are serious health conditions provided
30 all the other conditions of this section are met. Mental illness
31 resulting from stress or allergies may be serious health conditions,
32 but only if all the conditions of this section are met.

33 (g)(i) Substance abuse may be a serious health condition if the
34 conditions of this section are met. However, leave may only be taken
35 for treatment for substance abuse by a health care provider or by a
36 licensed substance abuse treatment provider. Absence because of the
37 employee's use of the substance, rather than for treatment, does not
38 qualify for leave under this title.

39 (ii) Treatment for substance abuse does not prevent an employer
40 from taking employment action against an employee. The employer may

1 not take action against the employee because the employee has
2 exercised his or her right to take medical leave for treatment.
3 However, if the employer has an established policy, applied in a
4 nondiscriminatory manner that has been communicated to all employees,
5 that provides under certain circumstances an employee may be
6 terminated for substance abuse, pursuant to that policy the employee
7 may be terminated whether or not the employee is presently taking
8 medical leave. An employee may also take family leave to care for a
9 covered family member who is receiving treatment for substance abuse.
10 The employer may not take action against an employee who is providing
11 care for a covered family member receiving treatment for substance
12 abuse.

13 (h) Absences attributable to incapacity under (a)(ii)(B) or (C)
14 of this subsection qualify for leave under this title even though the
15 employee or the family member does not receive treatment from a
16 health care provider during the absence, and even if the absence does
17 not last more than three consecutive, full calendar days. For
18 example, an employee with asthma may be unable to report for work due
19 to the onset of an asthma attack or because the employee's health
20 care provider has advised the employee to stay home when the pollen
21 count exceeds a certain level. An employee who is pregnant may be
22 unable to report to work because of severe morning sickness.

23 ~~((23))~~ (24) "Service is localized in this state" has the same
24 meaning as described in RCW 50.04.120.

25 ~~((24))~~ (25) "Spouse" means a husband or wife, as the case may
26 be, or state registered domestic partner.

27 ~~((25))~~ (26) "State average weekly wage" means the most recent
28 average weekly wage calculated under RCW 50.04.355 and available on
29 January 1st of each year.

30 ~~((26))~~ (27) "Supplemental benefit payments" means payments made
31 by an employer to an employee as salary continuation or as paid time
32 off. Such payments must be in addition to any paid family or medical
33 leave benefits the employee is receiving.

34 ~~((27))~~ (28) "Typical workweek hours" means:

35 (a) For an hourly employee, the average number of hours worked
36 per week by an employee within the qualifying period; and

37 (b) Forty hours for a salaried employee, regardless of the number
38 of hours the salaried employee typically works.

39 ~~((28))~~ (29) "Wage" or "wages" means:

1 (a) For the purpose of premium assessment, the remuneration paid
2 by an employer to an employee. The maximum wages subject to a premium
3 assessment are those wages as set by the commissioner under RCW
4 50A.10.030;

5 (b) For the purpose of payment of benefits, the remuneration paid
6 by one or more employers to an employee for employment during the
7 employee's qualifying period. At the request of an employee, wages
8 may be calculated on the basis of remuneration payable. The
9 department shall notify each employee that wages are calculated on
10 the basis of remuneration paid, but at the employee's request a
11 redetermination may be performed and based on remuneration payable;
12 and

13 (c) For the purpose of a self-employed person electing coverage
14 under RCW 50A.10.010, the meaning is defined by rule.

15 **Sec. 2.** RCW 50A.05.090 and 2019 c 13 s 37 are each amended to
16 read as follows:

17 (1) Nothing in this title requires any party to a collective
18 bargaining agreement in existence on October 19, 2017, to reopen
19 negotiations of the agreement or to apply any of the rights and
20 responsibilities under this title unless and until the existing
21 agreement is reopened or renegotiated by the parties or expires.

22 (2) This section expires December 31, 2023.

23 **Sec. 3.** RCW 50A.15.020 and 2020 c 125 s 4 are each amended to
24 read as follows:

25 (1) Beginning January 1, 2020, family and medical leave are
26 available and benefits are payable to a qualified employee under this
27 section.

28 (a) Following a waiting period consisting of the first seven
29 consecutive calendar days, benefits are payable when family or
30 medical leave is required. However, no waiting period is required for
31 leave for the birth or placement of a child, or for leave because of
32 any qualifying exigency as defined under RCW 50A.05.010(10)(c). The
33 waiting period begins the previous Sunday of the week when an
34 otherwise eligible employee takes leave for the minimum claim
35 duration under subsection (2)(c) of this section. Eligible employees
36 may satisfy the waiting period requirement while simultaneously
37 receiving paid time off for any part of the waiting period.

1 (b) Benefits may continue during the continuance of the need for
2 family or medical leave, subject to the maximum and minimum weekly
3 benefits, duration, and other conditions and limitations established
4 in this title.

5 (2) The weekly benefit shall be prorated by the percentage of
6 hours on leave compared to the number of hours provided as the
7 typical workweek hours as defined in RCW 50A.05.010.

8 (a) The benefits in this section, if not a multiple of one
9 dollar, shall be reduced to the next lower multiple of one dollar.

10 (b) Hours on leave claimed for benefits under this title, if not
11 a multiple of one hour, shall be reduced to the next lower multiple
12 of one hour.

13 (c) The minimum claim duration payment is for eight consecutive
14 hours of leave.

15 (3)(a) The maximum duration of paid family leave may not exceed
16 twelve times the typical workweek hours during a period of fifty-two
17 consecutive calendar weeks.

18 (b) The maximum duration of paid medical leave may not exceed
19 twelve times the typical workweek hours during a period of fifty-two
20 consecutive calendar weeks. This leave may be extended an additional
21 two times the typical workweek hours if the employee experiences a
22 serious health condition with a pregnancy that results in incapacity.

23 (c) An employee is not entitled to paid family and medical leave
24 benefits under this title that exceeds a combined total of sixteen
25 times the typical workweek hours. The combined total of family and
26 medical leave may be extended to eighteen times the typical workweek
27 hours if the employee experiences a serious health condition with a
28 pregnancy that results in incapacity.

29 (4)(a) Any paid leave benefits under this chapter used in the
30 postnatal period by an employee eligible for benefits under RCW
31 50A.05.010(23)(a)(ii)(B) must be medical leave, subject to the
32 maximum and minimum weekly benefits, duration, and other conditions
33 and limitations established in this title, unless the employee
34 chooses to use family leave during the postnatal period.

35 (b) Certification of a serious health condition is not required
36 for paid leave benefits used in the postnatal period by an employee
37 eligible for benefits under RCW 50A.05.010(23)(a)(ii)(B).

38 (5) The weekly benefit for family and medical leave shall be
39 determined as follows: If the employee's average weekly wage is: (a)
40 Equal to or less than one-half of the state average weekly wage, then

1 the benefit amount is equal to ninety percent of the employee's
2 average weekly wage; or (b) greater than one-half of the state
3 average weekly wage, then the benefit amount is the sum of: (i)
4 Ninety percent of one-half of the state average weekly wage; and (ii)
5 fifty percent of the difference of the employee's average weekly wage
6 and one-half of the state average weekly wage.

7 ~~((5))~~ (6)(a) The maximum weekly benefit for family and medical
8 leave that occurs on or after January 1, 2020, shall be one thousand
9 dollars. By September 30, 2020, and by each subsequent September
10 30th, the commissioner shall adjust the maximum weekly benefit amount
11 to ninety percent of the state average weekly wage. The adjusted
12 maximum weekly benefit amount takes effect on the following January
13 1st.

14 (b) The minimum weekly benefit shall not be less than one hundred
15 dollars per week except that if the employee's average weekly wage at
16 the time of family or medical leave is less than one hundred dollars
17 per week, the weekly benefit shall be the employee's full wage.

18 **Sec. 4.** RCW 50A.25.020 and 2019 c 13 s 71 are each amended to
19 read as follows:

20 (1) Any information or records concerning an individual or
21 employer obtained by the department pursuant to the administration of
22 this title shall be private and confidential, except as otherwise
23 provided in this chapter or RCW 50A.05.040.

24 (2) This chapter does not create a rule of evidence.

25 (3) The department must publish, on its website, a current list
26 of all employers that have approved voluntary plans under chapter
27 50A.30 RCW.

28 NEW SECTION. **Sec. 5.** A new section is added to chapter 50A.05
29 RCW to read as follows:

30 (1) The office of actuarial services is established within the
31 department.

32 (2) The head of the office must be qualified by education and
33 experience in the field of actuarial science.

34 **Sec. 6.** RCW 50A.15.040 and 2019 c 13 s 6 are each amended to
35 read as follows:

36 (1) Family and medical leave insurance benefits are payable to an
37 employee during a period in which the employee is unable to perform

1 his or her regular or customary work because he or she is on family
2 and medical leave if the employee:

3 (a) Files an application for benefits as required by rules
4 adopted by the commissioner;

5 (b) Has met the eligibility requirements of RCW 50A.15.010 or the
6 elective coverage requirements under RCW 50A.10.010;

7 (c) Consents to the disclosure of information or records deemed
8 private and confidential under state law. Initial disclosure of this
9 information and these records by another state agency to the
10 department is solely for purposes related to the administration of
11 this title. Further disclosure of this information or these records
12 is subject to chapter 50A.25 RCW((~~7~~)) and RCW 50A.05.020(3)((~~7~~)) and
13 ((~~RCW~~)) 50A.20.030;

14 (d) Provides his or her social security number;

15 (e) Provides a document authorizing the family member's or
16 employee's health care provider, as applicable, to disclose the
17 family member's or employee's health care information in the form of
18 the certification of a serious health condition;

19 (f) Provides the employer from whom family and medical leave is
20 to be taken with written notice of the employee's intention to take
21 family leave in the same manner as an employee is required to provide
22 notice in RCW 50A.15.030 and, in the employee's initial application
23 for benefits, attests that written notice has been provided, unless
24 notice has been waived by the employer under RCW 50A.15.030(3); and

25 (g) Provides documentation of a military exigency, if requested
26 by the employer.

27 (2) An employee who is not in employment for an employer at the
28 time of filing an application for benefits is exempt from subsection
29 (1)(f) and (g) of this section.

30 (3) Beginning July 1, 2022, and until the 12 months after the end
31 of the state of emergency declared by the governor due to COVID-19,
32 the department must ask the employee applicant whether their family
33 or medical leave is related to the COVID-19 pandemic. Initial
34 disclosure of this information is solely for purposes related to the
35 administration of this title, including monitoring potential impacts
36 on the solvency and stability of the family and medical leave
37 insurance account created in RCW 50A.05.070. Further disclosure of
38 this information or these records is subject to chapter 50A.25 RCW
39 and RCW 50A.05.020(3) and 50A.20.030.

1 **Sec. 7.** RCW 50A.05.050 and 2017 3rd sp.s. c 5 s 86 are each
2 amended to read as follows:

3 (1) Beginning December 1, 2020, and annually thereafter, the
4 department shall report to the legislature on the entire program,
5 including:

6 ~~((1))~~ (a) Projected and actual program participation;

7 ~~((2))~~ (b) Premium rates;

8 ~~((3))~~ (c) Fund balances;

9 ~~((4))~~ (d) Benefits paid;

10 ~~((5))~~ (e) Demographic information on program participants,
11 including income, gender, race, ethnicity, geographic distribution by
12 county and legislative district, and employment sector;

13 ~~((6))~~ (f) Costs of providing benefits;

14 ~~((7))~~ (g) Elective coverage participation;

15 ~~((8))~~ (h) Voluntary plan participation;

16 ~~((9))~~ (i) Outreach efforts; and

17 ~~((10))~~ (j) Small business assistance.

18 (2) (a) Beginning January 1, 2023, the office of actuarial
19 services created in section 5 of this act must annually report, by
20 November 1st, to the advisory committee in RCW 50A.05.030 on the
21 experience and financial condition of the family and medical leave
22 insurance account, and the lowest future premium rates necessary to
23 maintain solvency of the family and medical leave insurance account
24 in the next four years while limiting fluctuation in premium rates.

25 (b) For calendar years 2023 through 2028, the annual reports in
26 (a) of this subsection must be submitted to the appropriate
27 committees of the legislature in compliance with RCW 43.01.036.

28 (3) Beginning October 1, 2023, the department must report
29 quarterly to the advisory committee in RCW 50A.05.030 on premium
30 collections, benefit payments, the family and medical leave insurance
31 account balance, and other program expenditures.

32 NEW SECTION. **Sec. 8.** A new section is added to chapter 50A.05
33 RCW to read as follows:

34 (1) The office of financial management must enter into a contract
35 with a public or private entity for actuarial services to provide a
36 report to the appropriate committees of the legislature by October 1,
37 2022, on the following:

38 (a) The experience and financial condition of the family and
39 medical leave insurance account created in RCW 50A.05.070;

1 (b) Any recommendations for options to modify the provisions of
2 chapter 50A.10 RCW to maintain the long-term stability and solvency
3 of the family and medical leave insurance account; and

4 (c) A comparison of the provisions of RCW 50A.10.030 with similar
5 provisions in those states with both paid medical leave insurance and
6 paid family leave insurance programs.

7 (2) The contract is exempt from the competitive procurement
8 requirements in chapter 39.26 RCW.

9 (3) The report in this section must comply with RCW 43.01.036.

10 (4) This section expires December 31, 2023.

11 **Sec. 9.** RCW 44.44.040 and 2019 c 363 s 22 are each amended to
12 read as follows:

13 The office of the state actuary shall have the following powers
14 and duties:

15 (1) Perform all actuarial services for the department of
16 retirement systems, including all studies required by law.

17 (2) Advise the legislature and the governor regarding pension
18 benefit provisions, and funding policies and investment policies of
19 the state investment board.

20 (3) Consult with the legislature and the governor concerning
21 determination of actuarial assumptions used by the department of
22 retirement systems.

23 (4) Prepare a report, to be known as the actuarial fiscal note,
24 on each pension bill introduced in the legislature which briefly
25 explains the financial impact of the bill. The actuarial fiscal note
26 shall include: (a) The statutorily required contribution for the
27 biennium and the following twenty-five years; (b) the biennial cost
28 of the increased benefits if these exceed the required contribution;
29 and (c) any change in the present value of the unfunded accrued
30 benefits. An actuarial fiscal note shall also be prepared for all
31 amendments which are offered in committee or on the floor of the
32 house of representatives or the senate to any pension bill. However,
33 a majority of the members present may suspend the requirement for an
34 actuarial fiscal note for amendments offered on the floor of the
35 house of representatives or the senate.

36 (5) Provide such actuarial services to the legislature as may be
37 requested from time to time.

38 (6) Provide staff and assistance to the committee established
39 under RCW 41.04.276.

1 (7) Provide actuarial assistance to the law enforcement officers'
2 and firefighters' plan 2 retirement board as provided in chapter 2,
3 Laws of 2003. Reimbursement for services shall be made to the state
4 actuary under RCW 39.34.130 and section 5(5), chapter 2, Laws of
5 2003.

6 (8) Provide actuarial assistance to the committee on advanced
7 tuition payment pursuant to chapter 28B.95 RCW, including
8 recommending a tuition unit price to the committee on advanced
9 tuition payment to be used in the ensuing enrollment period.
10 Reimbursement for services shall be made to the state actuary under
11 RCW 39.34.130.

12 (9) Provide actuarial assistance to the long-term services and
13 supports trust commission pursuant to chapter 50B.04 RCW.
14 Reimbursement for services shall be made to the state actuary under
15 RCW 39.34.130.

16 (10) Provide actuarial assistance, as requested by the employment
17 security department or the office of financial management, to the
18 employment security department related to the family and medical
19 leave program in Title 50A RCW.

20 **Sec. 10.** RCW 50A.25.070 and 2020 c 125 s 8 are each amended to
21 read as follows:

22 (1) The department may enter into data-sharing contracts and may
23 disclose records and information deemed confidential to state or
24 local government agencies under this chapter only if permitted under
25 subsection (2) of this section and RCW 50A.25.090. A state or local
26 government agency must need the records or information for an
27 official purpose and must also provide:

28 (a) An application in writing to the department for the records
29 or information containing a statement of the official purposes for
30 which the state or local government agency needs the information or
31 records and specifically identify the records or information sought
32 from the department; and

33 (b) A written verification of the need for the specific
34 information from the director, commissioner, chief executive, or
35 other official of the requesting state or local government agency
36 either on the application or on a separate document.

37 (2) The department may disclose information or records deemed
38 confidential under this chapter to the following state or local
39 government agencies:

1 (a) To the department of social and health services to identify
2 child support obligations as defined in RCW 50A.15.080;

3 (b) To the department of revenue to determine potential tax
4 liability or employer compliance with registration and licensing
5 requirements;

6 (c) To the department of labor and industries to compare records
7 or information to detect improper or fraudulent claims;

8 (d) To the office of financial management for the purpose of
9 conducting periodic salary or fringe benefit studies pursuant to law;

10 (e) To the office of the state treasurer and any financial or
11 banking institutions deemed necessary by the office of the state
12 treasurer and the department for the proper administration of funds;

13 (f) To the office of the attorney general for purposes of legal
14 representation;

15 (g) To a county clerk for the purpose of RCW 9.94A.760 if
16 requested by the county clerk's office;

17 (h) To the office of administrative hearings for the purpose of
18 administering the administrative appeal process;

19 (i) To the department of enterprise services for the purpose of
20 agency administration and operations; ~~((and))~~

21 (j) To the consolidated technology services agency for the
22 purpose of enterprise technology support; and

23 (k) To the office of the state actuary for the purpose of
24 performing actuarial services to assess the financial stability and
25 solvency of the family and medical leave program, and specifically
26 the family and medical leave insurance account created in RCW
27 50A.05.070.

28 NEW SECTION. Sec. 11. (1)(a) A legislative task force on paid
29 family and medical leave insurance premiums is established, with
30 members as provided in this subsection.

31 (i) The president of the senate must appoint two members from
32 each of the two largest caucuses of the senate.

33 (ii) The speaker of the house of representatives must appoint two
34 members from each of the two largest caucuses of the house of
35 representatives.

36 (iii) The voting members of the advisory committee in RCW
37 50A.05.030.

1 (iv) The governor shall appoint two members, one representing the
2 governor's office and one representing the employment security
3 department.

4 (b) The task force must choose its cochairs from among its
5 legislative membership described in (a)(i) and (ii) of this
6 subsection.

7 (2) The task force must review the reports submitted under RCW
8 50A.05.050 and make recommendations for any legislative modifications
9 to the provisions of chapter 50A.10 RCW to ensure the lowest future
10 premium rates necessary to maintain solvency of the family and
11 medical leave insurance account created in RCW 50A.05.070 in the next
12 four years while limiting fluctuation in family and medical leave
13 insurance premium rates.

14 (3)(a) Staff support for the task force must be provided by the
15 senate committee services and the house of representatives office of
16 program research.

17 (b) The staff must convene the initial meeting of the task force
18 no later than November 4, 2022.

19 (4) Legislative members of the task force are reimbursed for
20 travel expenses in accordance with RCW 44.04.120. Nonlegislative
21 members are not entitled to be reimbursed for travel expenses if they
22 are elected officials or are participating on behalf of an employer,
23 governmental entity, or other organization. Any reimbursement for
24 other nonlegislative members is subject to chapter 43.03 RCW.

25 (5) The expenses of the committee must be paid jointly by the
26 senate and the house of representatives. Task force expenditures are
27 subject to approval by the senate facilities and operations committee
28 and the house of representatives executive rules committee, or their
29 successor committees.

30 (6) The task force shall issue a final report on its findings and
31 recommendations to the governor and the appropriate committees of the
32 legislature by December 30, 2022.

33 (7) This section expires January 4, 2023.

34 NEW SECTION. **Sec. 12.** (1) By October 1, 2024, the joint
35 legislative audit and review committee, in consultation with the
36 employment security department and the advisory committee in RCW
37 50A.05.030, must conduct a performance audit analyzing the
38 implementation of the paid family and medical leave insurance

1 program. The analysis must include, at a minimum, the following
2 components:

3 (a) Evaluate the extent to which the department makes fair and
4 timely decisions, and communicates with employers and workers in a
5 timely, responsive, and accurate manner;

6 (b) Determine if current organization and service delivery models
7 are the most efficient available;

8 (c) Determine whether current initiatives improve service
9 delivery, meet the needs of current and future workers, and are
10 measurable;

11 (d) Evaluate whether the department prepares financial
12 information for the account under RCW 50A.05.070 in accordance with
13 generally accepted accounting principles;

14 (e) Evaluate the solvency of the account under RCW 50A.05.070
15 taking into account insurance risks and standard accounting
16 principles; and

17 (f) Make recommendations regarding administrative changes that
18 should be made to improve efficiency while maintaining quality
19 service to help address system costs and identify any needed
20 legislative changes to implement these recommendations.

21 (2) The joint legislative audit and review committee may contract
22 with an outside consulting firm with expertise in insurance or social
23 insurance and insurance principles.

24 (3) The joint legislative audit and review committee must submit
25 a final report on their findings to the appropriate committees of the
26 legislature by October 1, 2024, and must submit a progress report by
27 October 1, 2023.

28 (4) This section expires December 31, 2025.

29 NEW SECTION. **Sec. 13.** Section 8 of this act is necessary for
30 the immediate preservation of the public peace, health, or safety, or
31 support of the state government and its existing public institutions,
32 and takes effect immediately.

--- END ---