HOUSE BILL REPORT
HB 1959

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to extending certain requirements in the state paid family and medical leave program to employers with fewer than 50 employees.

Brief Description: Extending parts of the paid family and medical leave program to employers with fewer than 50 employees.

Sponsors: Representatives Walen, Ryu, Berry, Ramel, Reed, Ormsby, Doglio, Fosse, Lekanoff, Tharinger, Riccelli, Wylie, Pollet and Davis.

Brief History:
Committee Activity:
Labor & Workplace Standards: 1/17/24, 1/26/24 [DPS].

Brief Summary of Substitute Bill

- Removes the exemption allowing employers with fewer than 50 employees to not pay any portion of the premium for the Paid Family and Medical Leave Program, thereby requiring those employers to pay at least 55 percent of the medical leave share of the premium.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

Minority Report: Do not pass. Signed by 3 members: Representatives Schmidt, Ranking Minority Member; Rude and Ybarra.

Staff: Kelly Leonard (786-7147).

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.

Background:

The Paid Family and Medical Leave (PFML) Program, administered by the Employment Security Department (ESD), provides paid family or medical leave benefits for eligible employees who have worked at least 820 hours during a qualifying year. Eligible employees can take up to 12 weeks of medical leave or family leave, or up to 16 to 18 weeks of combined medical and family leave in a year. Eligible employees may receive cash benefits up to 90 percent of their wages, subject to a weekly maximum cap, which is $1,456 for 2024.

Premiums. Benefits are funded through a premium paid by both employees and employers, which is collected by employers and remitted to the ESD for deposit into the PFML Insurance Account on a quarterly basis. The total premium rate is a percentage of employee gross wages (up to the maximum wages subject to taxation for social security) which is calculated through a statutory formula and adjusted annually by the ESD. The total premium rate has two components, a family leave share and medical leave share. The split between the shares is based on the percentage of paid claims in each category in the previous year. For the medical leave share, employers with 50 or more employees pay 55 percent, and employees pay 45 percent. For the family leave share, employees pay 100 percent unless the employer chooses to pay a portion. An employer with fewer than 50 employees is exempt from paying premiums, unless it receives a small business assistance grant.

The ESD calculated the total premium rate and percentage split for 2024, providing as follows:
- The total premium rate is 0.74 percent of each employee's gross wages, not including tips, up to the 2024 Social Security cap ($168,600).
- The employer portion of the total rate is 28.57 percent (except for employers with fewer than 50 employees).
- The employee portion of the total rate is 71.43 percent.

Small Business Assistance Grants. Small business assistance grants provide small employers (150 or fewer employees) with grant money to help cover costs associated with one of their employees taking medical leave and family leave. There are two types of small business assistance grants:
- $3,000 for offsetting the costs of hiring a temporary worker to replace an employee on family or medical leave for seven days or more; or
- $1,000 for reimbursement of other significant wage-related costs or equipment costs resulting from an employee taking family or medical leave.

An employer may apply for a grant no more than 10 times per calendar year and no more than once for each employee on leave. If an employer with fewer than 50 employees receives a small business grant, then the employer must pay the employer portion of the total premium rate for all its employees for three years from the date of receipt of the grant.

Small business assistance grants are funded from the PFML insurance account.

Summary of Substitute Bill:

The exemption allowing employers with fewer than 50 employees to not pay any portion of the premium for the PFML Program is removed, thereby requiring those employers to pay at least 55 percent of the medical leave share of the total premium rate.

Substitute Bill Compared to Original Bill:

The substitute bill reorganizes provisions to provide that the ESD must calculate employer sizes for the purpose of determining eligibility for small business assistance grants, rather than for the purposes of determining the requirement to pay premiums and eligibility for those grants, as provided in current law.

The substitute bill takes effect January 1, 2025, rather than July 1, 2025.

Appropriation: None.

Fiscal Note: Requested on January 26, 2024.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2025.

Staff Summary of Public Testimony:

(In support) The Legislature should examine the requirements for PFML premiums. Current law exempts all employers with fewer than 50 employees, regardless of the type of business or its gross revenues. There are significant differences and inequities across small employers. Yet the law does not consider any of them. The employees of these small businesses are still accessing the leave benefits, but the employer share of the premium is going unpaid. In effect, large and mid-size employers and all employees are subsidizing small employers. The opponents of the bill will insist that the exemption was part of the bargain that led to the creation of the PFML Program, but at some point the Legislature needs to have a conversation about what is fair and how the program will maintain solvency. This should not be tiered system. Small employers are already administering the employee share of the premium, and this change will not be burdensome.

(Opposed) This bill would be yet another burden on small businesses, in addition to the minimum wage increase, the 10 percent increase in workers' compensation taxes, and the increase in unemployment insurances payroll taxes. It is yet another cut in a thousand cuts against business. And worse, this bill goes back on a bargain that the state, business, and the labor community negotiated when the PFML Program was initially passed into law. This bill will make it difficult to have honest negotiations going forward. The Legislature should not deviate from the agreement it made with the business community. Current law already allows small employers to opt in to paying the premium in exchange for small business assistance grants. Many small employers are doing this. The Legislature already chose the carrot, as opposed to the stick, approach. The state should allow the PFML Program to balance out before making changes. In examining the data, it is clear that employees of small employers are not heavily utilizing this program. Those employees are paying more than what they take out of the PFML Program, and are subsidizing larger employers, not the other way around.

Persons Testifying: (In support) Representative Amy Walen, prime sponsor; and AJ Johnson, Washington State Council of Firefighters.

(Opposed) Tom Kwieciak, Building Industry Association of Washington; Bruce K Beckett, Washington Retail Association; Patrick Connor, National Federation of Independent Businesses; Katie Beeson, Washington Food Industry Association; Robert Battles, Association of Washington Business; and Julia Gorton, Washington Hospitality Association.

Persons Signed In To Testify But Not Testifying: None.