FINAL BILL REPORT
SSB 5286

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Synopsis as Enacted

Brief Description: Modifying the premium provisions of the paid family and medical leave program.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Robinson, King, Keiser, Liias, Stanford, Wellman and Wilson, C.).

Senate Committee on Labor & Commerce
House Committee on Labor & Workplace Standards
House Committee on Appropriations

Background: Paid Family and Medical Leave Program. The Paid Family and Medical Leave Program (PFML) provides partial wage replacement to employees on leave for specified family and medical reasons if the employee worked at least 820 hours in a qualifying period. Qualified employees are eligible for up to 12 weeks of paid family or medical leave, up to 16 weeks when family and medical leave are used in combination, and an additional two weeks of leave due to pregnancy complications. Qualified employees may receive wage replacement of up to 90 percent of their wages, subject to a weekly maximum cap—$1,427 in 2023. The Employment Security Department (ESD) administers the PFML.

Paid Family and Medical Leave Program Premiums and Rate. Employers collect and remit premiums on taxable wages up to the taxable maximum in the Social Security Program—$160,200 in 2023. ESD collects premiums quarterly and the largest portion of premiums are received near the end of the quarter, which creates a lag in premium collection. For example, ESD will not receive the largest portion of premiums collected by employers in the fourth quarter of 2022 until the end of the first quarter of 2023—on or around March 31, 2023. Since these premium collections are from 2022, they are taxed at the 2022 rate, therefore, April is the first month ESD receives premiums collected at the new calendar year's rate.

The PFML premium rate has two components, a family leave share and a medical leave

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share. The split between the shares is based on the percentage of claims in each category in the previous year. Of the medical leave share, employers pay 55 percent and employees pay 45 percent. Employers with fewer than 50 employees are exempt from paying the medical leave share. For the family leave share, employees pay 100 percent unless the employer chooses to pay all or a portion of this share. In 2023, employers will pay 27.24 percent of the total premium and employees will pay 72.76 percent—a ratio similar to 2022.

The balance of the Family and Medical Leave Insurance Account (account) fluctuates as premium remittances are received quarterly and benefits are paid. The account balance ratio is calculated by dividing the account balance as of September 30th by the total covered wages paid by employers and those electing coverage. The premium rate is set based on the account balance ratio falling within certain statutorily-designated thresholds. ESD must assess a solvency surcharge if the account balance ratio is below 0.05 percent as of September 30th of each year. The solvency surcharge must be set at the lowest rate necessary to cover the costs of the PFML for the next calendar year. The premium rate may not exceed 1.2 percent, which includes a maximum base rate of 0.6 percent and a maximum solvency surcharge of 0.6 percent. ESD set the 2023 premium rate at 0.8 percent, which comprises a 0.6 percent base rate and a 0.2 percent solvency surcharge.

Account Condition. Since launching in early 2020, demand for PFML benefits has outpaced premium collection. The premium rate remained at 0.4 percent from 2019 through 2021, and increased to 0.6 percent in 2022, but ESD has not assessed a solvency surcharge. These premium rates were insufficient to fund growing administrative expenses and benefit payments for the PFML. At the end of 2021, the account balance declined to $123 million with a projected cash deficit to occur by spring 2022. A temporary cash deficit first occurred in April 2022 and again in July and October. In March 2022, ESD requested and was granted temporary deficit authorization by the Office of Financial Management (OFM), and benefit payments were not affected by temporary insolvency. The 2022 supplemental operating budget appropriated $350 million to OFM, which is available to transfer into the account on June 30, 2023, should the account be in a deficit at the end of the 2021-23 fiscal biennium. OFM may only transfer the amounts necessary to prevent the account from being in a deficit. Temporary deficits are expected in January, April, and possibly other months in 2023.

Paid Family and Medical Leave Task Force. In 2022, the Legislature passed 2SSB 5649 which, among other things, required many actuarial assessments to occur relative to the solvency of the account and the PFML generally. In addition, 2SSB 5649 established a Legislative Task Force on PFML Premiums (task force), consisting of members from both chambers and parties of the Legislature, the voting members of the PFML Advisory Committee, and Governor appointees representing the Governor's Office and ESD. The task force was required to make recommendations for legislative changes to the PFML premium provisions to ensure the lowest premium rates necessary to maintain solvency of the account while limiting rate fluctuations.

The task force submitted its final report in December 2022, recommending the following:

- at the end of the current biennium, use whatever remains of the $350 million allocated to the PFML as a one-time fund transfer into the account;
- calculate the premium rate to four decimal places, and round up to set the premium rate at two decimal places;
- cap the premium rate at 1.2 percent;
- remove the solvency surcharge;
- create a new formula establishing the equivalent of roughly three months of benefits in reserve; and
- calculate the formula as follows with the premium rate relying on historical program usage, not the current method of a specific day's ending fund balance:
  1. begin with 140 percent of the previous fiscal year's expenses, subtract the account balance from that amount, and divide by the previous fiscal year's taxable wages;
  2. round the result to four decimal places and then round up to set the rate at two decimal places;
  3. if the rate calculated results in projected annual account balances for the coming rate collection year above an amount equivalent to the estimated three-month reserve, the rate must be set at the minimum level necessary to maintain an annual end balance of at least that amount; and
  4. the three-month reserve is defined as the average monthly expenditures —benefits and administrative costs—in the prior 12 calendar months multiplied by three.

The task force expired January 4, 2023.

Summary: <u>Definitions.</u> Taxable wages means the total amount of wages subject to a premium assessment for all individuals in employment with an employer and all individuals electing coverage. Three-month reserve means the average monthly expenses, including the total amount of benefits paid and ESD's administrative costs, in the prior 12 calendar months from the date of the premium rate calculation multiplied by three.

<u>Paid Family and Medical Leave Program Premiums and Rate.</u> On or around October 20th of each year, ESD must calculate the total premium rate as follows:

- calculate an amount that equals 140 percent of the prior fiscal year's expenses, including the total amount of benefits paid and ESD's administrative costs;
- subtract the account balance as of September 30th from the amount determined above; and
- divide the difference above by the prior fiscal year's taxable wages.

The quotient must be carried to the fourth decimal place and rounded up to the nearest one hundredth of one percent.

ESD must set the total premium rate at the rate calculated above subject to the following conditions:

- if ESD determines the total premium rate exceeds a rate necessary to maintain a three-month reserve at the end of the following rate collection year, it must set the total premium rate at the minimum rate necessary to close the rate collection year with a three-month reserve; and
- the total premium rate must not exceed 1.20 percent.

ESD's ability to assess a solvency surcharge is removed.

Other. Expired language regarding the previous family leave share and medical leave share of the premium rate is removed.

Votes on Final Passage:

Senate	48	0
House	96	0

Effective: July 23, 2023