

SENATE BILL REPORT

SB 5539

As of February 17, 2025

Title: An act relating to expanding protections for workers in the state paid family and medical leave program.

Brief Description: Expanding protections for workers in the state paid family and medical leave program.

Sponsors: Senators Alvarado, Stanford, Frame, Nobles, Riccelli, Slatter, Trudeau, Valdez and Wilson, C..

Brief History:

Committee Activity: Labor & Commerce: 2/18/25.

Brief Summary of Bill

- Reduces the minimum claim for benefits under the Washington Paid Family and Medical Leave Program (PFML) from eight consecutive hours to four consecutive hours.
- Extends employment protection rights in the PFML to any employee who began employment with their current employer at least 90 calendar days before taking leave, regardless of the size of the employer.
- Allows employers to prevent stacking of certain employment protection rights by extending employment protection in the PFML to periods of unpaid leave protected by the Federal Family and Medical Leave Act, so long as the employer provides certain notices to the employee, and providing that employment protection expires after certain periods.
- Expands health care coverage protection during any period in which an employee receives PFML benefits and is also entitled to employment protection.

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.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Susan Jones (786-7404)

Background: Washington Paid Family and Medical Leave Program. The Washington Paid Family and Medical Leave Program (PFML), which is administered by the Employment Security Department (ESD), provides partial wage replacement benefits to employees on leave for specified family and medical reasons. The program is funded through premiums paid by employers and employees.

Washington Paid Family and Medical Leave Program Benefits. An eligible employee may access paid family or medical leave benefits for a qualifying event if the employee worked at least 820 hours during a qualifying year. The 820 hours can be satisfied in one or more positions with one or more employers. An eligible employee can access up to 12 weeks of medical leave or family leave benefits, or up to 16 to 18 weeks of combined medical and family leave benefits in a year. An eligible employee may receive benefits up to a specified percentage of their average weekly wage, subject to a weekly maximum, which is \$1,542 in 2025.

Eligible employees' use of paid leave benefits is based on their need. Depending on the circumstances, an eligible employee may use paid leave benefits in a single continuous period—possibly reaching the maximum allowable benefit period—or may use it intermittently. The minimum claim period to qualify for benefits is eight consecutive hours.

Employment Protection. An employer with 50 or more employees is required to restore an eligible employee to an equivalent position with equivalent pay and benefits upon returning from leave in the PFML, often referred to as employment protection or employment restoration. For an employee to qualify for employment protection, the employee must have worked for the employer for at least 12 months and for 1250 hours in the year before the first day they used paid leave benefits. If the employer has opted to use an approved employer-managed voluntary plan for paid family and medical leave, then employment protection must be given to any employee who has worked for the employer for at least nine months and for at least 965 hours in the previous year.

An employer may deny employment protection to any salaried employee who is among the highest paid 10 percent of the employees employed by the employer within 75 miles of the facility at which the employee is employed if certain conditions are satisfied.

Health Care Coverage. If the Federal Family and Medical Leave Act (FMLA) requires the employer to maintain health care coverage during any period in which an eligible employee uses paid or family medical leave benefits in the PFMLA, then state law also requires the employer to maintain the coverage during the employee's leave. If the employer and employee share the cost of the existing health benefits, the employee remains responsible for the employee's share of the cost.

Outreach. The ESD must conduct outreach to ensure that eligible employees are made aware of the PFML. Employers are also required to inform employees about the PFML by posting certain notices developed by the ESD. Employers may also provide an optional paystub insert developed by the ESD.

Washington Paid Family and Medical Leave Program Enforcement. The ESD may inspect and audit employer files and records relating to the PFML. The ESD is authorized to conduct certain enforcement actions to ensure compliance with PFML requirements.

Federal Family and Medical Leave Act. The FMLA allows an eligible employee to take up to 12 weeks of job-protected, unpaid leave in a 12-month period for a qualifying reason. Eligible employees are also entitled to continuing health care benefits. The FMLA applies to employees who have worked for a private employer with 50 or more employees or for a public employer, and have worked for the employer for at least 12 months and for at least 1250 hours during the previous 12 months. Eligible employees must meet all eligibility requirements, including a requirement that the employer employ at least 50 employees at the worksite or within 75 miles of that worksite. Upon return from leave, the employee is entitled to be returned to the same or an equivalent position.

State law provides that leave taken under the PFML must be taken concurrently with leave under the FMLA, unless an employer permits otherwise.

Summary of Bill: Washington Paid Family and Medical Leave Program Benefits. The minimum claim period to qualify for benefits is reduced to four consecutive hours.

Washington Paid Family and Medical Leave Program Employment Protection. The standards for employment protection are modified. All employers are required to provide employment protection to eligible employees, rather than limiting the requirement to employers with a minimum number of employees.

The minimum hourly threshold for qualifying for employment protection is removed. Instead, to qualify for protection, an employee must have begun employment with their current employer for at least 90 calendar days before taking leave. This applies to both to employers participating in the PFML and also to those opting to use approved voluntary plans.

Employment protection is extended to any period of unpaid leave protected by the FMLA where the employee was eligible for PFML benefits but did not apply for and receive those benefits, so long as the employer provides certain written notices to the employee. The written notices must include certain elements identified in the bill, including that the leave is counting against any permitted period of employment protection under the PFML and the FMLA, and that the use of unpaid leave does not affect the employee's eligibility for benefits in the PFML.

Maximum periods of employment protection are established. Except by agreement between the employer and employee, the employee forfeits the right to employment restoration if the employee does not exercise it upon the earlier of the:

- first scheduled work day following the period of leave; or
- first scheduled work day following a continuous period of, or combined intermittent periods of a total of, 16 typical workweeks of leave taken during a period of 52 consecutive calendar weeks, except this period is extended to 18 typical workweeks of leave during a period of 52 consecutive calendar weeks if any of the leave was taken as a result of a serious health condition with a pregnancy resulting in incapacity.

For leave extending certain periods, the employer must provide at least five business days advance written notice to the employee, regarding the estimated expiration of employment protection and the date of the employee's first scheduled work day. The notice must be sent in the language understood by the employee and transmitted by a method reasonably certain to be received promptly by the employee.

Health Care Coverage. The requirement for employers to maintain health care coverage is expanded. Employers must maintain an employee's health care coverage during any period of leave in the PFML in which the employee is also entitled to employment protection.

Outreach. The ESD must conduct regular outreach to employers regarding their responsibilities under the PFML. The written statement of employee rights and posters distributed and posted by employers must explain certain elements provided in the bill.

Washington Paid Family and Medical Leave Program Enforcement. The ESD must conduct periodic audits of employer files and records for the purposes of assisting with and otherwise enforcing compliance. To that end, the ESD may require the employer to collect and report information on the exercise of employment protection rights.

Appropriation: None.

Fiscal Note: Requested on February 4, 2025.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2026.