
HOUSE BILL 1658

State of Washington 60th Legislature 2007 Regular Session

By Representatives Dickerson, Conway, Hankins, Appleton, Green, Hurst, Campbell, Moeller, Wood, McCoy, Hasegawa, Ormsby, Sells, Roberts, Williams, Chase, Kagi, Santos, Cody and Simpson

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1 AN ACT Relating to family and medical leave insurance; and adding
2 a new chapter to Title 49 RCW.

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

4 NEW SECTION. **Sec. 1.** FINDINGS AND DECLARATIONS. The legislature
5 finds that, although family and medical leave laws have assisted
6 individuals to balance the demands of the workplace with their family
7 responsibilities, more needs to be done to achieve the goals of family
8 care, children and family health, workforce stability, and economic
9 security. In particular, the legislature finds that many individuals
10 do not have access to family and medical leave laws, and those who do
11 may not be in a financial position to take family and medical leave
12 that is unpaid, and that employer-paid benefits, including family and
13 medical leave and disability benefits, meet only a relatively small
14 part of this need. The legislature declares it to be in the public
15 interest to establish a program that: (1) Allows parents to bond with
16 a newborn or newly placed child, and workers to care for seriously ill
17 family members or recover from their own serious health condition; (2)
18 is in addition to those programs offered by employers; (3) provides
19 limited income support for a reasonable period while an individual is

1 away from work on family and medical leave; and (4) reduces the impact
2 on state income support programs by increasing an individual's ability
3 to provide caregiving services for family members while maintaining an
4 employment relationship.

5 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
6 section apply throughout this chapter unless the context clearly
7 requires otherwise.

8 (1) "Application year" means the twelve-month period beginning on
9 the first day of the calendar week in which an individual files an
10 application for family and medical leave insurance benefits and,
11 thereafter, the twelve-month period beginning with the first day of the
12 calendar week in which the individual next files an application for
13 family and medical leave insurance benefits after the expiration of the
14 individual's last preceding application year.

15 (2) "Calendar quarter" means the same as in RCW 50.04.050.

16 (3) "Child," "department," "director," "health care provider,"
17 "parent," "serious health condition," and "spouse" mean the same as in
18 RCW 49.78.020.

19 (4) "Domestic partner" means an unmarried person eighteen years of
20 age or older: (a) With whom the individual entered into a close
21 personal relationship when both parties were mentally competent and has
22 maintained a close personal relationship solely with that person for a
23 minimum of six continuous months; (b) with whom the individual shares
24 a regular and permanent residence; (c) with whom the individual has
25 agreed to be jointly responsible for basic living expenses incurred
26 during the domestic partnership; and (d) to whom the individual is not
27 related by blood as would bar marriage.

28 (5) "Employer" means: (a) The same as in RCW 50.04.080; and (b)
29 the state and its political subdivisions.

30 (6) "Employment" has the meaning provided in RCW 50.04.100.

31 (7) "Family and medical leave" means leave for a family member's
32 serious health condition, leave for the birth or placement of a child,
33 and leave for the employee's serious health condition as defined in RCW
34 49.78.020 and described in RCW 49.78.220.

35 (8) "Family and medical leave insurance benefits" means the
36 benefits payable under sections 6 and 7 of this act.

1 (9) "Family member" means a child, spouse or domestic partner, or
2 the parent of the individual.

3 (10) "Premium" or "premiums" means payments required by this
4 chapter to be made to the department for the family and medical leave
5 insurance account under section 19 of this act.

6 (11) "Qualifying year" means the first four of the last five
7 completed calendar quarters or the last four completed calendar
8 quarters immediately preceding the first day of the individual's
9 application year.

10 (12) "Regularly working" means the average number of hours per work
11 week that an individual worked in the two quarters of the individual's
12 qualifying year in which total wages were highest.

13 NEW SECTION. **Sec. 3.** FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.

14 (1) The department shall establish and administer a family and medical
15 leave insurance program and pay family and medical leave insurance
16 benefits as specified in this chapter.

17 (2) The department shall establish procedures and forms for filing
18 claims for benefits under this chapter. The department shall notify
19 the employer within five business days of a claim being filed under
20 section 4 of this act.

21 (3) The department may require that a claim for benefits under this
22 chapter be supported by a certification issued by the health care
23 provider providing health care to the individual or individual's family
24 member, as applicable.

25 (4) The department shall use information sharing and integration
26 technology to facilitate the disclosure of relevant information or
27 records by the employment security department, so long as an individual
28 consents to the disclosure as required under section 4(4) of this act.

29 (5) Information contained in the files and records pertaining to an
30 individual under this chapter are confidential and not open to public
31 inspection, other than to public employees in the performance of their
32 official duties. However, the individual or an authorized
33 representative of an individual may review the records or receive
34 specific information from the records on the presentation of the signed
35 authorization of the individual. An employer or the employer's duly
36 authorized representative may review the records of an individual
37 employed by the employer in connection with a pending claim. At the

1 department's discretion, other persons may review records when such
2 persons are rendering assistance to the department at any stage of the
3 proceedings on any matter pertaining to the administration of this
4 chapter.

5 (6) The department shall develop and implement an outreach program
6 to ensure that individuals who may be eligible to receive family and
7 medical leave insurance benefits under this chapter are made aware of
8 these benefits. Outreach information shall explain, in an easy to
9 understand format, eligibility requirements, the claims process, weekly
10 benefit amounts, maximum benefits payable, notice and medical
11 certification requirements, reinstatement and nondiscrimination rights,
12 confidentiality, and the relationship between benefits under this
13 chapter and other leave rights and benefits. Outreach information
14 shall be available in English and other primary languages as defined in
15 RCW 74.04.025.

16 NEW SECTION. **Sec. 4.** ELIGIBILITY FOR BENEFITS. Beginning
17 September 1, 2008, family and medical leave insurance benefits are
18 payable to an individual during a period in which the individual is on
19 family and medical leave if the individual:

20 (1) Files a claim for benefits in each week in which the individual
21 is on family and medical leave, and as required by rules adopted by the
22 director;

23 (2) Has been employed for at least six hundred eighty hours in
24 employment during the individual's qualifying year;

25 (3) Establishes an application year. An application year may not
26 be established if the qualifying year includes hours worked before
27 establishment of a previous application year;

28 (4) Consents to the disclosure of information or records deemed
29 private and confidential under chapter 50.13 RCW. Initial disclosure
30 of this information and these records by the employment security
31 department to the department is solely for purposes related to the
32 administration of this chapter. Further disclosure of this information
33 or these records is subject to sections 3(4) and 13(2)(b) of this act;

34 (5) Discloses whether or not he or she owes child support
35 obligations as defined in RCW 50.40.050;

36 (6) Documents that he or she has provided the employer from whom

1 family and medical leave is to be taken with written notice of the
2 individual's intention to take family and medical leave as follows:

3 (a) If the necessity for family and medical leave was foreseeable
4 based on an expected birth or placement, notice was given at least
5 thirty days before the family and medical leave was to begin, stating
6 the anticipated starting date and ending date of the family and medical
7 leave. However, if the date of birth or placement required family and
8 medical leave to begin in less than thirty days or if the date of birth
9 or placement required family and medical leave to be changed or
10 extended, as much notice as practicable was given; and

11 (b) If the necessity for family and medical leave was foreseeable
12 based on planned medical treatment:

13 (i) Notice was given at least thirty days before the family and
14 medical leave was to begin, stating the anticipated starting date and
15 ending date of the family and medical leave. However, if the date of
16 the treatment required family and medical leave to begin in less than
17 thirty days or if the date of the treatment required family and medical
18 leave to be changed or extended, as much notice as practicable was
19 given; and

20 (ii) The individual made reasonable efforts to schedule the
21 treatment so as not to disrupt unduly the operations of the employer,
22 subject to the approval of the health care provider of the individual
23 or family member, as applicable; and

24 (7) Is not receiving benefits under the unemployment compensation,
25 industrial insurance, crime victims' compensation, or disability
26 insurance laws of this state, any other state, or the United States.

27 NEW SECTION. **Sec. 5.** DISQUALIFICATION FROM BENEFITS. An
28 individual is disqualified from family and medical leave insurance
29 benefits beginning with the first day of the calendar week, and
30 continuing for the next fifty-two consecutive weeks, in which the
31 individual:

32 (1) Willfully made a false statement or misrepresentation regarding
33 a material fact, or willfully failed to report a material fact, to
34 obtain benefits under this chapter; or

35 (2) With respect to family and medical leave, is suffering from a
36 serious health condition resulting from the individual's perpetration
37 of a gross misdemeanor or felony.

1 NEW SECTION. **Sec. 6.** DURATION OF BENEFITS. (1) The maximum
2 number of weeks during which family and medical leave insurance
3 benefits are payable in an application year is five weeks. However,
4 benefits are not payable during a waiting period consisting of the
5 first seven calendar days of family and medical leave taken in an
6 application year with respect to a particular type of family and
7 medical leave, whether the first seven calendar days of family and
8 medical leave are employer paid or unpaid.

9 (2)(a) The first payment of benefits must be made to an individual
10 within two weeks after the claim is filed or the family and medical
11 leave began, whichever is later, and subsequent payments must be made
12 semimonthly thereafter.

13 (b) The payment of benefits under this chapter shall not be
14 considered a binding determination of the obligations of the department
15 under this chapter. The acceptance of compensation by the individual
16 shall likewise not be considered a binding determination of his or her
17 rights under this chapter. Whenever any payment of benefits under this
18 chapter has been made and timely appeal therefrom has been made where
19 the final decision is that the payment was improper, the individual
20 shall repay it and recoupment may be made from any future payment due
21 to the individual on any claim under this chapter. The director may
22 exercise his or her discretion to waive, in whole or in part, the
23 amount of any such payments where the recovery would be against equity
24 and good conscience.

25 (c) If an individual dies before he or she receives a payment of
26 benefits, the payment shall be made to the surviving spouse or domestic
27 partner, or the child or children if there is no surviving spouse or
28 domestic partner. If there is no surviving spouse or domestic partner,
29 and no child or children, the payment shall be made by the department
30 and distributed consistent with the terms of the decedent's will or, if
31 the decedent dies intestate, consistent with the terms of RCW
32 11.04.015.

33 (3) Benefits are not payable and waiting period credits are not
34 earned under this chapter for any weeks in which compensation is paid
35 or payable to the individual under the unemployment compensation,
36 industrial insurance, crime victims' compensation, or disability
37 insurance laws of this state, any other state, or the United States.

1 NEW SECTION. **Sec. 7.** AMOUNT OF BENEFITS. The amount of family
2 and medical leave insurance benefits shall be determined as follows:

3 (1) For weeks of family and medical leave beginning before July 1,
4 2009, the weekly benefit shall be two hundred fifty dollars per week
5 for an individual who at the time of beginning family and medical leave
6 was regularly working forty hours or more per week. By June 30, 2009,
7 and by each subsequent June 30th, the department shall calculate to the
8 nearest dollar an adjusted maximum weekly benefit to account for
9 inflation using the consumer price index for urban wage earners and
10 clerical workers, CPI-W, or a successor index, for the twelve completed
11 calendar months before each June 30th as calculated by the United
12 States department of labor. The adjusted maximum weekly benefit takes
13 effect for weeks of family and medical leave beginning after the
14 relevant June 30th.

15 (2) If an individual who at the time of beginning family and
16 medical leave was regularly working forty hours or more per week is on
17 family and medical leave for less than forty hours but at least eight
18 hours in a week, the individual's weekly benefit shall be .025 times
19 the maximum weekly benefit times the number of hours of family and
20 medical leave taken in the week. Benefits are not payable for less
21 than eight hours of family and medical leave taken in a week.

22 (3) For an individual who at the time of beginning family and
23 medical leave was regularly working less than forty hours per week, the
24 department shall calculate a prorated schedule for a weekly benefit
25 amount and a minimum number of hours of family and medical leave that
26 must be taken in a week for benefits to be payable, with the prorated
27 schedule based on the amounts and the calculations specified under
28 subsections (1) and (2) of this section.

29 (4) If an individual discloses that he or she owes child support
30 obligations under section 4 of this act and the department determines
31 that the individual is eligible for benefits, the department shall
32 notify the applicable state or local child support enforcement agency
33 and deduct and withhold an amount from benefits in a manner consistent
34 with RCW 50.40.050.

35 (5) If the internal revenue service determines that family and
36 medical leave insurance benefits under this chapter are subject to
37 federal income tax and an individual elects to have federal income tax

1 deducted and withheld from benefits, the department shall deduct and
2 withhold the amount specified in the federal internal revenue code in
3 a manner consistent with section 8 of this act.

4 NEW SECTION. **Sec. 8.** FEDERAL INCOME TAX. (1) If the internal
5 revenue service determines that family and medical leave insurance
6 benefits under this chapter are subject to federal income tax, the
7 department must advise an individual filing a new claim for family and
8 medical leave insurance benefits, at the time of filing such claim,
9 that:

10 (a) The internal revenue service has determined that benefits are
11 subject to federal income tax;

12 (b) Requirements exist pertaining to estimated tax payments;

13 (c) The individual may elect to have federal income tax deducted
14 and withheld from the individual's payment of benefits at the amount
15 specified in the federal internal revenue code; and

16 (d) The individual is permitted to change a previously elected
17 withholding status.

18 (2) Amounts deducted and withheld from benefits must remain in the
19 family and medical leave insurance account until transferred to the
20 federal taxing authority as a payment of income tax.

21 (3) The director shall follow all procedures specified by the
22 federal internal revenue service pertaining to the deducting and
23 withholding of income tax.

24 NEW SECTION. **Sec. 9.** ADJUSTMENT TO BENEFITS. If family and
25 medical leave insurance benefits are paid erroneously or as a result of
26 willful misrepresentation, or if a claim for family and medical leave
27 benefits is rejected after benefits are paid, RCW 51.32.240 shall
28 apply, except that appeals are governed by section 14 of this act,
29 penalties are paid into the family and medical leave insurance account,
30 and the department shall seek repayment of benefits from the recipient.

31 NEW SECTION. **Sec. 10.** LEAVE AND EMPLOYMENT PROTECTION. During a
32 period in which an individual receives family and medical leave
33 insurance benefits or earns waiting period credits under this chapter,
34 the individual is entitled to family and medical leave and, at the
35 established ending date of leave, to be restored to a position of

1 employment with the employer from whom leave was taken. The individual
2 entitled to leave under this section shall be restored to a position of
3 employment in the same manner as an employee entitled to leave under
4 chapter 49.78 RCW is restored to a position of employment, as specified
5 in RCW 49.78.280. An individual's rights to leave and employment
6 protection under this section are subject to the following:

7 (1) The individual must have been employed for at least twelve
8 months by the employer from whom family and medical leave is taken, and
9 for at least one thousand two hundred fifty hours of service with the
10 employer during the previous twelve-month period;

11 (2) The individual may not increase the total workweeks of leave
12 during any twelve-month period to which the individual is entitled
13 under the federal family and medical leave act of 1993 (Act Feb. 5,
14 1993, P.L. 103-3, 107 Stat. 6), chapter 49.78 RCW, or other applicable
15 federal, state, or local law by tacking on any weeks of leave to which
16 the individual is entitled under this chapter;

17 (3) If the individual is entitled to employment protection under
18 the federal family and medical leave act of 1993 (Act Feb. 5, 1993,
19 P.L. 103-3, 107 Stat. 6), chapter 49.78 RCW, or other applicable
20 federal, state, or local law, other than this chapter, the individual
21 is entitled to employment protection under the applicable law most
22 favorable to the individual;

23 (4)(a) The employer may require that family and medical leave for
24 which the individual is receiving or received family and medical leave
25 insurance benefits or waiting period credits under this chapter be
26 taken concurrently with leave under the federal family and medical
27 leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6), chapter
28 49.78 RCW, or other applicable federal, state, or local law, except
29 that:

30 (i) Family and medical leave taken for sickness or temporary
31 disability because of pregnancy or childbirth for which the individual
32 is receiving or received family and medical leave insurance benefits
33 under this chapter is in addition to leave under the federal family and
34 medical leave act of 1993, chapter 49.78 RCW, or other applicable
35 federal, state, or local law; and

36 (ii) Family and medical leave for which the individual is receiving
37 or received family and medical leave insurance benefits under this

1 chapter is in addition to leave from employment during which benefits
2 are paid or are payable under the industrial insurance laws of this
3 state, any other state, or the United States.

4 (b) If an employer requires that family and medical leave for which
5 an individual is receiving or received benefits under this chapter be
6 taken concurrently with leave under the federal family and medical
7 leave act of 1993, chapter 49.78 RCW, or other applicable federal,
8 state, or local law, the employer must give all individuals in its
9 employ written notice of the requirement; and

10 (5) This section shall be enforced as provided in chapter 49.78
11 RCW.

12 NEW SECTION. **Sec. 11.** ELECTIVE COVERAGE. (1) An employer of
13 individuals not covered by this chapter or a self-employed person,
14 including a sole proprietor, partner, or joint venturer, may elect
15 coverage under this chapter for all individuals in its employ for an
16 initial period of not less than three years or a subsequent period of
17 not less than one year immediately following another period of
18 coverage. The employer or self-employed person must file a notice of
19 election in writing with the director, as required by the department.
20 The election becomes effective on the date of filing the notice.

21 (2) An employer or self-employed person who has elected coverage
22 may withdraw from coverage within thirty days after the end of the
23 three-year period of coverage, or at such other times as the director
24 may prescribe by rule, by filing written notice with the director, such
25 withdrawal to take effect not sooner than thirty days after filing the
26 notice. Within five days of filing written notice of the withdrawal
27 with the director, an employer must provide written notice of the
28 withdrawal to all individuals in the employer's employ.

29 (3) The department may cancel elective coverage if the employer or
30 self-employed person fails to make required payments or reports. The
31 department may collect due and unpaid premiums and may levy an
32 additional premium for the remainder of the period of coverage. The
33 cancellation shall be effective no later than thirty days from the date
34 of the notice in writing advising the employer or self-employed person
35 of the cancellation. Within five days of receiving written notice of
36 the cancellation from the director, an employer must provide written
37 notice of the cancellation to all individuals in the employer's employ.

1 NEW SECTION. **Sec. 12.** AMOUNT OF PREMIUMS. (1) Beginning January
2 1, 2008, for each individual, each employer shall pay a premium of two
3 cents per hour worked, up to a maximum of forty hours per week, to the
4 department, and may retain from the earnings of each individual an
5 amount equal to the premium assessed for the individual. None of the
6 amount assessed for the family and medical leave insurance account,
7 however, may be retained from the earnings of individuals covered under
8 RCW 51.16.210.

9 (2) Payments shall be made in the manner and at such intervals as
10 the department directs for deposit in the family and medical leave
11 insurance account. In the payment of premiums, a fractional part of a
12 cent shall be disregarded unless it amounts to one-half cent or more,
13 in which case it shall be increased to one cent.

14 (3) The director shall adjust the amount of the premium from time
15 to time to ensure that the amount is the lowest rate necessary to pay
16 family and medical leave insurance benefits and administrative costs,
17 and maintain actuarial solvency in accordance with recognized insurance
18 principles, of the family and medical leave insurance program on a
19 current basis, and to repay loaned funds from the supplemental pension
20 fund, if any, as required in section 20 of this act.

21 NEW SECTION. **Sec. 13.** REPORTING AND RECORDKEEPING. (1) In the
22 form and at the times specified by the director, an employer shall make
23 reports, furnish information, and remit premiums as required by section
24 12 of this act to the department. If the employer is a temporary help
25 company that provides employees on a temporary basis to its customers,
26 the temporary help company is considered the employer for purposes of
27 this section. However, if the temporary help company fails to remit
28 the required premiums, the customer to whom the employees were provided
29 is liable for paying the premiums.

30 (2)(a) An employer must keep at his or her place of business a
31 record of employment from which the information needed by the
32 department for purposes of this chapter may be obtained. This record
33 shall at all times be open to the inspection of the director or
34 department employees designated by the director.

35 (b) Information obtained from employer records under this chapter
36 is confidential and not open to public inspection, other than to public
37 employees in the performance of their official duties. However, an

1 interested party shall be supplied with information from employer
2 records to the extent necessary for the proper presentation of the case
3 in question. An employer may authorize inspection of its records by
4 written consent.

5 (3) The requirements relating to the assessment and collection of
6 family and medical leave insurance premiums are the same as the
7 requirements relating to the assessment and collection of industrial
8 insurance premiums under Title 51 RCW, including but not limited to
9 penalties, interest, and department lien rights and collection
10 remedies. These requirements apply to:

11 (a) An employer that fails under this chapter to make the required
12 reports, or fails to remit the full amount of the premiums when due;

13 (b) An employer that willfully makes a false statement or
14 misrepresentation regarding a material fact, or willfully fails to
15 report a material fact, to avoid making the required reports or
16 remitting the full amount of the premiums when due under this chapter;

17 (c) A public entity that engages in work or lets a contract for
18 work, in the manner specified in RCW 51.12.050;

19 (d) A person, firm, or corporation who lets a contract for work, in
20 the manner specified in RCW 51.12.070;

21 (e) A successor, as defined in RCW 51.08.177, in the manner
22 specified in RCW 51.16.200; and

23 (f) An officer, member, manager, or other person having control or
24 supervision of payment and/or reporting of family and medical leave
25 insurance, or who is charged with the responsibility for the filing of
26 returns, in the manner specified in RCW 51.48.055.

27 (4) Notwithstanding subsection (3) of this section, appeals are
28 governed by section 14 of this act.

29 NEW SECTION. **Sec. 14.** APPEALS. (1) A person aggrieved by a
30 decision of the department under this chapter must file a notice of
31 appeal with the director, by mail or personally, within thirty days
32 after the date on which a copy of the department's decision was
33 communicated to the person. Upon receipt of the notice of appeal, the
34 director shall request the assignment of an administrative law judge in
35 accordance with chapter 34.05 RCW to conduct a hearing and issue a
36 proposed decision and order. The hearing shall be conducted in
37 accordance with chapter 34.05 RCW.

1 (2) The administrative law judge's proposed decision and order
2 shall be final and not subject to further appeal unless, within thirty
3 days after the decision is communicated to the interested parties, a
4 party petitions for review by the director. If the director's review
5 is timely requested, the director may order additional evidence by the
6 administrative law judge. On the basis of the evidence before the
7 administrative law judge and such additional evidence as the director
8 may order to be taken, the director shall render a decision affirming,
9 modifying, or setting aside the administrative law judge's decision.
10 The director's decision becomes final and not subject to further appeal
11 unless, within thirty days after the decision is communicated to the
12 interested parties, a party files a petition for judicial review as
13 provided in chapter 34.05 RCW. The director is a party to any judicial
14 action involving the director's decision and shall be represented in
15 the action by the attorney general.

16 (3) If, upon administrative or judicial review, the final decision
17 of the department is reversed or modified, the administrative law judge
18 or the court in its discretion may award reasonable attorneys' fees and
19 costs to the prevailing party. Attorneys' fees and costs owed by the
20 department, if any, are payable from the family and medical leave
21 insurance account.

22 NEW SECTION. **Sec. 15.** PROHIBITED ACTS. An employer, temporary
23 help company, employment agency, employee organization, or other person
24 may not discharge, expel, or otherwise discriminate against a person
25 because he or she has filed or communicated to the employer an intent
26 to file a claim, a complaint, or an appeal, or has testified or is
27 about to testify or has assisted in any proceeding, under this chapter,
28 at any time, including during the waiting period described in section
29 6 of this act and the period in which the person receives family and
30 medical leave insurance benefits under this chapter. This section
31 shall be enforced as provided in RCW 51.48.025.

32 NEW SECTION. **Sec. 16.** EFFECT ON OTHER LEAVE AND BENEFITS. (1)
33 This chapter does not limit an individual's right to leave from
34 employment or benefits under other laws, collective bargaining
35 agreements, or employer policy, as applicable, except as provided in
36 this chapter. This chapter also does not diminish an employer's

1 obligation to comply with other laws, collective bargaining agreements,
2 or employer policies, as applicable, that provides greater rights to
3 leave from employment or benefits than the rights provided under this
4 chapter.

5 (2) The rights to leave provided to individuals under this chapter
6 may not be diminished by collective bargaining agreements entered into
7 or renewed or employer policies adopted or retained after the effective
8 date of this section. This chapter is not intended to discourage or
9 preclude employers from entering into or renewing collective bargaining
10 agreements or adopting or retaining employer policies that provide
11 additional benefits to individuals to address family and medical leave
12 needs.

13 (3) An agreement by an individual to waive his or her rights under
14 this chapter is void as against public policy.

15 (4) If an employer provides paid family and medical leave through
16 disability insurance or any other means, the individual may elect
17 whether first to use the paid family and medical leave or to receive
18 family and medical leave insurance benefits under this chapter. An
19 individual may not be required to use the individual's paid family and
20 medical leave to which the individual is otherwise entitled before
21 receiving benefits under this chapter.

22 NEW SECTION. **Sec. 17.** NO CONTINUING ENTITLEMENT OR CONTRACTUAL
23 RIGHT. This chapter does not create a continuing entitlement or
24 contractual right. The legislature reserves the right to amend or
25 repeal all or part of this chapter at any time, and a benefit or other
26 right granted under this chapter exists subject to the legislature's
27 power to amend or repeal this chapter. There is no vested private
28 right of any kind against such amendment or repeal.

29 NEW SECTION. **Sec. 18.** RULES. The director may adopt rules as
30 necessary to implement this chapter. In adopting rules, the director
31 shall maintain consistency with the rules adopted to implement the
32 federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L.
33 103-3, 107 Stat. 6), and chapter 49.78 RCW, to the extent such rules
34 are not in conflict with this chapter.

1 NEW SECTION. **Sec. 19.** ACCOUNT. The family and medical leave
2 insurance account is created in the custody of the state treasurer.
3 All receipts from the premium imposed under section 12 of this act or
4 the penalties imposed under section 13 of this act must be deposited in
5 the account. Expenditures from the account may be used only for the
6 purposes of the family and medical leave insurance program. Only the
7 director or the director's designee may authorize expenditures from the
8 account. The account is subject to the allotment procedures under
9 chapter 43.88 RCW, but an appropriation is not required for benefit
10 payments.

11 NEW SECTION. **Sec. 20.** LOANS. If necessary to ensure that money
12 is available in the family and medical leave insurance account for the
13 administration of the family and medical leave insurance program and
14 the payment of benefits under this chapter, the director may, from time
15 to time, lend funds from the supplemental pension fund to the family
16 and medical leave insurance account. These loaned funds may be
17 expended solely for the purposes of administering the program and
18 paying benefits under this chapter. The director shall repay the
19 supplemental pension fund, plus its proportionate share of earnings
20 from investment of moneys in the supplemental pension fund during the
21 loan period, from the family and medical leave insurance account within
22 one year of the date of the loan.

23 NEW SECTION. **Sec. 21.** REPORTS TO THE LEGISLATURE. Beginning
24 September 1, 2009, the department shall report to the legislature by
25 September 1st of each year on projected and actual program
26 participation, premium rates, fund balances, and outreach efforts.

27 NEW SECTION. **Sec. 22.** SEVERABILITY. If any provision of this act
28 or its application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 23.** CAPTIONS. Captions used in this act are
32 not any part of the law.

1 NEW SECTION. **Sec. 24.** CODIFICATION. Sections 1 through 23 of
2 this act constitute a new chapter in Title 49 RCW.

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