

SENATE BILL REPORT

SB 5649

As of January 13, 2022

Title: An act relating to modifying the Washington state paid family and medical leave act.

Brief Description: Modifying the Washington state paid family and medical leave act.

Sponsors: Senators Robinson, Conway, Lovick, Randall and Wilson, C..

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 1/13/22.

Brief Summary of Bill

- Provides up to 14 calendar days of paid family leave, within existing leave limits, in certain situations following the death of the employee's family member or child.
- Specifies that leave taken by certain employees in the first six weeks after giving birth must be medical leave, unless the employee chooses to use family leave.
- Expires the collective bargaining exception contained in the Paid Family and Medical Leave program.
- Authorizes the Employment Security Department (ESD) to issue a predetermination of eligibility and benefits prior to the employee's start of leave.
- Requires ESD to publish a list of employers with approved voluntary plans on its website.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Staff: Matt Shepard-Koningsor (786-7627)

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: Paid Family and Medical Leave Overview. In 2017, the Paid Family and Medical Leave (PFML) program was enacted to provide partial wage replacement to employees on leave for specified family and medical reasons. Employees are eligible for PFML benefits after working 820 hours in a qualifying period. Premium collection began on January 1, 2019, and benefits were payable as of January 1, 2020. The Employment Security Department (ESD) administers the PFML program.

Qualified employees are eligible for the following maximum leave amounts per calendar year:

- up to 12 weeks of paid family or medical leave;
- up to 16 weeks of leave when family and medical leave are used in combination; and
- an additional two weeks of leave due to pregnancy complications.

Definitions. ESD, by rule, defines a qualifying event (QE) as:

- for family leave, events described in the PFML definition of family leave and related rules; and
- for medical leave, events described in the PFML definition of medical leave and related rules.

Paid Family Leave. Paid family leave benefits are provided when an employee is bonding after the birth or placement of a child under the age of 18; because of a family member's serious health condition; or for a military exigency.

Paid Medical Leave. Paid medical leave benefits are provided for an employee's own serious health condition. A serious health condition is defined by statute and has the same meaning as in the federal Family and Medical Leave Act and its regulations. A serious health condition includes, among other things, any period of incapacity due to pregnancy or for prenatal care.

Certification of Serious Health Condition. If applicable, when applying for paid family or medical leave, ESD requires the employee to submit a certification of a serious health condition form. The form contains information provided by the employee and their health care provider.

Collective Bargaining Agreements. The PFML program does not require any party to a collective bargaining agreement (CBA) in existence on October 19, 2017, to reopen negotiations of the CBA or to apply any of the rights and responsibilities under the PFML program unless and until the existing CBA is reopened, renegotiated by the parties, or expires.

Application for Benefits. To receive benefits, an employee must:

- file an application for benefits with ESD;
- meet the 820-hour eligibility requirement;
- consent to the disclosure of certain information;

- provide their social security number;
- provide a document authorizing certain health care disclosures; and
- provide written notice to their employer.

An employee may complete most of their application for benefits prior to their QE, but ESD does not issue predeterminations on such applications.

Confidential Records. Information or records relative to the administration of the PFML program are private and confidential, however, there are certain exceptions determined by where the request originates. Based on this confidentiality, ESD does not publicly list employers that have approved voluntary plans under the PFML program.

Summary of Bill: Definitions. "Postnatal" means the first six weeks after birth. "Predetermination" means a determination of eligibility and benefit amount and duration under the PFML program, which occurs before the employee's QE.

Paid Family Leave. Paid family leave benefits are provided:

- up to 14 calendar days following the death of the family member for whom the employee was approved to provide care; and
- up to 14 calendar days following the postnatal death or stillbirth of the employee's child for whose birth the employee was approved for medical leave or would have qualified for medical leave based on a period of incapacity due to pregnancy or for prenatal care.

Paid Medical Leave. Any paid leave benefits used in the postnatal period by an employee eligible for benefits based on a period of incapacity due to pregnancy or for prenatal care must be medical leave, unless the employee chooses to use family leave during the postnatal period. The maximum and minimum weekly benefits, duration, and other conditions and limitations established in the PFML program still apply.

Certification of Serious Health Condition. A certification of a serious health condition form is not required for paid leave benefits used in the postnatal period by an employee eligible for benefits based on a period of incapacity due to pregnancy or for prenatal care.

Collective Bargaining Agreements. The CBA exception in the PFML program expires December 31, 2023.

Predetermination on Application for Benefits. Before an employee's QE, but not earlier than 45 days in advance, the employee may apply for benefits and receive a predetermination from ESD. ESD will not conduct fact finding or issue a predetermination on incomplete applications. After the employee's QE, but before receiving their first weekly payment, the employee must notify ESD and provide certification or documentation validating the employee's QE.

Confidential Records. ESD must publish, on its website, a current list of all employers that have approved voluntary plans under the PFML program.

Appropriation: None.

Fiscal Note: Requested on January 6, 2022.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill contains minor fixes to issues we have heard from ESD, employees, and employers. This bill will help the PFML program operate more effectively. The current requirement that pregnant individuals wait until the medical event has occurred and then submit the application for leave creates issues. A client had pregnancy complications and postpartum depression and ended up missing the application deadline. I had all of my paperwork ready to apply for pregnancy leave but found out I could not submit my application until my event occurred. This bill allows individuals to apply 45 days in advance. If I had the extra time, it would be one less thing to stress and worry about. This bill aims to make small but deeply meaning modifications to the PFML program. We think it is necessary that people can plan for leaves accordingly. I made a mistake while filling out my application for pregnancy leave and that could have been avoided with the fixes in this bill. This bill makes simple and necessary fixes to the PFML program. In 2014, before the PFML program, I used up my vacation and other paid time off caring for my mother until she passed away and used an additional two weeks to assist my father. This bill would have saved me a lot of stress during the most difficult year of my life.

CON: We are concerned the bill creates a new benefit of bereavement leave for employees caring for family members. We just saw a 50 percent rate increase without this change.

OTHER: We do not have any concerns with the bill as written, but we would request clarity on the provisions relating to leave taken concurrently under the PFML program and the federal Family and Medical Leave Act. We agree with the need for predeterminations and public posting of employers with voluntary plans. The 14 days should be offered and not automatic.

Persons Testifying: PRO: Senator June Robinson, Prime Sponsor; Suzanne Pak, Korean Women's Assoc; Sasha Buz; Samantha Grad, UFCW 21; Lauren Hipp, MomsRising; Marilyn Watkins, Economic Opportunity Institute; Julia Gorton, Washington Hospitality Association.

CON: Tom Kwieciak, Building Industry Association of Washington.

OTHER: Robert Battles, Association of Washington Business (AWB); Briahna Murray,

Contract Lobbyist for Cities.

Persons Signed In To Testify But Not Testifying: No one.