

HOUSE BILL REPORT

HB 2392

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to family and medical leave.

Brief Description: Modifying the family and medical leave act.

Sponsors: Representatives Dickerson, Appleton, Moeller, Hasegawa, Darneille, Conway, Roberts, Kenney, Kagi, Flannigan, Cody and Green.

Brief History:

Committee Activity:

Commerce & Labor: 1/16/06, 2/2/06 [DPS].

Brief Summary of Substitute Bill

- Amends the state Family Leave Law to conform, in part, with the federal Family and Medical Leave Act.
- Includes details about "serious health conditions" and "intermittent leave" from federal regulations.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins, Kenney and McCoy.

Minority Report: Do not pass. Signed by 4 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Crouse and Holmquist.

Staff: Jill Reinmuth (786-7134).

Background:

Federal and state laws provide that certain employees are entitled to family and medical leave.

Federal Family and Medical Leave Act

Eligible employees who work for covered employers may take up to 12 weeks of unpaid leave in a 12-month period for: (1) the birth and care of a child of the employee; (2) the placement of a child with the employee for adoption or foster care; (3) the care of an immediate family

member who has a serious health condition; or (4) the serious health condition of the employee that makes the employee unable to work. These employees are also entitled to be reinstated to their original jobs or equivalent jobs.

An "eligible employee" is one who: (1) works for a covered employer; and (2) has worked for the same employer for at least 12 months, and for at least 1,250 hours over the previous 12 months. An eligible employee is not one who works at a location at which the employer employs less than 50 employees if the total number employed within 75 miles of that work site is less than 50.

A "covered employer" is a private employer that had 50 or more employees in at least 20 weeks of the current or preceding year, or a public agency.

An "immediate family member" is the employee's spouse, son or daughter under age 18, or parent.

A "serious health condition" is an illness, injury, impairment, or physical or mental condition involving inpatient care in hospital, hospice, or residential medical-care facility, or continuing treatment by a health care provider. Regulations adopted by the federal Secretary of Labor define "serious health condition" in greater detail.

Unpaid leave may be taken intermittently in some circumstances. For example, leave for birth and care or placement for adoption or foster care may be taken intermittently only with the employer's approval. Leave for serious illnesses may be taken intermittently whenever medically necessary. Regulations adopted by the federal Secretary of Labor also address "intermittent leave."

State and local laws may provide greater family or medical leave rights than federal law.

State Family Leave Law

Eligible employees are entitled to return to a workplace within 20 miles of their original workplace, and an employee's right to leave under federal law is in addition to leave for sickness or temporary disability related to pregnancy or childbirth. *Enforcement of other provisions of the state Family Leave Law is currently suspended.*

Summary of Substitute Bill:

The state Family Leave Law is amended to conform, in part, with the federal Family and Medical Leave Act. The state law is amended to include details about "serious health conditions" and "intermittent leave" found in federal regulations. The provision suspending enforcement of the state Family Leave Law is repealed.

Eligible employees who work for covered employers may take up to 12 weeks of unpaid leave in a 12-month period for: (1) the birth and care of a child of the employee; (2) the placement of a child with the employee for adoption or foster care; (3) the care of a family member who has a serious health condition; or (4) the serious health condition of the employee that makes

the employee unable to work. These employees are also entitled to be reinstated to their original jobs or equivalent jobs.

An "eligible employee" is one who: (1) works for a covered employer; and (2) has worked for the same employer for at least 12 months, and for at least 1,250 hours over the previous 12 months. An eligible employee is not one who works at a location at which the employer employs less than 50 employees if the total number employed within 75 miles of that work site is less than 50.

A "covered employer" is a private employer that had 50 or more employees in at least 20 weeks of the current or preceding year, the state, or a unit of local government.

A "family member" is the employee's child, parent, or spouse.

A "serious health condition" is defined in the same manner as in regulations adopted by the federal Secretary of Labor. A "serious health condition" is an illness, injury, impairment, or physical or mental condition involving inpatient care in a hospital, hospice, or residential medical-care facility; or continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes: (1) a period of incapacity of more than three consecutive days and any subsequent treatment or period of incapacity relating to the same condition that also involves treatment two or more times by a health care provider or on at least one occasion which results in a regimen of continuing treatment; (2) a period of incapacity due to pregnancy or for prenatal care; (3) a period of incapacity or treatment due to a chronic serious health condition; (4) a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; or (5) a period of absence to receive multiple treatments. "Treatment" and "regimen of continuing treatment" are defined. Substance abuse and conditions for which cosmetic treatments are administered may be serious health conditions in specified circumstances.

Leave may be taken intermittently or on a reduced leave schedule in the same manner specified in regulations adopted by the federal Secretary of Labor. With the employer's agreement, it may be taken: (1) for the birth or placement of a child; (2) when medically necessary for the medical treatment of a serious health condition; or (3) to provide care or psychological comfort to an immediate family member with a serious health condition. There is no limit on the size of the increment of intermittent or reduced leave although the employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences or use of leave. Leave taken intermittently or on a reduced leave schedule may not result in a reduction of the total amount of leave to which the employee is entitled.

If leave for the birth or placement of a child is foreseeable based on the expected birth date or placement, the employee must provide the employer with at least 30 days notice before the date leave is to begin. If the birth date or placement makes giving 30 days notice impracticable, then the employee must provide as much notice to the employer as possible.

If leave becomes necessary to care for a family member with a serious health condition or because of the employee's health condition, the employee must make a reasonable effort to

schedule the treatment so as to not unduly interrupt the operations of the employer. The employee must also provide the employer notice of leave at least 30 days before leave is to begin, unless impracticable.

An employer may require that a leave request for a family member's serious health condition or the employee's serious health condition be supported by a health care provider's certification. The employee must provide a copy of the certification to the employer in a timely manner. If the employer has reason to doubt the validity of the certification, he or she can request the opinion of a second health care provider.

Upon returning from leave, an employee is entitled to be restored to: (1) the position he or she held when leave started; or (2) an equivalent position with equal benefits, pay and other terms and conditions of employment at a workplace within 20 miles of the employee's workplace when leave commenced. Employees maintain all employment benefits accrued before leave was taken.

During the leave period, if the employee is not eligible to receive employer-paid benefits, the employee may opt to continue the benefits at the employee's expense. The premium paid by the employee cannot exceed 102 percent of the applicable premium for the leave period.

An employer may not discharge or discriminate against any employee who takes leave.

The director of the Department of Labor and Industries (Department) is required to investigate complaints of violations of these provisions. An employer found to have violated a provision after an investigation is subject to a civil penalty of at least \$1,000 per violation. These penalties are collected by the Department and deposited into a newly-created Family and Medical Leave Enforcement Account. An employee may also bring suit directly against an employer for violations of these provisions, and may recover damages equal to the amount of wages, benefits, salary or other compensation lost or denied as a result of the violation or any actual monetary losses as a result of the violation up to a sum equal to 12 weeks of the employee's wages or salary.

An employer must post a notice of these provisions. An employer found to have willfully failed to post the notice is subject to a civil penalty of not more than \$100 per violation.

Leave under the state Family Leave Law and the federal Family and Medical Leave Act are in addition to any sick or temporary disability leave provided because of pregnancy or childbirth. Leave under the state law must be taken concurrently with leave under the federal law.

Substitute Bill Compared to Original Bill:

The definitions of "employer" and "family member" are modified to conform with the federal Family and Medical Leave Act. Covered employers are those with 50 or more employees (instead of 25 or more employees). Family members are children, parents, and spouses (not domestic partners).

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Some Washington workers are covered under the federal Family and Medical Leave Act. But in the last year, the federal Department of Labor has announced its intent to change the federal Act. It could mean that serious health conditions would not be allowed for periods of time that are less than 10 days long. Intermittent leave also may not be allowed. This means that workers would not have a right to leave to take a family member to chemotherapy, for example.

Washington was one of the first states to adopt a leave law. However, Washington law is now almost completely superseded by federal law. This bill helps maintain the same standard that currently exists.

This year's bill contains two modest updates to the federal law. First, it covers employers with 25 or more employees. Forty percent of employees are currently excluded because federal law only covers employers with 50 or more employees. Oregon law covers employers with 25 or more employees and it works. Laws in several other states also provide for greater coverage than federal law. This change would extend coverage to about 330,000 additional employees. Second, it recognizes that family structures have changed and includes coverage for domestic partners.

Family leave can have a positive effect on businesses. If they are interested in motivating employees and making them care about the success of the business, they should respect their workers, and show their commitment to their workers and their families. Values are changing. First-year MBA students say balance is more important than compensation. Data shows that the costs are either neutral or positive. In every case, small businesses were more accommodating. However, employees cannot count on the good will of employers. With procedures for complaints and civil penalties, parties can avoid litigation. This bill is good for business. It is a win-win situation.

Intermittent leave is key. The trend in health care is towards shorter hospitalizations. When patients are discharged, many are able to go home rather than to a skilled nursing facility. When patients go home, they need someone to be there. Outpatient treatments are becoming more common. Many people are foregoing health care for themselves, and ending up with more serious, and therefore more expensive, conditions.

Testimony Against: We oppose this bill for three reasons. First, it drops the threshold from 50 employees to 25 employees. Oregon's standard is not necessarily good policy. Forty-six other states do not have standards that differ from the federal standard. This expansion would have a significant impact on small businesses, including small retailers. Second, moneys in the Accident and Medical Aid funds are used to administer the laws. Third, with respect to domestic partners, the question is one of proof, not substance.

We can talk about this bill if it is just about conforming to federal law. We do not object to the parts of this bill that are faithful to the federal law.

Persons Testifying: (In support) Representative Dickerson, prime sponsor; Sharon Lobel, Seattle University and Boston College Working Family Roundtable; Dr. Jay Fahti; Sharon Ness, United Food and Commercial Workers; Marilyn Watkins, Economic Opportunity Institute; and Pam Crone, Washington State Labor Council.

(Opposed) Kris Tefft, Association of Washington Business; and Mark Johnson, Washington Retail Association.

Persons Signed In To Testify But Not Testifying: (In support) Bob Guenther, International Brotherhood of Electrical Workers.

(Opposed) Carolyn Logue, National Federation of Independent Business; and Gary Smith, Independent Business Association.