

HOUSE BILL REPORT

E2SSB 5069

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to family leave insurance.

Brief Description: Establishing family leave insurance.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Kohl-Welles, Franklin, Thibaudeau, Brown, Kline and Regala).

Brief History:

Committee Activity:

Commerce & Labor: 3/24/05, 3/31/05 [DPA].

**Brief Summary of Engrossed Second Substitute Bill
(As Amended by House Committee)**

- Establishes the family leave insurance program.
- Provides for payment of benefits of \$250 per week for up to five weeks to eligible employees of covered employers while they are on family leave.
- Provides for assessment of premiums of 2 cents per hour worked per employee, to be deducted by employers from employee wages and submitted by employers to the Department of Labor and Industries.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 4 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins and McCoy.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Sump, Assistant Ranking Minority Member; and Crouse.

Staff: Jill Reinmuth (786-7134).

Background:

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

Federal Law: Under the federal Family and Medical Leave Act, eligible employees are entitled to take up to 12 weeks of unpaid leave in a 12-month period for specified family and medical reasons, and 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 worksite 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.

Leave may be taken 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.

State Law: Under the state Family Leave Law, eligible employees are entitled to reinstatement to workplaces within 20 miles of their original workplaces. Employees are also entitled to leave for sickness or temporary disability related to pregnancy or childbirth in addition to leave under federal law. Enforcement of other provisions of the state Family Leave Law is currently suspended.

Summary of Amended Bill:

A new partial wage replacement program, the Family Leave Insurance Program, is established. Beginning on September 3, 2006, benefits of \$250 per week for up to five weeks are paid to eligible employees of covered employers while they are on family leave. Premiums are 2 cents per hour worked per employee. Employers deduct premiums from employee wages, and submit premiums to the Department of Labor and Industries (Department). The program is administered by the Department.

Family Leave: "Family leave" means leave: (1) to care for a newborn child; (2) to care for a child placed with the employee for adoption or foster care; and (3) to care for a child, spouse, or parent of an employee or spouse with a serious health condition.

Eligible Employees: An individual is eligible to receive benefits if he or she: (1) is employed by an employer subject to unemployment compensation; (2) has been employed for at least 680 hours and in at least six months during either the first four of the last five calendar quarters or the last four calendar quarters completed before beginning family leave; and (3) has been employed for at least six calendar workweeks by the employer from whom family leave is to be taken.

Covered Employers: An employer is covered if the employer is: (1) an employer that employed 50 or more employees for each working day during each of 20 or more calendar

workweeks in the current or preceding year; (2) the state or a political subdivision; or (3) an employer or a self-employed person not mandatorily covered, including an employer who employed fewer than 50 employees, that elects to be covered.

Other Requirements: If leave is foreseeable, the employee is required to provide notice of leave to his or her employer. If leave is to care for a family member with a serious health condition, the employee may be required by the Department to support his or her claim with medical certification.

Disqualification: An employee is disqualified from receiving benefits if the employee made false statements to obtain benefits.

Other Leave and/or Compensation: Family leave for which an individual is receiving benefits must be taken concurrently with leave under federal, state, or local law. An employee may elect when he or she uses any paid leave. An employer may not require an employee to exhaust any paid leave before receiving benefits. An employee may not receive benefits while entitled to certain workers' compensation or unemployment compensation benefits.

Benefits: An eligible employee on family leave is entitled to receive benefits for a maximum of five weeks in an application year. The amount of the weekly benefit is \$250 for an eligible employee who was regularly working 40 or more hours per week and is on leave for the same number of hours. Benefits are prorated for an eligible employee who was regularly working less than 40 hours per week, and for an eligible employee who is on leave for fewer hours per week than he or she was regularly working.

Reinstatement: An eligible employee is entitled to return to the same job or an equivalent position at the end of the period in which he or she receives benefits, with certain exceptions.

Premiums: Beginning on January 1, 2006, an employer is required to submit the premium, and is authorized to retain the full amount of the premium from employee wages. The premium is 2 cents per hour worked per employee. The amount of the premium may be reduced by the Department to ensure that it is at the lowest rate necessary to pay benefits and administrative costs, and maintain actuarial solvency of the program on a current basis.

Penalties: An employee who receives benefits erroneously or as a result of willful misrepresentation must repay the benefits and may be subject to penalties. An employer that fails to make reports or pay premiums required by the Department is subject to sanctions, including penalties, interest, and collection procedures.

Confidentiality: Information in an employee's record is not subject to public disclosure, but an employer may review the records of its employee in connection with a pending claim. Information that the Department obtains from employers' records for administration of the program is not subject to public disclosure.

Discrimination: An employer or other person may not discriminate against a person for filing a claim for benefits, communicating an intent to file a claim, or testifying or assisting in a proceeding related to a family leave insurance.

Dedicated Account: A dedicated account is established. Premiums and penalties are paid into and benefits are paid out of the account.

Loan: If necessary, the Director of the Department may loan funds from the supplemental pension fund to the family leave insurance account. The loaned funds are for the purposes of administering the family leave insurance program and paying family leave insurance benefits. The loan funds must be repaid, with interest, from the family leave insurance account to the supplemental pension fund within one year of the initial loan, and within three months of any subsequent loans.

Reports: Beginning on September 1, 2006, and annually thereafter, the Department must report to the Legislature on program participation, premium rates, fund balances, and outreach efforts.

Amended Bill Compared to Engrossed Second Substitute Bill:

The employer coverage requirements are modified to cover: (1) employers that employ fifty or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding year; (2) the state and its political subdivisions; and (3) employers that employ less than 50 employees and self-employed persons that elect coverage. Employers are covered for determining both an individual's eligibility to receive benefits and an employer's obligation to submit premiums.

The employee eligibility requirements are modified to provide that the individual: (1) must be employed by an employer subject to unemployment compensation; (2) must have been employed for at least 680 hours and in at least six months during either the first four of the last five calendar quarters or the last four calendar quarters completed before beginning family leave; and (3) must have been employed for at least six calendar workweeks by the employer from whom family leave is to be taken.

The reinstatement provisions are modified to specify that an employee is entitled to return to the same job or an equivalent position at the end of the period in which he or she receives benefits, with certain exceptions.

Appropriation: None.

Fiscal Note: Requested on March 22, 2005.

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

Testimony For: This bill establishes a new partial wage replacement program for workers to care for a new baby or someone in their family with a serious medical condition. The premium is 2 cents per hour. The program applies only to employers with 50 or more employees. Other employers can opt in. The program requires 30 days of notice when the need for leave is foreseeable, and provides for a one-week waiting period. The program provides a modest

benefit of \$250 per week, which is just enough to pay for rent and food and keep things together. It puts in place a safety net for times of need that you cannot predict.

This bill has undergone an extreme makeover. We would like it to reach a few more low-income workers that work for relatively small employers, and provide coverage for domestic partners. From the California program, we know that 90 percent of claims for benefits are baby-related.

This program is modeled after temporary disability insurance programs that are long-established in certain other states. These programs already cover 20 percent of the country's workforce. Of the persons receiving benefits, only 10 percent earned more than \$50,000 per year, while 52 percent earned less than \$20,000 per year.

The bill was amended in the Senate. The amendments took out coverage of one's own serious health condition, which reduced anticipated claims for benefits by two-thirds. It also limited participation only to employers with 50 or more employees, which means that only 5 percent of employers in Washington are covered, and only 40 percent of employees. (This is an outstanding concern because workers in small companies are most likely not to have paid leave.) Finally, it eliminated language providing for modest cost-of-living adjustments, which would help maintain buying power.

We ask that you change the bill to restore coverage of small businesses. As is, this bill creates the perception that there is a disadvantage to working for a small business. Covering all employers makes sense.

We ask that you change the bill to restore the number of hours required for eligibility to 680. At the higher level, the bill excludes many hourly school employees and part-time community college faculty. Their families get sick too.

This bill helps workers balance family and work. The workers pay for the insurance and the administration. The employers pay nothing. This bill supports family values by allowing workers to celebrate new family members and to be there when family members are seriously or terminally ill.

This bill balances the needs of families and the demands of the workforce. A workers' decision to take family leave should not be about dollars and cents. There are very few who would scam and game the program.

Testimony Against: This bill hurts Washington because it will be abused by employees, increase the cost of manufacturing, and drive businesses to outsource work. Workers will abuse the program, because the benefit is about 83 percent of what a minimum wage worker makes. Manufacturing costs will increase because of decreased productivity.

Mandated paid family leave is the wrong policy for small businesses and their employees. Productivity is necessary to be competitive. We cannot create incentives to stay home from work. Companies can retain their employees without government intervention. Our company provides paid time off; others provide sick leave banks and other leave benefits. Small

employers compete for employees with big business. If they are not benevolent, they will be forced to make changes because they will lose employees. The costs to business are for legal advice to navigate the law, as well as in lost productivity and profits.

The bill misses the mark for employers that already provide paid leave. It should require employees to use all employer-based benefits first.

The bill also creates administrative costs. For example, the Family and Medical Leave Act makes employees with 1,250 hours eligible for leave, but the bill says 960 hours. It is a burden to have to track hours for these and other purposes. Also, the Family and Medical Leave Act does not include in-laws, but the bill does.

The bill does not address two spouses working for the same company, and whether both spouses can take leave. The bill includes a death benefit that strays from the intent of the bill.

Our organization believes in family values. Our members do not need government to tell them to do this. They allow time whenever possible. The requirement that a worker be continuously employed for 12 months could be interpreted as having a job or looking for one. The requirement that employers have at least 50 employees applies only to premium payment, and not benefit eligibility.

This policy is not timely. It puts a new mandate on employers, and a new tax on workers. The record keeping requirements are unclear.

This bill creates an unnecessary drain on the economy and on worker wages. Seventy percent of employers already pay for leave. Workers would do better to have personal savings accounts that do not require applications or waiting periods as this bill does.

We are concerned about the administrative burdens created by this bill. Mandatory leave creates a competitive disadvantage. We need flexibility. Do not saddle the Department of Labor and Industries with a new program.

The definition of employer needs greater precision. Employers may have over 50 employees at times, and less at other times.

The disclosure provisions allow interested parties to request records, which will be an invitation to litigation.

Penalties are deposited in the Family Leave Insurance Account. Penalties are usually deposited in the General Fund, not in a non-appropriated account.

The fiscal note shows that state agencies are confused too. Different agencies provided three different estimates of appeals costs.

This bill creates technology issues for the Department of Personnel. The current payroll system does not support modern payroll practices. The costs of implementing this bill, especially the payroll deductions, would be significant. The new system would be able to handle the deductions. The implementation date should be changed to July 1, 2006, or later.

Cities provide very good benefits. This bill mandates benefits above and beyond what it already provided. It also does not allow or require concurrent leave.

Public agencies are generous, but absenteeism is a concern. For example, out of 500 drivers, we have an 11.2 percent absentee rate (not including vacation leave).

School districts would face added costs in the form of an unfunded mandate. Current benefits are fine. This bill is not needed.

Persons Testifying: (In support) Senator Keiser, prime sponsor; Representative Dickerson; Marilyn Watkins, Economic Opportunity Institute; Simon Fraser; Sandra Schroeder, Washington Federation of Teachers; Joe Crump, United Food and Commercial Workers; and Jerri Wood, Alliance of Retired Americans.

(Opposed) Kris Tefft, Association of Washington Business; Jerry O'Neill, ACCOR Technology; Lynn Robbins, Spectrum Controls; Mike Nelson, Columbia Bank; Emily Shue, City of Anacortes; Susan Miller, Department of Personnel; Peter Thein, Washington State Transit Association; Gary Smith, Independent Business Association; Carolyn Logue, National Federation of Independent Business; Dan Fazio, Washington State Farm Bureau; Mitch Denning, Alliance of Education Association and Washington Association of School Business Officials; Mark Johnson, Washington Retail Association; Rick Slunaker, Associated General Contractors; Larry Stevens, National Electrical Contractors Association and Mechanical Contractors Association; and Phil Watkins, Goodwill Industries.

Persons Signed In To Testify But Not Testifying: None.