

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 6185

Chapter 59, Laws of 2006

59th Legislature
2006 Regular Session

FAMILY AND MEDICAL LEAVE

EFFECTIVE DATE: 6/7/06

Passed by the Senate February 8, 2006
YEAS 37 NAYS 12

BRAD OWEN

President of the Senate

Passed by the House March 1, 2006
YEAS 54 NAYS 44

FRANK CHOPP

Speaker of the House of Representatives

Approved March 15, 2006.

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6185** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

March 15, 2006 - 2:17 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6185

Passed Legislature - 2006 Regular Session

State of Washington 59th Legislature 2006 Regular Session

By Senate Committee on Labor, Commerce, Research & Development
(originally sponsored by Senators Keiser, Kohl-Welles, Thibaudeau,
Kline and Poulsen)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to family and medical leave; amending RCW 49.78.010
2 and 49.78.020; adding new sections to chapter 49.78 RCW; creating a new
3 section; repealing RCW 49.78.005, 49.78.030, 49.78.040, 49.78.050,
4 49.78.060, 49.78.070, 49.78.080, 49.78.100, 49.78.110, 49.78.120,
5 49.78.130, 49.78.140, 49.78.150, 49.78.160, 49.78.170, 49.78.180,
6 49.78.190, and 49.78.200; and prescribing penalties.

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

8 **Sec. 1.** RCW 49.78.010 and 1989 1st ex.s. c 11 s 1 are each amended
9 to read as follows:

10 The legislature finds that the demands of the workplace and of
11 families need to be balanced to promote family stability and economic
12 security. ~~((Changes in))~~ Workplace leave policies are desirable to
13 accommodate changes in the work force such as rising numbers of dual-
14 career couples ~~((and))~~, working single parents, and an aging
15 population. In addition, given the mobility of American society, many
16 people no longer have available community or family support networks
17 and therefore need additional flexibility in the workplace. The
18 legislature declares it to be in the public interest to provide
19 reasonable ~~((family leave upon the birth or adoption of a child and to~~

1 ~~care for a child under eighteen years old with a terminal~~) leave for
2 medical reasons, for the birth or placement of a child, and for the
3 care of a family member who has a serious health condition.

4 **Sec. 2.** RCW 49.78.020 and 1996 c 178 s 14 are each amended to read
5 as follows:

6 Unless the context clearly requires otherwise, the definitions in
7 this section apply throughout this chapter.

8 (1) "Child" means a biological ~~((or))~~, adopted, or foster child,
9 ~~((or))~~ a stepchild, ((living with the employee)) a legal ward, or a
10 child of a person standing in loco parentis, who is: (a) Under
11 eighteen years of age; or (b) eighteen years of age or older and
12 incapable of self-care because of a mental or physical disability.

13 (2) "Department" means the department of labor and industries.

14 (3) "Director" means the director of the department.

15 (4)(a) "Employee" means a person ((other than an independent
16 contractor employed by an employer on a continuous basis for the
17 previous fifty two weeks for at least thirty five hours per week)) who
18 has been employed: (i) For at least twelve months by the employer with
19 respect to whom leave is requested under section 3 of this act; and
20 (ii) for at least one thousand two hundred fifty hours of service with
21 the employer during the previous twelve-month period.

22 (b) "Employee" does not mean a person who is employed at a worksite
23 at which the employer as defined in (a) of this subsection employs less
24 than fifty employees if the total number of employees employed by that
25 employer within seventy-five miles of that worksite is less than fifty.

26 ~~((+4))~~ (5) "Employer" means: (a) Any person, firm, corporation,
27 partnership, business trust, legal representative, or other business
28 entity which engages in any business, industry, profession, or activity
29 in this state and includes any unit of local government including, but
30 not limited to, a county, city, town, municipal corporation, quasi-
31 municipal corporation, or political subdivision, which ((+i) employed
32 a daily average of one hundred or more employees during the last
33 calendar quarter at the place where the employee requesting leave
34 reports for work, or (ii) employed a daily average of one hundred or
35 more employees during the last calendar quarter within a twenty mile
36 radius of the place where the employee requesting leave reports for
37 work, where the employer maintains a central hiring location and

1 ~~customarily transfers employees among workplaces; and~~) employs fifty
2 or more employees for each working day during each of twenty or more
3 calendar workweeks in the current or preceding calendar year; (b) the
4 state, state institutions, and state agencies; and (c) any unit of
5 local government including, but not limited to, a county, city, town,
6 municipal corporation, quasi-municipal corporation, or political
7 subdivision.

8 ~~((5) "Family leave" means leave from employment to care for a~~
9 ~~newborn or newly adopted child under the age of six or a child under~~
10 ~~eighteen years old with a terminal health condition, as provided in RCW~~
11 ~~49.78.030.))~~

12 (6) "Employment benefits" means all benefits provided or made
13 available to employees by an employer, including group life insurance,
14 health insurance, disability insurance, sick leave, annual leave,
15 educational benefits, and pensions except benefits that are provided by
16 a practice or written policy of an employer or through an employee
17 benefit plan as defined in 29 U.S.C. Sec. 1002(3).

18 (7) "Family member" means a child, parent, or spouse of an
19 employee.

20 (8) "Health care provider" means: (a) A person licensed as a
21 physician under chapter 18.71 RCW or an osteopathic physician and
22 surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced
23 registered nurse practitioner under chapter 18.79 RCW; or (c) any other
24 person determined by the director to be capable of providing health
25 care services.

26 ~~((7))~~ (9) "Intermittent leave" is leave taken in separate blocks
27 of time due to a single qualifying reason.

28 (10) "Leave for a family member's serious health condition" means
29 leave as described in section 3(1)(c) of this act.

30 (11) "Leave for the birth or placement of a child" means leave as
31 described in section 3(1) (a) or (b) of this act.

32 (12) "Leave for the employee's serious health condition" means
33 leave as described in section 3(1)(d) of this act.

34 (13) "Parent" means ~~((a biological or adoptive parent, or a~~
35 ~~stepparent))~~ the biological or adoptive parent of an employee or an
36 individual who stood in loco parentis to an employee when the employee
37 was a child.

1 ~~((8))~~ (14) "Period of incapacity" means an inability to work,
2 attend school, or perform other regular daily activities because of the
3 serious health condition, treatment of that condition or recovery from
4 it, or subsequent treatment in connection with such inpatient care.

5 (15) "Reduced leave schedule" means ~~((leave scheduled for fewer~~
6 ~~than an employee's usual number of hours or days per workweek))~~ a leave
7 schedule that reduces the usual number of hours per workweek, or hours
8 per workday, of an employee.

9 ~~((9) "Terminal health condition" means a condition caused by~~
10 ~~injury, disease, or illness, that, within reasonable medical judgment,~~
11 ~~is incurable and will produce death within the period of leave to which~~
12 ~~the employee is entitled.))~~

13 (16)(a) "Serious health condition" means an illness, injury,
14 impairment, or physical or mental condition that involves:

15 (i) Inpatient care in a hospital, hospice, or residential medical
16 care facility, including any period of incapacity; or

17 (ii) Continuing treatment by a health care provider. A serious
18 health condition involving continuing treatment by a health care
19 provider includes any one or more of the following:

20 (A) A period of incapacity of more than three consecutive calendar
21 days, and any subsequent treatment or period of incapacity relating to
22 the same condition, that also involves:

23 (I) Treatment two or more times by a health care provider, by a
24 nurse or physician's assistant under direct supervision of a health
25 care provider, or by a provider of health care services under orders
26 of, or on referral by, a health care provider; or

27 (II) Treatment by a health care provider on at least one occasion
28 which results in a regimen of continuing treatment under the
29 supervision of the health care provider;

30 (B) Any period of incapacity due to pregnancy, or for prenatal
31 care;

32 (C) Any period of incapacity or treatment for such incapacity due
33 to a chronic serious health condition. A chronic serious health
34 condition is one which:

35 (I) Requires periodic visits for treatment by a health care
36 provider, or by a nurse or physician's assistant under direct
37 supervision of a health care provider;

1 (II) Continues over an extended period of time, including recurring
2 episodes of a single underlying condition; and

3 (III) May cause episodic rather than a continuing period of
4 incapacity;

5 (D) A period of incapacity which is permanent or long-term due to
6 a condition for which treatment may not be effective. The employee or
7 family member must be under the continuing supervision of, but need not
8 be receiving active treatment by, a health care provider; or

9 (E) Any period of absence to receive multiple treatments, including
10 any period of recovery from the treatments, by a health care provider
11 or by a provider of health care services under orders of, or on
12 referral by, a health care provider, either for restorative surgery
13 after an accident or other injury, or for a condition that would likely
14 result in a period of incapacity of more than three consecutive
15 calendar days in the absence of medical intervention or treatment, such
16 as cancer, severe arthritis, or kidney disease.

17 (b) Treatment for purposes of (a) of this subsection includes, but
18 is not limited to, examinations to determine if a serious health
19 condition exists and evaluations of the condition. Treatment does not
20 include routine physical examinations, eye examinations, or dental
21 examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of
22 continuing treatment includes, but is not limited to, a course of
23 prescription medication or therapy requiring special equipment to
24 resolve or alleviate the health condition. A regimen of continuing
25 treatment that includes taking over-the-counter medications, such as
26 aspirin, antihistamines, or salves, or bed-rest, drinking fluids,
27 exercise, and other similar activities that can be initiated without a
28 visit to a health care provider, is not, by itself, sufficient to
29 constitute a regimen of continuing treatment for purposes of this
30 chapter.

31 (c) Conditions for which cosmetic treatments are administered are
32 not "serious health conditions" unless inpatient hospital care is
33 required or unless complications develop. Unless complications arise,
34 the common cold, the flu, ear aches, upset stomach, minor ulcers,
35 headaches other than migraine, routine dental or orthodontia problems,
36 and periodontal disease are examples of conditions that do not meet the
37 definition of a "serious health condition" and do not qualify for leave
38 under this chapter. Restorative dental or plastic surgery after an

1 injury or removal of cancerous growths are serious health conditions
2 provided all the other conditions of this section are met. Mental
3 illness resulting from stress or allergies may be serious health
4 conditions provided all the other conditions of this section are met.

5 (d) Substance abuse may be a serious health condition if the
6 conditions of this section are met. However, leave may only be taken
7 for treatment for substance abuse by a health care provider or by a
8 provider of health care services upon referral by a health care
9 provider. Absence from work because of the employee's use of the
10 substance, rather than for treatment, does not qualify for leave under
11 this chapter.

12 (e) Absences attributable to incapacity under (a)(ii)(B) or (C) of
13 this subsection qualify for leave under this chapter even though the
14 employee or the immediate family member does not receive treatment from
15 a health care provider during the absence, and even if the absence does
16 not last more than three days.

17 (17) "Spouse" means a husband or wife, as the case may be.

18 NEW SECTION. Sec. 3. A new section is added to chapter 49.78 RCW
19 to read as follows:

20 ENTITLEMENT TO LEAVE. (1) Subject to section 7 of this act, an
21 employee is entitled to a total of twelve workweeks of leave during any
22 twelve-month period for one or more of the following:

23 (a) Because of the birth of a child of the employee and in order to
24 care for the child;

25 (b) Because of the placement of a child with the employee for
26 adoption or foster care;

27 (c) In order to care for a family member of the employee, if the
28 family member has a serious health condition; or

29 (d) Because of a serious health condition that makes the employee
30 unable to perform the functions of the position of the employee.

31 (2) The entitlement to leave for the birth or placement of a child
32 expires at the end of the twelve-month period beginning on the date of
33 such birth or placement.

34 NEW SECTION. Sec. 4. A new section is added to chapter 49.78 RCW
35 to read as follows:

36 LEAVE TAKEN INTERMITTENTLY OR ON REDUCED LEAVE SCHEDULE. (1)(a)

1 When leave is taken after the birth or placement of a child for
2 adoption or foster care, an employee may take leave intermittently or
3 on a reduced leave schedule with the employer's agreement. The
4 employer's agreement is not required, however, for leave during which
5 the employee has a serious health condition in connection with the
6 birth of a child or if the newborn child has a serious health
7 condition.

8 (b) Leave may be taken intermittently or on a reduced leave
9 schedule when medically necessary for medical treatment of a serious
10 health condition by or under the supervision of a health care provider,
11 or for recovery from treatment or recovery from a serious health
12 condition. It may also be taken to provide care or psychological
13 comfort to an immediate family member with a serious health condition.

14 (i) Intermittent leave may be taken for a serious health condition
15 that requires treatment by a health care provider periodically, rather
16 than for one continuous period of time, and may include leave of
17 periods from an hour or more to several weeks.

18 (ii) Intermittent or reduced schedule leave may be taken for
19 absences where the employee or family member is incapacitated or unable
20 to perform the essential functions of the position because of a chronic
21 serious health condition even if he or she does not receive treatment
22 by a health care provider.

23 (c) There is no limit on the size of an increment of leave when an
24 employee takes intermittent leave or leave on a reduced leave schedule.
25 However, an employer may limit leave increments to the shortest period
26 of time that the employer's payroll system uses to account for absences
27 or use of leave, provided it is one hour or less.

28 (d) The taking of leave intermittently or on a reduced leave
29 schedule under this section may not result in a reduction in the total
30 amount of leave to which the employee is entitled under section 3 of
31 this act beyond the amount of leave actually taken.

32 (2) If an employee requests intermittent leave, or leave on a
33 reduced leave schedule, for a family member's serious health condition
34 or the employee's serious health condition when the condition is
35 foreseeable based on planned medical treatment, the employer may
36 require such employee to transfer temporarily to an available
37 alternative position offered by the employer for which the employee is
38 qualified and that:

- 1 (a) Has equivalent pay and benefits; and
- 2 (b) Better accommodates recurring periods of leave than the regular
- 3 employment position of the employee.

4 NEW SECTION. **Sec. 5.** A new section is added to chapter 49.78 RCW
5 to read as follows:

6 UNPAID LEAVE PERMITTED--RELATIONSHIP TO PAID LEAVE. (1) Except as
7 provided in subsection (2) of this section, leave granted under section
8 3 of this act may consist of unpaid leave.

9 (2) If an employer provides paid leave for fewer than twelve
10 workweeks, the additional weeks of leave necessary to attain the twelve
11 workweeks of leave required under this chapter may be provided without
12 compensation.

13 NEW SECTION. **Sec. 6.** A new section is added to chapter 49.78 RCW
14 to read as follows:

15 FORESEEABLE LEAVE. (1) If the necessity for leave for the birth or
16 placement of a child is foreseeable based on an expected birth or
17 placement, the employee shall provide the employer with not less than
18 thirty days' notice, before the date the leave is to begin, of the
19 employee's intention to take leave for the birth or placement of a
20 child, except that if the date of the birth or placement requires leave
21 to begin in less than thirty days, the employee shall provide such
22 notice as is practicable.

23 (2) If the necessity for leave for a family member's serious health
24 condition or the employee's serious health condition is foreseeable
25 based on planned medical treatment, the employee:

26 (a) Must make a reasonable effort to schedule the treatment so as
27 not to disrupt unduly the operations of the employer, subject to the
28 approval of the health care provider of the employee or the health care
29 provider of the family member, as appropriate; and

30 (b) Must provide the employer with not less than thirty days'
31 notice, before the date the leave is to begin, of the employee's
32 intention to take leave for a family member's serious health condition
33 or the employee's serious health condition, except that if the date of
34 the treatment requires leave to begin in less than thirty days, the
35 employee must provide such notice as is practicable.

1 NEW SECTION. **Sec. 7.** A new section is added to chapter 49.78 RCW
2 to read as follows:

3 SPOUSES EMPLOYED BY SAME EMPLOYER. If spouses entitled to leave
4 under this chapter are employed by the same employer, the aggregate
5 number of workweeks of leave to which both may be entitled may be
6 limited to twelve workweeks during any twelve-month period, if such
7 leave is taken: (1) For the birth or placement of a child; or (2) for
8 a parent's serious health condition.

9 NEW SECTION. **Sec. 8.** A new section is added to chapter 49.78 RCW
10 to read as follows:

11 CERTIFICATION. (1) An employer may require that a request for
12 leave for a family member's serious health condition or the employee's
13 serious health condition be supported by a certification issued by the
14 health care provider of the employee or of the family member, as
15 appropriate. The employee must provide, in a timely manner, a copy of
16 the certification to the employer.

17 (2) Certification provided under subsection (1) of this section is
18 sufficient if it states:

19 (a) The date on which the serious health condition commenced;

20 (b) The probable duration of the condition;

21 (c) The appropriate medical facts within the knowledge of the
22 health care provider regarding the condition;

23 (d)(i) For purposes of leave for a family member's serious health
24 condition, a statement that the employee is needed to care for the
25 family member and an estimate of the amount of time that such employee
26 is needed to care for the family member; and

27 (ii) For purposes of leave for the employee's serious health
28 condition, a statement that the employee is unable to perform the
29 functions of the position of the employee;

30 (e) In the case of certification for intermittent leave, or leave
31 on a reduced leave schedule, for planned medical treatment, the dates
32 on which the treatment is expected to be given and the duration of the
33 treatment;

34 (f) In the case of certification for intermittent leave, or leave
35 on a reduced leave schedule, for the employee's serious health
36 condition, a statement of the medical necessity for the intermittent

1 leave or leave on a reduced leave schedule, and the expected duration
2 of the intermittent leave or reduced leave schedule; and

3 (g) In the case of certification for intermittent leave, or leave
4 on a reduced leave schedule, for a family member's serious health
5 condition, a statement that the employee's intermittent leave or leave
6 on a reduced leave schedule is necessary for the care of the family
7 member who has a serious health condition, or will assist in their
8 recovery, and the expected duration and schedule of the intermittent
9 leave or reduced leave schedule.

10 (3) If the employer has reason to doubt the validity of the
11 certification provided under subsection (1) of this section for leave
12 for a family member's serious health condition or the employee's
13 serious health condition, the employer may require, at the expense of
14 the employer, that the employee obtain the opinion of a second health
15 care provider designated or approved by the employer concerning any
16 information certified under subsection (2) of this section for the
17 leave. The second health care provider may not be employed on a
18 regular basis by the employer.

19 (4) If the second opinion described in subsection (3) of this
20 section differs from the opinion in the original certification provided
21 under subsection (1) of this section, the employer may require, at the
22 expense of the employer, that the employee obtain the opinion of a
23 third health care provider designated or approved jointly by the
24 employer and the employee concerning the information certified under
25 subsection (2) of this section. The opinion of the third health care
26 provider concerning the information certified under subsection (2) of
27 this section is considered to be final and is binding on the employer
28 and the employee.

29 (5) The employer may require that the employee obtain subsequent
30 recertifications on a reasonable basis.

31 NEW SECTION. **Sec. 9.** A new section is added to chapter 49.78 RCW
32 to read as follows:

33 EMPLOYMENT PROTECTION. (1)(a) Except as provided in (b) of this
34 subsection, any employee who takes leave under section 3 of this act
35 for the intended purpose of the leave is entitled, on return from the
36 leave:

1 (i) To be restored by the employer to the position of employment
2 held by the employee when the leave commenced; or
3 (ii) To be restored to an equivalent position with equivalent
4 employment benefits, pay, and other terms and conditions of employment
5 at a workplace within twenty miles of the employee's workplace when
6 leave commenced.

7 (b) The taking of leave under section 3 of this act may not result
8 in the loss of any employment benefits accrued before the date on which
9 the leave commenced.

10 (c) Nothing in this section entitles any restored employee to:
11 (i) The accrual of any seniority or employment benefits during any
12 period of leave; or
13 (ii) Any right, benefit, or position of employment other than any
14 right, benefit, or position to which the employee would have been
15 entitled had the employee not taken the leave.

16 (d) As a condition of restoration under (a) of this subsection for
17 an employee who has taken leave for the employee's serious health
18 condition, the employer may have a uniformly applied practice or policy
19 that requires each such employee to receive certification from the
20 health care provider of the employee that the employee is able to
21 resume work, except that nothing in this subsection (1)(d) supersedes
22 a valid local law or a collective bargaining agreement that governs the
23 return to work of such employees.

24 (e) Nothing in this subsection (1) prohibits an employer from
25 requiring an employee on leave to report periodically to the employer
26 on the status and intention of the employee to return to work.

27 (2) An employer may deny restoration under subsection (1) of this
28 section to any salaried employee who is among the highest paid ten
29 percent of the employees employed by the employer within seventy-five
30 miles of the facility at which the employee is employed if:
31 (a) Denial is necessary to prevent substantial and grievous
32 economic injury to the operations of the employer;
33 (b) The employer notifies the employee of the intent of the
34 employer to deny restoration on such basis at the time the employer
35 determines that the injury would occur; and
36 (c) The leave has commenced and the employee elects not to return
37 to employment after receiving the notice.

1 NEW SECTION. **Sec. 10.** A new section is added to chapter 49.78 RCW
2 to read as follows:

3 EMPLOYMENT BENEFITS. During any period of leave taken under
4 section 3 of this act, if the employee is not eligible for any employer
5 contribution to medical or dental benefits under an applicable
6 collective bargaining agreement or employer policy during any period of
7 leave, an employer shall allow the employee to continue, at the
8 employee's expense, medical or dental insurance coverage, including any
9 spouse and dependent coverage, in accordance with state or federal law.
10 The premium to be paid by the employee shall not exceed one hundred two
11 percent of the applicable premium for the leave period.

12 NEW SECTION. **Sec. 11.** A new section is added to chapter 49.78 RCW
13 to read as follows:

14 PROHIBITED ACTS. (1) It is unlawful for any employer to:
15 (a) Interfere with, restrain, or deny the exercise of, or the
16 attempt to exercise, any right provided under this chapter; or
17 (b) Discharge or in any other manner discriminate against any
18 individual for opposing any practice made unlawful by this chapter.
19 (2) It is unlawful for any person to discharge or in any other
20 manner discriminate against any individual because the individual has:
21 (a) Filed any charge, or has instituted or caused to be instituted
22 any proceeding, under or related to this chapter;
23 (b) Given, or is about to give, any information in connection with
24 any inquiry or proceeding relating to any right provided under this
25 chapter; or
26 (c) Testified, or is about to testify, in any inquiry or proceeding
27 relating to any right provided under this chapter.

28 NEW SECTION. **Sec. 12.** A new section is added to chapter 49.78 RCW
29 to read as follows:

30 Upon complaint by an employee, the director shall investigate to
31 determine if there has been compliance with this chapter and the rules
32 adopted under this chapter. If the investigation indicates that a
33 violation may have occurred, a hearing must be held in accordance with
34 chapter 34.05 RCW. The director must issue a written determination
35 including his or her findings after the hearing. A judicial appeal

1 from the director's determination may be taken in accordance with
2 chapter 34.05 RCW, with the prevailing party entitled to recover
3 reasonable costs and attorneys' fees.

4 NEW SECTION. **Sec. 13.** A new section is added to chapter 49.78 RCW
5 to read as follows:

6 An employer who is found, in accordance with section 12 of this
7 act, to have violated a requirement of this chapter and the rules
8 adopted under this chapter, is subject to a civil penalty of not less
9 than one thousand dollars for each violation. Civil penalties must be
10 collected by the department and deposited into the family and medical
11 leave enforcement account.

12 NEW SECTION. **Sec. 14.** A new section is added to chapter 49.78 RCW
13 to read as follows:

14 CIVIL ACTION BY EMPLOYEES. (1) Any employer who violates section
15 11 of this act is liable:

16 (a) For damages equal to:

17 (i) The amount of:

18 (A) Any wages, salary, employment benefits, or other compensation
19 denied or lost to such employee by reason of the violation; or

20 (B) In a case in which wages, salary, employment benefits, or other
21 compensation have not been denied or lost to the employee, any actual
22 monetary losses sustained by the employee as a direct result of the
23 violation, such as the cost of providing care, up to a sum equal to
24 twelve weeks of wages or salary for the employee;

25 (ii) The interest on the amount described in (a)(i) of this
26 subsection calculated at the prevailing rate; and

27 (iii) An additional amount as liquidated damages equal to the sum
28 of the amount described in (a)(i) of this subsection and the interest
29 described in (a)(ii) of this subsection, except that if an employer who
30 has violated section 11 of this act proves to the satisfaction of the
31 court that the act or omission which violated section 11 of this act
32 was in good faith and that the employer had reasonable grounds for
33 believing that the act or omission was not a violation of section 11 of
34 this act, the court may, in the discretion of the court, reduce the
35 amount of the liability to the amount and interest determined under
36 (a)(i) and (ii) of this subsection, respectively; and

1 (b) For such equitable relief as may be appropriate, including
2 employment, reinstatement, and promotion.

3 (2) An action to recover the damages or equitable relief prescribed
4 in subsection (1) of this section may be maintained against any
5 employer in any court of competent jurisdiction by any one or more
6 employees for and on behalf of:

7 (a) The employees; or

8 (b) The employees and other employees similarly situated.

9 (3) The court in such an action shall, in addition to any judgment
10 awarded to the plaintiff, allow reasonable attorneys' fees, reasonable
11 expert witness fees, and other costs of the action to be paid by the
12 defendant.

13 NEW SECTION. **Sec. 15.** A new section is added to chapter 49.78 RCW
14 to read as follows:

15 NOTICE. Each employer shall post and keep posted, in conspicuous
16 places on the premises of the employer where notices to employees and
17 applicants for employment are customarily posted, a notice, to be
18 prepared or approved by the director, setting forth excerpts from, or
19 summaries of, the pertinent provisions of this chapter and information
20 pertaining to the filing of a charge. Any employer that willfully
21 violates this section may be subject to a civil penalty of not more
22 than one hundred dollars for each separate offense. Any penalties
23 collected by the department under the section shall be deposited into
24 the family and medical leave enforcement account.

25 NEW SECTION. **Sec. 16.** A new section is added to chapter 49.78 RCW
26 to read as follows:

27 FAMILY AND MEDICAL LEAVE ENFORCEMENT ACCOUNT. The family and
28 medical leave enforcement account is created in the custody of the
29 state treasurer. Any penalties collected under section 13 or 15 of
30 this act shall be deposited into the account and shall be used only for
31 the purposes of administering and enforcing this chapter. Only the
32 director or the director's designee may authorize expenditures from the
33 account. The account is subject to allotment procedures under chapter
34 43.88 RCW, but an appropriation is not required for expenditures.

1 NEW SECTION. **Sec. 17.** A new section is added to chapter 49.78 RCW
2 to read as follows:

3 EFFECT ON OTHER LAWS. Nothing in this chapter shall be construed:
4 (1) To modify or affect any state or local law prohibiting
5 discrimination on the basis of race, religion, color, national origin,
6 sex, age, or disability; or (2) to supersede any provision of any local
7 law that provides greater family or medical leave rights than the
8 rights established under this chapter.

9 NEW SECTION. **Sec. 18.** A new section is added to chapter 49.78 RCW
10 to read as follows:

11 EFFECT ON EXISTING EMPLOYMENT BENEFITS. Nothing in this chapter
12 diminishes the obligation of an employer to comply with any collective
13 bargaining agreement or any employment benefit program or plan that
14 provides greater family or medical leave rights to employees than the
15 rights established under this chapter. The rights established for
16 employees under this chapter may not be diminished by any collective
17 bargaining agreement or any employment benefit program or plan.

18 NEW SECTION. **Sec. 19.** A new section is added to chapter 49.78 RCW
19 to read as follows:

20 ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES. Nothing in this
21 chapter shall be construed to discourage employers from adopting or
22 retaining leave policies more generous than any policies that comply
23 with the requirements under this chapter.

24 NEW SECTION. **Sec. 20.** A new section is added to chapter 49.78 RCW
25 to read as follows:

26 (1) Leave under this chapter and leave under the federal family and
27 medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6)
28 is in addition to any leave for sickness or temporary disability
29 because of pregnancy or childbirth.

30 (2) Leave taken under this chapter must be taken concurrently with
31 any leave taken under the federal family and medical leave act of 1993
32 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6).

33 NEW SECTION. **Sec. 21.** A new section is added to chapter 49.78 RCW
34 to read as follows:

1 RULE-MAKING AUTHORITY. The director shall adopt rules as necessary
2 to implement this chapter.

3 NEW SECTION. **Sec. 22.** A new section is added to chapter 49.78 RCW
4 to read as follows:

5 CONSTRUCTION. This chapter must be construed to the extent
6 possible in a manner that is consistent with similar provisions, if
7 any, of the federal family and medical leave act of 1993 (Act Feb. 5,
8 1993, P.L. 103-3, 107 Stat. 6), and that gives consideration to the
9 rules, precedents, and practices of the federal department of labor
10 relevant to the federal act.

11 NEW SECTION. **Sec. 23.** The following acts or parts of acts are
12 each repealed:

13 (1) RCW 49.78.005 (Administration and enforcement of this chapter
14 to cease while federal family and medical leave act provides the same
15 or more family leave--Rights under RCW 49.78.070(1)(b) preserved--
16 Enforcement) and 1997 c 16 s 1;

17 (2) RCW 49.78.030 (Requirements--Limitation) and 1989 1st ex.s. c
18 11 s 3;

19 (3) RCW 49.78.040 (Notice to employer) and 1989 1st ex.s. c 11 s 4;

20 (4) RCW 49.78.050 (Requirements for confirmation--Second opinion)
21 and 1989 1st ex.s. c 11 s 5;

22 (5) RCW 49.78.060 (Both parents with same employer) and 1989 1st
23 ex.s. c 11 s 6;

24 (6) RCW 49.78.070 (Employee employment rights--Limitations) and
25 1989 1st ex.s. c 11 s 7;

26 (7) RCW 49.78.080 (Employee benefits) and 1989 1st ex.s. c 11 s 8;

27 (8) RCW 49.78.100 (Additional rights--Remedies) and 1989 1st ex.s.
28 c 11 s 10;

29 (9) RCW 49.78.110 (Collective bargaining agreements--Obligations
30 and rights not diminished) and 1989 1st ex.s. c 11 s 11;

31 (10) RCW 49.78.120 (Collective bargaining agreements--Application
32 of chapter--Grievance procedures) and 1989 1st ex.s. c 11 s 12;

33 (11) RCW 49.78.130 (Discrimination prohibited) and 1989 1st ex.s.
34 c 11 s 13;

35 (12) RCW 49.78.140 (Complaint--Contents--Notice--Investigation) and
36 1989 1st ex.s. c 11 s 14;

- 1 (13) RCW 49.78.150 (Notice of infraction--Contents) and 1989 1st
2 ex.s. c 11 s 15;
- 3 (14) RCW 49.78.160 (Notice of infraction--Service) and 1989 1st
4 ex.s. c 11 s 16;
- 5 (15) RCW 49.78.170 (Notice of infraction--State agencies) and 1989
6 1st ex.s. c 11 s 17;
- 7 (16) RCW 49.78.180 (Appeal--Hearings--Decisions--Review--Appeal of
8 final decision) and 1989 1st ex.s. c 11 s 18;
- 9 (17) RCW 49.78.190 (Penalties) and 1989 1st ex.s. c 11 s 19; and
10 (18) RCW 49.78.200 (Poster required) and 1989 1st ex.s. c 11 s 20.

11 NEW SECTION. **Sec. 24.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 25.** Captions used in this act are not any part
16 of the law.

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