

HOUSE BILL REPORT

SSB 5975

As Passed House:
June 30, 2017

Title: An act relating to paid family and medical leave.

Brief Description: Addressing paid family and medical leave.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Fain, Liias, Keiser, Saldaña, Miloscia, Cleveland, McCoy, Nelson, Ranker, Conway, Mullet, Hobbs, Takko, Palumbo, Pedersen and Chase).

Brief History:

Committee Activity:

None.

Third Special Session

Floor Activity:

Passed House: 6/30/17, 65-29.

Brief Summary of Substitute Bill

- Provides paid family leave, beginning January 1, 2020, of up to 12 weeks after the birth or placement of a child, to care for a family member with a serious health condition, or because of a military exigency.
- Provides paid medical leave, beginning January 1, 2020, of up to 12 weeks for an employee's serious health condition.
- Establishes a combined leave limit of 16 weeks in a year, with an additional two weeks for incapacity due to pregnancy. Requires a seven-day waiting period for leave, except for the birth or placement of a child.
- Requires an employee to work 820 hours in the qualifying period to be eligible.
- Establishes a total premium of 0.40 percent of wages beginning on January 1, 2019. Provides for employees to pay 100 percent of the premium portion that is for family leave and 45 percent of the premium portion that is for medical leave. Allows employers to pay the employee's share of the premium.
- Provides that small businesses do not pay the employer share of the premium.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Provides for benefits based on an employee's wages, with lower wage employees receiving a higher percentage of wages in benefits.
- Allows employers to offer alternative voluntary plans if the plans meet specified criteria.
- Allows tribes and self-employed individuals to elect coverage.

Staff: Joan Elgee (786-7106).

Background:

Unpaid Family and Medical Leave.

Federal and state laws grant certain employees the right to job-protected unpaid family and medical leave. The federal Family and Medical Leave Act (FMLA) allows eligible employees to take up to 12 weeks of leave in a 12-month period for the birth or placement of an adopted or foster child, or the serious health condition of the employee or the employee's family member. Under the FMLA, a "serious health condition" is an illness, injury, impairment, or physical or mental condition that involves inpatient care at specified facilities, or continuing treatment by a health care provider, and is further defined by rule. Eligible employees may also take leave because of a qualifying exigency arising out of the spouse, child, or parent of the employee being on active military duty or impending active duty status. Qualifying exigencies are defined by rule, and include such circumstances as attending military events or making child care or financial arrangements for the military member.

The FMLA applies to employees who work for a private employer with 50 or more employees or for a public employer, and who have worked for the current employer for at least 12 months and for at least 1,250 hours during the preceding 12 months.

The state Family Leave Act is very similar to the FMLA but does not include military exigency leave. The state Military Family Leave Act allows certain employees to take 15 days of job-protected leave when the employee's spouse is notified of an impending call to active duty or when the spouse is on leave from active duty.

Paid Leave.

Under Initiative 1433, passed by the voters in 2016, employees will be eligible for paid sick leave beginning on January 1, 2018. Paid sick leave accrues at the rate of one hour of leave for every 40 hours worked. Paid sick leave may be used for the employee's or a family member's injury, illness, or health condition, or need for preventative care. In addition, employees may use paid sick leave for absences due to closure of the employee's work site or their child's school or place of care due to a public health issue.

A framework for a state paid family leave insurance program was enacted in 2007. Under 2013 legislation, benefits are to begin when the Legislature has specifically appropriated funding and enacted an implementation date.

The framework provides for benefits of \$250 per week for up to five weeks for individuals on leave for the birth or the placement of a child for adoption. To receive benefits, an individual must have worked 680 hours in a qualifying period. Most employers are covered. An employer not mandatorily covered or a self-employed person may elect coverage. Job protection applies to individuals who have worked at least 12 months for an employer with more than 25 employees and for at least 1,250 hours over the previous 12 months with the employer.

Unemployment Insurance.

The Employment Security Department administers the state's unemployment insurance program. Most employers pay contributions (payroll taxes) to finance unemployment benefits. An employer's tax rate is experience rated so that the rate is determined, in part, by the benefits paid to its employees and charged to the employer. An employer may request relief from charging under specified circumstances. These charges are pooled and shared among all employers.

Summary of Bill:

The Family Leave Act (FLA) and framework for paid family leave are repealed and replaced by a paid family and medical leave insurance program (program). The Employment Security Department (ESD) administers the program.

Purposes of Leave.

Family Leave. Benefits are payable because of the birth or placement of a child, a family member's serious health condition, or a qualifying military exigency of a family member. A family member is a child, grandchild, grandparent, parent, sibling, or spouse. A child includes a biological, adopted, foster, stepchild, or child to whom the employee stands in loco parentis or in other specified relationships. A parent includes a parent-in-law.

Medical Leave. Benefits are payable for an employee's own serious health condition. "Serious health condition" is defined the same as the federal Family and Medical Leave Act (FMLA). A "qualifying exigency" is as defined in the FMLA and implementing rules. Military exigency benefits are available for a family member as defined for purposes of the program.

Coverage.

Employees are eligible for benefits after working for at least 820 hours in employment during the qualifying period, which is the first four of the last five quarters or an alternative period. The hours do not have to be with the same employer. Tribes and self-employed individuals, including independent contractors, may elect coverage. Self-employed individuals are

eligible for benefits once they have worked 820 hours after electing coverage, and must elect coverage for an initial period of at least three years and then for periods of at least one year.

All employers, both public and private, are covered for purposes of benefits.

Benefit Duration.

The maximum duration of benefits is 12 times the typical workweek hours during a 52 week period for each of family leave and medical leave. The combined maximum of family and medical leave benefits is 16 weeks, with two additional weeks if the employee has a serious health condition with a pregnancy that results in incapacity. No benefits are payable for a seven-day waiting period, except for leave for birth or placement of a child.

An employer may allow an employee to use accrued vacation, sick, or other paid time off, or receive the benefits under the program.

Amount of Benefit.

The maximum weekly benefit is \$1,000 and is adjusted annually to 90 percent of the state AWW. Benefits are prorated based on an employee's typical workweek hours. The minimum claim duration payment is for eight consecutive hours.

The benefit amount is a percentage of the employee's average weekly wage (AWW) during the two highest earning quarters of the qualifying period:

- If the employee's AWW is 50 percent or less than the state AWW (\$1,082 for 2015), the benefit is 90 percent of the employee's AWW.
- If the employee's AWW is more than 50 percent of the state AWW, the benefit is 90 percent of the employee's AWW up to 50 percent of the state AWW, and 50 percent of the employee's AWW that is greater than the state AWW.

Premiums.

The initial total premium rate is 0.40 percent of wages beginning on January 1, 2019. The medical leave premium rate is two-thirds of the total premium rate and the family leave premium is one-third of the total premium rate. The maximum wages subject to assessment are the maximum wages subject to social security tax. An employer may deduct 100 percent of the family leave premium from employee wages and up to 45 percent of the medical leave premium from employee wages. Self-employed individuals who elect coverage pay the employee share of the premiums. Employers with 50 or fewer employees are exempt from paying the employer share of the premiums.

The ESD must make annual adjustments in the total premium rate under a specified formula and assess a solvency surcharge under certain circumstances. Based on the claims experience, the ESD must also adjust the ratio of family and medical leave premiums to the total premium. A conditional waiver of premiums is available for an employee based out-of-state who is not expected to be eligible for benefits.

Job Protection.

An employee returning from leave is entitled to be restored to a same or equivalent job under the same criteria and standards as the FMLA.

Voluntary Plans.

An employer may opt out of the state program for either family leave or medical leave or both by having a voluntary plan that meets specified standards, including:

- The benefits must be at least equivalent to the benefits under the state program, including duration of leave. The employer must offer at least one-half the length of leave with pay and provide a monetary benefit equal to or higher than the total monetary benefits the employee would receive under the state program.
- The payroll deduction may not exceed the deduction for an employee under the state program.
- Employees are covered after working the 820 hours and 340 hours for the voluntary plan employer.
- Employee jobs are protected if an employee has worked for the employer for at least nine months and 965 hours during the preceding 12 months.

Employers must pay a \$250 fee to the ESD to review a plan. The ESD must conduct a review of administrative costs related to voluntary plans during the first three years of the program and report to the Legislature.

Other voluntary plan matters addressed include successor employers, recordkeeping, employee transition between a voluntary plan and the state program and between voluntary plans, employees simultaneously covered by one or more voluntary plans and the state program, and termination of voluntary plans.

Local Governments.

A city, county, or other political subdivision may not: (1) create a paid family or medical leave insurance program that alters or amends the program for a private employer; (2) provide for local enforcement of the program; or (3) require private employers to supplement the duration of leave or the benefits provided under the program.

Small Business Grants. Employers with 150 or fewer employees or employers with 50 or fewer employees who elect to pay employer premiums are eligible for grants: \$3,000 if the employer hires a temporary worker to replace an employee on leave for seven or more days, or up to \$1,000 for reimbursement for significant additional wage-related costs related to the employee's leave. An employer who receives a grant for the wage-related costs may receive an additional grant of up to \$2,000 in certain circumstances.

An employer may receive no more than 10 grants per year and only one for each employee on leave. The ESD administers the grants, which are paid from the Family and Medical Leave Insurance Account.

To be eligible for a grant, an employer with 50 or fewer employees must pay all premiums for three years. An employer with an approved voluntary plan is not eligible for a grant

Enforcement.

An employee who knowingly and willfully makes false statements or representations is disqualified for benefits for a period of time and is subject to monetary penalties. The penalties increase for repeated violations. Voluntary plan employers found by the ESD to have violated the provisions are subject to a schedule of increasing monetary penalties and the plan may be terminated if there is a risk benefits will not be paid or for other good cause. Employers who willfully fail to make reports or pay premiums are also subject to escalating penalties. Appeal and collection provisions are specified and are very similar to unemployment insurance provisions. The ESD must enforce the collection of premiums for state program employers and penalties for state program and voluntary plan employers through conference and conciliation.

An employer is prohibited from denying the employee's rights or discriminating against an employee for exercising their rights. It is also unlawful for any person to discharge or discriminate against an employee for filing a complaint or for taking other specified actions. The ESD must investigate complaints. The potential damages for violations are specified, including double damages for a willful violation.

Other Provisions.

Administration and Process. Outreach, applications, time of payment of benefits, employer contesting of applications, conditional payments, certification of serious health conditions, recordkeeping, notice to employers about leave, and other administrative and process matters are specified. The ESD has rule-making authority and must adopt government efficiencies.

Accounts. A Family and Medical Leave Insurance Account for the purposes of the program and a Family and Medical Leave Enforcement Account for the deposit of penalties are created.

Advisory Committee. An advisory committee is created, consisting of four members each representing employees and employers, and an the ESD representative and the ombuds as ex officio members. The committee must comment on rules, policies, and other specified matters and study issues as the committee determines.

Unemployment Benefits Noncharging. An employer may request relief of unemployment benefits charges that result from paying unemployment benefits to a temporary replacement employee who worked for the employer for 20 weeks or less and who was laid off due to the return of an employee on leave. The amount of the relief from unemployment benefits charges is transferred to the unemployment trust fund from the Family and Medical Leave Insurance Account.

Ombuds. The Governor must appoint an ombuds within the ESD to be available to all employers and employees. The ombuds, among other duties, must provide information to employers and employees regarding family and medical leave, act as an advocate for employers and employees in their dealings in with ESD, and facilitate the resolution of complaints. The ombuds may conduct employee surveys.

Collective Bargaining Agreements. The act does not require reopening negotiations of an existing agreement or application of any of the rights or responsibilities under the act until the agreement is reopened or renegotiated or expires.

Report. The ESD must submit annual reports to the Legislature beginning in 2020 on the program, including participation, premium rates, fund balances, benefits paid, demographic information on participants, voluntary plan participation, outreach, and small business assistance.

Health Benefits. If required by the FMLA, an employer, including employers with a voluntary plan, must maintain existing health benefits of the employee during the employee's leave. If the cost of the benefits is shared, each remains responsible for their share.

Concurrent with Family and Medical Leave Act. Unless otherwise expressly permitted by the employer, leave taken under the act must be taken concurrently with any leave taken under the FMLA.

Cross-references to the FLA in domestic violence leave and military spouse leave laws are replaced with the referenced language from the FLA.

Appropriation: None.

Fiscal Note: Requested on June 30, 2017.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 90 through 98, relating to the repeal of the Family Leave Act, which takes effect December 31, 2019.