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**SUBSTITUTE HOUSE BILL 1145**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** House State Government & Tribal Relations (originally sponsored by Representatives Reeves, Riccelli, Robinson, Stanford, and Pollet)

AN ACT Relating to Washington child care access for resident employees of the state; amending RCW 41.04.660; reenacting and amending RCW 41.04.665; adding a new section to chapter 41.04 RCW; adding a new section to chapter 41.05 RCW; creating new sections; and providing expiration dates.

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

NEW SECTION. **Sec.**  The office of financial management must:

(1) Consult with the child care collaborative task force established by section 1, chapter 91, Laws of 2018 to modify the task force's model policy for a "bring your infant to work" program as appropriate for implementation at state agencies; and

(2) Provide the modified model policy and implementation guidelines to state agency directors by February 1, 2020. The implementation guidelines must require agencies to adopt the policy by July 1, 2020, and allow agencies to modify the policy or limit its application as appropriate based on the working conditions and job duties of agency personnel.

(3) This section expires August 1, 2020.

**Sec.**  RCW 41.04.660 and 2018 c 39 s 3 are each amended to read as follows:

The Washington state leave sharing program is hereby created. The purpose of the program is to permit state employees, at no significantly increased cost to the state of providing annual leave, sick leave, or personal holidays, to come to the aid of a fellow state employee who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition; a fellow state employee whose child is too ill to attend child care; a fellow state employee who is a victim of domestic violence, sexual assault, or stalking; a fellow state employee who is sick or temporarily disabled because of pregnancy disability or for the purpose of parental leave; or a fellow state employee who has been called to service in the uniformed services, which has caused or is likely to cause the employee to take leave without pay or terminate his or her employment.

**Sec.**  RCW 41.04.665 and 2018 c 39 s 4 and 2017 c 173 s 1 are each reenacted and amended to read as follows:

(1) An agency head may permit an employee to receive leave under this section if:

(a)(i) The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(ii) The employee has been called to service in the uniformed services;

(iii) The employee is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability;

(iv) The employee is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointment or treatment;

(v) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has needed skills to assist in responding to the emergency or its aftermath and volunteers his or her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(vi) The employee is a victim of domestic violence, sexual assault, or stalking;

(vii) The employee needs the time for parental leave; ((~~or~~))

(viii) The employee is sick or temporarily disabled because of pregnancy disability; or

(ix) The employee has a child under the age of thirteen who is too ill to attend child care, as described in rules adopted by the department of children, youth, and families;

(b) The illness, injury, impairment, condition, call to service, emergency volunteer service, or consequence of domestic violence, sexual assault, temporary layoff under section 3(5), chapter 32, Laws of 2010 1st sp. sess., or stalking has caused, or is likely to cause, the employee to:

(i) Go on leave without pay status; or

(ii) Terminate state employment;

(c) The employee's absence and the use of shared leave are justified;

(d) The employee has depleted or will shortly deplete his or her:

(i) Annual leave and sick leave reserves if he or she qualifies under (a)(i) of this subsection;

(ii) Annual leave and paid military leave allowed under RCW 38.40.060 if he or she qualifies under (a)(ii) of this subsection;

(iii) Annual leave if he or she qualifies under (a)(v) or (vi) of this subsection; or

(iv) Annual leave and sick leave reserves if the employee qualifies under (a)(vii) ((~~or~~)), (viii), or (ix) of this subsection. However, the employee is not required to deplete all of his or her annual leave and sick leave and can maintain up to forty hours of annual leave and forty hours of sick leave in reserve;

(e) The employee has abided by agency rules regarding:

(i) Sick leave use if he or she qualifies under (a)(i), (vi), (vii) ((~~or~~)), (viii), or (ix) of this subsection; or

(ii) Military leave if he or she qualifies under (a)(ii) of this subsection; and

(f) The employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if he or she qualifies under (a)(i) of this subsection.

(2) The agency head shall determine the amount of leave, if any, which an employee may receive under this section. However, an employee shall not receive a total of more than five hundred twenty-two days of leave, except that, a supervisor may authorize leave in excess of five hundred twenty-two days in extraordinary circumstances for an employee qualifying for the shared leave program because he or she is suffering from an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature. Shared leave received under the uniformed service shared leave pool in RCW 41.04.685 is not included in this total.

(3) The agency head must allow employees who are veterans, as defined under RCW 41.04.005, and their spouses, to access shared leave from the veterans' in-state service shared leave pool upon employment.

(4) An employee may transfer annual leave, sick leave, and his or her personal holiday, as follows:

(a) An employee who has an accrued annual leave balance of more than ten days may request that the head of the agency for which the employee works transfer a specified amount of annual leave to another employee authorized to receive leave under subsection (1) of this section. In no event may the employee request a transfer of an amount of leave that would result in his or her annual leave account going below ten days. For purposes of this subsection (4)(a), annual leave does not accrue if the employee receives compensation in lieu of accumulating a balance of annual leave.

(b) An employee may transfer a specified amount of sick leave to an employee requesting shared leave only when the donating employee retains a minimum of one hundred seventy-six hours of sick leave after the transfer.

(c) An employee may transfer, under the provisions of this section relating to the transfer of leave, all or part of his or her personal holiday, as that term is defined under RCW 1.16.050, or as such holidays are provided to employees by agreement with a school district's board of directors if the leave transferred under this subsection does not exceed the amount of time provided for personal holidays under RCW 1.16.050.

(5) An employee of an institution of higher education under RCW 28B.10.016, school district, or educational service district who does not accrue annual leave but does accrue sick leave and who has an accrued sick leave balance of more than twenty-two days may request that the head of the agency for which the employee works transfer a specified amount of sick leave to another employee authorized to receive leave under subsection (1) of this section. In no event may such an employee request a transfer that would result in his or her sick leave account going below twenty-two days. Transfers of sick leave under this subsection are limited to transfers from employees who do not accrue annual leave. Under this subsection, "sick leave" also includes leave accrued pursuant to RCW 28A.400.300(1)(b) or 28A.310.240(1) with compensation for illness, injury, and emergencies.

(6) Transfers of leave made by an agency head under subsections (4) and (5) of this section shall not exceed the requested amount.

(7) Leave transferred under this section may be transferred from employees of one agency to an employee of the same agency or, with the approval of the heads of both agencies, to an employee of another state agency.

(8) While an employee is on leave transferred under this section, he or she shall continue to be classified as a state employee and shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual leave or sick leave.

(a) All salary and wage payments made to employees while on leave transferred under this section shall be made by the agency employing the person receiving the leave. The value of leave transferred shall be based upon the leave value of the person receiving the leave.

(b) In the case of leave transferred by an employee of one agency to an employee of another agency, the agencies involved shall arrange for the transfer of funds and credit for the appropriate value of leave.

(i) Pursuant to rules adopted by the office of financial management, funds shall not be transferred under this section if the transfer would violate any constitutional or statutory restrictions on the funds being transferred.

(ii) The office of financial management may adjust the appropriation authority of an agency receiving funds under this section only if and to the extent that the agency's existing appropriation authority would prevent it from expending the funds received.

(iii) Where any questions arise in the transfer of funds or the adjustment of appropriation authority, the director of financial management shall determine the appropriate transfer or adjustment.

(9) Leave transferred under this section shall not be used in any calculation to determine an agency's allocation of full time equivalent staff positions.

(10)(a) The value of any leave transferred under this section which remains unused shall be returned at its original value to the employee or employees who transferred the leave when the agency head finds that the leave is no longer needed or will not be needed at a future time in connection with the illness or injury for which the leave was transferred or for any other qualifying condition. Unused shared leave may not be returned until one of the following occurs:

(i) The agency head receives from the affected employee a statement from the employee's doctor verifying that the illness or injury is resolved; or

(ii) The employee is released to full-time employment; has not received additional medical treatment for his or her current condition or any other qualifying condition for at least six months; and the employee's doctor has declined, in writing, the employee's request for a statement indicating the employee's condition has been resolved.

(b) If a shared leave account is closed and an employee later has a need to use shared leave due to the same condition listed in the closed account, the agency head must approve a new shared leave request for the employee.

(c) To the extent administratively feasible, the value of unused leave which was transferred by more than one employee shall be returned on a pro rata basis.

(11) An employee who uses leave that is transferred to him or her under this section may not be required to repay the value of the leave that he or she used.

(12) The director of financial management may adopt rules as necessary to implement subsection (2) of this section.

NEW SECTION. **Sec.**  A new section is added to chapter 41.04 RCW to read as follows:

(1) The child care shared leave pool is created to allow employees to donate leave to be used as shared leave for employees who meet the requirements of RCW 41.04.665(1)(a)(ix).

(2) Participation in the pool must, at all times, be voluntary on the part of the employee. The office of financial management shall administer the child care shared leave pool.

(3) Employees who are eligible to donate leave under RCW 41.04.665 may donate leave to the child care shared leave pool.

(4) An employee who is eligible for shared leave under RCW 41.04.665(1)(a)(ix) may request shared leave from the child care shared leave pool.

(5) Shared leave under this section may not be granted unless the pool has a sufficient balance to fund the requested shared leave.

(6) Shared leave paid under this section may not exceed the level of the employee's state monthly salary.

(7) Any leave donated must be removed from the personally accumulated leave balance of the employee donating the leave.

(8) All employees who donate to the shared leave pool must specify their intent to donate to the child care shared leave pool.

(9) An employee who receives shared leave from the pool is not required to recontribute such leave to the pool, except as otherwise provided in this section.

(10) Leave that may be donated or received by any one employee must be calculated as in RCW 41.04.665.

(11) As used in this section:

(a) "Employee" has the meaning provided in RCW 41.04.655, except that "employee" as used in this section does not include employees of school districts and educational service districts. "Employee" does not include employees called to service in the uniformed services.

(b) "Monthly salary" includes monthly salary and special pay and shift differential, or the monthly equivalent for hourly employees. "Monthly salary" does not include:

(i) Overtime pay;

(ii) Call back pay;

(iii) Standby pay; or

(iv) Performance bonuses.

(12) The office of financial management shall adopt rules and policies governing the donation and use of shared leave from the child care shared leave pool, including definitions of pay and allowances and guidelines for agencies to use in recordkeeping concerning shared leave.

(13) Agencies shall investigate any alleged abuse of the child care shared leave pool and on a finding of wrongdoing, the employee may be required to repay all of the shared leave received from the child care shared leave pool.

(14) Higher education institutions shall adopt policies consistent with the needs of the employees under their respective jurisdictions.

NEW SECTION. **Sec.**  A new section is added to chapter 41.05 RCW to read as follows:

(1) The authority shall establish a pilot project under which a state agency will provide matching contributions to its employees' dependent care assistance program accounts.

(2) The authority shall submit a draft implementation plan for the pilot project to the appropriate committees of the legislature by November 1, 2019. The pilot project will begin on January 1, 2020, and conclude on January 1, 2021. The authority shall adopt rules to implement the pilot project.

(3) The authority shall select three to five state agencies to participate in the pilot project, subject to the following restrictions:

(a) At least one agency must have a minimum of three thousand employees;

(b) At least one agency must have a minimum of five hundred and a maximum of one thousand employees; and

(c) At least one agency must have a minimum of thirty-five and a maximum of one hundred employees.

(4) All employees of the participating agencies who are eligible to participate in the dependent care assistance program are eligible to participate in the pilot project.

(5) Under the pilot project, when an employee contributes part of his or her salary to a dependent care assistance program under this chapter, the state agency employer shall contribute funds to the employee's dependent care assistance program account in an amount equal to the employee's contribution. However, the agency's contribution to each employee may not exceed two thousand five hundred dollars per taxable year.

(6) The agency's contribution to the dependent care assistance program is subject to the rules regarding salary reduction plans under this chapter in the same manner as if it was provided by the employee.

(7) By June 30, 2021, and in compliance with RCW 43.01.036, the authority shall submit a full report on the pilot project to the appropriate committees of the legislature and to the governor that includes the following:

(a) The total number of employees participating;

(b) The total financial impact to the participating agencies;

(c) A discussion of successes and challenges that the agencies experienced when implementing the project;

(d) Individual testimonials about the project from participating employees; and

(e) Recommendations for modifying or expanding the availability of employer contributions to the dependent child assistance program.

(8) This section expires July 1, 2021.

NEW SECTION. **Sec.**  If specific funding for the purposes of section 5 of this act, referencing section 5 of this act by bill or chapter number and section number, is not provided by June 30, 2019, in the omnibus appropriations act, section 5 of this act is null and void.

NEW SECTION. **Sec.**  (1) The department of commerce, within existing resources, and in partnership with the office of financial management, the department of enterprise services, the department of children, youth, and families, and the health care authority, shall develop a survey for state employees in order to better understand issues affecting child care access and affordability for their families.

(2) The survey must, at a minimum:

(a) Identify the number of children age twelve and under of state employees who are receiving care from child care and early learning providers. The survey must allow employees to differentiate, to the extent possible, the type of child care or early learning provider serving the family, including:

(i) Licensed and certified child care centers and family homes;

(ii) License-exempt providers who care for children for four hours or less per day;

(iii) Family, friend, and neighbor caregivers;

(iv) Nannies and au pairs;

(v) Religious organizations providing care;

(vi) Entities providing before-and-after school care;

(vii) Employer-supported child care; and

(viii) Other formal and informal networks of care;

(b) Identify the number of children age twelve and under whose care is paid for in whole or in part with state subsidies;

(c) Allow employees to describe challenges they face in accessing or paying for child care;

(d) Allow employees to describe whether, and if so how, these challenges affect their labor participation, workplace productivity, and household earnings; and

(e) Ask employees to provide their total annual household income.

(3) The survey must be made available to all state employees with children age twelve and under no later than September 1, 2019. Responses shall be collected through September 30, 2019.

(4) By November 1, 2019, and in compliance with RCW 43.01.036, the department of commerce shall submit a report to the appropriate committees of the legislature detailing the results of the survey. The report must include:

(a) A breakdown of:

(i) The number of children receiving care based on provider type;

(ii) The number of children receiving state subsidized care; and

(iii) The number of children receiving exclusively private pay care;

(b) An analysis of the relationship between family child care choices and household income bracket;

(c) A narrative summary of the challenges that employees face in accessing or paying for child care; and

(d) A narrative summary of the ways in which these challenges affect the labor participation, workplace productivity, and household earnings of state employees.

(5) This section expires January 1, 2020.

NEW SECTION. **Sec.**  This act may be known and cited as the Washington CARES act.

**--- END ---**