

HOUSE BILL REPORT

HB 1399

As Reported by House Committee On:
Labor & Workplace Standards
Appropriations

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

Brief Description: Concerning paid family and medical leave.

Sponsors: Representatives Robinson, Doglio, Sells, Hudgins, Ormsby, Springer, Gregerson, Frame, Appleton, Bergquist, Riccelli, Tharinger, Stanford, Slatter, Goodman, Reeves, Macri and Ortiz-Self; by request of Employment Security Department.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/22/19, 1/28/19 [DPS];
Appropriations: 2/14/19, 2/18/19 [DPS(LAWS)].

Brief Summary of Substitute Bill

- Establishes provisions regarding disclosure of private information under the paid family and medical leave program.
- Makes changes regarding employer waivers and supplementation of benefits, voluntary plans, waiting periods, and other matters.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Sells, Chair; Chapman, Vice Chair; Mosbrucker, Ranking Minority Member; Gregerson, Hoff and Ormsby.

Minority Report: Do not pass. Signed by 1 member: Representative Chandler, Assistant Ranking Minority Member.

Staff: Joan Elgee (786-7106).

Background:

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.

In 2017 a paid family and medical leave (PFML) program was enacted to provide partial wage replacement to employees on leave for specified family and medical reasons. Employees are eligible for benefits after working at least 820 hours in a qualifying period. Premium collection began January 1, 2019, and benefits are payable beginning January 1, 2020. The Employment Security Department (Department) administers the program.

Voluntary Plans.

An employer may opt out of the state plan for either family leave or medical leave or both by having a voluntary plan that meets specified standards. Under a voluntary plan, to be eligible for benefits an employee must meet the 820 hours requirement and also have worked at least 340 hours for the voluntary plan employer.

The law directs the Department to adopt rules to allow benefits or prevent duplication of benefits to employees covered by one or more voluntary plans or the state plan. The law also specifically states that an employee covered by a voluntary plan at the commencement of a period of leave may not receive benefits from the state plan.

An employee may appeal a voluntary plan employer's denial of liability under a claim.

Benefits.

A seven-day waiting period is required before benefits are payable, except for the birth or placement of a child.

An employee must provide an employer at least 30 days' notice for foreseeable leave.

An employer may supplement an employee's PFML benefits. However, with respect to other accrued time off, an employer is limited to allowing an employee to use other paid time off or receive PFML benefits.

An employee is not entitled to benefits for any day in which a care recipient works part of the day during substantially similar hours as those of the employer from whom benefits are claimed.

The Department must withhold child support from a benefit payment if the employee volunteers that he or she owes child support, and the Department may verify delinquent child support.

Definitions.

The PFML program gives certain employees job protection, which must include equivalent employment benefits. The definition of "benefits" excludes benefits provided by an employer's practice or written policy.

Wages, for purposes of benefits and premiums, is defined by reference to unemployment insurance provisions, with some exceptions.

Disclosure and Privacy.

As a condition to receiving benefits, employees must consent to the disclosure of information deemed private under state law. Initial disclosure of the information to another state agency

is solely for purposes of administering the PFML program. Further disclosure is subject to provisions in unemployment insurance statutes.

Other.

Employers may request a conditional waiver from both employer and employee premiums if the employee works outside the state and is not expected to work 820 hours in the state in the qualifying period. A PFML ombuds is a resource for employees and employers.

Summary of Substitute Bill:

Voluntary Plans.

An employer may waive the qualifying hours requirements to allow an employee to be immediately eligible for coverage.

An employee may appeal any adverse decision by an employer, not limited to a denial of liability.

Benefits.

The seven-day waiting period begins when the employee takes leave for the minimum eight-hour claim duration and is stated to be seven consecutive calendar days.

An employer may waive the requirement for the employee to provide notice of leave.

An employer may offer supplemental benefit payments, such as vacation, sick, or other paid time off, to an employee on leave. The employee may chose whether to receive these payments.

An employee may not receive benefits for any period of time in which the employee works.

The Department may verify all child support obligations, not limited to delinquent obligations or dependent on the employee's disclosure.

An assignment of a right to benefits is void and benefits are generally exempt from execution except for child support.

Definitions.

The exclusion of benefits provided by an employer's practice or written policy is removed. "Wages" is defined for the PFML program, without referencing unemployment insurance statutes. An employee may elect to have wages calculated on the basis of remuneration payable.

Disclosure and Privacy.

Paid family and medical leave program specific provisions are added regarding disclosure and privacy. Information concerning an individual or employer is generally private and confidential including records and files of the ombuds. If all details identifying an individual or employer are deleted, the information may be disclosed. Individuals have access to all

information concerning the individual, and employers have access to their own records, information relating to a decision to allow or deny benefits if the decision is based on material information provided by the employer, and information related to the employer's premium assessment. The Department may disclose records to a third party acting on behalf of an individual or employer with a signed release. The release must:

- identify the information to be disclosed;
- state that state government files will be accessed to obtain the information;
- state the specific purpose for which the information is sought and that the information will only be used for that purpose; and
- indicate all the parties who may receive the information.

The Department may enter into data-sharing contracts with specified state agencies or a county clerk under certain conditions, including that the director or other official of a state agency provides a written verification of the need for the specific information. Information may be disclosed to the Department of Social and Health Services to verify child support obligations, to the Department of Revenue to determine tax liability or compliance with registration and licensing requirements, and to other specified agencies.

The Department may release information to the Legislature upon consent of the individuals and organizations whose information is contained in the records, and may disclose information to the Internal Revenue Service if necessary to administer provisions related to withholding.

In an appeal proceeding, an interested party may have access to information that is material to the issues. Parties to a judicial or administrative proceeding may receive private information upon a written finding by the presiding officer that the need for the information outweighs any reasons for privacy.

The PFML program may disclose information to private parties assisting in the operation, management, and implementation of the PFML program.

Entities receiving information have an affirmative obligation to take all reasonable actions to prevent disclosure of confidential information. A misuse or unauthorized release of information subjects the entity to a civil penalty of up to \$20,000, adjusted by the consumer price index.

The Department has rule-making authority regarding the privacy and disclosure provisions.

Other.

The reference to "qualifying period" for purposes of determining whether a conditional waiver is available is changed to four consecutive complete calendar quarters.

A cross-reference is corrected and the provisions are reorganized.

Substitute Bill Compared to Original Bill:

The substitute bill modifies a restriction on benefits to refer to when the employee is working, rather than the care recipient. The substitute bill also makes a number of clarifying changes and changes for consistency.

Appropriation: None.

Fiscal Note: Requested on January 18, 2019.

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

Staff Summary of Public Testimony:

(In support) This bill contains multiple technical fixes that were agreed upon by the PFML Advisory Committee. The changes will make the PFML program work better and make sure the intent of the original act and what was negotiated are being met. There are some minor modifications to the definitions. The bill will provide greater flexibility to employers who wish to offer more benefits than the law requires. It also clarifies how the non-charging of unemployment benefits works as well as the weekly benefit amount calculation. Privacy and confidentiality provisions are also added.

(Opposed) None.

Persons Testifying: Representative Robinson, prime sponsor; Nick Streuli, Employment Security Department; and Bob Battles, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: Joe Kendo, Washington State Labor Council; and Roger Ferris, Washington Fire Commissioners Association.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Labor & Workplace Standards be substituted therefor and the substitute bill do pass. Signed by 22 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Cody, Fitzgibbon, Hansen, Hoff, Hudgins, Jinkins, Macri, Mosbrucker, Pettigrew, Ryu, Senn, Springer, Stanford, Steele, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 7 members: Representatives Caldier, Chandler, Dye, Kraft, Schmick, Volz and Ybarra.

Minority Report: Without recommendation. Signed by 2 members: Representatives Stokesbary, Ranking Minority Member; Sutherland.

Staff: Jessica Van Horne (786-7288).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Labor & Workplace Standards:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The Employment Security Department has worked with business and labor to implement the paid family and medical leave program. The changes in the bill will help with implementation. This bill gives employees whose employers offer voluntary plans the same appeal rights as those whose employers use the state plan, which will meet the intent of the original act. The costs of the bill result from those additional appeal rights.

(Opposed) None.

Persons Testifying: Nick Streuli, Employment Security Department.

Persons Signed In To Testify But Not Testifying: None.