

SENATE BILL REPORT

SB 5449

As Reported by Senate Committee On:
Labor & Commerce, January 28, 2019

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

Brief Description: Concerning paid family and medical leave.

Sponsors: Senators Keiser, King, Liias, Wellman, Saldaña, Conway, Hunt and Wilson, C.; by request of Employment Security Department.

Brief History:

Committee Activity: Labor & Commerce: 1/24/19, 1/28/19 [DPS, w/oRec].

Brief Summary of First Substitute Bill

- Makes technical corrections and reorganizes the Paid Family and Medical Leave (PFML) statutes.
- Modifies the definition of wages and employment benefits and creates a new definition for the term remuneration.
- Authorizes employer to waive several provisions that will make it easier for employees to obtain PFML benefits.
- Adds provisions concerning privacy and access to confidential records.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5449 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; King, Ranking Member; Saldaña and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senator Braun.

Staff: Richard Rodger (786-7461)

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.

Background: In 2017, the Legislature passed a comprehensive program to provide PFML to all qualifying employees working in the state. An employee must work 820 hours in the qualifying period to be eligible for the benefits.

The program provides paid family leave of up to 12 weeks to bond after the birth or placement of a child or to care for a family member with a serious health condition. It also provides paid medical leave of up to 12 weeks for an employee's serious health condition. The paid leave limits may be combined to 16 weeks of leave in a year, plus an additional two weeks if there are pregnancy complications, for a possible total of 18 weeks. The program requires a seven-day waiting period for leave, except for the birth or placement of a child.

Premiums to support the program began on January 1, 2019, and qualifying employees will be eligible for benefits beginning January 1, 2020.

The Department of Employment Security (ESD) is the agency designated to administer the PFML program.

Summary of Bill (First Substitute): Technical and Clarifying Changes. Multiple technical and clarifying changes are made throughout the paid family and medical leave law. In addition to the specific provisions described below, minor revisions are made to the sections concerning benefit calculations, waiting periods, child support obligations, appeals, and conditional waivers for out-of-state employees.

Recodification. The entire PFML law is recodified into new chapters under Title 50A.04 of the code to make the provisions easier to find.

Definitions. The definition of employment benefits is revised to delete an unintentional exemption that would affect an employee's ability to (1) protect the restoration of those benefits when an employee returns from leave, and (2) recover damages if an employer violated the employee's rights related to the PFML program.

The definition of wage, as it relates to premium assessments and benefit calculation, is clarified.

The term remuneration is defined to include all compensation for personal services, previously accrued compensation, and negotiated settlements related to termination or employment agreements. Remuneration does not include tips, supplemental benefits paid by an employer while an employee is collecting PFML benefits, or payments to members of the Armed Forces for duties not exceeding 72 hours.

Waiting Period. Provides that the waiting period is seven calendar days, instead of calendar days of leave.

Duplication of Benefits. To prevent duplication of benefits for employees who are simultaneously covered by a voluntary plan and the state plan, employees must file a claim under the plan for which they have the most hours in the qualifying period.

Garnishments and Liens. A new provision exempts the PFML benefits from garnishments or liens. Any agreements to assign or encumber the PFML benefits are void. These provisions may not be waived.

Authorizing Waivers by Employers to Benefit Employees. Employers may waive the following statutory provisions to allow employees to receive benefits:

- without providing at least 30 days' notice, when the leave was foreseeable;
- without providing notice as soon as practicable for leave starting in less than 30 days;
- without the employer's attestation, on the initial application, that proper notice was provided; and
- under an employer's voluntary plan without meeting the 340 hours of employment requirement.

Benefit Exclusion. Provides that individuals cannot work and receive PFML benefits for the same period of time.

Privacy and Confidentiality. Individuals, employers, and third parties are able to access confidential information held by ESD under specified circumstances. The ESD is authorized to enter data-sharing agreements with certain other specified state and local agencies.

The disclosure of otherwise confidential information to staff and members of the Legislature is permitted for official purposes, so long as ESD receives a signed release from all parties that evidences consent to such disclosure.

The ESD must submit information to the Internal Revenue Service for the purpose of administering income tax withholdings and reporting.

All private persons, government agencies, and organizations authorized to receive information from ESD have an affirmative obligation to:

- take all reasonable actions necessary to prevent the disclosure of confidential information;
- notify the department if such disclosure occurs; and
- take all reasonably available actions to rectify the disclosure.

The unauthorized release of information is accompanied by a civil penalty of up to \$20,000. The penalty amount is adjusted annually for inflation.

Interested parties may receive otherwise confidential documents from ESD or an appeal tribunal if the requested documents are material to the appeal proceeding. Confidential information may be subpoenaed from ESD if a written finding from a presiding officer indicates that the need for the confidential information outweighs the privacy risk.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

- Additional technical corrections are made to the paid family and medical leave statutes.

- Clarifies that the restriction on benefits during a period of time refers to the employee rather than the care recipient.
- Clarifies the waiting period is seven calendar days, instead of calendar days of leave.
- Changes the phrase employing unit to employer.
- Clarifies that county clerks are local agencies that can receive confidential information.

Appropriation: None.

Fiscal Note: Requested on January 19, 2019.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: We worked very closely with the advisory committee and everyone is in agreement on the technical changes that are necessary to implement the bill. The advisory committee has discussed the elected official concerns and is generally reticent to change any funding mechanisms until after the program is fully launched.

OTHER: We support the program for our employees who are our hourly wage earners. Fire commissioners are paid per day of service and are limited to \$13,000 per year. Unemployment insurance exempts elected officials from that coverage and we are seeking the same exemption here for per diem commissioners. The collection of 37 cents per meeting is an administrative hurdle we would like to avoid.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Nick Streuli, Legislative Director, Employment Security Department; Joe Kendo, Washington State Labor Council; Robert Battles, Association of Washington Business.

OTHER: Roger Ferris, Washington Fire Commissioners Association.

Persons Signed In To Testify But Not Testifying: No one.