

HOUSE BILL REPORT

E2SSB 5659

As Reported by House Committee On:

Commerce & Labor

Appropriations

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

Brief Description: Establishing family and medical leave insurance.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Kohl-Welles, Fairley, Franklin, Brown and Kline).

Brief History:

Committee Activity:

Commerce & Labor: 3/20/07, 3/23/07 [DPA];

Appropriations: 3/28/07, 3/31/07 [DPA(APP w/o CL)s].

Brief Summary of Engrossed Second Substitute Bill (As Amended by House Committee)

- Declares that it is the intention of the Legislature to establish a program that allows parents to bond with a new child, and workers to care for seriously ill family members by providing income support while an individual is on leave.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

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

Staff: Jill Reinmuth (786-7134).

Background:

Federal and state laws provide that certain employees are entitled to unpaid family and medical leave.

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.

Federal Law: Under the federal Family and Medical Leave Act, eligible employees are entitled to take up to 12 weeks of unpaid leave in a 12-month period for specified family and medical reasons, and to be reinstated to their original jobs or equivalent jobs. An eligible employee is one who: (1) works for a covered employer; and (2) has worked for the same employer for at least 12 months, and for at least 1,250 hours over the previous 12 months. An eligible employee is not one who works at a location at which the employer employs less than 50 employees if the total number employed within 75 miles of that worksite is less than 50. A covered employer is a private employer that had 50 or more employees in at least 20 weeks of the current or preceding year.

Leave may be taken for: (1) the birth and care of a child of the employee; (2) the placement of a child with the employee for adoption or foster care; (3) the care of an immediate family member who has a serious health condition; or (4) the serious health condition of the employee that makes the employee unable to work.

State Law: The state Family Leave Law generally conforms to federal law and related regulations, with certain exceptions. Upon returning from leave, eligible employees are entitled to be returned to workplaces within 20 miles of their original workplaces. Employees are also entitled to leave for sickness or temporary disability related to pregnancy or childbirth in addition to leave under federal law. Employers must allow employees to continue their health coverage at their own expense during leave.

Summary of Amended Bill:

A new partial wage replacement program, the Family and Medical Leave Insurance Program (Program), is established. Beginning on October 1, 2009, benefits of \$250 per week for up to five weeks are paid to individuals who are unable to perform their regular or customary work because they are on family and medical leave. Premiums of 2 cents per hour worked per individual are assessed. Employers are required to deduct the full amount of the premiums from the individual's pay. The Program is administered by the Department of Labor and Industries (Department).

Family and Medical Leave: "Family and medical leave" means leave for: (1) the birth or placement of a child; or (2) a family member's serious health condition. "Family member" means the individual's child, spouse, parent, or person involved in a legal relationship governed by domestic relations laws.

Eligibility: An individual is eligible to receive benefits if he or she has worked 680 hours in employment covered by unemployment compensation during either the first four of the last five calendar quarters or the last four calendar quarters completed before beginning family and medical leave. An employer or a self-employed person not mandatorily covered may elect coverage.

Other Requirements: If leave is foreseeable, the individual is required to provide notice of leave in the same manner required under the state Family Leave Law.

Disqualification: An individual is disqualified from receiving benefits if the individual made false statements to obtain benefits.

Other Leave and/or Compensation: An employer may require an individual who is receiving benefits to take the leave concurrently with leave under federal, state, or local law, with certain exceptions. An employer may not require an individual to exhaust paid leave or disability insurance before receiving benefits. An individual may elect when he or she uses paid leave. An individual may not increase the amount of leave to which the individual is entitled under the federal Family and Medical Leave Act and other laws by "tacking on" any leave to which the individual is entitled under the Program. An individual may not receive benefits while entitled to certain workers' compensation, unemployment compensation, crime victims' compensation, or disability insurance benefits.

Amount: Initially, the amount of the weekly benefit is \$250 for an individual who was regularly working 35 or more hours per week and is on leave for the same number of hours. Benefits are prorated for an individual who was regularly working less than 35 hours per week, and for an individual who is on leave for fewer hours per week than he or she was regularly working. Each year thereafter, the amount of the weekly benefit is adjusted for inflation by the Department. The individual's weekly benefit may not exceed the individual's average weekly wage.

Duration: An individual is entitled to receive benefits for a maximum of five weeks in an application year. If spouses or people involved in a legal relationship governed by domestic relations laws are employed by the same employer, the employer may require that they not take leave concurrently for: (1) the birth or placement of a child; or (2) a parent's serious health condition.

Reinstatement: An individual is entitled to be restored to a position of employment in the same manner as an employee entitled to leave under the state Family Leave Law is restored to a position of employment. However, the individual must have worked for an employer with more than 25 employees for at least 12 months, and for at least 1,250 hours over the previous 12 months.

Premiums: Beginning on January 1, 2009, an employer is required to deduct premiums from pay. Initially, the premium is 2 cents per hour worked per individual. Every year thereafter, the amount of the premium is adjusted by the Department to ensure that it is at the lowest rate necessary to pay benefits and administrative costs, and maintain actuarial solvency of the program on a current basis.

Penalties: An individual who receives benefits erroneously or as a result of willful misrepresentation must repay the benefits and may be subject to penalties. An employer that fails to make reports or pay premiums required by the Department is subject to sanctions, including penalties, interest, and collection procedures.

Confidentiality: Information in an employee's record is not subject to public disclosure, but an employer may review the records of its employee in connection with a pending claim.

Information that the Department obtains from employers' records for administration of the program is not subject to public disclosure.

Discrimination: An employer or other person may not discriminate against a person for filing a claim for benefits, communicating an intent to file a claim, or testifying or assisting in a proceeding related to a family and medical leave insurance claim.

Dedicated Account: A dedicated account is established. Premiums and penalties are paid into and benefits are paid out of the account.

Loan: If necessary, the Director of the Department may, from time to time before July 1, 2009, lend funds from the Supplemental Pension Fund to the Family and Medical Leave Insurance Account. The loaned funds are for the purposes of administering the Program and paying family and medical leave insurance benefits. The loaned funds must be repaid, with interest, from the Family and Medical Leave Insurance Account to the Supplemental Pension Fund within two years of the loan. The authority to make a loan expires October 1, 2011.

Reports: Beginning on September 1, 2010, and annually thereafter, the Department must report to the Legislature on program participation, premium rates, fund balances, and outreach efforts.

Tax Credit: A business and occupation tax credit is allowed for businesses employing 50 or fewer persons who hire a replacement worker for an employee on leave. The credit is \$1,200 for each replacement worker hired on or after October 1, 2009.

Amended Bill Compared to Engrossed Second Substitute Bill:

Leave for a family member's serious health condition and leave for the birth of a child are the same as in the state Family Leave Law. The Department of Labor and Industries must adjust the premium amount by December 1 of each year, and the adjusted amount applies during the following calendar year. The credit is against the business and occupation tax. Employers may negotiate collective bargaining agreements or adopt policies to coordinate benefits except as otherwise provided. Revisions consistent with the specified purposes of leave and conditions of reinstatement are made. Other technical corrections are made.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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

Staff Summary of Public Testimony:

(In support) We have been working on this bill for the past six years. This is the second time that the Senate has brought the House a paid family and medical leave insurance bill. Polling

shows that the people of Washington overwhelmingly support paid family and medical leave. Some technical amendments are needed. Please move the bill as quickly as possible.

When my mother was diagnosed with lung cancer, only two of her five children had paid sick leave they could use to care for a family member. My sister and I cared for her. Our siblings are still affected by not being able to be there to take care of her in her final days. Workers should not have to make choices between caring for someone they love and their job.

When my wife was pregnant with our son, we had to plan very meticulously. When we approached her employer to make sure she could take leave, her employer referred us to the fine print in the handbook, which said that the employer reserved the right to change its policy without prior notice. As a result, she had to return to work two weeks earlier than planned. Supplemental income would have made it possible for me to be at home when she needed me.

This bill is an opportunity to embrace a more balanced work-family life. This bill embraces the value of new life and the well-being of an existing one. Future business leaders want successful companies, as well as happy and fulfilling family lives.

This bill is inevitable because the workplace is changing. Seventy percent of kids have both parents in the workforce. Two-thirds of women with children under six are in the workforce. We need policies that help us retain and recruit a skilled workforce.

There are three popular arguments against this bill. First, there will be job losses and business failures. The same argument was made with respect to minimum wage legislation, but there have been only negligible effects. Second, long-term job growth will be hampered. Yet paid family leave could coax people with family responsibilities back into the workforce. Third, the costs of not having family-friendly workplaces outweigh the costs of abuse or fraud.

Like California employers, Washington employers may coordinate this leave with other benefits in various ways. They may choose to top off the benefit. They may make other choices.

(In support with concerns) We are concerned that one's own serious health condition has been taken out. This is a good first step, but we urge you to make it a bigger step and put one's own serious health condition back in.

(With concerns) Start-up costs, including costs associated with changing payroll systems, are a concern. A local government fiscal note is being prepared. We are hopeful that local governments might get some assistance with these costs.

Coordination of benefits is another concern. The bill does not account for extensive paid leave that our employees have (e.g., up to six months of paid sick leave). It also does not account for disability insurance available from the city and the union.

Even though premiums are deducted from wages, the unions will pass those costs on. Whenever an employee is away, there is a cost to the employer. We cannot always hire replacement employees, so we have additional overtime costs. There may be an impact on public safety.

We suggest that, if this bill passes, local government should be treated in the same manner for these benefits as for unemployment insurance benefits. (Reimbursable employers like counties and cities are billed quarterly for everyone who has received unemployment insurance benefits.)

(Opposed) This bill is a threat to our company. We are a commercial printing and distribution company with 14 full-time employees. We give our employees vacation leave and sick leave, and have made special arrangements to accommodate special needs.

This bill provides for 25 days of paid family leave. It gives us three choices for dealing with additional time off. First, we can tack it on to their existing leave. We do not have to hold their job open, but if we let them go, our unemployment insurance rates increase. Second, we can hire someone to replace them, but that also increases our unemployment insurance rates. A solution is to hire employees from a temporary agency, but that is not always possible. Third, we can require other employees to work overtime. Then our other workers end up not having a balanced life.

Ninety-six percent of our association's members oppose this legislation, and our opposition rates are never that high. Most small employers do not have a leave policy, but deal with sporadic situations as they happen and figure out ways to deal with them. This bill takes away their ability to deal with these issues as they come up.

One issue of concern to our association's members is the disincentive for employers to establish or maintain more generous leave programs. Another issue is the requirement that they keep jobs open. The tax credit does not cover the costs of overtime pay, temporary employees, and unemployment insurance. The biggest issue is that this program costs more than it appears to. Two cents will not cover those costs. Business may be required to fund increases.

This bill and its "one-size-fits-all" approach do not work. Consider making these requirements apply only to firms subject to the federal Family and Medical Leave Act. Give small businesses more flexibility.

The section on taxes should be changed to clarify that the tax is on the worker's post-tax income. It should also be changed to give the Department of Labor and Industries additional policy guidance when adjusting the amount of the tax. At the very least, the section should require the Department to follow the Administrative Procedure Act process to change the amount. It is not necessary to tie the amount to the account's actuarial solvency.

Persons Testifying: (In support) Senator Keiser, prime sponsor; Representative Dickerson; Diane McDaniel, Washington State Labor Council; Justin McNeil; Michael Mueller; Professor Sharon Lobel and Professor Meenakshi Rishi, Albers School of Business and Economics, Seattle University; and Marilyn Watkins, Economic Opportunity Institute.

(In support with concerns) Jerri Wood, Washington State Alliance of Retired Americans and Lance Armstrong Foundation.

(With concerns) Sophia Byrd McSherry, Washington State Association of Counties; Debbie Lund, City of Tumwater; and Alberto Lara, Thurston County.

(Opposed) Kris Tefft, Association of Washington Business; Judy Coover, PrintCom, Inc.; Carolyn Logue, National Federation of Independent Business; Vicki Marin, Washington Retail Association; Gary Smith, Independent Business Association; and Rick Slunaker, Associated General Contractors.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Commerce & Labor. Signed by 18 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Cody, Conway, Darneille, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, McDermott, McIntire, Morrell, Pettigrew, Schual-Berke, Seaquist and P. Sullivan.

Minority Report: Do not pass. Signed by 14 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Buri, Chandler, Dunn, Ericks, Fromhold, Grant, Hinkle, Kretz, Linville and Priest.

Staff: Owen Rowe (786-7391).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Commerce & Labor:

All provisions of the underlying bill are removed except the intent section.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) All of the costs in this legislation are covered by revenue. The revenue is an employee-paid 2 cent an hour premium on hours worked. The premiums will be incorporated into quarterly payments to industrial insurance already made by employers. This fiscal note is based on actuarial experience from California and several other states that already have paid maternity benefits. This bill will have many benefits to families, including lower health care costs. This bill has been perfected at each level of the process. The cost to the state of establishing such a program is nominal compared to the results. This program would provide a better chance for a healthy start for every child and lower child care costs. Additionally, there will be fewer people needing Temporary Aid to Needy Families (TANF) benefits. Employers

of less than 25 employees are not required to provide job protection, and there is a Business and Occupation Tax credit that is applied when employers need to replace workers. This is an opportunity for employers to offer their workers paid leave. This is a bill that Washington citizens want to see passed. In a February poll, 73 percent of voters across the state support family and medical leave insurance.

(Opposed) This bill integrates this benefit with other employment benefits, including unemployment and unpaid family leave, and the Washington Family Care Act. By combining these available benefits it's possible for an individual to take up to 20 weeks of leave in less than one year. The state already has a paid disability benefit in unemployment.

This bill creates an enormous state bureaucracy in order to benefit relatively few people. According to the fiscal note it would tax 3.4 million workers to benefit about 35,000 people. The payroll tax takes in less than what's needed to fund the program. As more people use the program that gap will grow and the tax will go up, once the program is in place the costs will increase. This bill's administration costs are too high compared to the benefits. This is an inefficient way to deliver this benefit by charging over 3 million state employees for a program that is this expensive to administer. The small business owners of the State of Washington do not like the fact that this is a hit on state workers' compensation funds. Everything the state agencies say will increase their costs as a result of this legislation will also have an impact on business. There will be an impact to business revenue and small businesses will be vulnerable to penalties. This will result in unemployment. The Business and Occupation tax credit is not sufficient to cover an employer's cost increases. This is a regressive tax because it impacts all workers the same regardless of income. This program creates a new benefit that citizens will become reliant on. This program will duplicate benefits, and create more state dependency. The administrative costs of this program are excessive. The fiscal note does not include impacts to businesses. Please oppose this bill.

Persons Testifying: (In support) Senator Keiser, prime sponsor; and Pamela Crone, Washington State Labor Council and Northwest Women's Law Center.

(Opposed) Gary Smith, Independent Business Association; Vicky Marin, Washington Retail Association; Carolyn Logue, National Federation of Independent Businesses; Dan Fazio, Washington Farm Bureau; and Kris Tefft, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.