

SENATE BILL REPORT

SB 5149

As of February 7, 2017

Title: An act relating to paid family leave.

Brief Description: Addressing paid family leave.

Sponsors: Senators Fain, Hobbs, Braun, Palumbo, Baumgartner, Warnick, Walsh, Miloscia, Zeiger and Rivers.

Brief History:

Committee Activity: Commerce, Labor & Sports: 1/30/17.

Brief Summary of Bill

- Provides benefits for individuals on paid family leave, including a family member's serious health condition, an individual's own serious health condition, a child's birth or placement of a child, or a military exigency.
- Provides a phased-in schedule of paid family leave with up to eight weeks beginning on January 1, 2020, and reaching up to 12 weeks starting January 1, 2023.
- Pays benefits of up to 50 percent of the individual's salary, capped at 50 percent of the state average weekly wage (AWW), starting January 1, 2020. The benefits increase each year until until January 1, 2023 when it reach 67 percent of the individual's salary, capped at 67 percent of the state's AWW. The state's AWW for 2015 was \$1,082 per week.
- Requires the Commissioner of the Employment Security Department to set the premium level each year based on sound actuarial principles.
- Requires the premiums be paid by the employees.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Staff: Richard Rodger (786-7461)

Background: Unpaid Family and Medical Leave. *Federal Law.* Federal and state laws grant certain employees the right to unpaid family and medical leave. The federal Family

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.

and Medical Leave Act (FMLA) allows eligible employees to take up to 12 weeks of job-protected 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. Eligible employees may also take leave because of a qualifying exigency arising out of active military duty or impending active duty status. Generally, the FMLA applies to employees who work for a private employer with 50 or more employees or for a public employer, and meet employment duration requirements.

State Law. The state Family Leave Act (FLA) is very similar to the FMLA but does not include military exigency leave. Under the FLA, 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. A number of types of incapacity qualify as "continuing treatment by a health care provider," including an incapacity lasting more than three consecutive days that involves treatment by a health care provider.

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. I-1433. 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 and other specified situations. Employers must pay employees using paid sick leave at their regular rate of pay or the minimum wage, whichever is greater.

Family Leave Insurance Program. A framework for a state 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 during either the first four of the last five calendar quarters or the last four calendar quarters completed (qualifying year). Most employers are covered. An employer not mandatorily covered or a self-employed person may elect coverage. Paid family leave must be taken concurrently with leave under the FMLA or the FLA.

Job protection applies to individuals who have worked at least 12 months for an employer with more than 25 employees and for at least 1250 hours over the previous 12 months with the employer.

Summary of Bill: The paid family leave insurance is implemented and modified.

Purposes of Leave. Benefits are payable when an individual is unable to work because the individual is on leave for a family member's or the individuals' own serious health condition, in addition to birth or placement of a child. Leave may also be taken for a military exigency.

"Serious health condition" has the same meaning as in the FLA. A "military exigency" is defined by reference to the FMLA and implementing rules. Military exigency leave may be taken by a family member. If the employee does not have a spouse, he or she may designate one person they will care for, if needed.

Duration and Amount of Benefit. The duration of the benefit is increased from five weeks to the maximum of twelve weeks as provided below. The benefit amount is changed from a flat rate of \$250 per week to a percentage of the individual's average weekly wage (AWW) with a cap set using the state's AWW. The state's AWW was \$1,082 in 2015. The phased-in schedule of duration and benefits are as follows:

- January 1, 2020: 8 weeks of paid family leave and up to 50 percent of salary, not to exceed 50 percent of state AWW.
- January 1, 2021: 10 weeks of paid family leave and up to 55 percent of salary, not to exceed 55 percent of state AWW.
- January 1, 2022: 10 weeks of paid family leave and up to 60 percent of salary, not to exceed 60 percent of state AWW.
- January 1, 2023 & thereafter: 12 weeks of paid family leave and up to 67 percent of salary, not to exceed 67 percent of state AWW.

The Commissioner of the Employment Security Department (ESD) has the discretion to delay, under specified considerations, the scheduled increases in the family leave benefit level starting in 2021. The minimum benefit must not be less than \$100 per week, unless the employee's wages are less than \$100, in which case they receive their full wages. Benefits are available at the first full day of when leave is required. Benefits may be paid intermittently.

Any paid family leave taken under this act must be taken concurrent with leave under the FMLA, unless an employer expressly permits otherwise.

Eligibility. All employers who are required to pay unemployment insurance premiums, including public employers, are covered for purposes of benefits. An employee must work 26 or more consecutive weeks to be eligible for benefits. Individuals who work less than the employer's normal workweek are eligible after 175 days of regular employment. To receive benefits, an individual must:

- file claim for benefits;
- consent to the disclosure of certain information;
- notify the employer; and
- meet certain documentation requirements regarding leave for a serious health condition or military exigency.

Elective coverage is available for employers who are not covered by the act, as well as self-employed persons. Those electing coverage for all their employees must commit to coverage for a minimum of three years.

Premiums. The Commissioner of the ESD must set the premium level each year based on sound actuarial principles. The premiums are paid by the employees. A new Family Leave Insurance Account is created at the State Treasurer's Office for the deposit of the premiums. The State Investment Board is authorized to invest any excess funds in the account.

Implementation and Administration. ESD pays benefits, collects premiums, and otherwise administers provisions related to benefits and premiums. Employer record keeping requirements are established. The provisions regarding notices, existing health care benefits, overpayments, and appeals are revised and clarified.

Return to Work. The provision from the FLA that allowed a employer to not rehire an employee, after taking family leave, if the salaried employee was among the business' highest top ten percent of employees within a 75 mile radius is removed.

State Preemption. The state fully occupies and preempts the entire field of paid family leave. Local laws and ordinances that are inconsistent are preempted and repealed.

Rules. ESD may adopt rules to implement this act.

Structure. All sections of the bill are codified or recodified into a new chapter in Title 50 of the RCWs. Repeals the section regarding the coordination of paid and unpaid FLA benefits. All the provisions that were contained in chapter 49.86 RCW are repealed.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill takes effect on January 1, 2019.

Staff Summary of Public Testimony: PRO: This bill provides paid family leave benefits in a manner that doesn't create a burden on employers. The program is funded by the employees and can allow some of the minimum wage gains from I-1433 to be put into providing these benefits. We like the approach of an employee-funded system, but the bill still needs to be tweaked to address the burdens on small and mid-sized businesses who are dealing with the new minimum wage and sick leave provisions. We would support the idea of portability between employers. All businesses must provide equity in the workplace and should provide these benefits. The preemption clause is very important to employers who have multiple operations in different jurisdictions.

CON: The benefits provided by this proposal are too low and will force employees back to work too soon. The bill leaves out too many employees. It should provide portability benefits between employers and for those who have paid the premiums, but then leave employment. The employees should not have to pay the full cost of these benefits. The benefits should be expanded to include preventive care and medical conditions that are less serious.

OTHER: The recent minimum wage increases will cost my business \$30,000 for this year. Our American dream is slipping away. While we try to help our employees, this should be handled on a case-by-case basis. While this bill takes the right direction, it still raises concerns. The bill should have an exemption for small businesses. The employers cost for

employee benefits are already 36 percent higher here than elsewhere. We support the concepts of paid family leave and our county already provides full benefits for up to 12 weeks. The preemption clause should allow local governments to provide higher benefits. The bill should be applied equally across the state, including those covered by collective bargaining agreements.

Persons Testifying: PRO: Senator Joe Fain, Prime Sponsor; Carolyn Logue, Washington Retail Association; Holli Johnson, Washington Food Industry Association; Dave Parker, Code Fellows, CEO; John Suk, WTIA/Chairman; Julia Gorton, WA Hospitality Association; Kyla Shkerich, Seattle Metropolitan Chamber of Commerce; Holly Chisa, Northwest Grocery Association.

CON: Marilyn Watkins, Economic Opportunity Institute.

OTHER: Tanya Neilsen, Owner/Manager Thrive Community Fitness; Bob Battles, AWB; Gary Smith, Independent Business Association; Mike Shaw, King County; Deb Blakeslee, citizen.

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