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**Labor & Workplace Standards  
Committee**

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**HB 2191**

**Brief Description:** Concerning family and medical leave program coverage.

**Sponsors:** Representative Dufault.

**Brief Summary of Bill**

- Exempts corporate officers of corporations and members of limited liability companies from the Paid Family and Medical Leave Act if certain criteria are met.

**Hearing Date:** 1/20/20

**Staff:** Trudes Tango (786-7384).

**Background:**

The Paid Family and Medical Leave Act (PFML) is a mandatory statewide program, administered by the Employment Security Department (ESD), that provides partial wage replacement to eligible employees on leave for specified family and medical reasons. It is funded through premiums paid by employers and employees.

The PFML applies to most employers in the state, except for self-employed persons who may opt-in the program. The PFML also does not apply to federal employees and federally recognized tribes. Employers with their own voluntary plans that meet or exceed the PFML benefits are not required to withhold premiums. Businesses with fewer than 50 employees are exempt from the employer portion of the premium.

The state Industrial Insurance Act exempts from mandatory coverage certain corporate officers of public corporations, nonpublic corporations, and family corporations, if certain criteria are met. Family corporations are nonpublic corporations where all of the officers are related.

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*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.*

## **Summary of Bill:**

Corporate officers are exempt from the PFML if certain criteria are met. To be exempt, a corporate officer of a public corporation must meet all of the following:

- be a bona fide officer voluntarily elected or appointed in accordance with the articles of incorporation;
- be a bona fide director;
- be a shareholder of the corporation; and
- exercise substantial control in the daily management of the corporation and not have primary responsibilities that include the performance of manual labor.

Nonpublic corporations may exempt up to eight bona fide officers. They must meet the same criteria established for corporate officers in public corporations, except the corporate officer need not be a director. For family corporations, corporate officers may be exempt if all the officers are related by blood within the third degree or marriage.

Members of a limited liability company are exempt if:

- the management of the company is vested in one or more managers; and
- the members seeking exemption are managers who would qualify for exemption if the company was a corporation.

A corporation or limited liability company may elect to cover persons who would otherwise be exempted. If a nonpublic corporation elects to be covered under the PFML, it must do so using prescribed forms created by the ESD.

Determinations regarding the status of persons performing services for a corporation must be made, in part, by reference to the laws governing corporations and to compliance by the corporation with its own articles of incorporation and bylaws. Substance must control over form, and coverage under the PFML will extend to all employees regardless of honorary titles conferred upon those actually serving as employees.

**Appropriation:** None.

**Fiscal Note:** Requested on January 14, 2020.

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