Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Labor & Workplace Standards Committee

SSB 5286

Brief Description: Modifying the premium provisions of the paid family and medical leave program.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Robinson, King, Keiser, Liias, Stanford, Wellman and Wilson, C.).

Brief Summary of Substitute Bill

- Modifies the statutory formula for determining the premium rates for the Paid Family and Medical Leave Program.

Hearing Date: 3/14/23

Staff: Kelly Leonard (786-7147).

Background:

The Paid Family and Medical Leave (PFML) Program provides paid family or medical leave for eligible workers who have worked at least 820 hours during a qualifying year. Eligible workers can take up to 12 weeks of medical leave or family leave, or up to 16 to 18 weeks of combined medical and family leave in a year. Eligible workers may receive cash benefits up to 90 percent of their wages, subject to a weekly maximum cap, which is $1,427 for 2023.

Premiums.
Employers collect and remit premiums on taxable wages up to the Social Security maximum taxable earnings cap, which is $160,200 for 2023, to the Employment Security Department (ESD) on a quarterly basis. Those premiums are deposited into the Family and Medical Leave Insurance Account (Account) to support cash benefits and the costs of the PFML Program.

The total premium rate has two components: a family leave share and a medical leave share. The split between the shares is based on the percentage of paid claims in each category in the previous year. For the medical leave share, employers with 50 or more employees pay 55 percent, and employees pay 45 percent. Employers with fewer than 50 employees are exempt from paying premiums. For the family leave share, employees pay 100 percent unless the employer chooses to pay a portion.

The total premium rate for combined family leave and medical leave benefits is established through a statutory formula and adjusted annually by the ESD. The total premium rate is based on the account balance ratio as of September 30 of the previous year. The ESD calculates the account balance ratio by dividing the balance of the Account by total covered wages paid by employers and those electing coverage, carried to the fourth decimal place with the remaining fraction disregarded unless it amounts to 0.00005 or more, in which case the fourth decimal place is rounded to the next higher digit. The premium rate is then set as follows:

Account Balance Ratio	**Total Premium Rate**
0 to .09 percent	0.6 percent
0.1 to 0.19 percent	0.5 percent
0.2 to 0.29 percent	0.4 percent
0.3 to 0.39 percent	0.3 percent
0.4 to 0.49 percent	0.2 percent
0.5 percent or greater	0.1 percent

The ESD is required to assess a solvency surcharge if the account balance ratio of the Account is below .05 percent as of September 30 of each year. The surcharge is required to be set at the lowest rate necessary to provide revenue for the costs of the PFML Program for the upcoming calendar year. The premium rate may not exceed 1.2 percent, which includes a maximum base rate of 0.6 percent and a maximum solvency surcharge of 0.6 percent.

Based on the statutory formula, the total premium rate remained at 0.4 percent from 2019 through 2021, and increased to 0.6 percent in 2022. Then, in 2023, the ESD set the total premium rate at 0.8 percent, which comprises a 0.6 percent base rate and a 0.2 percent solvency surcharge. These rates are insufficient to fund growing administrative expenses and benefit payments for the PFML Program.

Solvency of the Family and Medical Leave Insurance Account.
Demand for PFML benefits has outpaced premium collection consistently since early 2020. The Account had a temporary cash deficit in April 2022 and again in July and October. The 2022 supplemental operating budget appropriated $350 million to the Office of Financial Management (OFM) to be available for transfer into the Account on June 30, 2023, should the account be in a deficit at the end of the 2021-23 biennium. The OFM may only transfer the amounts necessary to prevent the account from being in a deficit. Temporary deficits are expected in January, April, and possibly other months.

In 2022 the Legislature passed Second Substitute Senate Bill (2SSB) 5649, which made several changes to the PFML Program. Among other things, 2SSB 5649 required the OFM to contract for actuarial services and report to the Legislature by October of 2022 on the financial condition of the Account, including providing recommendations for modifying the premium rates to maintain long-term stability and solvency of the Account. Going forward, the newly established Office of Actuarial Services within the ESD must report annually to the Legislature on various financial information regarding the Account, as well as what the lowest necessary premium rates could be while limiting fluctuations.

Legislative Task Force.
2SSB 5649 also established the Legislative Task Force on PFML Premiums (Task Force) for the purpose of making recommendations on legislative changes to ensure the lowest premium rates necessary to maintain solvency of the Account while limiting rate fluctuations. The Task Force submitted its final report in December 2022. The report is publicly available on the website for the Washington State Legislature.

Summary of Bill:

Based on the recommendations of the Task Force, the formula for calculating PFML premiums is replaced. On or around October 20 of each year, the ESD must calculate the total premium rate as follows:

- calculate an amount that equals 140 percent of the prior fiscal year's expenses, including the total amount of benefits paid and the ESD's administrative costs;
- subtract the balance of the Account as of September 30;
- divide the difference by the prior fiscal year's taxable wages; and
- carry the quotient to the fourth decimal place and round up to the nearest one hundredth of one percent.

The ESD's authority to assess a solvency surcharge is removed. Instead, the total premium rate is subject to the following conditions:

- if the ESD determines the total premium rate exceeds a rate necessary to maintain a three-month reserve at the end of the following rate collection year, it must set the total premium rate at the minimum rate necessary to close the rate collection year with a three-month reserve; and
- the total premium rate must not exceed 1.20 percent.

Appropriation: None.

Fiscal Note: Available.

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