

# HOUSE BILL REPORT

## HB 2220

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*As Passed House*

*June 19, 1991*

**Title:** An act relating to leave from employment for family responsibilities.

**Brief Description:** Changing employment leave provisions.

**Sponsor(s):** Representatives Ebersole, Wang, Heavey, Cole, Jacobsen, Jones, Nelson, Franklin, Belcher, Cantwell, Anderson, Leonard, Spanel, Inslee, Pruitt, O'Brien, Prentice, Brekke, Peery, Appelwick and Wineberry.

**Brief History:**

Reported by House Committee on:  
Commerce & Labor, June 17, 1991, DP;  
Passed House, June 19, 1991, 58-35.

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**HOUSE COMMITTEE ON  
COMMERCE & LABOR**

**Majority Report:** *Do pass.* Signed by 7 members:  
Representatives Heavey, Chair; Cole, Vice Chair; Franklin;  
Jones; R. King; O'Brien; and Prentice.

**Minority Report:** *Do not pass.* Signed by 2 members:  
Representatives Lisk, Assistant Ranking Minority Member and  
Vance.

**Staff:** Chris Cordes (786-7117).

**Background:** In 1989, the Legislature enacted family leave legislation. The legislation requires employers with 100 or more employees to grant family leave to an employee for the care of a newborn or newly adopted child under six, or the care of a terminally ill child under 18. Family leave is limited to 12 weeks during any 24 month period.

On return from family leave, the employee has a right to reinstatement to the employee's same position, an equivalent position, or any vacant position. If both parents are employed by the same employer, the employees together are limited to a total of 12 weeks of family leave. An employer is prohibited from discriminating against a person for opposing unlawful leave practices, filing a family leave complaint, or testifying in a proceeding.

Employees are also permitted to use their own accrued sick leave to care for a child of the employee with a health condition that requires supervision or treatment.

Although state law encourages employers to offer employees periodic opportunities to visit schools during working hours, the law does not require employers to provide leave time for employees to participate in their children's classroom activities.

***Summary of Bill:***

Coverage

The threshold for determining the employers covered by the family leave provisions is changed from those employers who employ a daily average of 100 or more to those who employ a daily average of 50 or more. The requirement is deleted that a covered employee be employed on a continuous basis for the previous 52 weeks for at least 35 hours per week. A requirement is added that a covered employee must be employed at least 52 weeks within the previous 78 weeks for at least an average of 32 hours per week.

The definition of "child" is amended to include foster children and legal wards, and family leave may be taken for adopted children and foster children under age 16.

Language is added to clarify that if the employer chooses to exempt the highest paid 10 percent of its employees from family leave, the designation must be in writing and will take effect 30 days after notice is given to the affected employees.

Reasons for granting leave

An employee is entitled to family leave to care for family members with serious health conditions. Family members include the employee's child under age 18 and a child age 18 or older who is incapable of self-care, the employee's spouse, and parents, including the spouse's parents. A serious health condition is a physical or mental condition that requires inpatient care or continuing treatment or supervision by a health care provider.

Family leave includes parental leave to care for foster children under age 16 when placement is the permanent plan.

In addition to family leave, covered employees are entitled to 16 hours of family educational leave during any 24 month period. Family educational leave may be taken to volunteer in classroom activities in a school program for a family

member in grades kindergarten through the 12th grade. Leave may be unpaid, but the taking of leave may not result in loss of accrued employment benefits. The employee must provide written notice to the employer at least 30 days in advance of the anticipated date of leave. Employers may limit or deny family educational leave to key personnel or highest paid 10 percent of the employer's employees.

#### Job reinstatement

Job reinstatement rights for employees on family leave are given priority in the following order: (1) reinstating the employee to the same position; (2) reinstating the employee to a position with equivalent benefits and pay; or (3) reinstating the employee to any other position that is vacant and for which the employee is qualified.

#### Discrimination provisions

Anti-discrimination provisions are amended to prohibit discrimination when the employee exercises any rights afforded by the family leave or family educational leave law. No employer policy may be applied to limit or discourage the use of these leaves or the use of accrued sick leave for family care.

#### Repealers

The sections are repealed that (1) direct cessation of enforcement of the state law upon enactment of a substantially similar federal law; (2) prohibit a private right of action for violations of the state law; and (3) limit the family leave to which parents employed by the same employer are entitled.

#### Application of the act

The act takes effect September 1, 1991, but for employees under unexpired collective bargaining agreements and employee benefit plans, the act will apply upon the expiration of the agreements or the first day of the next plan year.

**Fiscal Note:** Requested June 12, 1991.

**Effective Date:** The bill contains an emergency clause and takes effect September 1, 1991.

**Testimony For:** (Presentation of study commissioned by the U.S. Small Business Administration): The study's survey of businesses indicates that the net cost of providing family leave is low and that the cost of terminating and replacing

an employee on leave is more costly than implementing a leave plan. (Testimony): The current family leave law in Washington is too limited in scope. It should be expanded to assist a greater number of employees who are having to choose between jobs and families to provide care for both children and older family members. Our child care and medical care systems rely on these family care givers. These family members should be supported and assisted as much as possible because they fill a gap not yet met by government services. States with family medical leave laws are not reporting any problems in implementing these laws. Leave should also be available for the care of older adopted children because they often require additional attention during the transition to a new family. An important part of a child's educational success is parental involvement in the child's school activities. Providing working parents with family educational leave is needed to permit parents to volunteer at school.

**Testimony Against:** Small business does not support enactment of family leave laws because the laws interfere with the employer-employee relationship. Employers are already overburdened with regulations. Because of this regulatory burden, even small costs are a hardship for small businesses. Many businesses are already providing leaves as needed in cooperation with their employees. This issue is not a government responsibility and will be solved by the pressures of a free market economy.

**Witnesses:** (Presentation of study commissioned by the U.S. Small Business Administration): Dr. Eileen Trzcinski. (In favor): Representative Brian Ebersole, prime sponsor; Senator Patty Murray; Ann Davis; Ester Stohl, American Association of Retired Persons; Evan Iverson, Senior Lobby; Mike Sells, Everett Education Association; Bob Maier, Washington Education Association; Amy Stephson, Coalition for Family Leave; Rebecca Perbix, Children's Home Society; Susan Wilburn and Shirley Carmichael, Washington State Nurses Association; Gary Tollefson, Washington State PTA; Dennis Mahar, Washington Association of Area Agencies on Aging; and Mary Jo Wilcox, Washington Assembly for Parents and Citizens with Disabilities. (Opposed): Gary Smith, Independent Business Association.