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HOUSE BILL 2220

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State of Washington                      52nd Legislature    1991 1st Special Session

By Representatives Ebersole, Wang, Heavey, Cole, Jacobsen, Jones, Nelson, Franklin, Belcher, Cantwell, Anderson, Leonard, Spanel, Inslee, Pruitt, O'Brien, Prentice, Brekke, Peery, Appelwick and Wineberry.

Read first time 6-14-91. Referred to Committee on Commerce & Labor.

1            AN    ACT    Relating to leave from employment for family  
2 responsibilities; amending RCW 49.78.010, 49.78.020, 49.78.030,  
3 49.78.040, 49.78.050, 49.78.070, and 49.78.130; adding a new section to  
4 chapter 49.12 RCW; adding new sections to chapter 49.78 RCW; repealing  
5 RCW 49.78.060 and 49.78.210; providing an effective date; and declaring  
6 an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8            **Sec. 1.** RCW 49.78.010 and 1989 1st ex.s. c 11 s 1 are each amended  
9 to read as follows:

10            The legislature finds that the demands of the workplace and of  
11 families need to be balanced to promote family stability and economic  
12 security. Changes in workplace leave policies are desirable to  
13 accommodate changes in the work force such as rising numbers of dual-  
14 career couples and working single parents. In addition, given the  
15 mobility of American society, many people no longer have available

1 community or family support networks and therefore need additional  
2 flexibility in the workplace to meet family care responsibilities,  
3 including responsibilities involving their children's education. The  
4 legislature declares it to be in the public interest to provide  
5 reasonable family leave upon the birth or adoption of a child and to  
6 care for a ~~((child under eighteen years old with a terminal))~~ family  
7 member with a serious health condition.

8 **Sec. 2.** RCW 49.78.020 and 1989 1st ex.s. c 11 s 2 are each amended  
9 to read as follows:

10 Unless the context clearly requires otherwise, the definitions in  
11 this section apply throughout this chapter.

12 (1) "Child" means a biological ~~((or)),~~ adopted, or foster child, a  
13 legal ward, or a stepchild~~((, living with the employee))~~.

14 (2) "Department" means the department of labor and industries.

15 (3) "Employee" means a person other than an independent contractor  
16 employed by an employer ~~((on a continuous basis for the previous))~~ for  
17 at least fifty-two weeks within the previous seventy-eight weeks and  
18 for at least ((thirty-five)) an average of thirty-two hours per week.

19 (4) "Employer" means: (a) Any person, firm, corporation,  
20 partnership, business trust, legal representative, or other business  
21 entity which engages in any business, industry, profession, or activity  
22 in this state and includes any unit of local government including, but  
23 not limited to, a county, city, town, municipal corporation, quasi-  
24 municipal corporation, or political subdivision, which (i) employed a  
25 daily average of ~~((one hundred))~~ fifty or more employees during the  
26 last calendar quarter at the place where the employee requesting leave  
27 reports for work, or (ii) employed a daily average of ~~((one hundred))~~  
28 fifty or more employees during the last calendar quarter within a  
29 twenty mile radius of the place where the employee requesting leave

1 reports for work, where the employer maintains a central hiring  
2 location and customarily transfers employees among workplaces; and (b)  
3 the state, state institutions, and state agencies.

4 (5) "Family leave" means leave from employment, as provided in RCW  
5 49.78.030, to care for a newborn ((or)), a newly adopted child ((under  
6 the age of six or a child under eighteen years old with a terminal  
7 health condition, as provided in RCW 49.78.030)), or a newly placed  
8 foster child, or to care for a family member with a serious health  
9 condition.

10 (6) "Family educational leave" means leave from employment, as  
11 provided in section 9 of this 1991 act, to volunteer in classroom  
12 activities in a school program in grades K-12 for a family member.

13 (7) "Family member" means a child of the employee, the spouse of  
14 the employee, or a parent of the employee or the employee's spouse.

15 (8) "Health care provider" means a person licensed as a physician  
16 under chapter 18.71 ((RCW or an osteopath under chapter)) or 18.57 RCW.

17 ((+7)) (9) "Parent" means a biological, foster, or adoptive  
18 parent, ((or)) a stepparent, or legal guardian.

19 ((+8)) (10) "Reduced leave schedule" means leave scheduled for  
20 fewer than an employee's usual number of hours or days per workweek.

21 ((+9)) ~~"Terminal health condition" means a condition caused by~~  
22 ~~injury, disease, or illness, that, within reasonable medical judgment,~~  
23 ~~is incurable and will produce death within the period of leave to which~~  
24 ~~the employee is entitled.)~~

25 (11) "Serious health condition" means an illness, injury,  
26 impairment, or physical or mental condition, whether or not  
27 preexisting, that requires:

28 (a) Inpatient care in a hospital, hospice, or residential medical  
29 care facility; or

1        (b) Continuing treatment or continuing supervision by a health care  
2 provider.

3        **Sec. 3.** RCW 49.78.030 and 1989 1st ex.s. c 11 s 3 are each amended  
4 to read as follows:

5        (1) An employee is entitled to twelve workweeks of family leave  
6 during any twenty-four month period to: (a) Care for a newborn child  
7 ~~((or))~~ of the employee, an adopted child of the employee who is under  
8 the age of ~~((six))~~ sixteen at the time of placement for adoption~~((7))~~  
9 or~~((7))~~ a foster child when placement with the employee is the  
10 permanent plan and the foster child is under the age of sixteen at the  
11 time of placement; or (b) care for ~~((a child under eighteen years old~~  
12 of the employee who has a terminal)) a family member with a serious  
13 health condition. Leave under subsection (1)(a) of this section shall  
14 be completed within twelve months after the birth or placement for  
15 adoption or foster care, as applicable. ~~((An employee is entitled to~~  
16 leave under subsection (1)(b) of this section only once for any given  
17 child)) For the leave under subsection (1)(b) of this section to apply  
18 for the care of the employee's child, the child must be under the age  
19 of eighteen, or be eighteen years of age or older and incapable of  
20 self-care because of a mental or physical impairment.

21        (2) Family leave may be taken on a reduced leave schedule subject  
22 to the approval of the employer.

23        (3) The leave required by this section may be unpaid. If an  
24 employer provides paid family leave for fewer than twelve workweeks,  
25 the additional workweeks of leave added to attain the twelve-workweek  
26 total may be unpaid. An employer may require an employee to first use  
27 up the employee's total accumulation of leave to which the employee is  
28 otherwise entitled before going on family leave; however, except as  
29 provided in subsection (4) of this section, nothing in this section

1 requires more than twelve total workweeks of family leave during any  
2 twenty-four month period. An employer is not required to allow an  
3 employee to use the employee's other leave in place of the leave  
4 provided under this chapter.

5 (4) The leave required by this section is in addition to any leave  
6 for sickness or temporary disability because of pregnancy or  
7 childbirth.

8 (5) An employer may limit or deny family leave to either:

9 (a) Up to ten percent of the employer's (~~workforce~~) work force in  
10 the state designated as key personnel by the employer. Any designation  
11 made under this (~~section~~) subsection (a) shall take effect thirty  
12 days after it is issued and may be changed no more than once in any  
13 twelve-month period. The designation shall be in writing and shall be  
14 displayed in a conspicuous place. An employer shall not designate key  
15 personnel on the basis of age or gender or for the purpose of evading  
16 the requirements of this chapter. No employee may be designated as key  
17 personnel after giving notice of intent to take leave pursuant to RCW  
18 49.78.040(~~(. The designation shall be in writing and shall be~~  
19 ~~displayed in a conspicuous place)~~); or

20 (b) If the employer does not designate key personnel, the employees  
21 designated as the highest paid ten percent of the employer's employees  
22 in the state. Any designation made under this subsection (b) shall be  
23 in writing and may be changed no more than once in any twelve-month  
24 period. The designation shall take effect thirty days after the  
25 affected employees have been given written notice.

26 **Sec. 4.** RCW 49.78.040 and 1989 1st ex.s. c 11 s 4 are each amended  
27 to read as follows:

28 (1) An employee planning to take family leave under RCW  
29 49.78.030(1)(a) shall provide the employer with written notice at least

1 thirty days in advance of the anticipated date of delivery or placement  
2 for adoption or foster care, stating the dates during which the  
3 employee intends to take family leave. The employee shall adhere to  
4 the dates stated in the notice unless:

5 (a) The birth is premature;

6 (b) The mother is incapacitated due to birth such that she is  
7 unable to care for the child;

8 (c) The employee takes physical custody of the newly adopted child  
9 at an unanticipated time and is unable to give notice thirty days in  
10 advance; ~~((or))~~

11 (d) The employee takes physical custody of the newly placed foster  
12 child at an unanticipated time and is unable to give notice thirty days  
13 in advance; or

14 (e) The employer and employee agree to alter the dates of family  
15 leave stated in the notice.

16 (2) In cases of premature birth, incapacity, or unanticipated  
17 placement for adoption or foster care referred to in subsection (1) of  
18 this section, the employee must give notice of revised dates of family  
19 leave as soon as possible but at least within one working day of the  
20 birth or placement ~~((for adoption))~~ or incapacitation of the mother.

21 (3) If family leave under RCW 49.78.030(1)(b) is foreseeable, the  
22 employee shall provide the employer with written notice at least  
23 fourteen days in advance of the expected leave and shall make a  
24 reasonable effort to schedule the leave so as not to unduly disrupt the  
25 operations of the employer. If family leave under RCW 49.78.030(1)(b)  
26 is not foreseeable fourteen or more days before the leave is to take  
27 place, the employee shall notify the employer of the expected leave as  
28 soon as possible, but at least within one working day of the beginning  
29 of the leave.

1 (4) If the employee fails to give the notice required by this  
2 section, the employer may reduce or increase the family leave required  
3 by this chapter by three weeks.

4 **Sec. 5.** RCW 49.78.050 and 1989 1st ex.s. c 11 s 5 are each amended  
5 to read as follows:

6 (1) In the event of any dispute under this chapter regarding  
7 premature birth, incapacitation of the mother, maternity disability, or  
8 (~~terminal condition of a child~~) serious health condition of a family  
9 member, an employer may require confirmation by a health care provider  
10 of: (a) The date of the birth; (b) the date on which incapacity  
11 because of childbirth or disability because of pregnancy or childbirth  
12 commenced or will probably commence, and its probable duration; or (c)  
13 for family leave under RCW 49.78.030(1)(b), the fact that the (~~child~~  
14 ~~has a terminal~~) family member has a serious health condition.

15 (2) An employer may require, at the employer's expense, that the  
16 employee obtain the opinion of a second health care provider selected  
17 by the employer concerning any information required under subsection  
18 (1) of this section. If the health care providers disagree on any  
19 factor which is determinative of the employee's eligibility for family  
20 leave, the two health care providers shall select a third health care  
21 provider, whose opinion, obtained at the employer's expense, shall be  
22 conclusive.

23 **Sec. 6.** RCW 49.78.070 and 1989 1st ex.s. c 11 s 7 are each amended  
24 to read as follows:

25 (1) Subject to subsection (2) of this section, an employee who  
26 exercises any right provided under RCW 49.78.030 shall be entitled, in  
27 the following order of priority, upon return from leave or during any  
28 reduced leave schedule:

1 (a) To the same position held by the employee when the leave  
2 commenced; or

3 (b) If the employer's circumstances have so changed that the  
4 employee cannot be reinstated under (a) of this subsection, to a  
5 position with equivalent benefits and pay at a workplace within twenty  
6 miles of the employee's workplace when leave commenced; or

7 (c) If the employer's circumstances have so changed that the  
8 employee cannot be reinstated (~~(to the same position, or a position of~~  
9 ~~equivalent pay and benefits)) under either (a) or (b) of this  
10 subsection, the employee shall be reinstated in any other position  
11 which is vacant and for which the employee is qualified. The filling  
12 of a position held by an employee on family leave under this chapter  
13 shall not by itself constitute changed circumstances.~~

14 (2) The entitlement under subsection (1) of this section is subject  
15 to bona fide changes in compensation or work duties, and does not apply  
16 if:

17 (a) The employee's position is eliminated by a bona fide  
18 restructuring, or reduction-in-force;

19 (b) The employee's workplace is permanently or temporarily shut  
20 down for at least thirty days;

21 (c) The employee's workplace is moved to a location at least sixty  
22 miles from the location of the workplace when leave commenced;

23 (d) An employee on family leave takes (~~(another job))~~ a job with  
24 another employer working twenty hours or more per week; or

25 (e) The employee fails to provide timely notice of family leave as  
26 required under RCW 49.78.040, or fails to return on the established  
27 ending date of leave.

28 **Sec. 7.** RCW 49.78.130 and 1989 1st ex.s. c 11 s 13 are each  
29 amended to read as follows:



1 No employer, employment agency, labor union, or other person shall  
2 discharge, expel, or otherwise discriminate against any person because  
3 he or she has opposed any practices forbidden by this chapter, or  
4 because he or she has filed a complaint, testified, or assisted in any  
5 proceeding under this chapter, or has exercised any rights afforded by  
6 this chapter. No employer policy may be applied to limit or discourage  
7 the use of the leave rights available under this chapter.

8 NEW SECTION. Sec. 8. A new section is added to chapter 49.12 RCW  
9 to read as follows:

10 No employer may discharge or in any manner discriminate against any  
11 employee because he or she has filed a complaint, testified, or  
12 assisted in any proceeding under RCW 49.12.270 through 49.12.295, or  
13 has exercised any rights afforded by RCW 49.12.270 through 49.12.295.  
14 No employer policy may be applied to limit or discourage the use of the  
15 leave rights available under RCW 49.12.270 through 49.12.295.

16 NEW SECTION. Sec. 9. The following acts or parts of acts are each  
17 repealed:

- 18 (1) RCW 49.78.060 and 1989 1st ex.s. c 11 s 6; and  
19 (2) RCW 49.78.210 and 1989 1st ex.s. c 11 s 21.

20 NEW SECTION. Sec. 10. A new section is added to chapter 49.78 RCW  
21 to read as follows:

22 (1) An employee is entitled to sixteen hours of family educational  
23 leave during any twenty-four month period. The leave may be unpaid.  
24 If an employer provides paid family educational leave for fewer than  
25 sixteen hours, the additional hours of leave added to attain the  
26 sixteen-hour total may be unpaid.

1 (2) The taking of leave under this section shall not result in the  
2 loss of any benefit, including seniority or pension rights, accrued  
3 before the date on which the leave commenced.

4 (3) Family educational leave may be taken on a reduced leave  
5 schedule subject to the approval of the employer.

6 (4) The leave required by this section is in addition to family  
7 leave provided under RCW 49.78.030.

8 (5) An employer may require verification of participation in  
9 classroom activities.

10 (6) An employer may limit or deny family educational leave to  
11 either:

12 (a) Up to ten percent of the employer's work force in the state  
13 designated as key personnel by the employer. Any designation made  
14 under this subsection (a) shall take effect thirty days after it is  
15 issued and may be changed no more than once in any twelve-month period.  
16 The designation shall be in writing and shall be displayed in a  
17 conspicuous place. An employer shall not designate key personnel on  
18 the basis of age or gender or for the purpose of evading the  
19 requirements of this chapter. No employee may be designated as key  
20 personnel after giving notice of intent to take leave under section 11  
21 of this act; or

22 (b) If the employer does not designate key personnel, the employees  
23 designated as the highest paid ten percent of the employer's employees  
24 in the state. Any designation made under this subsection (b) shall be  
25 in writing and may be changed no more than once in any twelve-month  
26 period. The designation shall take effect thirty days after the  
27 affected employees have been given written notice.

28 NEW SECTION. **Sec. 11.** A new section is added to chapter 49.78 RCW  
29 to read as follows:

1 (1) An employee planning to take family educational leave under  
2 section 10 of this act shall provide the employer with written notice  
3 at least thirty days in advance of the anticipated date or dates of  
4 family educational leave, stating the dates during which the employee  
5 intends to take family educational leave.

6 (2) If the employee fails to give the notice required by this  
7 section, the employer may deny that request for family educational  
8 leave.

9 NEW SECTION. **Sec. 12.** A new section is added to chapter 49.78 RCW  
10 to read as follows:

11 To facilitate the orderly application of chapter \_\_\_ (H-3105/91),  
12 Laws of 1991, to employees covered by an unexpired collective  
13 bargaining agreement that expires on or after September 1, 1991, or by  
14 an employee benefit program or plan with a stated year ending on or  
15 after the effective date of this section, the chapter shall apply to  
16 these employees the later of: (1) The first day following expiration  
17 of the collective bargaining agreement; or (2) the first day of the  
18 next plan year, as applicable.

19 NEW SECTION. **Sec. 13.** This act is necessary for the immediate  
20 preservation of the public peace, health, or safety, or support of the  
21 state government and its existing public institutions, and shall take  
22 effect September 1, 1991.