
SENATE BILL 5407

State of Washington

52nd Legislature

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By Senators Murray, Rinehart, A. Smith, Pelz, Skratek, Talmadge, Vognild, Williams, Moore, L. Kreidler, Niemi and McMullen.

Read first time January 30, 1991. Referred to Committee on Commerce & Labor.

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

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

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

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

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

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

14 (3) "Employee" means a person other than an independent contractor
15 employed by an employer ~~((on a continuous basis for the previous))~~ for

1 at least fifty-two weeks within the previous seventy-eight weeks and
2 for at least ((thirty-five)) an average of thirty-two hours per week.

3 (4) "Employer" means: (a) Any person, firm, corporation,
4 partnership, business trust, legal representative, or other business
5 entity which engages in any business, industry, profession, or activity
6 in this state and includes any unit of local government including, but
7 not limited to, a county, city, town, municipal corporation, quasi-
8 municipal corporation, or political subdivision, which (i) employed a
9 daily average of ((one hundred)) fifty or more employees during the
10 last calendar quarter at the place where the employee requesting leave
11 reports for work, or (ii) employed a daily average of ((one hundred))
12 fifty or more employees during the last calendar quarter within a
13 twenty mile radius of the place where the employee requesting leave
14 reports for work, where the employer maintains a central hiring
15 location and customarily transfers employees among workplaces; and (b)
16 the state, state institutions, and state agencies.

17 (5) "Family leave" means leave from employment, as provided in RCW
18 49.78.030, to care for a newborn ((or)), a newly adopted child ((under
19 the age of six or a child under eighteen years old with a terminal
20 health condition, as provided in RCW 49.78.030)), or a newly placed
21 foster child, or to care for a family member with a serious health
22 condition.

23 (6) "Family member" means a child of the employee, the spouse of
24 the employee, or a parent of the employee or the employee's spouse.

25 (7) "Health care provider" means a person licensed as a physician
26 under chapter 18.71 ((RCW or an osteopath under chapter)) or 18.57 RCW.

27 ((+7)) (8) "Parent" means a biological, foster, or adoptive
28 parent, ((or)) a stepparent, or legal guardian.

29 ((+8)) (9) "Reduced leave schedule" means leave scheduled for
30 fewer than an employee's usual number of hours or days per workweek.

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

5 (10) "Serious health condition" means an illness, injury,
6 impairment, or physical or mental condition, whether or not
7 preexisting, that requires:

8 (a) Inpatient care in a hospital, hospice, or residential medical
9 care facility; or

10 (b) Continuing treatment or continuing supervision by a health care
11 provider.

12 **Sec. 2.** RCW 49.78.030 and 1989 1st ex.s. c 11 s 3 are each amended
13 to read as follows:

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

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

3 (3) The leave required by this section may be unpaid. If an
4 employer provides paid family leave for fewer than twelve workweeks,
5 the additional workweeks of leave added to attain the twelve-workweek
6 total may be unpaid. An employer may require an employee to first use
7 up the employee's total accumulation of leave to which the employee is
8 otherwise entitled before going on family leave; however, except as
9 provided in subsection (4) of this section, nothing in this section
10 requires more than twelve total workweeks of family leave during any
11 twenty-four month period. An employer is not required to allow an
12 employee to use the employee's other leave in place of the leave
13 provided under this chapter.

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

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

18 (a) Up to ten percent of the employer's (~~workforce~~) work force in
19 the state designated as key personnel by the employer. Any designation
20 made under this (~~section~~) subsection shall take effect thirty days
21 after it is issued and may be changed no more than once in any twelve-
22 month period. The designation shall be in writing and shall be
23 displayed in a conspicuous place. An employer shall not designate key
24 personnel on the basis of age or gender or for the purpose of evading
25 the requirements of this chapter. No employee may be designated as key
26 personnel after giving notice of intent to take leave pursuant to RCW
27 49.78.040(~~(. The designation shall be in writing and shall be~~
28 ~~displayed in a conspicuous place))~~); or

29 (b) If the employer does not designate key personnel, the employees
30 designated as the highest paid ten percent of the employer's employees

1 in the state. Any designation made under this subsection shall be in
2 writing and may be changed no more than once in any twelve-month
3 period. The designation shall take effect thirty days after the
4 affected employees have been given written notice.

5 **Sec. 3.** RCW 49.78.040 and 1989 1st ex.s. c 11 s 4 are each amended
6 to read as follows:

7 (1) An employee planning to take family leave under RCW
8 49.78.030(1)(a) shall provide the employer with written notice at least
9 thirty days in advance of the anticipated date of delivery or placement
10 for adoption or foster care, stating the dates during which the
11 employee intends to take family leave. The employee shall adhere to
12 the dates stated in the notice unless:

13 (a) The birth is premature;

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

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

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

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

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

1 (3) If family leave under RCW 49.78.030(1)(b) is foreseeable, the
2 employee shall provide the employer with written notice at least
3 fourteen days in advance of the expected leave and shall make a
4 reasonable effort to schedule the leave so as not to unduly disrupt the
5 operations of the employer. If family leave under RCW 49.78.030(1)(b)
6 is not foreseeable fourteen or more days before the leave is to take
7 place, the employee shall notify the employer of the expected leave as
8 soon as possible, but at least within one working day of the beginning
9 of the leave.

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

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

15 (1) In the event of any dispute under this chapter regarding
16 premature birth, incapacitation of the mother, maternity disability, or
17 (~~terminal condition of a child~~) serious health condition of a family
18 member, an employer may require confirmation by a health care provider
19 of: (a) The date of the birth; (b) the date on which incapacity
20 because of childbirth or disability because of pregnancy or childbirth
21 commenced or will probably commence, and its probable duration; or (c)
22 for family leave under RCW 49.78.030(1)(b), the fact that the (~~child~~
23 ~~has a terminal~~) family member has a serious health condition.

24 (2) An employer may require, at the employer's expense, that the
25 employee obtain the opinion of a second health care provider selected
26 by the employer concerning any information required under subsection
27 (1) of this section. If the health care providers disagree on any
28 factor which is determinative of the employee's eligibility for family
29 leave, the two health care providers shall select a third health care

1 provider, whose opinion, obtained at the employer's expense, shall be
2 conclusive.

3 **Sec. 5.** RCW 49.78.070 and 1989 1st ex.s. c 11 s 7 are each amended
4 to read as follows:

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

9 (a) To the same position held by the employee when the leave
10 commenced; or

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

15 (c) If the employer's circumstances have so changed that the
16 employee cannot be reinstated (~~(to the same position, or a position of~~
17 ~~equivalent pay and benefits)) under either (a) or (b) of this
18 subsection, the employee shall be reinstated in any other position
19 which is vacant and for which the employee is qualified. The filling
20 of a position by an employee on family leave under this chapter shall
21 not by itself constitute changed circumstances.~~

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

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

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

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

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

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

8 **Sec. 6.** RCW 49.78.130 and 1989 1st ex.s. c 11 s 13 are each
9 amended to read as follows:

10 No employer, employment agency, labor union, or other person shall
11 discharge, expel, or otherwise discriminate against any person because
12 he or she has opposed any practices forbidden by this chapter, or
13 because he or she has filed a complaint, testified, or assisted in any
14 proceeding under this chapter, or has exercised any rights afforded by
15 this chapter. No employer policy may be applied to limit or discourage
16 the use of the leave rights available under this chapter.

17 NEW SECTION. **Sec. 7.** A new section is added to chapter 49.12 RCW
18 to read as follows:

19 No employer may discharge or in any manner discriminate against any
20 employee because he or she has filed a complaint, testified, or
21 assisted in any proceeding under RCW 49.12.270 through 49.12.295, or
22 has exercised any rights afforded by RCW 49.12.270 through 49.12.295.
23 No employer policy may be applied to limit or discourage the use of the
24 leave rights available under RCW 49.12.270 through 49.12.295.

25 NEW SECTION. **Sec. 8.** The following acts or parts of acts are each
26 repealed:

27 (1) RCW 49.78.060 and 1989 1st ex.s. c 11 s 6; and

1 (2) RCW 49.78.210 and 1989 1st ex.s. c 11 s 21.

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

4 To facilitate the orderly application of chapter ___ (H-0885/91),
5 Laws of 1991, to employees covered by an unexpired collective
6 bargaining agreement that expires on or after September 1, 1991, or by
7 an employee benefit program or plan with a stated year ending on or
8 after the effective date of this section, the chapter shall apply to
9 these employees the later of: (1) The first day following expiration
10 of the collective bargaining agreement; or (2) the first day of the
11 next plan year, as applicable.

12 NEW SECTION. **Sec. 10.** This act shall take effect September 1,
13 1991.