
SENATE BILL 6381

State of Washington

56th Legislature

2000 Regular Session

By Senators Fairley and Kohl-Welles

Read first time 01/14/2000. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to family and medical leave; amending RCW
2 49.78.005, 49.78.010, and 49.78.020; adding new sections to chapter
3 49.78 RCW; adding a new section to Title 49 RCW; creating a new
4 section; repealing RCW 49.78.030, 49.78.040, 49.78.050, 49.78.060,
5 49.78.070, 49.78.080, 49.78.100, 49.78.110, 49.78.120, 49.78.130,
6 49.78.140, 49.78.150, 49.78.160, 49.78.170, 49.78.180, 49.78.190, and
7 49.78.200; and prescribing penalties.

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

9 **Sec. 1.** RCW 49.78.005 and 1997 c 16 s 1 are each amended to read
10 as follows:

11 (1) Except as provided in subsection (2) of this section, the
12 department shall cease to administer and enforce this chapter beginning
13 on July 27, 1997, and until the earlier of the following dates:

14 (a) The effective date of the repeal of the federal family and
15 medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6);
16 or

17 (b) July 1st of the year following the year in which amendments to
18 the federal family and medical leave act of 1993 (Act Feb. 5, 1993,
19 P.L. 103-3, 107 Stat. 6) take effect (~~that provide less family leave~~

1 ~~than is provided under RCW 49.78.030~~). In determining whether the
2 federal law provides the same or more leave, the department shall only
3 consider whether (i) the total period of leave allowed under the
4 amended federal law is twelve or more workweeks in a twenty-four month
5 period, and (ii) the types of leave authorized under the amended
6 federal law are similar to the types authorized in this chapter.

7 (2) An employee's right under (~~RCW 49.78.070(1)(b)~~) section
8 10(1)(a)(ii) of this act to be returned to a workplace within twenty
9 miles of the employee's workplace when leave commenced shall remain in
10 effect. The family leave required by U.S.C. 29.2612(a)(1)(A) and (B)
11 of the federal family and medical leave act of 1993 (Act Feb. 5, 1993,
12 P.L. 103-3, 107 Stat. 6) shall be in addition to any leave for sickness
13 or temporary disability because of pregnancy or childbirth. The
14 department shall enforce this subsection under (~~RCW 49.78.140 through~~
15 ~~49.78.190, except that an initial notice of infraction shall state~~
16 ~~that~~) section 15 of this act, except that the department shall
17 initially notify the employer that it has thirty days in which to take
18 corrective action. No (~~infraction or penalty may be assessed~~) action
19 under section 15 of this act shall be taken if the employer complies
20 with the requirements of the department's initial notice (~~of~~
21 infraction).

22 **Sec. 2.** RCW 49.78.010 and 1989 1st ex.s. c 11 s 1 are each amended
23 to read as follows:

24 The legislature finds that the demands of the workplace and of
25 families need to be balanced to promote family stability and economic
26 security. Changes in workplace leave policies are desirable to
27 accommodate changes in the work force such as rising numbers of dual-
28 career couples and working single parents. In addition, given the
29 mobility of American society, many people no longer have available
30 community or family support networks and therefore need additional
31 flexibility in the workplace. The legislature declares it to be in the
32 public interest to provide reasonable (~~family leave upon the birth or~~
33 ~~adoption of a child and to care for a child under eighteen years old~~
34 ~~with a terminal health condition~~) leave for medical reasons, for the
35 birth or placement of a child, and for the care of a family member who
36 has a serious health condition.

1 **Sec. 3.** RCW 49.78.020 and 1996 c 178 s 14 are each amended to read
2 as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

5 (1) "Child" means a biological ~~((or)),~~ adopted, or foster child,
6 ~~((or))~~ a stepchild, ~~((living with the employee))~~ a legal ward, or a
7 child of a person standing in loco parentis, who is: (a) Under
8 eighteen years of age; or (b) eighteen years of age or older and
9 incapable of self-care because of a mental or physical disability.

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

11 (3) "Director" means the director of the department.

12 (4) "Employee" means a person other than an independent contractor
13 employed ~~((by an employer on a continuous basis for the previous fifty-~~
14 ~~two weeks for at least thirty-five hours per week))~~: (a) For at least
15 twelve months by the employer with respect to whom leave is requested
16 under section 4 of this act; and (b) for at least one thousand two
17 hundred fifty hours of service with such employer during the previous
18 twelve-month period. "Employee" does not mean a person other than an
19 independent contractor who is employed at a worksite at which the
20 employer employs less than fifty employees if the total number of
21 employees employed by that employer within seventy-five miles of that
22 worksite is less than fifty.

23 ~~((4))~~ (5) "Employer" means: (a) Any person, firm, corporation,
24 partnership, business trust, legal representative, or other business
25 entity which engages in any business, industry, profession, or activity
26 in this state and includes any unit of local government including, but
27 not limited to, a county, city, town, municipal corporation, quasi-
28 municipal corporation, or political subdivision, which ~~((i) employed~~
29 ~~a daily average of one hundred or more employees during the last~~
30 ~~calendar quarter at the place where the employee requesting leave~~
31 ~~reports for work, or (ii) employed a daily average of one hundred or~~
32 ~~more employees during the last calendar quarter within a twenty mile~~
33 ~~radius of the place where the employee requesting leave reports for~~
34 ~~work, where the employer maintains a central hiring location and~~
35 ~~customarily transfers employees among workplaces)) employs fifty or~~
36 more employees for each working day during each of twenty or more
37 calendar workweeks in the current or preceding calendar year; and (b)
38 the state, state institutions, and state agencies.

1 ~~((5) "Family leave" means leave from employment to care for a~~
2 ~~newborn or newly adopted child under the age of six or a child under~~
3 ~~eighteen years old with a terminal health condition, as provided in RCW~~
4 ~~49.78.030.)~~)

5 (6) "Employment benefits" means all benefits provided or made
6 available to employees by an employer, including group life insurance,
7 health insurance, disability insurance, sick leave, annual leave,
8 educational benefits, and pensions regardless of whether such benefits
9 are provided by a practice or written policy of an employer or through
10 an employee benefit plan as defined in 29 U.S.C. Sec. 1002(3).

11 (7) "Family member" means a child, parent, or spouse of an
12 employee.

13 (8) "Health care provider" means: (a) A person licensed as a
14 physician under chapter 18.71 RCW or an osteopathic physician and
15 surgeon under chapter 18.57 RCW; or (b) any other person determined by
16 the director to be capable of providing health care services.

17 ~~((7))~~ (9) "Parent" means ((a biological or adoptive parent, or a
18 stepparent)) the biological or adoptive parent of an employee or an
19 individual who stood in loco parentis to an employee when the employee
20 was a child.

21 ~~((8))~~ (10) "Reduced leave schedule" means ((leave scheduled for
22 fewer than an employee's usual number of hours or days per workweek))
23 a leave schedule that reduces that usual number of hours per workweek,
24 or hours per workday, of an employee.

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

29 (11) "Serious health condition" means an illness, injury,
30 impairment, or physical or mental condition that involves: (a)
31 Inpatient care in a hospital, hospice, or residential medical care
32 facility; or (b) continuing treatment by a health care provider.

33 (12) "Spouse" means a husband or wife, as the case may be.

34 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.78 RCW
35 to read as follows:

36 ENTITLEMENT TO LEAVE. (1) Subject to section 9 of this act, an
37 employee shall be entitled to a total of twelve workweeks of leave
38 during any twelve-month period for one or more of the following:

1 (a) Because of the birth of a child of the employee and in order to
2 care for such child;

3 (b) Because of the placement of a child with the employee for
4 adoption or foster care;

5 (c) In order to care for a family member of the employee, if such
6 family member has a serious health condition; or

7 (d) Because of a serious health condition that makes the employee
8 unable to perform the functions of the position of such employee.

9 (2) The entitlement to leave for the birth or placement of a child
10 shall expire at the end of the twelve-month period beginning on the
11 date of such birth or placement.

12 NEW SECTION. **Sec. 5.** A new section is added to chapter 49.78 RCW
13 to read as follows:

14 LEAVE TAKEN INTERMITTENTLY OR ON REDUCED LEAVE SCHEDULE. (1) Leave
15 for the birth or placement of a child shall not be taken by an employee
16 intermittently or on a reduced leave schedule unless the employee and
17 the employer of the employee agree otherwise. Subject to section 7(2)
18 of this act and section 9(2)(e) of this act, leave for a family
19 member's serious health condition or the employee's serious health
20 condition may be taken intermittently or on a reduced leave schedule
21 when medically necessary. The taking of leave intermittently or on a
22 reduced leave schedule pursuant to this section shall not result in a
23 reduction in the total amount of leave to which the employee is
24 entitled under section 4 of this act beyond the amount of leave
25 actually taken.

26 (2) If an employee requests intermittent leave, or leave on a
27 reduced leave schedule, for a family member's serious health condition
28 or the employee's serious health condition, that is foreseeable based
29 on planned medical treatment, the employer may require such employee to
30 transfer temporarily to an available alternative position offered by
31 the employer for which the employee is qualified and that:

32 (a) Has equivalent pay and benefits; and

33 (b) Better accommodates recurring periods of leave than the regular
34 employment position of the employee.

35 NEW SECTION. **Sec. 6.** A new section is added to chapter 49.78 RCW
36 to read as follows:

1 UNPAID LEAVE PERMITTED--RELATIONSHIP TO PAID LEAVE. (1) Except as
2 provided in subsection (2) of this section, leave granted under section
3 4 of this act may consist of unpaid leave.

4 (2)(a) If an employer provides paid leave for fewer than twelve
5 workweeks, the additional weeks of leave necessary to attain the twelve
6 workweeks of leave required under this act may be provided without
7 compensation.

8 (b) An employee may elect, or an employer may require the employee:

9 (i) To substitute any of the accrued paid vacation leave, personal
10 leave, or family leave of the employee for leave for the birth or
11 placement of a child or for a family member's serious health condition
12 for any part of the twelve-week period of such leave; or (ii) to
13 substitute any of the accrued paid vacation leave, personal leave, or
14 medical or sick leave of the employee for leave provided for a family
15 member's serious health condition or the employee's serious health
16 condition for any part of the twelve-week period of such leave, except
17 that nothing in this act shall require an employer to provide paid sick
18 leave or paid medical leave in any situation in which such employer
19 would not normally provide any such paid leave.

20 NEW SECTION. **Sec. 7.** A new section is added to chapter 49.78 RCW
21 to read as follows:

22 FORESEEABLE LEAVE. (1) In any case in which the necessity for
23 leave for the birth or placement of a child is foreseeable based on an
24 expected birth or placement, the employee shall provide the employer
25 with not less than thirty days' notice, before the date the leave is to
26 begin, of the employee's intention to take leave for the birth or
27 placement of a child, except that if the date of the birth or placement
28 requires leave to begin in less than thirty days, the employee shall
29 provide such notice as is practicable.

30 (2) In any case in which the necessity for leave for a family
31 member's serious health condition or the employee's serious health
32 condition is foreseeable based on planned medical treatment, the
33 employee:

34 (a) Shall make a reasonable effort to schedule the treatment so as
35 not to disrupt unduly the operations of the employer, subject to the
36 approval of the health care provider of the employee or the health care
37 provider of the family member, as appropriate; and

1 (b) Shall provide the employer with not less than thirty days'
2 notice, before the date the leave is to begin, of the employee's
3 intention to take leave for a family member's serious health condition
4 or the employee's serious health condition, except that if the date of
5 the treatment requires leave to begin in less than thirty days, the
6 employee shall provide such notice as is practicable.

7 NEW SECTION. **Sec. 8.** A new section is added to chapter 49.78 RCW
8 to read as follows:

9 SPOUSES EMPLOYED BY SAME EMPLOYER. In any case in which a husband
10 and wife entitled to leave under this act are employed by the same
11 employer, the aggregate number of workweeks of leave to which both may
12 be entitled may be limited to twelve workweeks during any twelve-month
13 period, if such leave is taken: (1) For the birth or placement of a
14 child; or (2) for a parent's serious health condition.

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

17 CERTIFICATION. (1) An employer may require that a request for
18 leave for a family member's serious health condition or the employee's
19 serious health condition be supported by a certification issued by the
20 health care provider of the employee or of the family member, as
21 appropriate. The employee shall provide, in a timely manner, a copy of
22 such certification to the employer.

23 (2) Certification provided under subsection (1) of this section
24 shall be sufficient if it states:

25 (a) The date on which the serious health condition commenced;

26 (b) The probable duration of the condition;

27 (c) The appropriate medical facts within the knowledge of the
28 health care provider regarding the condition;

29 (d)(i) For purposes of leave for a family member's serious health
30 condition, a statement that the employee is needed to care for the
31 family member and an estimate of the amount of time that such employee
32 is needed to care for the family member; and

33 (ii) For purposes of leave for the employee's serious health
34 condition, a statement that the employee is unable to perform the
35 functions of the position of the employee;

36 (e) In the case of certification for intermittent leave, or leave
37 on a reduced leave schedule, for planned medical treatment, the dates

1 on which such treatment is expected to be given and the duration of
2 such treatment;

3 (f) In the case of certification for intermittent leave, or leave
4 on a reduced leave schedule, for the employee's serious health
5 condition, a statement of the medical necessity for the intermittent
6 leave or leave on a reduced leave schedule, and the expected duration
7 of the intermittent leave or reduced leave schedule; and

8 (g) In the case of certification for intermittent leave, or leave
9 on a reduced leave schedule, for a family member's serious health
10 condition, a statement that the employee's intermittent leave or leave
11 on a reduced leave schedule is necessary for the care of the family
12 member who has a serious health condition, or will assist in their
13 recovery, and the expected duration and schedule of the intermittent
14 leave or reduced leave schedule.

15 (3) In any case in which the employer has reason to doubt the
16 validity of the certification provided under subsection (1) of this
17 section for leave for a family member's serious health condition or the
18 employee's serious health condition, the employer may require, at the
19 expense of the employer, that the employee obtain the opinion of a
20 second health care provider designated or approved by the employer
21 concerning any information certified under subsection (2) of this
22 section for such leave. The second health care provider shall not be
23 employed on a regular basis by the employer.

24 (4) In any case in which the second opinion described in subsection
25 (3) of this section differs from the opinion in the original
26 certification provided under subsection (1) of this section, the
27 employer may require, at the expense of the employer, that the employee
28 obtain the opinion of a third health care provider designated or
29 approved jointly by the employer and the employee concerning the
30 information certified under subsection (2) of this section. The
31 opinion of the third health care provider concerning the information
32 certified under subsection (2) of this section shall be considered to
33 be final and shall be binding on the employer and the employee.

34 (5) The employer may require that the employee obtain subsequent
35 recertifications on a reasonable basis.

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

1 EMPLOYMENT PROTECTION. (1)(a) Except as provided in (b) of this
2 subsection, any employee who takes leave under section 4 of this act
3 for the intended purpose of the leave shall be entitled, on return from
4 such leave:

5 (i) To be restored by the employer to the position of employment
6 held by the employee when the leave commenced; or

7 (ii) To be restored to an equivalent position with equivalent
8 employment benefits, pay, and other terms and conditions of employment
9 at a workplace within twenty miles of the employee's workplace when
10 leave commenced.

11 (b) The taking of leave under section 4 of this act shall not
12 result in the loss of any employment benefits accrued prior to the date
13 on which the leave commenced.

14 (c) Nothing in this section shall be construed to entitle any
15 restored employee to:

16 (i) The accrual of any seniority or employment benefits during any
17 period of leave; or

18 (ii) Any right, benefit, or position of employment other than any
19 right, benefit, or position to which the employee would have been
20 entitled had the employee not taken the leave.

21 (d) As a condition of restoration under (a) of this subsection for
22 an employee who has taken leave for the employee's serious health
23 condition, the employer may have a uniformly applied practice or policy
24 that requires each such employee to receive certification from the
25 health care provider of the employee that the employee is able to
26 resume work, except that nothing in this subsection (1)(d) shall
27 supersede a valid local law or a collective bargaining agreement that
28 governs the return to work of such employees.

29 (e) Nothing in this subsection (1) shall be construed to prohibit
30 an employer from requiring an employee on leave to report periodically
31 to the employer on the status and intention of the employee to return
32 to work.

33 (2) An employer may deny restoration under subsection (1) of this
34 section to any salaried employee who is among the highest paid ten
35 percent of the employees employed by the employer within seventy-five
36 miles of the facility at which the employee is employed if:

37 (a) Such denial is necessary to prevent substantial and grievous
38 economic injury to the operations of the employer;

1 (b) The employer notifies the employee of the intent of the
2 employer to deny restoration on such basis at the time the employer
3 determines that such injury would occur; and

4 (c) In any case in which the leave has commenced, the employee
5 elects not to return to employment after receiving such notice.

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

8 BENEFITS PROTECTION. (1) Except as provided in subsection (2) of
9 this section, during any period that an employee takes leave under
10 section 4 of this act the employer shall maintain coverage under any
11 group health plan as defined in 26 U.S.C. Sec. 5000(b)(1) for the
12 duration of such leave at the level and under the conditions coverage
13 would have been provided if the employee had continued in employment
14 continuously for the duration of such leave.

15 (2) The employer may recover the premium that the employer paid for
16 maintaining coverage for the employee under such group health plan
17 during any period of unpaid leave under section 4 of this act, if:

18 (a) The employee fails to return from leave under section 4 of this
19 act, after the period of leave to which the employee is entitled has
20 expired; and

21 (b) The employee fails to return to work for a reason other than:

22 (i) The continuation, recurrence, or onset of a serious health
23 condition that entitles the employee to leave for a family member's
24 serious health condition or the employee's serious health condition; or

25 (ii) Other circumstances beyond the control of the employee.

26 (3) In the case of an employee unable to return to work because of
27 a family member's serious health condition, an employer may require
28 that a claim that an employee is unable to return to work because of
29 the continuation, recurrence, or onset of the serious health condition
30 described in subsection (2)(b)(i) of this section be supported by a
31 certification issued by the health care provider of the family member.
32 The certification described in this subsection shall be sufficient if
33 the certification states that the employee is needed to care for the
34 family member who has a serious health condition on the date that the
35 leave of the employee expired.

36 (4) In the case of an employee unable to return to work because of
37 the employee's serious health condition, an employer may require that
38 a claim that an employee is unable to return to work because of the

1 continuation, recurrence, or onset of the serious health condition
2 described in subsection (2)(b)(i) of this section be supported by a
3 certification issued by the health care provider of the employee. The
4 certification described in this subsection shall be sufficient if the
5 certification states that a serious health condition prevented the
6 employee from being able to perform the functions of the position of
7 the employee on the date that the leave of the employee expired.

8 (5) The employee shall provide, in a timely manner, a copy of the
9 certification required by either subsection (3) of this section or
10 subsection (4) of this section to the employer.

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

13 PROHIBITED ACTS. (1) It shall be unlawful for any employer:

14 (a) To interfere with, restrain, or deny the exercise of, or the
15 attempt to exercise, any right provided under this act; or

16 (b) To discharge or in any other manner discriminate against any
17 individual for opposing any practice made unlawful by this act.

18 (2) It shall be unlawful for any person to discharge or in any
19 other manner discriminate against any individual because such
20 individual:

21 (a) Has filed any charge, or has instituted or caused to be
22 instituted any proceeding, under or related to this act;

23 (b) Has given, or is about to give, any information in connection
24 with any inquiry or proceeding relating to any right provided under
25 this act; or

26 (c) Has testified, or is about to testify, in any inquiry or
27 proceeding relating to any right provided under this act.

28 NEW SECTION. **Sec. 13.** A new section is added to chapter 49.78 RCW
29 to read as follows:

30 INVESTIGATIVE AUTHORITY. (1) To ensure compliance with the
31 provisions of this act, or any regulation or order issued under this
32 act, the director shall have, subject to subsection (3) of this
33 section, the investigative authority provided under RCW 49.46.040(1).

34 (2) Any employer shall make, keep, and preserve records pertaining
35 to compliance with this act in accordance with RCW 49.46.040(3) and in
36 accordance with rules adopted by the director.

1 (3) The director shall not under the authority of this section
2 require any employer or any plan, fund, or program to submit to the
3 director any books or records more than once during any twelve-month
4 period, unless the director has reasonable cause to believe there may
5 exist a violation of this act or any regulation or order issued
6 pursuant to this act, or is investigating a complaint pursuant to
7 section 15 of this act.

8 (4) For the purposes of any investigation provided for in this
9 section, the director shall have the authority to issue subpoenas to
10 compel the attendance of witnesses or parties and the production of
11 books, papers, or records.

12 NEW SECTION. **Sec. 14.** A new section is added to chapter 49.78 RCW
13 to read as follows:

14 CIVIL ACTION BY EMPLOYEES. (1) Any employer who violates section
15 12 of this act shall be liable:

16 (a) For damages equal to:

17 (i) The amount of:

18 (A) Any wages, salary, employment benefits, or other compensation
19 denied or lost to such employee by reason of the violation; or

20 (B) In a case in which wages, salary, employment benefits, or other
21 compensation have not been denied or lost to the employee, any actual
22 monetary losses sustained by the employee as a direct result of the
23 violation, such as the cost of providing care, up to a sum equal to
24 twelve weeks of wages or salary for the employee;

25 (ii) The interest on the amount described in (a)(i) of this
26 subsection calculated at the prevailing rate; and

27 (iii) An additional amount as liquidated damages equal to the sum
28 of the amount described in (a)(i) of this subsection and the interest
29 described in (a)(ii) of this subsection, except that if an employer who
30 has violated section 12 of this act proves to the satisfaction of the
31 court that the act or omission which violated section 12 of this act
32 was in good faith and that the employer had reasonable grounds for
33 believing that the act or omission was not a violation of section 12 of
34 this act, such court may, in the discretion of the court, reduce the
35 amount of the liability to the amount and interest determined under
36 (a)(i) and (ii) of this subsection, respectively; and

37 (b) For such equitable relief as may be appropriate, including
38 employment, reinstatement, and promotion.

1 (2) An action to recover the damages or equitable relief prescribed
2 in subsection (1) of this section may be maintained against any
3 employer in any court of competent jurisdiction by any one or more
4 employees for and in behalf of:

5 (a) The employees; or

6 (b) The employees and other employees similarly situated.

7 (3) The court in such an action shall, in addition to any judgment
8 awarded to the plaintiff, allow reasonable attorneys' fees, reasonable
9 expert witness fees, and other costs of the action to be paid by the
10 defendant.

11 (4) Unless the action described in (a) or (b) of this subsection is
12 dismissed without prejudice on motion of the director, the right
13 provided by subsection (2) of this section to bring an action by or on
14 behalf of any employee shall terminate:

15 (a) On the filing of a complaint by the director in an action under
16 section 15 of this act in which restraint is sought of any further
17 delay in the payment of the amount described in subsection (1)(a) of
18 this section to such employee by an employer responsible under
19 subsection (1) of this section for the payment; or

20 (b) On the filing of a complaint by the director in an action under
21 section 15 of this act in which a recovery is sought of the damages
22 described in subsection (1)(a) of this section owing to an employee by
23 an employer liable under subsection (1) of this section.

24 NEW SECTION. Sec. 15. A new section is added to chapter 49.78 RCW
25 to read as follows:

26 AGENCY ACTION. (1) The director shall receive, investigate, and
27 attempt to resolve complaints of violations of section 12 of this act
28 in the same manner that the director receives, investigates, and
29 attempts to resolve complaints of violations of RCW 49.46.020 and
30 49.46.130. The director may bring an action in superior court to
31 recover the damages described in section 14 of this act.

32 (2) Except as provided in this subsection, an action may be brought
33 under this section by two years after the date of the last event
34 constituting the alleged violation for which the action is brought. In
35 the case of such action brought for a willful violation of section 12
36 of this act, such action may be brought within three years of the date
37 of the last event constituting the alleged violation for which such
38 action is brought. In determining when an action is commenced by the

1 director under this section for the purposes of this subsection, it
2 shall be considered to be commenced on the date when the complaint is
3 filed.

4 (3) The director also may bring an action in superior court:

5 (a) To restrain violations of section 12 of this act, including the
6 restraint of any withholding of payment of wages, salary, employment
7 benefits, or other compensation, plus interest, found by the court to
8 be due to eligible employees; or

9 (b) To award such other equitable relief as may be appropriate,
10 including employment, reinstatement, and promotion.

11 NEW SECTION. **Sec. 16.** A new section is added to chapter 49.78 RCW
12 to read as follows:

13 NOTICE. Each employer shall post and keep posted, in conspicuous
14 places on the premises of the employer where notices to employees and
15 applicants for employment are customarily posted, a notice, to be
16 prepared or approved by the director, setting forth excerpts from, or
17 summaries of, the pertinent provisions of this act and information
18 pertaining to the filing of a charge. Any employer that willfully
19 violates this section may be subject to a civil penalty of not more
20 than one hundred dollars for each separate offense.

21 NEW SECTION. **Sec. 17.** A new section is added to Title 49 RCW to
22 read as follows:

23 FAMILY AND MEDICAL LEAVE ENFORCEMENT ACCOUNT. The family and
24 medical leave enforcement account is created in the custody of the
25 state treasurer. Any sums recovered by the director pursuant to
26 section 15 of this act shall be deposited into the account and shall be
27 paid to each employee affected. Any such sums not paid to an employee
28 because of inability to do so within a period of three years shall be
29 used only for the purposes of administering and enforcing this act.
30 Any penalties collected under section 16 of this act shall be deposited
31 into the account and shall be used only for the purposes of
32 administering and enforcing this act. Only the director or the
33 director's designee may authorize expenditures from the account. The
34 account is subject to allotment procedures under chapter 43.88 RCW, but
35 an appropriation is not required for expenditures.

1 NEW SECTION. **Sec. 18.** A new section is added to chapter 49.78 RCW
2 to read as follows:

3 EFFECT ON OTHER LAWS. Nothing in this act shall be construed: (1)
4 To modify or affect any state or local law prohibiting discrimination
5 on the basis of race, religion, color, national origin, sex, age, or
6 disability; or (2) to supersede any provision of any local law that
7 provides greater family or medical leave rights than the rights
8 established under this act.

9 NEW SECTION. **Sec. 19.** A new section is added to chapter 49.78 RCW
10 to read as follows:

11 EFFECT ON EXISTING EMPLOYMENT BENEFITS. Nothing in this act shall
12 be construed to diminish the obligation of an employer to comply with
13 any collective bargaining agreement or any employment benefit program
14 or plan that provides greater family or medical leave rights to
15 employees than the rights established under this act. The rights
16 established for employees under this act shall not be diminished by any
17 collective bargaining agreement or any employment benefit program or
18 plan.

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

21 ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES. Nothing in this act
22 shall be construed to discourage employers from adopting or retaining
23 leave policies more generous than any policies that comply with the
24 requirements under this act.

25 NEW SECTION. **Sec. 21.** A new section is added to chapter 49.78 RCW
26 to read as follows:

27 RULE-MAKING AUTHORITY. The director shall adopt rules as necessary
28 to implement this act by ninety days after suspension of chapter 49.78
29 RCW under RCW 49.78.005 is lifted.

30 NEW SECTION. **Sec. 22.** The following acts or parts of acts are
31 each repealed:

32 (1) RCW 49.78.030 (Requirements--Limitation) and 1989 1st ex.s. c
33 11 s 3;

34 (2) RCW 49.78.040 (Notice to employer) and 1989 1st ex.s. c 11 s 4;

- 1 (3) RCW 49.78.050 (Requirements for confirmation--Second opinion)
2 and 1989 1st ex.s. c 11 s 5;
- 3 (4) RCW 49.78.060 (Both parents with same employer) and 1989 1st
4 ex.s. c 11 s 6;
- 5 (5) RCW 49.78.070 (Employee employment rights--Limitations) and
6 1989 1st ex.s. c 11 s 7;
- 7 (6) RCW 49.78.080 (Employee benefits) and 1989 1st ex.s. c 11 s 8;
- 8 (7) RCW 49.78.100 (Additional rights--Remedies) and 1989 1st ex.s.
9 c 11 s 10;
- 10 (8) RCW 49.78.110 (Collective bargaining agreements--Obligations
11 and rights not diminished) and 1989 1st ex.s. c 11 s 11;
- 12 (9) RCW 49.78.120 (Collective bargaining agreements--Application of
13 chapter--Grievance procedures) and 1989 1st ex.s. c 11 s 12;
- 14 (10) RCW 49.78.130 (Discrimination prohibited) and 1989 1st ex.s.
15 c 11 s 13;
- 16 (11) RCW 49.78.140 (Complaint--Contents--Notice--Investigation) and
17 1989 1st ex.s. c 11 s 14;
- 18 (12) RCW 49.78.150 (Notice of infraction--Contents) and 1989 1st
19 ex.s. c 11 s 15;
- 20 (13) RCW 49.78.160 (Notice of infraction--Service) and 1989 1st
21 ex.s. c 11 s 16;
- 22 (14) RCW 49.78.170 (Notice of infraction--State agencies) and 1989
23 1st ex.s. c 11 s 17;
- 24 (15) RCW 49.78.180 (Appeal--Hearings--Decisions--Review--Appeal of
25 final decision) and 1989 1st ex.s. c 11 s 18;
- 26 (16) RCW 49.78.190 (Penalties) and 1989 1st ex.s. c 11 s 19; and
27 (17) RCW 49.78.200 (Poster required) and 1989 1st ex.s. c 11 s 20.

28 NEW SECTION. **Sec. 23.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 24.** Captions used in this act are not any part
33 of the law.

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