
HOUSE BILL 2392

State of Washington

59th Legislature

2006 Regular Session

By Representatives Dickerson, Appleton, Moeller, Hasegawa, Darneille, Conway, Roberts, Kenney, Kagi, Flannigan, Cody and Green

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

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, and an aging
15 population. In addition, given the mobility of American society, many
16 people no longer have available community or family support networks
17 and therefore need additional flexibility in the workplace. The
18 legislature declares it to be in the public interest to provide
19 reasonable ~~((family leave upon the birth or adoption of a child and to~~

1 ~~care for a child under eighteen years old with a terminal~~) leave for
2 medical reasons, for the birth or placement of a child, and for the
3 care of a family member who has a serious health condition.

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

6 Unless the context clearly requires otherwise, the definitions in
7 this section apply throughout this chapter.

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

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

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

15 (4) "Domestic partner" means an unmarried person eighteen years of
16 age or older: (a) With whom the individual entered into a close
17 personal relationship when both parties were mentally competent and has
18 maintained a close personal relationship solely with that person for a
19 minimum of six continuous months; (b) with whom the individual shares
20 a regular and permanent residence; (c) with whom the individual has
21 agreed to be jointly responsible for basic living expenses incurred
22 during the domestic partnership; and (d) to whom the individual is not
23 related by blood as would bar marriage.

24 (5)(a) "Employee" means a person ((other than an independent
25 contractor employed by an employer on a continuous basis for the
26 previous fifty two weeks for at least thirty five hours per week)) who
27 has been employed: (i) For at least twelve months by the employer with
28 respect to whom leave is requested under section 3 of this act; and
29 (ii) for at least one thousand two hundred fifty hours of service with
30 the employer during the previous twelve-month period.

31 (b) "Employee" does not mean a person who is employed at a worksite
32 at which the employer as defined in (a) of this subsection employs less
33 than twenty-five employees if the total number of employees employed by
34 that employer within seventy-five miles of that worksite is less than
35 twenty-five.

36 ~~((+4))~~ (6) "Employer" means: (a) Any person, firm, corporation,
37 partnership, business trust, legal representative, or other business

1 entity which engages in any business, industry, profession, or activity
2 in this state and includes any unit of local government including, but
3 not limited to, a county, city, town, municipal corporation, quasi-
4 municipal corporation, or political subdivision, which (~~((i) employed~~
5 ~~a daily average of one hundred or more employees during the last~~
6 ~~calendar quarter at the place where the employee requesting leave~~
7 ~~reports for work, or (ii) employed a daily average of one hundred or~~
8 ~~more employees during the last calendar quarter within a twenty mile~~
9 ~~radius of the place where the employee requesting leave reports for~~
10 ~~work, where the employer maintains a central hiring location and~~
11 ~~customarily transfers employees among workplaces; and)) employs
12 twenty-five or more employees for each working day during each of
13 twenty or more calendar workweeks in the current or preceding calendar
14 year; (b) the state, state institutions, and state agencies; and (c)
15 any unit of local government including, but not limited to, a county,
16 city, town, municipal corporation, quasi-municipal corporation, or
17 political subdivision.~~

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

22 ~~(6))~~ (7) "Employment benefits" means all benefits provided or made
23 available to employees by an employer, including group life insurance,
24 health insurance, disability insurance, sick leave, annual leave,
25 educational benefits, and pensions except benefits that are provided by
26 a practice or written policy of an employer or through an employee
27 benefit plan as defined in 29 U.S.C. Sec. 1002(3).

28 (8) "Family member" means a child, parent, spouse, or domestic
29 partner of an employee.

30 (9) "Health care provider" means: (a) A person licensed as a
31 physician under chapter 18.71 RCW or an osteopathic physician and
32 surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced
33 registered nurse practitioner under chapter 18.79 RCW; or (c) any other
34 person determined by the director to be capable of providing health
35 care services.

36 ~~((7))~~ (10) "Intermittent leave" is leave taken in separate blocks
37 of time due to a single qualifying reason.

1 (11) "Leave for a family member's serious health condition" means
2 leave as described in section 3(1)(c) of this act.

3 (12) "Leave for the birth or placement of a child" means leave as
4 described in section 3(1) (a) or (b) of this act.

5 (13) "Leave for the employee's serious health condition" means
6 leave as described in section 3(1)(d) of this act.

7 (14) "Parent" means ((a biological or adoptive parent, or a
8 stepparent)) the biological or adoptive parent of an employee or an
9 individual who stood in loco parentis to an employee when the employee
10 was a child.

11 ((+8)) (15) "Period of incapacity" means an inability to work,
12 attend school, or perform other regular daily activities because of the
13 serious health condition, treatment of that condition or recovery from
14 it, or subsequent treatment in connection with such inpatient care.

15 (16) "Reduced leave schedule" means ((leave scheduled for fewer
16 than an employee's usual number of hours or days per workweek)) a leave
17 schedule that reduces the usual number of hours per workweek, or hours
18 per workday, of an employee.

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

23 (17)(a) "Serious health condition" means an illness, injury,
24 impairment, or physical or mental condition that involves:

25 (i) Inpatient care in a hospital, hospice, or residential medical
26 care facility, including any period of incapacity; or

27 (ii) Continuing treatment by a health care provider. A serious
28 health condition involving continuing treatment by a health care
29 provider includes any one or more of the following:

30 (A) A period of incapacity of more than three consecutive calendar
31 days, and any subsequent treatment or period of incapacity relating to
32 the same condition, that also involves:

33 (I) Treatment two or more times by a health care provider, by a
34 nurse or physician's assistant under direct supervision of a health
35 care provider, or by a provider of health care services under orders
36 of, or on referral by, a health care provider; or

37 (II) Treatment by a health care provider on at least one occasion

1 which results in a regimen of continuing treatment under the
2 supervision of the health care provider;

3 (B) Any period of incapacity due to pregnancy, or for prenatal
4 care;

5 (C) Any period of incapacity or treatment for such incapacity due
6 to a chronic serious health condition. A chronic serious health
7 condition is one which:

8 (I) Requires periodic visits for treatment by a health care
9 provider, or by a nurse or physician's assistant under direct
10 supervision of a health care provider;

11 (II) Continues over an extended period of time, including recurring
12 episodes of a single underlying condition; and

13 (III) May cause episodic rather than a continuing period of
14 incapacity;

15 (D) A period of incapacity which is permanent or long-term due to
16 a condition for which treatment may not be effective. The employee or
17 family member must be under the continuing supervision of, but need not
18 be receiving active treatment by, a health care provider; or

19 (E) Any period of absence to receive multiple treatments, including
20 any period of recovery from the treatments, by a health care provider
21 or by a provider of health care services under orders of, or on
22 referral by, a health care provider, either for restorative surgery
23 after an accident or other injury, or for a condition that would likely
24 result in a period of incapacity of more than three consecutive
25 calendar days in the absence of medical intervention or treatment, such
26 as cancer, severe arthritis, or kidney disease.

27 (b) Treatment for purposes of (a) of this subsection includes, but
28 is not limited to, examinations to determine if a serious health
29 condition exists and evaluations of the condition. Treatment does not
30 include routine physical examinations, eye examinations, or dental
31 examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of
32 continuing treatment includes, but is not limited to, a course of
33 prescription medication or therapy requiring special equipment to
34 resolve or alleviate the health condition. A regimen of continuing
35 treatment that includes taking over-the-counter medications, such as
36 aspirin, antihistamines, or salves, or bed-rest, drinking fluids,
37 exercise, and other similar activities that can be initiated without a

1 visit to a health care provider, is not, by itself, sufficient to
2 constitute a regimen of continuing treatment for purposes of this
3 chapter.

4 (c) Conditions for which cosmetic treatments are administered are
5 not "serious health conditions" unless inpatient hospital care is
6 required or unless complications develop. Unless complications arise,
7 the common cold, the flu, ear aches, upset stomach, minor ulcers,
8 headaches other than migraine, routine dental or orthodontia problems,
9 and periodontal disease are examples of conditions that do not meet the
10 definition of a "serious health condition" and do not qualify for leave
11 under this chapter. Restorative dental or plastic surgery after an
12 injury or removal of cancerous growths are serious health conditions
13 provided all the other conditions of this section are met. Mental
14 illness resulting from stress or allergies may be serious health
15 conditions provided all the other conditions of this section are met.

16 (d) Substance abuse may be a serious health condition if the
17 conditions of this section are met. However, leave may only be taken
18 for treatment for substance abuse by a health care provider or by a
19 provider of health care services upon referral by a health care
20 provider. Absence from work because of the employee's use of the
21 substance, rather than for treatment, does not qualify for leave under
22 this chapter.

23 (e) Absences attributable to incapacity under (a)(ii)(B) or (C) of
24 this subsection qualify for leave under this chapter even though the
25 employee or the immediate family member does not receive treatment from
26 a health care provider during the absence, and even if the absence does
27 not last more than three days.

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

29 NEW SECTION. Sec. 3. A new section is added to chapter 49.78 RCW
30 to read as follows:

31 ENTITLEMENT TO LEAVE. (1) Subject to section 7 of this act, an
32 employee is entitled to a total of twelve workweeks of leave during any
33 twelve-month period for one or more of the following:

34 (a) Because of the birth of a child of the employee and in order to
35 care for the child;

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

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

3 (d) Because of a serious health condition that makes the employee
4 unable to perform the functions of the position of the employee.

5 (2) The entitlement to leave for the birth or placement of a child
6 expires at the end of the twelve-month period beginning on the date of
7 such birth or placement.

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

10 LEAVE TAKEN INTERMITTENTLY OR ON REDUCED LEAVE SCHEDULE. (1)(a)
11 When leave is taken after the birth or placement of a child for
12 adoption or foster care, an employee may take leave intermittently or
13 on a reduced leave schedule with the employer's agreement. The
14 employer's agreement is not required, however, for leave during which
15 the employee has a serious health condition in connection with the
16 birth of a child or if the newborn child has a serious health
17 condition.

18 (b) Leave may be taken intermittently or on a reduced leave
19 schedule when medically necessary for medical treatment of a serious
20 health condition by or under the supervision of a health care provider,
21 or for recovery from treatment or recovery from a serious health
22 condition. It may also be taken to provide care or psychological
23 comfort to an immediate family member with a serious health condition.

24 (i) Intermittent leave may be taken for a serious health condition
25 that requires treatment by a health care provider periodically, rather
26 than for one continuous period of time, and may include leave of
27 periods from an hour or more to several weeks.

28 (ii) Intermittent or reduced schedule leave may be taken for
29 absences where the employee or family member is incapacitated or unable
30 to perform the essential functions of the position because of a chronic
31 serious health condition even if he or she does not receive treatment
32 by a health care provider.

33 (c) There is no limit on the size of an increment of leave when an
34 employee takes intermittent leave or leave on a reduced leave schedule.
35 However, an employer may limit leave increments to the shortest period
36 of time that the employer's payroll system uses to account for absences
37 or use of leave, provided it is one hour or less.

1 (d) The taking of leave intermittently or on a reduced leave
2 schedule under this section may not result in a reduction in the total
3 amount of leave to which the employee is entitled under section 3 of
4 this act beyond the amount of leave actually taken.

5 (2) If an employee requests intermittent leave, or leave on a
6 reduced leave schedule, for a family member's serious health condition
7 or the employee's serious health condition when the condition is
8 foreseeable based on planned medical treatment, the employer may
9 require such employee to transfer temporarily to an available
10 alternative position offered by the employer for which the employee is
11 qualified and that:

12 (a) Has equivalent pay and benefits; and

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

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

17 UNPAID LEAVE PERMITTED--RELATIONSHIP TO PAID LEAVE. (1) Except as
18 provided in subsection (2) of this section, leave granted under section
19 3 of this act may consist of unpaid leave.

20 (2) If an employer provides paid leave for fewer than twelve
21 workweeks, the additional weeks of leave necessary to attain the twelve
22 workweeks of leave required under this chapter may be provided without
23 compensation.

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

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

34 (2) If the necessity for leave for a family member's serious health
35 condition or the employee's serious health condition is foreseeable
36 based on planned medical treatment, the employee:

1 (a) Must make a reasonable effort to schedule the treatment so as
2 not to disrupt unduly the operations of the employer, subject to the
3 approval of the health care provider of the employee or the health care
4 provider of the family member, as appropriate; and

5 (b) Must provide the employer with not less than thirty days'
6 notice, before the date the leave is to begin, of the employee's
7 intention to take leave for a family member's serious health condition
8 or the employee's serious health condition, except that if the date of
9 the treatment requires leave to begin in less than thirty days, the
10 employee must provide such notice as is practicable.

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

13 SPOUSES AND DOMESTIC PARTNERS EMPLOYED BY SAME EMPLOYER. If
14 spouses or domestic partners entitled to leave under this chapter are
15 employed by the same employer, the aggregate number of workweeks of
16 leave to which both may be entitled may be limited to twelve workweeks
17 during any twelve-month period, if such leave is taken: (1) For the
18 birth or placement of a child; or (2) for a parent's serious health
19 condition.

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

22 CERTIFICATION. (1) An employer may require that a request for
23 leave for a family member's serious health condition or the employee's
24 serious health condition be supported by a certification issued by the
25 health care provider of the employee or of the family member, as
26 appropriate. The employee must provide, in a timely manner, a copy of
27 the certification to the employer.

28 (2) Certification provided under subsection (1) of this section is
29 sufficient if it states:

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

31 (b) The probable duration of the condition;

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

34 (d)(i) For purposes of leave for a family member's serious health
35 condition, a statement that the employee is needed to care for the

1 family member and an estimate of the amount of time that such employee
2 is needed to care for the family member; and

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

6 (e) In the case of certification for intermittent leave, or leave
7 on a reduced leave schedule, for planned medical treatment, the dates
8 on which the treatment is expected to be given and the duration of the
9 treatment;

10 (f) In the case of certification for intermittent leave, or leave
11 on a reduced leave schedule, for the employee's serious health
12 condition, a statement of the medical necessity for the intermittent
13 leave or leave on a reduced leave schedule, and the expected duration
14 of the intermittent leave or reduced leave schedule; and

15 (g) In the case of certification for intermittent leave, or leave
16 on a reduced leave schedule, for a family member's serious health
17 condition, a statement that the employee's intermittent leave or leave
18 on a reduced leave schedule is necessary for the care of the family
19 member who has a serious health condition, or will assist in their
20 recovery, and the expected duration and schedule of the intermittent
21 leave or reduced leave schedule.

22 (3) If the employer has reason to doubt the validity of the
23 certification provided under subsection (1) of this section for leave
24 for a family member's serious health condition or the employee's
25 serious health condition, the employer may require, at the expense of
26 the employer, that the employee obtain the opinion of a second health
27 care provider designated or approved by the employer concerning any
28 information certified under subsection (2) of this section for the
29 leave. The second health care provider may not be employed on a
30 regular basis by the employer.

31 (4) If the second opinion described in subsection (3) of this
32 section differs from the opinion in the original certification provided
33 under subsection (1) of this section, the employer may require, at the
34 expense of the employer, that the employee obtain the opinion of a
35 third health care provider designated or approved jointly by the
36 employer and the employee concerning the information certified under
37 subsection (2) of this section. The opinion of the third health care

1 provider concerning the information certified under subsection (2) of
2 this section is considered to be final and is binding on the employer
3 and the employee.

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

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

8 EMPLOYMENT PROTECTION. (1)(a) Except as provided in (b) of this
9 subsection, any employee who takes leave under section 3 of this act
10 for the intended purpose of the leave is entitled, on return from the
11 leave:

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

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

18 (b) The taking of leave under section 3 of this act may not result
19 in the loss of any employment benefits accrued before the date on which
20 the leave commenced.

21 (c) Nothing in this section entitles any restored employee to:

22 (i) The accrual of any seniority or employment benefits during any
23 period of leave; or

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

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

35 (e) Nothing in this subsection (1) prohibits an employer from
36 requiring an employee on leave to report periodically to the employer
37 on the status and intention of the employee to return to work.

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

5 (a) Denial is necessary to prevent substantial and grievous
6 economic injury to the operations of the employer;

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

10 (c) The leave has commenced and the employee elects not to return
11 to employment after receiving the notice.

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

14 EMPLOYMENT BENEFITS. During any period of leave taken under
15 section 3 of this act, if the employee is not eligible for any employer
16 contribution to medical or dental benefits under an applicable
17 collective bargaining agreement or employer policy during any period of
18 leave, an employer shall allow the employee to continue, at the
19 employee's expense, medical or dental insurance coverage, including any
20 spouse, domestic partner, and dependent coverage, in accordance with
21 state or federal law. The premium to be paid by the employee shall not
22 exceed one hundred two percent of the applicable premium for the leave
23 period.

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

26 PROHIBITED ACTS. (1) It is unlawful for any employer to:

27 (a) Interfere with, restrain, or deny the exercise of, or the
28 attempt to exercise, any right provided under this chapter; or

29 (b) Discharge or in any other manner discriminate against any
30 individual for opposing any practice made unlawful by this chapter.

31 (2) It is unlawful for any person to discharge or in any other
32 manner discriminate against any individual because the individual has:

33 (a) Filed any charge, or has instituted or caused to be instituted
34 any proceeding, under or related to this chapter;

35 (b) Given, or is about to give, any information in connection with

1 any inquiry or proceeding relating to any right provided under this
2 chapter; or

3 (c) Testified, or is about to testify, in any inquiry or proceeding
4 relating to any right provided under this chapter.

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

7 Upon complaint by an employee, the director shall investigate to
8 determine if there has been compliance with this chapter and the rules
9 adopted under this chapter. If the investigation indicates that a
10 violation may have occurred, a hearing must be held in accordance with
11 chapter 34.05 RCW. The director must issue a written determination
12 including his or her findings after the hearing. A judicial appeal
13 from the director's determination may be taken in accordance with
14 chapter 34.05 RCW, with the prevailing party entitled to recover
15 reasonable costs and attorneys' fees.

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

18 An employer who is found, in accordance with section 12 of this
19 act, to have violated a requirement of this chapter and the rules
20 adopted under this chapter, is subject to a civil penalty of not less
21 than one thousand dollars for each violation. Civil penalties must be
22 collected by the department and deposited into the family and medical
23 leave enforcement account.

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

26 CIVIL ACTION BY EMPLOYEES. (1) Any employer who violates section
27 11 of this act is liable:

28 (a) For damages equal to:

29 (i) The amount of:

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

32 (B) In a case in which wages, salary, employment benefits, or other
33 compensation have not been denied or lost to the employee, any actual
34 monetary losses sustained by the employee as a direct result of the

1 violation, such as the cost of providing care, up to a sum equal to
2 twelve weeks of wages or salary for the employee;

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

5 (iii) An additional amount as liquidated damages equal to the sum
6 of the amount described in (a)(i) of this subsection and the interest
7 described in (a)(ii) of this subsection, except that if an employer who
8 has violated section 11 of this act proves to the satisfaction of the
9 court that the act or omission which violated section 11 of this act
10 was in good faith and that the employer had reasonable grounds for
11 believing that the act or omission was not a violation of section 11 of
12 this act, the court may, in the discretion of the court, reduce the
13 amount of the liability to the amount and interest determined under
14 (a)(i) and (ii) of this subsection, respectively; and

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

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

21 (a) The employees; or

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

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

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

29 NOTICE. Each employer shall post and keep posted, in conspicuous
30 places on the premises of the employer where notices to employees and
31 applicants for employment are customarily posted, a notice, to be
32 prepared or approved by the director, setting forth excerpts from, or
33 summaries of, the pertinent provisions of this chapter and information
34 pertaining to the filing of a charge. Any employer that willfully
35 violates this section may be subject to a civil penalty of not more
36 than one hundred dollars for each separate offense. Any penalties

1 collected by the department under the section shall be deposited into
2 the family and medical leave enforcement account.

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

5 FAMILY AND MEDICAL LEAVE ENFORCEMENT ACCOUNT. The family and
6 medical leave enforcement account is created in the custody of the
7 state treasurer. Any penalties collected under section 13 or 15 of
8 this act shall be deposited into the account and shall be used only for
9 the purposes of administering and enforcing this chapter. Only the
10 director or the director's designee may authorize expenditures from the
11 account. The account is subject to allotment procedures under chapter
12 43.88 RCW, but an appropriation is not required for expenditures.

13 NEW SECTION. **Sec. 17.** A new section is added to chapter 49.78 RCW
14 to read as follows:

15 EFFECT ON OTHER LAWS. Nothing in this chapter shall be construed:
16 (1) To modify or affect any state or local law prohibiting
17 discrimination on the basis of race, religion, color, national origin,
18 sex, age, or disability; or (2) to supersede any provision of any local
19 law that provides greater family or medical leave rights than the
20 rights established under this chapter.

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

23 EFFECT ON EXISTING EMPLOYMENT BENEFITS. Nothing in this chapter
24 diminishes the obligation of an employer to comply with any collective
25 bargaining agreement or any employment benefit program or plan that
26 provides greater family or medical leave rights to employees than the
27 rights established under this chapter. The rights established for
28 employees under this chapter may not be diminished by any collective
29 bargaining agreement or any employment benefit program or plan.

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

32 ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES. Nothing in this
33 chapter shall be construed to discourage employers from adopting or

1 retaining leave policies more generous than any policies that comply
2 with the requirements under this chapter.

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

5 (1) Leave under this chapter and leave under the federal family and
6 medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6)
7 is in addition to any leave for sickness or temporary disability
8 because of pregnancy or childbirth.

9 (2) Leave taken under this chapter must be taken concurrently with
10 any leave taken under the federal family and medical leave act of 1993
11 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6).

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

14 RULE-MAKING AUTHORITY. The director shall adopt rules as necessary
15 to implement this chapter.

16 NEW SECTION. **Sec. 22.** A new section is added to chapter 49.78 RCW
17 to read as follows:

18 CONSTRUCTION. This chapter must be construed to the extent
19 possible in a manner that is consistent with similar provisions, if
20 any, of the federal family and medical leave act of 1993 (Act Feb. 5,
21 1993, P.L. 103-3, 107 Stat. 6), and that gives consideration to the
22 rules, precedents, and practices of the federal department of labor
23 relevant to the federal act.

24 NEW SECTION. **Sec. 23.** The following acts or parts of acts are
25 each repealed:

26 (1) RCW 49.78.005 (Administration and enforcement of this chapter
27 to cease while federal family and medical leave act provides the same
28 or more family leave--Rights under RCW 49.78.070(1)(b) preserved--
29 Enforcement) and 1997 c 16 s 1;

30 (2) RCW 49.78.030 (Requirements--Limitation) and 1989 1st ex.s. c
31 11 s 3;

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

33 (4) RCW 49.78.050 (Requirements for confirmation--Second opinion)
34 and 1989 1st ex.s. c 11 s 5;

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

26 NEW SECTION. **Sec. 24.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 25.** Captions used in this act are not any part
31 of the law.

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