

SENATE BILL REPORT

SB 6280

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, February 04, 2008
Ways & Means, February 12, 2008

Title: An act relating to implementing the recommendations of the joint legislative task force on family leave insurance.

Brief Description: Implementing the recommendations of the joint legislative task force on family leave insurance.

Sponsors: Senators Keiser, Kohl-Welles and Kline.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 1/24/08, 2/04/08 [DPS-WM, DNP].

Ways & Means: 2/12/08 [DPS(LCRD), DNP, w/oRec].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 6280 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin, Murray and Prentice.

Minority Report: Do not pass.

Signed by Senators Holmquist, Ranking Minority Member; King.

Staff: Ingrid Mungia (786-7423)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6280 as recommended by Committee on Labor, Commerce, Research & Development be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Hatfield, Hobbs, Keiser, Kohl-Welles, Oemig, Rasmussen, Regala and Rockefeller.

Minority Report: Do not pass.

Signed by Senator Honeyford.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Carrell, Parlette and Schoesler.

Staff: Maria Hovde (786-7710)

Background: In 2007 the Legislature enacted E2SSB 5659 relating to family and medical leave insurance. A framework for a family leave insurance program was established. A joint legislative task force was created to study the establishment of the family leave insurance program, including financing and administration.

The framework included benefits of 250 dollars per week for up to five weeks for individuals on leave for the birth or placement of a child. It also included job protection following leave for individuals who work for an employer with more than 25 employees for at least 12 months, and who have worked for at least 1,250 hours over the previous 12 months.

The task force was directed to study the following: financing for benefits and administrative costs; program implementation and administration; government efficiencies which improve program administration and reduce program costs; and impacts, if any, on the unemployment compensation system, and options for mitigating such impacts.

The task force was required to report its findings and recommendations, including recommendations as to the specific manner in which benefits and administrative costs should be financed as well as proposed legislation, to the Legislature.

The majority of the task force agreed to recommend the following to the Legislature:

Financing of Benefits and Administrative Costs. The General Fund-State should be the source used to finance benefits and administrative costs during the first two biennia of the family leave insurance program.

Implementation and Administration. (1) Except as specified in Recommendation #3 below, the Employment Security Department (ESD) should be the agency directed to administer the family leave insurance program; and (2) the Department of Labor and Industries (L&I) should be the agency directed to enforce the labor standard set forth in RCW 49.86.090 (requiring restoration to employment for certain individuals).

Government Efficiencies. (1) An administrative law judge should not be authorized to award attorneys' fees and costs to a prevailing party if, upon administrative review, the final decision of the agency administering the family leave insurance program is reversed or modified. (2) An individual should not be required to file a claim for benefits in each week in which the individual is on family leave. (3) An individual should be allowed to file a claim for benefits after the individual begins to take family leave, so long as the claim is timely. (4) For benefits to be payable, an applicant should not be required to: (a) verify the birth of a child or the placement of a child for adoption – instead, the applicant should be required to attest to the birth or adoption. The agency administering the family leave insurance program should subsequently use a computer cross-match to verify the birth or adoption; (b) document that he or she has provided the employer from whom family leave is to be taken with written notice of the individual's intention to take family leave – instead, the applicant should attest that notification has occurred, if applicable; (5) the agency administering the family leave

insurance program should not be required to give an individual the option to elect to have federal income tax deducted and withheld from benefits; and (6) the agency administering the family leave insurance program should be given warrant, garnishment, lien, and other collection authority similar to collection authority available to the ESD for the unemployment compensation program and the Department of L&I for the workers' compensation program.

Unemployment Compensation. (1) The ESD should begin tracking the impacts of the family leave insurance program on the unemployment compensation system and report to the Legislature at a later date; and (2) a contribution paying base year employer should be allowed to request relief of charges that result from payment to an individual who: (a) worked for the employer for six weeks or less; and (b) is laid off at the end of temporary employment when that individual has temporarily replaced a permanent employee taking family leave as defined in Chapter 49.86 RCW and the layoff is due to the return of that permanent employee.

Other. (1) The agency administering the family leave insurance program should establish an advisory committee to aid the agency in formulating policies and discussing problems related to the administration of the program. (2) RCW 49.86.090 (requiring restoration to employment for certain individuals) should be amended to specify that it applies only if the employer from whom the individual takes family leave employs more than 25 employees "for each working day during each of 20 or more calendar work weeks in the current or preceding calendar year." (3) Chapter 49.86 RCW (establishing the family leave insurance program) should be amended to address concerns unique to the agricultural, construction, and staffing company sectors; and (4) RCW 49.86.210 (reports) should be amended to require that benchmarks and reporting requirements be created to assess the effectiveness of the family leave insurance program over time.

Summary of Bill (Recommended Substitute): The family leave insurance program is modified consistent with certain task force recommendations on implementation and administration of the program, government efficiencies, unemployment compensation, and other matters.

Implementation and Administration. ESD is directed to administer the family leave insurance program. Changes consistent with this direction are made throughout the family leave insurance program.

Government Efficiencies. Eligibility requirements are modified. Individuals must file claims for benefits in the six-week period beginning on the first day of the calendar week in which individuals are on family leave, but they need not file weekly claims. Individuals must also provide their employers with written notice of their intent to take family leave, but they need not document that such notice has been provided. Individuals are not prohibited from filing claims for benefits after beginning to take family leave. The first payment of benefits must be made to an individual within two weeks after the claim is filed or the leave began, whichever is greater, and subsequent payment must be made biweekly thereafter.

Several other efficiencies are adopted. ESD is not required to give individuals the option to have federal income tax deducted from benefits and transferred to the federal taxing authority. Administrative law judges are not authorized to award attorneys' fees and costs to prevailing parties if administrative agency decisions are reversed or modified. ESD must issue overpayment assessments and may file warrants to recover overpayments.

Unemployment Compensation. ESD is required to conduct a study of the impacts, if any, of the family leave insurance program on the unemployment compensation system. A report on the study is due by December 1, 2011.

Employers may request relief of charges that result from payment of unemployment benefits to temporary replacement employees who work for an employer for six weeks or less and who are laid off due to the return of permanent employees.

Other. The Commissioner of ESD is required to appoint a state advisory committee. The committee must aid the Commissioner in formulating policies related to program administration and of assuring consistency with program intent and impartiality and freedom from political influence in the solution of issues. Committee members must be reimbursed for travel expenses, but otherwise serve without compensation.

The scope of the annual program report is expanded. The report must include benefits paid, information on program participants, and the costs of providing benefits.

Job Protection. L&I is required to enforce the job protection provisions.

The requirement that an employer employ more than 25 employees is modified. The employer must employ more than 25 employees "for each working day during each of 20 or more calendar work weeks in the current or preceding calendar year within 75 miles of the employee's worksite."

An exception for certain individuals taking leave from staffing companies is added. The job protection provisions do not apply if an individual takes leave from employment with a staffing company and the individual is temporarily assigned to perform work at or services for another organization to support or supplement the other organization's workforces, or to provide assistance in certain special work situations. The job restoration provision is also inapplicable if employees are hired for a specific term or to perform work on a discrete project.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE, RESEARCH & DEVELOPMENT COMMITTEE (Recommended Substitute): Modifies the definition of "application year" to limit the period in which an individual may receive family leave insurance benefits to the 12-month period beginning on the date of birth or adoption. Clarifies that the alternate qualifying year (last four completed calendar quarters) is used only if eligibility is not established using the qualifying year (first four of last five completed calendar quarters). Requires that claims for benefits be filed in the six-week period beginning on the first day of the calendar week in which individuals are on family leave. Individuals must provide their employers with written notice of their intention to take family leave. Specifies that payments of benefits are made biweekly (instead of semimonthly). Language is added to the job restoration provisions specifying that the number of employees employed by an employer is the number employed within 75 miles of the employee's worksite. The job restoration provisions are inapplicable if employees are hired for a specific term or to perform work on a discrete project.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill (Labor, Commerce, Research & Development): PRO: The bill saves money by streamlining the filing process. It makes it easier for people most in need to receive benefits. The changes make it easier to implement and access the program. ESD will do a good job implementing the program. The Labor Council supports the provision of benefit charging. Current law is protective of employers enough; if someone leaves work to bond with a healthy child they would not be covered by unemployment insurance. L&I and ESD can coordinate benefits. The bill contains a number of safeguards and strengthens the ability of ESD recover overpayments. Every child born in Washington deserves the best start in life and time with their parents. Appreciate the exception for temporary staffing companies.

CON: The coordination of benefits is still a problem. People can still take multiple sets of leave. There is no provision for employers who offer a better leave program to opt-out of the program. There is also highly paid employees who will be able to double dip. The unemployment insurance impacts on employers is still not resolved. The provision for temporary employees should be broadened for all industries, not just temporary companies. There needs to be provisions insuring voluntary compliance or opt-out provisions. The voluntary compliance of employers already exceeding the program need to be able to opt-out. The unemployment insurance situation is not solved fully. Coordination of benefits and leave laws is still very confusing, it needs to be consolidated.

OTHER: Concerned about the stacking issue, seasonal workers, and unemployment issue. Concerned about the implementation and funding of the program. The program is promising benefits, while not really knowing how many people will apply or where the money is going to come from. There are too many questions at this point. All aspects of the program need to be thought out before implementation. There needs to be opt-out provisions for businesses who already have a program and means for testing for people who really need the program.

Persons Testifying (Labor, Commerce, Research & Development): PRO: Marilyn Watkins, Economic Opportunity Institute; Pam Crone, Washington State Labor Council; Katie Bethell, Moms Rising.

CON: Vicky Marin, Washington Retail Association; Carolyn Logue, Washington Food Industry; Kris Tefft, Association of Washington Business.

OTHER: Dan Fazio, Farm Bureau; Scott Dilley, Evergreen Freedom Foundation; Carl Gipson, Washington Policy Center; Holly Chisa, Staffing Association of America.

Staff Summary of Public Testimony on Recommended Substitute (Ways & Means): PRO Last year, the Legislature created the groundbreaking Family Leave Insurance Program to improve the health and well-being of every child in the state. The work of the Task Force brought forth several efficiencies and identified the Employment Security Department as the correct agency for implementing the program. We are still grappling with the long-term care financing issue; however, this bill reflects the consensus of the Task Force and establishes the fundamentals of getting this new program up and running.

Persons Testifying (Ways & Means): PRO: Senator Karen Keiser, prime sponsor; Pam Crone, Washington State Labor Council.