1116-S AMH MANW ELGE 122

**SHB 1116** - H AMD **250**

By Representative Manweller

**NOT CONSIDERED 01/05/2018**

Strike everything after the enacting clause and insert the following:

"**Sec.**  RCW 49.78.010 and 2006 c 59 s 1 are each amended to read as follows:

The legislature finds that the demands of the workplace and of families need to be balanced to promote family stability and economic security. Workplace leave policies are desirable to accommodate changes in the workforce such as rising numbers of dual-career couples, working single parents, and an aging population. In addition, given the mobility of American society, many people no longer have available community or family support networks and therefore need additional flexibility in the workplace. The legislature declares it to be in the public interest to provide reasonable family leave and paid family leave for medical reasons, for the birth or placement of a child for adoption or foster care with the employee, ((~~and~~)) for the care of a family member who has a serious health condition, and for a qualifying exigency under the federal family and medical leave act.

**Sec.**  RCW 49.78.020 and 2009 c 521 s 135 are each amended to read as follows:

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

(1) "A day of family leave" means any day which the employee uses for family leave and for which the employee has not received his or her regular remuneration.

(2) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, a child of either partner in a state registered domestic partnership, or a child of a person standing in loco parentis((~~, who is: (a) Under eighteen years of age; or (b) eighteen years of age or older and incapable of self~~‑~~care because of a mental or physical disability~~)).

((~~(2)~~)) (3) "Commissioner" means the commissioner of the department or the commissioner's designee.

(4) "Department" means the employment security department ((~~of labor and industries~~)).

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

~~(4)(a)~~)) (5)(a) "Employee" means ((~~a person who has been employed: (i) For at least twelve months by the employer with respect to whom leave is requested under RCW 49.78.220; and (ii) for at least one thousand two hundred fifty hours of service with the employer during the previous twelve-month period.~~

~~(b) "Employee" does not mean a person who is employed at a worksite at which the employer as defined in (a) of this subsection employs less than fifty employees if the total number of employees employed by that employer within seventy-five miles of that worksite is less than fifty~~)) an individual, working in the state, who is in the employment of: (i) A covered employer for twenty-six or more consecutive weeks, working a schedule that is usual for the trade or employer; or (ii) a covered employer for one hundred seventy-five days or more in the previous twelve-month period, working a schedule that is less than the trade's or employer's usual workweek.

(b) Where the context so dictates, the term "employee" may also include an employer for those employers who are eligible for the family leave benefits specified in this chapter.

(c) "Employee" does not include employees of the United States of America.

(6) "Employee's average weekly wage" means one-thirteenth of the total wages paid to an individual in the high quarter. For purposes of this computation, the high quarter is that quarter in which the individual's total wages were highest among the first four of the last five completed calendar quarters immediately before the quarter in which occurs the week with respect to which the computation is made.

((~~(5)~~)) (7)(a) "Employer" means: ((~~(a) Any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and includes any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision, which employs fifty or more employees for each working day during each of twenty or more calendar workweeks in the current or preceding calendar year~~)) (i) Any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this title; ((~~(b)~~)) (ii) the state, state institutions, and state agencies; and ((~~(c)~~)) (iii) any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi‑municipal corporation, or political subdivision.

((~~(6)~~)) (b) "Employer" does not include the United States of America.

(8) "Employment" means personal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship, including service in interstate commerce, performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied. "Employment" does not include self-employed individuals.

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

((~~(7)~~)) (10) "Family leave" means any leave taken by an employee from work:

(a) Made necessary by the employee's own serious health condition;

(b) To participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member;

(c) To bond with the employee's child during the first twelve months after the child's birth, or the first twelve months after the placement of the child for adoption or foster care with the employee; or

(d) Because of any qualifying exigency as permitted under the family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(e) and 29 C.F.R. Sec. 825.126(a)(1) through (8), as they existed on the effective date of this section.

(11) "Family member" means a child, parent, grandparent, grandchild, spouse, or state registered domestic partner of an employee.

((~~(8)~~)) (12) "Grandchild" means a child of the employee's child.

(13) "Grandparent" means a parent of the employee's parent.

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

((~~(9)~~)) (15) "Intermittent leave" is leave taken in separate blocks of time due to a single qualifying reason.

((~~(10) "Leave for a family member's serious health condition" means leave as described in RCW 49.78.220(1)(c).~~

~~(11) "Leave for the birth or placement of a child" means leave as described in RCW 49.78.220(1) (a) or (b).~~

~~(12) "Leave for the employee's serious health condition" means leave as described in RCW 49.78.220(1)(d).~~

~~(13)~~)) (16) "Parent" means the biological, foster, or adoptive parent ((~~of an employee~~)), a parent-in-law, a step parent, a legal guardian, or an individual who stood in loco parentis to an employee when the employee was a child.

((~~(14)~~)) (17) "Period of incapacity" means an inability to work, attend school, or perform other regular daily activities because of ((~~the~~)) a serious health condition, treatment of that condition or recovery from it, or subsequent treatment in connection with such inpatient care.

((~~(15)~~)) (18) "Premium" or "premiums" means the payments required by section 8 of this act and paid to the department for deposit in the family leave insurance account under section 37 of this act.

(19) "Reduced leave schedule" means a leave schedule that reduces the usual number of ((~~hours~~)) days per workweek((~~, or hours per workday,~~)) of an employee.

((~~(16)~~)) (20)(a) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

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

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

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

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

(II) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider;

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

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

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

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

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

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

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

(b) Treatment for purposes of (a) of this subsection includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of continuing treatment includes, but is not limited to, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of continuing treatment that includes taking over‑the‑counter medications, such as aspirin, antihistamines, or salves, or bed‑rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of this chapter.

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

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

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

((~~(17)~~)) (21) "Spouse" means a husband or wife, as the case may be, or state registered domestic partner.

(22) "State average weekly wage" means the most recent average weekly wage calculated under RCW 50.04.355 and available on January 1st of each year.

NEW SECTION. **Sec.**  (1) Employees are eligible for family leave benefits as provided in this chapter.

(2) An employee who has qualified for benefits under this chapter continues to be qualified to begin using the family leave benefits for an additional period of ninety days after their employment with a covered employer ends.

(3) An employee's hours worked towards the qualification of benefits and the employee's rights to receive family leave benefits are portable between employers for a period of ninety days.

(4) In addition, every such employee who has previously completed twenty-six or more consecutive weeks in employment with the covered employer for purposes of paid family leave, and returns to work with the same employer after an agreed and specified period of leave of absence or vacation without pay becomes qualified for benefits immediately with respect to such employment.

**Sec.**  RCW 49.78.220 and 2006 c 59 s 3 are each amended to read as follows:

(1) Subject to RCW 49.78.260 (as recodified by this act), an employee is entitled to a total of twelve workweeks of family leave as defined in RCW 49.78.020 (as recodified by this act), or the maximum duration of paid family leave benefits as set forth in section 6 of this act, during any twelve‑month period ((~~for one or more of the following:~~

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

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

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

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

(2)(a) The entitlement to leave and family leave benefits for the birth or placement of a child expires at the end of the twelve‑month period beginning on the date of such birth or placement.

(b) The entitlement to leave and family leave benefits for a family member's or the individual's serious health condition, or leave for qualifying exigency, expires at the end of the twelve-month period beginning on the date of which the individual filed an application for family leave benefits.

NEW SECTION. **Sec.**  (1) An employee is not entitled to family leave benefits under this chapter:

(a) For more than twelve weeks during a period of fifty-two consecutive calendar weeks;

(b) For any period during which a family leave care recipient fails to submit to a physical examination as may be required under RCW 49.78.270(8) (as recodified by this act);

(c) For any absence occasioned by the willful intention of the employee to bring about injury to or the sickness of himself or another, or resulting from any injury or sickness sustained in the perpetration by the employee of an illegal act;

(d) For any day of family leave during which the employee performed work for remuneration or profit;

(e) For any day of family leave for which the employee is entitled to receive from his or her employer, or from a fund to which the employer has contributed, remuneration in an amount equal to or greater than that to which he or she would be entitled under this chapter; but any voluntary contribution or aid which an employer may make to an employee or any supplementary benefit paid to an employee pursuant to the provisions of a collective bargaining agreement or from a trust fund to which contributions are made pursuant to the provisions of a collective bargaining agreement is not considered as continued remuneration or maintenance for this purpose;

(f) For any period in respect to which such employee is subject to suspension or disqualification of the accumulation of unemployment insurance benefit rights, or would be subject if he or she were eligible for such benefit rights, except for ineligibility resulting from the employee's own serious medical condition;

(g) For any family leave commencing before the employee becomes qualified for benefits under this chapter;

(h) For an employee who is not employed or is on administrative leave from his or her employment;

(i) For an employee during periods where the employee is collecting sick pay or paid time off from the employer; or

(j) For any day in which family leave care recipient works at least part of that day for remuneration or profit for the covered employer or for any other employer while working for remuneration or profit, for him or herself, or another person or entity, during the same or substantially similar working hours as those of the covered employer from which family leave benefits are claimed, except that occasional scheduling adjustments with respect to secondary employments shall not prevent receipt of family leave benefits.

(2) An employer may allow an employee who has accrued vacation, sick, or other paid time off to choose whether: (a) To take such leave and receive full salary; or (b) not to take such leave and receive paid family leave benefits, as provided in section 6 of this act.

(3) During periods when the employee is receiving total disability payments pursuant to a claim for workers' compensation benefits, except that when the employee is receiving payments for partial disability or reduced earnings under such laws, the family leave benefit, when combined with the benefits under such laws shall not exceed the average weekly wage in the employment for which family leave benefits are sought.

NEW SECTION. **Sec.**  (1) Family leave benefits are payable to a qualified employee for the first full day when family leave is required and thereafter during the continuance of the need for family leave, subject to the limitations as to maximum and minimum amounts and duration and other conditions and limitations established in this chapter. Successive periods of family leave caused by the same or related injury or sickness are deemed a single period of family leave only if separated by less than three months.

(2) The weekly benefit for family leave that occurs:

(a) On or after January 1, 2020, shall not exceed eight weeks during any fifty-two week calendar period and shall be fifty percent of the employee's average weekly wage but shall not exceed fifty percent of the state average weekly wage;

(b) On or after January 1, 2021, shall not exceed ten weeks during any fifty-two week calendar period and shall be fifty-five percent of the employee's average weekly wage but shall not exceed fifty-five percent of the state average weekly wage;

(c) On or after January 1, 2022, shall not exceed ten weeks during any fifty-two week calendar period and shall be sixty percent of the employee's average weekly wage but shall not exceed sixty percent of the state average weekly wage; and

(d) On or after January 1st of each succeeding year, shall not exceed twelve weeks during any fifty-two week calendar period and shall be sixty-seven percent of the employee's average weekly wage but shall not exceed sixty-seven percent of the Washington state average weekly wage in effect.

(3)(a) The commissioner has the discretion to delay the increases in the family leave benefits provided in subsection (2)(b), (c), and (d) of this section by one or more calendar years. In determining whether to delay the increase in the family leave benefit for any year, the commissioner shall consider:

(i) The current cost to employees of the family leave benefit and any expected change in the cost after the benefit increase;

(ii) The impact of the benefit increase on employers' business and the overall stability of the program to the extent that information is readily available;

(iii) The impact of the benefit increase on the financial stability of the program; and

(iv) Any additional factors that the commissioner deems relevant.

(b) If the commissioner delays the increase in the family leave benefit level for one or more calendar years, the family leave benefit level that takes effect immediately following the delay is the same benefit level that would have taken effect but for the delay.

(4) The weekly benefit for family leave that occurs on or after January 1, 2020, shall not be less than one hundred dollars per week except that if the employee's wages at the time of family leave are less than one hundred dollars per week, the employee shall receive his or her full wages.

(5) Subject to RCW 49.78.230(3) (as recodified by this act), benefits may be payable to employees for paid family leave taken intermittently or for less than a full workweek.

NEW SECTION. **Sec.**  (1) Benefits provided under this chapter shall be paid periodically and promptly, except when an employer contests a period of family leave. The department must send the first benefit payment to the employee within fourteen calendar days after the first properly completed weekly application is received by the department. Subsequent payments must be sent at least biweekly thereafter. If the employer contests an initial application for family leave benefits, the employer must notify the employee and the department in a manner prescribed by the commissioner within eighteen days of filing of the employee's proof of application, as provided under RCW 49.78.270. Failure to timely contest an initial application shall constitute a waiver of objection to the family leave application. Any inquiry which requires the employee's response in order to continue benefits uninterrupted or unmodified shall provide a reasonable time period in which to respond and include a clear and prominent statement of the deadline for responding and consequences of failing to respond.

(2) The department must develop, in rule, a process by which an employer may contest an initial application for family leave benefits.

NEW SECTION. **Sec.**  (1) Beginning January 1, 2019, and each year thereafter, every person in the employment of a covered employer and every person electing coverage under section 9 of this act must contribute to the cost of providing family leave benefits under this chapter, by paying a premium calculated by multiplying the premium rate as set in this section by the amount of the employee's average weekly wages.

(2)(a) On September 1, 2018, and annually thereafter, the commissioner shall set the premium rate for employee contributions beginning the following January 1st, using sound actuarial principles.

(b) The commissioner must set a maximum on the amount of wages that are subject to a premium assessment under this section that is equal to two times the state's average weekly wage.

(3)(a) For calendar year 2020 and thereafter, the commissioner must calculate the family leave insurance account balance ratio as of September 30th of the previous year. The commissioner shall calculate the account balance ratio by dividing the balance of the family leave insurance account by total annual wages paid to employees and those electing coverage pursuant to section 9 of this act. The division shall be carried to the fourth decimal place with the remaining fraction disregarded, unless it amounts to five thousandths or more, in which case the fourth decimal place shall be rounded to the next higher digit.

(b) Beginning January 1, 2020, if the account balance ratio calculated in (a) of this subsection is below one-half percent, each employee and those electing coverage pursuant to section 9 of this act must also be charged a solvency surcharge at the lowest rate necessary to provide revenue to pay for the administrative and benefit costs for the calendar year, as determined by the commissioner. The solvency surcharge shall be at least one-tenth percent and no more than six-tenths percent of the employee's average weekly wage.

(4) An employer is not required to fund any portion of the family leave benefits.

(5)(a) The employer must collect from his or her employees the premiums provided under this section, through payroll deductions and remit the amounts collected to the department.

(b) In collecting employee premiums through payroll deductions, the employer shall act as the agent of his or her employees and shall remit the amounts to the department as required by this chapter.

(c) Premiums shall be collected in the manner and at such intervals as provided in this chapter and directed by the department.

NEW SECTION. **Sec.**  (1) Any entity with employees not covered by this chapter or a self-employed person, including a sole proprietor, partner, or joint venturer, may elect coverage under this chapter for all its employees for an initial period of not less than three years and subsequent periods of not less than one year immediately following a period of coverage. The employer or self-employed person must file a notice of election in writing with the department, in a manner as required by the department in rule. The election becomes effective on the date of filing the notice with the department.

(2) An employer or self-employed person who has elected coverage may withdraw from coverage within thirty days after the end of each period of coverage, or at such other times as the commissioner may adopt by rule, by filing a notice of withdrawal in writing with the commissioner, such withdrawal to take effect not sooner than thirty days after filing the notice with the commissioner. Within five days of filing written notice of the withdrawal with the commissioner, an employer must provide written notice of the withdrawal to all its employees.

(3) The department may cancel elective coverage if the employer or self-employed person fails to make required payments or file reports. The department may collect due and unpaid premiums and may levy an additional premium for the remainder of the period of coverage. The cancellation shall be effective no later than thirty days from the date of the notice in writing advising the employer or self-employed person of the cancellation. Within five days of receiving written notice of the cancellation from the commissioner, an employer must provide written notice of the cancellation to all its employees.

(4) The department shall adopt rules for determining the wages of individuals who may elect coverage under this section.

NEW SECTION. **Sec.**  (1) For purposes of this section, "public employee" means any employee of the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality. "Public employer" means the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality thereof. "Employee organization" means any lawful association, labor organization, union, federation, council, or brotherhood, having as its primary purpose the representation of employees on matters of employment relations.

(2) Public employers shall collect premiums for family leave benefits to public employees in accordance with the procedures and terms set forth in subsection (3) of this section.

(3)(a) An employee organization may, pursuant to collective bargaining, elect to participate in the family leave benefit provisions in this chapter on behalf of those public employees it is either certified or recognized to represent. This section does not prohibit an agreement to elect to participate in family leave benefits between the employee organization and any public employer. An employee organization that has elected to participate in the family leave benefit provisions in this chapter may, pursuant to collective bargaining, terminate the election of it as is mutually agreed upon between the employee organization and any public employer.

(b) For public employees who are not represented by an employee organization, the public employer may elect to participate in the family leave benefit provisions in this chapter within ninety days' notice to such public employees. All premiums for the benefits must be paid by the employees. Following the election by a public employer for public employees not represented by an employee organization, the public employer may terminate the election of family leave benefits with twelve months' notice to those public employees.

**Sec.**  RCW 49.78.230 and 2006 c 59 s 4 are each amended to read as follows:

(1)(a) When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule with the employer's agreement. The employer's agreement is not required, however, for leave during which the employee has a serious health condition in connection with the birth of a child or if the newborn child has a serious health condition.

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

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

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

(c) ((~~There is no limit on the size of an increment of leave~~)) When an employee takes intermittent leave or leave on a reduced leave schedule((~~. However, an employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences or use of leave, provided it is one hour or less~~)) , the leave must be in an increment of one day of the employee's regularly scheduled employment.

(d) The taking of leave intermittently or on a reduced leave schedule under this section may not result in a reduction in the total amount of leave to which the employee is entitled under RCW 49.78.220 (as recodified by this act) beyond the amount of leave actually taken.

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

(a) Has equivalent pay and benefits; and

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

(3) An employee who uses intermittent leave or leave on a reduced leave schedule as provided in this section may be eligible to use the sick leave or other paid time off as provided in RCW 49.12.270. An employee electing to use the benefits that may be available under RCW 49.12.270 may not collect benefits payable under this chapter for the same period of time.

**Sec.**  RCW 49.78.250 and 2006 c 59 s 6 are each amended to read as follows:

(1) If the necessity for leave for the birth or placement of a child for adoption or foster care with the employee is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than thirty days' notice, before the date the leave is to begin, of the employee's intention to take leave for the birth or placement of a child, except that if the date of the birth or placement requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable.

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

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

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

**Sec.**  RCW 49.78.260 and 2006 c 59 s 7 are each amended to read as follows:

((~~If spouses entitled to leave under this chapter are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to twelve workweeks during any twelve-month period, if such leave is taken: (1) For the birth or placement of a child; or (2) for a parent's serious health condition.~~)) A covered employer is not required to permit more than one employee to use the same period of family leave to care for the same family member.

**Sec.**  RCW 49.78.270 and 2006 c 59 s 8 are each amended to read as follows:

(1) ((~~An employer may require that a request for leave for a family member's serious health condition or the employee's serious health condition be supported~~)) Written notice and proof of need for family leave shall be furnished to the employer, by or on behalf of the employee claiming the serious health condition, by a certification issued by the health care provider of the employee or of the family member, as appropriate. The employee must provide((~~, in a timely manner,~~)) a copy of the certification to the employer within thirty days after commencement of the period of leave. The employer must transmit the certification to the department.

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

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

(b) The probable duration of the condition;

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

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

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

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

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

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

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

(4) If the second opinion described in subsection (3) of this section differs from the opinion in the original certification provided under subsection (1) of this section, the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified under subsection (2) of this section. The opinion of the third health care provider concerning the information certified under subsection (2) of this section is considered to be final and is binding on the employer and the employee.

(5) The employer or department may require that the employee obtain subsequent recertifications on a reasonable basis, but not more often than once each week.

(6) Failure to furnish notice or proof within the time and in the manner required does not invalidate the application for family leave, but benefits are not required to be paid for any period more than two weeks prior to the date on which the required notice and proof is furnished. If it is shown to the satisfaction of the commissioner not to have been reasonably possible to furnish such notice or proof and that such notice or proof was furnished as soon as possible, the commissioner must pay the benefits for the full period of a valid application.

(7) Benefits are not required to be paid unless the required proof is furnished within the period of family leave that does not exceed the statutory maximum period permitted under this chapter.

(8) The commissioner may direct the family leave care recipient to submit to examination by a health care provider designated by him or her in any case in which the family leave benefits are contested. The department shall pay for the cost of such examination and pay the benefits for a reasonable period to allow for the examination to occur and the medical results to be delivered.

(9) Refusal of the family leave care recipient without good cause to submit to any such examination shall disqualify the employee from all benefits under this chapter for the period of such refusal, except as to benefits already paid. The department must provide the employer with notice of the refusal within a reasonable time.

(10) If benefits required to be paid under this chapter have been paid to an employee, further payments for the same family leave are not barred solely because of failure to give notice or to file proof for the period or periods for which such benefits have been paid, so long as notice and proof are given for the current period.

NEW SECTION. **Sec.**  (1) The department shall establish and administer a family leave program and pay family leave insurance benefits as specified in this chapter.

(2) The department shall establish procedures and forms for filing applications for benefits under this chapter. The department shall notify the employer within five business days of an application being filed.

(3) The department shall use information sharing and integration technology to facilitate the disclosure of relevant information or records by the department, so long as an employee consents to the disclosure as required under section 16 of this act.

(4) Information contained in the files and records pertaining to an employee under this chapter are confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, the employee or an authorized representative of an employee may review the records or receive specific information from the records on the presentation of the signed authorization of the employee. An employer or the employer's duly authorized representative may review the records of an employee employed by the employer in connection with a pending application. At the department's discretion, other persons may review records when such persons are rendering assistance to the department at any stage of the proceedings on any matter pertaining to the administration of this chapter.

(5) The department shall develop and implement an outreach program to ensure that employees who may be qualified to receive family leave benefits under this chapter are made aware of these benefits. Outreach information shall explain, in an easy to understand format, eligibility requirements, the application process, weekly benefit amounts, maximum benefits payable, notice and certification requirements, reinstatement and nondiscrimination rights, confidentiality, and the relationship between employment protection, leave from employment, and wage replacement benefits under this chapter and other laws, collective bargaining agreements, and employer policies. Outreach information shall be available in English and other primary languages as defined in RCW 74.04.025.

NEW SECTION. **Sec.**  Family leave insurance benefits are payable to an employee during a period in which the employee is unable to perform his or her regular or customary work because he or she is on family leave, as defined in RCW 49.78.020 (as recodified by this act), if the employee:

(1) Files an application for benefits as required by rules adopted by the commissioner;

(2) Consents to the disclosure of information or records deemed private and confidential under state law. Further disclosure of this information or these records is subject to section 15 of this act;

(3) Discloses whether or not he or she owes child support obligations as defined in RCW 50.40.050;

(4) Provides his or her social security number;

(5) Has provided his or her employer from whom family leave is to be taken with written notice of the employee's intention to take family leave as required in RCW 49.78.250 (as recodified by this act); and

(6) Provides a document authorizing the family member's or employee's health care provider, as applicable, to disclose the family member's or employee's health care information in the form of the certification required under RCW 49.78.270 (as recodified by this act).

NEW SECTION. **Sec.**  If an employee does not have a spouse, the employee may designate one person for whom the employee will care for if the designated person has a serious health condition. An employer may establish a process for an employee to make such a designation within thirty days of the employee's date of hire. Thereafter, the employer must permit the employee to make or change such a designation, as applicable, on an annual basis. If an employee's employer establishes such a process, the employee must make such a designation using the employer's process. If an employee's employer does not establish such a process, the employee may make such a designation when applying for benefits.

NEW SECTION. **Sec.**  If an employee discloses that he or she owes child support obligations under section 16 of this act and the department determines that the employee is qualified for benefits, the department shall notify the applicable state or local child support enforcement agency and deduct and withhold an amount from benefits in a manner consistent with RCW 50.40.050.

**Sec.**  RCW 49.78.280 and 2006 c 59 s 9 are each amended to read as follows:

(1)((~~(a)~~)) Except as provided in ((~~(b) of this~~)) subsection (2) of this section, any employee who takes leave under RCW 49.78.220 (as recodified by this act) for the intended purpose of the leave is entitled, on return from the leave:

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

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

((~~(b)~~)) (2) The taking of leave under RCW 49.78.220 (as recodified by this act) may not result in the loss of any employment benefits accrued before the date on which the leave commenced.

((~~(c)~~)) (3) Nothing in this section entitles any restored employee to:

((~~(i)~~)) (a) The accrual of any seniority or employment benefits during any period of leave; or

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

((~~(d)~~)) (4) As a condition of restoration under ((~~(a) of this~~)) subsection (1) of this section for an employee who has taken leave for the employee's serious health condition, the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work, except that nothing in this subsection ((~~(1)(d)~~)) supersedes a valid local law or a collective bargaining agreement that governs the return to work of such employees.

((~~(e)~~)) (5) Nothing in this ((~~subsection (1)~~)) section prohibits an employer from requiring an employee on leave to report periodically to the employer on the status and intention of the employee to return to work.

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

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

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

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

NEW SECTION. **Sec.**  (1) If family leave benefits are paid erroneously or as a result of willful misrepresentation, or if an application or weekly claim for family leave benefits is rejected after benefits are paid, RCW 50.20.070 applies, except that appeals are governed by section 22 of this act, penalties are paid into the family and medical leave enforcement account, and the department shall seek repayment of benefits from the recipient. The department shall issue an overpayment assessment setting forth the reasons for, and the amount of, the overpayment.

(2) Whenever such an overpayment assessment becomes conclusive and final, the department may file with the superior court clerk of any county within the state a warrant in the amount of the overpayment assessment plus a filing fee under RCW 36.18.012(10). However, the department must first give at least twenty days' notice by certified mail return receipt requested, to the employee's last known address of the intended action.

(a) The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant. The clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant the name of the person or persons mentioned in the warrant, the amount of the overpayment assessment, and the date when the warrant was filed.

(b) The amount of the warrant as docketed becomes a lien upon the title to, and any interest in, all real and personal property of the person or persons against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of the clerk. A warrant so docketed is sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment.

(c) A copy of the warrant shall be mailed to the person or persons mentioned in the warrant by certified mail to the person's last known address within ten days of its filing with the clerk.

NEW SECTION. **Sec.**  (1) In the form and at the times specified in this chapter and by the commissioner, an employer shall make reports, furnish information, and collect and remit premiums as required by this chapter to the department. If the employer is a temporary help company that provides employees on a temporary basis to its customers, the temporary help company is considered the employer for purposes of this section. However, if the temporary help company fails to remit the required premiums, the customer to whom the employees were provided is liable for paying the premiums.

(2)(a) An employer must keep at his or her place of business a record of employment from which the information needed by the department for purposes of this chapter may be obtained. This record shall at all times be open to the inspection of the commissioner.

(b) Information obtained from employer records under this chapter is confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, an interested party shall be supplied with information from employer records to the extent necessary for the proper presentation of the case in question. An employer may authorize inspection of its records by written consent.

(3) The requirements relating to the collection of family leave premiums are the same as the requirements relating to the assessment and collection of contributions under Title 50 RCW, including but not limited to penalties, interest, and department lien rights and collection remedies. These requirements apply to:

(a) An employer that fails under this chapter to make the required reports, or fails to remit the full amount of the premiums when due;

(b) An employer that willfully makes a false statement or misrepresentation regarding a material fact, or willfully fails to report a material fact, to avoid making the required reports or remitting the full amount of the premiums when due under this chapter;

(c) A successor in the manner specified in RCW 50.24.210; and

(d) An officer, member, or owner having control or supervision of payment and/or reporting of family leave premiums, or who is charged with the responsibility for the filing of returns, in the manner specified in RCW 50.24.230.

(4) Notwithstanding subsection (3) of this section, appeals are governed by section 22 of this act.

NEW SECTION. **Sec.**  (1) Except as provided under section 23(1) of this act, a person may file a notice of appeal from any determination or redetermination made by the department with the commissioner, by mail or personally, within thirty days after the date on which a copy of the department's decision was served on the person. Upon receipt of the notice of appeal, the commissioner shall request the assignment of an administrative law judge in accordance with chapter 34.05 RCW to conduct a hearing and issue a proposed decision and order. The hearing shall be conducted in accordance with chapter 34.05 RCW.

(2) The administrative law judge's proposed decision and order shall be final and not subject to further appeal unless, within thirty days after the decision is served on the interested parties, a party files a petition for judicial review as provided in chapter 34.05 RCW.

(3) If, upon judicial review, the final decision of the department is reversed or modified, the court in its discretion may award the prevailing party, other than the department, reasonable attorneys' fees and costs. Attorneys' fees and costs owed by the department, if any, are payable from the family and medical leave enforcement account.

NEW SECTION. **Sec.**  (1) A determination of amount of benefits potentially payable under this chapter is not a basis for appeal. However, the determination is subject to request by the employee on family leave for redetermination by the commissioner at any time within one year from the date of delivery or mailing of such determination, or any redetermination thereof. A redetermination shall be furnished to the employee in writing and provide the basis for appeal.

(2) A determination of denial of benefits becomes final, in the absence of timely appeal therefrom. The commissioner may redetermine such determinations at any time within one year from delivery or mailing to correct an error in identity, omission of fact, or misapplication of law with respect to the facts.

(3) A determination of allowance of benefits becomes final, in the absence of a timely appeal therefrom. The commissioner may redetermine such allowance at any time within two years following the application year in which such allowance was made in order to recover any benefits for which recovery is provided under this chapter.

(4) A redetermination may be made at any time: (a) To conform to a final court decision applicable to either an initial determination or a determination of denial or allowance of benefits; (b) in the event of a back pay award or settlement affecting the allowance of benefits; or (c) in the case of misrepresentation or willful failure to report a material fact. Written notice of any such redetermination shall be promptly given by mail or delivered to such interested parties as were notified of the initial determination or determination of denial or allowance of benefits and any new interested party or parties who, pursuant to such rule as the commissioner may adopt, would be an interested party.

NEW SECTION. **Sec.**  (1) Leave from employment under this chapter is in addition to leave from employment during which benefits are paid or are payable under Title 51 RCW or other applicable federal or state industrial insurance laws.

(2) In any week in which an employee is receiving benefits under chapter 7.68 RCW, Title 50 or 51 RCW, or other applicable federal or state crime victims' compensation, unemployment compensation, industrial insurance, or disability insurance laws, the employee is disqualified from receiving family leave benefits under this chapter.

**Sec.**  RCW 49.78.290 and 2006 c 59 s 10 are each amended to read as follows:

In accordance with the federal family and medical leave act, during any period of family leave taken under ((~~RCW 49.78.220~~)) this chapter, ((~~if the employee is not eligible for any employer contribution to medical or dental benefits under an applicable collective bargaining agreement or employer policy during any period of leave, an employer shall allow the employee to continue, at the employee's expense, medical or dental insurance coverage, including any spouse and dependent coverage, in accordance with state or federal law. The premium to be paid by the employee shall not exceed one hundred two percent of the applicable premium for the leave period~~)) the employer shall maintain any existing health benefits of the employee in force for the duration of such leave as if the employee had continued to work from the date he or she commenced family leave until the date he or she returns to employment.

NEW SECTION. **Sec.**  Whenever an employee of a covered employer who is qualified for benefits under this chapter is absent from work to provide family leave for more than seven consecutive days, the employer shall provide the employee with a written statement of the employee's rights under this chapter in a form prescribed by the commissioner. The statement must be provided to the employee within five business days after the employee's seventh consecutive day of absence due to family leave or within five business days after the employer has received notice that the employee's absence is due to family leave, whichever is later.

**Sec.**  RCW 49.78.300 and 2006 c 59 s 11 are each amended to read as follows:

(1) It is unlawful for any employer to:

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

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

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

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

(b) Given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this chapter; or

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

**Sec.**  RCW 49.78.310 and 2006 c 59 s 12 are each amended to read as follows:

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

**Sec.**  RCW 49.78.330 and 2006 c 59 s 14 are each amended to read as follows:

(1) Any employer who violates RCW 49.78.300 (as recodified by this act) is liable:

(a) For damages equal to:

(i) The amount of:

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

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

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

(iii) An additional amount as liquidated damages equal to the sum of the amount described in (a)(i) of this subsection and the interest described in (a)(ii) of this subsection, except that if an employer who has violated RCW 49.78.300 (as recodified by this act) proves to the satisfaction of the court that the act or omission which violated RCW 49.78.300 (as recodified by this act) was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of RCW 49.78.300, the court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under (a)(i) and (ii) of this subsection, respectively; and

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

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

(a) The employees; or

(b) The employees and other employees similarly situated.

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

**Sec.**  RCW 49.78.340 and 2006 c 59 s 15 are each amended to read as follows:

Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the ((~~director~~)) commissioner, setting forth excerpts from, or summaries of, the pertinent provisions of this chapter and information pertaining to the filing of a charge. Any employer that willfully violates this section may be subject to a civil penalty of not more than one hundred dollars for each separate offense. Any penalties collected by the department under ((~~the [this]~~)) this section shall be deposited into the family and medical leave enforcement account.

**Sec.**  RCW 49.78.350 and 2006 c 59 s 16 are each amended to read as follows:

The family and medical leave enforcement account is created in the custody of the state treasurer. Any penalties collected under RCW 49.78.320 (as recodified by this act) or 49.78.340 (as recodified by this act) shall be deposited into the account and shall be used only for the purposes of administering and enforcing this chapter. Only the ((~~director or the director's designee~~)) commissioner may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

**Sec.**  RCW 49.78.360 and 2006 c 59 s 17 are each amended to read as follows:

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

(2) The state of Washington fully occupies and preempts the entire field of the governmental regulation of mandatory paid family leave for all private employers covered by the provisions of this act. Nothing in this chapter prevents a private employer from providing greater family or medical leave benefits than those established under this chapter. Cities, towns, and counties or other political subdivisions may enact only those laws and ordinances relating to paid family leave for private employers that are specifically authorized by state law and are consistent with this chapter. Local laws and ordinances regarding paid family leave for private employers, in existence on the effective date of this section that are inconsistent with this chapter are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such a city, town, county, or political subdivision.

**Sec.**  RCW 49.78.380 and 2006 c 59 s 19 are each amended to read as follows:

Nothing in this chapter shall be construed to discourage private employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this chapter.

**Sec.**  RCW 49.78.390 and 2006 c 59 s 20 are each amended to read as follows:

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

(2) Unless otherwise expressly permitted by the employer, leave taken under this chapter must be taken concurrently with any leave taken under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103‑3, 107 Stat. 6).

NEW SECTION. **Sec.**  (1) If the internal revenue service determines that family leave benefits under this chapter are subject to federal income tax, the department must advise an employee filing a new application for family leave benefits, at the time of filing such application, that:

(a) The internal revenue service has determined that benefits are subject to federal income tax;

(b) Requirements exist pertaining to estimated tax payments;

(c) The employee may elect to have federal income tax deducted and withheld from the employee's payment of benefits at the amount specified in the federal internal revenue code; and

(d) The employee is permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from benefits must remain in the family leave insurance account until transferred to the federal taxing authority as a payment of income tax.

(3) The commissioner shall follow all procedures specified by the federal internal revenue service pertaining to the deducting and withholding of income tax.

NEW SECTION. **Sec.**  This chapter does not create a continuing entitlement or contractual right. The legislature reserves the right to amend or repeal all or part of this chapter at any time, and a benefit or other right granted under this chapter exists subject to the legislature's power to amend or repeal this chapter. There is no vested private right of any kind against such amendment or repeal.

NEW SECTION. **Sec.**  The family leave insurance account is created in the custody of the state treasurer. All receipts from the employee premiums imposed under this chapter must be deposited in the account. Expenditures from the account may be used only for the purposes of the family leave program. Only the commissioner may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW. An appropriation is required for administrative expenses, but not for benefit payments.

NEW SECTION. **Sec.**  Whenever, in the judgment of the state investment board, there shall be in the family leave insurance account funds in excess of that amount deemed by the state investment board to be sufficient to meet the current expenditures properly payable therefrom, the state investment board shall have full power to invest, reinvest, manage, contract, or sell or exchange investments acquired with such excess funds in the manner prescribed by RCW 43.84.150, and not otherwise.

**Sec.**  RCW 50.29.021 and 2013 c 244 s 1 and 2013 c 189 s 3 are each reenacted and amended to read as follows:

(1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after January 4, 2004.

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer, except as provided in subsection (5) of this section.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Benefits paid to an individual who qualifies for benefits under RCW 50.20.050 (1)(b) (iv) or (xi) or (2)(b) (iv) or (xi), as applicable, shall not be charged to the experience rating account of any contribution paying employer.

(f) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer. This subsection (3)(f) does not apply to the calculation of contribution rates under RCW 50.29.025 for rate year 2010 and thereafter.

(g) The forty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1201 and the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1202 shall not be charged to the experience rating account of any contribution paying employer.

(h) With respect to claims where the minimum amount payable weekly is increased to one hundred fifty-five dollars pursuant to RCW 50.20.1201(3), benefits paid that exceed the benefits that would have been paid if the minimum amount payable weekly had been calculated pursuant to RCW 50.20.120 shall not be charged to the experience rating account of any contribution paying employer.

(i) Upon approval of an individual's training benefits plan submitted in accordance with RCW 50.22.155(2), an individual is considered enrolled in training, and regular benefits beginning with the week of approval shall not be charged to the experience rating account of any contribution paying employer.

(j) Training benefits paid to an individual under RCW 50.22.155 shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, except employers as provided in subsection (6) of this section, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, worksite, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster;

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW;

(v) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who qualified for two consecutive unemployment claims where wages were attributable to at least one employer who employed the individual in both base years. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW; ((~~or~~))

(vi) Was hired to replace an employee who is a member of the military reserves or National Guard and was called to federal active military service by the president of the United States and is subsequently laid off when that employee is reemployed by their employer upon release from active duty within the time provided for reemployment in RCW 73.16.035; or

(vii) Worked for an employer for forty weeks or less, and was laid off at the end of temporary employment when that individual temporarily replaced a permanent employee receiving family leave benefits under chapter 50.--- RCW (the new chapter created in section 41 of this act), and the layoff is due to the return of that permanent employee. This subsection applies to claims with an effective date on or after July 7, 2019.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted.

(5) When a benefit claim becomes invalid due to an amendment or adjustment of a report where the employer failed to report or inaccurately reported hours worked or remuneration paid, or both, all benefits paid will be charged to the experience rating account of the contribution paying employer or employers that originally filed the incomplete or inaccurate report or reports. An employer who reimburses the trust fund for benefits paid to workers and who fails to report or inaccurately reported hours worked or remuneration paid, or both, shall reimburse the trust fund for all benefits paid that are based on the originally filed incomplete or inaccurate report or reports.

(6) An employer's experience rating account may not be relieved of charges for a benefit payment and an employer who reimburses the trust fund for benefit payments may not be credited for a benefit payment if a benefit payment was made because the employer or employer's agent failed to respond timely or adequately to a written request of the department for information relating to the claim or claims without establishing good cause for the failure and the employer or employer's agent has a pattern of such failures. The commissioner has the authority to determine whether the employer has good cause under this subsection.

(a) For the purposes of this subsection, "adequately" means providing accurate information of sufficient quantity and quality that would allow a reasonable person to determine eligibility for benefits.

(b)(i) For the purposes of this subsection, "pattern" means a benefit payment was made because the employer or employer's agent failed to respond timely or adequately to a written request of the department for information relating to a claim or claims without establishing good cause for the failure, if the greater of the following calculations for an employer is met:

(A) At least three times in the previous two years; or

(B) Twenty percent of the total current claims against the employer.

(ii) If an employer's agent is utilized, a pattern is established based on each individual client employer that the employer's agent represents.

**Sec.**  RCW 49.78.400 and 2006 c 59 s 21 are each amended to read as follows:

The ((~~director~~)) commissioner shall adopt rules as necessary to implement this chapter.

NEW SECTION. **Sec.**  RCW 49.78.010, 49.78.020, 49.78.220, 49.78.230, 49.78.250, 49.78.260, 49.78.270, 49.78.280, 49.78.290, 49.78.300, 49.78.310, 49.78.320, 49.78.330, 49.78.340, 49.78.350, 49.78.360, 49.78.370, 49.78.380, 49.78.390, 49.78.400, 49.78.410, 49.78.901, and 49.78.904 are each recodified as a new chapter in Title 50 RCW.

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

(1)RCW 49.78.090 (Administration) and 1989 1st ex.s. c 11 s 9 are each repealed;

(2)RCW 49.78.240 (Unpaid leave permitted—Relationship to paid leave) and 2006 c 59 s 5;

(3)RCW 49.86.005 (Findings) and 2007 c 357 s 1;

(4)RCW 49.86.010 (Definitions) and 2007 c 357 s 3;

(5)RCW 49.86.020 (Family leave insurance program) and 2007 c 357 s 4;

(6)RCW 49.86.030 (Eligibility for benefits) and 2013 2nd sp.s. c 26 s 1, 2011 1st sp.s. c 25 s 1, 2009 c 544 s 1, & 2007 c 357 s 5;

(7)RCW 49.86.040 (Disqualification from benefits) and 2007 c 357 s 6;

(8)RCW 49.86.050 (Duration of benefits—Payment of benefits) and 2007 c 357 s 7;

(9)RCW 49.86.060 (Amount of benefits) and 2007 c 357 s 8;

(10)RCW 49.86.070 (Federal income tax) and 2007 c 357 s 9;

(11)RCW 49.86.080 (Erroneous payments—Payments induced by willful misrepresentation—Claim rejected after payments) and 2007 c 357 s 10;

(12)RCW 49.86.090 (Leave and employment protection) and 2007 c 357 s 11;

(13)RCW 49.86.100 (Employment by same employer) and 2007 c 357 s 12;

(14)RCW 49.86.110 (Elective coverage) and 2007 c 357 s 13;

(15)RCW 49.86.120 (Appeals) and 2007 c 357 s 14;

(16)RCW 49.86.130 (Prohibited acts—Discrimination—Enforcement) and 2007 c 357 s 15;

(17)RCW 49.86.140 (Coordination of leave) and 2007 c 357 s 16;

(18)RCW 49.86.150 (Continuing entitlement or contractual rights—Not created) and 2007 c 357 s 17;

(19)RCW 49.86.160 (Rules) and 2007 c 357 s 18;

(20)RCW 49.86.170 (Family leave insurance account) and 2009 c 4 s 905 & 2007 c 357 s 19;

(21)RCW 49.86.180 (Family leave insurance account funds—Investment) and 2007 c 357 s 20;

(22)RCW 49.86.210 (Reports) and 2013 2nd sp.s. c 26 s 2, 2011 1st sp.s. c 25 s 2, 2009 c 544 s 2, & 2007 c 357 s 26;

(23)RCW 49.86.902 (Effective dates—2007 c 357) and 2007 c 357 s 30; and

(24)RCW 49.86.903 (Construction—Chapter applicable to state registered domestic partnerships—2009 c 521) and 2009 c 521 s 136.

NEW SECTION. **Sec.**  Sections 3, 5 through 10, 15 through 18, 20 through 24, 26, and 35 through 38 of this act are each added to chapter 50.--- RCW (the new chapter created in section 41 of this act).

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

NEW SECTION. **Sec.**  Except for section 40 of this act, this act takes effect January 1, 2019."

Correct the title.

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| --- | --- |
|  | EFFECT: Strikes the underlying bill and provides for family leave insurance as follows:   * Purposes of leave. Allows benefits for employees on leave for birth of a child or placement of an adopted or foster child, leave made necessary by a family member's or the employee's own serious health condition, and leave because of a military exigency. Allows a person without a spouse to designate a person for whom the employee will provide care. Defines family members, serious health condition, and other terms. * Eligibility. Establishes eligibility as 26 consecutive weeks in employment, with provisions for persons who work less than a usual workweek and for portability between employers for 90 days. Creates separate provisions for public sector employees: Represented employees may opt-in or out and employers of nonrepresented employers may opt-in or out. Allows elective coverage by self-employed individuals. * Benefits - general. Provides benefits of 50 percent of an employee's average weekly wage (capped at 50 percent of the state average weekly wage) and 8 weeks of leave, with phased in increases to 67 percent of the employee's average weekly wage (capped at 67 percent of the state average weekly wage) and 12 weeks of leave in 2023 and thereafter. Provides for benefits to begin January 1, 2020. Allows the Employment Security Department (ESD) to delay benefit increases. * Premiums. Provides for premiums to be paid by employees and those electing coverage, beginning January 1, 2019. Establishes a maximum amount of wages subject to premiums. Requires ESD to set the premium using sound actuarial principles. Allows for a solvency surcharge. * Job protection. Provides job protection for all employees. * Administration. Provides for ESD to administer family leave insurance. Establishes requirements and procedures for applications, health care provider certification, notice of provisions to employees, and outreach. Sets forth procedures for appeals, overpayments, and other administrative matters. * Preemption. Preempts paid leave provisions by local governments for private employers. * Other benefit provisions. Disqualifies persons from benefits for absences caused by willful or illegal acts of the employee, and for other reasons. Permits an employer to not allow more than one employee to use the same period of leave to care for the same family member. Provides for intermittent leave and other benefit provisions. * Other. Grants rule-making authority to ESD. Provides for unemployment insurance charge relief for charges that result from laying off a replacement worker. Requires leave to be concurrent with the federal Family and Medical Leave Act, unless the employer permits otherwise. Merges the family leave insurance provisions into the family leave law, recodifies the family leave law in the unemployment insurance title, and repeals the family leave insurance law. |

**--- END ---**