

# HOUSE BILL REPORT

## HB 1116

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**As Reported by House Committee On:**  
Labor & Workplace Standards  
Appropriations

**Title:** An act relating to implementing family and medical leave insurance.

**Brief Description:** Implementing family and medical leave insurance.

**Sponsors:** Representatives Robinson, Doglio, Senn, Reeves, Gregerson, Frame, Lytton, Kagi, Stonier, Tarleton, Jinkins, Ortiz-Self, Ormsby, Macri, Riccelli, Tharinger, Appleton, Stanford, Peterson, McBride, Kloba, Kirby, Dolan, Hudgins, Wylie, Slatter, Santos, Pollet, Farrell, Bergquist, Goodman and Sells.

**Brief History:**

**Committee Activity:**

Labor & Workplace Standards: 1/19/17, 1/23/17 [DP];  
Appropriations: 2/9/17, 2/22/17 [DPS].

**Brief Summary of Substitute Bill**

- Provides benefits for individuals on leave for a family member's or the individual's own serious health condition or for a military exigency, in addition to leave for a child's birth or placement.
- Allows 26 weeks of leave for birth or placement of a child, a family member's serious health condition, or a military exigency, beginning October 1, 2019, plus beginning October 1, 2020, 12 weeks of leave for an individual's own serious health condition.
- Establishes eligibility as 340 hours in the individual's qualifying year, rather than 680 hours.
- Bases benefits on the individual's wages rather than a flat amount.
- Specifies a premium of 0.255 percent of wages beginning on July 1, 2018, and then 0.51 percent of wages beginning on January 1, 2020, with subsequent annual adjustments, and allows employers to deduct one-half of premiums from employee wages.

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*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.*

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## HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** Do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Doglio and Frame.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Manweller, Ranking Minority Member; McCabe, Assistant Ranking Minority Member; Pike.

**Staff:** Joan Elgee (786-7106).

### **Background:**

#### Unpaid Family and Medical Leave.

##### *Federal Law.*

Federal and state laws grant certain employees the right to unpaid family and medical leave. The federal Family and Medical Leave Act (FMLA) allows eligible employees to take up to 12 weeks of job-protected leave in a 12-month period for the birth or placement of an adopted or foster child, or the serious health condition of the employee or the employee's family member. Eligible employees may also take leave because of a qualifying exigency arising out of the spouse, child, or parent of the employee being on active military duty or impending active duty status. Qualifying exigencies are defined by rule of the United States Department of Labor. Generally, the FMLA applies to employees who work for a private employer with 50 or more employees or for a public employer, and meet employment duration requirements.

##### *State Law.*

The state Family Leave Act (FLA) is very similar to the FMLA but does not include military exigency leave. Under the FLA, a "serious health condition" is an illness, injury, impairment, or physical or mental condition that involves inpatient care at specified facilities, or continuing treatment by a health care provider. A number of types of incapacity qualify as "continuing treatment by a health care provider," including an incapacity lasting more than three consecutive days that involves treatment by a health care provider. Some conditions are specified not to be serious health conditions.

The state Military Family Leave Act allows certain employees to take 15 days of job-protected leave when the employee's spouse is notified of an impending call to active duty or when the spouse is on leave from active duty.

#### Paid Leave.

Under Initiative 1433, passed by the voters in 2016, employees will be eligible for paid sick leave beginning on January 1, 2018. Paid sick leave accrues at the rate of one hour of leave for every 40 hours worked. Paid sick leave may be used for the employee's or a family member's injury, illness, or health condition, or need for preventative care. In addition, employees may use paid sick leave for absences due to closure of the employee's work site or their child's school or place of care due to a public health issue. Employers must pay

employees using paid sick leave at their regular rate of pay or the minimum wage, whichever is greater.

A framework for a state family leave insurance program was enacted in 2007. Under 2013 legislation, benefits are to begin when the Legislature has specifically appropriated funding and enacted an implementation date.

The framework provides for benefits of \$250 per week for up to five weeks for individuals on leave for the birth or the placement of a child for adoption. To receive benefits, an individual must have worked 680 hours during either the first four of the last five calendar quarters or the last four calendar quarters completed (the "qualifying year"). Most employers are covered. An employer not mandatorily covered or a self-employed person may elect coverage.

Job protection applies to individuals who have worked at least 12 months for an employer with more than 25 employees and for at least 1,250 hours over the previous 12 months with the employer.

Paid family leave must be taken concurrently with leave under the FMLA or the FLA.

Procedural and administrative matters are addressed, including outreach, overpayments, and appeals. Retaliation for exercising rights is prohibited. A report to the Legislature is required, and the Family Leave Insurance Account was created.

#### Unemployment Insurance Charging.

Most employers pay contributions (payroll taxes) to finance unemployment benefits. An employer's tax rate is experience rated so that the rate is determined, in part, by the benefits paid to its employees and charged to the employer. An employer may request relief from charging under specified circumstances. These charges are pooled and shared among all employers.

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#### **Summary of Bill:**

A family and medical leave insurance program (FMLI) is implemented and modified.

#### Purposes of Leave.

Benefits are payable when an individual is unable to work because the individual is on leave for a family member's or the individual's own serious health condition, in addition to birth or placement of a child. Placement is of a child under the age of 18. Leave may also be taken for a military exigency.

A "child" is a foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis, in addition to a biological or adopted child. A "family member" is the individual's child, spouse, parent, grandparent, grandchild, or sibling, or any person related by blood or

affinity whose close association with the individual is the equivalent of a family relationship. "Parent" includes in-laws and a person who stood in loco parentis when the individual or his or her spouse was a child.

"Serious health condition" has the same meaning as in the FLA. A "military exigency" is defined by reference to the FMLA and implementing rules. Military exigency leave may be taken by a "family member" as defined for purposes of the FMLI.

#### Amount of Benefit.

The benefit amount is changed from a flat rate to a percentage of the individual's average weekly wage (AWW) during the two highest earning quarters of the individual's qualifying year:

- If the individual's AWW is 50 percent or less of the state average weekly wage (\$1,082 for 2015), the benefit is 90 percent of the individual's AWW.
- If the individual's AWW is more than 50 percent of the state AWW, the benefit is 90 percent of the individual's AWW up to 50 percent of the state AWW, and 50 percent of the individual's AWW that is greater than the state AWW.

The maximum benefit amount is \$1,000 and is adjusted annually to 90 percent of the state AWW.

#### Duration of Benefit.

The maximum duration of benefits is 26 weeks for a child's birth or placement, a family member's serious health condition, and military exigency leave. In addition, benefits are payable for 12 weeks for the individual's serious health condition. The number of weeks of leave apply to an application year, which is the 12-month period beginning with the birth or placement of a child, or the application for benefits for the other types of leave. For serious health conditions, no benefits are payable for a seven-day waiting period.

#### Eligibility.

All employers, including public employers, are covered for purposes of benefits. For an employee, the hours of work to be eligible for benefits is changed from 680 to 340 hours during the qualifying year. To receive benefits, an individual must:

- file an application for benefits;
- consent to the disclosure of certain information;
- notify the employer;
- provide his or her Social Security number; and
- meet certain documentation requirements regarding leave for a serious health condition or military exigency.

An individual does not need to be working at the time of application.

Benefits are payable beginning October 1, 2019, except benefits for an individual's serious health condition are payable beginning October 1, 2020.

Elective coverage is available for independent contractors as well as self-employed persons beginning January 1, 2019. The election becomes effective when the person establishes 340 hours after electing coverage. Provisions are set forth for cancelling elective coverage.

#### Other Benefit Provisions.

The job protection provision is modified to apply to employers with eight or more employees and employees who were employed by that employer for at least six months.

An employer must maintain any health plan coverage during any period in which an individual receives benefits.

An employer may require an individual receiving benefits to take the leave concurrently with leave under other laws. An employer may not require an individual to exhaust other wage replacement benefits before receiving family and medical leave insurance benefits.

An individual entitled to job protection under another law is entitled to the protections of the most favorable law. The provisions do not diminish an employer's obligation to comply with a collective bargaining agreement or employer policy that provides greater protection or benefits. An employer may enter a collective bargaining agreement or adopt a policy to coordinate existing benefits with leave and wage replacement benefits.

Claims are made weekly and an individual may submit weekly claims on an intermittent basis.

#### Premiums.

Premiums are assessed at 0.255 percent of wages paid within the state beginning on July 1, 2018, and 0.51 percent of wages beginning January 1, 2020. An employer may deduct up to one-half the premium from employee wages. Premiums are deposited into the renamed Family and Medical Leave Insurance Account (account). Beginning in 2021, the premium is based on the account balance ratio. The ratio is determined by dividing the balance in the account by total wages. The premium amounts are specified in intervals from 0.1 percent to 0.6 percent of an individual's wages, depending on the ratio. If the ratio falls below 0.05 percent, employers are charged a solvency surcharge of least 0.10 percent and no more than 0.6 percent.

#### Unemployment Compensation Charge Relief.

Employers may request relief of unemployment benefit charges that result from paying unemployment benefits to a temporary replacement employee who worked for the employer for 40 weeks or less and who was laid off due to the return of an employee who was receiving FMLI benefits.

#### Implementation and Administration.

The Employment Security Department (ESD) pays benefits, collects premiums, defines wages by rule for purposes of independent contractors and self-employed individuals, and

otherwise administers provisions related to benefits and premiums. The Department of Labor and Industries (L&I) enforces the job protection provision. Employer recordkeeping requirements are established.

The ESD must adopt government efficiencies to include, to the extent feasible, combined reporting and payment with a single return of unemployment contributions and FMLI premiums.

Other.

The annual reporting requirement to the Legislature is expanded to include demographic information on program participants and other items.

Additional outreach information is specified. Appeal provisions are modified to, among other things, provide that an administrative law judge's proposed decision and order is subject to judicial review, instead of the Director of the ESD's review.

A provision allowing an employer employing spouses to require leave not be taken concurrently is repealed.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Paid leave is long overdue. States that have paid leave have strong economies and the bill will help Washington's economy. Leave is not only for new parents. All of us will need this benefit at some point, such as to help with elderly parents or because of a hospitalization. Paid leave is part of our moral covenant to take care of each other. Benefits need to be robust and progressive. The improved definitions and shortened length of time to qualify are good.

Research supports the policy in the bill. Paid family leave improves child and family health and financial security. Strong parent-child bonds and early attachment lead to a lifetime of health. Mothers breastfeed longer, children are more likely to get preventative care, parents can stay with hospitalized children, and families are less likely to receive public assistance. It is best to breastfeed for six months or longer. A quarter of moms go back to work two weeks after birth. Fifty percent of moms are the family's primary or sole breadwinner.

Low wage workers should not have to choose between taking care of family members, or their own health, or getting a paycheck. With paid benefits, all parents, not just higher income parents, will benefit. Ninety-six percent of low-income workers lack paid leave.

Forty percent of workers are not covered by current leave laws. Unpaid leave is very stressful financially. A worker without paid benefits had to use a food bank.

People will be able help a military family member with child care, spend time with their family member before they deploy, and otherwise help military members. The bill will help veterans to get the care they need, such as by allowing a spouse to stay with a veteran with post-traumatic stress disorder or a traumatic brain injury, and will result in better outcomes for veterans. The bill will also help workers dealing with domestic violence and trafficking.

Under this bill, employers will be able to provide the benefits they want to offer. It is now hard for small employers to accommodate paid leave. The unemployment insurance system is one that employers know. The bill will be financed the same way as Medicare and Social Security. Passing a bill will help avoid a patchwork of local laws. It will help small business be competitive and attract workers in a low paid industry. The payroll impact is relatively small. Agriculture's position on the bill is not uniform.

The Department of Health's health impact review found that the bill has the potential to improve financial security and health.

(Opposed) Employers, including farmers and grocers, have tight margins and cannot afford this bill. Employers are dealing with the minimum wage increase. They would have to pay overtime for replacement workers under the bill. Small businesses pay 36 percent more for new regulation than larger businesses. The majority of employees work for small businesses and they are closing. There should be an exemption for businesses with fewer than 20 employees and the leave should be employee paid. It may be difficult to reconcile this bill with the new sick leave requirements. Reporting is burdensome.

Workers already have paid options. Employers can offer paid leave without a law. The bill does not allow for flexibility. Many farmers work things out with their employees.

(Other) A paid family leave policy is strongly supported. There is a desire to work with the Committee and the bill is a tool to move forward. Concerns exist about the relationship with collective bargaining agreements provisions, the reporting requirement, the lack of exemption for small businesses, and costs. It has higher benefits than programs in other states. Employers have just been hit with minimum wage and workers' compensation increases. Preemption is needed.

A statewide paid family leave policy is supported but the details are still being worked on. Paid family leave will reduce disparities with access to leave and help attract quality a workforce. Paid parental leave at full salary for 12 weeks is offered by an employer.

**Persons Testifying:** (In support) Representative Robinson, prime sponsor; Lelach Rave, Washington Chapter of the Academy of Pediatricians; Sarah Bird, Moz; Raymond Miller, Veterans Place Northwest Welcome-Home; Karina Romero, United Food & Commercial Workers Union; Marilyn Watkins, Economic Opportunity Institute; Rhonda Parker; Don Orange, Hoesly EcoAutomotive; Liz Mills, Young Women's Christian Association; Seattle, King, Snohomish; Fernando Mejia, Main Street Alliance; Maggie Humphreys, MomsRising;

Lynn Dodson, Washington State Labor Council; Ben Alexander, Sound Native Plants; and Linda Malanchuk-Finnan, Washington State National Organization for Women.

(Opposed) Mark Streuli, Washington Farm Bureau; Carolyn Logue, Washington Retail Association; Holli Johnson, Washington Food Industry Association; and Gary Smith, Independent Business Association.

(Other) Julia Gorton, Washington Hospitality Association; Holly Chisa, Northwest Grocery; Bob Battles, Association of Washington Business; Mac Nicholson, King County; and Alexandra Montano, Washington State Board of Health.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Bergquist, Cody, Fitzgibbon, Hansen, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan and Tharinger.

**Minority Report:** Do not pass. Signed by 15 members: Representatives Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Caldier, Condotta, Haler, Harris, Manweller, Nealey, Schmick, Taylor, Vick, Volz and Wilcox.

**Staff:** Meghan Morris (786-7119).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Labor & Workplace Standards:**

A \$42 million loan from the State General Fund to the Family and Medical Leave Insurance Account is established for the start-up costs of the Family and Medical Leave Insurance Program. The loan must be repaid by the end of the 2017-19 biennium, along with interest equal to the amount the State General Fund would have earned without the transfer, as determined by the State Treasurer.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for Section 20, relating to the \$42 million transfer from the State General Fund to the Family and Medical Leave Insurance Program, which takes effect immediately.

**Staff Summary of Public Testimony:**



(In support) This is the year to figure out paid family leave. The policies in the bill are based on research. Studies have shown the importance of the first year of life and parental presence during hospital stays has a beneficial effect. States with paid family leave show positive outcomes. People should not have to choose between paying the bills and staying with a sick child. Fewer people will rely on social services. A large percentage of low income and minority workers do not have paid family leave. The benefits are more than some employers can provide. A person earning a median wage will pay \$2 a week when the bill is fully implemented and the benefits are progressive. The bill will help keep seniors out of institutions. The benefit and the length of leave are sufficient to support caregivers of seniors, who face financial strain. Employers can use the wages of the person out on leave to pay for a replacement worker.

(Opposed) This bill would create the most generous and expensive leave in the nation. The full cost includes the costs of hiring replacement workers. The question should be how to help employees fund their leave, which is their issue, not the employers. A pared-down model like New York or California should be examined. The bill is a \$1 billion payroll tax. Small businesses are already dealing with paid sick leave and a minimum wage increase. An employer could provide disability leave, then the employee could take 26 weeks of leave and then an additional 12 weeks of leave.

(Other) Working toward a solution is supported. Since an employee could be out for nine months, the impact on small business needs to be considered.

**Persons Testifying:** (In support) Representative Robinson, prime sponsor; Robyn Rogers, American Academy of Pediatrics-Washington Chapter; Liz Mills, YMCA Seattle, King, Snohomish; Marilyn Watkins, Economic Opportunity Institute; and Joanna Grist, AARP, Incorporated.

(Opposed) Holli Johnson, Washington Food Industry Association; Carolyn Logue, Washington Retail Association; and Patrick Connor, National Federation of Independent Business.

(Other) Julia Gorton, Washington Hospitality Association; and Bob Battles, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** None.