

HOUSE BILL REPORT

ESSB 5097

As Reported by House Committee On:

Labor & Workplace Standards
Appropriations

Title: An act relating to expanding coverage of the paid family and medical leave program.

Brief Description: Expanding coverage of the paid family and medical leave program.

Sponsors: Senate Committee on Labor, Commerce & Tribal Affairs (originally sponsored by Senators Robinson, Conway, Darneille, Das, Hasegawa, Hunt, Keiser, Liias, Lovelett, Nguyen, Saldaña, Stanford, Van De Wege and Wilson, C.).

Brief History:

Committee Activity:

Labor & Workplace Standards: 3/16/21, 3/19/21 [DP];
Appropriations: 3/30/21, 3/31/21 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended By Committee)**

- Expands the definition of family member in the Paid Family and Medical Leave (PFML) program.
- Requires the Employment Security Department to collect and analyze data and submit reports to the Legislature with certain information regarding the PFML program.
- Requires the General Fund to cover certain additional leave expenses.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 4 members: Representatives Sells, Chair; Berry, Vice Chair; Bronoske and Ortiz-Self.

Minority Report: Do not pass. Signed by 3 members: Representatives Hoff, Ranking

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

Minority Member; Mosbrucker, Assistant Ranking Minority Member; Harris.

Staff: Lily Smith (786-7175).

Background:

General.

The Paid Family and Medical Leave (PFML) program provides partial wage replacement to employees on leave for specified family and medical reasons. It is funded through premiums paid by employers and employees. The Employment Security Department (ESD) administers the program. The PFML Advisory Committee provides comment on rules, policies, and other aspects of the program, and studies issues as it determines necessary.

A "family member" under the PFML program means a child, grandchild, grandparent, parent, sibling, or spouse.

An employer may opt-out of either the state program for family leave or medical leave, or both, by having a voluntary plan meeting specified standards.

Job Protection.

An employee returning from PFML leave is entitled to be restored to a same or equivalent job when the following applies:

- the employer has 50 or more employees;
- the employee has been with the employer for 12 months or more; and
- the employee has worked for the employer for at least 1,250 hours during the immediately preceding 12-month period.

Health Benefits.

An employer must maintain the existing health benefits of an employee during PFML leave when otherwise required by the federal Family and Medical Leave Act (FMLA).

The FMLA provides eligible employees with unpaid leave, and generally requires maintenance of health benefits during leave. The FMLA applies to employees meeting work duration requirements for public employers or for private employers with 50 or more employees.

Summary of Engrossed Substitute Bill:

General.

The definition of "family member" is expanded to include any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care.

Reporting Requirements.

The ESD must collaborate with the Advisory Committee to collect and analyze disaggregated data relating to employment protections under the PFML program.

By December 1, 2021, the ESD must submit a report to the Legislature with the following information:

- program utilization by employees covered under approved voluntary plans compared to employees covered under the state plan;
- program utilization by employees working for employers with 50 or more employees compared to employees working for employers with fewer than 50 employees;
- the number of employees who took leave from an employer and did not appear on that employer's subsequent quarterly premium reports after leave was completed; and
- the lengths of leave employees took for different purposes.

By June 30, 2022, and June 30, 2023, the ESD must submit a report to the Legislature with the following information:

- the number of individuals who used leave under the PFML program as a result of the amended definition of family member in the act; and
- the effects, if any on the Family and Medical Leave Insurance Account as a result of the amended definition of family member in the act.

Other.

If the number of individuals utilizing leave under the PFML program as a result of the amended definition of family member in the act exceeds 500 individuals in any calendar year before July 1, 2023, the expenses of the additional leave must be paid by the General Fund into the Family and Medical Leave Insurance Account.

Appropriation: None.

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) We need to do more to actually achieve equity in the PFML program and allow workers to access the benefits they have earned. This bill will help families be responsible for those closest to them. The additional flexibility is especially important for some communities, for blended families, and for those who have experienced divorce. It is important that the person providing care is someone that understands you. This bill will have a large impact on health, but a minimal impact on the PFML fund. The broader definition of "family member" has been used in other family policies for years, none of

which have seen an explosion in use. Data shows that family care leave is taken less frequently and is shorter, and those premiums are also fully paid by workers. Additional data gathered through the reporting provisions will help the Legislature with future policy decisions. Changes from the original bill mean that many will continue to have to risk their livelihoods to provide care.

(Opposed) None.

(Other) The existing PFML legislation was very carefully drafted after much work. The work has continued through negotiations on the Advisory Committee. The consideration should not just be about who is paying for the premiums, but also whether the program is meeting the needs and whether the fund is sufficiently protected so that it is actually available when needed. The changes to the bill are appreciated, but should be continued. Additional language has been provided regarding the family member definition, and the study requirements to ensure that they are useful for assessments. There is an issue with changes to the PFML program not being brought before the Advisory Committee, which works on these issues on a monthly basis.

Persons Testifying: (In support) Senator Robinson, prime sponsor; Marilyn Watkins, Economic Opportunity Institute; Natasha Fecteau, MomsRising; Grey Ellis; Joe Kendo, Washington State Labor Council, American Federation of Labor and Congress of Industrial Organizations; and Taylor Farley, LGBTQ Allyship.

(Other) Robert Battles, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 14 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Dye, Harris, Hoff, Jacobsen, Rude, Schmick and Steele.

Staff: Jordan Clarke (786-7123).

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

The Appropriations Committee recommended additional language specifying that the definition of a "family member" for PFML does not include an individual who resides in the employee's home with no expectation of care. The Appropriations Committee modified the requirement that the ESD collaborate with the PFML Advisory Committee on the data collection requirements to a requirement that the ESD develop the proposed plan for data collection in consultation with the PFML Advisory Committee. The Appropriations Committee removed requirements that the ESD include certain data on employee leave use and returns in the first required report to the Legislature, and also required the ESD to provide opportunity for members of the PFML Advisory Committee to provide comment in each required report to the Legislature.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The PFML program is an accomplishment, but changes are needed to make access to the program equitable. The changes in this bill will have a small impact on the PFML insurance account, as only a small increase in claims is anticipated, but they will have a large impact on workers. The expansion is particularly important to ensure access for families in the LGBTQ community and in Black, Indigenous, and people of color families. All families should have access to this leave when they need it. The federal government has included chosen family in leave programs for some time. Existing PFML use shows that family leave claims occur less frequently and are shorter than other types of leave claims.

(Opposed) None.

(Other) The remaining issue with this bill comes down to making sure the costs do not jeopardize the work done on the PFML program when it was negotiated. The fiduciary duty of maintaining the program should be taken seriously. An amendment may be requested to address the study requirements. The PFML program has only just begun, and in this first year it has been operating in the context of a pandemic.

Persons Testifying: (In support) Joe Kendo, Washington State Labor Council; and Maggie Humphreys, MomsRising.

(Other) Robert Battles, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.