
SUBSTITUTE HOUSE BILL 1073

State of Washington

67th Legislature

2021 Regular Session

By House Labor & Workplace Standards (originally sponsored by Representatives Berry, Wicks, Fitzgibbon, Bateman, Tharinger, Simmons, Kloba, Ramel, Ortiz-Self, Goodman, Ryu, Bronoske, Hackney, Chopp, Riccelli, Stonier, Frame, Macri, Davis, Pollet, Bergquist, and Harris-Talley)

READ FIRST TIME 02/10/21.

1 AN ACT Relating to expanding coverage of the paid family and
2 medical leave program; amending RCW 50A.05.010, 50A.15.010, and
3 50A.30.020; adding a new section to chapter 50A.15 RCW; creating new
4 sections; providing an effective date; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that many
7 workers who have paid into the paid family and medical leave
8 insurance program have suffered job losses, reductions in hours, or
9 an inability to reenter the workforce due to the effects of the
10 COVID-19 pandemic. These workers are unable to access their family
11 and medical leave benefits under the existing hours worked threshold
12 through no fault of their own.

13 (2) The legislature intends to temporarily adjust the qualifying
14 periods for these adversely impacted workers to restore access to
15 family and medical leave benefits.

16 (3) In the temporary adjustment of the qualifying period for
17 these workers, the legislature intends to prevent impacts to the
18 family and medical leave insurance account through the provision of
19 separate funding. In so doing, the legislature intends to avoid any
20 premium rate increases or the application of a solvency surcharge.

1 **Sec. 2.** RCW 50A.05.010 and 2020 c 125 s 1 are each amended to
2 read as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this title.

5 (1) (a) "Casual labor" means work that:

6 (i) Is performed infrequently and irregularly; and

7 (ii) If performed for an employer, does not promote or advance
8 the employer's customary trade or business.

9 (b) For purposes of casual labor:

10 (i) "Infrequently" means work performed twelve or fewer times per
11 calendar quarter; and

12 (ii) "Irregularly" means work performed not on a consistent
13 cadence.

14 (2) "Child" includes a biological, adopted, or foster child, a
15 stepchild, a child's spouse, or a child to whom the employee stands
16 in loco parentis, is a legal guardian, or is a de facto parent,
17 regardless of age or dependency status.

18 (3) "Commissioner" means the commissioner of the department or
19 the commissioner's designee.

20 (4) "Department" means the employment security department.

21 (5) (a) "Employee" means an individual who is in the employment of
22 an employer.

23 (b) "Employee" does not include employees of the United States of
24 America.

25 (6) "Employee's average weekly wage" means the quotient derived
26 by dividing the employee's total wages during the two quarters of the
27 employee's qualifying period in which total wages were highest by
28 twenty-six. If the result is not a multiple of one dollar, the
29 department must round the result to the next lower multiple of one
30 dollar.

31 (7) (a) "Employer" means: (i) Any individual or type of
32 organization, including any partnership, association, trust, estate,
33 joint stock company, insurance company, limited liability company, or
34 corporation, whether domestic or foreign, or the receiver, trustee in
35 bankruptcy, trustee, or the legal representative of a deceased
36 person, having any person in employment or, having become an
37 employer, has not ceased to be an employer as provided in this title;
38 (ii) the state, state institutions, and state agencies; and (iii) any
39 unit of local government including, but not limited to, a county,

1 city, town, municipal corporation, quasi-municipal corporation, or
2 political subdivision.

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

4 (8) (a) "Employment" means personal service, of whatever nature,
5 unlimited by the relationship of master and servant as known to the
6 common law or any other legal relationship performed for wages or
7 under any contract calling for the performance of personal services,
8 written or oral, express or implied. The term "employment" includes
9 an individual's entire service performed within or without or both
10 within and without this state, if:

11 (i) The service is localized in this state; or

12 (ii) The service is not localized in any state, but some of the
13 service is performed in this state; and

14 (A) The base of operations of the employee is in the state, or if
15 there is no base of operations, then the place from which such
16 service is directed or controlled is in this state; or

17 (B) The base of operations or place from which such service is
18 directed or controlled is not in any state in which some part of the
19 service is performed, but the individual's residence is in this
20 state.

21 (b) "Employment" does not include:

22 (i) Self-employed individuals;

23 (ii) Casual labor;

24 (iii) Services for remuneration when it is shown to the
25 satisfaction of the commissioner that:

26 (A) (I) Such individual has been and will continue to be free from
27 control or direction over the performance of such service, both under
28 his or her contract of service and in fact; and

29 (II) Such service is either outside the usual course of business
30 for which such service is performed, or that such service is
31 performed outside of all the places of business of the enterprises
32 for which such service is performed; and

33 (III) Such individual is customarily engaged in an independently
34 established trade, occupation, profession, or business, of the same
35 nature as that involved in the contract of service; or

36 (B) As a separate alternative:

37 (I) Such individual has been and will continue to be free from
38 control or direction over the performance of such service, both under
39 his or her contract of service and in fact; and

1 (II) Such service is either outside the usual course of business
2 for which such service is performed, or that such service is
3 performed outside of all the places of business of the enterprises
4 for which such service is performed, or the individual is
5 responsible, both under the contract and in fact, for the costs of
6 the principal place of business from which the service is performed;
7 and

8 (III) Such individual is customarily engaged in an independently
9 established trade, occupation, profession, or business, of the same
10 nature as that involved in the contract of service, or such
11 individual has a principal place of business for the work the
12 individual is conducting that is eligible for a business deduction
13 for federal income tax purposes; and

14 (IV) On the effective date of the contract of service, such
15 individual is responsible for filing at the next applicable filing
16 period, both under the contract of service and in fact, a schedule of
17 expenses with the internal revenue service for the type of business
18 the individual is conducting; and

19 (V) On the effective date of the contract of service, or within a
20 reasonable period after the effective date of the contract, such
21 individual has established an account with the department of revenue,
22 and other state agencies as required by the particular case, for the
23 business the individual is conducting for the payment of all state
24 taxes normally paid by employers and businesses and has registered
25 for and received a unified business identifier number from the state
26 of Washington; and

27 (VI) On the effective date of the contract of service, such
28 individual is maintaining a separate set of books or records that
29 reflect all items of income and expenses of the business which the
30 individual is conducting; or

31 (iv) Services that require registration under chapter 18.27 RCW
32 or licensing under chapter 19.28 RCW rendered by an individual when:

33 (A) The individual has been and will continue to be free from
34 control or direction over the performance of the service, both under
35 the contract of service and in fact;

36 (B) The service is either outside the usual course of business
37 for which the service is performed, or the service is performed
38 outside of all the places of business of the enterprise for which the
39 service is performed, or the individual is responsible, both under

1 the contract and in fact, for the costs of the principal place of
2 business from which the service is performed;

3 (C) The individual is customarily engaged in an independently
4 established trade, occupation, profession, or business, of the same
5 nature as that involved in the contract of service, or the individual
6 has a principal place of business for the business the individual is
7 conducting that is eligible for a business deduction for federal
8 income tax purposes, other than that furnished by the employer for
9 which the business has contracted to furnish services;

10 (D) On the effective date of the contract of service, the
11 individual is responsible for filing at the next applicable filing
12 period, both under the contract of service and in fact, a schedule of
13 expenses with the internal revenue service for the type of business
14 the individual is conducting;

15 (E) On the effective date of the contract of service, or within a
16 reasonable period after the effective date of the contract, the
17 individual has an active and valid certificate of registration with
18 the department of revenue, and an active and valid account with any
19 other state agencies as required by the particular case, for the
20 business the individual is conducting for the payment of all state
21 taxes normally paid by employers and businesses and has registered
22 for and received a unified business identifier number from the state
23 of Washington;

24 (F) On the effective date of the contract of service, the
25 individual is maintaining a separate set of books or records that
26 reflect all items of income and expenses of the business that the
27 individual is conducting; and

28 (G) On the effective date of the contract of service, the
29 individual has a valid contractor registration pursuant to chapter
30 18.27 RCW or an electrical contractor license pursuant to chapter
31 19.28 RCW.

32 (9) "Employment benefits" means all benefits provided or made
33 available to employees by an employer, including group life
34 insurance, health insurance, disability insurance, sick leave, annual
35 leave, educational benefits, and pensions.

36 (10) "Family leave" means any leave taken by an employee from
37 work:

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

1 (b) To bond with the employee's child during the first twelve
2 months after the child's birth, or the first twelve months after the
3 placement of a child under the age of eighteen with the employee; or

4 (c) Because of any qualifying exigency as permitted under the
5 federal family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(E)
6 and 29 C.F.R. Sec. 825.126(b)(1) through (9), as they existed on
7 October 19, 2017, for family members as defined in subsection
8 (~~(10)~~) (11) of this section.

9 (11) "Family member" means a child, grandchild, grandparent,
10 parent, sibling, or spouse of an employee, and also includes any
11 individual who regularly resides in the employee's home or where the
12 relationship creates an expectation that the employee care for the
13 person, and that individual depends on the employee for care.

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

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

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

22 (15) "Medical leave" means any leave taken by an employee from
23 work made necessary by the employee's own serious health condition.

24 (16) "Paid time off" includes vacation leave, personal leave,
25 medical leave, sick leave, compensatory leave, or any other paid
26 leave offered by an employer under the employer's established policy.

27 (17) "Parent" means the biological, adoptive, de facto, or foster
28 parent, stepparent, or legal guardian of an employee or the
29 employee's spouse, or an individual who stood in loco parentis to an
30 employee when the employee was a child.

31 (18) "Period of incapacity" means an inability to work, attend
32 school, or perform other regular daily activities because of a
33 serious health condition, treatment of that condition or recovery
34 from it, or subsequent treatment in connection with such inpatient
35 care.

36 (19) "Premium" or "premiums" means the payments required by RCW
37 50A.10.030 and paid to the department for deposit in the family and
38 medical leave insurance account under RCW 50A.05.070.

39 (20) "Qualifying period" means the first four of the last five
40 completed calendar quarters or, if eligibility is not established,

1 the last four completed calendar quarters immediately preceding the
2 application for leave.

3 (21)(a) "Remuneration" means all compensation paid for personal
4 services including commissions and bonuses and the cash value of all
5 compensation paid in any medium other than cash.

6 (b) Previously accrued compensation, other than severance pay or
7 payments received pursuant to plant closure agreements, when assigned
8 to a specific period of time by virtue of a collective bargaining
9 agreement, individual employment contract, customary trade practice,
10 or request of the individual compensated, is considered remuneration
11 for the period to which it is assigned. Assignment clearly occurs
12 when the compensation serves to make the individual eligible for all
13 regular fringe benefits for the period to which the compensation is
14 assigned.

15 (c) Remuneration also includes settlements or other proceeds
16 received by an individual as a result of a negotiated settlement for
17 termination of an individual written employment contract prior to its
18 expiration date. The proceeds are deemed assigned in the same
19 intervals and in the same amount for each interval as compensation
20 was allocated under the contract.

21 (d) Remuneration does not include:

22 (i) The payment of tips;

23 (ii) Supplemental benefit payments made by an employer to an
24 employee in addition to any paid family or medical leave benefits
25 received by the employee; or

26 (iii) Payments to members of the armed forces of the United
27 States, including the organized militia of the state of Washington,
28 for the performance of duty for periods not exceeding seventy-two
29 hours at a time.

30 (22)(a) "Serious health condition" means an illness, injury,
31 impairment, or physical or mental condition that involves:

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

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

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

1 (I) Treatment two or more times, within thirty days of the first
2 day of incapacity, unless extenuating circumstances exist, by a
3 health care provider, by a nurse or physician's assistant under
4 direct supervision of a health care provider, or by a provider of
5 health care services, such as a physical therapist, under orders of,
6 or on referral by, a health care provider; or

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

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

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

15 (I) Requires periodic visits, defined as at least twice a year,
16 for treatment by a health care provider, or by a nurse under direct
17 supervision of a health care provider;

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

20 (III) May cause episodic rather than a continuing period of
21 incapacity, including asthma, diabetes, and epilepsy;

22 (D) A period of incapacity which is permanent or long term due to
23 a condition for which treatment may not be effective. The employee or
24 family member must be under the continuing supervision of, but need
25 not be receiving active treatment by, a health care provider,
26 including Alzheimer's, a severe stroke, or the terminal stages of a
27 disease; or

28 (E) Any period of absence to receive multiple treatments,
29 including any period of recovery from the treatments, by a health
30 care provider or by a provider of health care services under orders
31 of, or on referral by, a health care provider, either for: (I)
32 Restorative surgery after an accident or other injury; or (II) a
33 condition that would likely result in a period of incapacity of more
34 than three consecutive, full calendar days in the absence of medical
35 intervention or treatment, such as cancer, severe arthritis, or
36 kidney disease.

37 (b) The requirement in (a)(i) and (ii) of this subsection for
38 treatment by a health care provider means an in-person visit to a
39 health care provider. The first, or only, in-person treatment visit
40 must take place within seven days of the first day of incapacity.

1 (c) Whether additional treatment visits or a regimen of
2 continuing treatment is necessary within the thirty-day period shall
3 be determined by the health care provider.

4 (d) The term extenuating circumstances in (a)(ii)(A)(I) of this
5 subsection means circumstances beyond the employee's control that
6 prevent the follow-up visit from occurring as planned by the health
7 care provider. Whether a given set of circumstances are extenuating
8 depends on the facts. For example, extenuating circumstances exist if
9 a health care provider determines that a second in-person visit is
10 needed within the thirty-day period, but the health care provider
11 does not have any available appointments during that time period.

12 (e) Treatment for purposes of (a) of this subsection includes,
13 but is not limited to, examinations to determine if a serious health
14 condition exists and evaluations of the condition. Treatment does not
15 include routine physical examinations, eye examinations, or dental
16 examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of
17 continuing treatment includes, but is not limited to, a course of
18 prescription medication, such as an antibiotic, or therapy requiring
19 special equipment to resolve or alleviate the health condition, such
20 as oxygen. A regimen of continuing treatment that includes taking
21 over-the-counter medications, such as aspirin, antihistamines, or
22 salves, or bed rest, drinking fluids, exercise, and other similar
23 activities that can be initiated without a visit to a health care
24 provider, is not, by itself, sufficient to constitute a regimen of
25 continuing treatment for purposes of this title.

26 (f) Conditions for which cosmetic treatments are administered,
27 such as most treatments for acne or plastic surgery, are not serious
28 health conditions unless inpatient hospital care is required or
29 unless complications develop. Ordinarily, unless complications arise,
30 the common cold, the flu, ear aches, upset stomach, minor ulcers,
31 headaches other than migraines, routine dental or orthodontia
32 problems, and periodontal disease are examples of conditions that are
33 not serious health conditions and do not qualify for leave under this
34 title. Restorative dental or plastic surgery after an injury or
35 removal of cancerous growths are serious health conditions provided
36 all the other conditions of this section are met. Mental illness
37 resulting from stress or allergies may be serious health conditions,
38 but only if all the conditions of this section are met.

39 (g)(i) Substance abuse may be a serious health condition if the
40 conditions of this section are met. However, leave may only be taken

1 for treatment for substance abuse by a health care provider or by a
2 licensed substance abuse treatment provider. Absence because of the
3 employee's use of the substance, rather than for treatment, does not
4 qualify for leave under this title.

5 (ii) Treatment for substance abuse does not prevent an employer
6 from taking employment action against an employee. The employer may
7 not take action against the employee because the employee has
8 exercised his or her right to take medical leave for treatment.
9 However, if the employer has an established policy, applied in a
10 nondiscriminatory manner that has been communicated to all employees,
11 that provides under certain circumstances an employee may be
12 terminated for substance abuse, pursuant to that policy the employee
13 may be terminated whether or not the employee is presently taking
14 medical leave. An employee may also take family leave to care for a
15 covered family member who is receiving treatment for substance abuse.
16 The employer may not take action against an employee who is providing
17 care for a covered family member receiving treatment for substance
18 abuse.

19 (h) Absences attributable to incapacity under (a)(ii)(B) or (C)
20 of this subsection qualify for leave under this title even though the
21 employee or the family member does not receive treatment from a
22 health care provider during the absence, and even if the absence does
23 not last more than three consecutive, full calendar days. For
24 example, an employee with asthma may be unable to report for work due
25 to the onset of an asthma attack or because the employee's health
26 care provider has advised the employee to stay home when the pollen
27 count exceeds a certain level. An employee who is pregnant may be
28 unable to report to work because of severe morning sickness.

29 (23) "Service is localized in this state" has the same meaning as
30 described in RCW 50.04.120.

31 (24) "Spouse" means a husband or wife, as the case may be, or
32 state registered domestic partner.

33 (25) "State average weekly wage" means the most recent average
34 weekly wage calculated under RCW 50.04.355 and available on January
35 1st of each year.

36 (26) "Supplemental benefit payments" means payments made by an
37 employer to an employee as salary continuation or as paid time off.
38 Such payments must be in addition to any paid family or medical leave
39 benefits the employee is receiving.

40 (27) "Typical workweek hours" means:

1 (a) For an hourly employee, the average number of hours worked
2 per week by an employee within the qualifying period; and

3 (b) Forty hours for a salaried employee, regardless of the number
4 of hours the salaried employee typically works.

5 (28) "Wage" or "wages" means:

6 (a) For the purpose of premium assessment, the remuneration paid
7 by an employer to an employee. The maximum wages subject to a premium
8 assessment are those wages as set by the commissioner under RCW
9 50A.10.030;

10 (b) For the purpose of payment of benefits, the remuneration paid
11 by one or more employers to an employee for employment during the
12 employee's qualifying period. At the request of an employee, wages
13 may be calculated on the basis of remuneration payable. The
14 department shall notify each employee that wages are calculated on
15 the basis of remuneration paid, but at the employee's request a
16 redetermination may be performed and based on remuneration payable;
17 and

18 (c) For the purpose of a self-employed person electing coverage
19 under RCW 50A.10.010, the meaning is defined by rule.

20 **Sec. 3.** RCW 50A.15.010 and 2019 c 13 s 2 are each amended to
21 read as follows:

22 (~~Employees~~) Except as provided in section 4 of this act,
23 employees are eligible for family and medical leave benefits as
24 provided in this title after working for at least eight hundred
25 twenty hours in employment during the qualifying period.

26 NEW SECTION. **Sec. 4.** A new section is added to chapter 50A.15
27 RCW to read as follows:

28 (1) For claims with an effective start date of January 1, 2021
29 through June 30, 2022, employees that do not meet the hours worked
30 threshold for eligibility under RCW 50A.15.010 or 50A.30.020(1) in
31 calendar year 2020 or the first calendar quarter of 2021 are eligible
32 for family and medical leave benefits as provided under subsection
33 (2) of this section.

34 (2) An employee seeking eligibility under this section may use
35 one of the following alternate qualifying periods:

36 (a) Eight hundred twenty hours worked in employment during the
37 first through fourth calendar quarters of 2019;

1 (b) If the employee does not meet the hours worked threshold
2 under (a) of this subsection, 820 hours worked in employment during
3 the second through fourth calendar quarters of 2019 and first
4 calendar quarter of 2020; or

5 (c) If the employee does not meet the hours worked threshold
6 under (a) or (b) of this subsection, 520 hours worked in the first
7 calendar quarter of 2020.

8 (3)(a) Subsections (1) and (2) of this section do not apply to an
9 employee who does not meet the hours worked threshold for eligibility
10 under RCW 50A.15.010 or 50A.30.020(1) because of an employment
11 separation due to misconduct or a voluntary separation unrelated to
12 the COVID-19 pandemic.

13 (b) An employee seeking eligibility under this section must
14 attest, in a manner prescribed by the department, that their failure
15 to meet the hours worked threshold for eligibility under RCW
16 50A.15.010 or 50A.30.020(1) is not due to the reasons specified in
17 (a) of this subsection.

18 (4) For purposes of determining their weekly benefit amount under
19 RCW 50A.15.020(4), the average weekly wage of an employee qualifying
20 for benefits under subsection (2)(c) of this section is the quotient
21 derived by dividing the employee's total wages during the first
22 calendar quarter of 2020 by 13. If the result is not a multiple of
23 \$1, the department must round to the next lower multiple of \$1.

24 **Sec. 5.** RCW 50A.30.020 and 2019 c 13 s 57 are each amended to
25 read as follows:

26 (1) ~~((Fe))~~ Except as provided in section 4 of this act, to be
27 eligible for any family and medical leave, an employee must be in
28 employment for eight hundred twenty hours during the qualifying
29 period, by an employer with a voluntary plan or an employer utilizing
30 the state family and medical leave plan. An employee qualifies for
31 benefits under an employer's voluntary plan after the employee works
32 at least three hundred forty hours for the current employer.

33 (2) An employer with an approved voluntary plan may waive the
34 requirements in subsection (1) of this section, in whole or in part,
35 to allow an employee to be immediately eligible for coverage under
36 the employer's voluntary plan.

37 (3) An employee who had coverage under the state plan retains
38 coverage under the state plan until such time as the employee is
39 qualified for coverage under the new employer's voluntary plan.

1 (4) An employee who was eligible for benefits under a voluntary
2 plan is immediately eligible for benefits under a new employer's
3 voluntary plan.

4 NEW SECTION. **Sec. 6.** If specific funding for the purposes of
5 this act, referencing this act by bill or chapter number, is not
6 provided by June 30, 2021, in the omnibus appropriations act, this
7 act is null and void.

8 NEW SECTION. **Sec. 7.** Section 2 of this act takes effect
9 September 1, 2021.

10 NEW SECTION. **Sec. 8.** Sections 1, 3, 4, and 5 of this act are
11 necessary for the immediate preservation of the public peace, health,
12 or safety, or support of the state government and its existing public
13 institutions, and take effect immediately.

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