

# HOUSE BILL REPORT

## HB 1658

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**As Reported by House Committee On:**  
Commerce & Labor

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

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

**Sponsors:** Representatives Dickerson, Conway, Hankins, Appleton, Green, Hurst, Campbell, Moeller, Wood, McCoy, Hasegawa, Ormsby, Sells, Roberts, Williams, Chase, Kagi, Santos, Cody, Simpson and Darneille.

**Brief History:**

**Committee Activity:**

Commerce & Labor: 2/6/07, 2/23/07 [DPS].

### Brief Summary of Substitute Bill

- Establishes the family and medical leave insurance program.
- Provides for payment of benefits of \$250 per week for up to five weeks to individuals on family and medical leave.
- Provides for assessment of premiums of 2 cents per hour worked per individual.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Condotta, Ranking Minority Member and Chandler, Assistant Ranking Minority Member.

**Staff:** Jill Reinmuth (786-7134).

**Background:**

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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.*

Federal and state laws provide that certain employees are entitled to unpaid family and medical leave.

Federal Law: Under the federal Family and Medical Leave Act, eligible employees are entitled to take up to 12 weeks of unpaid leave in a 12-month period for specified family and medical reasons, and to be reinstated to their original jobs or equivalent jobs. An eligible employee is one who: (1) works for a covered employer; and (2) has worked for the same employer for at least 12 months, and for at least 1,250 hours over the previous 12 months. An eligible employee is not one who works at a location at which the employer employs less than 50 employees if the total number employed within 75 miles of that worksite is less than 50. A covered employer is a private employer that had 50 or more employees in at least 20 weeks of the current or preceding year.

Leave may be taken for: (1) the birth and care of a child of the employee; (2) the placement of a child with the employee for adoption or foster care; (3) the care of an immediate family member who has a serious health condition; or (4) the serious health condition of the employee that makes the employee unable to work.

State Law: The state Family Leave Law generally conforms to federal law and related regulations, with certain exceptions. Upon returning from leave, eligible employees are entitled to be returned to workplaces within 20 miles of their original workplaces. Employees are also entitled to leave for sickness or temporary disability related to pregnancy or childbirth in addition to leave under federal law. Employers must allow employees to continue their health coverage at their own expense during leave.

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

A new partial wage replacement program, the Family and Medical Leave Insurance Program, is established. Beginning on July 1, 2009, benefits of \$250 per week for up to five weeks are paid to individuals who are unable to perform their regular or customary work because they are on family and medical leave. Premiums of 2 cents per hour worked per individual are assessed. Employers are required to pay the premiums, and are authorized to retain the premiums from earnings. The program is administered by the Department of Labor and Industries (Department).

Family and Medical Leave: "Family and medical leave" means leave as defined and described in the state Family Leave Law for: (1) the birth or placement of a child; (2) a family member's serious health condition; or (3) the employee's serious health condition. "Family member" means the individual's child, spouse or domestic partner, or parent.

Eligibility: An individual is eligible to receive benefits if he or she has worked 680 hours in employment covered by unemployment compensation during either the first four of the last five calendar quarters or the last four calendar quarters completed before beginning family and medical leave. An employer or a self-employed person not mandatorily covered may elect coverage.

Other Requirements: If leave is foreseeable, the individual is required to provide notice of leave in the same manner required under the state Family Leave Law.

Disqualification: An individual is disqualified from receiving benefits if the individual made false statements to obtain benefits or, with respect to leave for the employee's own serious health condition, if the condition resulted from perpetration of a gross misdemeanor or felony.

Other Leave and/or Compensation: An employer may require an individual who is receiving benefits to take the leave concurrently with leave under federal, state, or local law, with certain exceptions. An employer may not require an individual to exhaust paid leave or disability insurance before receiving benefits. An individual may elect when he or she uses paid leave. An individual may not increase the amount of leave to which the individual is entitled under the federal Family and Medical Leave Act and other laws by "tacking on" any leave to which the individual is entitled under the Family and Medical Leave Insurance Program. An individual may not receive benefits while entitled to certain workers' compensation, unemployment compensation, crime victims' compensation, or disability insurance benefits.

Amount: Initially, the amount of the weekly benefit is \$250 for an individual who was regularly working 35 or more hours per week and is on leave for the same number of hours. Benefits are prorated for an individual who was regularly working less than 35 hours per week, and for an individual who is on leave for fewer hours per week than he or she was regularly working. Each year thereafter, the amount of the weekly benefit is adjusted for inflation by the Department. The individual's weekly benefit may not exceed the individual's average weekly wage.

Duration: An individual is entitled to receive benefits for a maximum of five weeks in an application year. Spouses and domestic partners employed by the same employer are entitled to receive benefits for an aggregate maximum of five weeks if leave is taken for the birth or placement of a child or for a parent's serious health condition.

Reinstatement: An individual is entitled to be restored to a position of employment in the same manner as an employee entitled to leave under the state Family Leave Law is restored to a position of employment. However, the individual must have worked for the same employer for at least 12 months, and for at least 1,250 hours over the previous 12 months. An employer may deny restoration to a key employee in the same circumstances and the same manner specified in the state Family Leave Law.

Premiums: Beginning on January 1, 2009, an employer is required to pay premiums, and is authorized to retain premiums from earnings. Initially the premium is 2 cents per hour worked per individual. Every year thereafter, the amount of the premium is adjusted by the Department to ensure that it is at the lowest rate necessary to pay benefits and administrative costs, and maintain actuarial solvency of the program on a current basis.

Penalties: An individual who receives benefits erroneously or as a result of willful misrepresentation must repay the benefits and may be subject to penalties. An employer that fails to make reports or pay premiums required by the Department is subject to sanctions, including penalties, interest, and collection procedures.

Confidentiality: Information in an employee's record is not subject to public disclosure, but an employer may review the records of its employee in connection with a pending claim. Information that the Department obtains from employers' records for administration of the Family and Medical Leave Insurance Program is not subject to public disclosure.

Discrimination: An employer or other person may not discriminate against a person for filing a claim for benefits, communicating an intent to file a claim, or testifying or assisting in a proceeding related to a family and medical leave insurance.

Dedicated Account: A dedicated account is established. Premiums and penalties are paid into and benefits are paid out of the account.

Loan: If necessary, the director of the Department may make one loan of funds from the Supplemental Pension Fund to the Family and Medical Leave Insurance Account. The loaned funds are for the purposes of administering the Family and Medical Leave Insurance Program and paying family and medical leave insurance benefits. The loaned funds must be repaid, with interest, from the Family and Medical Leave Insurance Account to the Supplemental Pension Fund within 12 months of the loan. The authority to make a loan expires 13 months after the date of the loan.

Reports: Beginning on September 1, 2010, and annually thereafter, the Department must report to the Legislature on program participation, premium rates, fund balances, and outreach efforts.

#### **Substitute Bill Compared to Original Bill:**

Benefits: Benefits are payable to an individual only during a period in which the individual is unable to perform his or her regular or customary work because he or she is on leave. An individual regularly working 35 hours (instead of 40 hours) or more per week may receive the maximum weekly benefit. An individual's weekly benefit may not exceed the individual's average weekly wage. Spouses and domestic partners employed by the same employer are entitled to a maximum of five weeks of leave if leave is taken for the birth or placement of a child or for a parent's serious health condition. Notice of leave and restoration to employment, including the exception for key employees, are the same as under the state Family Leave Law. Leave for sickness or temporary disability because of pregnancy or childbirth is not in addition to leave under federal or state family and medical leave laws.

Financing: Appropriations are required for administrative expenses, but not benefit payments. The State Investment Board is directed to invest excess funds in the Family and Medical Leave Insurance Account. The Family and Medical Leave Insurance Account retains interest earnings. Only one loan from the Supplemental Pension Fund to the Family and Medical Leave Insurance Account is authorized.

Other: Start-up dates are changed. Provisions describing relationship with other laws, agreements, and policies are reorganized in one section. Other technical changes are made.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Too many parents must choose between family and work. They cannot afford to take leave to bond with a new baby or recover from a serious illness. That is when family and medical leave insurance comes in. Full-time employees pay about \$40 per year, and receive \$250 per week for up to five weeks. If you value families, find a way to support this bill.

Similar benefits for temporary disabilities have been available for decades in California, New Jersey, Rhode Island, Hawaii, and New York. Paid family leave has been available for a few years in California. There is no reason to think the sky will fall. The economies of these states are excellent.

Recent trends show the importance of this issue. More than 80 percent of women have children by age 44, and 100 percent of them have parents. More than 70 percent of women are in the workforce. Only four of 168 countries do not have paid leave. Besides the United States, they are Papua New Guinea, Swaziland, and Lesotho. The United States currently ranks 37th in infant mortality. Paid leave reduces infant mortality by 20 percent. Countries with family-friendly policies have less of a wage gap. Paid leave reduces the wage gap.

Paid leave is a personal issue for me. When I had my first child, I had to quit my job and was on welfare for three months. When I had my second child, I planned to take four weeks of maternity leave (two and one-half weeks of paid leave and one and one-half weeks of unpaid leave). But then my son was born six weeks early. I decided to take leave when my son could come home from the hospital, so just days after giving birth I was back at work. No one should be forced to make the choice that I had to make.

My parents were hit with two catastrophic illnesses. My brothers and I knew the day would come when my father would ask us to care for him. Working during the last 3 months of his life was hard. Working during the last two weeks was the hardest. This benefit would have helped during that time.

The research on early learning shows how important early bonding with children is. It impacts how they learn and develop, and establishes an important foundation for the future.

This is an economical program, and it is the right thing to do. We supported this bill when funding was split between employers and employees, and we support it now too. We need this for the sandwich generation that is caring for their parents and their children. It is more cost-effective to reinstate an employee than to hire a new one, especially with the expense of retraining.

Retention is the key for our small, family-oriented store and for businesses like ours. When our employees need leave, we work with our employees closely. Paid family leave makes sense for our business.

This bill is supported by a coalition of 50 organizations.

We are pleased that there is not a referendum clause on this bill.

(Opposed) No one doubts the value of family leave or its importance to society. The key problem is that this bill doesn't work.

We support paid leave and provide it to our employees. A state-run program is not necessary or feasible. We have a full-time leave administrator who can be flexible and help our employees. A program administered by the Department of Labor and Industries cannot be flexible, and will result in more paperwork and other burdens.

We are also concerned about how these benefits would be coordinated. It is not clear whether employees can use benefits concurrently. It could increase their total time away from work. It could undermine return-to-work programs and productivity. We also do not believe these benefits are financially feasible.

This bill is ambiguous, inconsistent, and technically flawed. It would add to confusion over family leave. It is not clear whether leave and benefits may be taken concurrently, or whether they may be taken intermittently. It appears that employees could double dip. The bill uses a different definition of family member than other laws, and doesn't contain a key person exception. It is a fallacy that employees will pay. Only required deductions may be made. Permissive deductions, like this one, require consent from the employee. Small businesses are punished, because there is no exemption for them. Some needs, like chemotherapy treatments, would not be covered. This bill hurts those who work for more generous employers, as well as those who never avail themselves of leave.

A "one size fits all" program like this does not work. Job protection for small businesses does not work. The funding mechanism wouldn't cover program growth.

Ninety-six percent of small businesses oppose this bill. Seventy-five percent of small businesses provide some benefit to replace lost income, either through a disability plan or another means.

This bill would decrease flexibility and increase cost. It would make it harder for small businesses to work with their employees.

Paid family leave sounds good, but we urge you to be cautious. This entitlement program would be costly and burdensome. It would be paid for by all, but benefit only a few. It is troubling that the sponsor doesn't know how much the program would cost. It would take 31 full-time workers to support one worker who takes leave.

**Persons Testifying:** (In support) Representative Dickerson, prime sponsor; Kristin Rowe-Finkbeiner, MomsRising.org; Selena Allen; Sean O'Sullivan, Association of Western Pulp and

Paper Workers; Dr. Jill Sells, Docs for Tots - Washington State; Dolores Gohndrone, Hallmark Services; Mike Radice, Greenwood Hardware; Bruce Reeves, Senior Lobby; and Marilyn Watkins, Economic Opportunity Institute.

(Opposed) Kris Tefft, Association of Washington Business; Mari Schwab, Fred Hutchinson Cancer Research Center; Stephanie Pickett, K&L Gates; Vicki Marin, Washington Retail Association; Carolyn Logue and Betty Neighbors, National Federation of Independent Business; and Rick Anderson, Sakuma Brothers Farms.

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