

SENATE BILL No. 364

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-4.1-28.

Synopsis: Paid family and medical leave program. Requires the department of workforce development (department) to establish a paid family and medical leave program (program) to provide payments for employees who take family and medical leave. Establishes the family and medical leave fund to be funded with appropriations from the general assembly and payroll contributions. Specifies requirements for the administration of the program. Provides for the department to approve an employer's use of a private plan to meet the program obligations.

Effective: July 1, 2023.

Pol Jr.

January 12, 2023, read first time and referred to Committee on Pensions and Labor.



First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

SENATE BILL No. 364

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-4.1-28 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]:

4 **Chapter 28. Paid Family and Medical Leave Program**
5 **Sec. 1. As used in this chapter, "act" refers to the federal Family**
6 **and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.) as in effect**
7 **on July 1, 2023.**

8 **Sec. 2. As used in this chapter, "application year" is the twelve**
9 **(12) month period beginning on the first day of the calendar week**
10 **during which an individual files an application for program**
11 **benefits.**

12 **Sec. 3. As used in this chapter, "benefit payments" means**
13 **payments to a covered individual under the program.**

14 **Sec. 4. As used in this chapter, "commissioner" refers to the**
15 **commissioner of the department appointed under IC 22-4.1-3-1.**

16 **Sec. 5. As used in this chapter, "covered individual" means an**
17 **individual who:**



1 (1) is eligible for program benefit payments under section 21
2 of this chapter; and

3 (2) meets the application and other administrative
4 requirements of this chapter.

5 **Sec. 6. As used in this chapter, "covered service member"**
6 **means one (1) of the following:**

7 (1) A member of the armed forces of the United States or their
8 reserves, including a member of the National Guard or
9 reserves, who is:

10 (A) undergoing medical treatment, recuperation, or
11 therapy;

12 (B) otherwise in outpatient status; or

13 (C) otherwise on the temporary disability retired list;

14 for a serious injury or illness that was incurred by the
15 member in the line of duty on active duty in the armed forces,
16 or a serious injury or illness that existed before the beginning
17 of the member's active duty and was aggravated by service in
18 the line of duty on active duty in the armed forces.

19 (2) A former member of the armed forces of the United States
20 or their reserves, including a former member of the National
21 Guard or reserves, who is undergoing medical treatment,
22 recuperation, or therapy for a serious injury or illness that
23 was incurred by the member in the line of duty on active duty
24 in the armed forces, or a serious injury or illness that existed
25 before the beginning of the member's active duty and was
26 aggravated by service in the line of duty on active duty in the
27 armed forces and manifested before or after the member was
28 discharged or released from service.

29 **Sec. 7. As used in this chapter, "department" refers to the**
30 **department of workforce development established by**
31 **IC 22-4.1-2-1.**

32 **Sec. 8. As used in this chapter, "employee" means an individual**
33 **who works directly for an employer under an express or implied**
34 **contract of hire.**

35 **Sec. 9. As used in this chapter, "employer" has the meaning set**
36 **forth in IC 6-3-1-5. The term includes the following:**

37 (1) The state (as defined in IC 5-23-2-16).

38 (2) A political subdivision (as defined in IC 4-2-6-1).

39 **Sec. 10. As used in this chapter, "family member", with respect**
40 **to a covered individual, means the following:**

41 (1) A:

42 (A) biological, adopted, or foster child;



- 1 **(B) stepchild; or**
 2 **(C) legal ward;**
 3 **of the covered individual, regardless of age.**
 4 **(2) A:**
 5 **(A) biological, adoptive, or foster parent;**
 6 **(B) stepparent; or**
 7 **(C) legal guardian;**
 8 **of the covered individual or the covered individual's spouse.**
 9 **(3) An individual to whom the covered individual is legally**
 10 **married under the laws of any state.**
 11 **(4) A:**
 12 **(A) grandparent;**
 13 **(B) stepgrandparent;**
 14 **(C) biological, adoptive, or foster grandchild;**
 15 **(D) stepgrandchild;**
 16 **(E) biological, adoptive, or foster sibling; or**
 17 **(F) stepsibling;**
 18 **of the covered individual or the covered individual's spouse.**
 19 **Sec. 11. As used in this chapter, "fund" refers to the family and**
 20 **medical leave fund established by section 19 of this chapter.**
 21 **Sec. 12. As used in this chapter, "health care provider" means**
 22 **a person licensed under federal or state law to provide medical or**
 23 **emergency services, including a doctor, nurse, emergency room**
 24 **personnel, or certified midwife.**
 25 **Sec. 13. As used in this chapter, "next of kin" has the meaning**
 26 **set forth in 29 U.S.C. 2611(17).**
 27 **Sec. 14. As used in this chapter, "program" refers to the paid**
 28 **family and medical leave program established under section 17 of**
 29 **this chapter.**
 30 **Sec. 15. As used in this chapter, "qualifying exigency leave"**
 31 **means leave for a need arising from a covered individual's family**
 32 **member's active duty service or notice of an impending call or**
 33 **order to active duty in the armed forces of the United States,**
 34 **including:**
 35 **(1) providing for the care or other needs of the military**
 36 **member's child or other family member;**
 37 **(2) making financial or legal arrangements for the military**
 38 **member;**
 39 **(3) attending counseling;**
 40 **(4) attending military events or ceremonies;**
 41 **(5) spending time with the military member during a rest and**
 42 **recuperation leave or following return from deployment; or**



- 1 (6) making arrangements following the death of the military
2 member.
- 3 **Sec. 16.** As used in this chapter, "serious health condition" has
4 the meaning set forth in 29 U.S.C. 2611(11).
- 5 **Sec. 17. (a)** Not later than January 1, 2025, the department shall
6 establish and administer a paid family and medical leave program
7 through which a covered individual may receive benefit payments
8 as described in section 21 of this chapter.
- 9 **(b)** The department shall do the following:
- 10 **(1)** Establish reasonable procedures and forms for filing:
- 11 **(A)** employer and employee payroll contributions to the
12 fund under section 20 of this chapter; and
- 13 **(B)** claims for program benefits.
- 14 **(2)** Specify necessary documentation to support a claim for
15 program benefits, including any documentation required
16 from a health care provider for proof of a serious health
17 condition.
- 18 **(3)** Notify the employer of an individual who applies for
19 program benefits not more than five (5) business days after a
20 claim for program benefits is filed.
- 21 **(4)** Use information sharing and integration technology to
22 facilitate the disclosure of relevant information or records, as
23 consented to by the individual under state law.
- 24 **(5)** Adopt rules under IC 4-22-2 to implement this chapter.
- 25 **Sec. 18. (a)** Information concerning an individual described in
26 this chapter is confidential and may be used only for the purposes
27 of this chapter.
- 28 **(b)** An individual described in subsection (a) or an authorized
29 representative of the individual may review and receive
30 information described in subsection (a) upon the presentation of
31 the individual's signed authorization.
- 32 **Sec. 19. (a)** The family and medical leave fund is established for
33 the purpose of providing family and medical leave program benefit
34 payments to covered individuals. The fund shall be administered
35 by the department.
- 36 **(b)** The fund consists of appropriations from the general
37 assembly and payroll contributions under section 20 of this
38 chapter.
- 39 **(c)** The expenses of administering the fund shall be paid from
40 money in the fund.
- 41 **(d)** The treasurer of state shall invest the money in the fund not
42 currently needed to meet the obligations of the fund in the same



1 manner as other public money may be invested. Interest that
2 accrues from these investments shall be deposited in the fund.

3 (e) Money in the fund at the end of a state fiscal year does not
4 revert to the state general fund.

5 (f) Money in the fund is continually appropriated for the
6 purpose of funding the program.

7 **Sec. 20. (a)** The department shall annually determine the
8 amount of payroll contributions necessary to finance program
9 benefits.

10 (b) Employers shall make contributions to the fund in an
11 amount determined under subsection (a), not to exceed
12 seven-tenths of one percent (0.7%) of an employee's wage in a
13 twelve (12) month period. Employers may deduct up to fifty
14 percent (50%) of the contributions determined under subsection
15 (a) from the employee's wages.

16 **Sec. 21.** An individual is eligible for program benefit payments
17 if the individual:

18 (1) either:

19 (A) earned at least six thousand three hundred dollars
20 (\$6,300) from at least one (1) employer during the twelve
21 (12) month period immediately preceding the date on
22 which the individual submits an application for program
23 benefits; or

24 (B) is self-employed and elected to participate in the
25 program under section 27 of this chapter; and

26 (2) is described in at least one (1) of the following:

27 (A) Is caring for a child during the first year after the
28 birth, adoption, or foster care placement of the child.

29 (B) Is caring for a family member with a serious health
30 condition.

31 (C) Has a serious health condition or pregnancy that
32 makes the individual unable to perform the functions of
33 the employment position described in subdivision (1).

34 (D) Is caring for a covered service member who is the
35 individual's next of kin.

36 (E) Is eligible for qualifying exigency leave.

37 (F) Is subject to a state of emergency that affects the
38 individual's ability to perform the functions of the
39 employment position described in subdivision (1).

40 **Sec. 22.** Beginning July 1, 2025, the department shall make
41 program benefit payments available to an individual who:

42 (1) is eligible under section 21 of this chapter; and



- 1 (2) applies for program benefits under this chapter.
- 2 **Sec. 23. (a)** A covered individual may receive program benefit
- 3 payments for not more than twelve (12) weeks during an
- 4 application year.
- 5 (b) A covered individual may not receive program benefit
- 6 payments for less than eight (8) hours of family and medical leave
- 7 taken in one (1) work week.
- 8 **Sec. 24. (a)** Subject to subsection (b), the weekly program
- 9 benefit for family and medical leave is determined as follows:
- 10 (1) If the covered individual's average weekly wage is not
- 11 more than fifty percent (50%) of the state average weekly
- 12 wage, the employee's weekly benefit is ninety percent (90%)
- 13 of the covered individual's average weekly wage.
- 14 (2) If the covered individual's average weekly wage is greater
- 15 than fifty percent (50%) of the state average weekly wage, the
- 16 covered individual's weekly benefit is the sum of:
- 17 (A) ninety percent (90%) of the covered individual's
- 18 average weekly wage up to fifty percent (50%) of the state
- 19 average weekly wage; plus
- 20 (B) fifty percent (50%) of the covered individual's average
- 21 weekly wage that is greater than fifty percent (50%) of the
- 22 state average weekly wage.
- 23 (b) The maximum weekly program benefit payment is an
- 24 amount equal to the state average weekly wage.
- 25 **Sec. 25. (a)** A covered individual may take paid family and
- 26 medical leave on an intermittent or reduced leave schedule under
- 27 which all of the leave is not taken sequentially.
- 28 (b) Program benefit payments for an intermittent or reduced
- 29 leave schedule must be prorated accordingly.
- 30 (c) A covered individual shall do the following:
- 31 (1) Make a reasonable effort to schedule paid family and
- 32 medical leave so as not to unduly disrupt the operations of the
- 33 employer.
- 34 (2) To the extent practicable, provide to the employer prior
- 35 notice of the schedule on which the covered individual will
- 36 take the family and medical leave.
- 37 (d) The total amount of paid family and medical leave available
- 38 to a covered individual under this chapter is not reduced beyond
- 39 the actual amount of paid family and medical leave taken under
- 40 this section.
- 41 (e) This section does not entitle a covered individual to receive
- 42 more paid family and medical leave than the amount of family and



1 medical leave specified in section 23(a) of this chapter.

2 **Sec. 26. (a) An employer shall:**

3 (1) upon hiring;

4 (2) upon an employee's leave request;

5 (3) when the employer acquires knowledge that an employee's
6 leave may be qualifying exigency leave; and

7 (4) annually;

8 provide to the employee written notice as described in subsection
9 (b).

10 (b) Notice required by subsection (a) must include the following:

11 (1) Notice of the employee's right to program benefits and the
12 terms under which family and medical leave may be used.

13 (2) The amount of program benefit payments to which the
14 employee would be entitled.

15 (3) The procedure for filing a claim for program benefits.

16 (4) That discrimination and retaliatory personnel actions
17 against an employee for requesting, applying for, or using
18 program benefits are prohibited.

19 (5) That the employee has a right to file a complaint for
20 violations of this chapter.

21 (c) An employer shall display and maintain a poster in a
22 conspicuous place accessible to employees at the employer's place
23 of business that contains the information required by this section.

24 (d) The commissioner may adopt rules under IC 4-22-2
25 to establish additional requirements concerning the means by which
26 employers distribute the notice required by this section.

27 **Sec. 27. (a) An individual who is self-employed, including a sole
28 proprietor, partner, or joint venturer, may elect to participate in
29 the program for an initial period of not less than three (3) years.**

30 (b) An individual who is self-employed as described in
31 subsection (a) shall file a notice of election in writing with the
32 commissioner, including all information required by the
33 department.

34 (c) A notice of election filed under subsection (b) is effective on
35 the date on which the notice is filed.

36 (d) An individual who is self-employed and who has elected to
37 participate in the program under this chapter may withdraw from
38 participation by filing a notice of withdrawal:

39 (1) not later than thirty (30) days after the end of the three (3)
40 year period described in subsection (a); or

41 (2) at other times provided by the commissioner.

42 A withdrawal under this subsection takes effect not earlier than



1 thirty (30) days after the notice of withdrawal is filed.

2 **Sec. 28. (a) A person that:**

- 3 (1) interferes with;
 4 (2) restrains;
 5 (3) denies; or
 6 (4) attempts to deny;

7 the exercise of a provision of this chapter violates this chapter.

8 (b) An employer, temporary help company, employment agency,
 9 employee organization, or other person shall not take retaliatory
 10 personnel action or otherwise discriminate against an individual
 11 because the individual does any of the following:

- 12 (1) Requests, files for, applies for, or uses program benefits.
 13 (2) Communicates to the person or another person an intent
 14 to file a claim, a complaint with the department, a court
 15 action, or an appeal concerning program benefits.
 16 (3) Testifies, intends to testify, or assists in an investigation,
 17 hearing, or proceeding concerning program benefits.
 18 (4) Informs a person concerning an employer's alleged
 19 violation of this chapter.

20 (5) Informs a person of the person's rights under this chapter.

21 (c) An employer's absence policy may not count paid family and
 22 medical leave taken under this chapter as an absence that may lead
 23 to or result in discipline, discharge, demotion, suspension, or
 24 another adverse employment action.

25 (d) The protections of this section apply to an individual who in
 26 good faith alleges a violation of this chapter, regardless of whether
 27 the allegation is mistaken.

28 (e) The civil rights commission created by IC 22-9-1-4 shall
 29 enforce this section.

30 **Sec. 29. Paid family and medical leave taken under this chapter**
 31 **that also qualifies as leave under the act runs concurrently with**
 32 **leave taken under the act.**

33 **Sec. 30. (a) An individual's right to program benefit payments**
 34 **under this chapter may not be diminished by:**

- 35 (1) a collective bargaining agreement that is entered into or
 36 renewed; or
 37 (2) an employer policy adopted or retained;

38 after June 30, 2023.

39 (b) An agreement by an individual to waive the individual's
 40 rights under this chapter is void as against public policy.

41 **Sec. 31. An individual's eligibility for program benefits under**
 42 **this chapter does not entitle the individual to job protection beyond**



1 the job protection required by the act.

2 **Sec. 32. (a) This chapter does not do the following:**

3 (1) **Supersede or diminish an employer's obligation to comply**
 4 **with an employer policy, law, or collective bargaining**
 5 **agreement that provides greater or additional rights to leave**
 6 **than provided in this chapter.**

7 (2) **Curtail the rights, privileges, or remedies of an employee**
 8 **under a collective bargaining agreement or employment**
 9 **contract.**

10 (3) **Allow an employer to compel an employee to exhaust**
 11 **rights to sick, vacation, or personal time before or while**
 12 **taking leave under this chapter.**

13 (b) **An employer may require that benefit payments under this**
 14 **chapter be made concurrently or otherwise coordinated with**
 15 **payment made or leave allowed under the terms of disability or**
 16 **family care leave under a collective bargaining agreement or**
 17 **employer policy such that the employee will receive the greater of**
 18 **the various benefits that are available for the covered reason.**

19 (c) **Leave provided under a collective bargaining agreement or**
 20 **employer policy that is used by the employee for a covered reason**
 21 **and paid at the same or higher rate than leave available under this**
 22 **chapter counts against the allotment of leave available under this**
 23 **chapter.**

24 (d) **An employer shall give each employee written notice of the**
 25 **requirements of this section.**

26 **Sec. 33. (a) The department shall establish a process for**
 27 **approving a private plan to be used by the employer to meet the**
 28 **employer's obligations under this chapter.**

29 (b) **An employer may apply to the department for approval of**
 30 **a private plan described in subsection (a).**

31 (c) **The department may approve an employer's private plan**
 32 **described in subsection (a) if the department determines that the**
 33 **private plan confers all of the same rights, protections, and benefits**
 34 **provided to employees under this chapter, including the following:**

35 (1) **Providing paid family and medical leave to a covered**
 36 **individual for the reasons set forth in section 21 of this**
 37 **chapter, for the maximum number of weeks specified in**
 38 **section 23 of this chapter, in a benefit year.**

39 (2) **Providing a wage replacement rate during all family and**
 40 **medical leave at least equal to the amount required by section**
 41 **24 of this chapter.**

42 (3) **Imposing no additional conditions or restrictions on the**



1 use of paid family and medical leave beyond the conditions or
2 restrictions explicitly authorized by this chapter or rules
3 adopted under this chapter.
4 (4) Allowing an employee covered under the private plan who
5 is eligible to take paid family and medical leave under this
6 chapter to take paid family and medical leave under the
7 private plan.
8 Sec. 34. The department shall conduct a public education
9 campaign to inform employees and employers regarding the
10 availability of paid family and medical leave program benefits.
11 Sec. 35. The department may use state data collection and
12 technology to the extent possible and integrate the program with
13 existing state policies.
14 Sec. 36. The department shall annually report to the:
15 (1) legislative council in an electronic format under IC 5-14-6;
16 and
17 (2) budget committee;
18 concerning projected and actual program participation,
19 categorized by purpose of the leave, gender of employees taking
20 leave, employer and employee contributions, fund balances,
21 outreach efforts, and family members for whom leave was taken to
22 provide care.

