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SENATE BILL 5149

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State of Washington

65th Legislature

2017 Regular Session

By Senators Fain, Hobbs, Braun, Palumbo, Baumgartner, Warnick, Walsh, Miloscia, Zeiger, and Rivers

1 AN ACT Relating to paid family leave; amending RCW 49.78.010,  
2 49.78.020, 49.78.090, 49.78.220, 49.78.230, 49.78.250, 49.78.260,  
3 49.78.270, 49.78.280, 49.78.290, 49.78.300, 49.78.310, 49.78.330,  
4 49.78.340, 49.78.350, 49.78.360, 49.78.390, and 49.78.400; adding a  
5 new chapter to Title 50 RCW; recodifying RCW 49.78.010, 49.78.020,  
6 49.78.090, 49.78.220, 49.78.230, 49.78.240, 49.78.250, 49.78.260,  
7 49.78.270, 49.78.280, 49.78.290, 49.78.300, 49.78.310, 49.78.320,  
8 49.78.330, 49.78.340, 49.78.350, 49.78.360, 49.78.370, 49.78.380,  
9 49.78.390, 49.78.400, 49.78.410, 49.78.901, and 49.78.904; repealing  
10 RCW 49.78.240, 49.86.005, 49.86.010, 49.86.020, 49.86.030, 49.86.040,  
11 49.86.050, 49.86.060, 49.86.070, 49.86.080, 49.86.090, 49.86.100,  
12 49.86.110, 49.86.120, 49.86.130, 49.86.140, 49.86.150, 49.86.160,  
13 49.86.170, 49.86.180, 49.86.210, 49.86.902, and 49.86.903; and  
14 providing an effective date.

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

16 **Sec. 1.** RCW 49.78.010 and 2006 c 59 s 1 are each amended to read  
17 as follows:

18 The legislature finds that the demands of the workplace and of  
19 families need to be balanced to promote family stability and economic  
20 security. Workplace leave policies are desirable to accommodate  
21 changes in the workforce such as rising numbers of dual-career

1 couples, working single parents, and an aging population. In  
2 addition, given the mobility of American society, many people no  
3 longer have available community or family support networks and  
4 therefore need additional flexibility in the workplace. The  
5 legislature declares it to be in the public interest to provide  
6 reasonable paid family leave for medical reasons, for the birth or  
7 placement of a child for adoption or foster care with the employee,  
8 ~~((and))~~ for the care of a family member who has a serious health  
9 condition, and for a qualifying exigency under the federal family and  
10 medical leave act.

11 **Sec. 2.** RCW 49.78.020 and 2009 c 521 s 135 are each amended to  
12 read as follows:

13 Unless the context clearly requires otherwise, the definitions in  
14 this section apply throughout this chapter.

15 (1) "A day of family leave" means any day which the employee uses  
16 for family leave and for which the employee has not received his or  
17 her regular remuneration.

18 (2) "Child" means a biological, adopted, or foster child, a  
19 stepchild, a legal ward, a child of a state registered domestic  
20 partner, or a child of a person standing in loco parentis, who is:  
21 (a) Under eighteen years of age; or (b) eighteen years of age or  
22 older and incapable of self-care because of a mental or physical  
23 disability.

24 ~~((2))~~ (3) "Commissioner" means the commissioner of the  
25 department or the commissioner's designee.

26 (4) "Department" means the employment security department ~~((of~~  
27 ~~labor and industries))~~.

28 ~~((3) "Director" means the director of the department.~~

29 ~~(4)(a))~~ (5) "Employee" means a person who ~~((has been employed:~~  
30 ~~(i) For at least twelve months by the employer with respect to whom~~  
31 ~~leave is requested under RCW 49.78.220; and (ii) for at least one~~  
32 ~~thousand two hundred fifty hours of service with the employer during~~  
33 ~~the previous twelve-month period.~~

34 ~~(b) "Employee" does not mean a person who is employed at a~~  
35 ~~worksite at which the employer as defined in (a) of this subsection~~  
36 ~~employs less than fifty employees if the total number of employees~~  
37 ~~employed by that employer within seventy five miles of that worksite~~  
38 ~~is less than fifty)) is in the employment of a covered employer for~~  
39 twenty-six or more consecutive weeks and a person in employment

1 during the work period usual to and available during such twenty-six  
2 or more consecutive weeks in any trade or business in which they are  
3 regularly employed and in which hiring from day to day of such  
4 employees is the usual employment practice. An employee also includes  
5 a person who is regularly in the employment of a single employer, on  
6 a work schedule less than the employer's normal workweek, who shall  
7 become eligible for paid family leave benefits on the one hundred  
8 seventy-fifth day of such regular employment. Where the context so  
9 dictates, the term "employee" may also include an employer for those  
10 employers who are eligible for the family leave benefits specified in  
11 this chapter.

12 ~~((+5))~~ (6) "Employer" means: (a) ((Any person, firm,  
13 corporation, partnership, business trust, legal representative, or  
14 other business entity which engages in any business, industry,  
15 profession, or activity in this state and includes any unit of local  
16 government including, but not limited to, a county, city, town,  
17 municipal corporation, quasi-municipal corporation, or political  
18 subdivision, which employs fifty or more employees for each working  
19 day during each of twenty or more calendar workweeks in the current  
20 or preceding calendar year)) The same as in RCW 50.04.080; (b) the  
21 state, state institutions, and state agencies; and (c) any unit of  
22 local government including, but not limited to, a county, city, town,  
23 municipal corporation, quasi-municipal corporation, or political  
24 subdivision.

25 ~~((+6))~~ (7) "Employment" has the meaning provided in RCW  
26 50.04.100.

27 (8) "Employment benefits" means all benefits provided or made  
28 available to employees by an employer, including group life  
29 insurance, health insurance, disability insurance, sick leave, annual  
30 leave, educational benefits, and pensions except benefits that are  
31 provided by a practice or written policy of an employer or through an  
32 employee benefit plan as defined in 29 U.S.C. Sec. 1002(3).

33 ~~((+7))~~ (9) "Family leave" means any leave taken by an employee  
34 from work:

35 (a) Made necessary by the employee's own serious health  
36 condition;

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

1 (c) 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 the child for adoption or foster care with the employee;  
4 or

5 (d) Because of any qualifying exigency as interpreted under the  
6 family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(e) and 29  
7 C.F.R. Sec. 825.126(a)(1) through (8), arising out of the fact that  
8 the spouse, state registered domestic partner, child, or parent of  
9 the employee is on active duty or has been notified of an impending  
10 call or order to active duty in the armed forces of the United  
11 States.

12 (10) "Family member" means a child, parent, grandparent,  
13 grandchild, spouse, or state registered domestic partner of an  
14 employee.

15 ~~((+8))~~ (11) "Grandchild" means a child of the employee's child.

16 (12) "Grandparent" means a parent of the employee's parent.

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

23 ~~((+9))~~ (14) "Intermittent leave" is leave taken in separate  
24 blocks of time due to a single qualifying reason.

25 ~~((10))~~ ~~"Leave for a family member's serious health condition"~~  
26 ~~means leave as described in RCW 49.78.220(1)(c).~~

27 ~~(11)~~ ~~"Leave for the birth or placement of a child" means leave as~~  
28 ~~described in RCW 49.78.220(1) (a) or (b).~~

29 ~~(12)~~ ~~"Leave for the employee's serious health condition" means~~  
30 ~~leave as described in RCW 49.78.220(1)(d).~~

31 ~~(13))~~ (15) "Parent" means the biological, foster, or adoptive  
32 parent ~~((of an employee))~~, a parent-in-law, a step parent, a legal  
33 guardian, or an individual who stood in loco parentis to an employee  
34 when the employee was a child.

35 ~~((14))~~ (16) "Period of incapacity" means an inability to work,  
36 attend school, or perform other regular daily activities because of  
37 the serious health condition, treatment of that condition or recovery  
38 from it, or subsequent treatment in connection with such inpatient  
39 care.

1       (~~(15)~~) (17) "Reduced leave schedule" means a leave schedule  
2 that reduces the usual number of hours per workweek, or hours per  
3 workday, of an employee.

4       (~~(16)~~) (18)(a) "Serious health condition" means an illness,  
5 injury, impairment, or physical or mental condition that involves:

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

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

11       (A) A period of incapacity of more than three consecutive  
12 calendar days, and any subsequent treatment or period of incapacity  
13 relating to the same condition, that also involves:

14       (I) Treatment two or more times by a health care provider, by a  
15 nurse or physician's assistant under direct supervision of a health  
16 care provider, or by a provider of health care services under orders  
17 of, or on referral by, a health care provider; or

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

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

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

26       (I) Requires periodic visits for treatment by a health care  
27 provider, or by a nurse or physician's assistant under direct  
28 supervision of a health care provider;

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

31       (III) May cause episodic rather than a continuing period of  
32 incapacity;

33       (D) A period of incapacity which is permanent or long-term due to  
34 a condition for which treatment may not be effective. The employee or  
35 family member must be under the continuing supervision of, but need  
36 not be receiving active treatment by, a health care provider; or

37       (E) Any period of absence to receive multiple treatments,  
38 including any period of recovery from the treatments, by a health  
39 care provider or by a provider of health care services under orders  
40 of, or on referral by, a health care provider, either for restorative

1 surgery after an accident or other injury, or for a condition that  
2 would likely result in a period of incapacity of more than three  
3 consecutive calendar days in the absence of medical intervention or  
4 treatment, such as cancer, severe arthritis, or kidney disease.

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

19 (c) Conditions for which cosmetic treatments are administered are  
20 not "serious health conditions" unless inpatient hospital care is  
21 required or unless complications develop. Unless complications arise,  
22 the common cold, the flu, ear aches, upset stomach, minor ulcers,  
23 headaches other than migraine, routine dental or orthodontia  
24 problems, and periodontal disease are examples of conditions that do  
25 not meet the definition of a "serious health condition" and do not  
26 qualify for leave under this chapter. Restorative dental or plastic  
27 surgery after an injury or removal of cancerous growths are serious  
28 health conditions provided all the other conditions of this section  
29 are met. Mental illness resulting from stress or allergies may be  
30 serious health conditions provided all the other conditions of this  
31 section are met.

32 (d) Substance abuse may be a serious health condition if the  
33 conditions of this section are met. However, leave may only be taken  
34 for treatment for substance abuse by a health care provider or by a  
35 provider of health care services upon referral by a health care  
36 provider. Absence from work because of the employee's use of the  
37 substance, rather than for treatment, does not qualify for leave  
38 under this chapter.

39 (e) Absences attributable to incapacity under (a)(ii)(B) or (C)  
40 of this subsection qualify for leave under this chapter even though

1 the employee or the immediate family member does not receive  
2 treatment from a health care provider during the absence, and even if  
3 the absence does not last more than three days.

4 ~~((17))~~ (19) "Spouse" means a husband or wife, as the case may  
5 be, or state registered domestic partner.

6 NEW SECTION. **Sec. 3.** (1) Employees are eligible for family  
7 leave benefits as provided in this chapter. Every such employee  
8 continues to be eligible for family leave benefits only during  
9 employment with a covered employer.

10 (2) In addition, every such employee who has previously completed  
11 twenty-six or more consecutive weeks in employment with the covered  
12 employer for purposes of paid family leave, and returns to work with  
13 the same employer after an agreed and specified unpaid leave of  
14 absence or vacation without pay becomes eligible for benefits  
15 immediately with respect to such employment.

16 **Sec. 4.** RCW 49.78.090 and 1989 1st ex.s. c 11 s 9 are each  
17 amended to read as follows:

18 The employment security department (~~of labor and industries~~)  
19 shall administer the provisions of this chapter.

20 **Sec. 5.** RCW 49.78.220 and 2006 c 59 s 3 are each amended to read  
21 as follows:

22 (1) Subject to RCW 49.78.260 (as recodified by this act), an  
23 employee is entitled to a total of twelve workweeks of paid family  
24 leave as defined in RCW 49.78.020 (as recodified by this act), or the  
25 maximum duration as set forth in section 7 of this act, during any  
26 twelve-month period (~~for one or more of the following~~:

27 ~~(a) Because of the birth of a child of the employee and in order~~  
28 ~~to care for the child;~~

29 ~~(b) Because of the placement of a child with the employee for~~  
30 ~~adoption or foster care;~~

31 ~~(c) In order to care for a family member of the employee, if the~~  
32 ~~family member has a serious health condition; or~~

33 ~~(d) Because of a serious health condition that makes the employee~~  
34 ~~unable to perform the functions of the position of the employee)).~~

35 (2) The entitlement to leave for the birth or placement of a  
36 child expires at the end of the twelve-month period beginning on the  
37 date of such birth or placement.

1        NEW SECTION.    **Sec. 6.**    (1) An employee is not entitled to family  
2 leave benefits under this chapter:

3        (a) For more than twelve weeks during a period of fifty-two  
4 consecutive calendar weeks, or for any period in which the family  
5 leave combined with the disability benefits previously paid exceeds  
6 twenty-six weeks during the same fifty-two consecutive calendar  
7 weeks;

8        (b) For any period of family leave wherein the notice and medical  
9 certification as prescribed by the commissioner has not been filed.  
10 This also includes any period during which a family leave care  
11 recipient fails to submit to a physical examination as may be  
12 required under RCW 49.78.270(8) (as recodified by this act);

13        (c) For any absence occasioned by the willful intention of the  
14 employee to bring about injury to or the sickness of himself or  
15 another, or resulting from any injury or sickness sustained in the  
16 perpetration by the employee of an illegal act;

17        (d) For any day of family leave during which the employee  
18 performed work for remuneration or profit;

19        (e) For any day of family leave for which the employee is  
20 entitled to receive from his or her employer, or from a fund to which  
21 the employer has contributed, remuneration or maintenance in an  
22 amount equal to or greater than that to which he or she would be  
23 entitled under this chapter; but any voluntary contribution or aid  
24 which an employer may make to an employee or any supplementary  
25 benefit paid to an employee pursuant to the provisions of a  
26 collective bargaining agreement or from a trust fund to which  
27 contributions are made pursuant to the provisions of a collective  
28 bargaining agreement is not considered as continued remuneration or  
29 maintenance for this purpose;

30        (f) For any period in respect to which such employee is subject  
31 to suspension or disqualification of the accumulation of unemployment  
32 insurance benefit rights, or would be subject if he or she were  
33 eligible for such benefit rights, except for ineligibility resulting  
34 from the employee's disability;

35        (g) For any family leave commencing before the employee becomes  
36 eligible to benefits under this chapter;

37        (h) For an employee who is not employed or is on administrative  
38 leave from his or her employment;

39        (i) For an employee during periods where the employee is  
40 collecting sick pay or paid time off from the employer; or



1 (j) For any day in which family leave care recipient works at  
2 least part of that day for remuneration or profit for the covered  
3 employer or for any other employer while working for remuneration or  
4 profit, for him or herself, or another person or entity, during the  
5 same or substantially similar working hours as those of the covered  
6 employer from which family leave benefits are claimed, except that  
7 occasional scheduling adjustments with respect to secondary  
8 employments shall not prevent receipt of family leave benefits.

9 (2) As a condition of an employee's initial receipt of family  
10 leave benefits during any fifty-two consecutive calendar weeks in  
11 which an employee is eligible for these benefits, an employer may  
12 offer an employee who has accrued but unused vacation time or  
13 personal leave available at the time of use of available family leave  
14 to choose whether to charge all or part of the family leave time to  
15 accrued but unused vacation or personal leave, and receive full  
16 salary, or to not charge time to accrued but unused vacation or  
17 personal leave, and receive the benefit as set forth in section 7 of  
18 this act.

19 (3) During periods when the employee is receiving total  
20 disability payments pursuant to a claim for workers' compensation  
21 benefits, except that when the employee is receiving payments for  
22 partial disability or reduced earnings under such laws, the family  
23 leave benefit, when combined with the benefits under such laws shall  
24 not exceed the average weekly wage in the employment for which family  
25 leave benefits are sought.

26 NEW SECTION. **Sec. 7.** (1) Family leave benefits are payable to  
27 an eligible employee for the first full day when family leave is  
28 required and thereafter during the continuance of the need for family  
29 leave, subject to the limitations as to maximum and minimum amounts  
30 and duration and other conditions and limitations established in this  
31 chapter. Successive periods of family leave caused by the same or  
32 related injury or sickness are deemed a single period of family leave  
33 only if separated by less than three months.

34 (2) The weekly benefit for family leave that occurs:

35 (a) On or after January 1, 2020, shall not exceed eight weeks  
36 during any fifty-two week calendar period and shall be fifty percent  
37 of the employee's average weekly wage but shall not exceed fifty  
38 percent of the state average weekly wage;

1 (b) On or after January 1, 2021, shall not exceed ten weeks  
2 during any fifty-two week calendar period and shall be fifty-five  
3 percent of the employee's average weekly wage but shall not exceed  
4 fifty-five percent of the state average weekly wage;

5 (c) On or after January 1, 2022, shall not exceed ten weeks  
6 during any fifty-two week calendar period and shall be sixty percent  
7 of the employee's average weekly wage but shall not exceed sixty  
8 percent of the state average weekly wage; and

9 (d) On or after January 1st of each succeeding year, shall not  
10 exceed twelve weeks during any fifty-two week calendar period and  
11 shall be sixty-seven percent of the employee's average weekly wage  
12 but shall not exceed sixty-seven percent of the Washington state  
13 average weekly wage in effect.

14 (3)(a) The commissioner has the discretion to delay the increases  
15 in the family leave benefit level provided in subsection (2)(b), (c),  
16 and (d) of this section by one or more calendar years. In determining  
17 whether to delay the increase in the family leave benefit for any  
18 year, the commissioner shall consider:

19 (i) The current cost to employees of the family leave benefit and  
20 any expected change in the cost after the benefit increase;

21 (ii) The impact of the benefit increase on employers' business  
22 and the overall stability of the program to the extent that  
23 information is readily available;

24 (iii) The impact of the benefit increase on the financial  
25 stability of the program; and

26 (iv) Any additional factors that the commissioner deems relevant.

27 (b) If the commissioner delays the increase in the family leave  
28 benefit level for one or more calendar years, the family leave  
29 benefit level that takes effect immediately following the delay is  
30 the same benefit level that would have taken effect but for the  
31 delay.

32 (4) The weekly benefits for family leave that occurs on or after  
33 January 1, 2020, shall not be less than one hundred dollars per week  
34 except that if the employee's wages at the time of family leave are  
35 less than one hundred dollars per week, the employee shall receive  
36 his or her full wages.

37 (5) Subject to RCW 49.78.230(3) (as recodified by this act),  
38 benefits may be payable to employees for paid family leave taken  
39 intermittently or for less than a full workweek.

1        NEW SECTION.    **Sec. 8.**    Benefits provided under this chapter shall  
2 be paid periodically and promptly and, except as to a contested  
3 period of family leave. The first payment of benefits shall be due on  
4 the fourteenth day of family leave and benefits for that period shall  
5 be paid directly to the employee within four business days thereafter  
6 or within four business days after the filing of required proof of  
7 claim, whichever is the later. If the employer rejects an initial  
8 claim for family leave benefits, the employer or carrier must notify  
9 the employee in a manner prescribed by the commissioner within  
10 eighteen days of filing of the proof of claim. Failure to timely  
11 reject shall constitute a waiver of objection to the family leave  
12 claim. Thereafter benefits shall be due and payable biweekly,  
13 bimonthly, or monthly if wages were so paid. Any inquiry which  
14 requires the employee's response in order to continue benefits  
15 uninterrupted or unmodified shall provide a reasonable time period in  
16 which to respond and include a clear and prominent statement of the  
17 deadline for responding and consequences of failing to respond.

18        NEW SECTION.    **Sec. 9.**    (1) Every employee in the employment of a  
19 covered employer shall contribute to the cost of providing family  
20 leave benefits under this chapter, to the extent and in the manner  
21 provided in this section.

22        (2) On June 1, 2019, and annually thereafter on September 1st,  
23 the commissioner shall set the maximum employee contribution, using  
24 sound actuarial principles.

25        (3) An employer is not required to fund any portion of the family  
26 leave benefit.

27        (4) The employer is authorized to collect from his or her  
28 employees the contribution provided under this section, through  
29 payroll deductions.

30        (5) In collecting employee contributions through payroll  
31 deductions, the employer shall act as the agent of his or her  
32 employees and shall use the contributions only to provide family  
33 leave benefits as required by this chapter. In no event may the  
34 employee's annual contribution for family leave exceed his or her per  
35 capita share of the actual annual premium charged for the same year  
36 and must be determined consistent with the principle that employees  
37 should pay the total costs of family leave premium.

38        (6) Contributions shall be made in the manner and at such  
39 intervals as provided in this chapter and directed by the department,

1 and the employer shall deposit the employee's contributions in the  
2 family leave insurance account.

3 NEW SECTION. **Sec. 10.** (1) An employer of employees not covered  
4 by this chapter or a self-employed person, including a sole  
5 proprietor, partner, or joint venturer, may elect coverage under this  
6 chapter for all its employees for an initial period of not less than  
7 three years or a subsequent period of not less than one year  
8 immediately following another period of coverage. The employer or  
9 self-employed person must file a notice of election in writing with  
10 the commissioner, as required by the department. The election becomes  
11 effective on the date of filing the notice with the commissioner.

12 (2) An employer or self-employed person who has elected coverage  
13 may withdraw from coverage within thirty days after the end of the  
14 three-year period of coverage, or at such other times as the  
15 commissioner may adopt by rule, by filing a notice of withdrawal in  
16 writing with the commissioner, such withdrawal to take effect not  
17 sooner than thirty days after filing the notice with the  
18 commissioner. Within five days of filing written notice of the  
19 withdrawal with the commissioner, an employer must provide written  
20 notice of the withdrawal to all its employees.

21 (3) The department may cancel elective coverage if the employer  
22 or self-employed person fails to make required payments or reports.  
23 The department may collect due and unpaid premiums and may levy an  
24 additional premium for the remainder of the period of coverage. The  
25 cancellation shall be effective no later than thirty days from the  
26 date of the notice in writing advising the employer or self-employed  
27 person of the cancellation. Within five days of receiving written  
28 notice of the cancellation from the commissioner, an employer must  
29 provide written notice of the cancellation to all its employees.

30 NEW SECTION. **Sec. 11.** (1) For purposes of this section, "public  
31 employee" means any employee of the state, any political subdivision  
32 of the state, a public authority or any other governmental agency or  
33 instrumentality. "Public employer" means the state, any political  
34 subdivision of the state, a public authority or any other  
35 governmental agency or instrumentality thereof. "Employee  
36 organization" means any lawful association, labor organization,  
37 union, federation, council, or brotherhood, having as its primary

1 purpose the representation of employees on matters of employment  
2 relations.

3 (2) Public employers shall provide benefits for family leave to  
4 public employees in accordance with the procedures and terms set  
5 forth in subsection (3) of this section.

6 (3)(a) An employee organization may, pursuant to collective  
7 bargaining, opt-in to paid family leave benefits on behalf of those  
8 public employees it is either certified or recognized to represent.  
9 This section does not prohibit an agreement to opt-in to paid family  
10 leave between the employee organization and any public employer. An  
11 employee organization that has opted in to paid family leave benefits  
12 may, pursuant to collective bargaining, opt-out of it as is mutually  
13 agreed upon between the employee organization and any public  
14 employer.

15 (b) For public employees who are not represented by an employee  
16 organization, the public employer may opt-in to paid family leave  
17 benefits within ninety days' notice to such public employees.  
18 Following opt-in by a public employer for public employees not  
19 represented by an employee organization, the public employer may opt-  
20 out of paid family leave benefits with twelve months' notice to those  
21 public employees.

22 (4) In the absence of any contrary statement in a collectively  
23 negotiated agreement, a public employer may require public employees  
24 who opt-in under this section to provide the maximum employee  
25 contribution, as defined in section 9(2) of this act.

26 **Sec. 12.** RCW 49.78.230 and 2006 c 59 s 4 are each amended to  
27 read as follows:

28 (1)(a) When leave is taken after the birth or placement of a  
29 child for adoption or foster care, an employee may take leave  
30 intermittently or on a reduced leave schedule with the employer's  
31 agreement. The employer's agreement is not required, however, for  
32 leave during which the employee has a serious health condition in  
33 connection with the birth of a child or if the newborn child has a  
34 serious health condition.

35 (b) Leave may be taken intermittently or on a reduced leave  
36 schedule when medically necessary for medical treatment of a serious  
37 health condition by or under the supervision of a health care  
38 provider, or for recovery from treatment or recovery from a serious  
39 health condition. It may also be taken to provide care or

1 psychological comfort to an immediate family member with a serious  
2 health condition.

3 (i) Intermittent leave may be taken for a serious health  
4 condition that requires treatment by a health care provider  
5 periodically, rather than for one continuous period of time, and may  
6 include leave of periods from (~~(an hour or more)~~) one day to several  
7 weeks.

8 (ii) Intermittent or reduced schedule leave may be taken for  
9 absences where the employee or family member is incapacitated or  
10 unable to perform the essential functions of the position because of  
11 a chronic serious health condition even if he or she does not receive  
12 treatment by a health care provider.

13 (~~(There is no limit on the size of an increment of leave)~~)  
14 When an employee takes intermittent leave or leave on a reduced leave  
15 schedule(~~(. However, an employer may limit leave increments to the~~  
16 shortest period of time that the employer's payroll system uses to  
17 account for absences or use of leave, provided it is one hour or  
18 less)) the leave must be in an increment of one day of the employee's  
19 regularly scheduled employment.

20 (d) The taking of leave intermittently or on a reduced leave  
21 schedule under this section may not result in a reduction in the  
22 total amount of leave to which the employee is entitled under RCW  
23 49.78.220 (as recodified by this act) beyond the amount of leave  
24 actually taken.

25 (2) If an employee requests intermittent leave, or leave on a  
26 reduced leave schedule, for a family member's serious health  
27 condition or the employee's serious health condition when the  
28 condition is foreseeable based on planned medical treatment, the  
29 employer may require such employee to transfer temporarily to an  
30 available alternative position offered by the employer for which the  
31 employee is qualified and that:

32 (a) Has equivalent pay and benefits; and

33 (b) Better accommodates recurring periods of leave than the  
34 regular employment position of the employee.

35 (3) An employee who uses intermittent leave or leave on a reduced  
36 leave schedule as provided in this section may be eligible to use the  
37 sick leave or other paid time off as provided in RCW 49.12.270. An  
38 employee electing to use the benefits that may be available under RCW  
39 49.12.270 may not collect benefits payable under this chapter for the  
40 same period of time.

1       **Sec. 13.** RCW 49.78.250 and 2006 c 59 s 6 are each amended to  
2 read as follows:

3       (1) If the necessity for leave for the birth or placement of a  
4 child for adoption or foster care with the employee is foreseeable  
5 based on an expected birth or placement, the employee shall provide  
6 the employer with not less than thirty days' notice, before the date  
7 the leave is to begin, of the employee's intention to take leave for  
8 the birth or placement of a child, except that if the date of the  
9 birth or placement requires leave to begin in less than thirty days,  
10 the employee shall provide such notice as is practicable.

11       (2) If the necessity for leave for a family member's serious  
12 health condition or the employee's serious health condition is  
13 foreseeable based on planned medical treatment, the employee:

14       (a) Must make a reasonable effort to schedule the treatment so as  
15 not to disrupt unduly the operations of the employer, subject to the  
16 approval of the health care provider of the employee or the health  
17 care provider of the family member, as appropriate; and

18       (b) Must provide the employer with not less than thirty days'  
19 notice, before the date the leave is to begin, of the employee's  
20 intention to take leave for a family member's serious health  
21 condition or the employee's serious health condition, except that if  
22 the date of the treatment requires leave to begin in less than thirty  
23 days, the employee must provide such notice as is practicable.

24       **Sec. 14.** RCW 49.78.260 and 2006 c 59 s 7 are each amended to  
25 read as follows:

26       (~~(If spouses entitled to leave under this chapter are employed by~~  
27 ~~the same employer, the aggregate number of workweeks of leave to~~  
28 ~~which both may be entitled may be limited to twelve workweeks during~~  
29 ~~any twelve month period, if such leave is taken: (1) For the birth or~~  
30 ~~placement of a child; or (2) for a parent's serious health~~  
31 ~~condition.)) A covered employer is not required to permit more than  
32 one employee to use the same period of family leave to care for the  
33 same family member.~~

34       **Sec. 15.** RCW 49.78.270 and 2006 c 59 s 8 are each amended to  
35 read as follows:

36       (1) (~~(An employer may require that a request for leave for a~~  
37 ~~family member's serious health condition or the employee's serious~~  
38 ~~health condition be supported)) Written notice and proof of need for~~

1 family leave shall be furnished to the employer, by or on behalf of  
2 the employee claiming the disability, by a certification issued by  
3 the health care provider of the employee or of the family member, as  
4 appropriate. The employee must provide(~~(, in a timely manner,)~~) a  
5 copy of the certification to the employer within thirty days after  
6 commencement of the period of leave. The employer must transmit the  
7 certification to the department.

8 (2) Certification provided under subsection (1) of this section  
9 is sufficient if it states:

10 (a) The date on which the serious health condition commenced;

11 (b) The probable duration of the condition;

12 (c) The appropriate medical facts within the knowledge of the  
13 health care provider regarding the condition;

14 (d)(i) For purposes of leave for a family member's serious health  
15 condition, a statement that the employee is needed to care for the  
16 family member and an estimate of the amount of time that such  
17 employee is needed to care for the family member; and

18 (ii) For purposes of leave for the employee's serious health  
19 condition, a statement that the employee is unable to perform the  
20 functions of the position of the employee;

21 (e) In the case of certification for intermittent leave, or leave  
22 on a reduced leave schedule, for planned medical treatment, the dates  
23 on which the treatment is expected to be given and the duration of  
24 the treatment;

25 (f) In the case of certification for intermittent leave, or leave  
26 on a reduced leave schedule, for the employee's serious health  
27 condition, a statement of the medical necessity for the intermittent  
28 leave or leave on a reduced leave schedule, and the expected duration  
29 of the intermittent leave or reduced leave schedule; and

30 (g) In the case of certification for intermittent leave, or leave  
31 on a reduced leave schedule, for a family member's serious health  
32 condition, a statement that the employee's intermittent leave or  
33 leave on a reduced leave schedule is necessary for the care of the  
34 family member who has a serious health condition, or will assist in  
35 their recovery, and the expected duration and schedule of the  
36 intermittent leave or reduced leave schedule.

37 (3) If the employer has reason to doubt the validity of the  
38 certification provided under subsection (1) of this section for leave  
39 for a family member's serious health condition or the employee's  
40 serious health condition, the employer may require, at the expense of



1 the employer, that the employee obtain the opinion of a second health  
2 care provider designated or approved by the employer concerning any  
3 information certified under subsection (2) of this section for the  
4 leave. The second health care provider may not be employed on a  
5 regular basis by the employer.

6 (4) If the second opinion described in subsection (3) of this  
7 section differs from the opinion in the original certification  
8 provided under subsection (1) of this section, the employer may  
9 require, at the expense of the employer, that the employee obtain the  
10 opinion of a third health care provider designated or approved  
11 jointly by the employer and the employee concerning the information  
12 certified under subsection (2) of this section. The opinion of the  
13 third health care provider concerning the information certified under  
14 subsection (2) of this section is considered to be final and is  
15 binding on the employer and the employee.

16 (5) The employer or department may require that the employee  
17 obtain subsequent recertifications on a reasonable basis, but not  
18 more often than once each week.

19 (6) Failure to furnish notice or proof within the time and in the  
20 manner required does not invalidate the claim, but benefits are not  
21 required to be paid for any period more than two weeks prior to the  
22 date on which the required proof is furnished unless it is shown to  
23 the satisfaction of the commissioner not to have been reasonably  
24 possible to furnish such notice or proof and that such notice or  
25 proof was furnished as soon as possible.

26 (7) Benefits are not required to be paid unless the required  
27 proof is furnished within the period of family leave that does not  
28 exceed the statutory maximum period permitted under this chapter.

29 (8) The commissioner may direct the family leave care recipient  
30 to submit to examination by a health care provider designated by him  
31 or her in any case in which the family leave benefits are contested.  
32 The department shall pay for the cost of such examination.

33 (9) Refusal of the family leave care recipient without good cause  
34 to submit to any such examination shall disqualify the employee from  
35 all benefits under this chapter for the period of such refusal,  
36 except as to benefits already paid.

37 (10) If benefits required to be paid under this chapter have been  
38 paid to an employee, further payments for the same family leave are  
39 not barred solely because of failure to give notice or to file proof  
40 for the period or periods for which such benefits have been paid.

1        NEW SECTION.    **Sec. 16.**    (1) The department shall establish and  
2 administer a family leave insurance program and pay family leave  
3 insurance benefits as specified in this chapter.

4        (2) The department shall establish procedures and forms for  
5 filing claims for benefits under this chapter. The department shall  
6 notify the employer within five business days of a claim being filed.

7        (3) The department shall use information sharing and integration  
8 technology to facilitate the disclosure of relevant information or  
9 records by the department, so long as an employee consents to the  
10 disclosure as required under section 17 of this act.

11       (4) Information contained in the files and records pertaining to  
12 an employee under this chapter are confidential and not open to  
13 public inspection, other than to public employees in the performance  
14 of their official duties. However, the employee or an authorized  
15 representative of an employee may review the records or receive  
16 specific information from the records on the presentation of the  
17 signed authorization of the employee. An employer or the employer's  
18 duly authorized representative may review the records of an employee  
19 employed by the employer in connection with a pending claim. At the  
20 department's discretion, other persons may review records when such  
21 persons are rendering assistance to the department at any stage of  
22 the proceedings on any matter pertaining to the administration of  
23 this chapter.

24       (5) The department shall develop and implement an outreach  
25 program to ensure that employees who may be eligible to receive  
26 family leave insurance benefits under this chapter are made aware of  
27 these benefits. Outreach information shall explain, in an easy to  
28 understand format, eligibility requirements, the claims process,  
29 weekly benefit amounts, maximum benefits payable, notice and  
30 certification requirements, reinstatement and nondiscrimination  
31 rights, confidentiality, and the relationship between employment  
32 protection, leave from employment, and wage replacement benefits  
33 under this chapter and other laws, collective bargaining agreements,  
34 and employer policies. Outreach information shall be available in  
35 English and other primary languages as defined in RCW 74.04.025.

36       NEW SECTION.    **Sec. 17.**    Family leave insurance benefits are  
37 payable to an employee during a period in which the employee is  
38 unable to perform his or her regular or customary work because he or

1 she is on family leave, as defined in RCW 49.78.020 (as recodified by  
2 this act), if the employee:

3 (1) Files a claim for benefits as required by rules adopted by  
4 the commissioner;

5 (2) Consents to the disclosure of information or records deemed  
6 private and confidential under state law. Further disclosure of this  
7 information or these records is subject to section 16 of this act;

8 (3) Discloses whether or not he or she owes child support  
9 obligations as defined in RCW 50.40.050;

10 (4) Has provided his or her employer from whom family leave is to  
11 be taken with written notice of the employee's intention to take  
12 family leave as required in RCW 49.78.250 (as recodified by this  
13 act); and

14 (5) Provides a document authorizing the family member's or  
15 employee's health care provider, as applicable, to disclose the  
16 family member's or employee's health care information in the form of  
17 the certification required under RCW 49.78.270 (as recodified by this  
18 act).

19 NEW SECTION. **Sec. 18.** If an employee does not have a spouse,  
20 the employee may designate one person for whom the employee will care  
21 for if the designated person has a serious health condition. An  
22 employer may establish a process for an employee to make such a  
23 designation within thirty days of the employee's date of hire.  
24 Thereafter, the employer must permit the employee to make or change  
25 such a designation, as applicable, on an annual basis. If an  
26 employee's employer establishes such a process, the employee must  
27 make such a designation using the employer's process. If an  
28 employee's employer does not establish such a process, the employee  
29 may make such a designation when filing a claim for benefits.

30 NEW SECTION. **Sec. 19.** If an employee discloses that he or she  
31 owes child support obligations under section 17 of this act and the  
32 department determines that the employee is eligible for benefits, the  
33 department shall notify the applicable state or local child support  
34 enforcement agency and deduct and withhold an amount from benefits in  
35 a manner consistent with RCW 50.40.050.

36 **Sec. 20.** RCW 49.78.280 and 2006 c 59 s 9 are each amended to  
37 read as follows:

1           (1)~~((a))~~ Except as provided in ~~((b) of this)~~ subsection (2)  
2 of this section, any employee who takes leave under RCW 49.78.220 (as  
3 recodified by this act) for the intended purpose of the leave is  
4 entitled, on return from the leave:

5           ~~((i))~~ (a) To be restored by the employer to the position of  
6 employment held by the employee when the leave commenced; or

7           ~~((ii))~~ (b) To be restored to an equivalent position with  
8 equivalent employment benefits, pay, and other terms and conditions  
9 of employment at a workplace within twenty miles of the employee's  
10 workplace when leave commenced.

11           ~~((b))~~ (2) The taking of leave under RCW 49.78.220 (as  
12 recodified by this act) may not result in the loss of any employment  
13 benefits accrued before the date on which the leave commenced.

14           ~~((c))~~ (3) Nothing in this section entitles any restored  
15 employee to:

16           ~~((i))~~ (a) The accrual of any seniority or employment benefits  
17 during any period of leave; or

18           ~~((ii))~~ (b) Any right, benefit, or position of employment other  
19 than any right, benefit, or position to which the employee would have  
20 been entitled had the employee not taken the leave.

21           ~~((d))~~ (4) As a condition of restoration under ~~((a) of this)~~  
22 subsection (1) of this section for an employee who has taken leave  
23 for the employee's serious health condition, the employer may have a  
24 uniformly applied practice or policy that requires each such employee  
25 to receive certification from the health care provider of the  
26 employee that the employee is able to resume work, except that  
27 nothing in this subsection ~~((1)(d))~~ supersedes a valid local law or  
28 a collective bargaining agreement that governs the return to work of  
29 such employees.

30           ~~((e))~~ (5) Nothing in this ~~((subsection (1))~~ section prohibits  
31 an employer from requiring an employee on leave to report  
32 periodically to the employer on the status and intention of the  
33 employee to return to work.

34           ~~((2) An employer may deny restoration under subsection (1) of~~  
35 ~~this section to any salaried employee who is among the highest paid~~  
36 ~~ten percent of the employees employed by the employer within~~  
37 ~~seventy-five miles of the facility at which the employee is employed~~  
38 ~~if:~~

39           ~~(a) Denial is necessary to prevent substantial and grievous~~  
40 ~~economic injury to the operations of the employer;~~

1       ~~(b) The employer notifies the employee of the intent of the~~  
2 ~~employer to deny restoration on such basis at the time the employer~~  
3 ~~determines that the injury would occur; and~~

4       ~~(c) The leave has commenced and the employee elects not to return~~  
5 ~~to employment after receiving the notice.)~~

6       NEW SECTION.   **Sec. 21.** (1) If family leave insurance benefits  
7 are paid erroneously or as a result of willful misrepresentation, or  
8 if a claim for family leave benefits is rejected after benefits are  
9 paid, RCW 50.20.070 applies, except that appeals are governed by  
10 section 23 of this act, penalties are paid into the family leave  
11 insurance account, and the department shall seek repayment of  
12 benefits from the recipient. The department shall issue an  
13 overpayment assessment setting forth the reasons for, and the amount  
14 of, the overpayment.

15       (2) Whenever such an overpayment assessment becomes conclusive  
16 and final, the department may file with the superior court clerk of  
17 any county within the state a warrant in the amount of the  
18 overpayment assessment plus a filing fee under RCW 36.18.012(10).  
19 However, the department must first give at least twenty days' notice  
20 by certified mail return receipt requested, to the employee's last  
21 known address of the intended action.

22       (a) The clerk of the county where the warrant is filed shall  
23 immediately designate a superior court cause number for the warrant.  
24 The clerk shall cause to be entered in the judgment docket under the  
25 superior court cause number assigned to the warrant the name of the  
26 person or persons mentioned in the warrant, the amount of the  
27 overpayment assessment, and the date when the warrant was filed.

28       (b) The amount of the warrant as docketed becomes a lien upon the  
29 title to, and any interest in, all real and personal property of the  
30 person or persons against whom the warrant is issued, the same as a  
31 judgment in a civil case duly docketed in the office of the clerk. A  
32 warrant so docketed is sufficient to support the issuance of writs of  
33 execution and writs of garnishment in favor of the state in the  
34 manner provided by law for a civil judgment.

35       (c) A copy of the warrant shall be mailed to the person or  
36 persons mentioned in the warrant by certified mail to the person's  
37 last known address within ten days of its filing with the clerk.

1        NEW SECTION.        **Sec. 22.**        (1) In the form and at the times  
2 specified in this chapter and by the commissioner, an employer shall  
3 make reports, furnish information, and collect and remit  
4 contributions as required by this chapter to the department. If the  
5 employer is a temporary help company that provides employees on a  
6 temporary basis to its customers, the temporary help company is  
7 considered the employer for purposes of this section. However, if the  
8 temporary help company fails to remit the required contributions, the  
9 customer to whom the employees were provided is liable for paying the  
10 premiums.

11        (2)(a) An employer must keep at his or her place of business a  
12 record of employment from which the information needed by the  
13 department for purposes of this chapter may be obtained. This record  
14 shall at all times be open to the inspection of the commissioner.

15        (b) Information obtained from employer records under this chapter  
16 is confidential and not open to public inspection, other than to  
17 public employees in the performance of their official duties.  
18 However, an interested party shall be supplied with information from  
19 employer records to the extent necessary for the proper presentation  
20 of the case in question. An employer may authorize inspection of its  
21 records by written consent.

22        (3) The requirements relating to the collection of family leave  
23 insurance contributions are the same as the requirements relating to  
24 the assessment and collection of contributions under Title 50 RCW,  
25 including but not limited to penalties, interest, and department lien  
26 rights and collection remedies. These requirements apply to:

27        (a) An employer that fails under this chapter to make the  
28 required reports, or fails to remit the full amount of the  
29 contributions when due;

30        (b) An employer that willfully makes a false statement or  
31 misrepresentation regarding a material fact, or willfully fails to  
32 report a material fact, to avoid making the required reports or  
33 remitting the full amount of the contributions when due under this  
34 chapter;

35        (c) A successor in the manner specified in RCW 50.24.210; and

36        (d) An officer, member, or owner having control or supervision of  
37 payment and/or reporting of family leave insurance, or who is charged  
38 with the responsibility for the filing of returns, in the manner  
39 specified in RCW 50.24.230.

1 (4) Notwithstanding subsection (3) of this section, appeals are  
2 governed by section 23 of this act.

3 NEW SECTION. **Sec. 23.** (1) Except as provided under section  
4 24(1) of this act, a person may file a notice of appeal from any  
5 determination or redetermination made by the department with the  
6 commissioner, by mail or personally, within thirty days after the  
7 date on which a copy of the department's decision was served on the  
8 person. Upon receipt of the notice of appeal, the commissioner shall  
9 request the assignment of an administrative law judge in accordance  
10 with chapter 34.05 RCW to conduct a hearing and issue a proposed  
11 decision and order. The hearing shall be conducted in accordance with  
12 chapter 34.05 RCW.

13 (2) The administrative law judge's proposed decision and order  
14 shall be final and not subject to further appeal unless, within  
15 thirty days after the decision is served on the interested parties, a  
16 party files a petition for judicial review as provided in chapter  
17 34.05 RCW.

18 (3) If, upon judicial review, the final decision of the  
19 department is reversed or modified, the court in its discretion may  
20 award the prevailing party, other than the department, reasonable  
21 attorneys' fees and costs. Attorneys' fees and costs owed by the  
22 department, if any, are payable from the family leave insurance  
23 account.

24 NEW SECTION. **Sec. 24.** (1) A determination of amount of benefits  
25 potentially payable under this chapter is not a basis for appeal.  
26 However, the determination is subject to request by the employee on  
27 family leave for redetermination by the commissioner at any time  
28 within one year from the date of delivery or mailing of such  
29 determination, or any redetermination thereof. A redetermination  
30 shall be furnished to the employee in writing and provide the basis  
31 for appeal.

32 (2) A determination of denial of benefits becomes final, in the  
33 absence of timely appeal therefrom. The commissioner may redetermine  
34 such determinations at any time within one year from delivery or  
35 mailing to correct an error in identity, omission of fact, or  
36 misapplication of law with respect to the facts.

37 (3) A determination of allowance of benefits becomes final, in  
38 the absence of a timely appeal therefrom. The commissioner may

1 redetermine such allowance at any time within two years following the  
2 application year in which such allowance was made in order to recover  
3 any benefits for which recovery is provided under this chapter.

4 (4) A redetermination may be made at any time: (a) To conform to  
5 a final court decision applicable to either an initial determination  
6 or a determination of denial or allowance of benefits; (b) in the  
7 event of a back pay award or settlement affecting the allowance of  
8 benefits; or (c) in the case of misrepresentation or willful failure  
9 to report a material fact. Written notice of any such redetermination  
10 shall be promptly given by mail or delivered to such interested  
11 parties as were notified of the initial determination or  
12 determination of denial or allowance of benefits and any new  
13 interested party or parties who, pursuant to such rule as the  
14 commissioner may adopt, would be an interested party.

15 NEW SECTION. **Sec. 25.** (1) Leave from employment under this  
16 chapter is in addition to leave from employment during which benefits  
17 are paid or are payable under Title 51 RCW or other applicable  
18 federal or state industrial insurance laws.

19 (2) In any week in which an employee is receiving benefits under  
20 chapter 7.68 RCW, Title 50 or 51 RCW, or other applicable federal or  
21 state crime victims' compensation, unemployment compensation,  
22 industrial insurance, or disability insurance laws, the employee is  
23 disqualified from receiving family leave insurance benefits under  
24 this chapter.

25 **Sec. 26.** RCW 49.78.290 and 2006 c 59 s 10 are each amended to  
26 read as follows:

27 In accordance with the federal family and medical leave act,  
28 during any period of family leave taken under ((RCW 49.78.220)) this  
29 chapter, ((if the employee is not eligible for any employer  
30 contribution to medical or dental benefits under an applicable  
31 collective bargaining agreement or employer policy during any period  
32 of leave, an employer shall allow the employee to continue, at the  
33 employee's expense, medical or dental insurance coverage, including  
34 any spouse and dependent coverage, in accordance with state or  
35 federal law. The premium to be paid by the employee shall not exceed  
36 one hundred two percent of the applicable premium for the leave  
37 period)) the employer shall maintain any existing health benefits of  
38 the employee in force for the duration of such leave as if the



1 employee had continued to work from the date he or she commenced  
2 family leave until the date he or she returns to employment.

3 NEW SECTION. **Sec. 27.** Whenever an employee of a covered  
4 employer who is eligible for benefits under this chapter is absent  
5 from work to provide family leave for more than seven consecutive  
6 days, the employer shall provide the employee with a written  
7 statement of the employee's rights under this chapter in a form  
8 prescribed by the commissioner. The statement must be provided to the  
9 employee within five business days after the employee's seventh  
10 consecutive day of absence due to family leave or within five  
11 business days after the employer has received notice that the  
12 employee's absence is due to family leave, whichever is later.

13 **Sec. 28.** RCW 49.78.300 and 2006 c 59 s 11 are each amended to  
14 read as follows:

15 (1) It is unlawful for any employer to:

16 (a) Interfere with, restrain, or deny the exercise of, or the  
17 attempt to exercise, any right provided under this chapter; or

18 (b) Discharge or in any other manner discriminate against any  
19 (~~individual~~) employee for opposing any practice made unlawful by  
20 this chapter.

21 (2) It is unlawful for any person to discharge or in any other  
22 manner discriminate against any (~~individual~~) employee because the  
23 (~~individual~~) employee has:

24 (a) Filed any charge, or has instituted or caused to be  
25 instituted any proceeding, under or related to this chapter;

26 (b) Given, or is about to give, any information in connection  
27 with any inquiry or proceeding relating to any right provided under  
28 this chapter; or

29 (c) Testified, or is about to testify, in any inquiry or  
30 proceeding relating to any right provided under this chapter.

31 **Sec. 29.** RCW 49.78.310 and 2006 c 59 s 12 are each amended to  
32 read as follows:

33 Upon complaint by an employee, the (~~director~~) commissioner  
34 shall investigate to determine if there has been compliance with this  
35 chapter and the rules adopted under this chapter. If the  
36 investigation indicates that a violation may have occurred, a hearing  
37 must be held in accordance with chapter 34.05 RCW. The (~~director~~)

1 commissioner must issue a written determination including his or her  
2 findings after the hearing. A judicial appeal from the (~~director's~~)  
3 commissioner's determination may be taken in accordance with chapter  
4 34.05 RCW, with the prevailing party entitled to recover reasonable  
5 costs and attorneys' fees.

6 **Sec. 30.** RCW 49.78.330 and 2006 c 59 s 14 are each amended to  
7 read as follows:

8 (1) Any employer who violates RCW 49.78.300 (as recodified by  
9 this act) is liable:

10 (a) For damages equal to:

11 (i) The amount of:

12 (A) Any wages, salary, employment benefits, or other compensation  
13 denied or lost to such employee by reason of the violation; or

14 (B) In a case in which wages, salary, employment benefits, or  
15 other compensation have not been denied or lost to the employee, any  
16 actual monetary losses sustained by the employee as a direct result  
17 of the violation, such as the cost of providing care, up to a sum  
18 equal to twelve weeks of wages or salary for the employee;

19 (ii) The interest on the amount described in (a)(i) of this  
20 subsection calculated at the prevailing rate; and

21 (iii) An additional amount as liquidated damages equal to the sum  
22 of the amount described in (a)(i) of this subsection and the interest  
23 described in (a)(ii) of this subsection, except that if an employer  
24 who has violated RCW 49.78.300 (as recodified by this act) proves to  
25 the satisfaction of the court that the act or omission which violated  
26 RCW 49.78.300 (as recodified by this act) was in good faith and that  
27 the employer had reasonable grounds for believing that the act or  
28 omission was not a violation of RCW 49.78.300, the court may, in the  
29 discretion of the court, reduce the amount of the liability to the  
30 amount and interest determined under (a)(i) and (ii) of this  
31 subsection, respectively; and

32 (b) For such equitable relief as may be appropriate, including  
33 employment, reinstatement, and promotion.

34 (2) An action to recover the damages or equitable relief  
35 prescribed in subsection (1) of this section may be maintained  
36 against any employer in any court of competent jurisdiction by any  
37 one or more employees for and on behalf of:

38 (a) The employees; or

39 (b) The employees and other employees similarly situated.

1 (3) The court in such an action shall, in addition to any  
2 judgment awarded to the plaintiff, allow reasonable attorneys' fees,  
3 reasonable expert witness fees, and other costs of the action to be  
4 paid by the defendant.

5 **Sec. 31.** RCW 49.78.340 and 2006 c 59 s 15 are each amended to  
6 read as follows:

7 Each employer shall post and keep posted, in conspicuous places  
8 on the premises of the employer where notices to employees and  
9 applicants for employment are customarily posted, a notice, to be  
10 prepared or approved by the (~~director~~) commissioner, setting forth  
11 excerpts from, or summaries of, the pertinent provisions of this  
12 chapter and information pertaining to the filing of a charge. Any  
13 employer that willfully violates this section may be subject to a  
14 civil penalty of not more than one hundred dollars for each separate  
15 offense. Any penalties collected by the department under (~~the~~  
16 ~~[this]~~) this section shall be deposited into the family and medical  
17 leave enforcement account.

18 **Sec. 32.** RCW 49.78.350 and 2006 c 59 s 16 are each amended to  
19 read as follows:

20 The family and medical leave enforcement account is created in  
21 the custody of the state treasurer. Any penalties collected under RCW  
22 49.78.320 (as recodified by this act) or 49.78.340 (as recodified by  
23 this act) shall be deposited into the account and shall be used only  
24 for the purposes of administering and enforcing this chapter. Only  
25 the (~~director or the director's designee~~) commissioner may  
26 authorize expenditures from the account. The account is subject to  
27 allotment procedures under chapter 43.88 RCW, but an appropriation is  
28 not required for expenditures.

29 **Sec. 33.** RCW 49.78.360 and 2006 c 59 s 17 are each amended to  
30 read as follows:

31 (1) Nothing in this chapter shall be construed(~~(;-(1))~~) to modify  
32 or affect any state or local law prohibiting discrimination on the  
33 basis of race, religion, color, national origin, sex, age, or  
34 disability(~~(; or (2) to supersede any provision of any local law that~~  
35 ~~provides greater family or medical leave rights than the rights~~  
36 ~~established under this chapter)~~)).

1       (2) The state of Washington fully occupies and preempts the  
2 entire field of paid family leave within the boundaries of the state.  
3 Cities, towns, and counties or other municipalities may enact only  
4 those laws and ordinances relating to paid family leave that are  
5 specifically authorized by state law and are consistent with this  
6 chapter. Local laws and ordinances in existence on the effective date  
7 of this section that are inconsistent with this chapter are preempted  
8 and repealed, regardless of the nature of the code, charter, or home  
9 rule status of such a city, town, county, or municipality.

10       **Sec. 34.** RCW 49.78.390 and 2006 c 59 s 20 are each amended to  
11 read as follows:

12       (1) Leave under this chapter and leave under the federal family  
13 and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107  
14 Stat. 6) is in addition to any leave for sickness or temporary  
15 disability because of pregnancy or childbirth.

16       (2) Unless otherwise expressly permitted by the employer, leave  
17 taken under this chapter must be taken concurrently with any leave  
18 taken under the federal family and medical leave act of 1993 (Act  
19 Feb. 5, 1993, P.L. 103-3, 107 Stat. 6).

20       NEW SECTION.       **Sec. 35.** (1) If the internal revenue service  
21 determines that family leave insurance benefits under this chapter  
22 are subject to federal income tax, the department must advise an  
23 employee filing a new claim for family leave insurance benefits, at  
24 the time of filing such claim, that:

25       (a) The internal revenue service has determined that benefits are  
26 subject to federal income tax;

27       (b) Requirements exist pertaining to estimated tax payments;

28       (c) The employee may elect to have federal income tax deducted  
29 and withheld from the employee's payment of benefits at the amount  
30 specified in the federal internal revenue code; and

31       (d) The employee is permitted to change a previously elected  
32 withholding status.

33       (2) Amounts deducted and withheld from benefits must remain in  
34 the family leave insurance account until transferred to the federal  
35 taxing authority as a payment of income tax.

36       (3) The commissioner shall follow all procedures specified by the  
37 federal internal revenue service pertaining to the deducting and  
38 withholding of income tax.

1        NEW SECTION.    **Sec. 36.**    This chapter does not create a continuing  
2 entitlement or contractual right. The legislature reserves the right  
3 to amend or repeal all or part of this chapter at any time, and a  
4 benefit or other right granted under this chapter exists subject to  
5 the legislature's power to amend or repeal this chapter. There is no  
6 vested private right of any kind against such amendment or repeal.

7        NEW SECTION.    **Sec. 37.**    The family leave insurance account is  
8 created in the custody of the state treasurer. All receipts from the  
9 employee contributions imposed under this chapter must be deposited  
10 in the account. Expenditures from the account may be used only for  
11 the purposes of the family leave insurance program. Only the  
12 commissioner may authorize expenditures from the account. The account  
13 is subject to the allotment procedures under chapter 43.88 RCW. An  
14 appropriation is required for administrative expenses, but not for  
15 benefit payments.

16        NEW SECTION.    **Sec. 38.**    Whenever, in the judgment of the state  
17 investment board, there shall be in the family leave insurance  
18 account funds in excess of that amount deemed by the state investment  
19 board to be sufficient to meet the current expenditures properly  
20 payable therefrom, the state investment board shall have full power  
21 to invest, reinvest, manage, contract, or sell or exchange  
22 investments acquired with such excess funds in the manner prescribed  
23 by RCW 43.84.150, and not otherwise.

24        **Sec. 39.**    RCW 49.78.400 and 2006 c 59 s 21 are each amended to  
25 read as follows:

26        The ((~~director~~)) commissioner shall adopt rules as necessary to  
27 implement this chapter.

28        NEW SECTION.    **Sec. 40.**    RCW 49.78.010, 49.78.020, 49.78.090,  
29 49.78.220, 49.78.230, 49.78.240, 49.78.250, 49.78.260, 49.78.270,  
30 49.78.280, 49.78.290, 49.78.300, 49.78.310, 49.78.320, 49.78.330,  
31 49.78.340, 49.78.350, 49.78.360, 49.78.370, 49.78.380, 49.78.390,  
32 49.78.400, 49.78.410, 49.78.901, and 49.78.904 are each recodified as  
33 a new chapter in Title 50 RCW.

34        NEW SECTION.    **Sec. 41.**    The following acts or parts of acts are  
35 each repealed:

1 (1) RCW 49.78.240 (Unpaid leave permitted—Relationship to paid  
2 leave) and 2006 c 59 s 5;  
3 (2) RCW 49.86.005 (Findings) and 2007 c 357 s 1;  
4 (3) RCW 49.86.010 (Definitions) and 2007 c 357 s 3;  
5 (4) RCW 49.86.020 (Family leave insurance program) and 2007 c 357  
6 s 4;  
7 (5) RCW 49.86.030 (Eligibility for benefits) and 2013 2nd sp.s. c  
8 26 s 1, 2011 1st sp.s. c 25 s 1, 2009 c 544 s 1, & 2007 c 357 s 5;  
9 (6) RCW 49.86.040 (Disqualification from benefits) and 2007 c 357  
10 s 6;  
11 (7) RCW 49.86.050 (Duration of benefits—Payment of benefits) and  
12 2007 c 357 s 7;  
13 (8) RCW 49.86.060 (Amount of benefits) and 2007 c 357 s 8;  
14 (9) RCW 49.86.070 (Federal income tax) and 2007 c 357 s 9;  
15 (10) RCW 49.86.080 (Erroneous payments—Payments induced by  
16 willful misrepresentation—Claim rejected after payments) and 2007 c  
17 357 s 10;  
18 (11) RCW 49.86.090 (Leave and employment protection) and 2007 c  
19 357 s 11;  
20 (12) RCW 49.86.100 (Employment by same employer) and 2007 c 357 s  
21 12;  
22 (13) RCW 49.86.110 (Elective coverage) and 2007 c 357 s 13;  
23 (14) RCW 49.86.120 (Appeals) and 2007 c 357 s 14;  
24 (15) RCW 49.86.130 (Prohibited acts—Discrimination—Enforcement)  
25 and 2007 c 357 s 15;  
26 (16) RCW 49.86.140 (Coordination of leave) and 2007 c 357 s 16;  
27 (17) RCW 49.86.150 (Continuing entitlement or contractual rights—  
28 Not created) and 2007 c 357 s 17;  
29 (18) RCW 49.86.160 (Rules) and 2007 c 357 s 18;  
30 (19) RCW 49.86.170 (Family leave insurance account) and 2009 c 4  
31 s 905 & 2007 c 357 s 19;  
32 (20) RCW 49.86.180 (Family leave insurance account funds—  
33 Investment) and 2007 c 357 s 20;  
34 (21) RCW 49.86.210 (Reports) and 2013 2nd sp.s. c 26 s 2, 2011  
35 1st sp.s. c 25 s 2, 2009 c 544 s 2, & 2007 c 357 s 26;  
36 (22) RCW 49.86.902 (Effective dates—2007 c 357) and 2007 c 357 s  
37 30; and  
38 (23) RCW 49.86.903 (Construction—Chapter applicable to state  
39 registered domestic partnerships—2009 c 521) and 2009 c 521 s 136.

1        NEW SECTION.    **Sec. 42.**    Sections 3, 6 through 11, 16 through 19,  
2    21 through 25, 27, and 35 through 38 of this act are each added to  
3    chapter 50.--- RCW (the new chapter created in section 39 of this  
4    act).

5        NEW SECTION.    **Sec. 43.**    If any provision of this act or its  
6    application to any person or circumstance is held invalid, the  
7    remainder of the act or the application of the provision to other  
8    persons or circumstances is not affected.

9        NEW SECTION.    **Sec. 44.**    This act takes effect January 1, 2019.

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