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**SECOND SUBSTITUTE SENATE BILL 5649**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2022 Regular Session

**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Robinson, Conway, Lovick, Randall, and C. Wilson)

READ FIRST TIME 02/07/22.

1 AN ACT Relating to modifying the Washington state paid family and  
2 medical leave act; amending RCW 50A.05.010, 50A.05.090, 50A.15.020,  
3 50A.25.020, 50A.15.040, 50A.05.050, 44.44.040, and 50A.25.070; adding  
4 new sections to chapter 50A.05 RCW; creating new sections; providing  
5 expiration dates; and declaring an emergency.

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

7 **Sec. 1.** RCW 50A.05.010 and 2021 c 232 s 2 are each amended to  
8 read as follows:

9 Unless the context clearly requires otherwise, the definitions in  
10 this section apply throughout this title.

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

12 (i) Is performed infrequently and irregularly; and

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

15 (b) For purposes of casual labor:

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

18 (ii) "Irregularly" means work performed not on a consistent  
19 cadence.

20 (2) "Child" includes a biological, adopted, or foster child, a  
21 stepchild, a child's spouse, or a child to whom the employee stands

1 in loco parentis, is a legal guardian, or is a de facto parent,  
2 regardless of age or dependency status.

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

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

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

8 (b) "Employee" does not include employees of the United States of  
9 America.

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

16 (7) (a) "Employer" means: (i) Any individual or type of  
17 organization, including any partnership, association, trust, estate,  
18 joint stock company, insurance company, limited liability company, or  
19 corporation, whether domestic or foreign, or the receiver, trustee in  
20 bankruptcy, trustee, or the legal representative of a deceased  
21 person, having any person in employment or, having become an  
22 employer, has not ceased to be an employer as provided in this title;  
23 (ii) the state, state institutions, and state agencies; and (iii) any  
24 unit of local government including, but not limited to, a county,  
25 city, town, municipal corporation, quasi-municipal corporation, or  
26 political subdivision.

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

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

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

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

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

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

5 (b) "Employment" does not include:

6 (i) Self-employed individuals;

7 (ii) Casual labor;

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

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

13 (II) Such service is either outside the usual course of business  
14 for which such service is performed, or that such service is  
15 performed outside of all the places of business of the enterprises  
16 for which such service is performed; and

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

20 (B) As a separate alternative:

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

24 (II) Such service is either outside the usual course of business  
25 for which such service is performed, or that such service is  
26 performed outside of all the places of business of the enterprises  
27 for which such service is performed, or the individual is  
28 responsible, both under the contract and in fact, for the costs of  
29 the principal place of business from which the service is performed;  
30 and

31 (III) Such individual is customarily engaged in an independently  
32 established trade, occupation, profession, or business, of the same  
33 nature as that involved in the contract of service, or such  
34 individual has a principal place of business for the work the  
35 individual is conducting that is eligible for a business deduction  
36 for federal income tax purposes; and

37 (IV) On the effective date of the contract of service, such  
38 individual is responsible for filing at the next applicable filing  
39 period, both under the contract of service and in fact, a schedule of

1 expenses with the internal revenue service for the type of business  
2 the individual is conducting; and

3 (V) On the effective date of the contract of service, or within a  
4 reasonable period after the effective date of the contract, such  
5 individual has established an account with the department of revenue,  
6 and other state agencies as required by the particular case, for the  
7 business the individual is conducting for the payment of all state  
8 taxes normally paid by employers and businesses and has registered  
9 for and received a unified business identifier number from the state  
10 of Washington; and

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

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

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

20 (B) The service is either outside the usual course of business  
21 for which the service is performed, or the service is performed  
22 outside of all the places of business of the enterprise for which the  
23 service is performed, or the individual is responsible, both under  
24 the contract and in fact, for the costs of the principal place of  
25 business from which the service is performed;

26 (C) The individual is customarily engaged in an independently  
27 established trade, occupation, profession, or business, of the same  
28 nature as that involved in the contract of service, or the individual  
29 has a principal place of business for the business the individual is  
30 conducting that is eligible for a business deduction for federal  
31 income tax purposes, other than that furnished by the employer for  
32 which the business has contracted to furnish services;

33 (D) On the effective date of the contract of service, the  
34 individual is responsible for filing at the next applicable filing  
35 period, both under the contract of service and in fact, a schedule of  
36 expenses with the internal revenue service for the type of business  
37 the individual is conducting;

38 (E) On the effective date of the contract of service, or within a  
39 reasonable period after the effective date of the contract, the  
40 individual has an active and valid certificate of registration with

1 the department of revenue, and an active and valid account with any  
2 other state agencies as required by the particular case, for the  
3 business the individual is conducting for the payment of all state  
4 taxes normally paid by employers and businesses and has registered  
5 for and received a unified business identifier number from the state  
6 of Washington;

7 (F) On the effective date of the contract of service, the  
8 individual is maintaining a separate set of books or records that  
9 reflect all items of income and expenses of the business that the  
10 individual is conducting; and

11 (G) On the effective date of the contract of service, the  
12 individual has a valid contractor registration pursuant to chapter  
13 18.27 RCW or an electrical contractor license pursuant to chapter  
14 19.28 RCW.

15 (9) "Employment benefits" means all benefits provided or made  
16 available to employees by an employer, including group life  
17 insurance, health insurance, disability insurance, sick leave, annual  
18 leave, educational benefits, and pensions.

19 (10) "Family leave" means any leave taken by an employee from  
20 work:

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

24 (b) To bond with the employee's child during the first twelve  
25 months after the child's birth, or the first twelve months after the  
26 placement of a child under the age of eighteen with the employee;  
27 ((~~or~~))

28 (c) Because of any qualifying exigency as permitted under the  
29 federal family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(E)  
30 and 29 C.F.R. Sec. 825.126(b)(1) through (9), as they existed on  
31 October 19, 2017, for family members as defined in subsection (11) of  
32 this section; or

33 (d) During the seven calendar days following the death of the  
34 family member for whom the employee:

35 (i) Would have qualified for medical leave under subsection (15)  
36 of this section for the birth of their child; or

37 (ii) Would have qualified for family leave under (b) of this  
38 subsection.

39 (11) "Family member" means a child, grandchild, grandparent,  
40 parent, sibling, or spouse of an employee, and also includes any

1 individual who regularly resides in the employee's home or where the  
2 relationship creates an expectation that the employee care for the  
3 person, and that individual depends on the employee for care. "Family  
4 member" includes any individual who regularly resides in the  
5 employee's home, except that it does not include an individual who  
6 simply resides in the same home with no expectation that the employee  
7 care for the individual.

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

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

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

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

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

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

25 (18) "Period of incapacity" means an inability to work, attend  
26 school, or perform other regular daily activities because of a  
27 serious health condition, treatment of that condition or recovery  
28 from it, or subsequent treatment in connection with such inpatient  
29 care.

30 (19) "Postnatal" means the first six weeks after birth.

31 (20) "Premium" or "premiums" means the payments required by RCW  
32 50A.10.030 and paid to the department for deposit in the family and  
33 medical leave insurance account under RCW 50A.05.070.

34 ~~((20))~~ (21) "Qualifying period" means the first four of the  
35 last five completed calendar quarters or, if eligibility is not  
36 established, the last four completed calendar quarters immediately  
37 preceding the application for leave.

38 ~~((21))~~ (22) (a) "Remuneration" means all compensation paid for  
39 personal services including commissions and bonuses and the cash  
40 value of all compensation paid in any medium other than cash.

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

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

16 (d) Remuneration does not include:

17 (i) The payment of tips;

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

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

25 (~~(22)~~) (23)(a) "Serious health condition" means an illness,  
26 injury, impairment, or physical or mental condition that involves:

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

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

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

35 (I) Treatment two or more times, within thirty days of the first  
36 day of incapacity, unless extenuating circumstances exist, by a  
37 health care provider, by a nurse or physician's assistant under  
38 direct supervision of a health care provider, or by a provider of  
39 health care services, such as a physical therapist, under orders of,  
40 or on referral by, a health care provider; or

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

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

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

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

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

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

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

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

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

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

38 (d) The term extenuating circumstances in (a)(ii)(A)(I) of this  
39 subsection means circumstances beyond the employee's control that  
40 prevent the follow-up visit from occurring as planned by the health



1 care provider. Whether a given set of circumstances are extenuating  
2 depends on the facts. For example, extenuating circumstances exist if  
3 a health care provider determines that a second in-person visit is  
4 needed within the thirty-day period, but the health care provider  
5 does not have any available appointments during that time period.

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

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

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

39 (ii) Treatment for substance abuse does not prevent an employer  
40 from taking employment action against an employee. The employer may

1 not take action against the employee because the employee has  
2 exercised his or her right to take medical leave for treatment.  
3 However, if the employer has an established policy, applied in a  
4 nondiscriminatory manner that has been communicated to all employees,  
5 that provides under certain circumstances an employee may be  
6 terminated for substance abuse, pursuant to that policy the employee  
7 may be terminated whether or not the employee is presently taking  
8 medical leave. An employee may also take family leave to care for a  
9 covered family member who is receiving treatment for substance abuse.  
10 The employer may not take action against an employee who is providing  
11 care for a covered family member receiving treatment for substance  
12 abuse.

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

23 ~~((23))~~ (24) "Service is localized in this state" has the same  
24 meaning as described in RCW 50.04.120.

25 ~~((24))~~ (25) "Spouse" means a husband or wife, as the case may  
26 be, or state registered domestic partner.

27 ~~((25))~~ (26) "State average weekly wage" means the most recent  
28 average weekly wage calculated under RCW 50.04.355 and available on  
29 January 1st of each year.

30 ~~((26))~~ (27) "Supplemental benefit payments" means payments made  
31 by an employer to an employee as salary continuation or as paid time  
32 off. Such payments must be in addition to any paid family or medical  
33 leave benefits the employee is receiving.

34 ~~((27))~~ (28) "Typical workweek hours" means:

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

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

39 ~~((28))~~ (29) "Wage" or "wages" means:

1 (a) For the purpose of premium assessment, the remuneration paid  
2 by an employer to an employee. The maximum wages subject to a premium  
3 assessment are those wages as set by the commissioner under RCW  
4 50A.10.030;

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

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

15 **Sec. 2.** RCW 50A.05.090 and 2019 c 13 s 37 are each amended to  
16 read as follows:

17 (1) Nothing in this title requires any party to a collective  
18 bargaining agreement in existence on October 19, 2017, to reopen  
19 negotiations of the agreement or to apply any of the rights and  
20 responsibilities under this title unless and until the existing  
21 agreement is reopened or renegotiated by the parties or expires.

22 (2) This section expires December 31, 2023.

23 **Sec. 3.** RCW 50A.15.020 and 2020 c 125 s 4 are each amended to  
24 read as follows:

25 (1) Beginning January 1, 2020, family and medical leave are  
26 available and benefits are payable to a qualified employee under this  
27 section.

28 (a) Following a waiting period consisting of the first seven  
29 consecutive calendar days, benefits are payable when family or  
30 medical leave is required. However, no waiting period is required for  
31 leave for the birth or placement of a child, or for leave because of  
32 any qualifying exigency as defined under RCW 50A.05.010(10)(c). The  
33 waiting period begins the previous Sunday of the week when an  
34 otherwise eligible employee takes leave for the minimum claim  
35 duration under subsection (2)(c) of this section. Eligible employees  
36 may satisfy the waiting period requirement while simultaneously  
37 receiving paid time off for any part of the waiting period.

1 (b) Benefits may continue during the continuance of the need for  
2 family or medical leave, subject to the maximum and minimum weekly  
3 benefits, duration, and other conditions and limitations established  
4 in this title.

5 (2) The weekly benefit shall be prorated by the percentage of  
6 hours on leave compared to the number of hours provided as the  
7 typical workweek hours as defined in RCW 50A.05.010.

8 (a) The benefits in this section, if not a multiple of one  
9 dollar, shall be reduced to the next lower multiple of one dollar.

10 (b) Hours on leave claimed for benefits under this title, if not  
11 a multiple of one hour, shall be reduced to the next lower multiple  
12 of one hour.

13 (c) The minimum claim duration payment is for eight consecutive  
14 hours of leave.

15 (3)(a) The maximum duration of paid family leave may not exceed  
16 twelve times the typical workweek hours during a period of fifty-two  
17 consecutive calendar weeks.

18 (b) The maximum duration of paid medical leave may not exceed  
19 twelve times the typical workweek hours during a period of fifty-two  
20 consecutive calendar weeks. This leave may be extended an additional  
21 two times the typical workweek hours if the employee experiences a  
22 serious health condition with a pregnancy that results in incapacity.

23 (c) An employee is not entitled to paid family and medical leave  
24 benefits under this title that exceeds a combined total of sixteen  
25 times the typical workweek hours. The combined total of family and  
26 medical leave may be extended to eighteen times the typical workweek  
27 hours if the employee experiences a serious health condition with a  
28 pregnancy that results in incapacity.

29 (4)(a) Any paid leave benefits under this chapter used in the  
30 postnatal period by an employee eligible for benefits under RCW  
31 50A.05.010(23)(a)(ii)(B) must be medical leave, subject to the  
32 maximum and minimum weekly benefits, duration, and other conditions  
33 and limitations established in this title, unless the employee  
34 chooses to use family leave during the postnatal period.

35 (b) Certification of a serious health condition is not required  
36 for paid leave benefits used in the postnatal period by an employee  
37 eligible for benefits under RCW 50A.05.010(23)(a)(ii)(B).

38 (5) The weekly benefit for family and medical leave shall be  
39 determined as follows: If the employee's average weekly wage is: (a)  
40 Equal to or less than one-half of the state average weekly wage, then

1 the benefit amount is equal to ninety percent of the employee's  
2 average weekly wage; or (b) greater than one-half of the state  
3 average weekly wage, then the benefit amount is the sum of: (i)  
4 Ninety percent of one-half of the state average weekly wage; and (ii)  
5 fifty percent of the difference of the employee's average weekly wage  
6 and one-half of the state average weekly wage.

7 ~~((+5))~~ (6)(a) The maximum weekly benefit for family and medical  
8 leave that occurs on or after January 1, 2020, shall be one thousand  
9 dollars. By September 30, 2020, and by each subsequent September  
10 30th, the commissioner shall adjust the maximum weekly benefit amount  
11 to ninety percent of the state average weekly wage. The adjusted  
12 maximum weekly benefit amount takes effect on the following January  
13 1st.

14 (b) The minimum weekly benefit shall not be less than one hundred  
15 dollars per week except that if the employee's average weekly wage at  
16 the time of family or medical leave is less than one hundred dollars  
17 per week, the weekly benefit shall be the employee's full wage.

18 **Sec. 4.** RCW 50A.25.020 and 2019 c 13 s 71 are each amended to  
19 read as follows:

20 (1) Any information or records concerning an individual or  
21 employer obtained by the department pursuant to the administration of  
22 this title shall be private and confidential, except as otherwise  
23 provided in this chapter or RCW 50A.05.040.

24 (2) This chapter does not create a rule of evidence.

25 (3) The department must publish, on its website, a current list  
26 of all employers that have approved voluntary plans under chapter  
27 50A.30 RCW.

28 NEW SECTION. **Sec. 5.** A new section is added to chapter 50A.05  
29 RCW to read as follows:

30 (1) The office of actuarial services is established within the  
31 department.

32 (2) The head of the office must be qualified by education and  
33 experience in the field of actuarial science.

34 **Sec. 6.** RCW 50A.15.040 and 2019 c 13 s 6 are each amended to  
35 read as follows:

36 (1) Family and medical leave insurance benefits are payable to an  
37 employee during a period in which the employee is unable to perform

1 his or her regular or customary work because he or she is on family  
2 and medical leave if the employee:

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

5 (b) Has met the eligibility requirements of RCW 50A.15.010 or the  
6 elective coverage requirements under RCW 50A.10.010;

7 (c) Consents to the disclosure of information or records deemed  
8 private and confidential under state law. Initial disclosure of this  
9 information and these records by another state agency to the  
10 department is solely for purposes related to the administration of  
11 this title. Further disclosure of this information or these records  
12 is subject to chapter 50A.25 RCW((~~7~~)) and RCW 50A.05.020(3)((~~7~~)) and  
13 ((~~RCW~~)) 50A.20.030;

14 (d) Provides his or her social security number;

15 (e) Provides a document authorizing the family member's or  
16 employee's health care provider, as applicable, to disclose the  
17 family member's or employee's health care information in the form of  
18 the certification of a serious health condition;

19 (f) Provides the employer from whom family and medical leave is  
20 to be taken with written notice of the employee's intention to take  
21 family leave in the same manner as an employee is required to provide  
22 notice in RCW 50A.15.030 and, in the employee's initial application  
23 for benefits, attests that written notice has been provided, unless  
24 notice has been waived by the employer under RCW 50A.15.030(3); and

25 (g) Provides documentation of a military exigency, if requested  
26 by the employer.

27 (2) An employee who is not in employment for an employer at the  
28 time of filing an application for benefits is exempt from subsection  
29 (1)(f) and (g) of this section.

30 (3) Beginning July 1, 2022, and until the 12 months after the end  
31 of the state of emergency declared by the governor due to COVID-19,  
32 the department must ask the employee applicant whether their family  
33 or medical leave is related to the COVID-19 pandemic. Initial  
34 disclosure of this information is solely for purposes related to the  
35 administration of this title, including monitoring potential impacts  
36 on the solvency and stability of the family and medical leave  
37 insurance account created in RCW 50A.05.070. Further disclosure of  
38 this information or these records is subject to chapter 50A.25 RCW  
39 and RCW 50A.05.020(3) and 50A.20.030.

1       **Sec. 7.** RCW 50A.05.050 and 2017 3rd sp.s. c 5 s 86 are each  
2 amended to read as follows:

3       (1) Beginning December 1, 2020, and annually thereafter, the  
4 department shall report to the legislature on the entire program,  
5 including:

6       ~~((1))~~ (a) Projected and actual program participation;

7       ~~((2))~~ (b) Premium rates;

8       ~~((3))~~ (c) Fund balances;

9       ~~((4))~~ (d) Benefits paid;

10       ~~((5))~~ (e) Demographic information on program participants,  
11 including income, gender, race, ethnicity, geographic distribution by  
12 county and legislative district, and employment sector;

13       ~~((6))~~ (f) Costs of providing benefits;

14       ~~((7))~~ (g) Elective coverage participation;

15       ~~((8))~~ (h) Voluntary plan participation;

16       ~~((9))~~ (i) Outreach efforts; and

17       ~~((10))~~ (j) Small business assistance.

18       (2) (a) Beginning January 1, 2023, the office of actuarial  
19 services created in section 5 of this act must annually report, by  
20 November 1st, to the advisory committee in RCW 50A.05.030 on the  
21 experience and financial condition of the family and medical leave  
22 insurance account, and the lowest future premium rates necessary to  
23 maintain solvency of the family and medical leave insurance account  
24 in the next four years while limiting fluctuation in premium rates.

25       (b) For calendar years 2023 through 2028, the annual reports in  
26 (a) of this subsection must be submitted to the appropriate  
27 committees of the legislature in compliance with RCW 43.01.036.

28       (3) Beginning October 1, 2023, the department must report  
29 quarterly to the advisory committee in RCW 50A.05.030 on premium  
30 collections, benefit payments, the family and medical leave insurance  
31 account balance, and other program expenditures.

32       NEW SECTION.   **Sec. 8.** A new section is added to chapter 50A.05  
33 RCW to read as follows:

34       (1) The office of financial management must enter into a contract  
35 with a public or private entity for actuarial services to provide a  
36 report to the appropriate committees of the legislature by October 1,  
37 2022, on the following:

38       (a) The experience and financial condition of the family and  
39 medical leave insurance account created in RCW 50A.05.070;

1 (b) Any recommendations for options to modify the provisions of  
2 chapter 50A.10 RCW to maintain the long-term stability and solvency  
3 of the family and medical leave insurance account; and

4 (c) A comparison of the provisions of RCW 50A.10.030 with similar  
5 provisions in those states with both paid medical leave insurance and  
6 paid family leave insurance programs.

7 (2) The contract is exempt from the competitive procurement  
8 requirements in chapter 39.26 RCW.

9 (3) The report in this section must comply with RCW 43.01.036.

10 (4) This section expires December 31, 2023.

11 **Sec. 9.** RCW 44.44.040 and 2019 c 363 s 22 are each amended to  
12 read as follows:

13 The office of the state actuary shall have the following powers  
14 and duties:

15 (1) Perform all actuarial services for the department of  
16 retirement systems, including all studies required by law.

17 (2) Advise the legislature and the governor regarding pension  
18 benefit provisions, and funding policies and investment policies of  
19 the state investment board.

20 (3) Consult with the legislature and the governor concerning  
21 determination of actuarial assumptions used by the department of  
22 retirement systems.

23 (4) Prepare a report, to be known as the actuarial fiscal note,  
24 on each pension bill introduced in the legislature which briefly  
25 explains the financial impact of the bill. The actuarial fiscal note  
26 shall include: (a) The statutorily required contribution for the  
27 biennium and the following twenty-five years; (b) the biennial cost  
28 of the increased benefits if these exceed the required contribution;  
29 and (c) any change in the present value of the unfunded accrued  
30 benefits. An actuarial fiscal note shall also be prepared for all  
31 amendments which are offered in committee or on the floor of the  
32 house of representatives or the senate to any pension bill. However,  
33 a majority of the members present may suspend the requirement for an  
34 actuarial fiscal note for amendments offered on the floor of the  
35 house of representatives or the senate.

36 (5) Provide such actuarial services to the legislature as may be  
37 requested from time to time.

38 (6) Provide staff and assistance to the committee established  
39 under RCW 41.04.276.



1 (7) Provide actuarial assistance to the law enforcement officers'  
2 and firefighters' plan 2 retirement board as provided in chapter 2,  
3 Laws of 2003. Reimbursement for services shall be made to the state  
4 actuary under RCW 39.34.130 and section 5(5), chapter 2, Laws of  
5 2003.

6 (8) Provide actuarial assistance to the committee on advanced  
7 tuition payment pursuant to chapter 28B.95 RCW, including  
8 recommending a tuition unit price to the committee on advanced  
9 tuition payment to be used in the ensuing enrollment period.  
10 Reimbursement for services shall be made to the state actuary under  
11 RCW 39.34.130.

12 (9) Provide actuarial assistance to the long-term services and  
13 supports trust commission pursuant to chapter 50B.04 RCW.  
14 Reimbursement for services shall be made to the state actuary under  
15 RCW 39.34.130.

16 (10) Provide actuarial assistance, as requested by the employment  
17 security department or the office of financial management, to the  
18 employment security department related to the family and medical  
19 leave program in Title 50A RCW.

20 **Sec. 10.** RCW 50A.25.070 and 2020 c 125 s 8 are each amended to  
21 read as follows:

22 (1) The department may enter into data-sharing contracts and may  
23 disclose records and information deemed confidential to state or  
24 local government agencies under this chapter only if permitted under  
25 subsection (2) of this section and RCW 50A.25.090. A state or local  
26 government agency must need the records or information for an  
27 official purpose and must also provide:

28 (a) An application in writing to the department for the records  
29 or information containing a statement of the official purposes for  
30 which the state or local government agency needs the information or  
31 records and specifically identify the records or information sought  
32 from the department; and

33 (b) A written verification of the need for the specific  
34 information from the director, commissioner, chief executive, or  
35 other official of the requesting state or local government agency  
36 either on the application or on a separate document.

37 (2) The department may disclose information or records deemed  
38 confidential under this chapter to the following state or local  
39 government agencies:

1 (a) To the department of social and health services to identify  
2 child support obligations as defined in RCW 50A.15.080;

3 (b) To the department of revenue to determine potential tax  
4 liability or employer compliance with registration and licensing  
5 requirements;

6 (c) To the department of labor and industries to compare records  
7 or information to detect improper or fraudulent claims;

8 (d) To the office of financial management for the purpose of  
9 conducting periodic salary or fringe benefit studies pursuant to law  
10 or for the actuarial services created under this act;

11 (e) To the office of the state treasurer and any financial or  
12 banking institutions deemed necessary by the office of the state  
13 treasurer and the department for the proper administration of funds;

14 (f) To the office of the attorney general for purposes of legal  
15 representation;

16 (g) To a county clerk for the purpose of RCW 9.94A.760 if  
17 requested by the county clerk's office;

18 (h) To the office of administrative hearings for the purpose of  
19 administering the administrative appeal process;

20 (i) To the department of enterprise services for the purpose of  
21 agency administration and operations; (~~and~~)

22 (j) To the consolidated technology services agency for the  
23 purpose of enterprise technology support;

24 (k) To the office of the state actuary for the purpose of  
25 performing actuarial services to assess the financial stability and  
26 solvency of the family and medical leave program, and specifically  
27 the family and medical leave insurance account created in RCW  
28 50A.05.070; and

29 (l) To the joint legislative audit and review committee, in  
30 accordance with RCW 44.28.110, for the purpose of conducting  
31 performance audits.

32 NEW SECTION. Sec. 11. (1)(a) A legislative task force on paid  
33 family and medical leave insurance premiums is established, with  
34 members as provided in this subsection.

35 (i) The president of the senate must appoint two members from  
36 each of the two largest caucuses of the senate.

37 (ii) The speaker of the house of representatives must appoint two  
38 members from each of the two largest caucuses of the house of  
39 representatives.

1 (iii) The voting members of the advisory committee in RCW  
2 50A.05.030.

3 (iv) The governor shall appoint two members, one representing the  
4 governor's office and one representing the employment security  
5 department.

6 (b) The task force must choose its cochairs from among its  
7 legislative membership described in (a)(i) and (ii) of this  
8 subsection.

9 (2) The task force must review the reports submitted under RCW  
10 50A.05.050 and make recommendations for any legislative modifications  
11 to the provisions of chapter 50A.10 RCW to ensure the lowest future  
12 premium rates necessary to maintain solvency of the family and  
13 medical leave insurance account created in RCW 50A.05.070 in the next  
14 four years while limiting fluctuation in family and medical leave  
15 insurance premium rates.

16 (3) Staff support for the task force must be provided by the  
17 senate committee services and the house of representatives office of  
18 program research.

19 (4) Legislative members of the task force are reimbursed for  
20 travel expenses in accordance with RCW 44.04.120. Nonlegislative  
21 members are not entitled to be reimbursed for travel expenses if they  
22 are elected officials or are participating on behalf of an employer,  
23 governmental entity, or other organization. Any reimbursement for  
24 other nonlegislative members is subject to chapter 43.03 RCW.

25 (5) The expenses of the committee must be paid jointly by the  
26 senate and the house of representatives. Task force expenditures are  
27 subject to approval by the senate facilities and operations committee  
28 and the house of representatives executive rules committee, or their  
29 successor committees.

30 (6) The task force shall issue a final report on its findings and  
31 recommendations to the governor and the appropriate committees of the  
32 legislature by December 30, 2022.

33 (7) This section expires January 4, 2023.

34 NEW SECTION. **Sec. 12.** (1) By October 1, 2024, the joint  
35 legislative audit and review committee, in consultation with the  
36 employment security department and the advisory committee in RCW  
37 50A.05.030, must conduct a performance audit analyzing the  
38 implementation of the paid family and medical leave insurance

1 program. The analysis must include, at a minimum, the following  
2 components:

3 (a) Evaluate the extent to which the department makes fair and  
4 timely decisions, and communicates with employers and workers in a  
5 timely, responsive, and accurate manner;

6 (b) Determine if current organization and service delivery models  
7 are the most efficient available;

8 (c) Determine whether current initiatives improve service  
9 delivery, meet the needs of current and future workers, and are  
10 measurable;

11 (d) Evaluate whether the department prepares financial  
12 information for the account under RCW 50A.05.070 in accordance with  
13 generally accepted accounting principles;

14 (e) Evaluate the solvency of the account under RCW 50A.05.070  
15 taking into account insurance risks and standard accounting  
16 principles; and

17 (f) Make recommendations regarding administrative changes that  
18 should be made to improve efficiency while maintaining quality  
19 service to help address system costs and identify any needed  
20 legislative changes to implement these recommendations.

21 (2) The joint legislative audit and review committee may contract  
22 with an outside consulting firm with expertise in insurance or social  
23 insurance and insurance principles.

24 (3) The joint legislative audit and review committee must submit  
25 a final report on their findings to the appropriate committees of the  
26 legislature by October 1, 2024, and must submit a progress report by  
27 October 1, 2023.

28 (4) This section expires December 31, 2025.

29 NEW SECTION. **Sec. 13.** Section 8 of this act is necessary for  
30 the immediate preservation of the public peace, health, or safety, or  
31 support of the state government and its existing public institutions,  
32 and takes effect immediately.

33 NEW SECTION. **Sec. 14.** If specific funding for the purposes of  
34 this act, referencing this act by bill or chapter number, is not  
35 provided by June 30, 2022, in the omnibus appropriations act, this  
36 act is null and void.

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