

1 A bill to be entitled
2 An act relating to employment practices; creating ch.
3 444, F.S.; creating s. 444.001, F.S.; providing a
4 short title; creating s. 444.002, F.S.; providing
5 legislative findings and intent; creating s. 444.003,
6 F.S.; defining terms; creating s. 444.004, F.S.;
7 requiring an employer to allow an employee to take
8 paid family care leave to bond with a new child upon
9 the child's birth, adoption, or foster care placement;
10 requiring an employee to take certain action in order
11 to receive family care leave; specifying limitations
12 and duties with respect to an employer's
13 administration of family care leave; requiring that
14 family care leave be taken concurrently with any leave
15 taken pursuant to federal family and medical leave
16 provisions; creating s. 444.005, F.S.; requiring an
17 employer to provide notice to employees of the right
18 to paid family care leave; prescribing notice
19 requirements; requiring the Department of Economic
20 Opportunity to create a poster and a model notice that
21 specify family care leave rights; specifying
22 circumstances under which an employer is deemed in
23 compliance with notice requirements; providing a
24 penalty for an employer's failure to comply with such
25 requirements; creating s. 444.006, F.S.; authorizing
26 the executive director of the department to conduct an

27 investigation under certain circumstances;
28 establishing rebuttable presumptions that an employer
29 has violated certain provisions of ch. 444, F.S.,
30 under specified circumstances; authorizing the
31 executive director to take certain action in the event
32 of specified violations; authorizing an employee to
33 bring a civil action against an employer for a
34 violation within a specified timeframe; authorizing
35 the award of specified compensation, damages, and
36 fees; providing protections for an employee who acts
37 in good faith; prohibiting an employee from taking
38 certain actions in bad faith; providing a penalty;
39 creating s. 444.007, F.S.; authorizing the department
40 to adopt rules; creating s. 444.008, F.S.; providing
41 for construction; amending s. 760.10, F.S.; revising
42 the Florida Civil Rights Act of 1992 to prohibit
43 specified employment practices on the basis of
44 pregnancy, childbirth, or a related medical condition;
45 providing for leave, maintenance of health coverage,
46 reasonable accommodation and transfer, and return
47 rights for an employee who is disabled from pregnancy,
48 childbirth, or a related medical condition; providing
49 for construction; reenacting and amending s.
50 760.11(1), F.S., relating to administrative and civil
51 remedies for violations of the Florida Civil Rights
52 Act of 1992; conforming a cross-reference; providing

53 an effective date.

54
55 Be It Enacted by the Legislature of the State of Florida:

56
57 Section 1. Chapter 444, Florida Statutes, to be entitled
58 "Paid Family Care Leave," is created.

59 Section 2. Section 444.001, Florida Statutes, is created
60 to read:

61 444.001 Short title.—This chapter may be cited as the
62 "Florida Paid Family Care Leave Act."

63 Section 3. Section 444.002, Florida Statutes, is created
64 to read:

65 444.002 Legislative findings and intent.—The Legislature
66 finds that it is in the public interest to provide paid family
67 care leave to workers for the birth, adoption, or foster care
68 placement of a new child. The need for paid family care leave
69 has increased as the participation of both parents in the
70 workforce has increased and the number of single parents has
71 grown. Despite knowledge of the importance of time spent bonding
72 with a new child, the majority of workers in this state are
73 unable to take family care leave because they are unable to
74 afford leave without pay. When a worker does not receive income
75 during a leave of absence, his or her family suffers as a result
76 of the worker's loss of income, increasing demand on the state's
77 reemployment assistance program and dependence on the state's
78 welfare system. Therefore, in an effort to assist workers in

79 reconciling the demands of work and family, the Legislature
 80 intends to require employers to allow employees to take a paid
 81 family care leave to bond with their minor child during the
 82 first year after the birth of the child or the placement of the
 83 child through the foster care system or by adoption.

84 Section 4. Section 444.003, Florida Statutes, is created
 85 to read:

86 444.003 Definitions.—As used in this chapter, the term:

87 (1) "Adverse action" includes:

88 (a) Discharge.

89 (b) Demotion.

90 (c) A threat of discharge or demotion to an employee.

91 (d) Any other retaliatory action that results in a change
 92 in the terms or conditions of employment which would dissuade a
 93 reasonable employee from exercising a right under this chapter.

94 (2) "Child" means a biological, adopted, or foster son or
 95 daughter or a stepson or stepdaughter of an employee.

96 (3) "Department" means the Department of Economic
 97 Opportunity.

98 (4) "Employee" means a person who performs services for
 99 hire for an employer for an average of 20 or more hours per
 100 week. The term includes all individuals employed at any site
 101 owned or operated by an employer, not including an independent
 102 contractor.

103 (5) "Employer" has the same meaning as defined in s.
 104 760.02.

105 (6) "Executive director" means the executive director of
 106 the Department of Economic Opportunity.

107 (7) "Family care leave" means a paid leave of absence from
 108 employment for reason of the birth of an employee's child or the
 109 placement of a child with an employee through the foster care
 110 system or by adoption.

111 Section 5. Section 444.004, Florida Statutes, is created
 112 to read:

113 444.004 Family care leave upon the birth, adoption, or
 114 foster care placement of a child.-

115 (1) Beginning January 1, 2017, an employer shall allow an
 116 employee to take family care leave from employment, for up to 6
 117 weeks, for the employee to bond with his or her minor child
 118 during the first year after the birth or placement of the child
 119 in connection with foster care or adoption. Such family care
 120 leave shall be without loss of pay or diminution of any
 121 privilege, benefit, or right arising out of such employment.

122 (2) In order to receive family care leave, an employee
 123 shall:

124 (a) Request the leave from his or her employer as soon as
 125 practicable after the employee determines that he or she needs
 126 to take leave to bond with a new child.

127 (b) Notify the employer of the anticipated duration of the
 128 leave.

129 (c) Comply with any reasonable procedures established by
 130 the employer for an employee to follow when requesting and

131 obtaining leave.

132 (3) An employer may require an employee who requests or
133 obtains family care leave to provide reasonable documentation to
134 verify eligibility to take family care leave.

135 (4) An employer may not take adverse action against an
136 employee for requesting or obtaining family care leave
137 authorized under this section.

138 (5) An employer shall retain a record of family care leave
139 obtained by an employee for at least 3 years. After giving the
140 employer notice and determining a mutually agreeable time for
141 inspection, the executive director may inspect a record kept
142 pursuant to this subsection for the purpose of determining the
143 employer's compliance. If an employer fails to retain a record
144 as required under this subsection or to allow the executive
145 director to inspect such records, the executive director may
146 take action pursuant to s. 444.006(3).

147 (6) Family care leave taken pursuant to this section must
148 be taken concurrently with leave taken pursuant to the Family
149 and Medical Leave Act of 1993, Pub. L. No. 103-3.

150 Section 6. Section 444.005, Florida Statutes, is created
151 to read:

152 444.005 Notice requirements.—

153 (1) An employer shall notify his or her employee that the
154 employee is entitled to family care leave to bond with a new
155 child upon meeting the requirements for eligibility set forth in
156 this chapter.

- 157 (2) The notice must include:
- 158 (a) The purposes for which the employer is required to
159 allow an employee to take a leave of absence.
- 160 (b) A statement regarding the prohibition of the
161 employer's taking adverse action against an employee who
162 exercises a right under this section.
- 163 (c) Information regarding the right of an employee to
164 report an alleged violation of this chapter by the employer to
165 the executive director or to bring a civil action under s.
166 444.006.
- 167 (3) The department shall create and make available a
168 poster and a model notice that may be used by an employer in
169 complying with subsection (1). The poster and model notice must
170 be printed in English, Spanish, and any other language that the
171 executive director determines is necessary to notify employees
172 of their rights under this chapter.
- 173 (4) An employer is deemed to be in compliance with
174 subsection (1) by:
- 175 (a) Displaying the poster created by the executive
176 director in a conspicuous and accessible area at the site at
177 which the employees work;
- 178 (b) Including the model notice created by the executive
179 director in an employee handbook or other written guide to
180 employees concerning employee benefits or leave provided by the
181 employer; or
- 182 (c) Providing the model notice created by the executive

183 director to each employee at the time of initial hiring.

184 (5) If an employer decides not to use the model notice
 185 created by the executive director, the employer's notice must
 186 contain the same information that is included in the model
 187 notice.

188 (6) In lieu of posting the model notice, an employer may
 189 distribute the employer's notice to employees by electronic
 190 means.

191 (7) An employer who violates this section is subject to a
 192 civil penalty of not more than \$125 for the first violation and
 193 not more than \$250 for each subsequent violation.

194 Section 7. Section 444.006, Florida Statutes, is created
 195 to read:

196 444.006 Violations of chapter; civil action; penalties.—

197 (1) Upon the receipt of a written complaint from an
 198 employee, the executive director may conduct an investigation to
 199 determine whether the employer has acted in violation of this
 200 chapter.

201 (2)(a) There is a rebuttable presumption that an employer
 202 has violated this chapter if the employer takes adverse action
 203 against an employee within 90 days after the employee:

204 1. Files a complaint with the executive director alleging
 205 a violation of this chapter or brings a civil action under this
 206 section;

207 2. Informs a person about an alleged violation of this
 208 chapter by his or her employer;

209 3. Cooperates with the executive director or another
210 person in the investigation or prosecution of an alleged
211 violation of this chapter by his or her employer; or

212 4. Opposes a policy or practice of his or her employer of
213 an act committed by the employer which is prohibited under this
214 chapter.

215 (b) The rebuttable presumption may be overcome by clear
216 and convincing evidence.

217 (3) If the executive director determines that a violation
218 of this chapter has occurred, the executive director may:

219 (a) Attempt to informally resolve any pertinent issue by
220 mediation;

221 (b) With the written consent of the employee, request the
222 Attorney General to bring an action on behalf of the employee in
223 accordance with this section; or

224 (c) Bring an action on behalf of an employee in the county
225 where the violation allegedly occurred.

226 (4) An employee may bring a civil action in a court of
227 competent jurisdiction against his or her employer for a
228 violation of this chapter regardless of whether the employee
229 first filed a complaint with the executive director.

230 (5) An action brought under subsection (3) or subsection
231 (4) must be filed within 3 years after the occurrence of the act
232 on which the action is based.

233 (6) (a) If a court finds that an employer violated this
234 chapter in an action brought under subsection (3) or subsection

235 (4), the court may award the employee:
 236 1. The full monetary value of any unpaid family care leave
 237 that the employee was unlawfully denied;
 238 2. Actual economic damages suffered by the employee as a
 239 result of the employer's violation of this chapter;
 240 3. An additional amount not exceeding three times the
 241 damages awarded under subparagraph 2.;
 242 4. Reasonable attorney fees and other costs; and
 243 5. Any other relief that the court deems appropriate,
 244 including reinstatement of employment, back pay, and injunctive
 245 relief.
 246 (b) If the full monetary value of any unpaid family care
 247 leave of an employee is recovered under this subsection, such
 248 leave shall be paid to the employee without cost to the
 249 employee.
 250 (c) If the action was brought by the Attorney General
 251 under paragraph (3)(b), the court may order the employer to pay
 252 \$1,000 per violation to the state.
 253 (7) There is a rebuttable presumption that an employer has
 254 violated this chapter if the employer takes adverse action
 255 against an employee within 90 days after the employee:
 256 (a) Files a complaint with the executive director alleging
 257 a violation of this chapter or brings a civil action under
 258 subsection (4);
 259 (b) Informs a person about an alleged violation of this
 260 chapter by his or her employer;

261 (c) Cooperates with the executive director or another
 262 person in the investigation or prosecution of an alleged
 263 violation of this chapter by his or her employer; or

264 (d) Opposes a policy or practice of his or her employer or
 265 an act committed by his or her employer which is unlawful under
 266 this chapter.

267
 268 The protections afforded under this subsection apply to an
 269 employee who mistakenly, but in good faith, alleges a violation
 270 of this chapter.

271 (8) An employee, in bad faith, may not file a complaint
 272 with the executive director alleging a violation of this chapter
 273 or bring or testify in an action brought under this section. An
 274 employee who violates this subsection commits a misdemeanor of
 275 the first degree, punishable as provided in s. 775.082 or s.
 276 775.083.

277 Section 8. Section 444.007, Florida Statutes, is created
 278 to read:

279 444.007 Rules.—The department may adopt rules to implement
 280 and administer this chapter.

281 Section 9. Section 444.008, Florida Statutes, is created
 282 to read:

283 444.008 Construction.—

284 (1) This chapter does not diminish an employer's
 285 obligation to comply with a collective bargaining agreement,
 286 contract, employee benefit plan, or employer policy, as

287 applicable, which requires leave in excess of that required by
288 this chapter for the birth, adoption, or placement of a child.

289 (2) An individual's right to family care leave under this
290 chapter may not be diminished by a collective bargaining
291 agreement entered into or renewed or an employer policy adopted
292 or retained on or after July 1, 2016. Any agreement by an
293 individual to waive his or her rights under this chapter is
294 deemed against public policy and is void and unenforceable.

295 Section 10. Present subsections (2) through (10) of
296 section 760.10, Florida Statutes, are renumbered as subsections
297 (3) through (11), respectively, and a new subsection (2) is
298 added to that section, to read:

299 760.10 Unlawful employment practices.—

300 (2) In addition to the provisions governing pregnancy
301 under subsection (1), it is an unlawful employment practice for
302 an employer to:

303 (a) Refuse to allow a female employee disabled by
304 pregnancy, childbirth, or a related medical condition to take
305 unpaid leave for a period, not to exceed 4 months, during which
306 the female employee is disabled on account of pregnancy,
307 childbirth, or a related medical condition. An employee is
308 entitled to use any accrued vacation leave to receive
309 compensation during the unpaid period of leave. An employer may
310 require an employee who plans to take leave pursuant to this
311 paragraph to provide the employer reasonable notice of the date
312 the leave will commence and the estimated duration of the leave.

313 (b) Refuse to maintain and pay for coverage for a group
314 health plan, as defined in s. 5000(b)(1) of the Internal Revenue
315 Code, for an eligible employee who takes leave pursuant to
316 paragraph (a) at the level and under the conditions that
317 coverage would have been provided if the employee had
318 continuously worked for the duration of the leave. This
319 paragraph does not preclude an employer from maintaining and
320 paying for coverage under a group health plan for a period
321 exceeding 4 months. An employer may recover the premium that the
322 employer paid for maintaining coverage as required under this
323 paragraph if:

324 1. The employee fails to return from leave after the
325 period of leave to which the employee is entitled to has
326 expired; and

327 2. The employee's failure to return from leave is for a
328 reason other than the employee's taking paid family care leave
329 pursuant to chapter 444 or other than the continuation,
330 recurrence, or onset of a medical condition that entitles the
331 employee to leave under paragraph (a) or circumstance beyond the
332 control of the employee.

333 (c) Refuse to provide reasonable accommodation for an
334 employee, if she so requests with the advice of her health care
335 provider, for pregnancy, childbirth, or a medical condition
336 related to pregnancy or childbirth. As an accommodation, and
337 with the advice of her health care provider, an employee may
338 request transfer to a less strenuous or hazardous position for

339 the duration of her pregnancy. This paragraph does not require
340 an employer to create additional employment duties that the
341 employer would not otherwise have created, discharge another
342 employee, transfer an employee with more seniority, or promote
343 an employee who is not qualified to perform certain duties.

344 (d) Refuse to return an employee to the same position
345 after the period of leave to which the employee is entitled has
346 expired. If her same position is no longer available, an
347 employer must offer a position that is comparable in terms of
348 pay, location, job content, and promotional opportunities,
349 unless the employer can prove that no comparable position
350 exists.

351 (e) Otherwise interfere with, restrain, or deny the
352 exercise of, or the attempt to exercise, any right provided
353 under this subsection.

354
355 This subsection may not be construed to affect any other
356 provision of law relating to pregnancy, or in any way to
357 diminish the coverage of pregnancy, childbirth, or a medical
358 condition related to pregnancy or childbirth under any other
359 law, including chapter 444. An employee is entitled to take
360 leave pursuant to this subsection in addition to any paid family
361 care leave that the employee may be eligible to receive pursuant
362 to chapter 444.

363 Section 11. Subsection (1) of section 760.11, Florida
364 Statutes, is reenacted and amended to read:

365 760.11 Administrative and civil remedies; construction.—
366 (1) Any person aggrieved by a violation of ss. 760.01-
367 760.10 may file a complaint with the commission within 365 days
368 of the alleged violation, naming the employer, employment
369 agency, labor organization, or joint labor-management committee,
370 or, in the case of an alleged violation of s. 760.10(6) ~~s.~~
371 ~~760.10(5)~~, the person responsible for the violation and
372 describing the violation. Any person aggrieved by a violation of
373 s. 509.092 may file a complaint with the commission within 365
374 days of the alleged violation naming the person responsible for
375 the violation and describing the violation. The commission, a
376 commissioner, or the Attorney General may in like manner file
377 such a complaint. On the same day the complaint is filed with
378 the commission, the commission shall clearly stamp on the face
379 of the complaint the date the complaint was filed with the
380 commission. In lieu of filing the complaint with the commission,
381 a complaint under this section may be filed with the federal
382 Equal Employment Opportunity Commission or with any unit of
383 government of the state which is a fair-employment-practice
384 agency under 29 C.F.R. ss. 1601.70-1601.80. If the date the
385 complaint is filed is clearly stamped on the face of the
386 complaint, that date is the date of filing. The date the
387 complaint is filed with the commission for purposes of this
388 section is the earliest date of filing with the Equal Employment
389 Opportunity Commission, the fair-employment-practice agency, or
390 the commission. The complaint shall contain a short and plain

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391 statement of the facts describing the violation and the relief
392 sought. The commission may require additional information to be
393 in the complaint. The commission, within 5 days of the complaint
394 being filed, shall by registered mail send a copy of the
395 complaint to the person who allegedly committed the violation.
396 The person who allegedly committed the violation may file an
397 answer to the complaint within 25 days of the date the complaint
398 was filed with the commission. Any answer filed shall be mailed
399 to the aggrieved person by the person filing the answer. Both
400 the complaint and the answer shall be verified.

401 Section 12. This act shall take effect July 1, 2016.