

HOUSE BILL No. 1302

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-4.1-27.

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

Effective: July 1, 2019.

Shackleford

January 14, 2019, read first time and referred to Committee on Employment, Labor and Pensions.



First Regular Session of the 121st General Assembly (2019)

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

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

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1302

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

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

1 SECTION 1. IC 22-4.1-27 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]:

4 **Chapter 27. Paid Family and Medical Leave Program**

5 **Sec. 1. As used in this chapter, "act" refers to the federal Family**
6 **and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.) as in effect**
7 **on July 1, 2019.**

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

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

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

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



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

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

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

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

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

11 (B) otherwise in outpatient status; or

12 (C) otherwise on the temporary disability retired list;
13 for a serious injury or illness that was incurred by the
14 member in the line of duty on active duty in the armed forces,
15 or a serious injury or illness that existed before the beginning
16 of the member's active duty and was aggravated by service in
17 the line of duty on active duty in the armed forces.

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

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

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

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

35 (1) The state.

36 (2) A political subdivision.

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

39 (1) A biological, adopted, or foster:

40 (A) child;

41 (B) stepchild; or

42 (C) legal ward;



1 of the covered individual, regardless of age.

2 (2) A biological, adoptive, or foster:

3 (A) parent;

4 (B) stepparent; or

5 (C) legal guardian;

6 of the covered individual or the covered individual's spouse.

7 (3) An individual to whom the covered individual is legally
8 married under the laws of any state.

9 (4) A biological, adoptive, or foster:

10 (A) grandparent;

11 (B) stepgrandparent;

12 (C) grandchild;

13 (D) stepgrandchild;

14 (E) sibling; or

15 (F) stepsibling;

16 of the covered individual or the covered individual's spouse.

17 Sec. 11. As used in this chapter, "fund" refers to the family and
18 medical leave fund established by section 19 of this chapter.

19 Sec. 12. As used this chapter, "health care provider" means a
20 person licensed under federal or state law to provide medical or
21 emergency services, including a doctor, nurse, emergency room
22 personnel, or certified midwife.

23 Sec. 13. As used in this chapter, "next of kin" has the meaning
24 set forth in 29 U.S.C. 2611(17).

25 Sec. 14. As used in this chapter, "program" refers to the paid
26 family and medical leave program established under section 17 of
27 this chapter.

28 Sec. 15. As used in this chapter, "qualifying exigency leave"
29 means leave for a need arising from a covered individual's family
30 member's active duty service or notice of an impending call or
31 order to active duty in the armed forces, including:

32 (1) providing for the care or other needs of the military
33 member's child or other family member;

34 (2) making financial or legal arrangements for the military
35 member;

36 (3) attending counseling;

37 (4) attending military events or ceremonies;

38 (5) spending time with the military member during a rest and
39 recuperation leave or following return from deployment; or

40 (6) making arrangements following the death of the military
41 member.

42 Sec. 16. As used in this chapter, "serious health condition" has



1 the meaning set forth in 29 U.S.C. 2611(11).

2 Sec. 17. (a) Not later than January 1, 2021, the department shall
3 establish and administer a paid family and medical leave program
4 through which a covered individual may receive benefit payments
5 as described in section 21 of this chapter.

6 (b) The department shall do the following:

7 (1) Establish reasonable procedures and forms for filing:

8 (A) employer and employee payroll contributions to the
9 fund under section 20 of this chapter; and

10 (B) claims for program benefits.

11 (2) Specify necessary documentation to support a claim for
12 program benefits, including any documentation required
13 from a health care provider for proof of a serious health
14 condition.

15 (3) Notify the employer of an individual who applies for
16 program benefits not more than five (5) business days after a
17 claim for program benefits is filed.

18 (4) Use information sharing and integration technology to
19 facilitate the disclosure of relevant information or records, as
20 consented to by the individual under state law.

21 (5) Adopt rules under IC 4-22-2 to implement this chapter.

22 Sec. 18. (a) Information concerning an individual described in
23 this chapter is confidential and may be used only for the purposes
24 of this chapter.

25 (b) An individual described in subsection (a) or an authorized
26 representative of the individual may review and receive
27 information described in subsection (a) upon the presentation of
28 the individual's signed authorization.

29 Sec. 19. (a) The family and medical leave fund is established for
30 the purpose of providing family and medical leave program benefit
31 payments to covered individuals. The fund shall be administered
32 by the department.

33 (b) The fund consists of appropriations from the general
34 assembly and payroll contributions under section 20 of this
35 chapter.

36 (c) The expenses of administering the fund shall be paid from
37 money in the fund.

38 (d) The treasurer of state shall invest the money in the fund not
39 currently needed to meet the obligations of the fund in the same
40 manner as other public money may be invested. Interest that
41 accrues from these investments shall be deposited in the fund.

42 (e) Money in the fund at the end of a state fiscal year does not



1 revert to the state general fund.

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

4 Sec. 20. (a) The department shall annually determine the
5 amount of payroll contributions necessary to finance program
6 benefits.

7 (b) Employers shall make contributions to the fund in an
8 amount determined under subsection (a), not to exceed four-tenths
9 of one percent (0.4%) of an employee's wage in a twelve (12) month
10 period. Employers may deduct up to fifty percent (50%) of the
11 contribution determined under subsection (a) from the employee's
12 wages.

13 Sec. 21. An individual is eligible for program benefit payments
14 if the individual:

15 (1) either:

16 (A) earned at least six thousand three hundred dollars
17 (\$6,300) from at least one (1) employer during the twelve
18 (12) month period immediately preceding the date on
19 which the individual submits an application for program
20 benefits; or

21 (B) is self-employed and opted in under section 27 of this
22 chapter; and

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

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

26 (B) Is caring for a family member with a serious health
27 condition.

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

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

33 (E) Is eligible for qualifying exigency leave.

34 Sec. 22. Beginning July 1, 2021, the department shall make
35 program benefit payments available to an individual who:

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

37 (2) applies for program benefits under this chapter.

38 Sec. 23. (a) A covered individual may receive program benefit
39 payments for not more than six (6) weeks during an application
40 year.

41 (b) A covered individual may not receive program benefit
42 payments for less than eight (8) hours of family and medical leave



1 taken in one (1) work week.

2 **Sec. 24. (a) Subject to subsection (b), the weekly program**
 3 **benefit for family and medical leave is determined as follows:**

4 (1) If the covered individual's average weekly wage is not
 5 more than fifty percent (50%) of the state average weekly
 6 wage, the employee's weekly benefit is ninety percent (90%)
 7 of the covered individual's average weekly wage.

8 (2) If the covered individual's average weekly wage is greater
 9 than fifty percent (50%) of the state average weekly wage, the
 10 covered individual's weekly benefit is the sum of:

11 (A) ninety percent (90%) of the covered individual's
 12 average weekly wage up to fifty percent (50%) of the state
 13 average weekly wage; plus

14 (B) fifty percent (50%) of the covered individual's average
 15 weekly wage that is greater than fifty percent (50%) of the
 16 state average weekly wage.

17 (b) The maximum weekly program benefit payment is an
 18 amount equal to the state average weekly wage.

19 **Sec. 25. (a) A covered individual may take paid family and**
 20 **medical leave on an intermittent or reduced leave schedule under**
 21 **which all of the leave is not taken sequentially.**

22 (b) Program benefit payments for an intermittent or reduced
 23 leave schedule must be prorated accordingly.

24 (c) A covered individual shall do the following:

25 (1) Make a reasonable effort to schedule paid family and
 26 medical leave so as not to unduly disrupt the operations of the
 27 employer.

28 (2) To the extent practicable, provide to the employer prior
 29 notice of the schedule on which the covered individual will
 30 take the family and medical leave.

31 (d) The total amount of paid family and medical leave available
 32 to a covered individual under this chapter is not reduced beyond
 33 the actual amount of paid family and medical leave taken under
 34 this section.

35 (e) This section does not entitle a covered individual to receive
 36 more paid family and medical leave than the amount of family and
 37 medical leave specified in section 23(a) of this chapter.

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

39 (1) upon hiring;

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

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



1 **(4) annually;**
 2 **provide to the employee written notice as described in subsection**
 3 **(b).**

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

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

7 **(2) The amount of program benefit payments to which the**
 8 **employee would be entitled.**

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

10 **(4) That discrimination and retaliatory personnel actions**
 11 **against an employee for requesting, applying for, or using**
 12 **program benefits is prohibited.**

13 **(5) That the employee has a right to file a complaint for**
 14 **violations of this chapter.**

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

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

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

24 **(b) An individual who is self-employed as described in**
 25 **subsection (a) shall file a notice of election in writing with the**
 26 **commissioner, including all information required by the**
 27 **department.**

28 **(c) An election filed under subsection (b) is effective on the date**
 29 **on which the notice is filed.**

30 **(d) An individual who is self-employed who has elected to**
 31 **participate in the program under this chapter may withdraw from**
 32 **participation by filing a notice of withdrawal:**

33 **(1) less than thirty (30) days after the end of the three (3) year**
 34 **period described in subsection (a); or**

35 **(2) at other times provided by the commissioner.**

36 **A withdrawal under this subsection takes effect not earlier than**
 37 **thirty (30) days after the notice of withdrawal is filed.**

38 **Sec. 28. (a) A person that interferes with, restrains, denies, or**
 39 **attempts to deny the exercise of a provision of this chapter violates**
 40 **this chapter.**

41 **(b) An employer, temporary help company, employment agency,**
 42 **employee organization, or other person shall not take retaliatory**



1 personnel action or otherwise discriminate against an individual
2 because the individual does any of the following:

- 3 (1) Requests, files for, applies for, or uses program benefits.
4 (2) Communicates to the person or another person an intent
5 to file a claim, a complaint with the department, a court
6 action, or an appeal concerning program benefits.
7 (3) Testifies, intends to testify, or assists in an investigation,
8 hearing, or proceeding concerning program benefits.
9 (4) Informs a person concerning an employer's alleged
10 violation of this chapter.
11 (5) Informs a person of the person's rights under this chapter.

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

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

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

21 **Sec. 29.** Paid family and medical leave taken under this chapter
22 that also qualifies as leave under the act runs concurrently with
23 leave taken under the act.

24 **Sec. 30. (a)** An employer may require that program benefit
25 payments made under this chapter be made concurrently, or
26 otherwise coordinated, with payment made or leave allowed under
27 the terms of disability or family care leave under a collective
28 bargaining agreement or an employer policy.

29 (b) An employer shall provide to each employee written notice
30 of a requirement described in subsection (a).

31 **Sec. 31.** This chapter does not diminish an employer's obligation
32 to comply with any of the following that provide more generous
33 leave:

- 34 (1) A collective bargaining agreement.
35 (2) An employer policy.
36 (3) Another law.

37 **Sec. 32. (a)** An individual's right to program benefit payments
38 under this chapter may not be diminished by:

- 39 (1) a collective bargaining agreement that is entered into or
40 renewed; or
41 (2) an employer policy adopted or retained;

42 after June 30, 2019.



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

3 **Sec. 33. An individual's eligibility for program benefits under**
 4 **this chapter does not entitle the individual to job protection beyond**
 5 **the job protection required by the act.**

6 **Sec. 34. (a) This chapter does not do the following:**

7 **(1) Supersede an employer's obligation to comply with a**
 8 **company policy, law, or collective bargaining agreement that**
 9 **provides greater or additional rights to leave than provided**
 10 **in this chapter.**

11 **(2) Curtail the rights, privileges, or remedies of an employee**
 12 **under a collective bargaining agreement or employment**
 13 **contract.**

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

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

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

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

30 **Sec. 35. (a) The department shall establish a process for**
 31 **approving a private plan to be used by the employer to meet the**
 32 **employer's obligations under this chapter.**

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

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

39 **(1) Providing family and medical leave to a covered individual**
 40 **for the reasons set forth in section 21 of this chapter, for the**
 41 **maximum number of weeks specified in section 23 of this**
 42 **chapter, in a benefit year.**



- 1 **(2) Providing a wage replacement rate during all family and**
- 2 **medical leave at least equal to the amount required by section**
- 3 **24 of this chapter.**
- 4 **(3) Imposing no additional conditions or restrictions on the**
- 5 **use of family or medical leave beyond the conditions or**
- 6 **restrictions explicitly authorized by this chapter or rules**
- 7 **adopted under this chapter.**
- 8 **(4) Allowing an employee covered under the private plan who**
- 9 **is eligible to take family or medical leave under this chapter**
- 10 **to take family or medical leave under the private plan.**
- 11 **Sec. 36. The department shall conduct a public education**
- 12 **campaign to inform employees and employers regarding the**
- 13 **availability of family and medical leave program benefits.**
- 14 **Sec. 37. The department may use state data collection and**
- 15 **technology to the extent possible and integrate the program with**
- 16 **existing state policies.**
- 17 **Sec. 38. The department shall annually report to the:**
- 18 **(1) legislative council in an electronic format under IC 5-14-6;**
- 19 **and**
- 20 **(2) state budget committee;**
- 21 **concerning projected and actual program participation,**
- 22 **categorized by purpose of the leave, gender of employee taking**
- 23 **leave, employer and employee contributions, fund balances,**
- 24 **outreach efforts, and family members for whom leave was taken to**
- 25 **provide care.**

