

SENATE BILL REPORT

E2SHB 1073

As Reported by Senate Committee On:
Labor, Commerce & Tribal Affairs, March 17, 2021
Ways & Means, April 2, 2021

Title: An act relating to expanding coverage of the paid family and medical leave program.

Brief Description: Expanding coverage of the paid family and medical leave program.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Berry, Wicks, Fitzgibbon, Bateman, Tharinger, Simmons, Kloba, Ramel, Ortiz-Self, Goodman, Ryu, Bronoske, Hackney, Chopp, Riccelli, Stonier, Frame, Macri, Davis, Pollet, Bergquist and Harris-Talley).

Brief History: Passed House: 3/3/21, 56-40.

Committee Activity: Labor, Commerce & Tribal Affairs: 3/11/21, 3/17/21 [DPA-WM, DNP].

Ways & Means: 3/30/21, 4/02/21 [DPA, DNP].

Brief Summary of Amended Bill

- Provides a pandemic leave assistance employee grant to certain employees who are unable to access their state paid family and medical leave benefits due to the COVID-19 pandemic.
- Outlines employee eligibility for the new grant based on alternate hours worked thresholds.
- Provides a pandemic leave assistance employer grant to employers with fewer than 150 employees, who have an employee taking leave and receiving a grant under the act.
- Stipulates that employers and employees receiving pandemic leave assistance grants are subject to the provisions of the Paid Family and Medical Leave Program.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Keiser, Chair; Conway, Vice Chair, Labor; Stanford, Vice Chair, Commerce & Tribal Affairs; Robinson and Saldaña.

Minority Report: Do not pass.
Signed by Senators King, Ranking Member; Braun, Honeyford and Schoesler.

Staff: Matt Shepard-Koningsor (786-7627)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.
Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Lias, Mullet, Pedersen, Van De Wege and Wellman.

Minority Report: Do not pass.
Signed by Senators Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital; Braun, Gildon, Muzzall, Rivers, Wagoner and Warnick.

Staff: Sarah Emmans (786-7478)

Background: The Paid Family and Medical Leave (PFML) program was enacted to provide partial wage replacement to employees on leave for specified family and medical reasons. It is funded through premiums paid by employers and employees. The Employment Security Department (ESD) administers the program.

Eligibility. Employees are eligible for benefits under the PFML program after working at least 820 hours in a qualifying period. A qualifying period is the first four of the last five full calendar quarters, or the last four full calendar quarters.

Weekly Benefit Amount. The weekly benefit amount (WBA) under the PFML program is calculated as follows. If the employee's average weekly wage is:

- equal to or less than one-half of the state average weekly wage, the WBA is equal to 90 percent of the employee's average weekly wage; or
- greater than one-half of the state average weekly wage, the WBA is the sum of: (1) 90 percent of one-half of the state average weekly wage; and (2) 50 percent of the difference of the employee's average weekly wage and one-half of the state average weekly wage.

The WBA is subject to certain conditions and limitations such as maximum and minimum

weekly benefits and duration. The WBA is prorated by the percentage of hours on leave compared to the number of hours provided as the typical workweek hours. A salaried employee's typical workweek hours are 40, regardless of the number of hours the salaried employee typically works. A non-salaried employee's typical workweek hours are the average number of hours the employee works per week within the qualifying period.

Small Business Grants. Employers with 150 or fewer employees may be eligible for limited grants for wage-related costs or the costs of hiring a temporary worker due to an employee's leave. The amount of each grant varies based on the reasoning and is subject to certain conditions. These grants are funded from the Family and Medical Leave Insurance Account.

Summary of Amended Bill: Pandemic Leave Employee Grants. For claims with an effective start date in 2021 through March 31, 2022, employees who do not meet the hours worked threshold for PFML program eligibility in 2020 or the first calendar quarter of 2021, and are otherwise eligible under the PFML program, are eligible for a pandemic leave assistance employee grant (employee grant), if the employee:

- worked 820 hours in employment during the first through fourth calendar quarters of 2019; or
- worked 820 hours in employment during the second through fourth calendar quarters of 2019 and the first calendar quarter of 2020.

Employees may begin filing claims for the employee grant beginning August 1, 2021. An employee is ineligible for an employee grant if the employee does not meet the hours worked threshold because of an employment separation due to misconduct or a voluntary separation unrelated to COVID-19. An employee seeking employee grant eligibility must attest to this information.

The amount of the employee grant must be equal to the WBA calculated in the PFML program. In calculating the WBA for non-salaried employees eligible for an employee grant, the typical workweek hours are the quotient derived by dividing the sum of the employee's reported hours by the sum of the number of weeks the employee reported hours.

Pandemic Leave Employer Grants. Employers with fewer than 150 employees, and certain employers with 50 or fewer employees may be eligible for a pandemic leave assistance employer grant (employer grant) if the employer hires a temporary worker to replace an employee on leave who has received or who will receive an employee grant.

The employer grant amounts are:

- \$3,000 for employers who hire a temporary worker to replace an employee on leave who has received or will receive an employee grant; or
- up to \$1,000 for employers who incur significant wage-related costs related to the employee's leave.

An employer may receive either of the grant amounts, but not both, except that they may receive the difference between the two grants if an employee receiving an employee grant extended the leave beyond initial plans and the employer hires a temporary worker to replace that employee.

Employer grants may not be funded from the Family and Medical Leave Insurance Account.

Other. Employees and employers receiving a pandemic leave assistance grant must comply with the provisions of the PFML program. Pandemic leave assistance grants are only available until funding provided by the Legislature solely for the purposes of the grants is exhausted. ESD is granted rulemaking authority. Intent language provides intent to use federal funding from the America's Rescue Plan Act to pay for the grants.

EFFECT OF WAYS & MEANS COMMITTEE AMENDMENT(S):

- Reduces the time period in which an employee may be eligible for a pandemic leave assistance employee grant, for claims with an effective start date in 2021 through March 31, 2022—rather than through June 30, 2022.
- Provides that employees may apply beginning August 1, 2021.
- Provides that employers with fewer than 150 employees are eligible for an employer grant to help cover the costs of employees on leave who receive a grant under this act, and that these grants may not be funded from the PFML insurance account.
- Provides that all employees and employers receiving a grant under the act must comply with all provisions of the PFML program.
- Adds language that the grants are only available as long as funding provided solely for the purposes of this act remains available.

EFFECT OF LABOR, COMMERCE & TRIBAL AFFAIRS COMMITTEE AMENDMENT(S):

- Modifies the intent section to explain the connection between COVID-19 and hours worked thresholds.
- Provides intent to use federal funding from the America rescue plan act to provide financial assistance through a pandemic leave assistance grant to workers unable to access PFML program benefits due to not meeting the hours worked threshold because of COVID-19.
- Retains the alternate eligibility periods to determine employee eligibility for the grant, which is equal to the WBA in the PFML program.
- Amends the calculation for the typical workweek hours for non-salaried employees.
- Removes provisions on small business grants, and the null and void and emergency clauses.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill (Labor, Commerce & Tribal Affairs): *The committee recommended a different version of the bill than what was heard.* PRO: This bill is narrowly designed to address the impact of COVID-19 on workers' ability to meet the hours worked requirement. Washington has one of the highest hours worked requirements in the country and COVID-19 creates additional issues. This is a gender equity bill since the bulk of workers who lost their jobs during the pandemic are women. It should be passed as soon as possible. It is estimated this bill will assist up to 42,000 families in Washington. These are workers who paid into the program but cannot access benefits. This bill will not affect the family and medical leave insurance account.

OTHER: PFML is still a fragile program, which has only been in effect for a little over a year. This bill will affect the efficiency of the family and medical leave insurance account. Small business grants were implemented a year late and wait times at ESD are extensive.

Persons Testifying (Labor, Commerce & Tribal Affairs): PRO: Marilyn Watkins, Economic Opportunity Institute; Maggie Humphreys, MomsRising.

OTHER: Robert Battles, Association of Washington Business.

Persons Signed In To Testify But Not Testifying (Labor, Commerce & Tribal Affairs): No one.

Staff Summary of Public Testimony on the Bill as Amended by Labor, Commerce & Tribal Affairs (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: This bill is specifically targeted to help Washingtonians experience leave, even if they lost work due to COVID. Many workers have been denied medical leave benefits because of the 820 hour threshold. With paid leave, these workers will spend this money in local businesses. Women and workers of color would be helped most by this change. This bill will not be paid for by employers because federal funding will be used to pay for the policy. This bill is a modest change that will help Washington families now.

OTHER: The funding is not coming from the PFML fund, which is appreciated. The bill costs \$200 million to fix a temporary situation.

Persons Testifying (Ways & Means): PRO: Marilyn Watkins, Economic Opportunity Institute; Nancy Sapiro.

OTHER: Robert Battles, Association of Washington Business.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.