

# HOUSE BILL REPORT

## E2SHB 1073

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### As Amended by the Senate

**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:

#### Committee Activity:

Labor & Workplace Standards: 1/15/21, 2/5/21 [DPS];  
Appropriations: 2/17/21, 2/22/21 [DP2S(w/o sub LAWS)].

#### Floor Activity:

Passed House: 3/3/21, 56-40.  
Senate Amended.  
Passed Senate: 4/7/21, 29-20.

### Brief Summary of Engrossed Second Substitute Bill

- Provides temporary alternate eligibility for Paid Family Medical Leave claims through June 30, 2022.

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### HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Sells, Chair; Berry, Vice Chair; Bronoske and Ortiz-Self.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Hoff, Ranking Minority Member; Mosbrucker, Assistant Ranking Minority Member.

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*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.*

**Staff:** Lily Smith (786-7175).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Labor & Workplace Standards. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

**Minority Report:** Do not pass. Signed by 14 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Dye, Harris, Hoff, Jacobsen, Rude, Schmick and Steele.

**Staff:** Jordan Clarke (786-7123).

### **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 (Department) administers the program.

### Coverage.

Employees are eligible for benefits under the PFML program after working at least 820 hours in a qualifying period.

### Job Protection.

An employee returning from PFML leave is entitled to be restored to a same or equivalent job when the following applies:

- the employer has 50 or more employees;
- the employee has been with the employer for 12 months or more; and
- the employee has worked for the employer for at least 1,250 hours during the immediately preceding 12 month period.

### Health Benefits.

An employer must maintain the existing health benefits of an employee during PFML leave when otherwise required by the federal Family and Medical Leave Act (FMLA).

The FMLA provides eligible employees with unpaid leave, and generally requires maintenance of health benefits during leave. The FMLA applies to employees meeting work duration requirements for public employers or for private employers with 50 or more

employees.

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 PFML leave.

**Summary of Engrossed Second Substitute Bill:**

Limited alternate eligibility is provided for claims between January 1, 2021, and June 30, 2022, for employees not meeting the existing hours worked threshold for 2020 or the first calendar quarter of 2021, through:

- two alternate lookback qualifying periods across 2019 and the first calendar quarter of 2020; and
- one alternate qualifying period of 520 hours worked in the first quarter of 2020.

The alternate eligibility does not apply to employees that do not meet the existing hours worked threshold because of an employment separation due to misconduct or voluntary separations unrelated to the COVID-19 pandemic.

Small business grants for employee leaves taken under the alternate eligibility may not be funded from the family and medical leave insurance account.

An emergency clause and immediate effective date is provided.

**EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment removes the temporary alternate eligibility for PFML-leave claims from January 1, 2021 through June 30, 2022, and instead provides pandemic leave assistance employee grants beginning August 1, 2021, for leave claims from 2021 through March 31, 2022. Grant eligibility is provided for employees that met the PFML eligibility threshold through hours worked in 2019 and the first quarter of 2020, without the third alternate threshold of hours worked only in the first quarter of 2020. Pandemic leave assistance grants are provided for employers with fewer than 150 employees for the costs of leaves taken by employees receiving a grant under the bill. An expiration date of June 30, 2021 is provided.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony (Labor & Workplace Standards):**

(In support) The purpose of the PFML program was to provide broad access to workers in all types of work, and it is now clear it needs to expand. Expanding coverage would have a large positive impact compared to the cost, and is important to support infant bonding. The hours worked threshold disqualifies many workers who need paid leave, particularly after the shutdowns during this past year, and there is an urgent need for support. Moving to a wage-based threshold would make it less likely that certain temporary or part-time positions, such as in academia, lose out on benefits. Women and women of color have been disproportionately impacted and will experience a cumulative financial effect. Affinity relationships in caretaking within communities of color should be taken into account. Many vulnerable workers are afraid to take their entitled leave because they are not covered under the job protection provisions. Our state's program has been surpassed by other states with broader eligibility and application to family members. Paid family and medical leave levels the playing field for businesses competing for employees.

(Opposed) The PFML program was heavily negotiated and reflects a careful balance between costs to employers and benefits to employees. The definition of "family member" was a part of that balance. Under the bill, a family member could mean a variety of people depending on your relationships, and determining those boundaries is problematic. This bill was not brought before the PFML Advisory Committee and the business community was not consulted. The PFML law is new and not ready for this degree of changes. The program itself has not been fully implemented. For example, the grant programs for small businesses have not been available until recently. The costs of the continuation of health benefits alone could make it prohibitive to backfill an employee's absence, and the costs as a whole look like they will affect premiums and trigger a surcharge. To address issues related to the pandemic, temporary instead of blanket action should be considered. The wage-based threshold would not necessarily promote equity.

#### **Staff Summary of Public Testimony (Appropriations):**

(In support) This bill would provide targeted relief and stimulus to the workforce, by allowing additional workers that would otherwise be denied benefits. That cash will then go back into the economy. Certain populations have been more affected by pandemic job loss than others. This bill provides modest changes that will be a large help in keeping people out of poverty and in their homes. The change in the definition of "family member" will have a minimal impact on the fund, but a large impact on those who need it. There are many caregiving roles for people that are the equivalent of family. It is important to be able to allow people to die with love and dignity.

(Opposed) There is support for the modification of the hours eligibility threshold on an emergent basis, but concern with the impact of changing the definition of "family member." The Paid Family Medical Leave (PFML) program was heavily negotiated in its creation, and there needs to be more review of the ongoing impact of this change. This bill was not vetted through the PFML advisory committee. There are inconsistencies in the fiscal note with a similar proposal in the Senate, which requires far fewer full-time

employees to implement. The differing numbers should be explored further.

**Persons Testifying (Labor & Workplace Standards):** (In support) Representative Berry, prime sponsor; Marilyn Watkins, Economic Opportunity Institute; Scarlett To; Elizabeth Perez; Karen Anderson, American Association of University Women of Washington; Sam Schroeder, Olympia Coffee Roasters; Andrea Schmitt, Columbia Legal Services; Michael Arenson, Washington Chapter of the American Academy of Pediatrics; Laura Beal; and Emily Myers, United Auto Workers.

(Opposed) Candice Bock, Association of Washington Cities; Bob Battles, Association of Washington Business; Julia Gorton, Washington Hospitality Association; Christine Brewer, Brewer Public Affairs; Tammie Hetrick, Washington Food Industry Association; Gary Smith, Independent Business Association.

**Persons Testifying (Appropriations):** (In support) Marilyn Watkins, Economic Opportunity Institute; and Laura Beal.

(Opposed) Tammie Hetrick, Washington Food Industry Association; and Robert Battles, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying (Labor & Workplace Standards):**  
None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.