

ONE HUNDRED FOURTH LEGISLATURE - SECOND SESSION - 2016
COMMITTEE STATEMENT
LB850

Hearing Date: Monday February 01, 2016
Committee On: Business and Labor
Introducer: Crawford
One Liner: Adopt the Paid Family Medical Leave Insurance Act

Roll Call Vote - Final Committee Action:
Indefinitely postponed

Vote Results:

Aye:	6	Senators Bloomfield, Crawford, Ebke, Harr, Howard, Johnson
Nay:		
Absent:	1	Senator Chambers
Present Not Voting:		

Verbal Testimony:

Proponents:

Senator Sue Crawford
Sarah Kole
Sofia Jawed-Wessel
Ian Fallon
Michelle Zych
Ken Smith
Aubrey Mancuso
Sarah Ann Kotchian

Sue Martin
Mark Intermill

Opponents:

Coby Mach

Richard Reiser
Robert Hallstrom

John Albin
Frank Velinsky

Neutral:

Representing:

Introducer
Self
Self
Heartland Workers Center
Women's Fund of Omaha
Nebraska Appleseed
Voices for Children in Nebraska
Holland Children's Movement, Nebraska Child Health and Educational Alliance
Nebraska AFL-CIO
AARP

Representing:

Lincoln Independent Business Association, Omaha Chamber of Commerce, Lincoln Chamber of Commerce, Nebraska Chamber of Commerce
Nebraska Trucking Association
Nebraska Federation of Independent Business, Nebraska Bankers Association
Nebraska Department of Labor
Cartech, Home Care Association of America - Nebraska Chapter

Representing:

Summary of purpose and/or changes:

Sec. 1. creates the Paid Family Medical Leave Insurance Act.

Sec. 2. definitional section. Defines commissioner, covered active duty or call to covered active duty status, covered

employer, covered individual, covered service member, designated person, family medical leave benefits, family member, health care provider, military member, next of kin, paid family medical leave, qualifying exigency leave, retaliatory personnel action, and serious health condition.

Sec. 3. entitles an individual to paid family medical leave beginning April 1, 2019. Leave may be taken for the following reasons: (1) to care for a new child of the individual during the first year after birth, adoption, or placement through foster care; (2) because the individual has a serious health condition, including pregnancy, that makes him/her unable to perform the functions of the position; (3) to care for a family member who has a serious health condition; (4) to care for a service member who is the individual's next of kin; or (5) for qualifying exigency leave for active duty individuals and their families.

The maximum amount of leave an individual may take is 12 weeks during a year if leave is taken because of the individual's serious health condition, or 8 weeks during a year if leave is taken for any other reason.

Leave benefits to be paid to the individual are prorated based on the individual's wages. Benefits are 95% of the individual's wages if his/her yearly earnings are 20% or less of Nebraska's annual median wage. Leave benefits equal 90% of an individual's wages if his/her yearly earnings are more than 20% but not more than 30% of the median wage. Leave benefits equal 85% of the individuals' wages if his/her yearly earnings are more than 30% but not more than 50% of the median wage. Leave benefits equal 66% of the individual's wages if his/her yearly earnings are more than 50% of the median wage.

There is a waiting period where benefits are not payable for the first five days a year that an individual takes paid family medical leave. If the individual takes 10 or more days of leave in a year, he/she will be paid for the waiting period. Leave benefits are not payable for less than eight hours of leave taken in any one work week. The first payment of leave benefits must be made within two weeks after a claim is filed, then subsequent payments must be made every two weeks thereafter. An individual cannot receive family medical leave and unemployment benefits simultaneously.

Sec. 4. requires individuals to file a claim for benefits with the commissioner on a form that includes identifying information, the reason for leave, wage information, health care documentation as necessary, and employer information. Once a claim is filed, the commissioner will notify the employer of the claim and determine the individual's eligibility. If the individual is eligible, the commissioner will pay the benefits to the individual. If the individual is ineligible, the commissioner will notify the individual, and the individual may appeal. Claims filed and related information are confidential and are not public records

Sec. 5. creates the Paid Family Medical Leave Insurance Fund, which will be administered by the commissioner. The fund will consist of contributions from covered individuals as payroll deductions. Such contributions will be used to pay benefits under the act. The commissioner will evaluate the amount of contributions necessary to finance the amount of benefits payable under the act. In no case shall the contributions from an individual exceed one-half of one percent of that individual's wages in any 12 month period.

Sec. 6. allows an individual to take family medical leave on an intermittent basis to care for a seriously ill family member, to care for his/her own serious health condition, or to care for a newborn or newly adopted or foster care child with the employer's approval. Benefits for intermittent leave will be prorated. If an individual needs intermittent leave for foreseeable medical treatments, the individual must work with the employer to schedule leave. In such cases, the employer may temporarily transfer the individual to an alternative job to accommodate the recurring periods of leave, so long as the temporary job has equivalent pay and benefits. Nothing in this section entitles an individual to more leave than he/she is entitled to under section 3.

Sec. 7. requires that an individual who takes leave must be restored to the position held prior to the leave taken or to a different position with equivalent seniority, status, benefits, and pay. While an employee is on paid family medical leave, the employer is to maintain any health benefits of the individual for the duration of the leave if the individual continues to pay his/her share of the cost of such health benefits as required prior to leave. However, earned benefits such as seniority or paid leave, do not need to continue to accrue during paid family medical leave, if such benefits do not accrue

for employees on other types of leave.

Sec. 8. prohibits employers from interfering with any rights protected under the act or from taking retaliatory action against an individual because he or she exercised such rights. Rights include the right to request or use leave, to communicate to the employer an intent to file a claim for leave, to appeal eligibility decisions, to testify or participate in an investigation, and to inform the commissioner of any alleged violation. It is unlawful for an employer to count paid family medical leave as an absence under an absence control policy.

Sec. 9. provides that an individual entitled to leave under the federal FMLA shall take the federal leave concurrently with the state-level paid family medical leave. The act does not diminish an employer's obligation to comply with a more generous leave provided in a collective bargaining agreement, an employer policy, or any state or federal law.

Sec. 10. requires employers to provide notice of the act to each individual upon hiring and each year thereafter. The employer is required to provide notice when the individual requests leave or when the employer becomes aware that an individual's leave may qualify for family medical leave benefits. The notice must include the following: an explanation of the right to benefits and the terms when it may be used, the amount of benefits, the procedure for filing a claim for benefits, the procedure for selecting a designated person, an explanation of the right to job protection, an explanation that retaliatory actions are prohibited, and an explanation that the individual has a right to file a complaint for violations under the act. The employer must display a poster of the information required.

Sec. 11. allows covered employers to establish a process for individuals to select a designated person. If the employer establishes such a process, it must allow individuals to make a selection within 30 days of the hire date and allow the individual to make a change on an annual basis. If a covered employer does not establish such a process, the individual may make a designation when filing a claim for benefits.

Sec. 12. requires the commissioner to implement procedures to ensure confidentiality of all information related to any claims under the act.

Sec. 13. disqualifies a covered individual from receiving benefits for one year if the commissioner determines the individual willfully made a false statement regarding a material fact in order to obtain benefits. If benefits are paid erroneously or as a result of willful misrepresentation, the commissioner may seek repayment from the recipient.

Sec. 14. allows a self-employed person to elect coverage for an initial period of 3 years by filing notice with the commissioner. A self-employed person who elects coverage may withdraw within 30 days after the end of the 3-year period or at other times as the commissioner may prescribe by rules and regulations.

Sec. 15. intent language stating that the commissioner should use data and technology available for other state programs, such as unemployment insurance.

Sec. 16. requires the commissioner to advise claimants of requirements and deductions if the IRS determines that leave benefits are subject to federal income tax. If the individual elects to have federal tax payments withheld, the commissioner will deduct and withhold the specified amount, and such amount must remain in the fund until transferred to the federal taxing authority.

Sec. 17. requires the commissioner to file an electronic report to the Legislature on or before December 31, 2019 and each year thereafter. The report will include: (1) the amount and percentage of benefits paid for each type of leave; (2) the percentage of benefits paid to each gender for each type of leave; (3) the amount of contributions collected by employers; (4) the median benefit payment level; (5) the occupation and industry of individuals receiving benefits; (6) the number of self-employed individuals who elect coverage and the median length of time coverage was maintained; (7) the fund's balance; (8) a summary of outreach efforts to increase awareness; and (9) the types of family members for whom leave was taken.

Sec. 18. authorizes the commissioner to promulgate regulations for the act.

Sec. 19. operative date July 1, 2018.

Sec. 20. clarifies that if any portion is declared unconstitutional, the other sections shall remain valid.

Burke Harr, Chairperson