

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 850**

Introduced by Crawford, 45; Campbell, 25; Cook, 13; Haar, 21; Hansen, 26;  
Howard, 9; Morfeld, 46; Pansing Brooks, 28.

Read first time January 08, 2016

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to employment; to adopt the Paid Family
- 2 Medical Leave Insurance Act; to provide an operative date; and to
- 3 provide severability.
- 4 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 18 of this act shall be known and may be  
2 cited as the Paid Family Medical Leave Insurance Act.

3           Sec. 2. For purposes of the Paid Family Medical Leave Insurance  
4 Act:

5           (1) Commissioner means the Commissioner of Labor;

6           (2) Covered active duty or call to covered active duty status has  
7 the definition found in 29 C.F.R. 825.126(a)(1) and (2);

8           (3) Covered employer means an employer subject to the Employment  
9 Security Law;

10          (4) Covered individual means an individual who:

11          (a) Is employed by a covered employer; or

12          (b) Is self-employed and elects coverage under section 14 of this  
13 act;

14          (5) Covered servicemember has the definition found in 29 U.S.C.  
15 2611(15);

16          (6) Designated person means the one additional person designated by  
17 a covered individual who will be considered a family member of the  
18 covered individual for purposes of the act and for whom the covered  
19 individual may take paid family medical leave if the designated person  
20 has a serious health condition;

21          (7) Family medical leave benefits means the benefits provided under  
22 section 3 of this act for periods of paid family medical leave;

23          (8) Family member means:

24          (a) A biological, adopted, or foster child, a stepchild, or a legal  
25 ward of a covered individual or the covered individual's spouse or  
26 domestic partner or a person to whom the covered individual or the  
27 covered individual's spouse or domestic partner stood in loco parentis  
28 when such person was a minor child;

29          (b) A biological, adoptive, or foster parent, a stepparent, or a  
30 legal guardian of a covered individual or the covered individual's spouse  
31 or domestic partner or a person who stood in loco parentis to the covered

1 individual or the covered individual's spouse or domestic partner when  
2 the covered individual or the covered individual's spouse or domestic  
3 partner was a minor child;

4 (c) A covered individual's spouse or a covered individual's domestic  
5 partner as registered under the laws of any state or political  
6 subdivision;

7 (d) A grandparent, grandchild, or sibling, whether of a biological,  
8 foster, adoptive, or step relationship, of the covered individual or the  
9 covered individual's spouse or domestic partner; or

10 (e) A designated person of the covered individual;

11 (9) Health care provider means any person licensed under federal or  
12 state law to provide medical or emergency services, including, but not  
13 limited to, doctors, nurses, emergency room personnel, and certified  
14 nurse midwives;

15 (10) Military member means a covered individual's family member who  
16 is in the armed forces of the United States;

17 (11) Next of kin has the definition found in 29 U.S.C. 2611(17);

18 (12) Paid family medical leave means leave taken by a covered  
19 individual for the reasons described in section 3 of this act for which  
20 the covered individual is eligible for family medical leave benefits;

21 (13) Qualifying exigency leave means leave taken by a covered  
22 individual for the following purposes if the covered individual's family  
23 member is on covered active duty or call to covered active duty status:

24 (a) Any of the purposes specified in 29 C.F.R. 825.126(b)(3)(i)  
25 through (iv);

26 (b) Any of the purposes specified in 29 C.F.R. 825.126(b)(8)(i)  
27 through (iv);

28 (c) To address any issue that arises from the fact that the military  
29 member is notified of an impending call or order to covered active duty  
30 seven or less calendar days prior to the date of deployment. Leave taken  
31 for this purpose can be used for a period of seven calendar days

1 beginning on the date the military member is notified of an impending  
2 call or order to covered active duty;

3 (d) To attend any official ceremony, program, or event sponsored by  
4 the military that is related to the covered active duty or call to  
5 covered active duty status of the military member;

6 (e) To attend family support or assistance programs and  
7 informational briefings sponsored or promoted by the military, military  
8 service organizations, or the American Red Cross that are related to the  
9 covered active duty or call to covered active duty status of the military  
10 member;

11 (f) To make or update financial or legal arrangements to address the  
12 military member's absence while on covered active duty or call to covered  
13 active duty status, such as preparing and executing financial and  
14 healthcare powers of attorney, transferring bank account signature  
15 authority, obtaining military identification cards, or preparing or  
16 updating a will or living trust;

17 (g) To act as the military member's representative before a federal,  
18 state, or local agency for the purposes of obtaining, arranging, or  
19 appealing military service benefits while the military member is on  
20 covered active duty or call to covered active duty status, and for a  
21 period of ninety days following the termination of the military member's  
22 covered active duty status;

23 (h) To attend counseling provided by someone other than a health  
24 care provider for the covered individual, for the military member, for  
25 the biological, adopted, or foster child, the stepchild, or the legal  
26 ward of the military member, for a child of the military member's  
27 domestic partner, or for a child to whom the military member stands in  
28 loco parentis, if the need for counseling arises from the covered active  
29 duty status or call to covered active duty status of the military member;

30 (i) To spend time with the military member who is on short-term,  
31 temporary, rest and recuperation leave during the period of deployment.

1 Leave taken for this purpose can be used for a period of fifteen calendar  
2 days beginning on the date the military member commences each instance of  
3 rest and recuperation leave;

4 (j) To attend arrival ceremonies, reintegration briefings and  
5 events, and any other official ceremony or program sponsored by the  
6 military during a period of ninety days following the termination of the  
7 military member's covered active duty status;

8 (k) To address issues that arise from the death of the military  
9 member while on covered active duty status, such as meeting and  
10 recovering the body of the military member, making funeral arrangements,  
11 and attending funeral services; and

12 (l) To address other events which arise out of the military member's  
13 covered active duty or call to covered active duty status if the covered  
14 employer and covered individual agree that such leave qualifies as an  
15 exigency and agree to both the timing and duration of such leave;

16 (14) Retaliatory personnel action means denial of any right  
17 guaranteed under the Paid Family Medical Leave Insurance Act, including,  
18 but not limited to:

19 (a) Any threat, discharge, suspension, demotion, reduction of hours,  
20 or any other adverse action against a covered individual for the exercise  
21 of any right guaranteed in the act;

22 (b) Reporting or threatening to report a covered individual's  
23 suspected citizenship or immigration status or the suspected citizenship  
24 or immigration status of a family member of the covered individual to a  
25 federal, state, or local agency; and

26 (c) Interference with or punishment for participating in or  
27 assisting with an investigation, proceeding, or hearing under the act;  
28 and

29 (15) Serious health condition means an illness, injury, impairment,  
30 or physical or mental condition which requires (a) inpatient care in a  
31 hospital, hospice, or residential medical care facility or (b) continuing

1 medical treatment or continuing supervision by a health care provider.

2       Sec. 3. (1) On and after April 1, 2019, a covered individual shall  
3 be entitled to take paid family medical leave for the following reasons:

4       (a) To care for a new child of the covered individual during the  
5 first year after the birth, adoption, or placement through foster care of  
6 that child;

7       (b) Because the covered individual has a serious health condition,  
8 including pregnancy, that makes the covered individual unable to perform  
9 the functions of the position held by such covered individual;

10       (c) To care for a family member of the covered individual who has a  
11 serious health condition;

12       (d) To care for a covered servicemember who is the covered  
13 individual's next of kin; or

14       (e) For qualifying exigency leave.

15       (2) The maximum amount of paid family medical leave that a covered  
16 individual may take shall be:

17       (a) Twelve weeks during any calendar year if such leave is taken for  
18 a purpose described in subdivision (1)(b) of this section; or

19       (b) Eight weeks during any calendar year if such leave is taken for  
20 a purpose described in subdivision (1)(a), (c), (d), or (e) of this  
21 section.

22       (3) Subject to subsection (4) of this section, the family medical  
23 leave benefits to be paid to the covered individual for any week of paid  
24 family medical leave shall be:

25       (a) For a covered individual whose yearly earnings are not more than  
26 twenty percent of Nebraska's annual median wage as calculated by the  
27 Department of Labor, an amount equal to ninety-five percent of the  
28 covered individual's average weekly wage for the two most recently  
29 completed calendar quarters or, if the covered individual has not been  
30 employed that long, ninety-five percent of the covered individual's  
31 weekly wage at the time he or she takes the paid family medical leave;

1       (b) For a covered individual whose yearly earnings are more than  
2 twenty percent but not more than thirty percent of Nebraska's annual  
3 median wage as calculated by the Department of Labor, an amount equal to  
4 ninety percent of the covered individual's average weekly wage for the  
5 two most recently completed calendar quarters or, if the covered  
6 individual has not been employed that long, ninety percent of the covered  
7 individual's weekly wage at the time he or she takes the paid family  
8 medical leave;

9       (c) For a covered individual whose yearly earnings are more than  
10 thirty percent but not more than fifty percent of Nebraska's annual  
11 median wage as calculated by the Department of Labor, an amount equal to  
12 eighty-five percent of the covered individual's average weekly wage for  
13 the two most recently completed calendar quarters or, if the covered  
14 individual has not been employed that long, eighty-five percent of the  
15 covered individual's weekly wage at the time he or she takes the paid  
16 family medical leave; or

17       (d) For a covered individual whose yearly earnings are more than  
18 fifty percent of Nebraska's annual median wage as calculated by the  
19 Department of Labor, an amount equal to sixty-six percent of the covered  
20 individual's average weekly wage for the two most recently completed  
21 calendar quarters or, if the covered individual has not been employed  
22 that long, sixty-six percent of the covered individual's weekly wage at  
23 the time he or she takes the paid family medical leave.

24       (4) The amount of family medical leave benefits to be paid to a  
25 covered individual in any week shall not exceed sixty-six percent of  
26 Nebraska's annual median wage as calculated by the Department of Labor.

27       (5) Family medical leave benefits are not payable for the first five  
28 calendar days in any calendar year that a covered individual takes paid  
29 family medical leave. Such five-day period shall be known as the waiting  
30 period. If the covered individual takes ten or more days of paid family  
31 medical leave in such calendar year, the covered individual shall be paid

1 for the waiting period. The waiting period shall occur only once in any  
2 calendar year.

3 (6) Family medical leave benefits are not payable for less than  
4 eight hours of paid family medical leave taken in any one work week.

5 (7) The first payment of family medical leave benefits must be made  
6 to the covered individual within two weeks after a claim is filed under  
7 section 4 of this act, and subsequent payments of such benefits must be  
8 made every two weeks thereafter for as long as the covered individual is  
9 eligible.

10 (8) A covered individual shall not simultaneously receive family  
11 medical leave benefits and unemployment compensation.

12 Sec. 4. (1) To receive family medical leave benefits, a covered  
13 individual shall file a claim for such benefits with the commissioner on  
14 a form prescribed by the commissioner. The claim shall include:

15 (a) The name, address, and social security number of the covered  
16 individual;

17 (b) The reason for taking the paid family medical leave;

18 (c) Such wage information as the commissioner may require to  
19 determine the amount of family medical leave benefits;

20 (d) Such documentation as the commissioner may require from a health  
21 care provider for proof of a serious health condition;

22 (e) The name and address of the covered employer; and

23 (f) Such other information as required by the commissioner to  
24 calculate and determine eligibility for family medical leave benefits.

25 (2) After a claim is filed, the commissioner shall notify the  
26 covered employer of such claim and shall determine the covered  
27 individual's eligibility for family medical leave benefits. If the  
28 commissioner determines that the covered individual is eligible, the  
29 commissioner shall pay family medical leave benefits to the covered  
30 individual pursuant to section 3 of this act. If the commissioner  
31 determines that the covered individual is ineligible, the commissioner



1 shall notify the covered individual of the commissioner's determination.  
2 Such determination of ineligibility may be appealed, and the appeal shall  
3 be in accordance with the Administrative Procedure Act.

4 (3) Claims filed under this section and all related information are  
5 confidential and shall not be public records. A covered individual or his  
6 or her authorized representative may review the claim and related  
7 information upon the presentation of the covered individual's signed  
8 authorization.

9 Sec. 5. (1) The Paid Family Medical Leave Insurance Fund is  
10 created. Any money in the fund available for investment shall be invested  
11 by the state investment officer pursuant to the Nebraska Capital  
12 Expansion Act and the Nebraska State Funds Investment Act.

13 (2) The commissioner shall administer the Paid Family Medical Leave  
14 Insurance Fund. The fund shall consist of contributions from covered  
15 individuals. Such contributions shall be collected by covered employers  
16 as payroll deductions from covered individuals beginning on the operative  
17 date of this act and shall be remitted to the State Treasurer for credit  
18 to the fund. Such contributions shall be used to pay family medical leave  
19 benefits payable under the Paid Family Medical Leave Insurance Act. The  
20 commissioner shall be responsible for evaluating and determining on an  
21 annual basis the amount of contributions necessary to finance the total  
22 amount of family medical leave benefits payable under the act. In no case  
23 shall the contributions from a covered individual exceed one-half of one  
24 percent of his or her wages in any twelve-month period.

25 Sec. 6. (1) A covered individual may take paid family medical leave  
26 on an intermittent basis if:

27 (a) The intermittent leave is to care for a seriously ill family  
28 member or because of the covered individual's serious health condition;  
29 or

30 (b) The intermittent leave is to care for a newborn or a newly  
31 placed adopted or foster care child of the covered individual and the

1 covered individual has received the employer's approval for such  
2 intermittent leave.

3 (2) Family medical leave benefits for intermittent leave shall be  
4 prorated.

5 (3) A covered individual in need of intermittent leave for  
6 foreseeable medical treatment must work with his or her covered employer  
7 to schedule the leave so as not to unduly disrupt the operations of the  
8 covered employer. In such cases, the covered employer may transfer the  
9 covered individual temporarily to an alternative job with equivalent pay  
10 and benefits that accommodates recurring periods of leave better than the  
11 covered individual's regular job.

12 (4) Paid family medical leave taken intermittently under this  
13 section shall not result in a reduction of the total amount of leave to  
14 which a covered individual is entitled beyond the amount of leave  
15 actually taken.

16 (5) Nothing in this section shall be construed to entitle a covered  
17 individual to more paid family medical leave than he or she is entitled  
18 to under section 3 of this act.

19 Sec. 7. (1) Any covered individual who exercises his or her right  
20 to paid family medical leave shall, upon the expiration of such leave, be  
21 entitled to be restored by the covered employer to the position held by  
22 the covered individual when the leave commenced or to a different  
23 position with equivalent seniority, status, employment benefits, pay, and  
24 other terms and conditions of employment, including fringe benefits and  
25 service credits.

26 (2) During any paid family medical leave taken, the covered employer  
27 shall maintain any health benefits the covered individual had prior to  
28 taking such leave for the duration of the leave as if the covered  
29 individual had continued in employment continuously from the date he or  
30 she commenced the leave until the date the family medical leave benefits  
31 terminate if the covered individual continues to pay the covered

1 individual's share of the cost of such health benefits as required prior  
2 to the commencement of the leave.

3 (3) Certain types of earned benefits, such as seniority or paid  
4 leave, need not continue to accrue during periods of paid family medical  
5 leave if such benefits do not accrue for employees on other types of  
6 leave.

7 (4) Nothing in this section shall be construed to entitle any  
8 covered individual to any right, benefit, or position of employment other  
9 than any right, benefit, or position to which the covered individual  
10 would have been entitled had the covered individual not taken the leave.

11 Sec. 8. (1) It shall be unlawful for a covered employer to  
12 interfere with, restrain, or deny the exercise of, or the attempt to  
13 exercise, any right protected under the Paid Family Medical Leave  
14 Insurance Act or to take a retaliatory personnel action against a covered  
15 individual because he or she exercised rights protected under the act.  
16 Such rights include, but are not limited to:

17 (a) The right to request or use paid family medical leave;

18 (b) The right to communicate to the covered employer an intent to  
19 file a claim for family medical leave benefits;

20 (c) The right to appeal eligibility determinations;

21 (d) The right to testify or participate in any investigation,  
22 hearing, or proceeding under the act; and

23 (e) The right to inform the commissioner of any alleged violation of  
24 the act.

25 (2) It shall be unlawful for a covered employer's absence control  
26 policy to count paid family medical leave taken under the act as an  
27 absence that may lead to or result in discipline, discharge, demotion,  
28 suspension, or any other adverse action.

29 Sec. 9. (1) A covered individual who is entitled to leave under the  
30 federal Family and Medical Leave Act of 1993, 29 U.S.C. 2601 et seq.,  
31 shall take any paid family medical leave under the Paid Family Medical

1 Leave Insurance Act concurrently with leave taken pursuant to the federal  
2 Family and Medical Leave Act of 1993.

3 (2) A covered employer may require that payments made pursuant to  
4 the Paid Family Medical Leave Insurance Act be made concurrently or  
5 otherwise coordinated with payments made or leave allowed as disability  
6 or family care leave under a collective bargaining agreement or employer  
7 policy. The covered employer must give covered individuals written notice  
8 of this requirement.

9 (3) The Paid Family Medical Leave Insurance Act does not diminish a  
10 covered employer's obligation to comply with any of the following that  
11 provide more generous leave:

12 (a) A collective bargaining agreement;

13 (b) An employer policy; or

14 (c) Any state or federal law.

15 (4) A covered individual's right to paid family medical leave under  
16 the Paid Family Medical Leave Insurance Act may not be diminished by a  
17 collective bargaining agreement entered into or renewed, or an employer  
18 policy adopted or retained, after the operative date of this act.

19 Sec. 10. (1) Each covered employer shall provide written notice  
20 regarding the Paid Family Medical Leave Insurance Act to each covered  
21 individual upon hiring and annually thereafter. A covered employer shall  
22 also provide written notice to a covered individual when he or she  
23 requests leave under the act or when the covered employer acquires  
24 knowledge that a covered individual's leave may qualify for family  
25 medical leave benefits. Such notice shall include:

26 (a) An explanation of the covered individual's right to family  
27 medical leave benefits and the terms under which it may be used;

28 (b) The amount of family medical leave benefits;

29 (c) The procedure for filing a claim for family medical leave  
30 benefits;

31 (d) The procedure for selecting a designated person;

1       (e) An explanation of the right to job protection and benefits  
2 continuation under section 7 of this act;

3       (f) A statement explaining that retaliatory personnel actions  
4 against a covered individual for requesting or using paid family medical  
5 leave is prohibited; and

6       (g) A statement explaining that the covered individual has a right  
7 to file a complaint for violations of the Paid Family Medical Leave  
8 Insurance Act.

9       (2) A covered employer shall also display and maintain a poster in a  
10 conspicuous place accessible to covered individuals at the covered  
11 employer's place of business that contains the information required under  
12 subsection (1) of this section.

13       Sec. 11. (1) Covered employers may establish a process for covered  
14 individuals to select a designated person. If a covered employer  
15 establishes such a process:

16       (a) The process must allow covered individuals to make such  
17 selection within thirty days of the covered individual's date of hire and  
18 must also permit the covered individual to make or change such a  
19 designation, as applicable, on an annual basis. For any covered  
20 individual employed by a covered employer on the operative date of this  
21 act, the process must allow such covered individual to make a selection  
22 within thirty days after such date; and

23       (b) Covered individuals must utilize the covered employer's process  
24 to make such a designation.

25       (2) If a covered employer does not establish such a process, the  
26 covered individual may make such a designation when filing a claim for  
27 family medical leave benefits.

28       Sec. 12. The commissioner shall implement procedures to ensure the  
29 confidentiality of all information related to any claims filed or appeals  
30 taken pursuant to the Paid Family Medical Leave Insurance Act to the  
31 maximum extent permitted by applicable laws.

1           Sec. 13. (1) A covered individual is disqualified from receiving  
2 family medical leave benefits for one year if he or she is determined by  
3 the commissioner to have willfully made a false statement or  
4 misrepresentation regarding a material fact, or willfully failed to  
5 report a material fact, to obtain family medical leave benefits.

6           (2) If family medical leave benefits are paid erroneously or as a  
7 result of willful misrepresentation, or if a claim for family medical  
8 leave benefits is rejected after benefits are paid, the commissioner may  
9 seek repayment of such benefits from the recipient.

10           Sec. 14. (1) A self-employed person may elect coverage under the  
11 Paid Family Medical Leave Insurance Act for an initial period of not less  
12 than three years. The self-employed person must file a notice of election  
13 in writing with the commissioner in a format required by the  
14 commissioner. The election becomes effective on the date of the filing of  
15 the notice. As a condition of election, the self-employed person must  
16 agree to supply any information concerning income that the commissioner  
17 deems necessary.

18           (2) A self-employed person who has elected coverage may withdraw  
19 from coverage within thirty days after the end of the three-year period  
20 of coverage, or at such other times as the commissioner may prescribe by  
21 rule and regulation, by filing written notice with the commissioner. Such  
22 withdrawal shall take effect not sooner than thirty days after filing the  
23 notice.

24           Sec. 15. It is the intent of the Legislature that the commissioner  
25 utilize state data and technology that is used for other state programs,  
26 including, but not limited to, unemployment insurance, to the maximum  
27 extent possible for purposes of carrying out his or her responsibilities  
28 under the Paid Family Medical Leave Insurance Act.

29           Sec. 16. (1) If the Internal Revenue Service determines that family  
30 medical leave benefits are subject to federal income tax, the  
31 commissioner shall advise any covered individual filing a claim for

1 family medical leave benefits, at the time of filing such claim, that:

2 (a) The Internal Revenue Service has determined that family medical  
3 leave benefits are subject to federal income tax;

4 (b) Requirements exist pertaining to estimated tax payments;

5 (c) The covered individual may elect to have federal income tax  
6 deducted and withheld from the covered individual's family medical leave  
7 benefits; and

8 (d) The covered individual is permitted to change a previously  
9 elected income withholding status.

10 (2) If the individual elects to have federal tax payments withheld,  
11 the commissioner shall deduct and withhold the amount specified in the  
12 Internal Revenue Code in a manner consistent with state and federal law.  
13 Amounts deducted and withheld must remain in the Paid Family Medical  
14 Leave Insurance Fund until transferred to the federal taxing authority as  
15 a payment of income tax.

16 Sec. 17. On or before December 31, 2019, and on or before December  
17 31 of each year thereafter, the commissioner shall electronically submit  
18 a report to the Legislature. The report shall include:

19 (1) The amount and percentage of family medical leave benefits paid  
20 for each type of paid family medical leave described in subsection (1) of  
21 section 3 of this act;

22 (2) The percentage of family medical leave benefits paid to each  
23 gender for each type of paid family medical leave described in subsection  
24 (1) of section 3 of this act;

25 (3) The amount of the contributions collected by covered employers  
26 as payroll deductions under section 5 of this act;

27 (4) The median benefit payment level;

28 (5) The occupation and industry of covered individuals receiving  
29 family medical leave benefits;

30 (6) The number of self-employed individuals who elect coverage under  
31 section 14 of this act and the median length of time self-employed

1 individuals maintain such coverage;

2 (7) The balance of the Paid Family Medical Leave Insurance Fund;

3 (8) A summary of the outreach efforts made by the commissioner to  
4 increase awareness of the availability of paid family medical leave; and

5 (9) The types of family members for whom paid family medical leave  
6 as described in subdivision (1)(c) of section 3 of this act was taken.

7 Sec. 18. The commissioner may adopt and promulgate rules and  
8 regulations as necessary to carry out the Paid Family Medical Leave  
9 Insurance Act.

10 Sec. 19. This act becomes operative on July 1, 2018.

11 Sec. 20. If any section in this act or any part of any section is  
12 declared invalid or unconstitutional, the declaration shall not affect  
13 the validity or constitutionality of the remaining portions.