

**ONE HUNDRED SEVENTH LEGISLATURE - FIRST SESSION - 2021**  
**COMMITTEE STATEMENT**  
**LB290**

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**Hearing Date:** Monday February 08, 2021  
**Committee On:** Business and Labor  
**Introducer:** Cavanaugh, M.  
**One Liner:** Adopt the Paid Family and Medical Leave Insurance Act

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File

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**Vote Results:**

<b>Aye:</b>	4	Senators Blood, Hansen, M., Hunt, Lathrop
<b>Nay:</b>	2	Senators Halloran, Hansen, B.
<b>Absent:</b>		
<b>Present Not Voting:</b>	1	Senator Gragert

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**Oral Testimony:**

**Proponents:**

Senator Machaela Cavanaugh  
Jina Ragland  
Scout Richters  
Tiffany Joekel  
Diane Amdor  
Susan L. Martin  
Ashlea Kerr

**Representing:**

Introducer  
AARP NE  
ACLU of NE  
Women's Fund of Omaha  
NE Appleseed  
NE State AFL-CIO  
The Arc of NE

**Opponents:**

John Albin  
Erin Ebeler Rolf

**Representing:**

NE Department of Labor  
NE Chamber of Commerce, Lincoln Chamber of Commerce, Omaha Chamber of Commerce, NE Bankers Association, LIBA, NE Grocery Industry Association, NE Retail Federation, NE Restaurant Association, NFIB

**Neutral:**

**Representing:**

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**Submitted Written Testimony:**

**Proponents:**

Jason Hayes  
Julie Erickson  
Paige Gade

**Representing:**

NE State Education Association  
Voices for Children  
Lincoln Young Professionals Group

**Opponents:**

Robert M. Bell

**Representing:**

NE Insurance Federation

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**Summary of purpose and/or changes:**

LB290 adopts the Paid Family and Medical Leave Insurance Act. The act creates a paid family and medical leave insurance program to provide partial wage replacement for eligible workers to care for themselves or family members.

Section by Section Summary:

Sec 1: Adopts the Paid Family and Medical Leave Insurance Act

Sec 2: Defines for purposes of the Act:

Base Period: First four of the last five completed calendar quarters.

Benefit Year: The one-year period beginning with the week the claim was filed

Commissioner: Commissioner of Labor

Covered Individual: An individual who is employed by a covered employer or a self-employed individual who has elected coverage under the act.

Family Member: A biological, adopted, or foster child, a stepchild, or a legal ward of a covered individual or the covered individual's spouse or a person to whom the covered individual or the covered individual's spouse stood in loco parentis when such person was a minor child, regardless of the age or dependency status of such child, stepchild, legal ward, or person; A biological, adoptive, or foster parent, a stepparent, or a legal guardian of a covered individual or the covered individual's spouse or a person who stood in loco parentis to the covered individual or the covered individual's spouse when the covered individual or the covered individual's spouse was a minor child; A covered individual's spouse; A grandparent, grandchild, or sibling, whether of a biological, foster, adoptive, or step relationship, of the covered individual or the covered individual's spouse; and One person designated by the covered individual as a family member. Such designation shall be made in a form and manner prescribed by the commissioner.

Paid family and medical leave: means leave taken by a covered individual for a qualifying reason.

Sec 3: Beginning July 1, 2023 a covered individual may take paid family and medical leave 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) to care for a family member who has a serious health condition;
- (3) to care for a service member who is the individual's next of kin; or
- (4) for qualifying exigency leave for active duty individuals and their families that are the same as the Federal Family and Medical Leave Act.
- (5) because the individual has a serious health condition, including pregnancy, that makes him/her unable to perform the functions of the position; The maximum amount of leave an individual may take is 12 weeks during a year if leave is taken because of a new child or the individual's serious health condition, or 6 weeks during a year if leave is taken for any other reason except for a military member notified of an impending call or to spend time with the military member who is on short-term leave.

Sec 4: Leave benefits to be paid to the individual are prorated based on the individual's wages. 90% of the portion of the individual's average weekly wage that is at or below 50% of the state average weekly wage and 50% of the portion of the individual's average weekly wage that is above 50% of the state average weekly wage. Not to exceed 66% of the state average weekly wage. Benefits are not payable for the first week in any benefit year and any day must be a full day of leave. If the individual takes ten or more days of leave they will then be paid for the first week.

Sec 5: Requires individuals to file a claim for benefits with the commissioner on a form that includes identifying information, the reason for leave, a schedule of leave to the extent known, 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.

Sec 6: The fund shall be administered by the commissioner and shall consist of private donations, money transferred to the fund by the Legislature, and contributions from covered employers. Any money in the fund available for investment shall be invested. The amount paid by employers shall never exceed 1% of the gross wages paid. On October 1, 2021, the State Treasurer shall transfer \$5,585,000 from the Nebraska Health Care Cash Fund to the Paid Family and Medical Leave Insurance Fund.

Sec 7: 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.

Sec 8: Upon return from leave an individual shall be restored to an equivalent position with equivalent benefits. Health care benefits must be maintained by the employer during leave. An employer cannot require an individual to exhaust accrued vacation or sick time prior to taking paid family and medical leave.

Sec 9: 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 10: Provides that a covered individual who takes leave under the federal FMLA or any kind of disability or family care leave under a collective-bargaining agreement to be taken concurrently with the Paid Family and Medical Leave Insurance Act.

Sec 11: Requires each employer to provide written notice to the employee upon hiring and annually thereafter. Notice shall include: explanation of the individual's right to benefits; the amount of benefits; the procedure to file a claim; explanation of protections; a statement saying that retaliatory actions are prohibited; and a statement about the right to file a complaint. The employer shall also display a poster with this information.

Sec 12: Requires all claims and appeals to be confidential and not public record except for use by a public official in official duties; or in response to a court order or subpoena. Any person who violates this section shall be guilty of a Class III misdemeanor.

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

Sec 15: Requires the commissioner to advise claimants of requirements and deductions if the Internal Revenue Service 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 16: Authorizes the commissioner to conduct investigations in order to determine compliance with this act. The commissioner shall issue a citation for a violation of this act of 4 not more than \$500 for a first violation and not more than \$5,000 for subsequent violations.

Sec 17: An employer that provides paid leave at least as generous as this act may apply for an exemption from the commissioner. The exemption must be applied for annually. The employer is still subject to sections 8 and 9 and the employer must provide written notice required under section 11. The employer is also subject to investigations and citations under section 16.

Sec 18: Requires the commissioner to file an electronic report to the Legislature on or before December 31, 2023 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 fund's balance;
- (7) a summary of outreach efforts to increase awareness; and
- (8) the types of family members for whom leave was taken.

Sec 19: Family and medical leave benefits shall not be considered compensation under the County Employees Retirement Act, the Judges Retirement Act, the Nebraska State Patrol Retirement Act, the School Employees Retirement Act, the State Employees Retirement Act, or any other retirement plan administered by the Public Employees Retirement 8 Board and shall not be eligible for deferral under any deferred compensation plan administered by the Public Employees Retirement Board.

Sec 20: Authorizes the commissioner to promulgate rules and regulations for the act.

Sec 21: Amends the Employment Security Law so that no benefits shall be charged to the experience account of any employer if such benefits were paid to: an individual who worked for twenty weeks or less to temporarily replace an employee receiving family and medical leave benefits and who was laid off due to the return of such permanent employee; an individual who failed to return to work after the expiration of paid family and medical leave; or an individual who left work voluntarily while on paid family and medical leave.

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Ben Hansen, Chairperson