

Proposed Substitute Senate Bill 5975 (S-2944.3)

Paid Family and Medical Leave Section-by-Section Summary

Sec.	Title	Summary of Section.
1.	Intent.	The legislature intends to provide reasonable paid family leave, medical leave, and leave for a qualifying military exigency as provided under the federal law.
2.	Definitions.	Defines key terms such as: Child, employee, employer, family leave, family member, medical leave, parent, qualifying period, serious health condition, spouse, and wage.
3.	Benefit Eligibility.	Employees are eligible for family and medical leave benefits after working for at least 820 hours for an employer during the qualifying period.
4.	Leave Entitlement Expiration.	Specifies when entitlement for leave benefits expires.
5.	Limitations, Disqualifications, and Employee Penalties.	<p>Provides a list of reasons why an employee is not eligible for family or medical leave benefits. Specifies that an employer may allow an employee to take vacation, sick, or other paid time off or paid family or medical leave benefits.</p> <p>An employee who knowingly and willfully makes false statements or representations is disqualified for benefits for a period of time and is subject to monetary penalties. The penalties increase for repeated violations.</p>
6.	Benefit Amounts and Duration.	<p><u>Duration.</u> The maximum duration of benefits is 12 times the typical workweek hours during a 52- week period for each of family leave and medical leave, with a combined limit of 16 weeks. An additional 2 weeks of leave may be used if there is a serious health condition with a pregnancy that results in incapacity, for a combined total of 18 weeks. There is a 7-day waiting period, except for leave for birth or placement of a child.</p> <p><u>Amount of Benefit.</u> The benefit amount is a percentage of the individual's average weekly wage (AWW) during the two highest quarters in the qualifying period, calculated as follows: (1) if the individual's AWW is 50% or less than the state AWW (\$1,082 for 2015), the benefit is 90% of the individual's AWW; or (2) if the individual's AWW is more than 50% of the state AWW, the benefit is 90% of the individual's AWW up to 50% of the state AWW, and 50% of the individual's AWW that is greater than the state AWW. The maximum weekly benefit amount is \$1,000 and is adjusted annually. The minimum weekly benefit is not less than \$100, with an exception if the employee's AWW is less than \$100 per week.</p>
7.	Time of Payment - Contesting Application.	1st payment due on the 14th day of family leave. An employer objection must be filed within 18 days.

8.	Premiums.	<p>Premium of 0.4 percent of wages are assessed beginning January 1, 2019, with subsequent annual adjustments. Employees pay all of the family leave premium and 45 percent of the medical leave premium. The amount of wages subject to a premium assessment is capped at the maximum wages subject to social security tax. Employers with 50 or fewer employees are exempt from paying the employer share of the premiums. Employer may pay the employee share.</p> <p>A city, code city, town, county, or other political subdivision may not enact a charter, ordinance, regulation, rule, or resolution that: (1) Creates a paid family or medical leave insurance program that alters or amends the program for a private employer; (2) provides for local enforcement of the program; or (3) requires private employers to supplement the duration of leave or the benefits provided under the program.</p>
9.	Premiums - Out-of-State Waiver.	<p>A conditional waiver for payment of premiums is provided for an employee based out of state who is not expected to be eligible for benefits.</p>
10.	Elective Coverage.	<p>Self-employed individuals, including independent contractors, may elect coverage and only pay the employee's share of the premiums.</p>
11.	Tribes.	<p>Federally recognized tribes may elect coverage under rules as adopted by ESD.</p>
12.	Notice to Employers.	<p>An employee must provide to the employer at least 30 days' notice of the leave, if foreseeable, or such notice as is practicable.</p>
13.	Application, Certification, and Verification.	<p>To be eligible to receive benefits, an employee must file a claim for benefits, consent to the disclosure of certain information, notify the employer, and meet certain documentation requirements regarding leave for a serious health condition or military exigency.</p>
14.	Voluntary Plan - General.	<p>An employer may apply to the commissioner for approval of a voluntary plan for the payment of either family leave benefits or medical leave benefits, or both. The ESD fee for each review is set at \$250. The commissioner must approve any voluntary plan if specified conditions are met. The benefits afforded to the employees must be at least equivalent to the benefits the employees are entitled to as part of the state's family and medical leave program, including but not limited to the duration of leave. The employer must offer at least one-half of the length of leave as provided in the act with pay and provide a monetary payment in an amount equal to or higher than the total amount of monetary benefits the employee would be entitled to receive as part of the state-run program.</p> <p>Employees' jobs are protected if they have worked for the current employer for at least nine months and 965 hours in the last 12 months.</p> <p>ESD must review the expenses incurred in association with the administration of the voluntary plans for 3 years and report back to the Legislature.</p>

15.	Voluntary Plan - Successor Employer.	Specifies the conditions under which a successor employer must continue the voluntary plan. The new employer must make a specific request for withdrawal of the plan. The successor may terminate a voluntary plan without notice or request to withdraw within 90 days from the acquisition date.
16.	Voluntary Plan - Reapproval.	The employer must have the voluntary plan approved by the commissioner annually for the first three years. Thereafter, approval is only upon making changes to the plan.
17.	Voluntary Plan - Employee Costs.	An employer may assume all or a greater part of the cost of the voluntary plan than required under the state program. An employer may deduct from the wages of an employee the amount allowed under the state program.
18.	Voluntary Plan - Wage Deductions Upon Withdrawal.	All deductions from the wages remaining with the employer upon the withdrawal of the voluntary plan must be remitted to the state.
19.	Voluntary Plan - Trust Funds.	Employee contributions received or retained by an employer are trust funds and not part of an employer's assets.
20.	Voluntary Plans - Penalties.	Specifies a schedule of escalating penalties (1st - \$1,000; subsequent - \$2,000) for employers with voluntary plans who have been found to have violated the act. Penalties may be waived for inadvertent errors.
21.	Voluntary Plan - Termination.	Specifies the process for ESD to seek a termination of a voluntary plan.
22.	Voluntary Plan - Employees Covered.	To be eligible, an employee must be employed for 820 hours during the qualifying period. An employee qualifies for benefits under a voluntary plan only after the employee works at least 340 hours for the current employer. An employee who had coverage under the state plan retains the coverage under the state plan until qualified under the new employer's plan. Employees who transfer between employers with voluntary plans are automatically covered by the new plan.
23.	Voluntary Plan - Employees No Longer Covered.	An employee is not covered under a voluntary plan if the leave arose after the employment relationship ends or if the commissioner terminates the voluntary plan. An employee who is no longer covered by a voluntary plan is, if otherwise eligible, immediately entitled to benefits under the state program.
24.	Voluntary Plan - Appeal.	An employer may appeal any adverse decision by ESD regarding the voluntary plan and an employee may appeal an employer's denial of family or medical leave benefits under the appeal process specified in Sec. 34 (see below).
25.	Voluntary Plan - Information.	An employer must provide employees with a notice prepared or approved by ESD with information regarding the act.
26.	Voluntary Plan - Reports and Records.	Employers must furnish all reports, information, and records as required by ESD. Employers must retain records for 6 years.

27.	Voluntary Plan - Amendments.	ESD must approve any amendment to a voluntary plan if it meets the standards in this act and 10- days' notice was given to the employees.
28.	Advisory Committee.	A 10-member advisory committee is created, consisting of four members each representing employees and employers, and an ESD representative and the ombuds as ex officio members. The committee may comment on rules, policies, and other specified matters and study issues as the committee determines.
29.	Department to Administer - Information and Outreach.	ESD will establish and administer family and medical leave programs and develop and implement an outreach program to employees. ESD will establish procedures and forms for filing applications for benefits and will notify the employer within 5 days of an employee's application being filed. ESD may inspect and audit employers' files and records.
30.	Child Support.	If an employee owes child support obligations and is qualified for benefits, ESD must notify the child support enforcement and deduct and withhold benefits as required by law. ESD may verify information with DSHS.
31.	Employment Protection.	Job protection is provided for employees who worked for an employer with 50 or more employees and worked for at least 12 months and at least 1250 hours in the last 12 months for that employer. (FMLA standard).
32.	Recovery of Benefit Payments.	ESD must seek repayment of overpayments of paid family or medical leave from the recipient.
33.	Employer Requirements - Companies.	An employer shall make reports, furnish information, and collect and remit premiums as required to ESD. Record keeping requirements and the process for the assessment and collection of contributions are specified. Employers must keep records for a period of 6 years. ESD must first enforce the collection of premiums through conference and conciliation.
34.	Appeals - General.	Any aggrieved person may file an appeal from any determination or redetermination with the commissioner within 30 days after the date of notification or mailing. (The appeals process in Sections 34 through 54 generally replicates the process for unemployment insurance appeals under RCW chapter 50.32).
35.	Appeals - Filing Process.	Specifies conditions under which an appeal or petition is deemed filed and received.
36.	Appeals - Assessment.	An employer has 30 days to file an appeal with ESD from an order and notice of assessment or after notice of denial of refund or adjustment.
37.	Appeals - Benefit Appeal Procedure.	In any proceeding before an administrative law judge (ALJ) involving an employee's right to benefits, all parties have an opportunity for hearing after not less than seven days' notice. A party may appeal an ALJ's final decision within 30 days.
38.	Appeals - Assessment Appeal Procedure.	In an appeal before an ALJ, the judge must affirm, modify, or set aside the notice of assessment or denial of refund. The ALJ's final decision may be appealed to the commissioner within 30 days.
39.	Appeals - Hearings.	A full and complete record shall be kept of all ALJ proceedings.

40.	Appeals - Petition for Review by Commissioner.	Any party may appeal a decision by an ALJ by filing a petition for review with the commissioner within 30 days.
41.	Appeals - Waiver of Time.	For good cause, an ALJ or the commissioner may waive the time limitations for filing administrative appeals or petitions.
42.	Appeals - Commissioner Review Procedure.	The commissioner shall render a decision affirming, modifying, or setting aside the decision of the ALJ or may order further proceedings to be held before the ALJ.
43.	Appeals - Commissioner Decisions.	Any decision of the commissioner involving a review of an ALJ decision, in the absence of a petition under the Administrative Procedures Act, becomes final in 30 days.
44.	Appeals - Judicial Review Procedure.	A judicial review of a commissioner's decision must meet the specific procedural requirements.
45.	Appeals - Seeking Judicial Review.	A bond is not be required of any employee seeking judicial review from a commissioner's decision. An employer must deposit any amounts owing with the commissioner or the court.
46.	Appeals - Interstate Petitions to Thurston County.	Petitions to the superior court from decisions of the commissioner that were filed outside of this state shall be filed with the superior court of Thurston county.
47.	Appeals - Judicial Review.	Specifies the process for a judicial review.
48.	Appeals - Applicability of Finding, Determination, etc., Other Action.	Substantially similar to RCW 50.32.097.
49.	Appeals - Fees for Administrative Hearings.	Substantially similar to RCW 50.32.110.
50.	Appeals - Attorneys' Fees.	The court shall set the reasonable fee an attorney may charge an employee for an appeal. If the decision of the commissioner is reversed or modified, the attorneys' fee and the costs are paid out of the family and medical leave enforcement account.
51.	Appeals - Remedies Exclusive.	The remedies provided under this act are exclusive.
52.	Appeals - Expenses.	All expenses and costs incurred by the commissioner in a judicial appeal are paid out of the family and medical leave enforcement account.
53.	Appeals - Redeterminations.	A determination of amount of benefits potentially payable is not appealable, but may be redetermined by the commissioner within one year. The denial and allowance of benefits may be redetermined under certain conditions. The commissioner may redetermined an allowance within two years to recover any benefits.
54.	Authority to Compromise.	Substantially similar to RCW 50.24.020.
55.	Interest on Delinquent Premiums.	Substantially similar to RCW 50.24.040.
56.	Lien for Premiums Generally.	Substantially similar to RCW 50.24.050.
57.	Lien in Event of Insolvency or Dissolution.	Substantially similar to RCW 50.24.060.
58.	Order and Notice of Assessment.	Substantially similar to RCW 50.24.070.

59.	Jeopardy Assessment.	Substantially similar to RCW 50.24.080.
60.	Distrain, Seizure, and Sale.	Substantially similar to RCW 50.24.090.
61.	Distrain Procedure.	Substantially similar to RCW 50.24.100.
62.	Notice and Order to Withhold and Deliver.	Substantially similar to RCW 50.24.110.
63.	Warrant - Authorized - Filing - Lien - Enforcement.	Substantially similar to RCW 50.24.115.
64.	Collection by Civil Action.	Substantially similar to RCW 50.24.120.
65.	Injunction Proceedings.	Substantially similar to RCW 50.24.180.
66.	Chargeoff of Uncollectible Accounts.	Substantially similar to RCW 50.24.200.
67.	Premiums Due and Payable Upon Termination or Disposal of Business - Successor Liability.	Substantially similar to RCW 50.24.210.
68.	Employer Penalties.	Employers found to have willfully failed to make the required reports are subject to a schedule of increasing monetary penalties: 2nd time - \$75; 3rd - \$150; and thereafter - \$250. Employers found to have willfully failed to pay premiums are subject to penalties equal to premiums and interest. ESD must enforce the collection of premiums and penalties through conference and conciliation. Appeal and collection provisions are provided.
69.	Other Benefits.	An employee is disqualified from receiving family or medical leave benefits in any week the employee receives other specified benefits.
70.	Health Benefits.	If required under the FMLA, an employer must maintain any existing health benefits while the employee is on family or medical leave. If the employer and employee share the cost of the benefits, the employee is responsible for that share of the cost.
71.	Employee Notice of Rights.	An employer must provide a written statement of employee rights to an employee, who is eligible for benefits, when he or she has been absent to provide family leave or take medical leave for more than 7 days.
72.	Employer Prohibitions.	Specifies unlawful employer activities relating to an employee's rights under the act.
73.	Investigations and Appeals.	Upon complaint by an employee, the commissioner shall investigate to determine if there has been compliance with this act.
74.	Remedies.	Specifies the remedies available against an employer who violates an employee's rights.
75.	Posting of Notice.	Each employer must post a notice with the pertinent provisions of this act and information pertaining to the filing of a charge for violating the employee's rights.
76.	Family and Medical Leave Enforcement Account.	Creates the Family and Medical Leave Enforcement Account. Funds previously held in the Family Leave Enforcement Account are transferred to the new account.

77.	Other Laws - Discrimination.	The act does not affect existing laws against discrimination.
78.	Miscellaneous Rights.	All employers (public and private) may adopt or retain leave policies more generous than provided in this act. Any agreement by an individual to waive his or her rights under this chapter is void as against public policy. After January 1, 2020, subject to section 87 of this act, an employee's rights under this chapter may not be diminished by a collective bargaining agreement or employer policy.
79.	Coordination of Leave Under Other Laws.	Leave taken under the act must be taken concurrently with leave taken under the FMLA, unless expressly permitted by the employer.
80.	Federal Income Taxes.	If the IRS determines that family or medical leave benefits are subject to federal income tax, the ESD must so advise an employee filing a new application for benefits. The employee may elect to have federal income tax deducted and withheld from the benefit payment.
81.	No Continuing Right.	The act does not create a continuing entitlement or contractual right and the Legislature may amend or repeal all or part of the act at any time.
82.	Family and Medical Leave Insurance Account.	Creates the Family and Medical Leave Insurance Account. All receipts from premiums must be deposited in the account. Provides for repayment of unemployment benefits not charged from the Account to the Unemployment Trust Fund (see Section 83).
83.	Unemployment Noncharging of Benefits.	Unemployment insurance benefit payments are not be charged to the employer's experience rating for certain employees who temporarily replaced a permanent employee receiving family or medical leave benefits.
84.	Small Business Assistance.	Employers with 150 or fewer employees or employers with 50 or fewer employees who opt to pay all premiums are eligible for grants of: \$3,000 if the employer hires a temporary worker to replace an employee on leave for seven or more days; or up to \$1,000 for reimbursement for significant additional wage-related costs related to an employee's leave. An employer who receives a grant for the wage-related costs may receive an additional grant of up to \$ 2,000 in certain circumstances. An employer may not receive more than ten grants per year and only one for each employee on leave. To be eligible for a grant, an employer with 50 or fewer employees must elect coverage and be liable for payment of premiums for three years.
85.	Rules.	ESD may adopt rules.
86.	Reports.	ESD must submit annual reports to the Legislature beginning in 2020 on the program, including participation, premium rates, fund balances, benefits paid, demographic information on participants, voluntary plan participation, outreach, and small business assistance.
87.	Collective Bargaining.	The act does not require reopening negotiations of an existing agreement or to apply any of the rights or responsibilities until the agreement is reopened or renegotiated or expires.

88.	Ombuds.	The Governor must appoint an ombuds to act within ESD to be available to all employers and employees. The appointment is for a term of 6 years. The ombuds, among other duties, must provide information to employers and employees on family and medical leave, act as an advocate for employers and employees in their dealings in with ESD, and facilitate resolution of complaints. The ombuds may conduct employee surveys.
89.	Treasury Interest.	Interest in the Family and Medical Leave Insurance Account remains in the account.
90.	Technical Amendment to Address Cross-Reference to Repealed Section.	RCW 49.76.020. Definitions are written into the section instead of using a cross-reference to the Family Leave Act (that will be repealed 12/31/2019).
91.	Technical Amendment to Address Cross-Reference to Repealed Section.	RCW 49.76.130. Language concerning employment poster requirements are written into the section instead of using a cross-reference to the Family Leave Act (that will be repealed 12/31/2019).
92.	Technical Amendment to Address Cross-Reference to Repealed Section.	RCW 49.77.020. Definitions are written into the section instead of using a cross-reference to the Family Leave Act (that will be repealed 12/31/2019).
93.	Technical Amendment to Address Cross-Reference to Repealed Section.	RCW 49.77.030. Language concerning restoration to employment are written into the section instead of using a cross-reference to the Family Leave Act (that will be repealed 12/31/2019). Removes references to prohibited employer actions (See: Sec. 94 below) and enforcement provisions (see sections 95, 96 & 97 below) the places these provisions in the new sections of chapter 49.77 RCW.
94.	Technical Section to Address Cross-Reference to Repealed Section.	Adds the prohibited employer actions to a new section to replace the cross-reference that was deleted in RCW 49.77.030 (See: Sec. 93 above).
95.	Technical Section to Address Cross-Reference to Repealed Section.	Adds the enforcement provisions to a new section to replace the cross-reference that was deleted in RCW 49.77.030 (See: Sec. 93 above).
96.	Technical Section to Address Cross-Reference to Repealed Section.	Adds the enforcement provisions to a new section to replace the cross-reference that was deleted in RCW 49.77.030 (See: Sec. 93 above).
97.	Technical Section to Address Cross-Reference to Repealed Section.	Adds the enforcement provisions to a new section to replace the cross-reference that was deleted in RCW 49.77.030 (See: Sec. 93 above).
98.	Repealers.	Repeals all of Washington's Family Leave Act, Ch. 49.78 RCW. (Delayed effective date in Section 95).
99.	Repealers.	Repeals all of Washington's Paid Family Leave Act, Ch. 49.86 RCW.
100.	Codification.	Creates a new title and chapter for the act in Title 50A RCW.
101.	Federal Severability.	If any part of this act is in conflict with federal requirements, for the allocation of federal funds for the federal unemployment tax credits, the conflicting part is inoperative.
102.	State Severability.	If any provision of this act is held invalid, the remainder of the act is not affected.
103.	Effective Date.	Section 90 (repeal of the Family Leave Act) takes effect on December 31, 2019. The rest of the act takes effect in 90 days after adjournment of the session in which it passes.