
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 108 Session of
1993

INTRODUCED BY BLAUM, DeWEESE, ITKIN, BELFANTI, M. COHEN, EVANS,
BELARDI, BOYES, CAPPABIANCA, COLAIZZO, COWELL, BEBKO-JONES,
BUTKOVITZ, BUXTON, CURRY, DeLUCA, DONATUCCI, FEE, FREEMAN,
GEORGE, GIGLIOTTI, HANNA, JOSEPHS, KASUNIC, KELLER, KENNEY,
KUKOVICH, LaGROTTA, LAUGHLIN, LEDERER, LEVDANSKY, LINTON,
MANDERINO, McNALLY, MELIO, MIHALICH, MUNDY, PESCI, PISTELLA,
PRESTON, RITTER, ROBINSON, ROONEY, RUDY, SCRIMENTI, STABACK,
STEELMAN, STEIGHNER, STISH, STURLA, SURRA, TANGRETTI, TRELLO,
VAN HORNE, YANDRISEVITS AND RICHARDSON, JANUARY 27, 1993

REFERRED TO COMMITTEE ON RULES, JANUARY 27, 1993

AN ACT

1 Entitling employees to family leave in certain cases involving a
2 birth, an adoption or a serious health condition and to
3 temporary medical leave in certain cases involving a serious
4 health condition, with adequate protection of the employee's
5 employment and benefit rights.

6 TABLE OF CONTENTS

- 7 Section 1. Short title.
- 8 Section 2. Findings and purposes.
- 9 Section 3. Definitions.
- 10 Section 4. Family leave requirement.
- 11 Section 5. Temporary medical leave requirement.
- 12 Section 6. Combined leave limitation; leave conditions.
- 13 Section 7. Certification.
- 14 Section 8. Employment and benefits protection.
- 15 Section 9. Prohibited acts.
- 16 Section 10. Administrative enforcement and civil remedy.

1 Section 11. Relief.

2 Section 12. Notice.

3 Section 13. Effect on other laws.

4 Section 14. Effect on existing employment benefits.

5 Section 15. Encouragement of more generous leave policies.

6 Section 16. Task force.

7 Section 17. Severability.

8 Section 18. Effective date.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Short title.

12 This act shall be known and may be cited as the Family and
13 Medical Leave Act.

14 Section 2. Findings and purposes.

15 (a) Findings.--The General Assembly finds as follows:

16 (1) The number of single-parent households and two-
17 parent households in which the single parent or both parents
18 work is increasing significantly.

19 (2) It is important to the development of the child and
20 to the family unit that fathers and mothers be able to
21 participate in early child-rearing and in the care of family
22 members with serious health conditions.

23 (3) Employment policies that do not entitle parents to
24 return to their jobs after taking family leave can force
25 individuals to choose between job security and child-rearing.

26 (4) There is inadequate job security for some employees
27 who have serious health conditions that prevent them from
28 working for temporary periods.

29 (5) The growing number of older Pennsylvanians has
30 created a new social and economic reality, requiring an

1 increasing number of individuals to provide unpaid care to
2 older family members.

3 (6) Employment policies that do not entitle persons who
4 must provide care to family members with serious health
5 conditions to return to their jobs can force individuals to
6 choose between job security and caretaking.

7 (7) When families fail to carry out the critical
8 functions of caring for children and providing emotional and
9 physical support to family members in distress, the societal
10 costs are enormous.

11 (b) Purposes.--The purposes of this act are as follows:

12 (1) To promote stability and economic security in
13 families by balancing the demands of the workplace with the
14 needs of families.

15 (2) To entitle employees to take reasonable leave for
16 medical reasons, for the birth or adoption of a child and for
17 the care of a family member who has a serious health
18 condition.

19 (3) To accomplish such purposes in a manner which
20 accommodates the legitimate interests of employers.

21 Section 3. Definitions.

22 The following words and phrases when used in this act shall
23 have the meanings given to them in this section unless the
24 context clearly indicates otherwise:

25 "Child." The term includes the following:

26 (1) A biological, adopted or foster child, or a
27 stepchild of an employee.

28 (2) A legal ward of the employee toward whom the
29 employee assumes the obligations and discharges the duties
30 incidental to the parental relationship or stands in loco

1 parentis.

2 (3) A child towards whom the employee assumes the
3 obligations and discharges the duties incidental to the
4 parental relationship or stands in loco parentis.

5 "Department." The Department of Labor and Industry of the
6 Commonwealth.

7 "Eligible employee." A person employed by an employer for at
8 least 12 months, for not less than 1,000 base hours during the
9 immediately preceding 12-month period. The term includes all of
10 the following:

11 (1) Employees of the Commonwealth or a political
12 subdivision.

13 (2) Employees within the meaning of section 3(e) of the
14 Fair Labor Standards Act of 1938 (52 Stat.1060, 29 U.S.C. §
15 203(e)) and the interpretation given to that section.

16 "Employ." To suffer or permit to work for consideration. The
17 term shall be interpreted consistently with the interpretation
18 given to the term under section 3(g) of the Fair Labor Standards
19 Act of 1938 (52 Stat. 1060, 29 U.S.C. § 203(g)).

20 "Employee." Any individual employed by an employer.

21 "Employer." Any person who employs 50 or more employees for
22 each working day during each of 20 or more calendar workweeks in
23 the current or preceding calendar year commencing January 1,
24 1994; who employs 40 or more employees in the current or
25 preceding calendar year commencing January 1, 1996; who employs
26 30 or more employees in the current or preceding year commencing
27 January 1, 1997; and who employs 20 or more employees in the
28 current or preceding year commencing January 1, 1998, and
29 thereafter. The term includes any person, or group of persons,
30 who acts, directly or indirectly, in the interest of an employer

1 with respect to one or more employees, and any successor in
2 interest of such an employer. The term includes the
3 Commonwealth, a political subdivision and an agency or
4 instrumentality of either.

5 "Employment benefits." Benefits other than salary or wages
6 provided or made available to employees by an employer,
7 including group life insurance, health insurance, disability
8 insurance, sick leave, annual leave, seniority rights,
9 educational benefits and pensions, regardless of whether such
10 benefits are provided by a policy or practice of an employer or
11 by an employee benefit plan as defined in section 3(3) of the
12 Employee Retirement Income Security Act of 1974 (Public Law 93-
13 406, 29 U.S.C. § 1002(3)).

14 "Family member." A sibling, parent, grandparent, child or
15 spouse of the employee.

16 "Health care provider." Any person licensed under Federal,
17 State or local law to provide health care services.

18 "Parent." A biological, foster or adoptive parent, a parent-
19 in-law, a stepparent or a legal guardian.

20 "Person." Any individual, firm, partnership, mutual company,
21 joint stock company, corporation, association, organization,
22 unincorporated organization, labor union, government agency
23 (including the Commonwealth and all its entities), incorporated
24 society, statutory or common law trust, estate, executor,
25 administrator, receiver, trustee, conservator, liquidator,
26 trustee in bankruptcy, committee, assignee, officer, employee,
27 principal or agent, or the legal or personal representative of
28 any of the foregoing.

29 "Physician." Any person licensed to practice osteopathic
30 medicine pursuant to the act of October 5, 1978 (P.L.1109,

1 No.261), known as the Osteopathic Medical Practice Act, or any
2 person licensed to practice medicine and surgery within the
3 scope of the act of December 20, 1985 (P.L.457, No.112), known
4 as the Medical Practice Act of 1985.

5 "Reduced leave schedule." Leave scheduled for fewer than an
6 employee's usual number of hours per workweek or hours per
7 workday.

8 "Serious health condition." An illness, injury, impairment,
9 or physical or mental condition which requires:

10 (1) inpatient care in a hospital, hospice or residential
11 health care facility; or

12 (2) continuing treatment or continuing supervision by a
13 health care provider.

14 "Task force." The Task Force on Family and Medical Leave
15 established in section 16.

16 Section 4. Family leave requirement.

17 (a) General rule.--

18 (1) An eligible employee shall be entitled to a total of
19 12 workweeks of family leave during any 12-month period for
20 any of the following reasons:

21 (i) The birth of a child.

22 (ii) The placement of a child in the employee's
23 household for adoption.

24 (iii) In order for the employee to care for a family
25 member who has a serious health condition.

26 (2) The entitlement to begin leave under paragraph
27 (1)(i) and (ii) shall expire at the end of the 12-month
28 period beginning after the date of the birth or placement.

29 (3) In the case of a family member who has a serious
30 health condition, leave under this section may be taken

1 intermittently when medically necessary, subject to
2 subsection (e)(2).

3 (b) Reduced leave.--Upon agreement between the employer and
4 the eligible employee, leave under this section may be taken on
5 a reduced leave schedule; however, such reduced leave schedule
6 shall not result in a reduction in the total amount of leave to
7 which the employee is entitled.

8 (c) Unpaid leave permitted.--Leave under this section may
9 consist of unpaid leave, except as provided in subsection (d).

10 (d) Relationship to paid leave.--An eligible employee may
11 elect, or an employer may require, the employee to substitute
12 for family leave as provided for in subsection (a) any of the
13 employee's paid vacation leave, personal leave or family leave
14 for any part of the 12-week period of such leave. If the
15 eligible employee elects to substitute or is required by his
16 employer to substitute paid leave for family leave, and if such
17 paid leave is less than 12 weeks, the employer shall provide
18 such additional weeks of leave as may be necessary to obtain
19 such 12 weeks; except that nothing in this act shall require an
20 employer to provide paid leave in any situation in which the
21 employer does not normally provide such leave.

22 (e) Forseeable leave.--

23 (1) In any case in which the necessity for leave under
24 this section is forseeable, based on an expected birth or
25 adoption, the eligible employee shall provide the employer
26 with prior notice of such expected birth or adoption in a
27 manner which is reasonable and practicable.

28 (2) In any case in which the necessity for the leave
29 under this section is forseeable, based on planned medical
30 treatment or supervision, the eligible employee shall:

(i) Make a reasonable effort to schedule elective treatment or supervision so as not to disrupt unduly the operations of the employer, subject to the approval of the family member's health care provider.

(ii) Provide the employer with prior notice of the date of the anticipated leave and its approximate duration, insofar as this is ascertainable, in a manner which is reasonable and practicable.

(f) Employees employed by the same employer.--In any case in which a husband and wife entitled to leave under subsection (a) are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period, if such leave is taken:

(1) under subsection (a)(1)(i) or (ii); or

(2) to care for a sick sibling, parent or grandparent under subsection (a)(1)(iii).

Section 5. Temporary medical leave requirement.

(a) General rule.--

(1) An eligible employee who, because of a serious health condition, becomes unable to perform the functions of the employee's position shall be entitled to temporary medical leave for as long as the employee is unable to perform such functions, except that this leave shall not exceed 12 workweeks during any 12-month period.

(2) Leave under this section may be taken intermittently when medically necessary, subject to subsection (e).

(b) Reduced leave.--Upon agreement between the employer and the eligible employee, leave under this section may be taken on a reduced leave schedule if authorized by the employee's health

1 care provider; however, such reduced leave schedule shall not
2 result in a reduction in the total amount of leave to which the
3 employee is entitled.

4 (c) Unpaid leave permitted.--Leave may consist of unpaid
5 leave, except as provided in subsection (d).

6 (d) Relationship to paid leave.--

7 (1) If an employer provides paid temporary medical leave
8 or paid sick leave for fewer than 12 weeks, the additional
9 weeks of leave added to attain the 12-week total may be
10 unpaid.

11 (2) An eligible employee may elect or an employer may
12 require the employee to substitute any paid leave which the
13 employee has accrued for any part of the 12-week period,
14 except that nothing in this act shall require an employer to
15 provide paid medical or sick leave in any situation in which
16 the employer does not normally provide such leave.

17 (e) Foreseeable leave.--In any case in which the necessity
18 for leave under this section is foreseeable based on planned
19 medical treatment or supervision, the eligible employee shall:

20 (1) Make a reasonable effort to schedule elective
21 treatment or supervision so as not to disrupt unduly the
22 operations of the employer, subject to the approval of the
23 employee's health care provider.

24 (2) Provide the employer with prior notice of the date
25 of the anticipated leave and its approximate duration,
26 insofar as this is ascertainable, in a manner which is
27 reasonable and practicable.

28 Section 6. Combined leave limitation; leave conditions.

29 (a) General rule.--An employer may limit the number of
30 workweeks of leave provided under sections 4 and 5 to a maximum

1 of 18 workweeks in a 24-month period. The 24-month period shall
2 commence with the first day leave is taken under section 4 or 5.

3 (b) Student or other employment.--No employee who receives
4 any number of workweeks of leave as authorized by section 4 or 5
5 may be a full-time student or have other gainful employment
6 during the time the employee is on such leave unless the
7 employer consents or unless, in the case of other employment,
8 the employee had that employment prior to the granting of leave
9 under section 4 or 5.

10 Section 7. Certification.

11 (a) General rule.--An employer may require that a claim for
12 family leave under section 4(a)(1)(iii), or temporary medical
13 leave under section 5, be supported by certification issued by
14 the physician of the family member or of the employee, whichever
15 is appropriate. The employee shall provide a copy of this
16 certification to the employer.

17 (b) Additional opinions.--In any case in which the employer
18 has reason to doubt the validity of the certification provided
19 pursuant to subsection (a), the employer may require, at its own
20 expense and after the employee has been on leave one week, that
21 an employee obtain an opinion regarding the serious health
22 condition from a second physician designated or approved, but
23 not employed, by the employer. If the second opinion differs
24 from the certification provided pursuant to subsection (a), the
25 employer may require, at its own expense, that the employee
26 obtain the opinion of a third physician designated or approved
27 jointly by the employer and the employee concerning the serious
28 health condition. The opinion of the third physician shall be
29 considered to be final and shall be binding on the employer and
30 the employee.

1 (c) Confidentiality.--For purposes of protecting patient
2 confidentiality, the certification under this section shall not
3 disclose the patient's diagnosis but shall be sufficient if it
4 contains the following:

5 (1) The date on which the serious health condition
6 commenced.

7 (2) The probable duration of the condition.

8 (3) For purposes of leave under section 5, a statement
9 that, due to a serious health condition, the employee is
10 unable to perform the functions of the employee's position;
11 or, for purposes of leave under section 4(a)(1)(iii), a
12 statement that, due to the family member's serious health
13 condition, the employee must take the requested leave in
14 order to care for the family member.

15 Section 8. Employment and certain benefits protected.

16 (a) Restoration to position.--

17 (1) Upon return from leave under section 4 or 5, the
18 employee shall be entitled to be:

19 (i) restored by the employer to the position of
20 employment held by the employee when the leave commenced;
21 or

22 (ii) restored to an equivalent position with
23 equivalent employment benefits, pay, and other terms and
24 conditions of employment held by the employee when the
25 leave commenced.

26 (2) The taking of leave under this act shall not result
27 in the loss of any employment benefit accrued prior to the
28 date on which the leave commenced.

29 (3) The taking of leave under this act shall not result
30 in the loss of any accrual of seniority to which the employee

1 would have been entitled had the employee not taken the
2 leave.

3 (4) Nothing in this section shall be construed to
4 entitle any restored employee to any right, employment
5 benefit or position of employment other than any right,
6 employment benefit or position to which the employee would
7 have been entitled had the employee not taken the leave.

8 (5) If during a leave provided by this act, the employer
9 experiences a reduction in force or layoff and the employee
10 would have lost their position had the employee not been on
11 leave, as a result of the reduction in force or pursuant to
12 the good faith operation of a bona fide layoff and recall
13 system including a system under a collective bargaining
14 agreement where applicable, the employee shall not be
15 entitled to reinstatement to the former or an equivalent
16 position. The employee shall retain all rights under any
17 applicable layoff and recall system, including a system under
18 a collective bargaining agreement, as if the employee had not
19 taken the leave.

20 (b) Denial of restoration.--An employer may deny restoration
21 as provided for in subsection (a) to any salaried eligible
22 employee who is among the highest paid 10% of the employees
23 employed by the employer if:

24 (1) such denial is necessary to prevent substantial and
25 grievous economic injury to the employer's operations;

26 (2) the employer notifies the employee of its intent to
27 deny restoration on such basis at the time the employer
28 determines that such injury would occur; and

29 (3) in any case in which the leave has commenced, the
30 employee elects not to return to employment after receiving

1 such notice.

2 (c) Maintenance of health benefits.--During any period an
3 eligible employee takes leave under section 4 or 5, the employer
4 shall maintain coverage under any group health plan, as defined
5 in section 162(i)(3) of the Internal Revenue Code of 1954 (68A
6 Stat. 3, 26 U.S.C. § 162(i)(3)), for the duration of such leave
7 at the level and under the conditions coverage would have been
8 provided if the employee had continued in employment
9 continuously from the date the employee commenced the leave
10 until the date the employee is restored under subsection (a).
11 The employee shall be responsible for reimbursement to the
12 employer of the costs of health benefits if the employee fails
13 to return to employment without good cause at the expiration of
14 the leave.

15 Section 9. Prohibited acts.

16 (a) Interference with rights.--

17 (1) It shall be unlawful for any employer to interfere
18 with, restrain or deny the exercise of or attempt to
19 exercise, any right provided under this act.

20 (2) It shall be unlawful for any employer to discharge
21 or in any other manner discriminate against any individual
22 for opposing any practice made unlawful by this act.

23 (b) Interference with proceedings or injuries.--It shall be
24 unlawful for any person to discharge or in any other manner
25 discriminate against any individual because such individual:

26 (1) has filed a complaint with the department, or has
27 instituted or caused to be instituted any proceeding, under
28 or related to this act;

29 (2) has given or is about to give any information in
30 connection with any inquiry or proceeding relating to any

1 right provided under this act; or

2 (3) has testified or is about to testify in any
3 proceeding relating to any right provided under this act.

4 Section 10. Administrative enforcement and civil remedy.

5 (a) Complaint.--Any person claiming to be aggrieved by a
6 violation of any provision of this act shall file a complaint
7 with the department within six months of the alleged violation.
8 The department shall conduct a hearing according to 2 Pa.C.S.
9 Ch. 5 (relating to practice and procedure).

10 (b) Complaint not to be foreclosed.--If a person files a
11 complaint with the department, that person's right of action in
12 the courts of the Commonwealth shall not be foreclosed. If
13 within one year after the filing of the complaint, the
14 department has dismissed the complaint or has not concluded its
15 proceedings, the department shall notify the aggrieved person.
16 On receipt of such notice, the aggrieved person shall be able to
17 bring an action in the court of common pleas of the Commonwealth
18 based on this act. If the employer is an agency or political
19 subdivision of the Commonwealth, then the civil action must be
20 filed in the Commonwealth Court.

21 Section 11. Relief.

22 (a) General rule.--Upon a finding of a violation under
23 section 10, the aggrieved party may receive the following
24 relief:

25 (1) In any civil action or departmental proceeding
26 brought under section 10, the court may grant as relief any
27 permanent or temporary injunction, temporary restraining
28 order and other equitable relief as the court deems
29 appropriate.

30 (2) Any employer that violates any provision of this act

1 shall be liable to the injured party in an amount equal to
2 any wages, salary, employment benefits or other compensation
3 denied or lost to the employee by reason of the violation,
4 plus interest on the total monetary damages calculated at the
5 prevailing rate.

6 (3) Any employer that violates any provision of this act
7 may also be liable to the injured party in the amount of \$100
8 for each day the violation occurs. The maximum penalty
9 imposed under this subsection shall not exceed \$5,000.

10 (4) A prevailing employee may be awarded a reasonable
11 attorney fee as part of the costs, in addition to any relief
12 awarded. The Commonwealth shall be liable for costs the same
13 as a private person.

14 (b) Limitation.--Damages awarded under subsection (a)(2) may
15 not accrue from a date more than two years before the date on
16 which the complaint was filed with the department under section
17 10.

18 Section 12. Notice.

19 (a) General rule.--Each employer shall post and keep posted,
20 in conspicuous places upon its premises where notices to
21 employees and applicants for employment are customarily posted,
22 a notice setting forth excerpts from, or summaries of, the
23 pertinent provisions of this act and information pertaining to
24 the filing of a complaint.

25 (b) Penalty.--Any employer that willfully violates this
26 section shall be assessed a civil penalty of not more than \$100
27 for each separate offense.

28 Section 13. Effect on other laws.

29 Nothing in this act shall be construed to supersede any law
30 which provides greater employee family or medical leave rights

1 than the rights established under this act.

2 Section 14. Effect on existing employment benefits.

3 (a) More protective.--Nothing in this act shall be construed
4 to diminish an employer's obligation to comply with any
5 collective bargaining agreement or any employment benefit
6 program or plan which provides greater family and medical leave
7 rights to employees than the rights provided under this act.

8 (b) Less protective.--The rights provided to employees under
9 this act may not be diminished by any collective bargaining
10 agreement or any employment benefit program or plan.

11 (c) Limited exemption.--

12 (1) Any employer who, on or before March 1, 1990, has an
13 established family leave policy as part of its employee
14 benefits package and maintains a family leave policy, shall
15 be exempt from this act until January 1, 1996.

16 (2) As used in this subsection, the term "family leave
17 policy" means a written policy incorporated by an employer
18 for the benefit of its employees which permits an employee
19 family leave for reasonable time due to family illness, birth
20 of a child, newborn child care, including newborn adoption
21 and temporary medical leave for employee illness. A family
22 leave policy shall also guarantee employees reinstatement to
23 the position of employment prior to leave or equivalent
24 position with equivalent employment benefits, and in the case
25 of unpaid leave, shall, at a minimum, provide for the
26 continuation of health care benefits, to be paid by the
27 employer for the full period of leave.

28 Section 15. Encouragement of more generous leave policies.

29 Nothing in this act shall be construed to discourage
30 employers from adopting leave policies more generous than any

1 policies which comply with the requirements under this act.

2 Section 16. Task force.

3 (a) Establishment.--The Task Force on Family and Medical
4 Leave is established within the department.

5 (b) Composition.--The task force shall consist of 13
6 members:

7 (1) The Secretary of Labor and Industry, who shall serve
8 as a voting member of the task force and who shall chair the
9 task force.

10 (2) The Majority Chairman and the Minority Chairman of
11 the Senate Labor and Industry Committee, or their designees.

12 (3) The Majority Chairman and the Minority Chairman of
13 the House of Representatives Labor Relations Committee, or
14 their designees.

15 (4) Four representatives of employers, at least one of
16 whom is representative of small business and one who is a
17 representative of local government. All appointees shall be
18 named by the Governor.

19 (5) Four representatives of employees, two of whom shall
20 represent private employees and two of whom shall represent
21 public employees. All appointees shall be named by the
22 Governor.

23 (c) Powers and duties.--

24 (1) The task force shall conduct a comprehensive study
25 of the family and medical leave practices as provided in this
26 act; existing and proposed policies relating to family and
27 medical leave; and potential costs, benefits and impacts on
28 productivity of family and medical leave policies on the
29 private and the public sectors.

30 (2) The task force shall make a written report, within

1 two years after the effective date of this act, to the Chief
2 Clerk of the Senate, the Chief Clerk of the House of
3 Representatives and the Governor. The report shall indicate:

4 (i) The number of employers that currently provide
5 family and medical leave either through formal or
6 informal policy, or on an ad hoc basis.

7 (ii) The type and length of leave that is currently
8 provided by employers.

9 (iii) The cost of this act to employers.

10 (iv) The extent that this act will impact on the
11 collective bargaining process.

12 (v) The number of employees who took leave, the
13 length of leave taken and the reasons for the leaves of
14 absence taken under the provisions of this act.

15 (vi) The benefits of this act to the well-being of
16 the families of this Commonwealth, to improvements in
17 employer-employee relations and to increased productivity
18 in the workplaces in this Commonwealth.

19 (d) Cooperation.--Administrative agencies of the
20 Commonwealth shall provide assistance and information to the
21 task force upon request.

22 Section 17. Severability.

23 The provisions of this act are severable. If any provision of
24 this act or its application to any person or circumstance is
25 held invalid, the invalidity shall not affect other provisions
26 or applications of this act which can be given effect without
27 the invalid provision or application.

28 Section 18. Effective date.

29 This act shall take effect in 60 days.