

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1661 Session of  
1989

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OLASZ, JUNE 7, 1989

REFERRED TO COMMITTEE ON LABOR RELATIONS, JUNE 7, 1989

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.

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

12 Section 1. Short title.

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

15 Section 2. Findings and purposes.

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

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

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

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

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

30 (5) The growing number of older Pennsylvanians has

1 created a new social and economic reality, requiring an  
2 increasing number of individuals to provide unpaid care to  
3 older family members.

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

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

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

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

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

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

## 22 Section 3. Definitions.

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

26 "Child." The term includes the following:

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

29 (2) A legal ward of the employee toward whom the  
30 employee assumes the obligations and discharges the duties

1 incidental to the parental relationship or stands in loco  
2 parentis.

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

6 "Employee." Any person employed by an employer for a period  
7 of three months or more. The term "employee," as used in this  
8 act, shall be consistent with the use of the term "employee" in  
9 the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. §  
10 201 et seq.) and the regulations made pursuant to that act under  
11 29 C.F.R. § 1608.8 (relating to affirmative action plans which  
12 are part of commission conciliation or settlement agreements).  
13 Economic reality rather than technical concepts determines  
14 whether there is employment within the meaning of this act.

15 "Employer." Any person who employs ten or more employees for  
16 each working day during each of 20 or more calendar workweeks in  
17 the current or preceding calendar year. The term includes any  
18 person, or group of persons, who acts, directly or indirectly,  
19 in the interest of an employer with respect to one or more  
20 employees, and any successor in interest of such an employer.

21 "Employment benefits." Benefits other than salary or wages  
22 provided or made available to employees by an employer,  
23 including group life insurance, health insurance, disability  
24 insurance, sick leave, annual leave, educational benefits and  
25 pensions, regardless of whether such benefits are provided by a  
26 policy or practice of an employer or by an employee benefit plan  
27 as defined in section 3(3) of the Employee Retirement Income  
28 Security Act of 1974 (Public Law 93-406, 29 U.S.C. § 1002(1)).

29 "Family member." A sibling, parent, grandparent, child or  
30 spouse of the employee.

1 "Health care provider." The term includes the following:

2 (1) Any person licensed under Federal, State or local  
3 law to provide health care services.

4 (2) Any other person determined by the Secretary of  
5 Labor and Industry to be capable of providing health  
6 services.

7 "Hearing officer." A full-time attorney appointed by the  
8 Secretary of Labor and Industry to conduct hearings.

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

11 "Person." Any individual, firm, partnership, mutual company,  
12 joint stock company, corporation, association, organization,  
13 unincorporated organization, labor union, government agency  
14 (including the Commonwealth and all its entities), incorporated  
15 society, statutory or common law trust, estate, executor,  
16 administrator, receiver, trustee, conservator, liquidator,  
17 trustee in bankruptcy, committee, assignee, officer, employee,  
18 principal or agent, or the legal or personal representative of  
19 any of the foregoing.

20 "Reduced leave schedule." Leave scheduled for fewer than an  
21 employee's usual number of hours per workweek or hours per  
22 workday.

23 "Secretary." The Secretary of Labor and Industry of the  
24 Commonwealth or his duly authorized representative.

25 "Serious health condition." An illness, injury, impairment,  
26 or physical or mental condition which involves any of the  
27 following:

28 (1) Inpatient care in a hospital, hospice or residential  
29 health care facility.

30 (2) Continuing treatment or continuing supervision by a

1 health care provider.

2 Section 4. Family leave requirement.

3 (a) General rule.--

4 (1) An employee shall be entitled to a total of 18  
5 workweeks of family leave during any 24-month period for any  
6 of the following reasons:

7 (i) The birth of a child.

8 (ii) The placement of a child in the employee's  
9 household for adoption or foster care.

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

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

15 (3) In the case of a family member who has a serious  
16 health condition, leave under this section may be taken  
17 intermittently when medically necessary, subject to  
18 subsection (e)(2).

19 (b) Reduced leave.--Upon agreement between the employer and  
20 the employee, leave under this section may be taken on a reduced  
21 leave schedule; however, such reduced leave schedule shall not  
22 result in a reduction in the total amount of leave to which the  
23 employee is entitled.

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

26 (d) Relationship to paid leave.--

27 (1) If an employer provides paid family leave for fewer  
28 than 18 workweeks, the additional weeks of leave added to  
29 attain the 18-workweek total may be unpaid.

30 (2) An employee may elect to substitute any paid leave

1       which the employee has accrued for any part of the 18-week  
2       period, except that nothing in this act shall require an  
3       employer to provide paid leave in any situation in which the  
4       employer does not normally provide such leave.

5       (e) Foreseeable leave.--

6           (1) In any case in which the necessity for leave under  
7       this section is foreseeable, based on an expected birth or  
8       adoption, the employee shall provide the employer with prior  
9       notice of such expected birth or adoption in a manner which  
10      is reasonable and practicable.

11          (2) In any case in which the necessity for the leave  
12      under this section is foreseeable, based on planned medical  
13      treatment or supervision, the employee shall:

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

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

22      (f) Employees employed by the same employer.--In any case in  
23      which two employees from the same household entitled to family  
24      leave under subsection (a)(1)(i) or (ii) are employed by the  
25      same employer, the two employees shall not be entitled to take  
26      such leave simultaneously, unless the employer otherwise agrees.  
27      Section 5. Temporary medical leave requirement.

28      (a) General rule.--

29           (1) An employee who, because of a serious health  
30      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 26 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 employee, leave under this section may be taken on a reduced leave schedule if authorized by the employee's health care provider; however, such reduced leave schedule shall not result in a reduction in the total amount of leave to which the employee is entitled.

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

(d) Relationship to paid leave.--

(1) If an employer provides paid temporary medical leave or paid sick leave for fewer than 26 weeks, the additional weeks of leave added to attain the 26-week total may be unpaid.

(2) An employee may elect to substitute any paid leave which the employee has accrued for any part of the 26-week period, except that nothing in this act shall require an employer to provide paid leave in any situation in which the employer does not normally provide such leave.

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

(1) 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



employee's health care provider.

(2) 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.

#### Section 6. Certification.

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

(b) Sufficient certification.--For purposes of protecting patient confidentiality, the certification under this section shall not disclose the patient's diagnosis but shall be sufficient if it contains the following:

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

(2) The probable duration of the condition.

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

#### Section 7. Employment and benefits protection.

(a) Restoration to position.--

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

1 (i) restored by the employer to the position of  
2 employment held by the employee when the leave commenced;  
3 or

4 (ii) restored to an equivalent position with  
5 equivalent employment benefits, pay, and other terms and  
6 conditions of employment.

7 (2) The taking of leave under this act shall not result  
8 in the loss of any employment benefit accrued before the date  
9 on which the leave commenced.

10 (3) The taking of leave under this act shall not result  
11 in the loss of any accrual of seniority to which the employee  
12 would have been entitled had the employee not taken the  
13 leave.

14 (4) Nothing in this section shall be construed to  
15 entitle any restored employee to any right, employment  
16 benefit or position of employment other than any right,  
17 employment benefit or position to which the employee would  
18 have been entitled had the employee not taken the leave.

19 (b) Maintenance of health benefits.--During any period an  
20 employee takes leave under section 4 or 5, the employer shall  
21 maintain coverage under any group health plan, as defined in  
22 section 162(i)(3) of the Internal Revenue Code of 1954 (68A  
23 Stat. 3, 26 U.S.C. § 162(i)(3)), for the duration of such leave  
24 at the level and under the conditions coverage would have been  
25 provided if the employee had continued in employment  
26 continuously from the date the employee commenced the leave  
27 until the date the employee is restored under subsection (a).

28 Section 8. Prohibited acts.

29 (a) Interference with rights.--

30 (1) It shall be unlawful for any employer to interfere

1 with, restrain or deny the exercise of or attempt to  
2 exercise, any right provided under this act.

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

6 (b) Interference with proceedings or inquiries.--It shall be  
7 unlawful for any person to discharge or in any other manner  
8 discriminate against any individual because such individual:

9 (1) has filed any charge, or has instituted or caused to  
10 be instituted any proceeding, under or related to this act;

11 (2) has given or is about to give any information in  
12 connection with any inquiry or proceeding relating to any  
13 right provided under this act; or

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

16 Section 9. Administrative enforcement.

17 (a) General.--The secretary shall:

18 (1) Issue such rules and regulations as are necessary to  
19 carry out this section, including rules and regulations  
20 concerning service of complaints, notice of hearings, answers  
21 and amendments to complaints, and copies of orders and  
22 records of proceedings.

23 (2) Have the power and duty to appoint such attorneys,  
24 hearing officers, and other employees and agents as it deems  
25 necessary, fix their compensation within the limitations  
26 provided by law and prescribe their duties.

27 (b) Charges.--

28 (1) Any person (or any person, including a class or  
29 organization, on behalf of another person) alleging an act  
30 which violates any provision of this act may file a charge

1       respecting such violation with the secretary. Charges shall  
2       be in such form and contain such information as the secretary  
3       shall require by regulation.

4           (2) Not more than ten days after the secretary receives  
5       notice of the charge, the secretary:

6               (i) Shall serve a notice of the charge on the person  
7       charged with the violation.

8               (ii) Shall inform the person and the charging party  
9       as to the rights and procedures provided under this act.

10          (3) A charge may not be filed more than one year after  
11       the last event constituting the alleged violation.

12          (4) The charging party and the person charged with the  
13       violation may enter into a settlement agreement concerning  
14       the violation alleged in the charge before any determination  
15       is reached by the secretary under subsection (c). Such an  
16       agreement shall be effective unless the secretary determines,  
17       within 30 days after notice of the proposed agreement, that  
18       the agreement is not generally consistent with the purposes  
19       of this act.

20       (c) Investigation; complaint.--

21           (1) Within the 60-day period after the secretary  
22       receives any charge, the secretary shall investigate the  
23       charge and issue a complaint based on the charge or dismiss  
24       the charge.

25           (2) If the secretary determines that there is no  
26       reasonable basis for the charge, the secretary shall dismiss  
27       the charge and promptly notify the charging party and the  
28       person charged with the violation as to the dismissal.

29           (3) If the secretary determines that there is a  
30       reasonable basis for the charge, the secretary shall issue a

1 complaint based on the charge and promptly notify the  
2 charging party and the person charged with the violation as  
3 to the issuance.

4 (4) Upon issuance of a complaint, the secretary and the  
5 respondent may enter into a settlement agreement concerning a  
6 violation alleged in the complaint, except that any such  
7 settlement shall not be entered into over the objection of  
8 the charging party.

9 (5) If, at the end of the 60-day period referred to in  
10 paragraph (1), the secretary:

11 (i) has not made a determination under paragraph (2)  
12 or (3);

13 (ii) has dismissed the charge under paragraph (2);  
14 or

15 (iii) has disapproved a settlement agreement under  
16 subsection (b)(4) or has not entered into a settlement  
17 agreement under paragraph (4) of this subsection;

18 the charging party may elect to bring a civil action under  
19 section 10. Such election shall bar further administrative  
20 action by the secretary with respect to the violation alleged  
21 in the charge.

22 (d) Rights of parties.--

23 (1) In any case in which a complaint is issued under  
24 subsection (c), the secretary shall, not more than ten days  
25 after the complaint is issued, cause to be served on the  
26 parties a copy of the complaint.

27 (2) Any person filing a charge alleging a violation of  
28 this act may elect to be a party to any complaint filed by  
29 the secretary alleging such violation. Such election must be  
30 made before the commencement of the hearing.

1           (3) The failure of the secretary to comply in a timely  
2 manner with any obligation assigned to the secretary under  
3 this act shall entitle the employee to elect, at the time of  
4 such failure, to bring a civil action under section 10. Such  
5 election shall bar further administrative action by the  
6 secretary with respect to the violation alleged in the  
7 charge.

8           (4) Nothing in this section shall be construed to  
9 entitle the respondent to interfere with the performance of  
10 the function assigned to the secretary under this act,  
11 notwithstanding any failure by the secretary to strictly  
12 comply with any requirements relating to the exercise of such  
13 functions.

14 (e) Conduct of hearing.--

15           (1) The secretary shall have the duty to prosecute any  
16 complaint issued under subsection (c).

17           (2) A hearing officer shall conduct a hearing on the  
18 record with respect to any complaint issued under this act.  
19 The hearing shall be commenced within 60 days after the  
20 issuance of such complaint, unless the hearing officer, in  
21 the hearing officer's discretion, determines that the purpose  
22 of this act would best be furthered by commencement of the  
23 action after the expiration of such period.

24 (f) Findings and conclusions.--

25           (1) After the hearing conducted under this section, the  
26 hearing officer shall promptly make findings of fact and  
27 conclusions of law, and, if appropriate, issue an order for  
28 relief as provided in section 11.

29           (2) The hearing officer shall inform the parties, in  
30 writing, of the reason for any delay in making such findings

1 and conclusions if such findings and conclusions are not made  
2 within 60 days after the conclusion of such hearing.

3 (g) Finality of decision; review.--

4 (1) The decision and order of the hearing officer shall  
5 become the final decision and order of the agency unless,  
6 upon appeal by an aggrieved party taken not more than 30 days  
7 after such action, the secretary modifies or vacates the  
8 decision, in which case the decision of the secretary shall  
9 be the final decision and the order of the agency.

10 (2) Not later than 60 days after the entry of final  
11 order under paragraph (1), any person aggrieved by the final  
12 order may seek a review of such order in the court of common  
13 pleas or, if the employer is an agency or political  
14 subdivision of the Commonwealth, in the Commonwealth Court.

15 (3) Upon the filing of the record with the court, the  
16 jurisdiction of the court shall be exclusive and its judgment  
17 shall be final, except that the same shall be subject to  
18 review by the Supreme Court of the Commonwealth.

19 (h) Court enforcement of administrative orders.--

20 (1) If an order of the agency is not appealed under  
21 subsection (g)(2), the secretary may file a written petition  
22 with the court of common pleas, or, if the employer is an  
23 agency or political subdivision of the Commonwealth, in the  
24 Commonwealth Court, for the enforcement of the order of the  
25 secretary.

26 (2) Upon the filing of a petition under paragraph (1),  
27 the court shall have jurisdiction to make and enter a decree  
28 enforcing the order of the secretary. In such a proceeding,  
29 the order of the secretary shall not be subject to review.

30 (3) If, upon appeal of an order under subsection (g)(2),

1 the court does not reverse such order, such court shall have  
2 the jurisdiction to make and enter a decree enforcing the  
3 order of the secretary.

4 Section 10. Enforcement by civil action.

5 (a) Right to bring civil action.--

6 (1) Subject to the limitations in this section, an  
7 employee or any person, including a class or organization on  
8 behalf of any employee, the secretary or the Attorney General  
9 may bring a civil action against any employer to enforce any  
10 provisions of this act or any settlement agreement reached  
11 under section 9(b)(4) or (c)(4):

12 (i) in the court of common pleas; or

13 (ii) if the employer is an agency or political  
14 subdivision of the Commonwealth, in the Commonwealth  
15 Court.

16 (2) A civil action may not be commenced under this  
17 subsection if a charge has been filed with the secretary by  
18 the employee under section 9(b), unless such civil action has  
19 been initiated as a result of the secretary's:

20 (i) dismissal of a charge, disapproval of a  
21 settlement or lack of action within the required 60-day  
22 period, pursuant to section 9(c)(5); or

23 (ii) failure to comply in a timely manner with any  
24 obligation assigned to the secretary under this act,  
25 pursuant to section 9(d)(3).

26 (3) An employee is not required to file a charge under  
27 section 9(b) in order to bring a civil action under this  
28 section.

29 (4) Except as provided in paragraph (5), no civil action  
30 may be commenced more than one year after the date on which



1 the alleged violation occurred.

2 (5) In any case in which:

3 (i) a timely charge is filed under section 9(b); and

4 (ii) the failure of the secretary to issue a

5 complaint or enter into a settlement agreement based on

6 the charge, as provided under section 9(c)(5), occurs

7 more than 11 months after the date on which any alleged

8 violation occurred;

9 the employee may commence a civil action not more than 60

10 days after the date of such failure.

11 (b) Notification of the secretary; right to intervene.--A

12 copy of the complaint in any action by an employee under

13 subsection (a) shall be served upon the secretary by certified

14 mail. The secretary shall have the right to intervene in a civil

15 action brought by an employee under subsection (a).

16 Section 11. Relief.

17 (a) Injunctive.--

18 (1) Upon finding a violation by a person under section

19 9, the secretary shall issue an order requiring such person

20 to cease and desist from any act or practice which violates

21 this act.

22 (2) In any civil action brought under section 10, the

23 court may grant as relief any permanent or temporary

24 injunction, temporary restraining order and other equitable

25 relief as the court deems appropriate.

26 (b) Monetary.--

27 (1) Any employer that violates any provision of this act

28 shall be liable to the injured party in an amount equal to:

29 (i) any wages, salary, employment benefits or other

30 compensation denied or lost to the employee by reason of

1 the violation, plus interest on the total monetary  
2 damages calculated at the prevailing rate; and

3 (ii) an additional amount equal to the greater of  
4 the amount determined under paragraph (i), or  
5 consequential damages.

6 (2) 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 violations occurs. The maximum penalty  
9 imposed under this subsection shall not exceed \$5,000.

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

14 (d) Limitation.--Damages awarded under subsection (b) may  
15 not accrue from a date more than two years before the date on  
16 which a charge is filed under section 9(b) or a civil action is  
17 brought under section 10.

18 Section 12. Notice.

19 (a) In general.--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, to be approved by the secretary, setting forth  
23 excerpts from, or summaries of, the pertinent provisions of this  
24 act and information pertaining to the filing of a charge.

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 Section 15. Encouragement of more generous leave policies.

12 Nothing in this act shall be construed to discourage  
13 employers from adopting leave policies more generous than any  
14 policies which comply with the requirements under this act.

15 Section 16. Regulations.

16 The secretary shall prescribe such regulations as are  
17 necessary to carry out this act.

18 Section 17. Severability.

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

24 Section 18. Effective date.

25 This act shall take effect in 60 days.