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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1558 Session of  
2009

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INTRODUCED BY GIBBONS, BELFANTI, GERGELY, BRENNAN, BURNS,  
CALTAGIRONE, DONATUCCI, FABRIZIO, FREEMAN, JOSEPHS, MCGEEHAN,  
MELIO, READSHAW, J. TAYLOR AND YOUNGBLOOD, MAY 29, 2009

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REFERRED TO COMMITTEE ON LABOR RELATIONS, MAY 29, 2009

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AN ACT

1 Providing for family temporary care insurance and for the powers  
2 and duties of the Department of Labor and Industry; and  
3 establishing the Temporary Care Fund.

4 The General Assembly finds and declares as follows:

5 (1) It is in the public interest to provide family  
6 temporary care insurance benefits to employees to care for  
7 their family members. The need for family temporary care  
8 insurance benefits has intensified as the number of  
9 households with both parents employed has increased, and the  
10 number of single parent employees in the work force has  
11 grown. The need for partial wage replacement for employees  
12 taking family care leave will be exacerbated as the  
13 population of those needing care, both children and parents  
14 of employees, increases in relation to the number of working  
15 age adults.

16 (2) Developing programs that help families adapt to the  
17 competing interests of work and home not only benefits  
18 employees but also benefits employers by increasing employee

1 productivity and reducing employee turnover.

2 (3) The Family and Medical Leave Act of 1993 (Public Law  
3 103-3, 29 U.S.C. § 2601 et seq.) entitles eligible employees  
4 working for covered employers to take unpaid, job-protected  
5 leave for up to 12 workweeks in a 12-month period. Under the  
6 act, unpaid leave may be taken for the birth, adoption or  
7 foster placement of a new child; to care for a seriously ill  
8 child, parent or spouse; or for the employee's own serious  
9 health condition.

10 (4) The majority of employees in this Commonwealth are  
11 unable to take family care leave because they are unable to  
12 afford leave without pay. When employees do not receive some  
13 form of wage replacement during family care leave, families  
14 suffer from the employee's loss of income, increasing the  
15 demand on the Commonwealth's unemployment compensation  
16 program and dependence on the Commonwealth's public  
17 assistance and other benefit programs.

18 (5) It is the intent of the General Assembly to create a  
19 family temporary care insurance program to help reconcile the  
20 demands of work and family. The family temporary care  
21 insurance program shall be an independent component of the  
22 Commonwealth's unemployment compensation program and shall be  
23 funded through employee and employer contributions. Initial  
24 and ongoing administrative costs associated with the family  
25 temporary care insurance program shall be payable from the  
26 Temporary Care Fund.

27 The General Assembly of the Commonwealth of Pennsylvania  
28 hereby enacts as follows:

29 Section 1. Short title.

30 This act shall be known and may be cited as the Family

1 Temporary Care Act.

2 Section 2. Definitions.

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

6 "Child." An individual who is biological, adopted or foster  
7 son or daughter, a stepson or stepdaughter, a legal ward or a  
8 son or daughter of an employee who stands in loco parentis to  
9 that individual.

10 "Department." The Department of Labor and Industry of the  
11 Commonwealth.

12 "Employee." As defined in the act of December 5, 1936 (2nd  
13 Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment  
14 Compensation Law.

15 "Employer." As defined in the act of December 5, 1936 (2nd  
16 Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment  
17 Compensation Law.

18 "Family care leave." Any of the following:

19 (1) Leave for reason of the birth of a child of the  
20 employee, the placement of a child with an employee in  
21 connection with the adoption or foster care of the child by  
22 the employee or the serious health condition of a child of  
23 the employee.

24 (2) Leave to care for a parent or spouse who has a  
25 serious health condition.

26 "Family member." A child, parent or spouse.

27 "Fund." The Temporary Care Fund established under section 9.

28 "Parent." A biological, foster or adoptive parent, a  
29 stepparent, a legal guardian or other person who stood in loco  
30 parentis to an employee when the employee was a child.

1 "Secretary." The Secretary of Labor and Industry of the  
2 Commonwealth.

3 "Serious health condition." An illness, injury, impairment  
4 or physical or mental condition that involves inpatient care in  
5 a hospital, hospice or residential health care facility or  
6 continuing treatment or continuing supervision by a health care  
7 provider.

8 Section 3. Family temporary care insurance program.

9 (a) Establishment.--There is hereby established, within the  
10 Commonwealth unemployment compensation program, a family  
11 temporary care insurance program to provide up to 12 weeks of  
12 wage replacement benefits to eligible employees who take time  
13 off work to care for a seriously ill child, spouse or parent or  
14 to bond with a new child.

15 (b) Weekly benefit.--An individual's weekly benefit shall be  
16 the amount provided for unemployment compensation benefits under  
17 the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1),  
18 known as the Unemployment Compensation Law.

19 (c) Maximum benefit.--The maximum amount payable, within a  
20 12-month period, to an individual during any temporary care  
21 benefit period for family temporary care insurance shall be 12  
22 times the individual's weekly benefit, but in no case shall the  
23 total be more than the total wages paid to the individual during  
24 the individual's temporary care base period. If the benefit is  
25 not a multiple of one dollar, it shall be computed to the next  
26 highest multiple of one dollar.

27 (d) Maximum time.--No more than 12 weeks of family temporary  
28 care insurance benefits shall be paid within any 12-month  
29 period.

30 Section 4. Eligibility.

1 (a) General rule.--An employee shall be deemed eligible for  
2 family temporary care insurance benefits on any day in which the  
3 employee is unable to perform the employee's regular or  
4 customary work because the employee is caring for a new child  
5 during the first year after the birth or placement of the child  
6 or caring for a seriously ill child, parent or spouse subject to  
7 a waiting period of seven consecutive workdays during each  
8 family temporary care benefit period during which no benefits  
9 are payable within that period.

10 (b) Unemployment compensation.--An employee is not eligible  
11 for family temporary care insurance benefits with respect to any  
12 day that the employee has received unemployment compensation  
13 benefits under the act of December 5, 1936 (2nd Sp.Sess., 1937  
14 P.L.2897, No.1), known as the Unemployment Compensation Law, or  
15 under an unemployment compensation act of any other state or of  
16 the Federal Government.

17 (c) Other family members.--An employee is not eligible for  
18 family temporary care insurance benefits based upon a serious  
19 health condition of a child, parent or spouse with respect to  
20 any day that another family member is able and available to  
21 provide care for the same period of time that the employee  
22 provides the required care.

23 (d) Federal law.--An employee who is entitled to leave under  
24 the Family and Medical Leave Act of 1993 (Public Law 103-3, 29  
25 U.S.C. § 2601 et seq.) must take family temporary care insurance  
26 leave concurrent with leave taken under the Family and Medical  
27 Leave Act.

28 (e) Conditions.--

29 (1) As a condition of an employee's initial receipt of  
30 family temporary care insurance benefits during any 12-month

1 period in which the employee is eligible for these benefits,  
2 the employer may require the employee to take up to two weeks  
3 of earned but unused vacation leave prior to the employee's  
4 initial receipt of these benefits.

5 (2) If the employer so requires the employee to take  
6 vacation leave, that portion of the vacation leave that does  
7 not exceed one workweek shall be applied to the waiting  
8 period required under subsection (a).

9 (3) This subsection shall not be construed to relieve an  
10 employer of any duty under a collective bargaining agreement  
11 that the employer may have with respect to the subject matter  
12 of this subsection.

13 Section 5. Regulations.

14 The department shall promulgate regulations to administer  
15 this act and eligible employees shall receive benefits in  
16 accordance with the regulations.

17 Section 6. False certification.

18 If the secretary finds that any person falsely certifies the  
19 medical condition of an employee in order to obtain family  
20 temporary care insurance benefits with the intent to defraud,  
21 whether for the maker of the certification or for any other  
22 person, the secretary shall assess a penalty against the person  
23 in the amount of 25% of the benefits paid as a result of the  
24 false certification, in addition to requiring repayment of all  
25 benefits falsely paid.

26 Section 7. No abridgment of rights.

27 Nothing in this act shall be construed to abridge any rights  
28 and responsibilities conveyed by any other act. The benefits  
29 provided under this act are in addition to any such rights and  
30 responsibilities.

1 Section 8. Publication of contribution rate.

2 The secretary shall determine, on an annual basis, the amount  
3 of money necessary to provide benefits under this act and a  
4 uniform employee/employer contribution rate to be paid by all  
5 employees and employers subject to this act. The secretary shall  
6 publish the contribution rate annually in the Pennsylvania  
7 Bulletin. The rate shall become effective upon publication.

8 Section 9. Temporary Care Fund.

9 The Temporary Care Fund is established in the State Treasury.  
10 All contributions and penalties collected under this act,  
11 together with any appropriations that may be provided, shall be  
12 deposited in the fund to provide payment of benefits under this  
13 act.

14 Section 10. Applicability.

15 This act shall apply to periods of family temporary care  
16 leave commencing on or after July 1, 2010.

17 Section 11. Effective date.

18 This act shall take effect January 1, 2010, or immediately,  
19 whichever is later.