



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 181

PRINTER'S NO. 2432

PRIME SPONSOR: D. Miller

COST / (SAVINGS)

FUND	FY 2023/24	FY 2024/25
General Fund	See Fiscal Impact	See Fiscal Impact

SUMMARY:

Establishes the Family and Medical Leave Program and the Family and Medical Leave Fund and confers necessary powers on the Department of Labor and Industry.

ANALYSIS:

House Bill 181, Printer's Number 2432, establishes a new program known as the Family and Medical Leave Program and a new fund in the State Treasury named the Family and Medical Leave Fund.

Powers and Duties of the Department

The Department of Labor is tasked with establishing the Family and Medical Leave Program within one year of the effective date of the legislation. The department must begin paying family and medical leave payments no later than two years after the effective date of the legislation.

To facilitate the establishment of the program, the department is tasked with creating reasonable procedures for filing a claim as well as any documentation supporting a claim for a serious health condition or qualifying act of violence, as defined in the legislation. The legislation further provides requirements for reporting and notification between employers, employees, and the department, including confidentiality provisions. The department is tasked with acquiring any information systems or infrastructure necessary to create and operate the program, as well as filling any personnel needs.

The department is required to promulgate any regulations necessary to the functioning of the program. These include, among other things, a system for administrative complaints and appeals regarding payment or denial of benefits as well as any other violations.

Eligibility

Covered individuals will be entitled to payments for approved claims based on the following:

1. Because of birth, adoption, or placement through foster care, is caring for a new child during the first year after the birth, adoption, or placement of that child.
2. Is caring for a family member with a serious health condition.
3. Has a serious health condition, including pregnancy, that renders the covered individual unable to perform the functions of the individual's position.
4. In a declared public health emergency, is caring for a family member with a serious health condition.
5. Is caring for a family member who is a covered service member due to a qualifying exigency leave in accordance with the terms of 29 U.S.C. Ch. 28 (relating to family and medical leave).
6. Is a victim of a qualifying act of violence or is caring for a family member who is a victim of a qualifying act of violence and is taking leave for an authorized reason for leave for a qualifying act

of violence.

This program would make payments available to covered individuals for certain eligible claims. To be eligible to file a claim, a covered individual:

1. Have worked at least eighteen weeks during the twelve-month period prior to submitting a claim.
2. Have earned at least \$2,718 in come during the twelve-month period prior to submitting a claim, with this rate adjusted annually by the department to reflect the minimum qualifying wage to qualify for benefits under the unemployment compensation law.
3. Not be employed or an employer that has been issued a waiver under section 310 of the legislation.

To verify wages for determinations under the legislation, the department may request:

1. A check, check stub, or payroll record.
2. A tax return, including IRS form W-2 and form 1099, or successor forms.
3. Unemployment compensation records, including for UC-2A.
4. Bank statements or records showing regular and recurring deposits.
5. Written documentation created contemporaneously with the payment of wages.

In order to file a claim with the program, employees may not receive benefits for the same day under the Workers' Compensation Act or the Unemployment Compensation Law. When seeking benefits from the program, employees must submit any documentation required by the department, including any necessary medical certification or qualify act of violence certification.

The legislation provides that married or domestic partners employed by the same employer are both eligible for benefits, including when the leave runs concurrently. The department is tasked with promulgating regulations to provide an eligibility adjudication process for the program.

Benefits

Benefits under the program are payable for a maximum of twenty weeks for claims regarding a new child, serious health condition including pregnancy, or a domestic violence incident. For claims regarding care for a family member, benefits are payable for a maximum of twelve weeks. The combined maximum duration for leave is twenty weeks in any one application year, regardless of reason. Leave under the program can be claimed intermittently throughout any application year.

Initial benefit payments shall be made no later one week after a claim is filed and approved by the department or after the leave is scheduled to commence. Subsequent payments will be made semimonthly.

The benefit amounts payable under the program are based on an individual's average weekly wage. The portion of a covered individual average weekly way that is equal to or less than fifty percent of the statewide average weekly wage shall be replaced at a rate of ninety percent. The portion of a covered individual's average weekly wage exceeding fifty percent of the statewide average weekly wage shall be replaced at a rate of fifty percent. The legislation provides a methodology for determining an individual's average weekly wage under different compensation structures, including fixed weekly wages, annual salaries, or other payment arrangements such as seasonal or hourly contracts.

Benefits paid under the program for any covered individual may never exceed the statewide average weekly wage. The department shall adjust the benefit cap based annually based on the statewide average weekly wage and shall transmit notice of benefit rates to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

Contribution

All persons employed in the Commonwealth are required to contribution to the program for financing its benefits. These payments will occur as payroll contribution into the fund and shall commence at least one year prior to any benefit payments under the program. Contributions shall be set as a percentage of an individual's wages using an actuarial experience study. The rate shall be set to maintain solvency of the

fund and may not exceed one percent of an individual's wages. The rate of payroll contributions shall be evaluated and reset if necessary at least annually and the rate shall be posted on the departments website.

Employers will deduct fifty percent of the required contribution from an employee, but shall remit one hundred percent of the required contribution to the department. However, employers with fewer than fifteen employees may only deduct fifty percent of the required contribution from employees and remit fifty percent of the required contribution to the department.

The legislation provides the department with powers necessary to verify the number of employees an employer has, to provide any relevant notifications, and to impose penalties for failure to withhold or remit required contributions.

Employment Protections

The bill establishes a number of employer protections related to the program. Employees are entitled to be restored to their previously held position after taking leave under the program. Employee health benefits will be maintained during the time leave under the program is taken. Employers are prohibited from interfering with employees exercise of their rights under the program or from retaliating against an employee for exercising those rights.

Coordination of Benefits

The legislation establishes that leave taken under this act and that also qualifies as leave under 29 U.S.C. Ch. 28 (relating to family and medical leave) shall run concurrently with federal leave. Employees eligible for other paid leave, such as that offered under a collective bargaining agreement, may opt to take that leave prior to taking leave under this program, provided that it does not conflict with federal law. This legislation may not be diminished by employment contracts or collective bargaining agreements.

Waivers for Use of Private Plans

The legislation allows employers to seek waivers of their obligations from the department if the employer demonstrates it has a private, self-funded or insurance plan that meets the criteria of the Family and Medical Leave Program. To qualify for a waiver, a private plan must include:

1. Benefits to a covered individual providing the same maximum number of weeks of benefits.
2. Maximum weekly benefits in accordance with this legislation.
3. Payments in accordance with this legislation.
4. An allowance that leave may be taken intermittently.
5. A maximum benefit cap adjusted based on the methodology in the legislation.
6. No additional restrictions on the use of leave or benefits beyond those authorized in the legislation.
7. Costs to employees no greater than those in the program.

Employers using a private plan are not prohibited from providing benefits greater than those contained in the program. The legislation provides for the necessary documentation to both the department and to employees for employers utilizing a private plan.

Family and Medical Leave Fund

The Family and Medical Leave Fund is established as a nonlapsing fund in the State Treasury. All employee payroll contributions, as well as any financial penalties imposed under this legislation, shall be deposited into the fund. All money in the fund is appropriated to the department on an ongoing basis for the administration of the program and payment of benefits. Money in the fund may not be transferred or diverted for any other purpose.

Reporting and Education

The legislation imposes annual reporting requirements on the department, including information regarding the utilization of the program, demographics of its participants, and the status of the fund. The department

is also tasked with is also tasked with public education and outreach regarding the program.

Family and Medical Leave Advisory Board

The Family and Medical Leave Advisory Board is established to assist in the implementation of the program and in public outreach regarding the benefits available under the program. The Board will be composed of:

- The Secretary of Labor and Industry, or a designee.
- The State Treasurer, or a designee.
- The Insurance Commissioner, or a designee.
- The chairperson and minority chairperson of the Senate Labor and Industry Committee, or a designee.
- The chairperson and minority chairperson of the House Labor and Industry Committee, or a designee.
- Six members appointed by the secretary representing an equal number of employers and employees residing in the Commonwealth.

Ex officio members serving on the Board as a result of holding a public office shall serve for full tenure in the capacity which enabled them to become a member. Those appointed by the secretary shall serve four-year terms and be eligible to serve no more than two full consecutive terms.

Members of the Board will receive no compensation, but shall be reimbursed for expenses incurred in service of the Board.

Effective Date

This legislation takes effect 180 days upon enactment.

FISCAL IMPACT:

The Family and Medical Leave Program is designed to ultimately be self-funded entirely by the payroll contributions deducted from covered employees and no specific appropriations have been attached to the legislation. However, the Department of Labor and Industry estimates that it would have significant startup costs including staff and information technology infrastructure investments. The department would begin collecting payroll deductions for up to one year before the program was established and up to two years before any benefit payments were made.

In other states that have created similar programs, state governments often appropriated funded these startup costs. In many cases, those appropriations took the form of loans that were eventually repaid by payroll deductions after a sufficient balance had accrued in the relevant program fund. However, such an arrangement is not explicitly authorized by this legislation.

The department has estimated that personnel and operating costs, as well as technological infrastructure, could cost up to \$43.9 million in the first year after enactment, up to \$59.4 million in the second year of enactment, and up to \$60.2 million in the third year after enactment.

The payroll deductions that fund the program on an ongoing basis are to be set based on an actuarial experience study that will evaluate, on an annual basis, the contribution rate necessary to maintain the solvency of the fund and allow it to pay benefits as well as any and all administrative costs.

As the Commonwealth of Pennsylvania, school districts, and other political subdivisions throughout the Commonwealth, met the definition of employers under the legislation, and those with more than fifteen employees will be required to contribute fifty percent of the required contributions for all of their employees. This will increase personnel costs for these state agencies. Based on the one percent cap on the required contributions to the program, Commonwealth and agency costs would be capped at approximately 0.5 percent of their payroll in any given year. At this time, however, the precise dollar figure for these costs is indeterminate.

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DATE: December 13, 2023

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.