

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 181 Session of 2023

INTRODUCED BY D. MILLER, BENHAM, SCHLOSSBERG, DELLOSO, SIEGEL, GUENST, HARKINS, SANCHEZ, VENKAT, MADDEN, BURGOS, GALLOWAY, FIEDLER, KRAJEWSKI, FREEMAN, STURLA, KINKEAD, FRANKEL, OTTEN, O'MARA, HOHENSTEIN, WEBSTER, BOROWSKI, McNEILL, KHAN, D. WILLIAMS, T. DAVIS, DALEY, WARREN, SHUSTERMAN, ISAACSON, TOMLINSON AND WAXMAN, MARCH 8, 2023

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 6, 2023

AN ACT

1 Establishing the Family and Medical Leave Insurance Program and
2 the Family and Medical Leave Insurance Fund; conferring
3 powers and imposing duties on the Department of Labor and
4 Industry; and imposing penalties.

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20 The General Assembly of the Commonwealth of Pennsylvania
21 hereby enacts as follows:

22 CHAPTER 1

23 PRELIMINARY PROVISIONS

24 Section 101. Short title.

25 This act shall be known and may be cited as the Family and
26 Medical Leave Insurance Act.

27 Section 102. Legislative intent.

28 The General Assembly finds and declares as follows:

29 (1) Paid family and medical leave insurance promotes the
30 physical and emotional health of children and their families.

1 (2) Paid family and medical leave insurance has a
2 positive impact on economic stability and ensures competitive
3 viability for all businesses, but particularly smaller
4 businesses.

5 (3) The establishment of a paid family and medical leave
6 insurance program is essential to public health, safety and
7 welfare.

8 Section 103. Definitions.

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

12 "Application year." The 12-month period beginning on the
13 first day of the calendar week in which an individual files a
14 claim for family and medical leave insurance benefits.

15 "Benefits." The monetary allowances payable to a covered
16 individual as family and medical leave insurance during an
17 approved family and medical leave under the program in
18 accordance with this act.

19 "Board." The Family and Medical Leave Insurance Advisory
20 Board established under section 509.

21 "Claim." The filing of a written application with the
22 department for the receipt of benefits.

23 "Covered individual." An employee, or a self-employed person
24 who elects coverage in accordance with section 503, who meets
25 the following requirements, as applicable:

26 (1) Is currently employed in this Commonwealth or was
27 previously employed in this Commonwealth within 120 days of
28 separation from employment.

29 (2) Meets the employment and income eligibility
30 requirements specified in section 303.

1 (3) Meets the requirements of this act as to the receipt
2 of benefits.

3 (4) Submits a claim that is approved by the department.

4 "Covered service member." A current or former member of the
5 armed forces of the United States, including a current or former
6 member of a reserve component of the armed forces of the United
7 States or the Pennsylvania National Guard, who meets any of the
8 following requirements:

9 (1) Is undergoing medical treatment, recuperation or
10 therapy.

11 (2) Is otherwise in outpatient status.

12 (3) Is on the temporary disability retired list for a
13 serious injury or illness incurred in the line of duty on
14 active duty in the armed forces of the United States or a
15 serious injury or illness that existed before the beginning
16 of the member's active duty that was aggravated by service in
17 the line of duty on active duty in the armed forces of the
18 United States, a reserve component of the armed forces of the
19 United States or the Pennsylvania National Guard.

20 "Department." The Department of Labor and Industry of the
21 Commonwealth.

22 "Employee." An individual who is employed by an employer
23 doing business in this Commonwealth. THE TERM INCLUDES A SELF- <--
24 EMPLOYED INDIVIDUAL.

25 "Employer." An employer as defined in section 103 of the
26 Workers' Compensation Act.

27 "Family." Includes any of the following:

28 (1) A biological child, adopted or foster child,
29 stepchild or legal ward, a child of a domestic partner or a
30 child to whom an employee stands in loco parentis, regardless

1 of age.

2 (2) A biological parent, foster parent, stepparent or
3 adoptive parent or legal guardian of an employee or an
4 employee's spouse or domestic partner or an individual who
5 stood in loco parentis when the employee or the employee's
6 spouse or domestic partner was a minor child.

7 (3) An individual to whom the employee is legally
8 married under the laws of any state or a domestic partner of
9 an employee as registered under the laws of any state or
10 political subdivision.

11 (4) A grandparent, grandchild or sibling whether of a
12 biological, foster, adoptive or step relationship, of the
13 employee or the employee's spouse or domestic partner.

14 ~~(5) An individual for whom the employee is responsible~~ <--
15 ~~for providing or arranging care, including helping that~~
16 ~~individual obtain diagnostic, preventive, routine or~~
17 ~~therapeutic health treatment.~~

18 ~~(6) Any other individual whose close association with~~
19 ~~the employee is the equivalent of an immediate family~~
20 ~~relationship.~~

21 (5) AN INDIVIDUAL WHO REGULARLY RESIDES IN THE <--
22 EMPLOYEE'S HOME OR WHERE THE RELATIONSHIP CREATES AN
23 EXPECTATION THAT THE EMPLOYEE CARES FOR THE INDIVIDUAL AND
24 THAT THE INDIVIDUAL DEPENDS ON THE EMPLOYEE FOR CARE. THE
25 TERM DOES NOT INCLUDE AN INDIVIDUAL WHO SIMPLY RESIDES IN THE
26 SAME HOME WITH NO EXPECTATION THAT THE EMPLOYEE CARE FOR THE
27 INDIVIDUAL.

28 "Family and medical leave insurance." Benefits approved and
29 payable to covered individuals under the program.

30 "Fund." The Family and Medical Leave Insurance Fund

1 established under section 506.

2 "Health care provider." A health care center or a person,
3 including a corporation, university or other educational
4 institution licensed or approved by the Commonwealth to provide
5 health care or professional medical services, including a
6 physician, a certified nurse midwife, a mental health care
7 provider, a hospital, a nursing home, a birth center or any
8 other person determined by the department to be providing health
9 care services.

10 "Leave." The allotted amount of time approved by the
11 department for the receipt of benefits under this act.

12 "Medical certification." Written certification from a health
13 care provider on a form prepared by the department that verifies
14 the serious health condition prompting the filing of a claim and
15 receipt of benefits by a covered individual under this act.

16 "Program." The Family and Medical Leave Insurance Program
17 established under section 301.

18 "Qualifying exigency leave." Leave for the family member of
19 a military member deployed at home or abroad for the purposes
20 specified in 29 CFR 825.126 (relating to leave because of a
21 qualifying exigency).

22 "Secretary." The Secretary of Labor and Industry of the
23 Commonwealth.

24 "Serious health condition." An illness, injury, impairment,
25 pregnancy, recovery from childbirth or physical or mental
26 condition as described in 29 U.S.C. § 2611(11) (relating to
27 definitions).

28 "Statewide average weekly wage." The average amount of
29 weekly wages as determined by the department on an annual basis
30 for each calendar year in accordance with the Workers'

1 Compensation Act, which shall be posted on the department's
2 publicly accessible Internet website.

3 "Unemployment Compensation Law." The act of December 5, 1936
4 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
5 Compensation Law.

6 "Workers' Compensation Act." The act of June 2, 1915
7 (P.L.736, No.338), known as the Workers' Compensation Act.

8 CHAPTER 3

9 FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

10 Section 301. Family and Medical Leave Insurance Program.

11 (a) Establishment of program and payment of benefits.--

12 (1) Within one year of the effective date of this
13 paragraph, the department shall establish the Family and
14 Medical Leave Insurance Program.

15 (2) No later than two years following the establishment
16 of the program, the department shall pay family and medical
17 leave insurance benefits as specified in this act.

18 (b) Required documentation.--The department shall establish
19 reasonable procedures and forms for filing a claim under this
20 act, the documentation necessary to support a claim and any
21 certification required from a health care provider for proof of
22 a serious health condition.

23 (c) Notice of approved claim.--In addition to the notice
24 provided to an employer by an employee under section 501(d), the
25 department shall notify the employer within ~~five~~ 10 business <--
26 days of an approved claim for benefits under this act.

27 (d) Information sharing.--Information sharing and
28 integration technology to facilitate the disclosure of relevant
29 information or records shall be used as practicable subject to
30 consent and disclosure requirements under State law.

1 (e) Confidentiality.--Information contained in the files and
2 records pertaining to an individual filing a claim under this
3 act are confidential and shall not be open to public inspection
4 other than to public employees in the performance of their
5 official duties.

6 (f) Cooperation among departments.--To properly effectuate
7 the provisions of this act, all departments and agencies under
8 the jurisdiction of the Governor shall fully cooperate with the
9 department and provide assistance and support as needed to
10 ensure the timely and efficient delivery of benefits under this
11 act.

12 Section 302. Powers and duties of department.

13 (a) Administration of act.--The department shall be
14 responsible for the administration of this act and the fund.
15 Administration of the program for purposes of this section and
16 section 506 shall include acquisition, development and
17 operational costs related to information technology,
18 infrastructure and personnel needed to process claims and issue
19 benefits under this act.

20 (b) Powers and duties.--To fulfill its responsibilities
21 under this act, the department shall have the following powers
22 and duties:

23 (1) Calculate and set the amount of benefits payable to
24 a covered individual as specified in section 305 initially
25 and on an annual basis thereafter.

26 (2) Provide information to employees and employers on
27 the amount to be deducted as employee payroll premium
28 contributions as specified in section 306 initially and every
29 year thereafter.

30 (3) Develop and prepare the written notices that

1 employers must distribute and provide to their employees in
2 accordance with section 501. The form of the notices shall be
3 posted on the department's publicly accessible Internet
4 website.

5 (4) Prepare and provide the medical certification form
6 referenced in section 303(d) on the department's publicly
7 accessible Internet website.

8 (5) Prepare and provide the necessary forms for filing
9 and acknowledging a benefits claim and for providing notice
10 of benefits approval to both employers and covered individual
11 employees.

12 (6) EVALUATE AND ADJUDICATE CLAIMS. <--

13 (7) EVALUATE AND DETERMINE THE AMOUNT OF PAYROLL PREMIUM
14 CONTRIBUTIONS AND MAXIMUM EMPLOYEE CONTRIBUTIONS TO ENSURE
15 FUND SOLVENCY.

16 (8) COORDINATE BENEFITS WITH EMPLOYERS THAT HAVE ALREADY
17 PAID FOR BENEFITS OUTSIDE OF THE FUND.

18 (9) MAKE PAYMENTS ON CLAIMS.

19 ~~(6)~~ (10) Develop the abstract for employer posting of <--
20 notice in the workplace under section 501, which shall be
21 available on the department's publicly accessible Internet
22 website.

23 ~~(7)~~ (11) Prepare and provide the employee complaint form <--
24 on the department's publicly accessible Internet website.

25 ~~(8)~~ (12) Develop any and all forms necessary to ensure <--
26 implementation of this act.

27 ~~(9)~~ (13) Develop procedures to investigate and resolve <--
28 complaints under this act.

29 ~~(10)~~ (14) Conduct an ongoing public outreach campaign to <--
30 inform employers and employees about the availability of the

1 program and the process for filing a benefits claim.

2 ~~(11)~~ (15) Promulgate regulations as necessary to <--
3 administer this act.

4 ~~(12)~~ (16) Issue an annual report under section 507. <--

5 (c) Enforcement of act.--The secretary shall establish a
6 system for an administrative complaint and appeals process in
7 the case of a denial of family and medical leave insurance
8 benefits and all violations assessed under this act. In- <--

9 ~~establishing the appeals system, the department may utilize~~
10 ~~procedures and appeals mechanisms established under the~~
11 ~~Unemployment Compensation Law.~~ THE SYSTEM FOR ADMINISTRATIVE <--

12 COMPLAINTS AND APPEALS PROCESS SHALL BE PROMULGATED BY THE
13 DEPARTMENT THROUGH REGULATION. Procedures to ensure
14 confidentiality of all information related to any claims filed
15 or appeals taken shall be implemented in accordance with
16 applicable laws.

17 Section 303. Eligibility for family and medical leave insurance
18 benefits.

19 (a) Basis for receipt of benefits.--No later than two years
20 following establishment of the program, benefits under this act
21 shall be payable to a covered individual who files an approved
22 claim based on any of the following:

23 (1) Because of birth, adoption or placement through
24 foster care, is caring for a new child during the first year
25 after the birth, adoption or placement of that child.

26 (2) Is caring for a family member with a serious health
27 condition.

28 (3) Has a serious health condition, including pregnancy,
29 that renders the covered individual unable to perform the
30 functions of the individual's position.

1 (4) In a declared public health emergency, is caring for
2 a family member with a serious health condition.

3 (5) Is caring for a family member who is a covered
4 service member due to a qualifying exigency leave in
5 accordance with the terms of 29 U.S.C. Ch. 28 (relating to
6 family and medical leave).

7 (b) Employment and income eligibility requirements.--To be
8 eligible to file a benefits claim, a covered individual must
9 have:

10 (1) Worked at least 18 weeks during the 12-month period
11 prior to submitting a claim.

12 (2) Earned at least \$2,718 in income during the 12-month
13 period prior to submitting a claim. ~~This earned income rate~~ <--
14 ~~shall be adjusted annually by the department based on the~~
15 ~~Pennsylvania Unemployment Insurance Financial Eligibility~~
16 ~~Rules.~~ THE EARNED INCOME RATE IN THIS PARAGRAPH SHALL BE <--
17 ADJUSTED ANNUALLY BY THE DEPARTMENT AND REFLECT THE MINIMUM
18 QUALIFYING WAGE TO QUALIFY FOR BENEFITS UNDER THE
19 UNEMPLOYMENT COMPENSATION LAW.

20 (C) PROOF OF WAGES.--THE FUND SHALL NOT BE LIABLE FOR
21 PAYMENT OF BENEFITS UNLESS THE AMOUNT OF WAGES THAT THE COVERED
22 INDIVIDUAL EARNED AT THE TIME OF THEIR LEAVE IS VERIFIED BY
23 SECTION 305(A) (2) OR UNDER THIS SUBSECTION. IF A DISCREPANCY IS
24 IDENTIFIED BY THE DEPARTMENT IN VERIFYING WAGES UNDER SECTION
25 305(A) (2), THE DEPARTMENT MAY REQUEST THE FOLLOWING DOCUMENTS
26 FROM A COVERED INDIVIDUAL TO VERIFY THEIR WAGES:

27 (1) A CHECK, CHECK STUB OR PAYROLL RECORD.

28 (2) A TAX RETURN, INCLUDING IRS FORM W-2 AND FORM 1099,
29 OR SUCCESSOR FORMS.

30 (3) UNEMPLOYMENT COMPENSATION RECORDS, INCLUDING FORM

1 UC-2A.

2 (4) BANK STATEMENTS OR RECORDS SHOWING REGULAR AND
3 RECURRING DEPOSITS.

4 (5) WRITTEN DOCUMENTATION CREATED CONTEMPORANEOUSLY WITH
5 THE PAYMENT OF WAGES.

6 ~~(e)~~ (D) Interaction with the Workers' Compensation Act and <--
7 the Unemployment Compensation Law.--To file a benefits claim and
8 receive benefits under this act, a covered individual cannot
9 receive benefits for the same day under the Workers'
10 Compensation Act or the Unemployment Compensation Law.

11 ~~(d)~~ (E) Filing of benefits claim.--An individual seeking <--
12 benefits under this act shall submit a claim to the department
13 providing the required documentation to support a claim for
14 benefits, including any necessary medical certification.

15 ~~(e) Medical certification. A covered individual shall <--~~

16 (F) MEDICAL CERTIFICATION.-- <--

17 (1) A COVERED INDIVIDUAL SHALL obtain a medical
18 certification confirming a serious health condition under
19 subsection (a) (2), (3) and (4) that justify the filing of a
20 claim and the receipt of benefits under this act and shall
21 make that information available to the department on the form
22 prescribed by the department. WHEN POSSIBLE, THE DEPARTMENT <--
23 SHALL USE FEDERAL FAMILY AND MEDICAL LEAVE FORMS. Any
24 completed medical certification form regarding a covered
25 individual shall be ~~entitled to the protections of the Health <--~~
26 ~~Insurance Portability and Accountability Act of 1996 (Public~~
27 ~~Law 104-191, 110 Stat. 1936)~~ USED SOLELY FOR THE PURPOSE OF <--
28 ADJUDICATING A CLAIM UNDER THIS ACT.

29 (2) CONFIDENTIAL MEDICAL DOCUMENTATION SHALL NOT BE <--
30 RELEASED BY THE DEPARTMENT UNLESS WRITTEN AUTHORIZATION IS

1 PROVIDED BY AN EMPLOYEE OR A COVERED INDIVIDUAL.

2 (G) MARRIED OR DOMESTIC PARTNERS EMPLOYED BY THE SAME
3 EMPLOYER.--INDIVIDUALS WHO ARE LEGALLY MARRIED OR DOMESTIC
4 PARTNERS UNDER THE LAWS OF ANY STATE OR POLITICAL SUBDIVISION
5 AND EMPLOYED BY THE SAME EMPLOYER SHALL BOTH BE ELIGIBLE FOR
6 BENEFITS UNDER THIS ACT, EVEN WHEN THE LEAVE RUNS CONCURRENTLY.

7 (H) PROMULGATING REGULATIONS.--THE DEPARTMENT SHALL
8 PROMULGATE REGULATIONS TO PROVIDE FOR AN ADJUDICATION PROCESS
9 UNDER THIS ACT.

10 ~~(I)~~ (I) Adjudication of claim.--Upon receipt of all <--
11 necessary documentation to support a claim for benefits from a
12 covered individual, the department shall determine eligibility
13 for benefits under this act within ~~five~~ 20 business days. <--

14 Section 304. Duration of benefits.

15 (a) Maximum leave duration of 20 weeks.--The maximum number
16 of weeks during which benefits are payable under section 303(a)
17 (1) or (3) in an application year is 20 weeks.

18 (b) Maximum leave duration of 12 weeks.--The maximum number
19 of weeks during which benefits are payable under section 303(a)
20 (2), (4) or (5) in an application year is 12 weeks.

21 (c) Total maximum duration.--The duration of leave under
22 subsections (a) and (b) combined cannot exceed a total number of
23 20 weeks in any one application year regardless of reason.

24 (d) Initial payment of benefits.--The first payment of
25 benefits shall be made to a covered individual no later than one
26 week:

27 (1) after the claim is filed and approved by the
28 department; or

29 (2) from the date the leave is scheduled to commence.

30 (e) Payment of benefits.--After the initial payment of

1 benefits, subsequent payments shall be made semimonthly
2 thereafter for the duration of the approved leave.

3 Section 305. Amount of benefits.

4 ~~(a) Calculation of benefits. The benefits payable to a~~ <--
5 ~~covered individual shall be calculated as follows:~~

6 ~~(1) the portion of a covered individual's average weekly~~
7 ~~wage that is equal to or less than 50% of the Statewide~~
8 ~~average weekly wage shall be replaced at a rate of 90%; and~~

9 ~~(2) the portion of a covered individual's average weekly~~
10 ~~wage that exceeds 50% of the Statewide average weekly wage~~
11 ~~shall be replaced at a rate of 50%.~~

12 (A) CALCULATION OF BENEFITS.-- <--

13 (1) THE BENEFITS PAYABLE TO A COVERED INDIVIDUAL SHALL
14 BE CALCULATED AS FOLLOWS:

15 (I) THE PORTION OF A COVERED INDIVIDUAL'S AVERAGE
16 WEEKLY WAGE THAT IS EQUAL TO OR LESS THAN 50% OF THE
17 STATEWIDE AVERAGE WEEKLY WAGE SHALL BE REPLACED AT A RATE
18 OF 90%; AND

19 (II) THE PORTION OF A COVERED INDIVIDUAL'S AVERAGE
20 WEEKLY WAGE THAT EXCEEDS 50% OF THE STATEWIDE AVERAGE
21 WEEKLY WAGE SHALL BE REPLACED AT A RATE OF 50%.

22 (2) THE CALCULATION OF A COVERED INDIVIDUAL'S AVERAGE
23 WEEKLY WAGE IN ACCORDANCE WITH THIS SUBSECTION SHALL BE AS
24 FOLLOWS:

25 (I) IF AT THE TIME THE LEAVE COMMENCES THE WAGES ARE
26 FIXED BY THE WEEK, THE AMOUNT SO FIXED SHALL BE THE
27 AVERAGE WEEKLY WAGE.

28 (II) IF AT THE TIME THE LEAVE COMMENCES THE WAGES
29 ARE FIXED BY THE MONTH, THE AVERAGE WEEKLY WAGE SHALL BE
30 THE MONTHLY WAGE SO FIXED MULTIPLIED BY 12 AND DIVIDED BY

1 52.

2 (III) IF AT THE TIME THE LEAVE COMMENCES THE WAGES
3 ARE FIXED BY THE YEAR, THE AVERAGE WEEKLY WAGE SHALL BE
4 THE YEARLY WAGE FIXED DIVIDED BY 52.

5 (IV) IF AT THE TIME THE LEAVE COMMENCES THE WAGES
6 ARE FIXED BY ANY MANNER NOT PROVIDED IN SUBPARAGRAPH (I),
7 (II) OR (III), THE AVERAGE WEEKLY WAGE SHALL BE
8 CALCULATED BY DIVIDING BY 13 THE TOTAL WAGES EARNED IN
9 THE EMPLOY OF THE EMPLOYER IN EACH OF THE HIGHEST THREE
10 OF THE LAST FOUR CONSECUTIVE PERIODS OF 13 CALENDAR WEEKS
11 IN THE 52 WEEKS IMMEDIATELY PRECEDING THE LEAVE PERIOD
12 AND BY AVERAGING THE TOTAL AMOUNTS EARNED DURING THESE
13 THREE PERIODS.

14 (V) IF THE COVERED EMPLOYEE HAS NOT BEEN EMPLOYED BY
15 THE EMPLOYER FOR AT LEAST THREE CONSECUTIVE PERIODS OF 13
16 CALENDAR WEEKS IN THE 52 WEEKS IMMEDIATELY PRECEDING THE
17 LEAVE PERIOD, THE AVERAGE WEEKLY WAGE SHALL BE CALCULATED
18 BY DIVIDING BY 13 THE TOTAL WAGES EARNED IN THE EMPLOY OF
19 THE EMPLOYER FOR ANY COMPLETED PERIOD OF 13 CALENDAR
20 WEEKS IMMEDIATELY PRECEDING THE LEAVE PERIOD AND BY
21 AVERAGING THE TOTAL AMOUNTS EARNED DURING SUCH PERIODS.

22 (VI) IF THE EMPLOYEE HAS WORKED LESS THAN A COMPLETE
23 PERIOD OF 13 CALENDAR WEEKS AND DOES NOT HAVE FIXED
24 WEEKLY WAGES, THE AVERAGE WEEKLY WAGE SHALL BE THE HOURLY
25 WAGE RATE MULTIPLIED BY THE NUMBER OF HOURS THE EMPLOYEE
26 WAS EXPECTED TO WORK PER WEEK UNDER THE TERMS OF
27 EMPLOYMENT.

28 (VII) EXCEPT AS PROVIDED IN SUBPARAGRAPH (V) OR
29 (VI), IN OCCUPATIONS WHICH ARE EXCLUSIVELY SEASONAL AND
30 THEREFORE CANNOT BE CARRIED THROUGHOUT THE YEAR, THE

1 AVERAGE WEEKLY WAGE SHALL BE TAKEN TO BE ONE-FIFTEENTH OF
2 THE TOTAL WAGES WHICH THE EMPLOYEE HAS EARNED FROM ALL
3 OCCUPATIONS DURING THE 12 CALENDAR MONTHS IMMEDIATELY
4 PRECEDING THE LEAVE, UNLESS IT BE SHOWN THAT DURING SUCH
5 YEAR, BY REASON OF EXCEPTIONAL CAUSES, SUCH METHOD OF
6 CALCULATION DOES NOT CLEARLY PROVIDE THE EARNINGS OF THE
7 EMPLOYEE, IN WHICH CASE THE PERIOD FOR CALCULATION SHALL
8 BE EXTENDED SO FAR AS TO GIVE A BASIS FOR THE FAIR
9 ASCERTAINMENT OF AVERAGE WEEKLY EARNINGS.

10 (VIII) THE TERMS "AVERAGE WEEKLY WAGE" AND "TOTAL
11 WAGES," AS USED IN THIS PARAGRAPH SHALL INCLUDE BOARD AND
12 LODGING RECEIVED FROM THE EMPLOYER AND GRATUITIES
13 REPORTED TO THE UNITED STATES INTERNAL REVENUE SERVICE BY
14 OR FOR THE EMPLOYEE FOR FEDERAL INCOME TAX PURPOSES. THE
15 TERMS SHALL NOT INCLUDE AMOUNTS DEDUCTED BY THE EMPLOYER
16 UNDER THE CONTRACT OF HIRING FOR LABOR FURNISHED OR PAID
17 FOR BY THE EMPLOYER AND NECESSARY FOR THE PERFORMANCE OF
18 THE CONTRACT BY THE EMPLOYEE, NOR SHALL THE TERMS INCLUDE
19 DEDUCTIONS FROM WAGES DUE TO THE EMPLOYER FOR RENT AND
20 SUPPLIES NECESSARY FOR THE EMPLOYEE'S USE IN THE
21 PERFORMANCE OF THEIR LABOR, NOR SHALL THE TERMS INCLUDE
22 FRINGE BENEFITS, INCLUDING, BUT NOT LIMITED TO, EMPLOYER
23 PAYMENTS FOR OR CONTRIBUTIONS TO A RETIREMENT, PENSION,
24 HEALTH AND WELFARE, LIFE INSURANCE, SOCIAL SECURITY OR
25 ANY OTHER PLAN FOR THE BENEFIT OF THE EMPLOYEE OR THEIR
26 DEPENDENTS. HOWEVER, PROVIDED THAT THE AMOUNT OF ANY
27 BONUS, INCENTIVE OR VACATION PAYMENT EARNED ON AN ANNUAL
28 BASIS SHALL BE EXCLUDED FROM THE CALCULATIONS UNDER
29 SUBPARAGRAPHS (I), (II), (III), (IV), (V) AND (VI). SUCH
30 PAYMENTS, IF ANY, SHALL INSTEAD BE DIVIDED BY 52 AND THE

1 AMOUNT SHALL BE ADDED TO THE AVERAGE WEEKLY WAGE
2 OTHERWISE CALCULATED UNDER SUBPARAGRAPHS (I), (II),
3 (III), (IV), (V) AND (VI). IF THE EMPLOYEE IS WORKING
4 UNDER CONCURRENT CONTRACTS WITH TWO OR MORE EMPLOYERS,
5 THE WAGES FROM ALL EMPLOYERS SHALL BE CONSIDERED AS IF
6 EARNED FROM THE EMPLOYER LIABLE FOR COMPENSATION.

7 (b) Limitation.--~~In no case shall the weekly benefits~~ <--

8 (1) IN NO CASE SHALL THE WEEKLY BENEFITS payable to a <--
9 covered individual be more than the Statewide average weekly
10 wage.

11 (2) THE APPLICATION OF THE STATEWIDE AVERAGE WEEKLY WAGE <--
12 ON A CLAIM SHALL BEGIN ON THE DATE THAT THE BIRTH OR A
13 SERIOUS HEALTH CONDITION ARISES.

14 (3) IF A CLAIM CARRIES OVER FROM ONE YEAR INTO ANOTHER
15 AND THE STATEWIDE AVERAGE WEEKLY WAGE IS ADJUSTED, THE MOST
16 RECENT STATEWIDE AVERAGE WEEKLY WAGE SHALL BE USED IN ALL
17 FUTURE PAYMENTS.

18 (c) Adjustment of benefits calculation.--The department
19 shall adjust the maximum family and medical leave insurance
20 benefit cap established in subsection (a) annually based on the
21 Statewide average weekly wage and shall transmit notice of the
22 revised family and medical leave insurance benefit rates to the
23 Legislative Reference Bureau for publication in the Pennsylvania
24 Bulletin on an annual basis.

25 (d) Limit on taking of benefits and nonsequential leave.--
26 Under this section and section 307, benefits are not payable for
27 less than eight hours of leave taken in one work week.

28 Section 306. Contributions.

29 (a) Payment into the program.--All persons employed in this
30 Commonwealth shall be required to contribute to the program for

1 the purpose of financing the program.

2 (b) Commencement of payroll premium contributions.--Payroll
3 premium contributions into the fund for the purpose of financing
4 the program shall commence at least one year prior to the
5 payment of any benefits from the fund to covered individuals.

6 (c) Calculation of payroll premium contributions.--The
7 amount payable through employee payroll premium contributions
8 shall be set at ~~0.588%~~ A PERCENTAGE of an individual employee's <--
9 wages to initiate payments into the program. The following
10 apply:

11 (1) THE PAYROLL PREMIUM CONTRIBUTION SHALL BE CALCULATED <--
12 USING AN ACTUARIAL EXPERIENCE STUDY THAT SHALL TAKE INTO
13 ACCOUNT ALL AVAILABLE DATA. THE RATE SHALL BE SET AT AN
14 AMOUNT TO ENSURE SOLVENCY OF THE FUND BUT SHALL NOT EXCEED 1%
15 OF AN INDIVIDUAL EMPLOYEE'S WAGES.

16 ~~(1) Every~~ (2) WHEN NECESSARY, BUT AT LEAST EVERY year <--
17 thereafter, the department shall evaluate and determine the
18 amount of payroll premium contributions and maximum employee
19 contribution necessary to finance and adequately support the
20 program.

21 ~~(2) The premium contribution rate shall be the rate <--~~
22 ~~necessary to obtain a total amount of premium contributions~~
23 ~~equal to 125% of the benefits which were paid for the periods~~
24 ~~of leave during the last preceding full fiscal year plus an~~
25 ~~amount equal to 100% of the cost of administration of the~~
26 ~~fund during the last preceding full fiscal year, less the~~
27 ~~amount of net assets remaining in the fund as of December 31~~
28 ~~of the immediately preceding calendar year.~~

29 (3) The payroll premium contribution rate shall be
30 posted on the department's publicly accessible Internet

1 website.

2 (d) Notification to employers.--The department shall notify
3 the Department of Revenue to advise employers of the amount
4 payable through employee payroll premium contributions.

5 (e) Penalty for failure to withhold.--An employer who fails
6 to withhold payroll premium contributions in accordance with
7 this act shall be subject to those penalties enforceable through
8 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
9 Code of 1971, for failure to properly withhold wages for income
10 tax and sales and use tax purposes.

11 Section 307. Reduced leave schedule.

12 (a) Taking of nonsequential leave.--A covered individual
13 shall be entitled to utilize the leave authorized under section
14 304, at the option of the covered individual, to take leave on
15 an intermittent or reduced leave schedule in which all of the
16 leave authorized under this act is not taken sequentially.
17 Family and medical leave insurance benefits for intermittent or
18 reduced leave schedules shall be prorated.

19 (b) Impact on duration of leave.--Nonsequential leave taken
20 under this section shall not result in a reduction in the total
21 amount of family and medical leave to which a covered individual
22 is entitled beyond the amount of leave actually taken.

23 (c) Total amount of leave allowed.--Nothing in this section
24 shall be construed to enable a covered individual to take more
25 leave than allowed under section 304.

26 Section 308. Employment protections.

27 (a) Restoration of employment position.--Any covered
28 individual who takes leave in accordance with this act shall,
29 upon the expiration of that leave, be restored by the employer
30 to the position previously held by the covered individual when

1 the leave commenced, or to a position with equivalent seniority,
2 status, employment benefits, pay and other terms and conditions
3 of employment.

4 (b) Health care benefits maintained.--For the duration of a
5 leave approved under this act, the employer shall maintain any
6 health care benefits the covered individual had prior to taking
7 leave as if the covered individual had continued in employment
8 continuously from the date leave was commenced until the date
9 the leave terminates. A covered individual shall continue to pay
10 the covered individual's share of the cost of health benefits as
11 required prior to the commencement of the leave.

12 (c) Interference with benefits.--It shall be unlawful for an
13 employer or any other person to interfere with, restrain or deny
14 the exercise of, or the attempt to exercise, any protection
15 afforded under this act.

16 (d) Retaliation prohibited.--An employer, temporary help
17 company, employment agency, employee organization or other
18 person shall not take retaliatory personnel action or otherwise
19 discriminate against a person because the person took any action
20 in accordance with this act, including:

21 (1) Applying for or using benefits or taking leave under
22 this act.

23 (2) Communicating to the employer or any other person or
24 entity an intent to file and act on a claim, a complaint or
25 an appeal with the department or a court of competent
26 jurisdiction.

27 (e) Consideration of absence.--It shall be unlawful for an
28 employer to count leave taken under this act as an absence that
29 may lead to or result in a retaliatory personnel action.

30 (f) Good faith protection.--Protections under this section

1 shall apply to any person who mistakenly but in good faith
2 alleges a violation of this act.

3 (g) Definition.--As used in this section, the term
4 "retaliatory personnel action" includes any threat, discipline,
5 discharge, suspension, demotion, reduction of hours or any other
6 adverse action taken against an employee for exercising the
7 rights and protections afforded by this act. The term also
8 includes interference with or punishment for participating in or
9 acting on a complaint or appeal under this act.

10 Section 309. Coordination of benefits.

11 (a) Leave concurrent with Federal law.--Leave taken under
12 this act that also qualifies as leave under 29 U.S.C. Ch. 28
13 (relating to family and medical leave) shall run concurrently
14 with leave taken under 29 U.S.C. Ch. 28.

15 (b) Coordination with other paid leave.--An employee may
16 elect to utilize paid leave available under any other Federal or
17 State law, collective bargaining agreement or employer policy
18 prior to receiving benefits under this act, PROVIDED THAT IT <--
19 DOES NOT CONFLICT WITH FEDERAL LAW. Employers shall provide
20 employees with written notice of the opportunity to make the
21 election, and inform employees how leave will be coordinated
22 absent any election.

23 (c) Employer's obligation.--This act does not diminish an
24 employer's obligation to comply with any of the following that
25 provides more generous leave:

- 26 (1) A collective bargaining agreement.
- 27 (2) An employer policy.
- 28 (3) Any other Federal or State law.

29 (d) Prohibition on subsequent collective bargaining
30 agreement or employer policy.--An individual's right to leave

1 and the payment of benefits under this act may not be diminished
2 by a collective bargaining agreement entered into or renewed, or
3 an employer policy adopted or retained, after the effective date
4 of this subsection. An agreement by an individual to waive the
5 individual's rights under this act is void as against public
6 policy.

7 (e) Impact on Workers' Compensation Act.--Nothing in this
8 act shall be construed to impact the provisions of the Workers'
9 Compensation Act with regard to work-related injuries.

10 (f) Impact on Public Employe Relations Act.--Nothing in this
11 act shall be construed to supersede or preempt the rights,
12 remedies and procedures afforded to employees or labor
13 organizations under Federal or State law, including the act of
14 July 23, 1970 (P.L.563, No.195), known as the Public Employe
15 Relations Act, or any provision of a collective bargaining
16 agreement negotiated between an employer and an exclusive
17 representative of the employees in accordance with the Public
18 Employe Relations Act.

19 CHAPTER 5

20 ADMINISTRATION AND PROCEDURES

21 Section 501. Notice.

22 (a) Employer notice to employees.--Upon initial hiring of an
23 employee, and annually thereafter, an employer shall provide
24 written notice of the requirements of this act using the notices
25 prepared and posted by the department under section 302.

26 (b) Employer acknowledgment of leave request.--Using the
27 form prepared by the department under section 302, an employer
28 shall provide written acknowledgment to an employee when the
29 employee requests leave under this act. The acknowledgment shall
30 include:

1 (1) An explanation of the employee's right to benefits
2 under this act and the terms for its use.

3 (2) The amount of benefits.

4 (3) The procedure for filing a benefits claim with the
5 department.

6 (4) Provisions on job protection and benefits
7 continuation under section 308.

8 (5) The prohibition on employer discrimination and
9 retaliatory personnel action against a person for requesting,
10 applying for or using leave as provided in section 308.

11 (6) The employee's ability to file a complaint for
12 violations of this act.

13 (c) Public display of notice.--Using the abstract for
14 employer posting available on the department's publicly
15 accessible Internet website, an employer shall display and
16 maintain a poster in a conspicuous place accessible to employees
17 at the employer's place of business that contains the
18 information required by this section in English and Spanish,
19 with consideration to the inclusion of other significant
20 languages spoken in the workplace.

21 (d) Employee notice to employer.--When the need for leave is
22 known to the employee at least ~~15~~ 30 days in advance, the <--
23 employee shall provide written or verbal notice to the employer
24 of the need and schedule for taking leave at least ~~15~~ 30 days <--
25 prior to taking leave. The employee shall make a reasonable
26 effort to schedule leave in a manner that does not unduly
27 disrupt the operations of the employer. For all other absences,
28 the employee shall notify the employer as soon as practicable,
29 including if the need arises immediately before or after the
30 employee has reported for work.

1 Section 502. Erroneous payments and disqualification for
2 benefits.

3 (a) Employee disqualification.--A covered individual is
4 disqualified from receiving benefits for one year if the
5 individual is determined by the department to have willfully
6 made a false statement or misrepresentation regarding a material
7 fact, or willfully failed to report a material fact, to obtain
8 benefits under this act.

9 (b) Incorrect payment of benefits.--~~If benefits under this~~ <--
10 ~~act are paid:~~

11 (1) ~~Erroneously~~ IF BENEFITS UNDER THIS ACT ARE PAID <--
12 ERRONEOUSLY without fault or for a claim that is subsequently
13 rejected after benefits are paid, the department may seek
14 repayment through a reasonable reduction in any future
15 benefits due the recipient.

16 (2) ~~As~~ IF BENEFITS UNDER THIS ACT ARE PAID AS a result <--
17 of willful misrepresentation by the recipient, the recipient
18 shall be liable to repay a sum equal to the amount of
19 benefits derived through that willful misrepresentation and
20 the recipient shall be further disqualified for benefits as
21 specified in subsection (a).

22 (3) IF FAMILY AND MEDICAL LEAVE COMPENSATION IS PAID TO <--
23 A COVERED EMPLOYEE ERRONEOUSLY OR AS A RESULT OF WILLFUL
24 MISREPRESENTATION BY THE EMPLOYEE, OR IF A CLAIM FOR FAMILY
25 AND MEDICAL LEAVE COMPENSATION IS REJECTED AFTER COMPENSATION
26 IS PAID, THE DEPARTMENT MAY SEEK REPAYMENT OF BENEFITS FROM
27 THE EMPLOYEE HAVING RECEIVED THE COMPENSATION AND MAY ALSO,
28 IN THE CASE OF WILLFUL MISREPRESENTATION, SEEK PAYMENT OF A
29 PENALTY IN THE AMOUNT OF 50% OF THE BENEFITS PAID AS A RESULT
30 OF THE MISREPRESENTATION. THE DEPARTMENT MAY WAIVE, IN WHOLE

1 OR IN PART, THE AMOUNT OF ANY OF THE PAYMENTS IF THE RECOVERY
2 WOULD BE AGAINST EQUITY AND GOOD CONSCIENCE.

3 (C) PROOF OF WAGES.--DURING THE APPEALS PROCESS AS
4 ESTABLISHED UNDER SECTION 302(C), A COVERED EMPLOYEE'S PROOF OF
5 WAGES MAY BE PROVEN:

6 (1) AS PROVIDED UNDER SECTION 303(C);

7 (2) BY TESTIMONY OF THE EMPLOYER THAT IS PRESENTED UNDER
8 OATH AT A HEARING UNDER SECTION 505; OR

9 (3) BY TESTIMONY OF THE COVERED EMPLOYEE, IF FOUND
10 CREDIBLE BY THE JUDGE DURING A HEARING UNDER SECTION 505.

11 Section 503. Elective coverage.

12 (a) Self-employed option.--A self-employed person, including
13 a sole proprietor, partner or participant in a joint venture,
14 may elect coverage under this act for an initial period of not
15 less than three years upon meeting all of the following
16 requirements:

17 (1) Filing a notice of election in writing with the
18 department, effective on the date of filing the notice.

19 (2) Supplying all income information that the department
20 deems necessary.

21 (3) Compliance with all eligibility, employment and
22 income requirements specified in section 303.

23 (b) Withdrawal from coverage.--A self-employed person who
24 has elected coverage may withdraw from coverage within 30 days
25 after the end of the three-year period of coverage, or at other
26 times as the department may prescribe. Upon filing written
27 notice with the department, the self-employed person's
28 withdrawal from coverage shall take effect no later than 30 days
29 after filing the notice of withdrawal.

30 Section 504. Violations.

1 An employer that violates the requirements of sections 308,
2 309 or 501 shall be subject to the penalties as specified in 29
3 U.S.C. § 2617 (relating to enforcement).

4 Section 505. Judicial review.

5 Judicial review of any decision regarding the denial of
6 benefits or an appeal of any violation of this act shall be
7 permitted in ~~a court of competent jurisdiction~~ COMMONWEALTH <--
8 COURT, AS REQUIRED UNDER 42 PA.C.S. § 763 (RELATING TO DIRECT
9 APPEALS FROM GOVERNMENT AGENCIES), after a party aggrieved
10 thereby has exhausted all administrative remedies established by
11 the department.

12 Section 506. Family and Medical Leave Insurance Fund.

13 (a) Fund established.--The Family and Medical Leave
14 Insurance Fund is established as a nonlapsing fund in the State
15 Treasury.

16 (b) Deposit of money.--Money from employee payroll premium
17 contributions paid under section 306 and any financial penalties
18 imposed under this act shall be deposited into the fund and used
19 by the department for the administration of the program and the
20 payment of benefits to covered individuals.

21 (c) Continuing appropriation.--All money deposited in the
22 fund and all interest accrued is appropriated to the department
23 on a continuing basis to administer the program and provide
24 benefits under this act.

25 (d) Limitations on fund.--

26 (1) No administrative action shall prevent the deposit
27 of money into the fund in the fiscal year in which the money
28 is received.

29 (2) The fund may only be used for the program authorized
30 under this act. Money in the fund may not be transferred or

1 diverted to any other purpose by administrative action.

2 (e) Other deposits.--The department may deposit into the
3 fund any other money received for the purposes specified in this
4 act.

5 Section 507. Annual report.

6 (a) Annual report.--

7 (1) No later than September 1, 2027, and each September
8 1 thereafter, the department shall submit a report to the
9 chairperson and minority chairperson of the Labor and
10 Industry Committee of the Senate and the chairperson and
11 minority chairperson of the Labor and Industry Committee of
12 the House of Representatives.

13 (2) Each report under paragraph (1) shall include:

14 (i) Actual program participation by category as
15 delineated in subparagraph (ii), including total number
16 of leaves taken.

17 (ii) Beneficiary gender for leaves taken.

18 (iii) Types of family members for whom leave was
19 taken to provide care.

20 (iv) Payroll premium contribution rate calculations
21 for the current and previous calendar year and projected
22 rate calculations for the next three calendar years.

23 (v) Projected program participation over the next
24 three calendar years.

25 (vi) Account balances.

26 (vii) The scope and success of outreach efforts.

27 (viii) Recommendations for improvements to the
28 program.

29 (b) Public posting of annual report.--The department shall
30 make the report available on the department's publicly

1 accessible Internet website. Monthly data should also be made
2 available online.

3 Section 508. Public education.

4 (a) Outreach campaign.--

5 (1) The department shall conduct a public education
6 campaign to inform employees and employers regarding the
7 availability of family and medical leave benefits under this
8 act.

9 (2) The department shall allocate at least \$500,000 from
10 the fund annually to pay for a public education program that
11 informs employees about benefits and eligibility under this
12 act.

13 (3) Outreach information shall be available in English,
14 Spanish and other languages as determined by the department.

15 (b) Community outreach.--The department may utilize outreach
16 money to identify and assist appropriate community organizations
17 in educating hard-to-reach populations or industries, including
18 low-income employees, employees and employers in industries that
19 do not typically provide paid family leave and employees and
20 employers whose primary language is not English.

21 Section 509. Board.

22 (a) Establishment.--The department shall establish the
23 Family and Medical Leave Insurance Advisory Board to assist in
24 the implementation of the program and ensure effective public
25 outreach regarding the availability of benefits under this act.

26 (b) Composition.--The board shall be composed of the
27 following:

28 (1) The secretary or a designee, who shall serve as the
29 chairperson.

30 (2) The State Treasurer or a designee.

1 (3) The chairperson and minority chairperson of the
2 Labor and Industry Committee of the Senate or a designee.

3 (4) The chairperson and minority chairperson of the
4 Labor and Industry Committee of the House of Representatives
5 or a designee.

6 (5) Six members appointed by the secretary representing
7 an equal number of employers and employees who are residents
8 of and who work within this Commonwealth.

9 (c) Terms.--

10 (1) Members specified under subsection (b)(1), (2), (3)
11 and (4) shall serve for the length of their tenure in the
12 capacity which enabled them to become members.

13 (2) Members specified under subsection (b)(5) shall
14 serve four-year terms and shall not be eligible to serve more
15 than two full consecutive terms.

16 (d) Quorum.--A majority of the members of the board
17 participating in person or by video conference shall constitute
18 a quorum.

19 (e) Meetings.--The board shall meet at the call of the chair
20 and shall hold meetings at least biannually.

21 (f) Public access.--The board shall permit the public to
22 view or listen to a board meeting through contemporaneous
23 methods and shall make the recordings available on the
24 department's publicly accessible Internet website.

25 (g) Expenses.--Members shall not receive compensation but
26 shall be reimbursed for actual expenses incurred in service of
27 the board.

28 Section 510. Regulations.

29 ~~The department shall promulgate regulations as necessary to~~ <--
30 ~~implement and administer this act. Final form regulations shall~~

1 ~~be promulgated no later than September 1, 2025.~~

2 (A) DUTY OF DEPARTMENT.--IN ADDITION TO THE NECESSARY <--
3 REGULATIONS UNDER SECTIONS 302(C) AND 303(G), THE DEPARTMENT
4 SHALL PROMULGATE ADDITIONAL REGULATIONS AS NECESSARY TO
5 IMPLEMENT AND ADMINISTER THIS ACT.

6 (B) PUBLICATION.--PROPOSED REGULATIONS SHALL BE SUBMITTED TO
7 THE LEGISLATIVE REFERENCE BUREAU FOR PUBLICATION IN THE NEXT
8 AVAILABLE ISSUE OF THE PENNSYLVANIA BULLETIN, AS REQUIRED BY THE
9 ACT OF JULY 31, 1968 (P.L.769, NO.240), REFERRED TO AS THE
10 COMMONWEALTH DOCUMENTS LAW, NO LATER THAN ONE YEAR AFTER THE
11 EFFECTIVE DATE OF THIS SECTION.

12 SECTION 511. RIGHT OF ACTION.

13 (A) CIVIL ACTION BY EMPLOYEE.--AN ACTION TO RECOVER DAMAGES
14 OR OTHER APPROPRIATE CIVIL OR EQUITABLE RELIEF FOR A VIOLATION
15 OF SECTION 308, 309 OR 501 MAY BE MAINTAINED AGAINST AN EMPLOYER
16 IN A COURT OF COMPETENT JURISDICTION IN THE COMMONWEALTH BY ONE
17 OR MORE EMPLOYEES.

18 (B) FEES AND COSTS.--THE COURT, IN AN ACTION UNDER THIS
19 SECTION, SHALL, IN ADDITION TO ANY JUDGMENT AWARDED TO THE
20 PLAINTIFF, ALLOW REASONABLE ATTORNEY FEES AND OTHER COSTS OF THE
21 ACTION TO BE PAID BY THE DEFENDANT.

22 (C) LIMITATIONS.--AN ACTION BROUGHT BY AN EMPLOYEE UNDER
23 SUBSECTION (A) SHALL TERMINATE ON THE FILING OF A COMPLAINT BY
24 THE SECRETARY IN AN ACTION UNDER SUBSECTION (D).

25 (D) CIVIL ACTION BY SECRETARY.--THE SECRETARY MAY BRING AN
26 ACTION IN COMMONWEALTH COURT TO RECOVER DAMAGES AND OTHER
27 APPROPRIATE RELIEF.

28 (E) MONEY RECOVERED BY SECRETARY.--ANY MONEY RECOVERED BY
29 THE SECRETARY SHALL BE HELD IN A SPECIAL DEPOSIT ACCOUNT AND
30 SHALL BE PAID DIRECTLY TO EACH EMPLOYEE AFFECTED WITHIN 60 DAYS

1 OF RECEIPT.

2

CHAPTER 21

3

MISCELLANEOUS PROVISIONS

4 Section 2101. Effective date.

5 This act shall take effect in 180 days.