

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, WAXMAN, GREEN, DONAHUE, BRENNAN, KIM, FLEMING, MUNROE, SALISBURY, BULLOCK, BOYLE, RABB, CEPHAS, YOUNG, SOLOMON, SCOTT, BRIGGS, KAZEEM, MAYES AND KENYATTA, MARCH 8, 2023

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, DECEMBER 12, 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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22 The General Assembly of the Commonwealth of Pennsylvania
23 hereby enacts as follows:
24 CHAPTER 1
25 PRELIMINARY PROVISIONS
26 Section 101. Short title.
27 This act shall be known and may be cited as the Family and
28 Medical Leave ~~Insurance~~ Act. <--
29 Section 102. Legislative intent.
30 The General Assembly finds and declares as follows:

1 (1) Paid family and medical leave ~~insurance~~ promotes the <--
2 physical and emotional health of children and their families.

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

7 (3) The establishment of a paid family and medical leave
8 ~~insurance~~ program is essential to public health, safety and <--
9 welfare.

10 Section 103. Definitions.

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

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

17 "ATTESTING THIRD PARTY." A LAW ENFORCEMENT OFFICIAL, <--
18 LICENSED HEALTH CARE PROFESSIONAL, LICENSED SOCIAL WORKER,
19 VICTIM ADVOCATE OR VICTIM SERVICE PROVIDER.

20 "AUTHORIZED REASON FOR LEAVE FOR A QUALIFYING ACT OF
21 VIOLENCE." ANY OF THE FOLLOWING:

22 (1) TO SEEK OR OBTAIN MEDICAL ATTENTION, REHABILITATIVE
23 SERVICES, ACCESSIBILITY EQUIPMENT OR OTHER TREATMENT RELATED
24 TO A PHYSICAL OR MENTAL INJURY OR DISABILITY CAUSED OR
25 AGGRAVATED BY THE APPLICABLE QUALIFYING ACT OF VIOLENCE.

26 (2) TO RECOVER FROM A PHYSICAL OR MENTAL INJURY OR
27 DISABILITY CAUSED OR AGGRAVATED BY THE APPLICABLE QUALIFYING
28 ACT OF VIOLENCE.

29 (3) TO SEEK OR OBTAIN SERVICES FROM A VICTIM SERVICE
30 PROVIDER IN RELATION TO THE APPLICABLE QUALIFYING ACT OF

1 VIOLENCE.

2 (4) TO SEEK OR OBTAIN MENTAL HEALTH TREATMENT OR OTHER
3 COUNSELING IN RELATION TO THE APPLICABLE QUALIFYING ACT OF
4 VIOLENCE.

5 (5) TO RELOCATE OR ENGAGE IN THE PROCESS OF SECURING A
6 NEW RESIDENCE DUE TO THE APPLICABLE QUALIFYING ACT OF
7 VIOLENCE, INCLUDING SECURING TEMPORARY OR PERMANENT HOUSING
8 OR ENROLLING CHILDREN IN A NEW SCHOOL.

9 (6) TO SEEK OR OBTAIN FINANCIAL SERVICES OR MEET WITH A
10 FINANCIAL PROFESSIONAL TO ADDRESS FINANCIAL ISSUES RESULTING
11 FROM THE APPLICABLE QUALIFYING ACT OF VIOLENCE.

12 (7) TO SEEK, OBTAIN OR PROVIDE CHILD CARE OR CARE TO A
13 CARE-DEPENDENT ADULT NECESSARY AS A RESULT OF THE APPLICABLE
14 QUALIFYING ACT OF VIOLENCE.

15 (8) TO SEEK OR OBTAIN LEGAL SERVICES RELATED TO OR
16 RESULTING FROM THE APPLICABLE QUALIFYING ACT OF VIOLENCE.

17 (9) TO PREPARE FOR, PARTICIPATE IN OR ATTEND A CIVIL,
18 ADMINISTRATIVE OR CRIMINAL LEGAL PROCEEDING RELATING TO OR
19 RESULTING FROM THE APPLICABLE QUALIFYING ACT OF VIOLENCE.

20 (10) TO MAKE MODIFICATIONS TO A HOME OR VEHICLE
21 NECESSARY TO CREATE USABILITY OF AND ACCESSIBILITY TO THE
22 HOME OR VEHICLE DUE TO AN INJURY SUSTAINED IN A QUALIFYING
23 ACT OF VIOLENCE.

24 (11) TO TAKE ANY OTHER ACTION NECESSARY TO PROTECT OR
25 RESTORE PHYSICAL, MENTAL, EMOTIONAL OR ECONOMIC WELL-BEING AS
26 A RESULT OF THE APPLICABLE QUALIFYING ACT OF VIOLENCE.

27 "Benefits." The monetary allowances payable to a covered
28 individual ~~as~~ FOR family and medical leave ~~insurance~~ during an ~~an~~ <--
29 approved family and medical leave under the program in
30 accordance with this act.

1 "Board." The Family and Medical Leave ~~Insurance~~ Advisory <--
2 Board established under section 509.

3 "Claim." The filing of a written application with the
4 department for the receipt of benefits.

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

8 (1) Is currently employed in this Commonwealth or was
9 previously employed in this Commonwealth within 120 days of
10 separation from employment.

11 (2) Meets the employment and income eligibility
12 requirements specified in section 303.

13 (3) Meets the requirements of this act as to the receipt
14 of benefits.

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

16 "Covered service member." A current or former member of the
17 armed forces of the United States, including a current or former
18 member of a reserve component of the armed forces of the United
19 States or the Pennsylvania National Guard, who meets any of the
20 following requirements:

21 (1) Is undergoing medical treatment, recuperation or
22 therapy.

23 (2) Is otherwise in outpatient status.

24 (3) Is on the temporary disability retired list for a
25 serious injury or illness incurred in the line of duty on
26 active duty in the armed forces of the United States or a
27 serious injury or illness that existed before the beginning
28 of the member's active duty that was aggravated by service in
29 the line of duty on active duty in the armed forces of the
30 United States, a reserve component of the armed forces of the

1 United States or the Pennsylvania National Guard.

2 "Department." The Department of Labor and Industry of the
3 Commonwealth.

4 "DOMESTIC VIOLENCE." THE OCCURRENCE OF ANY OF THE FOLLOWING <--
5 ACTS BETWEEN FAMILY OR HOUSEHOLD MEMBERS AS DEFINED IN 23
6 PA.C.S. § 6102(A) (RELATING TO DEFINITIONS):

7 (1) INTENTIONALLY, KNOWINGLY OR RECKLESSLY CAUSING, OR
8 ATTEMPTING TO CAUSE, BODILY INJURY, SERIOUS BODILY INJURY OR
9 SEXUAL VIOLENCE.

10 (2) PLACING ANOTHER INDIVIDUAL IN REASONABLE FEAR OF
11 IMMINENT SERIOUS BODILY HARM.

12 (3) AN ACT OF DOMESTIC AND OTHER VIOLENCE AS DEFINED IN
13 55 PA. CODE § 3041.3 (RELATING TO DEFINITIONS).

14 (4) THE INFLICTION OF FALSE IMPRISONMENT UNDER 18
15 PA.C.S. § 2903 (RELATING TO FALSE IMPRISONMENT).

16 "ELIGIBLE EMPLOYEE." AN EMPLOYEE WHO MEETS THE REQUIREMENTS
17 OF SECTION 303(B) (1) AND (2).

18 "Employee." An individual who is employed by an employer
19 doing business in this Commonwealth. The term includes a self-
20 employed individual.

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

23 "Family." Includes any of the following:

24 (1) A biological child, adopted or foster child,
25 stepchild or legal ward, a child of a domestic partner or a
26 child to whom an employee stands in loco parentis, regardless
27 of age.

28 (2) A biological parent, foster parent, stepparent or
29 adoptive parent or legal guardian of an employee or an
30 employee's spouse or domestic partner or an individual who

1 stood in loco parentis when the employee or the employee's
2 spouse or domestic partner was a minor child.

3 (3) An individual to whom the employee is legally
4 married under the laws of any state or a domestic partner of
5 an employee as registered under the laws of any state or
6 political subdivision.

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

10 (5) An individual who regularly resides in the
11 employee's home or where the relationship creates an
12 expectation that the employee cares for the individual and
13 that the individual depends on the employee for care. The
14 term does not include an individual who simply resides in the
15 same home with no expectation that the employee care for the
16 individual.

17 "Family and medical leave ~~insurance~~." Benefits approved and <--
18 payable to covered individuals under the program.

19 "Fund." The Family and Medical Leave ~~Insurance~~ Fund <--
20 established under section 506.

21 "Health care provider." A health care center or a person,
22 including a corporation, university or other educational
23 institution licensed or approved by the Commonwealth to provide
24 health care or professional medical services, including a
25 physician, a certified nurse midwife, a mental health care
26 provider, a hospital, a nursing home, a birth center or any
27 other person determined by the department to be providing health
28 care services.

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

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

5 "Program." The Family and Medical Leave ~~Insurance~~ Program <--
6 established under section 301.

7 "QUALIFYING ACT OF VIOLENCE." AN ACT, CONDUCT OR PATTERN OF <--
8 CONDUCT THAT COULD CONSTITUTE ANY OF THE FOLLOWING, REGARDLESS
9 OF WHETHER ANYONE IS ARRESTED OR CHARGED WITH COMMITTING A
10 CRIME:

11 (1) DOMESTIC VIOLENCE.

12 (2) SEXUAL VIOLENCE.

13 (3) STALKING.

14 (4) AN ACT OR CONDUCT IN WHICH A PERSON USES FORCE TO
15 CAUSE OR ATTEMPT TO CAUSE PHYSICAL OR MENTAL INJURY TO
16 ANOTHER. FOR PURPOSES OF THIS PARAGRAPH, THE ACT OR CONDUCT
17 DOES NOT INCLUDE AN ACT OR CONDUCT ARISING OUT OF THE
18 OWNERSHIP, MAINTENANCE OR USE OF A MOTOR VEHICLE, EXCEPT WHEN
19 THE PERSON ENGAGING IN THE ACT OR CONDUCT:

20 (I) INTENDED TO CAUSE, OR INTENDED TO THREATEN TO
21 CAUSE, PHYSICAL OR MENTAL INJURY; OR

22 (II) WAS UNDER THE INFLUENCE OF ALCOHOL OR A
23 CONTROLLED SUBSTANCE.

24 (5) AN ACT OR CONDUCT IN WHICH A PERSON MAKES A
25 REASONABLY PERCEIVED OR ACTUAL THREAT OF PHYSICAL OR MENTAL
26 INJURY TO ANOTHER. FOR PURPOSES OF THIS PARAGRAPH, THE ACT OR
27 CONDUCT DOES NOT INCLUDE AN ACT OR CONDUCT ARISING OUT OF THE
28 OWNERSHIP, MAINTENANCE OR USE OF A MOTOR VEHICLE, EXCEPT WHEN
29 THE PERSON ENGAGING IN THE ACT OR CONDUCT:

30 (I) INTENDED TO CAUSE, OR INTENDED TO THREATEN TO

1 CAUSE, PHYSICAL OR MENTAL INJURY; OR
2 (II) WAS UNDER THE INFLUENCE OF ALCOHOL OR A
3 CONTROLLED SUBSTANCE.

4 "Qualifying exigency leave." Leave for the family member of
5 a military member deployed at home or abroad for the purposes
6 specified in 29 CFR 825.126 (relating to leave because of a
7 qualifying exigency).

8 "RETALIATORY PERSONNEL ACTION." AS FOLLOWS: <--

9 (1) ANY THREAT, DISCIPLINE, DISCHARGE, SUSPENSION,
10 DEMOTION, REDUCTION OF HOURS OR OTHER ADVERSE ACTION TAKEN
11 AGAINST AN EMPLOYEE FOR EXERCISING THE RIGHTS AND PROTECTIONS
12 AFFORDED BY THIS ACT.

13 (2) THE TERM INCLUDES INTERFERENCE WITH OR PUNISHMENT
14 FOR PARTICIPATING IN OR ACTING ON A COMPLAINT OR APPEAL UNDER
15 THIS ACT.

16 "Secretary." The Secretary of Labor and Industry of the
17 Commonwealth.

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

22 "SEXUAL VIOLENCE." AS DEFINED IN 42 PA.C.S. § 62A03 <--
23 (RELATING TO DEFINITIONS).

24 "STALKING." CONDUCT IN WHICH AN INDIVIDUAL DOES ANY OF THE
25 FOLLOWING:

26 (1) ENGAGES IN A COURSE OF CONDUCT OR REPEATEDLY COMMITS
27 ACTS TOWARD ANOTHER INDIVIDUAL, INCLUDING FOLLOWING THE OTHER
28 INDIVIDUAL WITHOUT PROPER AUTHORITY:

29 (I) UNDER CIRCUMSTANCES WHICH DEMONSTRATE EITHER AN
30 INTENT TO PLACE THE OTHER INDIVIDUAL IN REASONABLE FEAR

1 OF BODILY INJURY OR TO CAUSE SUBSTANTIAL EMOTIONAL
2 DISTRESS TO THE OTHER INDIVIDUAL; OR

3 (II) WHICH, AS A RESULT, INTENTIONALLY, KNOWINGLY OR
4 RECKLESSLY PLACES THE OTHER INDIVIDUAL IN REASONABLE FEAR
5 OF BODILY INJURY OR CAUSES SUBSTANTIAL EMOTIONAL DISTRESS
6 TO THE OTHER INDIVIDUAL.

7 (2) ENGAGES IN A COURSE OF CONDUCT OR REPEATEDLY
8 COMMUNICATES TO ANOTHER INDIVIDUAL:

9 (I) UNDER CIRCUMSTANCES WHICH DEMONSTRATE OR
10 COMMUNICATE EITHER AN INTENT TO PLACE THE OTHER
11 INDIVIDUAL IN REASONABLE FEAR OF BODILY INJURY OR TO
12 CAUSE SUBSTANTIAL EMOTIONAL DISTRESS TO THE OTHER
13 INDIVIDUAL; OR

14 (II) WHICH, AS A RESULT, INTENTIONALLY, KNOWINGLY OR
15 RECKLESSLY PLACES THE OTHER INDIVIDUAL IN REASONABLE FEAR
16 OF BODILY INJURY OR CAUSES SUBSTANTIAL EMOTIONAL DISTRESS
17 TO THE OTHER INDIVIDUAL.

18 "Statewide average weekly wage." The average amount of
19 weekly wages as determined by the department on an annual basis
20 for each calendar year in accordance with the Workers'
21 Compensation Act, which shall be posted on the department's
22 publicly accessible Internet website.

23 "Unemployment Compensation Law." The act of December 5, 1936
24 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
25 Compensation Law.

26 "VICTIM." ANY OF THE FOLLOWING:

<--

27 (1) AN INDIVIDUAL AGAINST WHOM A QUALIFYING ACT OF
28 VIOLENCE WAS COMMITTED.

29 (2) AN INDIVIDUAL WHO WAS PHYSICALLY PRESENT AT THE
30 SCENE OF A QUALIFYING ACT OF VIOLENCE AND WITNESSED THE

1 QUALIFYING ACT OF VIOLENCE, WHO DID NOT COMMIT THE QUALIFYING
2 ACT OF VIOLENCE AND WHO AS A DIRECT RESULT:

- 3 (I) SUFFERS PHYSICAL OR MENTAL INJURY; OR
- 4 (II) REASONABLY BELIEVES THAT THE INDIVIDUAL IS
5 UNDER THE THREAT OF PHYSICAL HARM.

6 "VICTIM ADVOCATE." AN INDIVIDUAL, WHETHER PAID OR SERVING AS
7 A VOLUNTEER, WHO PROVIDES SERVICES TO VICTIMS UNDER THE AUSPICES
8 OR SUPERVISION OF A VICTIM SERVICE PROVIDER, A COURT OR LAW
9 ENFORCEMENT OR PROSECUTION AGENCY.

10 "VICTIM SERVICE PROVIDER." AS FOLLOWS:

11 (1) AN AGENCY OR ORGANIZATION THAT PROVIDES SERVICES TO
12 VICTIMS.

13 (2) THE TERM INCLUDES:

14 (I) A RAPE CRISIS CENTER AS DEFINED IN 42 PA.C.S. §
15 5945.1(A) (RELATING TO CONFIDENTIAL COMMUNICATIONS WITH
16 SEXUAL ASSAULT COUNSELORS).

17 (II) A DOMESTIC VIOLENCE PROGRAM AS DEFINED IN 23
18 PA.C.S. § 6102(A).

19 (III) AN AGENCY OR ORGANIZATION WITH A DOCUMENTED
20 HISTORY OF PROVIDING SERVICES TO VICTIMS.

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

23 CHAPTER 3

24 FAMILY AND MEDICAL LEAVE ~~INSURANCE~~ PROGRAM <--

25 Section 301. Family and Medical Leave ~~Insurance~~ Program. <--

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

27 (1) Within one year of the effective date of this
28 paragraph, the department shall establish the Family and
29 Medical Leave ~~Insurance~~ Program. <--

30 (2) ~~No~~ EXCEPT AS PROVIDED UNDER SECTION 310, NO later <--

1 than two years following the establishment of the program,
2 the department shall pay family and medical leave ~~insurance~~ <--
3 benefits as specified in this act.

4 (b) Required documentation.--The department shall establish
5 reasonable procedures and forms for filing a claim under this
6 act, the documentation necessary to support a claim ~~and~~, any <--
7 certification required from a health care provider for proof of
8 a serious health condition AND ANY CERTIFICATION REQUIRED FROM A <--
9 VICTIM OF A QUALIFYING ACT OF VIOLENCE TO SUPPORT A CLAIM.

10 (c) Notice of approved claim.--In addition to the notice
11 provided to an employer by an employee under section 501(d), the
12 department shall notify the employer within 10 business days of
13 an approved claim for benefits under this act.

14 (d) Information sharing.--Information sharing and
15 integration technology to facilitate the disclosure of relevant
16 information or records shall be used as practicable subject to
17 consent and disclosure requirements under State law.

18 (e) Confidentiality.--Information contained in the files and
19 records pertaining to an individual filing a claim under this
20 act are confidential and shall not be open to public inspection
21 other than to public employees in the performance of their
22 official duties.

23 (f) Cooperation among departments.--To properly effectuate
24 the provisions of this act, all departments and agencies under
25 the jurisdiction of the Governor shall fully cooperate with the
26 department and provide assistance and support as needed to
27 ensure the timely and efficient delivery of benefits under this
28 act.

29 Section 302. Powers and duties of department.

30 (a) Administration of act.--The department shall be

1 responsible for the administration of this act and the fund.
2 Administration of the program for purposes of this section and
3 section 506 shall include acquisition, development and
4 operational costs related to information technology,
5 infrastructure and personnel needed to process claims and issue
6 benefits under this act.

7 (b) Powers and duties.--To fulfill its responsibilities
8 under this act, the department shall have the following powers
9 and duties:

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

13 (2) Provide information to employees and employers on
14 the amount to be deducted as employee payroll ~~premium~~ <--
15 contributions as specified in section 306 initially and every
16 year thereafter.

17 (3) Develop and prepare the written notices that
18 employers must distribute and provide to their employees in
19 accordance with section 501. The form of the notices shall be
20 posted on the department's publicly accessible Internet
21 website.

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

25 (5) Prepare and provide the necessary forms for filing
26 and acknowledging a benefits claim and for providing notice
27 of benefits approval to both employers and covered individual
28 employees.

29 (6) Evaluate and adjudicate claims.

30 (7) Evaluate and determine the amount of payroll ~~premium~~ <--

1 contributions and maximum employee contributions to ensure
2 fund solvency.

3 (8) Coordinate benefits with employers that have already
4 paid for benefits outside of the fund.

5 (9) Make payments on claims.

6 (10) Develop the abstract for employer posting of notice
7 in the workplace under section 501, which shall be available
8 on the department's publicly accessible Internet website.

9 (11) Prepare and provide the employee complaint form on
10 the department's publicly accessible Internet website.

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

13 (13) Develop procedures to investigate and resolve
14 complaints under this act.

15 (14) Conduct an ongoing public outreach campaign to
16 inform employers and employees about the availability of the
17 program and the process for filing a benefits claim.

18 (15) Promulgate regulations as necessary to administer
19 this act.

20 (16) Issue an annual report under section 507.

21 (c) Enforcement of act.--The secretary shall establish a
22 system for an administrative complaint and appeals process in
23 the case of a denial of family and medical leave ~~insurance~~ <--
24 benefits, DENIAL OF A WAIVER UNDER SECTION 310, DENIAL OF FAMILY <--
25 AND MEDICAL LEAVE BENEFITS PROVIDED THROUGH A PRIVATE PLAN UNDER
26 SECTION 310 and all violations assessed under this act. The
27 system for administrative complaints and appeals process shall
28 be promulgated by the department through regulation. Procedures
29 to ensure confidentiality of all information related to any
30 claims filed or appeals taken shall be implemented in accordance

1 with applicable laws.

2 Section 303. Eligibility for family and medical leave ~~insurance~~ <--
3 benefits.

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

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

11 (2) Is caring for a family member with a serious health
12 condition.

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

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

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

22 (6) IS A VICTIM OF A QUALIFYING ACT OF VIOLENCE OR IS <--
23 CARING FOR A FAMILY MEMBER WHO IS A VICTIM OF A QUALIFYING
24 ACT OF VIOLENCE AND IS TAKING LEAVE FOR AN AUTHORIZED REASON
25 FOR LEAVE FOR A QUALIFYING ACT OF VIOLENCE.

26 (b) Employment and income eligibility requirements.--To be
27 eligible to file a benefits claim, a covered individual must
28 have: <--

29 (1) ~~Worked~~ HAVE WORKED at least 18 weeks during the 12- <--
30 month period prior to submitting a claim.

1 (2) ~~Earned~~ HAVE EARNED at least \$2,718 in income during <--
2 the 12-month period prior to submitting a claim. The earned
3 income rate in this paragraph shall be adjusted annually by
4 the department and reflect the minimum qualifying wage to
5 qualify for benefits under the Unemployment Compensation Law.

6 (3) NOT BE EMPLOYED BY AN EMPLOYER THAT HAS BEEN ISSUED <--
7 A WAIVER UNDER SECTION 310.

8 (c) Proof of wages.--The fund shall not be liable for
9 payment of benefits unless the amount of wages that the covered
10 individual earned at the time of their leave is verified by
11 section 305(a)(2) or under this subsection. If a discrepancy is
12 identified by the department in verifying wages under section
13 305(a)(2), the department may request the following documents
14 from a covered individual to verify their wages:

15 (1) A check, check stub or payroll record.

16 (2) A tax return, including IRS form W-2 and form 1099,
17 or successor forms.

18 (3) Unemployment compensation records, including form
19 UC-2A.

20 (4) Bank statements or records showing regular and
21 recurring deposits.

22 (5) Written documentation created contemporaneously with
23 the payment of wages.

24 (d) Interaction with the Workers' Compensation Act and the
25 Unemployment Compensation Law.--To file a benefits claim and
26 receive benefits under this act, a covered individual ~~cannot~~ MAY <--
27 NOT receive benefits for the same day under the Workers'
28 Compensation Act or the Unemployment Compensation Law.

29 (e) Filing of benefits claim.--An individual seeking
30 benefits under this act shall submit a claim to the department

1 providing the required documentation to support a claim for
2 benefits, including any necessary medical certification OR <--
3 QUALIFYING ACT OF VIOLENCE CERTIFICATION.

4 (f) Medical certification.--

5 (1) A covered individual shall obtain a medical
6 certification confirming a serious health condition under
7 subsection (a) (2), (3) ~~and (4) that justify~~ OR (4) THAT <--
8 JUSTIFIES the filing of a claim and the receipt of benefits
9 under this act and shall make that information available to
10 the department on the form prescribed by the department. When
11 possible, the department shall use Federal family and medical
12 leave forms. Any completed medical certification form
13 regarding a covered individual shall be used solely for the
14 purpose of adjudicating a claim under this act.

15 (2) Confidential medical documentation ~~shall~~ MAY not be <--
16 released by the department unless written authorization is
17 provided by an employee or a covered individual.

18 (G) QUALIFYING ACT OF VIOLENCE CERTIFICATION.--THE <--
19 DEPARTMENT MAY REQUIRE THAT AN EMPLOYEE, WITHIN A REASONABLE
20 PERIOD AFTER THE ABSENCE, PROVIDE DOCUMENTATION THAT THE
21 EMPLOYEE OR FAMILY MEMBER OF THE EMPLOYEE IS A VICTIM OF A
22 QUALIFYING ACT OF VIOLENCE. THE FOLLOWING APPLY:

23 (1) THE EMPLOYEE MAY SATISFY THE CERTIFICATION
24 REQUIREMENT BY PROVIDING TO THE DEPARTMENT ANY OF THE
25 FOLLOWING:

26 (I) A COPY OF A VALID COURT ORDER THAT RESTRAINS THE
27 PERSON ALLEGED TO HAVE COMMITTED THE QUALIFYING ACT OF
28 VIOLENCE FROM CONTACT WITH THE EMPLOYEE OR FAMILY MEMBER
29 OF THE EMPLOYEE.

30 (II) MEDICAL OR MENTAL HEALTH RECORDS INDICATING

1 THAT THE EMPLOYEE OR FAMILY MEMBER OF THE EMPLOYEE IS A
2 VICTIM OF A QUALIFYING ACT OF VIOLENCE.

3 (III) A POLICE REPORT DOCUMENTING THE ACT OF WHICH
4 THE EMPLOYEE OR FAMILY MEMBER OF THE EMPLOYEE IS A VICTIM
5 OF A QUALIFYING ACT OF VIOLENCE.

6 (IV) EVIDENCE THAT THE PERSON ALLEGED TO HAVE
7 COMMITTED THE QUALIFYING ACT OF VIOLENCE HAS BEEN CHARGED
8 WITH OR CONVICTED OF AN ACT OF WHICH THE EMPLOYEE OR
9 FAMILY MEMBER OF THE EMPLOYEE IS A VICTIM.

10 (V) A WRITTEN CERTIFICATION SIGNED BY AN ATTESTING
11 THIRD PARTY THAT AFFIRMS THAT THE EMPLOYEE OR FAMILY
12 MEMBER OF THE EMPLOYEE IS A VICTIM OF A QUALIFYING ACT OF
13 VIOLENCE.

14 (VI) ANY OTHER FORM OF DOCUMENTATION THAT REASONABLY
15 VERIFIES THAT THE EMPLOYEE OR FAMILY MEMBER OF THE
16 EMPLOYEE IS A VICTIM OF A QUALIFYING ACT OF VIOLENCE,
17 INCLUDING A WRITTEN STATEMENT SIGNED BY THE EMPLOYEE OR
18 AN INDIVIDUAL AUTHORIZED TO ACT ON BEHALF OF THE
19 EMPLOYEE.

20 (2) FURNISHING DOCUMENTATION OR PROVIDING A
21 CERTIFICATION UNDER THIS SUBSECTION SHALL NOT WAIVE ANY
22 CONFIDENTIALITY OR PRIVILEGE THAT MAY EXIST BETWEEN THE
23 EMPLOYEE OR VICTIM AND A THIRD PARTY.

24 (3) THE DEPARTMENT MAY NOT REQUIRE:

25 (I) THAT THE EMPLOYEE PROVIDE A CERTIFICATION THAT
26 EXPLAINS THE DETAILS OF THE QUALIFYING ACT OF VIOLENCE.

27 (II) DISCLOSURE OF DETAILS RELATING TO A QUALIFYING
28 ACT OF VIOLENCE OR THE DETAILS OF THE MEDICAL CONDITION
29 OF THE EMPLOYEE OR FAMILY MEMBER OF THE EMPLOYEE AS A
30 CONDITION OF PROVIDING LEAVE UNDER THIS ACT.

1 (4) ALL INFORMATION PROVIDED TO THE DEPARTMENT UNDER
2 THIS SUBSECTION SHALL BE RETAINED IN THE STRICTEST CONFIDENCE
3 BY THE DEPARTMENT, EXCEPT TO THE EXTENT THAT DISCLOSURE IS:

4 (I) REQUESTED OR CONSENTED TO IN WRITING BY THE
5 EMPLOYEE; OR

6 (II) OTHERWISE REQUIRED BY APPLICABLE FEDERAL OR
7 STATE LAW, IN WHICH CASE THE DEPARTMENT SHALL PROVIDE THE
8 EMPLOYEE NOTICE PRIOR TO ANY AUTHORIZED DISCLOSURE.

9 ~~(g)~~ (H) Married or domestic partners employed by the same <--
10 employer.--Individuals who are legally married or domestic
11 partners under the laws of any state or political subdivision
12 and employed by the same employer shall both be eligible for
13 benefits under this act, even when the leave runs concurrently.

14 ~~(h)~~ (I) Promulgating regulations.--The department shall <--
15 promulgate regulations to provide for an ELIGIBILITY <--
16 adjudication process under this act.

17 ~~(i)~~ (J) Adjudication of claim.--Upon receipt of all <--
18 necessary documentation to support a claim for benefits from a
19 covered individual, the department shall determine eligibility
20 for benefits under this act within 20 business days.

21 Section 304. Duration of benefits.

22 (a) Maximum leave duration of 20 weeks.--The maximum number
23 of weeks during which benefits are payable under section 303(a)
24 (1) ~~or~~, (3) OR (6) in an application year is 20 weeks. <--

25 (b) Maximum leave duration of 12 weeks.--The maximum number
26 of weeks during which benefits are payable under section 303(a)
27 (2), (4) or (5) in an application year is 12 weeks.

28 (c) Total maximum duration.--The duration of leave under
29 subsections (a) and (b) combined ~~cannot~~ MAY NOT exceed a total <--
30 number of 20 weeks in any one application year regardless of

1 reason.

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

5 (1) after the claim is filed and approved by the
6 department; or

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

8 (e) Payment of benefits.--After the initial payment of
9 benefits, subsequent payments shall be made semimonthly
10 thereafter for the duration of the approved leave.

11 Section 305. Amount of benefits.

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 DEPENDENTS. <--

28 (IX) THE AMOUNT OF ANY bonus, incentive or vacation
29 payment earned on an annual basis shall be excluded from
30 the calculations under subparagraphs (i), (ii), (iii),

1 (iv), (v) and (vi). Such payments, if any, shall instead
2 be divided by 52 and the amount shall be added to the
3 average weekly wage otherwise calculated under
4 subparagraphs (i), (ii), (iii), (iv), (v) and (vi). If
5 the employee is working under concurrent contracts with
6 two or more employers, the wages from all employers shall
7 be considered as if earned from the employer liable for
8 compensation.

9 (b) Limitation.--

10 (1) In no case shall the weekly benefits payable to a
11 covered individual be more than the Statewide average weekly
12 wage.

13 (2) The application of the Statewide average weekly wage
14 on a claim shall begin on the date that the birth or a
15 serious health condition arises.

16 (3) If a claim carries over from one year into another
17 and the Statewide average weekly wage is adjusted, the most
18 recent Statewide average weekly wage shall be used in all
19 future payments.

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

27 (d) Limit on taking of benefits and nonsequential leave.--
28 Under this section and section 307, benefits are not payable for
29 less than eight hours of leave taken in one work week.
30 Section 306. Contributions.

1 (a) Payment into the program.--All persons employed in this
2 Commonwealth shall be required to contribute to the program for
3 the purpose of financing the program.

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

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

12 (1) The payroll ~~premium~~ contribution shall be calculated <--
13 using an actuarial experience study that shall take into
14 account all APPLICABLE available data. The rate shall be set <--
15 at an amount to ensure solvency of the fund but shall not
16 exceed 1% of an individual employee's wages.

17 (2) When necessary, but at least every year thereafter,
18 the department shall evaluate and determine the amount of
19 payroll ~~premium~~ contributions and maximum employee <--
20 contribution necessary to finance and adequately support the
21 program.

22 (3) The payroll ~~premium~~ contribution rate shall be <--
23 posted on the department's publicly accessible Internet
24 website.

25 (4) AN EMPLOYER MAY DEDUCT UP TO 50% OF THE CONTRIBUTION <--
26 REQUIRED FOR AN EMPLOYEE BY THIS SECTION FROM THAT EMPLOYEE'S
27 WAGES AND SHALL REMIT 100% OF THE CONTRIBUTION REQUIRED BY
28 THIS SECTION FROM BOTH THE EMPLOYER AND THOSE EMPLOYEES TO
29 THE FUND, AS FOLLOWS:

30 (I) AN EMPLOYER WITH FEWER THAN 15 EMPLOYEES MAY

1 DEDUCT UP TO 50% OF THE CONTRIBUTION REQUIRED FOR AN
2 EMPLOYEE BY THIS SECTION FROM THAT EMPLOYEE'S WAGES AND
3 SHALL REMIT 50% OF THE CONTRIBUTION REQUIRED BY THIS
4 SECTION TO THE FUND.

5 (II) TO DETERMINE AN EMPLOYER'S NUMBER OF EMPLOYEES
6 UNDER THIS SUBSECTION, ALL OF AN EMPLOYER'S EMPLOYEES
7 SHALL BE COUNTED, INCLUDING FULL-TIME, PART-TIME AND
8 TEMPORARY IN-STATE EMPLOYEES AND ALL OUT-OF-STATE
9 EMPLOYEES.

10 (d) Notification to employers.--The department shall notify
11 the Department of Revenue to advise employers of the amount
12 payable through employee payroll ~~premium~~ contributions. <--

13 (e) Penalty for failure to withhold.--~~An~~ EXCEPT FOR AN <--
14 EMPLOYER ISSUED A WAIVER UNDER SECTION 310, AN employer who
15 fails to withhold payroll ~~premium~~ contributions in accordance <--
16 with this act shall be subject to those penalties enforceable
17 through the act of March 4, 1971 (P.L.6, No.2), known as the Tax
18 Reform Code of 1971, for failure to properly withhold wages for
19 income tax and sales and use tax purposes.

20 Section 307. Reduced leave schedule.

21 (a) Taking of nonsequential leave.--A covered individual
22 shall be entitled to utilize the leave authorized under section
23 304, at the option of the covered individual, to take leave on
24 an intermittent or reduced leave schedule in which all of the
25 leave authorized under this act is not taken sequentially.

26 Family and medical leave ~~insurance~~ benefits for intermittent or <--
27 reduced leave schedules shall be prorated.

28 (b) Impact on duration of leave.--Nonsequential leave taken
29 under this section ~~shall~~ MAY not result in a reduction in the <--
30 total amount of family and medical leave to which a covered

1 individual is entitled beyond the amount of leave actually
2 taken.

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

6 Section 308. Employment protections.

7 (a) Restoration of employment position.--~~Any~~ A covered <--
8 individual who takes leave in accordance with this act shall,
9 upon the expiration of that leave, be restored by the employer
10 to the position previously held by the covered individual when
11 the leave commenced, or to a position with equivalent seniority,
12 status, employment benefits, pay and other terms and conditions
13 of employment.

14 (b) Health care benefits maintained.--For the duration of a
15 leave approved under this act, the employer shall maintain any
16 health care benefits the covered individual had prior to taking
17 leave as if the covered individual had continued in employment
18 continuously from the date leave ~~was~~ commenced until the date <--
19 the leave terminates. A covered individual shall continue to pay
20 the covered individual's share of the cost of health benefits as
21 required prior to the commencement of the leave.

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

26 (d) Retaliation prohibited.--An employer, temporary help
27 company, employment agency, employee organization or other
28 person ~~shall~~ MAY not take retaliatory personnel action or <--
29 otherwise discriminate against a person because the person took
30 any action in accordance with this act, including:

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

3 (2) Communicating to the employer or any other person or
4 entity an intent to file and act on a claim, a complaint or
5 an appeal with the department or a court of competent
6 jurisdiction.

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

10 (f) Good faith protection.--Protections under this section
11 shall apply to any person who mistakenly but in good faith
12 alleges a violation of this act.

13 ~~(g) Definition. As used in this section, the term~~ <--
14 ~~"retaliatory personnel action" includes any threat, discipline,~~
15 ~~discharge, suspension, demotion, reduction of hours or any other~~
16 ~~adverse action taken against an employee for exercising the~~
17 ~~rights and protections afforded by this act. The term also~~
18 ~~includes interference with or punishment for participating in or~~
19 ~~acting on a complaint or appeal under this act.~~

20 Section 309. Coordination of benefits.

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

25 (b) Coordination with other paid leave.--An employee may
26 elect to utilize paid leave available under any other Federal or
27 State law, collective bargaining agreement or employer policy
28 prior to receiving benefits under this act, provided that it
29 does not conflict with Federal law. Employers shall provide
30 employees with written notice of the opportunity to make the

1 election, and inform employees how leave will be coordinated
2 absent any election.

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

6 (1) A collective bargaining agreement.

7 (2) An employer policy.

8 (3) Any other Federal or State law.

9 (d) Prohibition on subsequent collective bargaining
10 agreement or employer policy.--An individual's right to leave
11 and the payment of benefits under this act may not be diminished
12 by a collective bargaining agreement entered into or renewed, or
13 an employer policy adopted or retained, after the effective date
14 of this subsection. An agreement by an individual to waive the
15 individual's rights under this act is void as against public
16 policy.

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

20 (f) Impact on Public Employe Relations Act.--Nothing in this
21 act shall be construed to supersede or preempt the rights,
22 remedies and procedures afforded to employees or labor
23 organizations under Federal or State law, including the act of
24 July 23, 1970 (P.L.563, No.195), known as the Public Employe
25 Relations Act, or any provision of a collective bargaining
26 agreement negotiated between an employer and an exclusive
27 representative of the employees in accordance with the Public
28 Employe Relations Act.

29 SECTION 310. EMPLOYER WAIVER TO USE PRIVATE PLAN.

<--

30 (A) WAIVER.--AN EMPLOYER MAY APPLY TO THE DEPARTMENT FOR A

1 WAIVER TO MEET THE EMPLOYER'S OBLIGATIONS UNDER THIS CHAPTER
2 THROUGH A PRIVATE PLAN. THE APPLICATION SHALL BE SUBMITTED ON A
3 FORM AND IN A MANNER PRESCRIBED BY THE DEPARTMENT. THE
4 DEPARTMENT MAY APPROVE A PRIVATE PLAN AND ISSUE A WAIVER UNDER
5 THIS SECTION IF A PRIVATE PLAN CONFERS AT LEAST ALL OF THE SAME
6 RIGHTS, PROTECTIONS AND BENEFITS PROVIDED TO EMPLOYEES UNDER
7 THIS CHAPTER AND IF THE EMPLOYER PROVIDES EVIDENCE THAT IT HAS
8 IN EFFECT A SELF-FUNDED PLAN GOVERNED UNDER THE EMPLOYEE
9 RETIREMENT INCOME SECURITY ACT OF 1974 (PUBLIC LAW 93-406, 88
10 STAT. 829) OR AN INSURANCE POLICY ISSUED BY AN ENTITY THAT HAS A
11 CERTIFICATE OF AUTHORITY TO DO THE BUSINESS OF INSURANCE AS
12 REQUIRED BY SECTION 208 OF THE ACT OF MAY 17, 1921 (P.L.789,
13 NO.285), KNOWN AS THE INSURANCE DEPARTMENT ACT OF 1921. THE
14 PRIVATE PLAN SHALL COMPLY WITH ALL OF THE REQUIREMENTS UNDER
15 THIS CHAPTER, INCLUDING THE FOLLOWING:

16 (1) BENEFITS TO A COVERED INDIVIDUAL UNDER SECTION
17 303(A) (1), (3) AND (6) FOR THE MAXIMUM NUMBER OF WEEKS
18 REQUIRED UNDER SECTION 304(A) IN A BENEFIT YEAR.

19 (2) BENEFITS TO A COVERED INDIVIDUAL UNDER SECTION
20 303(A) (2), (4) AND (5) FOR THE MAXIMUM NUMBER OF WEEKS
21 REQUIRED UNDER SECTION 304(B) IN A BENEFIT YEAR.

22 (3) COVERED INDIVIDUALS, IN THE AGGREGATE, THE MAXIMUM
23 NUMBER OF WEEKS OF BENEFITS IN A BENEFIT YEAR AS REQUIRED
24 UNDER SECTION 304(C).

25 (4) A WEEKLY WAGE REPLACEMENT RATE FOR EACH WEEK OF
26 BENEFITS OF THE AMOUNT REQUIRED BY SECTION 305(A).

27 (5) A MAXIMUM WEEKLY BENEFIT FOR EACH WEEK OF BENEFITS
28 OF THE AMOUNT SPECIFIED IN SECTION 305(B).

29 (6) PAYMENT OF BENEFITS IN ACCORDANCE WITH SECTION
30 303(F) AND (I).

1 (7) THE ALLOWANCE OF LEAVE AND BENEFITS TO BE TAKEN
2 INTERMITTENTLY OR ON A REDUCED SCHEDULE AS AUTHORIZED BY
3 SECTION 307.

4 (8) FOR THE ADJUSTMENT OF THE MAXIMUM BENEFIT CAP IN
5 ACCORDANCE WITH THE NOTICE PUBLISHED ANNUALLY IN THE
6 PENNSYLVANIA BULLETIN UNDER SECTION 305(C).

7 (9) THAT NO ADDITIONAL CONDITIONS OR RESTRICTIONS ON THE
8 USE OF LEAVE OR BENEFITS BEYOND THOSE EXPLICITLY AUTHORIZED
9 BY THIS ACT OR REGULATIONS PROMULGATED UNDER THIS ACT SHALL
10 BE IMPOSED.

11 (10) AN EMPLOYEE COVERED UNDER THE PRIVATE PLAN WHO IS
12 ELIGIBLE TO RECEIVE BENEFITS UNDER THIS ACT, WITH BENEFITS
13 UNDER THE PRIVATE PLAN.

14 (11) THAT THE COST TO EMPLOYEES COVERED BY A PRIVATE
15 PLAN SHALL NOT BE GREATER THAN THE COST CHARGED TO EMPLOYEES
16 UNDER SECTION 306(C) AND POSTED ON THE DEPARTMENT'S PUBLICLY
17 ACCESSIBLE INTERNET WEBSITE UNDER SECTION 306(C) (3).

18 (12) COVERAGE CONSISTENT WITH SECTION 303(B) (1) AND (2).

19 (B) CONSTRUCTION.--NOTHING IN THIS ACT SHALL PROHIBIT AN
20 EMPLOYER FROM PROVIDING BENEFITS GREATER THAN THOSE LISTED IN
21 SUBSECTION (A).

22 (C) ADDITIONAL EMPLOYER DUTIES.--TO BE ELIGIBLE FOR A WAIVER
23 UNDER SUBSECTION (A), AN EMPLOYER SHALL MEET ALL OF THE
24 FOLLOWING REQUIREMENTS:

25 (1) IF THE PRIVATE PLAN IS IN THE FORM OF SELF-FUNDED
26 COVERAGE, AN EMPLOYER MUST FURNISH A BOND RUNNING TO THE
27 COMMONWEALTH, ISSUED BY AN ENTITY AUTHORIZED TO TRANSACT
28 SURETY BUSINESS IN THIS COMMONWEALTH UNDER ARTICLE VI(E) OF
29 THE ACT OF MAY 17, 1921 (P.L.682, NO.284), KNOWN AS THE
30 INSURANCE COMPANY LAW OF 1921. THE FORM OF SURETY SHALL BE ON

1 A FORM APPROVED BY THE INSURANCE DEPARTMENT AND IN AN AMOUNT
2 REQUIRED BY THE DEPARTMENT.

3 (2) THE PRIVATE PLAN SHALL PROVIDE FOR ALL ELIGIBLE
4 EMPLOYEES THROUGHOUT THE EMPLOYEE'S PERIOD OF EMPLOYMENT.

5 (3) AN EMPLOYER THAT PROVIDES A PRIVATE PLAN UNDER THIS
6 SECTION SHALL PROVIDE EACH EMPLOYEE WITH A NOTICE OF THE
7 AVAILABILITY OF THE PROGRAM. THE NOTICE SHALL BE PROVIDED TO
8 EACH EMPLOYEE WITHIN FIVE DAYS OF APPROVAL OF A WAIVER, UPON
9 HIRE AND ANNUALLY THEREAFTER.

10 (D) ADDITIONAL DOCUMENTATION TO BE SUBMITTED UPON
11 APPROVAL.--UPON APPROVAL OF AN APPLICATION FOR AN EXEMPTION:

12 (1) THE EMPLOYER SHALL PROVIDE TO THE DEPARTMENT ALL
13 REPORTS REQUIRED BY REGULATIONS PROMULGATED BY THE
14 DEPARTMENT.

15 (2) IF AN EXEMPTION IS BASED ON THE EMPLOYER HAVING A
16 SELF-FUNDED PLAN, THE EMPLOYER SHALL PROVIDE SATISFACTORY
17 EVIDENCE OF MAINTENANCE OF THE FORM OF SURETY AS REQUIRED BY
18 THE DEPARTMENT UNDER SUBSECTION (C) (1).

19 (E) TERMINATION OF WAIVER.--THE DEPARTMENT MAY TERMINATE
20 APPROVAL TO USE A PRIVATE PLAN GRANTED UNDER SUBSECTION (A) IF
21 THE SECRETARY FINDS THAT THE TERMS AND CONDITIONS HAVE BEEN
22 VIOLATED OR THAT THE EMPLOYER OR PRIVATE PLAN HAS FAILED TO
23 CONFER ANY RIGHT, PROTECTION OR BENEFIT AFFORDED TO EMPLOYEES
24 UNDER THIS CHAPTER. THE DEPARTMENT SHALL BE REQUIRED TO NOTIFY
25 AN EMPLOYER OF A TERMINATED WAIVER. CAUSES FOR TERMINATION OF A
26 WAIVER SHALL INCLUDE:

27 (1) FAILURE TO PAY BENEFITS;

28 (2) FAILURE TO PAY BENEFITS TIMELY AND IN A MANNER
29 CONSISTENT WITH THE PROGRAM;

30 (3) FAILURE TO MAINTAIN AN ADEQUATE SECURITY DEPOSIT;

1 (4) MISUSE OF PRIVATE PLAN TRUST FUNDS;
2 (5) FAILURE TO SUBMIT ANY AND ALL REPORTS AS REQUIRED BY
3 REGULATIONS PROMULGATED BY THE DEPARTMENT; OR

4 (6) FAILURE TO COMPLY WITH THIS SECTION OR REGULATIONS
5 PROMULGATED BY THE DEPARTMENT.

6 (F) APPEAL.--IF THE SECRETARY TERMINATES A WAIVER FOR A
7 PRIVATE PLAN UNDER SUBSECTION (E), THE EMPLOYER SHALL HAVE THE
8 ABILITY TO APPEAL THE DECISION OF THE SECRETARY THROUGH THE
9 REGULATORY PROCESS ESTABLISHED UNDER SECTION 302.

10 (G) PROTECTIONS AND ENFORCEMENT.--AN EMPLOYEE COVERED UNDER
11 A PRIVATE PLAN SHALL RETAIN ALL EMPLOYEE PROTECTIONS UNDER
12 SECTION 308 AND ENFORCEMENT PROCEDURES AND THE APPEALS PROCESS
13 UNDER SECTION 302(C). THE FOLLOWING SHALL APPLY:

14 (1) APPLICABLE ENFORCEMENT PROCEDURES AND THE APPEALS
15 PROCESS FOR BENEFITS BY AN EMPLOYER-FUNDED PLAN SHALL BE
16 SUBJECT TO AN APPEAL UNDER SECTION 302(C).

17 (2) APPLICABLE ENFORCEMENT PROCEDURES AND THE APPEALS
18 PROCESS FOR BENEFITS BY AN INSURANCE POLICY SHALL BE SUBJECT
19 TO REVIEW AS OUTLINED IN THE POLICY OF INSURANCE AND
20 APPLICABLE INSURANCE LAW.

21 (3) IF ALL APPEALS UNDER THE POLICY OF INSURANCE HAVE
22 BEEN EXHAUSTED, AN INDIVIDUAL MAY APPEAL TO THE DEPARTMENT ON
23 A FORM AND IN A MANNER PRESCRIBED BY THE DEPARTMENT.

24 CHAPTER 5

25 ADMINISTRATION AND PROCEDURES

26 Section 501. Notice.

27 (a) Employer notice to employees.--~~Upon~~ EXCEPT FOR AN <--
28 EMPLOYER THAT HAS BEEN ISSUED A WAIVER UNDER SECTION 310, UPON
29 initial hiring of an employee, and annually thereafter, an
30 employer shall provide written notice of the requirements of

1 this act using the notices prepared and posted by the department
2 under section 302.

3 (b) Employer acknowledgment of leave request.--Using the
4 form prepared by the department under section 302, an employer
5 shall provide written acknowledgment to an employee when the
6 employee requests leave under this act. The acknowledgment shall
7 include:

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

10 (2) The amount of benefits.

11 (3) The procedure for filing a benefits claim with the
12 department.

13 (4) Provisions on job protection and benefits
14 continuation under section 308.

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

18 (6) The employee's ability to file a complaint ~~for~~ <--
19 ~~violations~~ ALLEGING A VIOLATION of this act. <--

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

28 (d) Employee notice to employer.--When the need for leave is
29 known to the employee at least 30 days in advance, the employee
30 shall provide written or verbal notice to the employer of the

1 need and schedule for taking leave at least 30 days prior to
2 taking leave. The employee shall make a reasonable effort to
3 schedule leave in a manner that does not unduly disrupt the
4 operations of the employer. For all other absences, the employee
5 shall notify the employer as soon as practicable, including if
6 the need arises immediately before or after the employee has
7 reported for work.

8 Section 502. Erroneous payments and disqualification for
9 benefits.

10 (a) Employee disqualification.--A covered individual is
11 disqualified from receiving benefits for one year if the
12 individual is determined by the department to have willfully
13 made a false statement or misrepresentation regarding a material
14 fact, or willfully failed to report a material fact, to obtain
15 benefits under this act.

16 (b) Incorrect payment of benefits.--

17 (1) If benefits under this act are paid erroneously
18 without fault or for a claim that is subsequently rejected
19 after benefits are paid, the department may seek repayment
20 through a reasonable reduction in any future benefits due the
21 recipient.

22 (2) If benefits under this act are paid as a result of
23 willful misrepresentation by the recipient, the recipient
24 shall be liable to repay a sum equal to the amount of
25 benefits derived through that willful misrepresentation and
26 the recipient shall be further disqualified for benefits as
27 specified in subsection (a).

28 (3) If family and medical leave compensation is paid to
29 a covered employee erroneously or as a result of willful
30 misrepresentation by the employee, or if a claim for family

1 and medical leave compensation is rejected after compensation
2 is paid, the department may seek repayment of benefits from
3 the employee having received the compensation and may also,
4 in the case of willful misrepresentation, seek payment of a
5 penalty in the amount of 50% of the benefits paid as a result
6 of the misrepresentation. The department may waive, in whole
7 or in part, the amount of any of the payments if the recovery
8 would be against equity and good conscience.

9 (c) Proof of wages.--During the appeals process as
10 established under section 302(c), a covered employee's proof of
11 wages may be proven:

12 (1) as provided under section 303(c);

13 (2) by testimony of the employer that is presented under
14 oath at a hearing under section 505; or

15 (3) by testimony of the covered employee, if found
16 credible by the judge during a hearing under section 505.

17 Section 503. Elective coverage.

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

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

25 (2) Supplying all income information that the department
26 deems necessary.

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

29 (b) Withdrawal from coverage.--A self-employed person who
30 has elected coverage may withdraw from coverage within 30 days

1 after the end of the three-year period of coverage, or at other
2 times as the department may prescribe. Upon filing written
3 notice with the department, the self-employed person's
4 withdrawal from coverage shall take effect no later than 30 days
5 after filing the notice of withdrawal.

6 Section 504. Violations.

7 An employer that violates the requirements of sections 308,
8 309 or 501 shall be subject to the penalties as specified in 29
9 U.S.C. § 2617 (relating to enforcement).

10 Section 505. Judicial review.

11 Judicial review of any decision regarding the denial of
12 benefits or an appeal of any violation of this act shall be
13 permitted in Commonwealth Court, as required under 42 Pa.C.S. §
14 763 (relating to direct appeals from government agencies), after
15 a party aggrieved thereby has exhausted all administrative
16 remedies established by the department.

17 Section 506. Family and Medical Leave ~~Insurance~~ Fund. <--

18 (a) Fund established.--The Family and Medical Leave
19 ~~Insurance~~ Fund is established as a nonlapsing fund in the State <--
20 Treasury.

21 (b) Deposit of money.--Money from employee payroll ~~premium~~ <--
22 contributions paid under section 306 and any financial penalties
23 imposed under this act shall be deposited into the fund and used
24 by the department for the administration of the program and the
25 payment of benefits to covered individuals.

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

30 (d) Limitations on fund.--

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

4 (2) The fund may only be used for the program authorized
5 under this act. Money in the fund may not be transferred or
6 diverted to any other purpose by administrative action.

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

10 Section 507. Annual report.

11 (a) Annual report.--

12 (1) No later than September 1, 2027, and each September
13 1 thereafter, the department shall submit a report to the
14 chairperson and minority chairperson of the Labor and
15 Industry Committee of the Senate and the chairperson and
16 minority chairperson of the Labor and Industry Committee of
17 the House of Representatives.

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

19 (i) Actual program participation by category as
20 delineated in subparagraph (ii), including total number
21 of leaves taken.

22 (ii) Beneficiary gender for leaves taken.

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

25 (iv) Payroll ~~premium~~ contribution rate calculations <--
26 for the current and previous calendar year and projected
27 rate calculations for the next three calendar years.

28 (v) Projected program participation over the next
29 three calendar years.

30 (vi) Account balances.

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

2 (viii) Recommendations for improvements to the
3 program.

4 (b) Public posting of annual report.--The department shall
5 make the report available on the department's publicly
6 accessible Internet website. Monthly data should also be made
7 available online.

8 Section 508. Public education.

9 (a) Outreach campaign.--

10 (1) The department shall conduct a public education
11 campaign to inform employees and employers regarding the
12 availability of family and medical leave benefits under this
13 act.

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

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

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

26 Section 509. Board.

27 (a) Establishment.--The department shall establish the
28 Family and Medical Leave ~~Insurance~~ Advisory Board to assist in <--
29 the implementation of the program and ensure effective public
30 outreach regarding the availability of benefits under this act.

1 (b) Composition.--The board shall be composed of the
2 following:

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

5 (2) The State Treasurer or a designee.

6 (3) THE INSURANCE COMMISSIONER OR A DESIGNEE. <--

7 ~~(3)~~ (4) The chairperson and minority chairperson of the <--
8 Labor and Industry Committee of the Senate or a designee.

9 ~~(4)~~ (5) The chairperson and minority chairperson of the <--
10 Labor and Industry Committee of the House of Representatives
11 or a designee.

12 ~~(5)~~ (6) Six members appointed by the secretary <--
13 representing an equal number of employers and employees who
14 are residents of and who work within this Commonwealth.

15 (c) Terms.--

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

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

22 (d) Quorum.--A majority of the members of the board
23 participating in person or by video conference shall constitute
24 a quorum.

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

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

1 (g) Expenses.--Members shall not receive compensation but
2 shall be reimbursed for actual expenses incurred in service of
3 the board.

4 Section 510. Regulations.

5 (a) Duty of department.--In addition to the necessary
6 regulations under sections 302(c) and ~~303(g)~~ 303(I), the <--
7 department ~~shall~~ MAY promulgate additional regulations as <--
8 necessary to implement and administer this act.

9 (b) Publication.--Proposed regulations shall be submitted to
10 the Legislative Reference Bureau for publication in the next
11 available issue of the Pennsylvania Bulletin, as required by the
12 act of July 31, 1968 (P.L.769, No.240), referred to as the
13 Commonwealth Documents Law, no later than one year after the
14 effective date of this section.

15 Section 511. Right of action.

16 (a) Civil action by employee.--An action to recover damages
17 or other appropriate civil or equitable relief for a violation
18 of section 308, 309 or 501 may be maintained against an employer
19 in a court of competent jurisdiction in the Commonwealth by one
20 or more employees.

21 (b) Fees and costs.--The court, in an action under this
22 section, shall, in addition to any judgment awarded to the
23 plaintiff, allow reasonable attorney fees and other costs of the
24 action to be paid by the defendant.

25 (c) Limitations.--An action brought by an employee under
26 subsection (a) shall terminate on the filing of a complaint by
27 the secretary in an action under subsection (d).

28 (d) Civil action by secretary.--The secretary may bring an
29 action in Commonwealth Court to recover damages and other
30 appropriate relief.

1 (e) Money recovered by secretary.--Any money recovered by
2 the secretary shall be held in a special deposit account and
3 shall be paid directly to each employee affected within 60 days
4 of receipt.

5 CHAPTER 21

6 MISCELLANEOUS PROVISIONS

7 Section 2101. Effective date.

8 This act shall take effect in 180 days.