
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 580 Session of
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MARCH 28, 2024

REFERRED TO LABOR AND INDUSTRY, MARCH 28, 2024

AN ACT

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

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18 The General Assembly of the Commonwealth of Pennsylvania
19 hereby enacts as follows:

20 CHAPTER 1

21 PRELIMINARY PROVISIONS

22 Section 101. Short title.

23 This act shall be known and may be cited as the Pennsylvania
24 Family and Medical Leave Act.

25 Section 102. Legislative intent.

26 The General Assembly finds and declares as follows:

27 (1) Paid family and medical leave promotes the physical
28 and emotional health of children and their families.

29 (2) Paid family and medical leave has a positive impact
30 on economic stability and ensures competitive viability for

1 all businesses, but particularly smaller businesses.

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

4 Section 103. Definitions.

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

8 "Abuse of a vulnerable adult." The term includes:

9 (1) Force or threat of force of inappropriate use of
10 medications or physical or chemical restraints.

11 (2) Misuse of power or authority granted to a person
12 through a power of attorney or by a court in a guardianship
13 or conservatorship proceeding that results in unreasonable
14 confinement or restriction of liberty.

15 (3) An act of violence against, or the taking,
16 transferring, concealing, harming or disposing of, an
17 emotional support or service animal owned, possessed or held
18 by a vulnerable adult.

19 (4) The failure of a caregiver to provide goods, care or
20 services essential to avoid a clear and serious threat to the
21 physical or mental health of a vulnerable adult.

22 (5) An act or course of conduct by a caregiver against a
23 vulnerable adult or a vulnerable adult's resources, without
24 the informed consent of the vulnerable adult or with consent
25 obtained through misrepresentation, coercion or threats of
26 force, that results in monetary, personal or other benefit,
27 gain or profit for the perpetrator or monetary or personal
28 loss to the vulnerable adult.

29 (6) The desertion of a vulnerable adult by a caregiver.

30 (7) Knowingly restricting the movement or independence

1 of a vulnerable adult without the vulnerable adult's consent
2 by removing means of transportation, communication or access
3 to other activities of daily living, including removing
4 access to assistive technology, communication devices or
5 mobility aids.

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

9 "Attesting third party." A disability service organization
10 manager or coordinator, caregiver agency coordinator or manager,
11 law enforcement official, licensed health care professional,
12 licensed social worker, victim advocate or victim service
13 provider.

14 "Authorized reason for leave for a qualifying act of
15 violence." Leave for a covered individual or to assist a family
16 member whom the covered individual is caring for, to:

17 (1) Seek or obtain medical attention, rehabilitative
18 services, accessibility equipment or other treatment related
19 to a physical or mental injury or disability caused or
20 aggravated by the applicable qualifying act.

21 (2) Recover from a physical or mental injury or
22 disability caused or aggravated by the applicable qualifying
23 act.

24 (3) Seek or obtain services from a victim service
25 provider in relation to the applicable qualifying act.

26 (4) Seek or obtain mental health treatment or other
27 counseling in relation to the applicable qualifying act.

28 (5) Relocate or engage in the process of securing a new
29 residence due to the applicable qualifying act, including,
30 but not limited to, securing temporary or permanent housing

1 or enrolling children in a new school.

2 (6) Seek or obtain financial services or meet with a
3 financial professional to address financial issues resulting
4 from the applicable qualifying act.

5 (7) Seek, obtain or provide child care or care to a
6 care-dependent adult necessary as a result of the applicable
7 qualifying act.

8 (8) Seek or obtain legal services related to or
9 resulting from the applicable qualifying act.

10 (9) Prepare for, participate in or attend any civil,
11 administrative or criminal legal proceeding relating to or
12 resulting from the applicable qualifying act.

13 (10) Make modifications to a home or vehicle necessary
14 to create usability of and accessibility to the home or
15 vehicle due to an injury sustained in a qualifying act.

16 (11) Seek or obtain new caregiver services.

17 (12) Take any other actions necessary to protect or
18 restore physical, mental, emotional or economic well-being as
19 a result of the applicable qualifying act.

20 "Benefits." The monetary allowances payable to a covered
21 individual as family and medical leave during an approved family
22 and medical leave under the program in accordance with this act.

23 "Board." The Pennsylvania Family and Medical Leave Act
24 Advisory Board established under section 509.

25 "Claim." The filing of a written application with the
26 department for the receipt of benefits.

27 "Covered individual." An employee, or a self-employed person
28 who elects coverage pursuant to section 503, who meets the
29 following requirements, as applicable:

30 (1) Is currently employed in this Commonwealth or was

1 previously employed in this Commonwealth within 120 days of
2 separation from employment.

3 (2) Meets the employment and income eligibility
4 requirements under section 303.

5 (3) Meets the requirements of this act as to the receipt
6 of benefits.

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

8 "Covered service member." A current or former member of the
9 armed forces of the United States, including a current or former
10 member of a reserve component of the armed forces of the United
11 States or the Pennsylvania National Guard, who meets any of the
12 following requirements:

13 (1) Is undergoing medical treatment, recuperation or
14 therapy.

15 (2) Is otherwise in outpatient status.

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

24 "Department." The Department of Labor and Industry of the
25 Commonwealth.

26 "Domestic violence." The occurrence of any of the following
27 acts between family or household members as defined in 23
28 Pa.C.S. § 6102(a) (relating to definitions):

29 (1) Intentionally, knowingly or recklessly causing, or
30 attempting to cause, bodily injury, serious bodily injury or

1 sexual violence.

2 (2) Placing another individual in reasonable fear of
3 imminent serious bodily harm.

4 (3) An act of domestic and other violence as defined in
5 55 Pa. Code § 3041.3 (relating to definitions).

6 (4) The infliction of false imprisonment under 18
7 Pa.C.S. § 2903 (relating to false imprisonment).

8 "Employee." An individual who is employed by an employer
9 doing business in this Commonwealth. The term includes a self-
10 employed individual.

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

13 "Family." Includes any of the following:

14 (1) A biological child, adopted or foster child,
15 stepchild or legal ward, a child of a domestic partner or a
16 child to whom an employee stands in loco parentis, regardless
17 of age.

18 (2) A biological parent, foster parent, stepparent or
19 adoptive parent or legal guardian of an employee or an
20 employee's spouse or domestic partner or an individual who
21 stood in loco parentis when the employee or the employee's
22 spouse or domestic partner was a minor child.

23 (3) An individual to whom the employee is legally
24 married under the laws of any state or a domestic partner of
25 an employee as registered under the laws of any state or
26 political subdivision.

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

30 (5) An individual who regularly resides in the

1 employee's home or where the relationship creates an
2 expectation that the employee cares for the individual and
3 that the individual depends on the employee for care. The
4 term does not include an individual who simply resides in the
5 same home with no expectation that the employee care for the
6 individual.

7 "Family and medical leave." Benefits approved and payable to
8 covered individuals under the program.

9 "Fund." The Family and Medical Leave Fund established under
10 section 506.

11 "Health care provider." A health care center or a person,
12 including a corporation, university or other educational
13 institution licensed or approved by the Commonwealth to provide
14 health care or professional medical services, including a
15 physician, certified nurse midwife, mental health care provider,
16 hospital, nursing home, birth center or any other person
17 determined by the department to be providing health care
18 services.

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

21 "Medical certification." Written certification from a health
22 care provider on a form prepared by the department that verifies
23 the serious health condition prompting the filing of a claim and
24 receipt of benefits by a covered individual pursuant to this
25 act.

26 "Program." The Pennsylvania Family and Medical Leave Program
27 established under section 301.

28 "Qualifying act of violence." An act, conduct or pattern of
29 conduct that could constitute any of the following, regardless
30 of whether anyone is arrested or charged with committing a

1 crime:

2 (1) Domestic violence.

3 (2) Sexual violence.

4 (3) Stalking.

5 (4) Abuse of a vulnerable adult.

6 (5) An act or conduct in which a person uses force to
7 cause or attempt to cause physical or mental injury to
8 another. This does not include conduct arising out of the
9 ownership, maintenance or use of a motor vehicle, except when
10 the person engaging in the conduct intended to cause or
11 intended to threaten to cause physical or mental injury or
12 when the person engaging in the conduct was under the
13 influence of alcohol or a controlled substance.

14 (6) An act or conduct in which a person makes a
15 reasonably perceived or actual threat of physical or mental
16 injury to another. This does not include conduct arising out
17 of the ownership, maintenance or use of a motor vehicle,
18 except when the person engaging in the conduct intended to
19 cause or intended to threaten to cause physical or mental
20 injury or when the person engaging in the conduct was under
21 the influence of alcohol or a controlled substance.

22 "Qualifying exigency leave." Leave for the family member of
23 a military member deployed at home or abroad for the purposes
24 specified in 29 CFR 825.126 (relating to leave because of a
25 qualifying exigency).

26 "Retaliatory personnel action." One of the following:

27 (1) Any threat, discipline, discharge, suspension,
28 demotion, reduction of hours or any other adverse action
29 taken against an employee for exercising the rights and
30 protections afforded by this act.

1 (2) Interference with or punishment for participating in
2 or acting on a complaint or appeal under this act.

3 "Secretary." The Secretary of Labor and Industry of the
4 Commonwealth.

5 "Serious health condition." An illness, injury, impairment,
6 pregnancy, recovery from childbirth or physical or mental
7 condition as defined in 29 U.S.C. § 2611(11) (relating to
8 definitions).

9 "Sexual violence." As defined under 42 Pa.C.S. § 62A03
10 (relating to definitions).

11 "Stalking." Conduct in which an individual either:

12 (1) engages in a course of conduct or repeatedly commits
13 acts toward another individual, including following the other
14 individual without proper authority:

15 (i) under circumstances which demonstrate either an
16 intent to place the other individual in reasonable fear
17 of bodily injury or to cause substantial emotional
18 distress to the other individual; or

19 (ii) which as a result intentionally, knowingly or
20 recklessly places the other individual in reasonable fear
21 of bodily injury or causes substantial emotional distress
22 to the other individual; or

23 (2) engages in a course of conduct or repeatedly
24 communicates to another individual:

25 (i) under circumstances which demonstrate or
26 communicate either an intent to place the other
27 individual in reasonable fear of bodily injury or to
28 cause substantial emotional distress to the other
29 individual; or

30 (ii) which as a result intentionally, knowingly or

1 recklessly places the other individual in reasonable fear
2 of bodily injury or causes substantial emotional distress
3 to the other individual.

4 "Statewide average weekly wage." The average amount of
5 weekly wages as determined by the department on an annual basis
6 for each calendar year pursuant to the Workers' Compensation
7 Act, which shall be posted on the department's publicly
8 accessible Internet website.

9 "Unemployment Compensation Law." The act of December 5, 1936
10 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
11 Compensation Law.

12 "Victim." Either of the following:

13 (1) An individual against whom a qualifying act was
14 committed.

15 (2) An individual who was physically present at the
16 scene of a qualifying act and witnessed the qualifying act,
17 who did not commit the qualifying act and who as a direct
18 result:

19 (i) suffers physical or mental injury; or

20 (ii) reasonably believes that the individual is
21 under the threat of physical harm.

22 "Victim advocate." An individual, whether paid or serving as
23 a volunteer, who provides services to victims under the auspices
24 or supervision of a victim service provider or a court or a law
25 enforcement or prosecution agency.

26 "Victim service provider." An agency or organization that
27 provides services to victims. The term includes:

28 (1) A rape crisis center as defined in 42 Pa.C.S. §
29 5945.1 (relating to confidential communications with sexual
30 assault counselors).

1 an approved claim for benefits under this act.

2 (d) Information sharing.--Information sharing and
3 integration technology to facilitate the disclosure of relevant
4 information or records shall be used as practicable subject to
5 consent and disclosure requirements under State law.

6 (e) Confidentiality.--Information contained in the files and
7 records pertaining to an individual filing a claim under this
8 act are confidential and shall not be open to public inspection
9 other than to public employees in the performance of their
10 official duties.

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

17 Section 302. Powers and duties of department.

18 (a) Administration of act.--The department shall be
19 responsible for the administration of this act and the fund.
20 Administration of the program for purposes of this section and
21 section 506 shall include acquisition, development and
22 operational costs related to information technology,
23 infrastructure and personnel needed to process claims and issue
24 benefits pursuant to the act.

25 (b) Powers and duties.--To fulfill its responsibilities
26 under this act, the department shall have the following powers
27 and duties:

28 (1) Calculate and set the amount of benefits payable to
29 a covered individual under section 305 initially and on an
30 annual basis thereafter.

1 (2) Provide information to employees and employers on
2 the amount to be deducted as employee payroll contributions
3 under section 306 initially and every year thereafter.

4 (3) Develop and prepare the written notices that
5 employers must distribute and provide to their employees
6 pursuant to section 501. The form of the notices shall be
7 posted on the department's publicly accessible Internet
8 website.

9 (4) Prepare and provide the medical certification form
10 referenced in section 303(f) on the department's publicly
11 accessible Internet website.

12 (5) Prepare and provide the necessary forms for filing
13 and acknowledging a benefits claim and for providing notice
14 of benefits approval to both employers and covered individual
15 employees.

16 (6) Evaluate and adjudicate claims.

17 (7) Evaluate and determine the amount of payroll
18 contributions and maximum employee contributions to ensure
19 fund solvency.

20 (8) Coordinate benefits with employers that have already
21 paid for benefits outside the fund.

22 (9) Make payments on claims.

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

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

28 (12) Develop forms necessary to ensure implementation of
29 this act.

30 (13) Develop procedures to investigate and resolve

1 complaints under this act.

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

5 (15) Promulgate regulations as necessary to administer
6 this act.

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

8 (c) Enforcement of act.--The secretary shall establish a
9 system for an administrative complaint and appeals process in
10 the case of a denial of family and medical leave benefits,
11 denial of a waiver under section 310, denial of family and
12 medical leave benefits provided through a private plan under
13 section 310 and all violations assessed under this act. The
14 system for administrative complaints and appeals process shall
15 be established by regulations promulgated by the department.
16 Procedures to ensure confidentiality of all information related
17 to any claims filed or appeals taken shall be implemented in
18 accordance with applicable laws.

19 Section 303. Eligibility for family and medical leave benefits.

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

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

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

29 (3) Has a serious health condition, including pregnancy,
30 that renders the covered individual unable to perform the

1 functions of the individual's position.

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

6 (5) Is a victim of a qualifying act of violence or has a
7 family member who is a victim of a qualifying act of violence
8 and is taking leave for an authorized reason for leave for a
9 qualifying act of violence.

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

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

15 (2) Earned at least \$2,718 in income during the 12-month
16 period prior to submitting a claim. This earned income rate
17 shall be adjusted annually by the department and reflect the
18 minimum qualifying wage to qualify for benefits under the
19 Unemployment Compensation Act.

20 (3) Not been employed by an employer that has been
21 issued a waiver under section 310.

22 (c) Proof of wages.--The fund shall not be liable for
23 payment of benefits unless the amount of wages that the covered
24 individual earned at the time of the covered individual's leave
25 is verified under section 305(a)(2) or under this subsection. If
26 a discrepancy is identified by the department in verifying wages
27 under section 305(a)(2), the department may request the
28 following documents from a covered individual to verify wages:

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

30 (2) A tax return, including IRS form W-2 and form 1099,

1 or successor forms.

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

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

6 (5) Written documentation created contemporaneously with
7 the payment of wages.

8 (d) Interaction with the Workers' Compensation Act and the
9 Unemployment Compensation Law.--To file a benefits claim and
10 receive benefits under this act, a covered individual may not
11 receive benefits for the same day under the Workers'
12 Compensation Act or the Unemployment Compensation Law.

13 (e) Filing of benefits claim.--An individual seeking
14 benefits under this act shall submit a claim to the department
15 providing the required documentation to support a claim for
16 benefits, including any necessary medical certification or
17 certification of a qualifying act of violence.

18 (f) Medical certification.--

19 (1) A covered individual shall obtain a medical
20 certification confirming a serious health condition under
21 subsection (a)(2) or (3) that justifies the filing of a claim
22 and the receipt of benefits under this act and shall make
23 that information available to the department on a form
24 prescribed by the department. When possible, the department
25 shall use Federal family and medical leave forms. Any
26 completed medical certification form regarding a covered
27 individual shall be used solely for the purpose of
28 adjudicating a claim under this act.

29 (2) Confidential medical documentation may not be
30 released by the department unless written authorization is

1 provided by an employee or covered individual.

2 (g) Qualifying act of violence certification.--

3 (1) The department may require that an employee, within
4 a reasonable period after the absence, provide documentation
5 that the employee or the employee's family member is a victim
6 of a qualifying act of violence. The employee may satisfy the
7 certification requirement by providing to the department any
8 of the following:

9 (i) a copy of a valid court order that restrains the
10 person alleged to have committed the qualifying act of
11 violence from contact with the employee or family member
12 of the employee;

13 (ii) medical or mental health records indicating
14 that the employee or family member is a victim of a
15 qualifying act of violence;

16 (iii) a police report documenting the act of which
17 the employee or family member is a victim of a qualifying
18 act of violence;

19 (iv) evidence that the person alleged to have
20 committed the qualifying act of violence has been charged
21 with or convicted of an act of which the employee or
22 family member is a victim;

23 (v) a written certification signed by an attesting
24 third party that affirms that the employee or family
25 member is a victim of a qualifying act of violence; or

26 (vi) any other form of documentation that reasonably
27 verifies that the employee or the employee's family
28 member is a victim, including a written statement signed
29 by the employee or signed by an individual authorized to
30 act on the employee's behalf.

1 (2) Furnishing documentation or providing a
2 certification under this subsection shall not waive any
3 confidentiality or privilege that may exist between the
4 employee or victim and a third party.

5 (3) The department shall not require that the employee
6 provide a certification that explains the details of the
7 qualifying act of violence. The department may not require a
8 disclosure of the details relating to a qualifying act of
9 violence or the details of an employee's or employee's family
10 member's medical condition as a condition of providing leave
11 under this act.

12 (4) All information provided to the department under
13 this subsection shall be retained in the strictest confidence
14 by the department, except to the extent that disclosure is:

15 (i) requested or consented to in writing by the
16 employee; or

17 (ii) otherwise required by applicable Federal or
18 State law in which case the department shall provide the
19 employee notice prior to any authorized disclosure.

20 (h) Married or domestic partners employed by the same
21 employer.--Individuals who are legally married or domestic
22 partners under the laws of any state or political subdivision
23 and employed by the same employer shall both be eligible for
24 benefits under this act, even when the leave runs concurrently.

25 (i) Regulations.--The department shall promulgate
26 regulations to provide for an adjudication process under this
27 act.

28 (j) Determination of eligibility.--Upon receipt of all
29 necessary documentation to support a claim for benefits from a
30 covered individual, the department shall determine eligibility

1 for benefits under this act within 20 business days.

2 Section 304. Duration of benefits.

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

6 (b) Maximum leave duration of 12 weeks.--The maximum number
7 of weeks during which benefits are payable under section 303(a)
8 (2), (4) or (5) in an application year is 12 weeks.

9 (c) Total maximum duration.--The duration of leave under
10 subsections (a) and (b) combined may not exceed a total number
11 of 20 weeks in any one application year regardless of reason.

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

15 (1) after the claim is filed and approved by the
16 department; or

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

18 (e) Payment of benefits.--After the initial payment of
19 benefits, subsequent payments shall be made weekly thereafter
20 for the duration of the approved leave.

21 Section 305. Amount of benefits.

22 (a) Calculation of benefits.--

23 (1) The benefits payable to a covered individual shall
24 be calculated as follows:

25 (i) the portion of a covered individual's average
26 weekly wage that is equal to or less than 50% of the
27 Statewide average weekly wage shall be replaced at a rate
28 of 90%; and

29 (ii) the portion of a covered individual's average
30 weekly wage that exceeds 50% of the Statewide average

1 weekly wage shall be replaced at a rate of 50%.

2 (2) The calculation of a covered individual's average
3 weekly wage shall be as follows:

4 (i) If at the time the leave commences the wages are
5 fixed by the week, the amount fixed shall be the average
6 weekly wage.

7 (ii) If at the time the leave commences the wages
8 shall be fixed by the month, the average weekly wage
9 shall be the monthly wage fixed multiplied by 12 and
10 divided by 52.

11 (iii) If at the time the leave commences the wages
12 are fixed by the year, the average weekly wage shall be
13 the yearly wage fixed divided by 52.

14 (iv) If at the time the leave commences the wages
15 are fixed by any manner not provided under this
16 subsection, the average weekly wage shall be calculated
17 by dividing by 13 the total wages earned in the employ of
18 the employer in each of the highest three of the last
19 four consecutive periods of 13 calendar weeks in the 52
20 weeks immediately preceding the leave period, and by
21 averaging the total amounts earned during these three
22 periods.

23 (v) If the covered employee has not been employed by
24 the employer for at least three consecutive periods of 13
25 calendar weeks in the 52 weeks immediately preceding the
26 leave period, the average weekly wage shall be calculated
27 by dividing by 13 the total wages earned in the employ of
28 the employer for any completed period of 13 calendar
29 weeks immediately preceding the leave period, and by
30 averaging the total amounts earned during the periods.

1 (vi) If the employee has worked less than a complete
2 period of 13 calendar weeks and does not have fixed
3 weekly wages, the average weekly wage shall be the hourly
4 wage rate multiplied by the number of hours the employee
5 was expected to work per week under the terms of
6 employment.

7 (vii) Except as provided in subparagraph (v) or
8 (vi), in occupations which are exclusively seasonal and
9 therefore cannot be carried throughout the year, the
10 average weekly wage shall be taken to be one-fifteenth of
11 the total wages which the employee has earned from all
12 occupations during the 12 calendar months immediately
13 preceding the leave, unless it be shown that during the
14 year, by reason of exceptional causes, the method of
15 calculation does not clearly provide the earnings of the
16 employee, in which case the period for calculation shall
17 be extended so far as to give a basis for the fair
18 ascertainment of average weekly earnings.

19 (3) As used in this subsection, the terms "average
20 weekly wage" and "total wages" shall include board and
21 lodging received from the employer and gratuities reported to
22 the United States Internal Revenue Service by or for the
23 employee for Federal income tax purposes. The terms shall not
24 include:

25 (i) Amounts deducted by the employer under the
26 contract of hiring for labor furnished or paid for by the
27 employer and necessary for the performance of the
28 contract by the employee.

29 (ii) Deductions from wages due to the employer for
30 rent and supplies necessary for the employee's use in the

1 performance of labor.

2 (iii) Fringe benefits, including employer payments
3 for or contributions to a retirement, pension, health and
4 welfare, life insurance, Social Security or any other
5 plan for the benefit of the employee or the employee's
6 dependents.

7 (4) The amount of any bonus, incentive or vacation
8 payment earned on an annual basis shall be excluded from the
9 calculations under paragraph (2) (i), (ii), (iii), (iv), (v)
10 or (vi). Those payments, if any, shall instead be divided by
11 52 and the amount shall be added to the average weekly wage
12 otherwise calculated under paragraph (2) (i), (ii), (iii),
13 (iv), (v) or (vi).

14 (5) If an employee is working under concurrent contracts
15 with two or more employers, the wages from all employers
16 shall be considered.

17 (b) Limitation.--

18 (1) In no case shall the weekly benefits payable to a
19 covered individual be more than the Statewide average weekly
20 wage.

21 (2) The application of the Statewide average weekly wage
22 on a claim shall begin on the date that the basis for the
23 receipt of benefits under section 303(a) arises.

24 (3) If a claim carries over from one year into another
25 and the Statewide average weekly wage is adjusted, the most
26 recent Statewide average weekly wage shall be used in
27 calculating all future payments.

28 (c) Adjustment of benefits calculation.--The department
29 shall adjust the maximum family and medical leave benefit cap
30 established in subsection (a) annually based on the Statewide

1 average weekly wage and shall transmit notice of the revised
2 family and medical leave benefit rates to the Legislative
3 Reference Bureau for publication in the next available issue of
4 the Pennsylvania Bulletin on an annual basis.

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

8 Section 306. Contributions.

9 (a) Payment into the program.--All persons employed in this
10 Commonwealth, except persons employed by an employer issued a
11 waiver under section 310, shall be required to contribute to the
12 program for the purpose of financing the program.

13 (b) Commencement of payroll contributions.--Payroll
14 contributions into the fund for the purpose of financing the
15 program shall commence at least one year prior to the payment of
16 benefits from the fund to covered individuals.

17 (c) Calculation of payroll contributions.--The amount
18 payable through employee payroll contributions shall be set at a
19 percentage of an individual employee's wages to initiate
20 payments into the program. The following shall apply:

21 (1) The payroll contribution shall be calculated using
22 an actuarial experience study that shall take into account
23 all available data. The rate shall be set at an amount to
24 ensure solvency of the fund but shall not exceed 1% of an
25 individual employee's wages.

26 (2) Every year thereafter, the department shall evaluate
27 and determine the amount of payroll contributions and maximum
28 employee contributions necessary to finance and adequately
29 support the program.

30 (3) The payroll contribution rate shall be posted on the

1 department's publicly accessible Internet 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 contributions.

5 (e) Penalty for failure to withhold.--Except for an employer
6 issued a waiver under section 310, an employer who fails to
7 withhold payroll contributions in accordance with this act shall
8 be subject to those penalties enforceable through the act of
9 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
10 1971, for failure to properly withhold wages for income tax and
11 sales and use tax purposes.

12 Section 307. Reduced leave schedule.

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

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

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

27 Section 308. Employment protections.

28 (a) Restoration of employment position.--A covered
29 individual who takes leave pursuant to this act shall, upon the
30 expiration of that leave, be restored by the employer to the

1 position previously held by the covered individual when the
2 leave commenced, or to a position with equivalent seniority,
3 status, employment benefits, pay and other terms and conditions
4 of employment.

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

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

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

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

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

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

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

4 Section 309. Coordination of benefits.

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

9 (b) Coordination with other paid leave.--An employee may
10 elect to utilize paid leave available under any other Federal or
11 State law, collective bargaining agreement or employer policy
12 prior to receiving benefits under this act, provided that the
13 paid leave does not conflict with Federal law. Employers shall
14 provide employees with written notice of the opportunity to make
15 the election and inform employees how leave will be coordinated
16 absent any election.

17 (c) Employer's obligation.--This act does not diminish an
18 employer's obligation to comply with any of the following that
19 provide more generous leave:

20 (1) A collective bargaining agreement.

21 (2) An employer policy.

22 (3) Any other Federal or State law.

23 (d) Prohibition on subsequent collective bargaining
24 agreement or employer policy.--An individual's right to leave
25 and the payment of benefits under this act may not be diminished
26 by a collective bargaining agreement entered into or renewed, or
27 an employer policy adopted or retained, after the effective date
28 of this subsection. Any agreement by an individual to waive the
29 individual's rights under this act is void as against public
30 policy.

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

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

13 Section 310. Employer waiver to use private plan.

14 (a) Waiver.--An employer may apply to the department for a
15 waiver to waive the employer's obligations under this chapter
16 with a private plan. The application shall be submitted on a
17 form and in a manner prescribed by the department. The
18 department shall approve a private plan and issue a waiver under
19 this section if, in accordance with subsection (b), a private
20 plan confers all of the same rights, protections and benefits
21 provided to employees under this chapter and if the employer
22 provides evidence of a self-funded plan or insurance policy in
23 effect and has a certificate of authority to transact insurance
24 under section 208 of the act of May 17, 1921 (P.L.789, No.285),
25 known as The Insurance Department Act of 1921. The private plan
26 shall provide:

27 (1) Benefits to a covered individual under section
28 303(a) (1) and (3) for the maximum number of weeks required
29 under section 304(a) in a benefit year.

30 (2) Benefits to a covered individual under section

1 303(a) (2), (4) and (5) for the maximum number of weeks
2 required under section 304(b) in a benefit year.

3 (3) Covered individuals, in the aggregate, at least the
4 maximum number of weeks of benefits in a benefit year as
5 provided under section 304(c).

6 (4) A weekly wage replacement rate for each week of
7 benefits of at least the amount required by section 305(a).

8 (5) A maximum weekly benefit rate for each week of
9 benefits of at least the amount specified in section 305(c).

10 (6) Payment of benefits in accordance with section
11 303(f) and (g).

12 (7) The allowance of leave and benefits to be taken
13 intermittently or on a reduced schedule as authorized by
14 section 307.

15 (8) For the adjustment of the maximum weekly benefit cap
16 in accordance with the notice published annually in the
17 Pennsylvania Bulletin under section 305(c).

18 (9) That no additional conditions or restrictions on the
19 use of leave or benefits beyond those explicitly authorized
20 by this act or regulations promulgated under this act shall
21 be imposed.

22 (10) An employee covered under the private plan who is
23 eligible to receive benefits under this act, with benefits
24 under the private plan.

25 (11) That the cost to employees covered by a private
26 plan shall not be greater than the cost charged to employees
27 under section 306(c) and posted on the department's publicly
28 accessible Internet website under section 306(c) (3).

29 (b) Additional employer duties.--To be eligible for a waiver
30 under subsection (a), an employer shall meet all of the

1 following requirements:

2 (1) If the private plan is in the form of self-
3 insurance, an employer must furnish a bond running to the
4 Commonwealth, issued by an entity authorized to transact
5 surety business in this Commonwealth under Article VI(e) of
6 the act of May 17, 1921 (P.L.682, No.284), known as The
7 Insurance Company Law of 1921. The form of surety shall be on
8 a form approved by the department and in an amount required
9 by the department.

10 (2) The private plan shall provide for all eligible
11 employees throughout the employee's period of employment.

12 (3) If the private plan provides for insurance, the
13 forms of the policy must be issued by an approved insurer.

14 (4) An employer that provides a private plan under this
15 section shall provide each employee with a notice of the
16 availability of the program. The notice shall be provided to
17 each employee within five days of approval of a waiver, upon
18 hire and annually thereafter.

19 (c) Documentation to be submitted upon approval.--Upon
20 approval of an application for a waiver:

21 (1) The employer shall provide to the department all
22 reports required by regulations promulgated by the
23 department.

24 (2) If a waiver is based on the employer having a self-
25 funded plan, the employer shall provide satisfactory evidence
26 of maintenance of the form of surety as required by the
27 department under subsection (b) (1).

28 (d) Termination of waiver.--If the secretary finds that the
29 terms and conditions of a private plan granted a waiver under
30 this section have been violated, the department may terminate

1 the waiver. The department shall notify an employer if the
2 department terminated the employer's waiver. A cause for
3 termination under this subsection may include one or more of the
4 following:

5 (1) Failure to pay benefits.

6 (2) Failure to pay benefits timely and in a manner
7 consistent with this act.

8 (3) Failure to maintain an adequate security deposit.

9 (4) Misuse of private plan trust funds.

10 (5) Failure to submit reports as required by regulations
11 promulgated by the department.

12 (6) Failure to comply with this section or regulations
13 promulgated by the department.

14 (e) Protections and enforcement.--An employee covered under
15 a private plan shall retain all employee protections under
16 section 308, enforcement procedures and the appeals process
17 under section 302(c). The following shall apply:

18 (1) Applicable enforcement procedures and the appeals
19 process for benefits by an employer-funded plan shall be
20 subject to an appeal under section 302(c).

21 (2) Applicable enforcement procedures and the appeals
22 process for benefits by an insurance policy shall be subject
23 to review as outlined in the insurance policy.

24 (3) If all appeals under the insurance policy have been
25 exhausted, an individual may appeal to the Insurance
26 Department on a form and in a manner prescribed by the
27 Insurance Department.

28 CHAPTER 5

29 ADMINISTRATION AND PROCEDURES

30 Section 501. Notice.

1 (a) Employer notice to employees.--Except for an employer
2 that has been issued a waiver under section 310, upon initial
3 hiring of an employee, and annually thereafter, an employer
4 shall provide written notice of the requirements of this act
5 using the notices prepared and posted by the department under
6 section 302.

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

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

14 (2) An explanation of how benefits will be calculated.

15 (3) The procedure for filing a benefits claim with the
16 department.

17 (4) Provisions on job protection and benefits
18 continuation under section 308.

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

22 (6) The employee's ability to file a complaint alleging
23 a violation of this act.

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

1 languages spoken in the workplace.

2 (d) Employee notice to employer.--When the need for leave is
3 known to the employee at least 30 days in advance, the employee
4 shall provide written or verbal notice to the employer of the
5 need and schedule for taking leave at least 30 days prior to
6 taking leave. The employee shall make a reasonable effort to
7 schedule leave in a manner that does not unduly disrupt the
8 operations of the employer. For all other absences, the employee
9 shall notify the employer as soon as practicable, including if
10 the need arises immediately before or after the employee has
11 reported for work.

12 Section 502. Erroneous payments and disqualification for
13 benefits.

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

20 (b) Incorrect payment of benefits.--

21 (1) If benefits under this act are paid erroneously
22 without fault, or for a claim that is subsequently rejected
23 after benefits are paid, the department may seek repayment
24 through a reduction in future benefits due the recipient
25 subject to the following:

26 (i) Recoupment from future benefits shall not exceed
27 one-third of the maximum benefit amount due to the
28 recipient for any week.

29 (ii) Recoupment from future benefits shall not occur
30 more than three years after the incorrect payment of

1 benefits.

2 (2) If benefits under this act are paid as a result of
3 willful misrepresentation by the recipient, the recipient
4 shall:

5 (i) Be liable to repay a sum equal to the amount of
6 benefits derived through that willful misrepresentation.

7 (ii) Be subject to a penalty in the amount of 50% of
8 the benefits paid as a result of the misrepresentation.

9 (iii) Be disqualified for benefits as described
10 under subsection (a).

11 (c) Proof of wages.--During the appeals process, if
12 determination or proof of wages is a factor in a
13 disqualification or incorrect payment of benefits, a covered
14 employee's proof of wages may be proven:

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

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

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

20 Section 503. Elective coverage.

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

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

28 (2) Supplying all income information that the department
29 deems necessary.

30 (3) Compliance with all eligibility, employment and

1 income requirements under section 303.

2 (b) Withdrawal from coverage.--A self-employed person who
3 has elected coverage may withdraw from coverage within 30 days
4 after the end of the three-year period of coverage or at other
5 times as the department may prescribe. Upon filing written
6 notice with the department, the self-employed person's
7 withdrawal from coverage shall take effect no later than 30 days
8 after filing the notice of withdrawal.

9 Section 504. Violations.

10 An employer who violates the requirements of sections 308,
11 309 or 501 shall be subject to the penalties under 29 U.S.C. §
12 2617 (relating to enforcement).

13 Section 505. Judicial review.

14 Judicial review of any decision regarding the denial of
15 benefits or an appeal of any violation of this act shall be
16 permitted in Commonwealth Court as required under 42 Pa.C.S. §
17 763 (relating to direct appeals from government agencies) after
18 a party aggrieved thereby has exhausted all administrative
19 remedies established by the department.

20 Section 506. Family and Medical Leave Fund.

21 (a) Fund established.--The Family and Medical Leave Fund is
22 established as a nonlapsing fund in the State Treasury.

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

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

1 benefits under this act.

2 (d) Limitations on fund.--

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

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

9 (e) Other deposits.--The department may deposit into the
10 fund any other funds received for the purposes under this act.
11 Section 507. Annual report.

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

18 (1) Actual program participation by category as
19 delineated in paragraph (2), including total number of leaves
20 taken.

21 (2) Beneficiary gender for leaves taken.

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

24 (4) Payroll contribution rate calculations for the
25 current and previous calendar year and projected rate
26 calculations for the next three calendar years.

27 (5) Projected program participation over the next three
28 calendar years.

29 (6) Account balances.

30 (7) The scope and success of outreach efforts.

1 (8) Recommendations for improvements to the program.

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

6 Section 508. Public education.

7 (a) Outreach campaign.--

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

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

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

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

24 Section 509. Advisory Board.

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

30 (b) Composition of board.--The board shall be composed of

1 the following:

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

4 (2) The State Treasurer or a designee.

5 (3) The Insurance Commissioner or a designee.

6 (4) The chairperson and minority chairperson of the
7 Labor and Industry Committee of the Senate or a designee.

8 (5) The chairperson and minority chairperson of the
9 Labor and Industry Committee of the House of Representatives
10 or a designee.

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

14 (c) Terms.--

15 (1) Members specified under subsection (b)(1), (2), (3),
16 (4) and (5) shall serve for the length of the member's tenure
17 in the underlying capacity.

18 (2) Members appointed under subsection (a)(6) shall
19 serve four-year terms and shall not be eligible to serve more
20 than two full consecutive terms.

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

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

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

30 (g) Expenses.--Members shall not receive compensation but

1 shall be reimbursed for actual expenses incurred in service of
2 the board.

3 Section 510. Regulations.

4 (a) Duty of department.--In addition to the necessary
5 regulations under sections 302(c) and 303(i), the department may
6 promulgate additional regulations as necessary to implement and
7 administer this act.

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

14 Section 511. Right of action.

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

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

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

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

30 (e) Money recovered by secretary.--Money recovered by the

1 secretary shall be held in a special deposit account and shall
2 be paid directly to each employee affected within 60 days of
3 receipt.

4

CHAPTER 21

5

MISCELLANEOUS PROVISIONS

6 Section 2101. Effective date.

7

This act shall take effect in 180 days.