

2023 Regular Session

HOUSE BILL NO. 596

BY REPRESENTATIVE FREEMAN

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

EMPLOYMENT: Creates the Louisiana Family and Medical Leave Benefits Act

1 AN ACT

2 To amend and reenact R.S. 44:4.1(B)(12) and to enact Chapter 6-B of Title 23 of the

3 Louisiana Revised Statutes of 1950, to be comprised of R.S. 23:671 through 690,

4 relative to family and medical leave benefits; to provide for a short title; to provide

5 for definitions; to provide for eligibility to receive and payment of benefits; to

6 provide for the calculation and duration of benefits; to provide for leave and job

7 protection; to prohibit discrimination; to provide for the coordination of benefits; to

8 provide for enforcement; to provide for elective coverage for self-employed

9 individuals; to provide for administration of the program; to provide for civil

10 penalties for violations; to provide for legislative oversight; to provide for public

11 outreach; to provide for the sharing of technology; to provide for confidentiality of

12 records and an exception to the public records law; to provide for an effective date;

13 to create a special fund in the treasury; to provide for funding; to provide for an

14 effective date; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. Chapter 6-B of Title 23 of the Louisiana Revised Statutes of 1950,

17 comprised of R.S. 23:671 through 690, is hereby enacted to read as follows:

1 CHAPTER 6-B. FAMILY AND MEDICAL LEAVE BENEFITS2 §671. Short title

3 This Chapter shall be known and may be cited as the "Louisiana Family and
4 Medical Leave Benefits Act".

5 §672. Definitions

6 As used in this Chapter, the following terms have the meanings ascribed to
7 them:

8 (1) "Application year" means the twelve-month period beginning on the first
9 day of the calendar week in which a covered individual files an application for
10 family and medical leave benefits.

11 (2) "Average weekly wage" means the covered individual's average weekly
12 wage.

13 (3) "Base period" means the first four of the last five complete calendar
14 quarters immediately preceding the first day of a covered individual's benefit year.

15 (4) "Benefits" means paid family and medical leave benefits.

16 (5) "Benefit year" means the one-year period beginning on the Sunday
17 immediately preceding the first day that paid family and medical leave provided for
18 in this Chapter commences for the covered individual.

19 (6) "Commission" means the Louisiana Workforce Commission or its
20 successor.

21 (7)(a) "Covered individual" means an individual who performs services for
22 compensation or under any written or oral contract for hire, whether the contract is
23 expressed or implied, and who satisfies all of the following criteria:

24 (i) The covered individual satisfies the eligibility requirements for benefits
25 as provided for in this Chapter.

26 (ii) The covered individual is employed and has paid monies into the
27 Louisiana Family and Medical Leave Account Fund for the base period.

28 (iii) The covered individual's compensation is subject to withholding payroll
29 contributions for unemployment compensation benefits and the covered individual

1 has worked the length of time necessary to be entitled to receive unemployment
2 compensation benefits.

3 (8)(a) "Employee" means an individual who performs services for
4 compensation or under any written or oral contract for hire, whether the contract is
5 express or implied.

6 (b) "Employee" shall not mean an individual who meets all of the following
7 criteria:

8 (i) He is and will continue to be free from any control or direction over the
9 performance of his services.

10 (ii) His service rendered is outside the usual course of the business for which
11 the service is performed or is performed outside all the places of business of the
12 enterprise for which the service is performed.

13 (iii) He is customarily engaged in an independently established trade,
14 occupation, profession, or business.

15 (9) "Employer" is as defined in R.S. 23:1472(11) except that the term
16 "employer" shall not include any of the following:

17 (a) A self-employed individual who does not elect coverage in accordance
18 with this Chapter.

19 (b) Any agency, board, committee, department, division, commission, office,
20 or other organizational unit of the state.

21 (c) Any local governmental unit or political subdivision of the state.

22 (10) "Family member" means any of the following individuals:

23 (a) The biological, adopted, foster, or stepchild to whom a covered
24 individual stands in loco parentis.

25 (b) The biological, foster, step, or adoptive parent, or legal guardian of a
26 covered individual or a person who stood in loco parentis if the covered individual
27 is a minor child.

28 (c) A person to whom a covered individual is legally married under the laws
29 of this state.

1 (d) A grandparent or step grandparent of a covered individual or his spouse.

2 (e) A grandchild or step grandchild of a covered individual or his spouse.

3 (f) A biological, foster, or adopted sibling, or the spouse of the sibling of a
4 covered individual.

5 (g) A person with whom the covered individual has a significant personal
6 bond that could be considered familial in nature.

7 (11) "Federal Family and Medical Leave Act" means the federal law known
8 as the "Family and Medical Leave Act of 1993", 29 U.S.C. 2601 et seq.

9 (12) "Fund" means the Louisiana Family and Medical Leave Account Fund
10 created pursuant to the provisions of this Chapter.

11 (13) "Qualifying military exigency leave" means leave for the family
12 member of a military service member for any of the following reasons:

13 (a) Leave needed due to notice that the service member is being deployed in
14 seven days or less.

15 (b) Leave to attend military events and related activities of the service
16 member.

17 (c) Leave to attend child care and school activities if the leave is directly or
18 indirectly required due to the active duty call or active duty status of a family service
19 member.

20 (d) Leave to make financial and legal arrangements due to the service
21 member's absence.

22 (e) Leave to attend counseling provided by someone other than a healthcare
23 provider if the need for counseling arises from the active duty or a call to active duty
24 status of a service member.

25 (f) Leave to spend time with a service member who is on short-term,
26 temporary rest and recuperation leave during his period of deployment. The covered
27 individual may take up to five days of leave for each instance of rest and
28 recuperation.

29 (g) Leave to attend post-deployment activities of the service member.

1 (h) Any leave related to issues that arise out of active duty or a call to active
2 duty that the employer and covered individual agree will be covered.

3 (14) "Safe leave" means leave for a covered individual or a covered
4 individual's family member who is a victim of domestic violence, sexual assault, or
5 stalking. Safe leave applies if the covered individual is using leave to protect the
6 covered individual or the covered individual's family member for any of the
7 following reasons:

8 (a) To seek a protective order pursuant to applicable state laws.

9 (b) To make the covered individual's or assist in making the covered
10 individual's family member's home secure from the perpetrator of the act of domestic
11 violence, sexual assault, or stalking, or seeking new housing or shelter to escape the
12 perpetrator.

13 (c) To seek legal assistance to address any issues arising from the act of
14 domestic violence, sexual assault, or stalking or to attend and prepare for court-
15 related proceedings arising from such acts or crimes.

16 (15) "Secretary" means the secretary of the Louisiana Workforce
17 Commission or his successor.

18 (16) "Serious health condition" means an illness, injury, impairment,
19 pregnancy, recuperation from childbirth, including any impairment or injury related
20 to or resulting from domestic abuse, sexual abuse, stalking, or any physical or mental
21 condition that involves inpatient care in a hospital, hospice, or residential medical
22 care facility or continuing treatment by a healthcare provider, and which injury is not
23 eligible for workers' compensation benefits.

24 (17) "State's average weekly wage" means the average weekly wage
25 established for workers' compensation claims.

26 §673. Eligibility for benefits

27 A. Beginning eighteen months after the effective date of this Chapter, family
28 and medical leave benefits shall be payable to an employee who is a "covered
29 individual" and who meets any one of the following situations:

1 (1) Because of birth, adoption, or placement through foster care, the covered
2 individual is caring for a new child during the first year after the birth, adoption, or
3 placement, or has a need to be absent from work before an actual placement of a
4 child in order for the placement for adoption or foster care to proceed.

5 (2) The covered individual needs to care for a family member with a serious
6 health condition.

7 (3) The covered individual has a need for leave from work due to a serious
8 health condition.

9 (4) The covered individual is caring for a military service member who is the
10 covered individual's family member.

11 (5) The leave for the covered individual falls under "qualifying military
12 exigency leave".

13 (6) The leave for the covered individual falls under "safe leave".

14 B. Benefits shall be payable to a covered individual who is employed and
15 paid monies into the Louisiana Family and Medical Leave Account Fund for a base
16 period.

17 §674. Duration of benefits

18 A. The maximum number of weeks for which benefits provided for in this
19 Chapter are payable in an application year is twelve weeks. An additional four
20 weeks shall be provided for cases involving a complication related to pregnancy or
21 childbirth.

22 B.(1) Except for leave provided for in R.S. 23:673(A)(1), benefits shall not
23 be payable for the first seven consecutive calendar days in an application year, or
24 waiting period, that a covered individual is eligible for benefits.

25 (2) If the covered individual uses seven or more days of benefits in an
26 application year, the covered individual shall be paid retroactively for the seven-day
27 waiting period. This seven-day waiting period shall only occur in an application year.

28 (3) Employers shall not require a covered individual to use accrued vacation
29 or sick leave during the waiting period.

1 C. The first payment of benefits shall be made to a covered individual within
2 two weeks after the claim is filed and subsequent payments shall be made twice a
3 month.

4 §675. Amount of benefits

5 A.(1) The amount of benefits provided for in this Chapter shall be based on
6 the covered individual's average weekly wage in relation to the state's average
7 weekly wage.

8 (2) The covered individual's average weekly wage shall be calculated using
9 his earnings during a base period divided by the number of weeks in the benefit year.

10 B. A covered individual's weekly benefit amount shall be determined and
11 paid pursuant to the following parameters:

12 (1) A covered individual shall receive ninety percent of his average weekly
13 wage which is less than fifty percent of the state's average weekly wage and fifty
14 percent of his average wages that equals or exceed fifty percent of the state's average
15 weekly wage.

16 (2) The maximum weekly benefit shall be the state's average weekly wage,
17 as calculated by the secretary.

18 C. Benefits shall not be paid for less than one day or for less than eight
19 consecutive hours of family and medical leave in any one work week.

20 §676. Contributions; rate of contributions; deposit of contributions into fund

21 A. Employer and employee contributions are authorized in order to finance
22 the payment of benefits pursuant to this Chapter.

23 B. Contributions shall not be required for employees wages above the
24 contribution and benefit base limited established annually by the federal social
25 security administration pursuant to 42 U.S.C. §430.

26 C.(1)(a) Contributions shall be divided between the employer and employee
27 with forty-five percent of the contribution being paid by the employer and fifty-five
28 percent of the contribution being paid by the employee.

1 (b) An employer with twenty-five or fewer employees shall not be required
2 to pay the employer portion of this contribution.

3 (2) A self-employed person who elects coverage in accordance with this
4 Chapter shall pay only the fifty-five percent of the contribution required of an
5 employee on that individual's income from self-employment.

6 (3) A self-employed person who elects coverage under this Chapter shall
7 remit the contribution amount required by this Section directly to the commission in
8 a form and manner prescribed by the commission.

9 D.(1) Each year, the secretary shall set the contribution rate for the upcoming
10 calendar year. For the first year of benefits, the secretary shall set the contribution
11 at a rate consistent with the commission's actuarial study.

12 (2) Following the first year of benefits, the contribution rate shall be based
13 upon a percent of employee wages and at the rate necessary to obtain a total amount
14 of contributions equal to one hundred twenty percent of the benefits paid during the
15 previous fiscal year plus an amount equal to one hundred percent of the cost of
16 administration of the payment of those benefits during the previous fiscal year, less
17 the amount of net assets remaining in the fund as of June thirty of the current
18 calendar year.

19 E. All contributions shall be withheld and deposited in the fund in a manner
20 designated by the commission.

21 §677. Coordination of benefits

22 A. If time taken in which compensation is received pursuant to this Chapter
23 also qualifies as a reason for leave in accordance with the federal Family and
24 Medical Leave Act, the time that benefits are paid pursuant to this Chapter shall run
25 concurrently with leave taken in accordance with the federal Family and Medical
26 Leave Act.

27 B. An employer may require that payments made pursuant to this Chapter be
28 made concurrently or otherwise coordinated with payments made or leave allowed
29 under the terms of disability or separately designated family care leave under a

1 collective bargaining agreement or employer policy. An employer shall give the
2 employee written notice of this requirement.

3 C. The provisions of this Chapter shall not be construed to diminish an
4 employer's obligation to comply with a collective bargaining agreement or employer
5 policy, as applicable, that provides greater leave time or more generous leave to an
6 employee. A covered individual's right to leave provided for in this Chapter shall not
7 be diminished by a collective bargaining agreement entered into or renewed, or an
8 employer policy adopted or retained, after the effective date of this Chapter.

9 D. Any agreement by a covered individual to waive his rights pursuant to this
10 Chapter shall be declared null and void and against public policy.

11 §678. Leave and employment protection

12 A. After a period in which a covered individual receives family and medical
13 leave benefits or earns a waiting period credit provided for in R.S. 23:674, the
14 covered individual is entitled to be restored to an equivalent position of employment
15 in the same manner as one entitled to leave in accordance with the federal Family
16 and Medical Leave Act, with the employer from whom leave was taken under the
17 conditions described in Subsection B of this Section, provided the covered individual
18 satisfies the standards for reinstatement.

19 B. The covered individual entitled to family and medical leave benefits shall
20 have his employment benefits continued in a manner identical to that required under
21 the federal Family and Medical Leave Act for the time that the covered individual
22 is absent from work and receiving family and medical leave benefits.

23 §679. Intermittent or reduced leave schedule

24 A. A covered individual may take family and medical leave provided for in
25 this Chapter on an intermittent or reduced leave schedule.

26 B. A covered individual shall make a reasonable effort to schedule
27 intermittent or reduced leave so as not to unduly disrupt the operations of the
28 employer. The covered individual shall provide the employer with prior notice of the
29 care, medical treatment, or continuing supervision by a healthcare provider necessary

1 due to a serious health condition of a family member, in a manner which is
2 reasonable and practicable. Leave taken on an intermittent or reduced leave schedule
3 shall be prorated and not otherwise result in a reduction of the total amount of leave
4 to which a covered individual is entitled.

5 §680. Elective coverage; self-employed

6 A. A self-employed person, including an independent contractor, may elect
7 coverage provided for in this Chapter for an initial period of not less than three years
8 or a subsequent period of not less than one year immediately following another
9 period of coverage. The self-employed person shall file a written notice of election
10 to be covered with the secretary on a form promulgated by the commission. This
11 election by a self-employed person shall become effective on the date of filing the
12 written notice with the secretary.

13 B. A self-employed person who has elected coverage may withdraw from
14 coverage within thirty days after the end of the three-year period of coverage, or at
15 other times as the commission may prescribe by rule, by filing written notice with
16 the secretary, and the withdrawal shall take effect not later than thirty days after
17 filing the written notice with the secretary.

18 §681. Erroneous payments and disqualification for benefits

19 A. A covered individual shall be disqualified from benefits provided for in
20 this Chapter for one year if the covered individual willfully makes a false statement
21 or misrepresentation regarding a material fact, or willfully fails to report a material
22 fact, in order to receive benefits pursuant to this Chapter.

23 B. If family and medical leave benefits are paid erroneously or as a result of
24 willful misrepresentation, or if a claim for family and medical leave benefits is
25 rejected after benefits are paid, the commission may seek repayment of benefits. The
26 secretary may waive, in whole or in part, the amount of any payment to be made if
27 the recovery would be contrary to equity and good conscience.

1 §682. Discrimination prohibited

2 No employer shall discharge, expel, demote, or otherwise discriminate or
3 take adverse employment action against a covered individual because the covered
4 individual has filed, applied for, or used benefits provided for in this Chapter, or
5 communicated to the employer an intent to file a claim, a complaint, or an appeal,
6 or has testified or is about to testify, or has assisted in any proceeding, pursuant to
7 this Chapter, at any time, including during the waiting period and the period in which
8 the covered individual receives benefits provided for in this Chapter.

9 §683. Penalties

10 A.(1) Any covered individual who is denied restoration to an equivalent
11 position or discriminated against in violation of the provisions of this Chapter, or
12 whose rights under this Chapter are otherwise restrained or denied, shall be entitled
13 to recover a civil penalty payable from the employer of not more than two hundred
14 dollars per violation. Each day a violation occurs shall constitute a separate offense.

15 (2) The provisions of this Section shall not create or be construed to create
16 a new private right of action that is not otherwise available to the covered individual.

17 (3)(a) The secretary or his authorized representative may institute any action
18 in a court of competent jurisdiction to enforce compliance with any provision of this
19 Chapter.

20 (b) In addition to any other remedy, the secretary or his authorized
21 representative may apply to the appropriate district court for injunctive relief.

22 B. The penalty authorized in this Section shall not exceed the total
23 compensation the covered individual would have received had he not been on family
24 or medical leave.

25 §684. Administration of the program

26 A. The commission shall establish and administer a family and medical leave
27 program and pay benefits as specified in this Chapter.

28 B. The commission shall implement and enforce this Chapter and is
29 authorized and directed to promulgate rules and regulations in accordance with the

1 Administrative Procedure Act, R.S. 49:950 et seq., necessary for the implementation
2 of the provisions of this Chapter, including but not limited to appeals, reasonable
3 certification, and notice requirements for covered individuals.

4 C. The commission shall notify an employer within five business days of a
5 claim being filed pursuant to this Chapter. The commission shall use information
6 sharing and integration technology to facilitate the disclosure of relevant information
7 or records if the covered individual gives written consent to the disclosure as
8 required by law.

9 D.(1) Except as provided in Paragraph (2) of this Subsection, information
10 contained in the files and records pertaining to a covered individual pursuant to this
11 Chapter shall be confidential and not open to public inspection, as provided for in
12 R.S. 44:4.1(B)(12).

13 (2) Information contained in the files and records pertaining to a covered
14 individual pursuant to this Chapter shall be available to any of the following:

15 (a) Public employees in the performance of their official duties.

16 (b) The covered individual.

17 (c) An authorized representative of the covered individual, designated by the
18 covered individual to act in the covered individual's interests, may review records or
19 receive specific information from the records only upon written authorization from
20 the covered individual to release his records.

21 §685. Public outreach

22 A. The commission shall conduct a public education campaign to inform
23 workers and employers regarding the availability of paid family and medical leave
24 benefits.

25 B. The commission may use no more than one-half of one percent of the
26 funds available in the family and medical leave program in a given calendar year to
27 pay for the public education program. Outreach information shall be available in
28 English and other languages spoken by more than five percent of the state's
29 population as that group's primary language.

1 §686. Sharing technology

2 The commission may use state data collection and technology to the extent
3 possible in order to minimize the cost of the program and to integrate the program
4 with existing state policies and programs.

5 §687. Legislative oversight; reports

6 A. Beginning eighteen months after the effective date of this Chapter, the
7 commission shall report quarterly to the House and Senate committees on labor and
8 industrial relations and the committees shall have legislative oversight of the
9 program.

10 B. The report required in this Section shall advise the legislature of projected
11 and actual program participation, contribution rates, fund balances, and outreach
12 efforts by the department.

13 §688. Federal income tax

14 If the Internal Revenue Service determines that benefits payable pursuant to
15 this Chapter are subject to federal income tax, the commission shall advise a covered
16 individual filing a new claim for family and medical leave benefits, at the time of
17 filing the claim, of all of the following:

18 (1) The Internal Revenue Service has determined that family and medical
19 leave benefits are subject to federal income tax.

20 (2) Any requirement that exists pertaining to estimated tax payments.

21 (3) The covered individual may have federal income tax deducted and
22 withheld from his benefits at the amount specified in the Internal Revenue Code.

23 (4) The covered individual may change a previously elected withholding
24 status.

25 (5) Amounts deducted and withheld from benefits shall remain in the family
26 and medical leave account until transferred to the federal taxing authority as payment
27 of income tax.

28 (6) The secretary shall follow all procedures specified by the Internal
29 Revenue Service pertaining to the deduction and withholding of income tax.

1 §689. Louisiana Family and Medical Leave Account Fund; creation; administration

2 A. There is hereby created in the state treasury a special fund to be known as
3 the "Louisiana Family and Medical Leave Account Fund", hereinafter referred to as
4 the "fund". All monies that are deposited or paid into the fund shall be appropriated
5 and made available to the secretary of the commission and shall be expended solely
6 for the purpose of defraying the cost of the administration of this Chapter and the
7 payment of benefits authorized in this Chapter.

8 B. The fund may receive any and all grants, contributions, or appropriations
9 from the state or the United States, any federal agency, or from any other source, to
10 carry out the provisions of this Chapter.

11 C. After compliance with the requirements of Article VII, Section 9 of the
12 Constitution of Louisiana relative to the Bond Security and Redemption Fund, all
13 monies in the fund shall be deposited, administered, and disbursed in the same
14 manner and under the same conditions and requirements as provided by law for other
15 special funds in the state treasury, except that monies in the fund shall not be
16 commingled with other state funds, but shall be maintained in a separate account in
17 the state treasury. The state treasurer shall, as provided by law, require collateral
18 security from a depository bank in the full amount of monies on deposit from the
19 fund and the depository bank may pledge collateral security which collateral security
20 shall be kept separate and distinct at all times from any collateral taken by the state
21 treasury for other state funds. This collateral security shall be pledged at an amount
22 not to exceed face value. Any balances in the fund shall not lapse at any time, but
23 shall be continuously available to the administrator for expenditure consistent with
24 this Chapter.

25 §690. Approved private plans; requirements; withdrawal; fines for violation;
26 administrative cost assessment

27 A.(1) An employer may apply to the commission for approval to meet his
28 obligations pursuant to this Chapter through a private plan. In order to be approved,
29 a private plan shall confer all of the same rights, protections and benefits provided

1 to an employee pursuant to this Chapter and shall impose no additional conditions
2 or restrictions on benefits or employment protections pursuant to R.S. 23:678,
3 beyond those explicitly authorized by this Chapter.

4 (2) The cost to employees covered by a private plan shall not be greater than
5 the cost charged to employees under a state plan.

6 B. The following requirements must be satisfied for the commission to
7 approve a private plan:

8 (1) When the private plan is in the form of self-insurance, the employer shall
9 furnish a bond to the state with a surety company authorized to transact business in
10 the state in a form, amount and manner prescribed by the commission.

11 (2) The private plan must provide coverage for all employees of the
12 employer throughout the period of employment with the employer.

13 (3) When the private plan is in the form of a third party that provides for
14 insurance, the form of the policy shall be issued by an insurer approved by the state.

15 (4) Written notice shall be provided to an employee covered by the private
16 plan, which shall include all of the following:

17 (a) All details regarding benefits.

18 (b) The employee's share of contributions.

19 (c) A statement about enforcement for any violations.

20 (d) A statement that discrimination or retaliation against a person's request
21 or claim for or use of benefits pursuant to this Chapter is prohibited.

22 C. The commission shall withdraw approval for a private plan granted
23 pursuant to this Section for any of the following reasons:

24 (1) When any terms or conditions of the plan have been violated.

25 (2) When the funds for the private plan have been misused.

26 (3) When the employer has failed to comply with any other requirements
27 issued by the commission.

28 D. An employee covered by an approved private plan shall retain all
29 applicable rights provided for in R.S. 23:678.

1 E. A contested determination, denial of family and medical leave insurance
2 benefits, or an alleged violation of this Chapter by a private plan is subject to
3 enforcement by the commission in the same manner provided for in R.S. 23:683.

4 F. An employer or third-party insurer who offers a private plan that violates
5 the provisions of this Section shall be assessed a fine by the commission.

6 G.(1) The secretary shall annually determine the total amount expended by
7 the commission for cost arising out of the administration of private plans.

8 (2) Each employer who offers a private plan pursuant to this Section shall
9 reimburse the commission for the costs arising out of the private plan in an amount,
10 form, and manner determined by the commission.

11 (3) The commission shall deposit any payment received pursuant to this
12 Section in the fund.

13 Section 2. R.S. 44:4.1(B)(12) is hereby amended and reenacted to read as follows:

14 §4.1. Exceptions

15 * * *

16 B. The legislature further recognizes that there exist exceptions, exemptions,
17 and limitations to the laws pertaining to public records throughout the revised
18 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
19 limitations are hereby continued in effect by incorporation into this Chapter by
20 citation:

21 * * *

22 (12) R.S. ~~23:684~~, 1177, 1197, 1200.7, 1291, 1292, 1293, 1306, 1660, 1671

23 * * *

24 Section 3. The Louisiana Legislature finds that Louisiana law has historically
25 provided two wage replacement programs to provide income security to employees who find
26 themselves unable to work. First, the unemployment insurance benefit program was enacted
27 for workers who were laid off from their jobs. Second, the workers' compensation benefits
28 system was enacted to cover workers who were injured in the course and scope of
29 employment. Historically, Louisiana has not provided for all other hardships which could

1 render an employee unable to work through no fault of his own; namely those hardships
 2 related to an employee's or family member's serious sickness or illness, hardships resulting
 3 from a family member serving in the military, or certain hardships related domestic violence,
 4 sexual assault, or stalking. The purpose of this Act is to provide for employment benefits
 5 related to all other hardships which an employee may encounter other than job layoffs and
 6 workers' compensation injuries so as to ensure that no worker is involuntarily unemployed
 7 due to any fault other than his own.

8 Section 4. This Act shall become effective upon signature by the governor or, if not
 9 signed by the governor, upon expiration of the time for bills to become law without signature
 10 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 11 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 12 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 596 Original

2023 Regular Session

Freeman

Abstract: Creates the Louisiana Family and Medical Leave Benefits Act.

Proposed law provides that proposed law shall be known and may be cited as the "Louisiana Family and Medical Leave Benefits Act".

Proposed law provides definitions for application year, average weekly wage, base period, benefits, benefit year, commission, covered individual, employee, employer, family member, federal Family and Medical Leave Act, fund, qualifying military exigency leave, safe leave, secretary, serious health condition, and state's average weekly wage.

Proposed law provides that beginning eighteen months after the effective date of proposed law, family and medical leave benefits shall be paid to an employee who is a covered individual and who meets any of the following situations:

- (1) The covered individual is caring for a new child during the first year after birth, adoption, or placement through foster care.
- (2) The covered individual is caring for a family member with a serious health condition that renders that family member unable to care for himself.
- (3) The covered individual has a serious health condition that makes him unable to perform the functions of his position of employment.
- (4) The covered individual is caring for a military service member who is the covered individual's family member.

- (5) The leave falls under "qualifying military exigency leave".
- (6) The leave falls under "safe leave".

Proposed law provides that benefits shall be payable to a covered individual who is employed and who has paid into the La. Family and Medical Leave Account Fund for a base period.

Proposed law provides that the maximum weeks that benefits will be paid is 12 weeks. Proposed law further provides that an additional four weeks may be provided for cases involving a complication related to pregnancy or childbirth.

Proposed law provides that benefits shall not be payable for the first seven consecutive calendar days in an application year or waiting period that a covered individual is eligible for benefits. Proposed law further provides that the aforementioned provision is not applicable for benefits taken by a covered individual, who is caring for a new child during the first year after birth, adoption, or placement through foster care.

Proposed law provides that the first payment of benefits shall be made within two weeks after the claim is filed and subsequent payments shall be made twice a month.

Proposed law provides that the family and medical leave benefits shall be based on the covered individual's average weekly wage in relation to the state's average weekly wage.

Proposed law provides that the covered individual's average weekly wage shall be calculated by dividing the number of weeks in the benefit by the covered individual's earnings.

Proposed law provides that after calculating the covered individual's average weekly wage, the covered individual's weekly benefit amount shall be determined and paid pursuant to the following:

- (1) If the covered individual's calculated average weekly wage is less than 50% of the state's average weekly wage then he shall be entitled to 90% of his average weekly wage.
- (2) If the covered individual's calculated average weekly wage is equal to or greater than 50% of the state's average weekly wage then he shall be entitled to 50% of his average weekly wage.

Proposed law provides that the maximum weekly benefit shall be the state's average weekly wage, as calculated by the secretary of the La. Workforce Commission (LWC).

Proposed law provides that benefits shall not be paid for less than one day or for less than eight consecutive hours of family and medical leave in any one work week.

Proposed law provides that employer and employee contributions are hereby authorized in order to finance the payment of benefits.

Proposed law provides that contributions are not required for employee wages above the contribution and benefit base limited established annually by appropriate federal law.

Proposed law requires contributions to be divided between employers and employees, with the employers paying 45% of the contribution and employees pay 55%. Proposed law further requires a self-employed person, who elects coverage, to pay only 55% of the contribution that is required of an employee.

Proposed law exempts an employer with 25 or fewer employees from paying the employer portion of the aforementioned contribution rate.

Proposed law provides that the secretary of LWC shall determine the contribution rate for each calendar year and the secretary shall withhold and deposit all contributions into the Family and Medical Leave fund.

Proposed law provides that benefits paid pursuant to proposed law that would also qualify as a reason for leave in accordance with the federal Family and Medical Leave Act (FMLA), then benefits paid shall run concurrently with leave taken under federal FMLA.

Proposed law provides that the covered individual is entitled to be restored to an equivalent position of employment in the same manner as one is entitled to in accordance with federal FMLA, if the covered individual satisfies the standards for reinstatement.

Proposed law allows a covered individual to take family and medical leave on an intermittent or reduced leave schedule, as long as the individual makes a reasonable effort to schedule such leave is not unduly disruptive to the employer's operations and the employer receives prior notice before leave is taken.

Proposed law provides that a self-employed individual may elect for coverage provided for in proposed law for an initial period of not less than three years or a subsequent period of not less than one year immediately following another period of coverage.

Proposed law provides that the self-employed individual shall file a written notice of election of coverage with the secretary of the La. Workforce Commission (LWC) on a form promulgated by the secretary. Proposed law further provides the election of coverage will become effective on the date the written notice was filed with the secretary of LWC.

Proposed law provides that a self-employed individual may withdraw from coverage within 30 days after the end of the three-year period of coverage or at any other times as the LWC may prescribe by rule. Proposed law further provides that in order to withdraw, the self-employed individual must file a written notice with the secretary of LWC and the withdrawal shall take effect no later than 30 days after filing of the written notice.

Proposed law provides that if a covered individual willfully makes a false statement or misrepresentation in order to receive family and medical leave benefits, then the covered individual will be disqualified from receiving benefits for one year.

Proposed law provides that the LWC may seek repayment of benefits if benefits were paid erroneously or were paid as a result of willful misrepresentation or if a claim is rejected after benefits have been paid.

Proposed law provides that any covered individual who is denied restoration to an equivalent position or discriminated against shall be entitled to recover a civil penalty of \$200 per each violation. Proposed law provides that each day a violation occurs shall constitute as a separate offense.

Proposed law provides that the aforementioned penalty shall not exceed the total compensation the covered individual would have received had he not been on family or medical leave.

Proposed law provides that the LWC shall establish and administer a family and medical leave program and pay benefits as specified in proposed law.

Proposed law provides that the LWC shall notify an employer within five business days of a claim that was filed.

Proposed law requires LWC to conduct public outreach, whereby LWC will conduct a public education campaign to inform workers and employers regarding the availability of paid family and medical leave benefits.

Proposed law provides for the creation of a special fund known as the La. Family and Medical Leave Account Fund (the fund) in the state treasury.

Proposed law provides that all monies deposited or paid into the fund shall be appropriated and made available to the secretary of the LWC and shall be expended solely for the purpose of defraying the cost of administration and the payment of benefits.

Proposed law provides that an employer may apply to LWC for approval to meet his obligations as required by proposed law through a private plan. Proposed law further provides that the cost to employees covered by this private plan shall not be greater than the cost charged to employees under a state plan.

Proposed law provides that an employee shall satisfy his obligations, if the private plan complies with all of the following:

- (1) If the private plan is self-insured, the employer shall furnish a bond to the state with a surety company authorized to do business in this state.
- (2) The private plan must provide coverage to all employees throughout their period of employment with the employer.
- (3) If it is a third-party insured private plan, the policy shall be issued by an insurer approved by the state.
- (4) Written notice shall be provided to an employee covered by the private plan and the written notice contain information specified and required by proposed law.

Proposed law provides that the private plan violates the provisions of proposed law, LWC shall assess a fine against the employer.

Proposed law provides that certain files and records pertaining to proposed law are confidential and subject to public inspection.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 44:4.1(B)(12); Adds R.S. 23:671-690)