

2016 Regular Session

SENATE BILL NO. 298

BY SENATOR PETERSON

EMPLOYMENT. Creates the Louisiana Family and Medical Leave Act. (See Act)

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AN ACT

To amend and reenact R.S. 44:4.1(B)(12) and to enact Chapter 6-B of Title 23 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 23:671 through 687, relative to the payment of family and medical leave; to provide for the payment of family and medical leave benefits; to provide for definitions; to provide for eligibility; to provide for duration of benefits; to provide for the calculation of benefits; to provide for payroll taxes; to provide for leave and employment protections; to prohibit discrimination; to provide for coordination of benefits; to provide for enforcement; to provide for elective coverage for self-employed individuals; to provide for administration of the program; to provide for a fund to be established in the treasury; to provide for legislative oversight; to provide for public outreach; to provide for the sharing of technology; to provide for confidentiality; to provide for an exception to the public records law; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 6-B of Title 23 of the Louisiana Revised Statutes of 1950, comprised of R.S. 23:671 through 687, is hereby enacted to read as follows:

1 **CHAPTER 6-B. FAMILY AND MEDICAL LEAVE BENEFITS**

2 **§671. Definitions**

3 **As used in this Chapter, the following terms shall have the definitions**
4 **ascribed in this Section unless the context indicates otherwise:**

5 **(1) "Covered individual" means any person who meets all of the**
6 **following:**

7 **(a) Is an employee who is employed in a job which is subject to the**
8 **Louisiana Employment Security Law as provided for in Chapter 11 of Title 23**
9 **of the Louisiana Revised Statutes of 1950.**

10 **(b) Is an employee who has worked the requisite number of quarters to**
11 **be entitled to receive unemployment compensation benefits pursuant to the**
12 **Louisiana Employment Security Law as provided for in Chapter 11 of Title 23**
13 **of the Louisiana Revised Statutes of 1950.**

14 **(c) Meets the eligibility requirements to receive family and medical leave**
15 **insurance benefits pursuant to the eligibility requirements of this Chapter.**

16 **(d) Has been employed and for whom payroll taxes have been paid into**
17 **the Louisiana Family and Medical Leave Account Fund by or on behalf of the**
18 **employee as provided for in R.S. 23:674.**

19 **(e) Submits an application on forms promulgated by the commission.**

20 **(2) "Commission" means the Louisiana Workforce Commission.**

21 **(3) "Director" means the executive director of the Louisiana Workforce**
22 **Commission.**

23 **(4) "Employer" means that individual, company or other entity that**
24 **employs more than twenty employees and that meets the definition of**
25 **"employer" pursuant to R.S. 23:1472(11) who provides employment as defined**
26 **in R.S. 23:1472(12), except for all of the following:**

27 **(a) A self-employed individual who has not elected coverage pursuant to**
28 **R.S. 23:680.**

29 **(b) Any department, office, division, agency, commission, board,**

1 committee, or other organizational unit of the state.

2 (c) Any local government or political subdivision of the state.

3 (5) "Family member" means any of the following:

4 (a) A biological, adopted or foster child, stepchild or legal ward, or a
5 child to whom the employee stands in loco parentis.

6 (b) A biological, foster, stepparent or adoptive parent, or legal guardian
7 of an employee, or an employee's spouse, or a person who stood in loco parentis
8 when the employee or the employee's spouse was a minor child.

9 (c) A person to whom the employee is legally married under the laws of
10 Louisiana.

11 (d) A domestic partner of the employee when the employer provides
12 benefits to domestic partners as part of the employee's benefit compensation
13 package.

14 (e) A grandparent or step-grandparent of the employee or the employee's
15 spouse or domestic partner.

16 (f) A grandchild or step-grandchild of the employee or the employee's
17 spouse or domestic partner.

18 (g) A biological, foster, or adopted sibling or the spouse or domestic
19 partner of such a sibling.

20 (h) Any other individual related by blood or affinity whose close
21 association with the employee is the equivalent of a family relationship.

22 (6) "Serious health condition" means an illness, injury, impairment, or
23 physical or mental condition that involves inpatient care in a hospital, hospice,
24 or residential medical care facility or continuing treatment by a health care
25 provider, and which injury is not eligible for workers' compensation benefits as
26 provided for in Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950.

27 (7) "Application year" means the twelve-month period beginning on the
28 first day of the calendar week in which an individual files an application for
29 family leave insurance benefits.

1 **(8) "Family and medical leave insurance benefits" means the benefits**
2 **provided under the terms of this Chapter.**

3 **(9) "Federal Family Medical Leave Act" means that federal law known**
4 **as the "Family Medical Leave Act of 1993", 29 U.S.C. 2601 et seq.**

5 **(10) "Qualifying exigency leave" means leave for the family member of**
6 **a service member of the military for any of the following reasons:**

7 **(a) Leave needed because of notice of seven days or less before**
8 **deployment.**

9 **(b) Leave to attend military events and related activities.**

10 **(c) Leave to attend child care and school activities if and only if the leave**
11 **is required due, indirectly or directly, to the active duty call or active duty**
12 **status of the family member.**

13 **(d) Leave to make financial and legal arrangements for the service**
14 **member's absence or because of the absence.**

15 **(e) Leave to attend counseling provided by someone other than a health**
16 **care provider, provided that the need for counseling arises from the active duty**
17 **or call to active duty status of a covered military member.**

18 **(f) Leave to spend time with a service member who is on short-term,**
19 **temporary rest and recuperation leave during the period of deployment.**
20 **Eligible employees may take up to five days of leave for each instance of rest**
21 **and recuperation.**

22 **(g) Leave to attend post deployment activities.**

23 **(h) Any leave related to issues that arise out of active duty or a call to**
24 **active duty that an employer and employee agree should be covered.**

25 **§672. Eligibility for benefits**

26 **A. Beginning January 1, 2019, family and medical leave insurance**
27 **benefits are payable to an individual who is a "covered individual" who meets**
28 **any of the following:**

29 **(1) Because of birth, adoption, or placement through foster care, is**

1 caring for a new child during the first year after the birth, adoption, or
2 placement.

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

4 (3) Has a serious health condition that makes the covered individual
5 unable to perform the functions of the position of such employee.

6 (4) Is caring for a qualifying service member who is the covered
7 individual's next of kin.

8 (5) Has a "qualifying exigency" arising out of the deployment of a family
9 member of the covered individual.

10 B. Benefits are only payable to an individual who has been employed and
11 for whom payroll taxes have been paid into the Louisiana Family and Medical
12 Leave Account Fund by and on behalf of the employee as provided for in R.S.
13 23:674 for no less than a base period of no less than four quarters. For purposes
14 of this Section, the calculation of the base period and the calculation of quarters
15 shall be the same method provided for in Chapter 11 of Title 23 of the Louisiana
16 Revised Statutes of 1950.

17 §673. Duration of benefits

18 A. The maximum number of weeks during which family leave insurance
19 benefits are payable in an application year is twelve weeks, except if a covered
20 individual receives benefits under R.S. 23:672(A)(3), then that individual may
21 receive an additional twelve weeks of benefits.

22 B. Benefits are not payable for the first five consecutive calendar days
23 in an application year that a covered individual would otherwise be eligible for
24 benefits.

25 C. If the covered individual uses ten or more days of paid family and
26 medical leave benefits in an application year, the covered individual shall be
27 paid for the five-day waiting period. The waiting period need only be served
28 once every application year. Employers may not force an employee to use
29 accrued leave, such as vacation or sick leave, during the waiting period.

1 **D. The first payment of benefits shall be made to an individual within**
2 **two weeks after the claim is filed and subsequent payments shall be made**
3 **semimonthly thereafter.**

4 **§674. Amount of benefits**

5 **The amount of family and medical leave insurance benefits shall be**
6 **determined as follows:**

7 **(1) The weekly benefit shall be paid in the same manner as provided for**
8 **in R.S. 23:1592 and calculated in the same manner and benefit amount as**
9 **provided for in R.S. 23:1474.**

10 **(2) Family and medical leave insurance benefits are not payable for less**
11 **than one day or eight consecutive hours of family and medical leave taken in**
12 **one work week.**

13 **(3) If the Internal Revenue Service determines that family and medical**
14 **leave insurance benefits under this Chapter are subject to federal income tax**
15 **and an individual elects to have federal income tax deducted and withheld from**
16 **benefits, as described in R.S. 23:682, the commission shall deduct and withhold**
17 **the amount specified in the Internal Revenue Code.**

18 **§675. Leave and employment protection**

19 **A. After a period in which a covered individual receives family and**
20 **medical leave insurance benefits or earns waiting period credits under R.S.**
21 **23:673, the covered individual is entitled to be restored to an equivalent position**
22 **of employment in the same manner as an employee entitled to leave under the**
23 **federal Family Medical Leave Act, with the employer from whom leave was**
24 **taken under the conditions described in Subsection B of this Section, provided**
25 **that the covered individual meets the standards for reinstatement.**

26 **B. The covered individual entitled to family and medical leave insurance**
27 **benefits shall have their employment benefits continued in a manner identical**
28 **to that required under the federal Family and Medical Leave Act for the time**
29 **that the covered individual is absent from work and receiving family and**

1 medical leave insurance benefits.

2 C. This Section shall be enforced as provided in R.S. 23:678.

3 §676. Discrimination prohibited

4 No employer shall discharge, expel, demote, or otherwise discriminate
5 or take adverse employment action against an employee because the employee
6 has filed, applied for, or used benefits provided for under this Chapter or
7 communicated to the employer an intent to file a claim, a complaint, or an
8 appeal, or has testified or is about to testify, or has assisted in any proceeding,
9 under this Chapter, at any time, including during the waiting period and the
10 period in which the person receives family and medical leave insurance benefits
11 under this Chapter. This Section shall be enforced as provided in R.S. 23:678.

12 §677. Coordination of benefits

13 A. If time taken with wage replacement under this Chapter also qualifies
14 as a reason for leave under the federal Family Medical Leave Act, time paid for
15 pursuant to this Chapter shall run concurrently with leave taken under the
16 federal Family Medical Leave Act.

17 B. An employer may require that payment made pursuant to this
18 Chapter be made concurrently or otherwise coordinated with payment made
19 or leave allowed under the terms of disability or family care leave under a
20 collective bargaining agreement or employer policy. The employer must give
21 individuals in its employ written notice of this requirement.

22 C. This Chapter does not diminish an employer's obligation to comply
23 with a collective bargaining agreement or employer policy, as applicable, that
24 provides greater leave for any of the purposes in R.S. 23:672. An individual's
25 right to leave under this Chapter may not be diminished by a collective
26 bargaining agreement entered into or renewed, or an employer policy adopted
27 or retained, after the effective date of this Chapter.

28 D. Any agreement by an individual to waive the individual's rights under
29 this Chapter is null and void and against public policy.

1 **§678. Enforcement**

2 **Whoever violates a provision of this Chapter shall be subject to a civil**
3 **fine of not less than twenty dollars nor more than two hundred dollars. Each**
4 **day such violation continues shall constitute a separate offense.**

5 **§679. Erroneous payments and disqualification for benefits**

6 **A. A covered individual is disqualified from family and medical leave**
7 **insurance benefits for one year if the individual willfully made a false statement**
8 **or misrepresentation regarding a material fact, or willfully failed to report a**
9 **material fact, to obtain benefits under this Chapter.**

10 **B. If family and medical leave insurance benefits are paid erroneously**
11 **or as a result of willful misrepresentation, or if a claim for family and medical**
12 **leave benefits is rejected after benefits are paid, the commission may seek**
13 **repayment of benefits from the recipient. The director shall exercise discretion**
14 **to waive, in whole or in part, the amount of any such payments where the**
15 **recovery would be against equity and good conscience.**

16 **§680. Elective coverage; self-employed**

17 **A. A self-employed person may elect coverage under this Chapter for an**
18 **initial period of not less than three years or a subsequent period of not less than**
19 **one year immediately following another period of coverage. The self-employed**
20 **person must file a notice of election in writing with the director on a form**
21 **promulgated by the commission. The election becomes effective on the date of**
22 **filing the notice.**

23 **B. A self-employed person who has elected coverage may withdraw from**
24 **coverage within thirty days after the end of the three-year period of coverage,**
25 **or at such other times as the commission may prescribe by rule, by filing**
26 **written notice with the director, such withdrawal to take effect not sooner than**
27 **thirty days after filing the notice.**

28 **§681. Administration of the program**

29 **A. The commission shall establish and administer a family and medical**

1 leave insurance program and pay family and medical leave insurance benefits
2 as specified in this Chapter.

3 B. The commission shall promulgate rules and forms for filing claims for
4 benefits under this Chapter pursuant to the Administrative Procedure Act.

5 C. The commission shall notify the employer within five business days
6 of a claim being filed pursuant to this Chapter. The commission shall use
7 information sharing and integration technology to facilitate the disclosure of
8 relevant information or records so long as an individual consents to the
9 disclosure as required under state law.

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

14 (2) Information contained in the files and records pertaining to an
15 individual under this Chapter shall be available to any of the following:

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

17 (b) The individual.

18 (c) The authorized representative of the individual who may review the
19 records or receive specific information from the records on the presentation of
20 the signed authorization of the individual.

21 §682. Federal income tax

22 If the Internal Revenue Service determines that family leave insurance
23 benefits under this Chapter are subject to federal income tax, the commission
24 shall advise an individual filing a new claim for family leave insurance benefits,
25 at the time of filing such claim, all of the following:

26 (1) The Internal Revenue Service has determined that benefits are
27 subject to federal income tax.

28 (2) Requirements exist pertaining to estimated tax payments.

29 (3) The individual may elect to have federal income tax deducted and

1 withheld from the individual's payment of benefits at the amount specified in
2 the Internal Revenue Code.

3 (4) The individual is permitted to change a previously elected
4 withholding status.

5 (5) Amounts deducted and withheld from benefits must remain in the
6 family leave insurance account until transferred to the federal taxing authority
7 as a payment of income tax.

8 (6) The director shall follow all procedures specified by the Internal
9 Revenue Service pertaining to the deducting and withholding of income tax.

10 §683. Creation of fund

11 A. There is hereby created in the state treasury a special fund to be
12 known as the "Louisiana Family and Medical Leave Account Fund". All monies
13 which are deposited or paid into the fund shall be appropriated and made
14 available to the director and shall be expended solely for the purpose of
15 defraying the cost of the administration of this Chapter and the payment of
16 family and medical leave insurance benefits pursuant to this Chapter.

17 B. The fund may receive any and all grants, appropriations from the
18 United States of America, or any agency thereof, or from any other source, to
19 carry out the purpose of this Chapter.

20 C. After compliance with the requirements of Article VII, Section 9 of
21 the Constitution of Louisiana relative to the Bond Security and Redemption
22 Fund, all monies in this fund shall be deposited, administered, and disbursed in
23 the same manner and under the same conditions and requirements as is
24 provided by law for other special funds in the state treasury, except that monies
25 in this fund shall not be commingled with other state funds, but they shall be
26 maintained in a separate account on the books of the depository. The state
27 treasurer shall, in accordance with law, require collateral security from the
28 depository bank in the full amount of all "Louisiana Family and Medical Leave
29 Account Fund" monies on deposit, and said depository bank is authorized to

1 pledge such collateral security. The collateral security shall be kept separate
2 and distinct at all times from any collateral taken by the state treasury for other
3 state funds. Such collateral security shall be pledged at an amount not to exceed
4 face value. Any balances in this fund shall not lapse at any time, but shall be
5 continuously available to the administrator for expenditure consistent with this
6 Chapter.

7 D. Whenever, in the judgment of the treasurer, there shall be in the
8 Louisiana Family and Medical Leave Account Fund monies in excess of that
9 amount deemed by the treasurer to be sufficient to meet the current
10 expenditures properly payable therefrom, the treasurer shall have full power
11 to invest, reinvest, manage, contract, sell, or exchange investments acquired
12 with such excess funds in the manner prescribed by Louisiana law.

13 §684. Intermittent leave schedule

14 A. A covered individual shall be entitled, at the option of the employee,
15 to take this leave on an intermittent leave schedule, except that the employee
16 shall not be entitled to an intermittent leave schedule for a period exceeding
17 twenty-four consecutive weeks unless shown to be medically necessary.

18 B. The employee shall make a reasonable effort to schedule intermittent
19 leave so as not to disrupt unduly the operations of the employer. The employee
20 shall provide the employer with prior notice of the care, medical treatment, or
21 continuing supervision by a health care provider necessary due to a serious
22 health condition of a family member, in a manner which is reasonable and
23 practicable. Leave taken on an intermittent leave schedule shall not result in a
24 reduction of the total amount of leave to which an employee is entitled.

25 §685. Legislative oversight; reports

26 A. Beginning January 1, 2019, the commission shall report quarterly to
27 the Senate Committee on Labor and Industrial Relations and the House of
28 Representatives Committee on Labor and Industrial Relations which
29 committees shall have legislative oversight of the program.

1 themselves unable to work. First, the unemployment insurance benefit program was enacted
 2 for workers who are laid off from their jobs. Second, the workers' compensation benefits
 3 system was enacted to cover workers who are injured in the course and scope of
 4 employment. Historically, however, Louisiana has not provided for all other hardships which
 5 could render an employee unable to work through no fault of their own; namely those
 6 hardships related to an employee's serious sickness or illness, hardships resulting from a
 7 family member serving in the military, or hardships related to any other family emergency
 8 which would lead to a job loss. The purpose of this Act is to provide for employment
 9 benefits related to all other hardships which an employee may encounter other than job
 10 layoffs and workers' compensation injuries so as to insure that no worker is involuntarily
 11 unemployed due to any fault other than their own.

12 Section 4. This Act may be cited as the "Louisiana Family and Medical Leave
 13 Benefits Act".

14 Section 5. Except as provided for in Section 6 and Section 7 of this Act, the
 15 provisions of Section 1 and Section 2 shall become effective upon signature by the governor
 16 or, if not signed by the governor, upon expiration of the time for bills to become law without
 17 signature by the governor, as provided by Article III, Section 18 of the Constitution of
 18 Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act
 19 shall become effective on the day following such approval.

20 Section 6. This Act shall become effective only if and when the Act which provides
 21 the assessment of a payroll tax and which originated as House Bill No. _____ of
 22 the 2017 Regular Session of the Louisiana Legislature becomes effective.

23 Section 7. All rules and forms promulgated pursuant to R.S. 23:681 shall be
 24 completed no later than January 1, 2018. On or after January 1, 2019, applications may be
 25 taken pursuant to and benefits made payable pursuant to R.S. 23:672.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

SB 298 Original 2016 Regular Session Peterson

Proposed law creates the "Louisiana Family and Medical Leave Benefits Act" (FMLA).

Proposed law provides for the following definitions:

- (1) "Covered individual" means any person who meets all of the following:
 - (a) Is employed in a job which is subject to withholding payroll taxes for unemployment compensation benefits.
 - (b) Has worked the length of time necessary to be entitled to receive unemployment compensation benefits.
 - (c) Meets the eligibility requirements to receive family and medical leave insurance benefits.
 - (d) Has been employed and payroll taxes have been paid by the employee and the employer into the La. FMLA Fund.
 - (e) Submits an application on forms promulgated by the Workforce Commission.
- (2) "Commission" means the La. Workforce Commission.
- (3) "Director" means the Executive Director of La. Workforce Commission.
- (4) "Employer" means that individual, company or other entity which meets the definition of "employer" under Louisiana law for unemployment benefits except for all of the following:
 - (a) A self-employed individual who does not elect FMLA coverage.
 - (b) Any department, office, division, agency, commission, board, committee or other organizational unit of the state.
 - (c) Any local government or political subdivision of the state.
 - (d) An individual, company, or other entity which employs 20 or less employees.
- (5) "Family member" means any of the following:
 - (a) A biological, adopted or foster child, stepchild or legal ward, or a child to whom the employee stands in loco parentis.
 - (b) A biological, foster, stepparent or adoptive parent, or legal guardian of an employee or an employee's spouse or a person who stood in loco parentis when the employee or the employee's spouse was a minor child.
 - (c) A person to whom the employee is legally married under the laws of La.
 - (d) A domestic partner of the employee when the employer provides benefits to domestic partners as part of the employee's benefit compensation package.
 - (e) A grandparent or step-grandparent of employee or employee's spouse or domestic partner.
 - (f) A grandchild or step-grandchild of employee or employee's spouse or domestic partner.
 - (g) A biological, foster, or adopted sibling, or the spouse or domestic partner of

such a sibling.

- (h) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- (6) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a health care provider and which injury is not eligible for workers' compensation benefits.
- (7) "Application year" means the 12-month period beginning on the 1st day of the calendar week in which an individual files an application for family leave insurance benefits.
- (8) "Family and medical leave insurance benefits" means the benefits provided under the La. FMLA.
- (9) "Federal Family Medical Leave Act" means that federal law known as the "Family Medical Leave Act of 1993".
- (10) "Qualifying exigency leave" means leave for the family member of a service member of the military for any of the following reasons:
 - (a) Leave needed because of notice of seven days or less before deployment.
 - (b) Leave to attend military events and related activities.
 - (c) Leave to attend child care and school activities if and only if the leave is required due, indirectly or directly, to the active duty call or active duty status of the family member.
 - (d) Leave to make financial and legal arrangements for the service member's absence or because of the absence.
 - (e) Leave to attend counseling provided by someone other than a health care provider, provided that the need for counseling arises from the active duty or call to active duty status of a covered military member.
 - (f) Leave to spend time with a service member who is on short-term, temporary rest and recuperation leave during the period of deployment. Eligible employees may take up to five days of leave for each instance of rest and recuperation.
 - (g) Leave to attend post deployment activities.
 - (h) Any leave related to issues that arise out of active duty or a call to active duty that an employer and employee agree should be covered.

Proposed law provides that, beginning Jan. 1, 2019, La. FMLA insurance benefits are payable to an individual who is a "covered individual" who meets any of the following:

- (1) Because of birth, adoption, or placement through foster care, is caring for a new child during the first year after the birth, adoption, or placement.
- (2) Is caring for a family member with a serious health condition.
- (3) Has a serious health condition that makes the covered individual unable to perform the functions of the position of such employee.

- (4) Is caring for a qualifying service member who is the covered individual's next of kin.
- (5) Has a "qualifying exigency" arising out of the deployment of a family member of the covered individual.

Proposed law provides that benefits are only payable to an individual who has been employed and payroll taxes have been paid into the La. FMLA Account Fund by and on behalf of the employee as provided for in at least one year. The calculation of the length of time needed to be eligible for FMLA insurance benefits will be the same as the length of time necessary to be eligible for unemployment compensation benefits.

Proposed law provides that the maximum number of weeks during which FMLA benefits are payable in an application year is 12 weeks, except if a covered individual receives benefits because the individual has a serious health condition that makes the covered individual unable to perform the functions at work.

Proposed law provides benefits are not payable for the initial five consecutive calendar days in an application year that a covered individual would otherwise be eligible for benefits.

Proposed law provides that, if the covered individual uses 10 or more days of paid family and medical leave benefits in an application year, the covered individual will be paid for the five-day waiting period. The waiting period need only be served once every application year. Employers may not force an employee to use accrued leave, such as vacation or sick leave, during the waiting period.

Proposed law provides that the first payment of benefits must be made to an individual within two weeks after the claim is filed and subsequent payments must be made semimonthly thereafter.

Proposed law provides that the amount of FMLA insurance benefits shall be determined as follows:

- (1) The weekly benefit shall be calculated and paid in the same manner as unemployment compensation.
- (2) FMLA insurance benefits are not payable for less than one day or eight consecutive hours of family and medical leave taken in one work week.
- (3) If the IRS determines that family and medical leave insurance benefits are subject to federal income tax and an individual elects to have federal income tax deducted and withheld from benefits, the commission shall deduct and withhold the amount specified in the Internal Revenue Code.

Present law provides that unemployment compensation taxes are to be paid exclusively by the employer.

Proposed law provides that payroll taxes shall be calculated and withheld in the same manner and in the same amounts as unemployment compensation, except that the payroll taxes for the FMLA insurance benefits shall be paid 50% by the employer and 50% by employee.

Proposed law provides that, after a period in which a covered individual receives family and medical leave insurance benefits, the covered individual is entitled to be restored to an equivalent position of employment in the same manner as an employee entitled to leave under the federal Family Medical Leave Act, with the employer from whom leave was taken, provided that the covered individual meets the standards for reinstatement.

Proposed law provides that the covered individual entitled to family and medical leave

insurance benefits shall have their employment benefits continued in a manner identical to that required under the federal Family and Medical Leave Act for the time that the covered individual is absent from work and receiving family and medical leave insurance benefits.

Proposed law provides that an employer may not discharge, expel, demote, or take adverse employment action against an employee because the employee filed for, applied for, or used FMLA benefits or communicated to the employer an intent to file a claim, a complaint, or an appeal, or has testified or is about to testify for another employee in any proceeding for FMLA.

Proposed law provides, if time taken with wage replacement also qualifies as a reason for leave under the federal Family Medical Leave Act, time paid for La. FMLA shall run concurrently with leave taken under the federal FMLA.

Proposed law provides that an employer may require that FMLA payments made be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy. Proposed law further provides that the employer must give individuals in its employ written notice of this requirement.

Proposed law provides that the employer's obligation to comply with a collective bargaining agreement or employer policy that provides greater leave cannot be diminished to the level of benefits required in the La. FMLA. Proposed law provides that an employee's right to leave under the La. FMLA may not be diminished by a collective bargaining agreement entered into or renewed, or an employer policy adopted or retained, after the effective date of proposed law.

Proposed law provides that any agreement by an individual to waive the individual's rights under this the La. FMLA is null and void and against public policy.

Proposed law provides that whoever violates a provision of the La. FMLA will be subject to a civil fine of not less than \$20 nor more than \$200 dollars. Each day such violation continues shall constitute a separate offense.

Proposed law provides that a covered individual is disqualified from FMLA insurance benefits for one year if the individual willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under the FMLA.

Proposed law provides that if FMLA insurance benefits are paid erroneously or as a result of willful misrepresentation, or if a claim for family and medical leave benefits is rejected after benefits are paid, the commission may seek repayment of benefits from the recipient. Proposed law provides that the director shall exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

Proposed law provides that a self-employed person may elect coverage under the La. FMLA 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 further provides that the self-employed person must file a notice of election in writing with the director on a form promulgated by the commission and the election becomes effective on the date of filing the notice.

Proposed law provides that a self-employed person who has elected coverage may withdraw from coverage within 30 days after the end of the three-year period of coverage, or at such other times as the commission may prescribe by rule, by filing written notice with the director, such withdrawal to take effect not sooner than 30 days after filing the notice.

Proposed law provides that the commission shall establish and administer the family and medical leave insurance program and pay family and medical leave insurance benefits as specified in the La. FMLA.

Proposed law provides that the commission shall promulgate rules and forms for filing claims for benefits.

Proposed law provides that the commission shall notify the employer within five business days of a claim being filed. The commission shall use information sharing and integration technology to facilitate the disclosure of relevant information or records so long as an individual consents to the disclosure as required under state law.

Proposed law provides that information contained in the files and records pertaining to an individual are confidential and not open to public inspection, other than to public employees in the performance of their official duties. Proposed law, however, provides that the individual or an authorized representative of an individual may review the records or receive specific information from the records on the presentation of the signed authorization of the individual.

Proposed law provides that, if the IRS determines that family leave insurance benefits under the La. FMLA are subject to federal income tax, the commission must advise an individual filing a new claim for family leave insurance benefits, at the time of filing such claim, all of the following:

- (1) The IRS has determined that benefits are subject to federal income tax.
- (2) Requirements exist pertaining to estimated tax payments.
- (3) The individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits at the amount specified in the Internal Revenue Code.
- (4) The individual is permitted to change a previously elected withholding status.
- (5) Amounts deducted and withheld from benefits must remain in the family leave insurance account until transferred to the federal taxing authority as a payment of income tax.
- (6) The director shall follow all procedures specified by the federal internal revenue service pertaining to the deducting and withholding of income tax.

Proposed law provides that there is created in the state treasury a special fund to be known as the Louisiana Family and Medical Leave Account Fund. All monies which are deposited or paid into this fund are appropriated and made available to the director and shall be expended solely for the purpose of defraying the cost of the administration of the FMLA and the payment of family and medical leave insurance benefits.

Proposed law provides that the fund shall consist of payroll taxes collected pursuant to the La. FMLA. Proposed law provides that the fund may receive any and all grants, appropriations from the U.S. government, or any agency thereof, or from any other source, to carry out the purpose of the La. FMLA.

Proposed law provides that all monies in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury, except that monies in this fund shall not be commingled with other state funds, but they shall be maintained in a separate account on the books of the depository. Proposed law provides that the state treasurer shall, in accordance with law, require collateral security from the depository bank in the full amount

of all employment security administration funds on deposit, and said depository bank is authorized to pledge such collateral security. Proposed law further provides that the collateral security shall be kept separate and distinct at all times from any collateral taken by the state treasury for other state funds and that such collateral security shall be pledged at an amount not to exceed face value. Proposed law provides that any balances in this fund shall not lapse at any time, but shall be continuously available to the administrator for expenditure consistent with the purposes of the La. FMLA.

Proposed law provides that whenever, in the judgment of the treasurer, there shall be in the La. FMLA Fund monies in excess of that amount deemed by the treasurer to be sufficient to meet the current expenditures, the treasurer shall have full power to invest, reinvest, manage, contract, sell, or exchange investments acquired with such excess funds in the manner prescribed by La. law.

Proposed law provides that a covered individual shall be entitled, at the option of the employee, to take this leave on an intermittent leave schedule, except that the employee shall not be entitled to an intermittent leave schedule for a period exceeding 24 consecutive weeks unless shown to be medically necessary.

Proposed law provides the employee shall make a reasonable effort to schedule intermittent leave so as not to disrupt unduly the operations of the employer. The employee shall provide the employer with prior notice of the care, medical treatment, or continuing supervision by a health care provider necessary due to a serious health condition of a family member, in a manner which is reasonable and practicable. Leave taken on an intermittent leave schedule shall not result in a reduction of the total amount of leave to which an employee is entitled.

Proposed law provides beginning Jan. 1, 2018, the commission shall report quarterly to the Senate Committee on Labor and Industrial Relations and the House Committee on Labor and Industrial Relations which committees shall have legislative oversight of program. Proposed law provides that the report will advise the legislature of projected and actual program participation, premium rates, fund balances, and outreach efforts by the department.

Proposed law provides that the commission shall conduct a public education campaign to inform workers and employers regarding the availability of paid family and medical leave. Proposed law provides the commission may use no more than ½ of 1% of the funds collected for the La. FMLA program in a given year to pay for the public education program. Proposed law provides that outreach information shall be available in English and other languages spoken by more than five percent of the state's population as that group's primary language.

Proposed law provides that the commission is encouraged to use state data collection and technology to the extent possible in order to keep the cost of the program down and to integrate the program with existing state policies.

Proposed law provides that the legislature finds that Louisiana law has historically provided two wage replacement programs to provide income security to employees who find themselves unable to work. First, the unemployment insurance benefit program was enacted for workers who are laid off from their jobs. Second, the workers' compensation benefits system was enacted to cover workers who are injured in the course and scope of employment. Historically, however, Louisiana has not provided for all other hardships which could render an employee unable to work through no fault of their own; namely those hardships related to an employee's serious sickness or illness, hardships resulting from a family member serving in the military, or hardships related to any other family emergency which would lead to a job loss. The purpose of the La. FMLA is to provide for employment benefits related to all other hardships which an employee may encounter other than job layoffs and workers' compensation injuries so as to insure that no worker is involuntarily unemployed due to any fault other than their own.

Effective upon signature of the governor or lapse of time for gubernatorial action, and if and when the Act providing assessment of a payroll tax and which originated as HB _____ of the 2017 Regular Session of the legislature becomes effective, except as follows:

- (1) All rules and forms promulgated by the Workforce Commission shall be completed before Jan. 1, 2018.
- (2) On January 1, 2018, payroll taxes shall begin being collected and paid by the employer and employee.
- (3) On or after Jan. 1, 2019, applications may be made for payment of benefits.

(Amends R.S. 44:4.1(B)(12); adds R.S. 23:671-687)