

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 HOUSE BILL 1815

By: Dunnington

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5
6 AS INTRODUCED

7 An Act relating to labor; creating the Paid Family
8 Leave Act; declaring legislative findings;
9 authorizing Department of Labor to establish a family
10 temporary disability insurance program; providing for
11 eligibility of certain benefits; providing for
12 maximum amount of benefits; providing for time frame
13 of benefits; providing for filing of claim for
14 benefits; defining terms; providing for benefit
15 period; providing for determination of eligibility;
16 providing for penalties; authorizing Department to
17 request certain medical information; authorizing
18 initial payment of benefits; authorizing Department
19 to promulgate rules; requiring certain information be
20 made accessible; providing for certificate of
21 eligibility; providing for confidentiality of
22 records; providing for payment and rate of
23 contributions by workers; creating Disability Trust
24 Fund for the Department; providing for codification;
and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 901 of Title 40, unless there is
created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Paid Family
Leave Act".

1 B. The Legislature finds the following:

2 1. It is in the public benefit to provide family temporary
3 disability insurance benefits to workers to care for their family
4 members. The need for family temporary disability insurance
5 benefits has intensified as the participation of both parents in the
6 workforce has increased, and the number of single parents in the
7 workforce has grown. The need for partial wage replacement for
8 workers taking family care leave will be exacerbated as the
9 population of those needing care, both children and parents of
10 workers, increases in relation to the number of working-age adults;

11 2. Developing systems that help families adapt to the competing
12 interests of work and home not only benefits workers, but also
13 benefits employers by increasing worker productivity and reducing
14 employee turnover;

15 3. The majority of workers in this state are unable to take
16 family care leave because they are unable to afford leave without
17 pay. When workers do not receive some form of wage replacement
18 during family care leave, families suffer from the worker's loss of
19 income, increasing the demand on the state unemployment insurance
20 system and dependence on the state's welfare system; and

21 4. It is the intent of the Legislature to create a family
22 temporary disability insurance program to help reconcile the demands
23 of work and family. The family temporary disability insurance
24 program shall be established by the Department of Labor, and shall

1 be funded through employee contributions, and shall be administered
2 in accordance with the policies of the state disability insurance
3 program created pursuant to this act. Initial and ongoing
4 administrative costs associated with the family temporary disability
5 insurance program shall be payable from the Disability Trust Fund
6 created in Section 13 of this act.

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 902 of Title 40, unless there is
9 created a duplication in numbering, reads as follows:

10 A. The Department of Labor shall establish a family temporary
11 disability insurance program. Family temporary disability insurance
12 shall provide up to six (6) weeks of wage replacement benefits to
13 workers who take time off work to care for a seriously ill child,
14 spouse, parent, grandparent, grandchild, sibling or domestic
15 partner, or to bond with a minor child within one (1) year of the
16 birth or placement of the child in connection with foster care or
17 adoption.

18 B. An individual shall be eligible to receive family temporary
19 disability insurance benefits equal to sixty-five percent (65%) of
20 his or her weekly wage amount for each full week during which he or
21 she is unable to work due to caring for a seriously ill or injured
22 family member or bonding with a minor child within one (1) year of
23 the birth or placement of the child in connection with foster care
24 or adoption.

1 C. The maximum amount payable to an individual during any
2 disability benefit period for family temporary disability insurance
3 shall be six (6) times his or her weekly benefit amount, but in no
4 case shall the total amount of benefits payable be more than the
5 total wages paid to the individual during his or her disability base
6 period. If the benefit is not a multiple of One Dollar (\$1.00), it
7 shall be computed to the next higher multiple of One Dollar (\$1.00).

8 D. No more than six (6) weeks of family temporary disability
9 insurance benefits shall be paid within any twelve-month period.

10 E. An individual shall file a claim for family temporary
11 disability insurance benefits not later than the forty-first
12 consecutive day following the first compensable day with respect to
13 which the claim is made for benefits, which time shall be extended
14 by the Department upon a showing of good cause. If a first claim is
15 not complete, the claim form shall be returned to the claimant for
16 completion and it shall be completed and returned not later than the
17 tenth consecutive day after the date it was mailed by the Department
18 to the claimant, except that such time shall be extended by the
19 Department upon a showing of good cause.

20 SECTION 3. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 903 of Title 40, unless there is
22 created a duplication in numbering, reads as follows:

23 As used in the Paid Family Leave Act:
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- 1 1. "Care provider" means the family member who is providing the
2 required care for a serious health condition or the family member
3 who is bonding with the new child;
- 4 2. "Care recipient" means the family member who is receiving
5 care for a serious health condition or the new child with whom the
6 care provider is bonding;
- 7 3. "Child" means a biological, adopted or foster son or
8 daughter, a stepson or stepdaughter, a legal ward, a son or daughter
9 of a domestic partner, or the person to whom the employee stands in
10 loco parentis;
- 11 4. "Department" means the "Department of Labor";
- 12 5. "Family care leave" means any of the following:
- 13 a. leave to bond with a minor child within the first year
14 of the child's birth or placement in connection with
15 foster care or adoption, or
- 16 b. leave to care for a child, parent, grandparent,
17 grandchild, sibling, spouse or domestic partner who
18 has a serious health condition;
- 19 6. "Family member" means child, parent, grandparent,
20 grandchild, sibling, spouse or domestic partner as defined in this
21 section;
- 22 7. "Grandchild" means a child of the employee's child;
- 23 8. "Grandparent" means a parent of the employee's parent;
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1 9. "Parent" means a biological, foster or adoptive parent, a
2 parent-in-law, a stepparent, a legal guardian, or other person who
3 stood in loco parentis to the employee when the employee was a
4 child;

5 10. "Parent-in-law" means the parent of a spouse or a domestic
6 partner;

7 11. "Serious health condition" means an illness, injury,
8 impairment or physical or mental condition that involves inpatient
9 care in a hospital, hospice or residential health care facility, or
10 continuing treatment or continuing supervision by a health care
11 provider;

12 12. "Sibling" means a person related to another person by
13 blood, adoption or affinity through a common biological or legal
14 parent;

15 13. "Spouse" means a partner to a lawful marriage;

16 14. "Twelve-month period", with respect to any individual,
17 means the three hundred sixty-five (365) consecutive days that begin
18 with the first day the individual establishes a valid claim for
19 family temporary disability benefits; and

20 15. "Valid claim" means any claim for family temporary
21 disability insurance benefits made in accordance with the provisions
22 of this act, and any rules and regulations adopted thereunder, if
23 the individual claiming benefits is unemployed and has been paid the
24 necessary wages in employment for employers to qualify for benefits

1 and is caring for a seriously ill family member, or bonding with a
2 minor child during the first year after the birth or placement of
3 the child in connection with foster care or adoption.

4 SECTION 4. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 904 of Title 40, unless there is
6 created a duplication in numbering, reads as follows:

7 A. "Disability benefit period" with respect to any individual
8 means the period of unemployment beginning with the first day an
9 individual establishes a valid claim for family temporary disability
10 insurance benefits to care for a seriously ill family member or to
11 bond with a minor child during the first year after the birth or
12 placement of the child in connection with foster care or adoption.

13 B. Periods of family care leave for the same care recipient
14 within a twelve-month period shall be considered one disability
15 benefit period.

16 C. Periods of disability for pregnancy and periods of family
17 care leave for bonding associated with the birth of that child shall
18 be considered one disability benefit period.

19 SECTION 5. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 905 of Title 40, unless there is
21 created a duplication in numbering, reads as follows:

22 An individual shall be deemed eligible for family temporary
23 disability insurance benefits equal to sixty-five percent (65%) of
24 his or her weekly benefit amount on any week in which he or she is

1 unable to perform his or her regular or customary work because he or
2 she is bonding with a minor child during the first year after the
3 birth or placement of the child in connection with foster care or
4 adoption or caring for a seriously ill child, parent, grandparent,
5 grandchild, sibling, spouse or domestic partner, only if the
6 Department of Labor finds all of the following:

7 1. The individual has made a claim for temporary disability
8 benefits as required by authorized regulations;

9 2. The individual has been unable to perform his or her regular
10 or customary work for a seven-day waiting period during each
11 disability benefit period, with respect to which waiting period no
12 family temporary disability insurance benefits are payable; and

13 3. The individual has filed a certificate pursuant to
14 subsection B of Section 11 of this act.

15 SECTION 6. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 906 of Title 40, unless there is
17 created a duplication in numbering, reads as follows:

18 A. An individual shall not be eligible for family temporary
19 disability insurance benefits with respect to any day that any of
20 the following apply:

21 1. The individual has received, or is entitled to receive,
22 unemployment compensation benefits or is under an unemployment
23 compensation act of any other state or of the federal government; or
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1 2. Another family member is ready, willing, able and available
2 to provide care for the same period of time in a day that the
3 individual is providing the required care.

4 B. An individual who is entitled to leave under the Family and
5 Medical Leave Act shall take family temporary disability insurance
6 leave concurrent with leave taken under the Family Medical Leave
7 Act.

8 C. As a condition of an employee's initial receipt of family
9 temporary disability insurance benefits during any twelve-month
10 period in which an employee is eligible for these benefits, an
11 employer may require an employee to take up to two (2) weeks of
12 earned but unused vacation leave prior to the employee's initial
13 receipt of these benefits. If an employer requires an employee to
14 take vacation leave, that portion of the vacation leave that does
15 not exceed one (1) week shall be applied to the waiting period
16 required pursuant to Section 5 of this act.

17 SECTION 7. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 907 of Title 40, unless there is
19 created a duplication in numbering, reads as follows:

20 If the Department of Labor finds that any individual falsely
21 certifies the medical condition of any person in order to obtain
22 family temporary disability insurance benefits, with the intent to
23 defraud, whether for the maker or for any other person, the
24 Department shall assess a penalty against the individual for the

1 total amount of twenty-five percent (25%) of the benefits paid as a
2 result of the false certification. In addition, the employee shall
3 be liable to the Department for any benefits paid as a result of the
4 false certification. Penalties collected under this section shall
5 be deposited in the Disability Trust Fund created in Section 13 of
6 this act.

7 SECTION 8. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 908 of Title 40, unless there is
9 created a duplication in numbering, reads as follows:

10 A. The Department of Labor may request additional medical
11 evidence to supplement the first or any continued claim if the
12 additional evidence can be procured without additional cost to the
13 care recipient. The Department may require that the additional
14 evidence include any or all of the following information:

- 15 1. Identification of diagnoses;
- 16 2. Identification of symptoms; and
- 17 3. A statement setting forth the facts of the care recipient's
18 serious health condition that warrants the participation of the
19 employee. The statement shall be completed and signed by any of the
20 following:

- 21 a. the physician or practitioner treating the care
22 recipient,

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1 b. the registrar, authorized medical officer or other
2 duly authorized official of the hospital or health
3 facility treating the care recipient, or

4 c. an examining physician or other representative of the
5 Department.

6 B. The Department may require the care recipient to submit to
7 reasonable examinations for the purpose of determining all of the
8 following:

9 1. Whether a serious health condition exists;

10 2. Whether a care provider's participation is warranted; and

11 3. The period of time that the care provider's participation is
12 warranted.

13 SECTION 9. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 909 of Title 40, unless there is
15 created a duplication in numbering, reads as follows:

16 The Department of Labor shall issue the initial payment for
17 family temporary disability insurance benefits to a monetarily
18 eligible claimant who is otherwise determined eligible by the
19 Department under applicable law and regulation within fourteen (14)
20 days after receipt of his or her properly completed disability
21 claim.

22 SECTION 10. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 910 of Title 40, unless there is
24 created a duplication in numbering, reads as follows:

1 Claims for disability benefits shall be made in accordance with
2 promulgated rules of the Department of Labor. Each employer shall
3 post and maintain in places readily accessible to individuals in his
4 or her service printed statements concerning such regulations and
5 shall make available to each such individual copies of such printed
6 statements, regulations or matters relating to claims for disability
7 benefits as the Department may prescribe. Such printed statements
8 shall be supplied to each employer by the Department without cost to
9 the employer.

10 SECTION 11. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 911 of Title 40, unless there is
12 created a duplication in numbering, reads as follows:

13 A. In accordance with the rules promulgated by the Department
14 of Labor, a claimant shall establish medical eligibility for each
15 uninterrupted period of disability by filing a first claim for
16 disability benefits supported by the certificate of a treating
17 physician or practitioner that establishes the sickness, injury or
18 pregnancy of the employee, or the condition of the family member
19 that warrants the care of the employee.

20 B. An employee shall be required to file a certificate to
21 establish eligibility when taking leave to care for a family member
22 with a serious health condition. The certificate shall be developed
23 by the Department. In order to establish medical eligibility of the
24 serious health condition of the family member that warrants the care

1 of the employee, the information shall be within the physician's or
2 practitioner's knowledge and shall be based on a physical
3 examination and documented medical history of the family member and
4 shall contain all of the following:

5 1. A diagnosis and diagnostic code prescribed in the
6 International Classification of Diseases, or, if no diagnosis has
7 yet been obtained, a detailed statement of symptoms;

8 2. The date, if known, on which the condition commenced;

9 3. The probable duration of the condition;

10 4. An estimate of the amount of time that the physician or
11 practitioner believes the employee needs to care for the child,
12 parent, grandparent, grandchild, sibling, spouse or domestic
13 partner; and

14 5. A statement that the serious health condition warrants the
15 participation of the employee to provide care for his or her child,
16 parent, grandparent, grandchild, sibling, spouse or domestic
17 partner. "Warrants the participation of the employee" includes, but
18 is not limited to, providing psychological comfort, and arranging
19 third-party care for the child, parent, grandparent, grandchild,
20 sibling, spouse or domestic partner, as well as directly providing
21 or participating in the medical care.

22 C. The Department shall develop a certification form for
23 bonding that is separate and distinct from the certificate required
24 in subsection A of this section for an employee taking leave to bond

1 with a minor child within the first year of the child's birth or
2 placement in connection with foster care or adoption.

3 D. The first and any continuing claim of an individual who
4 obtains care and treatment outside this state shall be supported by
5 a certificate of a treating physician or practitioner duly licensed
6 or certified by the state or foreign country in which the claimant
7 is receiving the care and treatment. If a physician or practitioner
8 licensed by and practicing in a foreign country is under
9 investigation by the Department for filing false claims and the
10 Department does not have legal remedies to conduct a criminal
11 investigation or prosecution in that country, the Department may
12 suspend the processing of all further certifications until the
13 physician or practitioner fully cooperates, and continues to
14 cooperate, with the investigation. A physician or practitioner
15 licensed by, and practicing in, a foreign country who has been
16 convicted of filing false claims with the Department may not file a
17 certificate in support of a claim for disability benefits for a
18 period of five (5) years.

19 SECTION 12. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 912 of Title 40, unless there is
21 created a duplication in numbering, reads as follows:

22 All medical records of the Department of Labor obtained pursuant
23 to the Paid Family Leave Act, except to the extent necessary for the
24 proper administration of this act or as provided elsewhere in law,

1 shall be confidential and shall not be published or be open to
2 public inspection in any manner revealing the identity of the
3 claimant or family member, or the nature or cause of his or her
4 disability.

5 SECTION 13. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 913 of Title 40, unless there is
7 created a duplication in numbering, reads as follows:

8 A. Each worker shall pay worker contributions at the rate
9 determined by the Department of Labor. On or before October 31 of
10 each calendar year, the Department shall prepare a statement, which
11 shall be a public record, declaring the rate of worker contributions
12 for the calendar year and shall notify promptly all employers of
13 employees covered for family temporary disability insurance.

14 B. The rate of worker contributions shall be established by the
15 Department.

16 C. There is created in the State Treasury a revolving fund for
17 the Department of Labor to be designated as the "Disability Trust
18 Fund". The fund shall be a continuing fund, not subject to fiscal
19 year limitations, and shall consist of all contributions, penalties
20 and interest provided for in this act. All monies accruing to the
21 credit of said fund are hereby appropriated and may be budgeted and
22 expended by the Department of Labor to perform duties as prescribed
23 by this act. Expenditures from said fund shall be made upon
24 warrants issued by the State Treasurer against claims filed as

1 prescribed by law with the Department of Labor for approval and
2 payment. All benefits provided for in this act shall be payable
3 from the fund. All benefits shall be paid in accordance with the
4 rules as the Department of Labor may prescribe.

5 SECTION 14. This act shall become effective November 1, 2017.

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