

SENATE BILL 647

By Kyle

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 21; Title 10, Chapter 7, Part 5 and Title 50, relative to family and medical leave insurance benefits.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, is amended by adding the following as a new part:

50-11-101.

This part shall be known and may be cited as the "Tennessee State Family Leave Act."

50-11-102.

As used in this part:

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

(2) "Average weekly wage" means the average wages over the course of the fifty-two (52) weeks prior to the start of the leave or if the covered individual was not employed for the entire fifty-two (52) weeks, then taking the average wages from the weeks when the covered individual was employed;

(3) "Commissioner" means the commissioner of labor and workforce development or the commissioner's designee;

(4) "Covered individual" means any person who:

(A) Satisfies the wages requirements of § 50-7-301(b);

(B) Meets the administrative requirements outlined in this part and in other law and rules; and

(C) Submits an application;

(5) "Department" means the department of labor and workforce development;

(6) "Employee" means any individual employed by any employer within this state;

(7) "Employer" has the same meaning as defined in the federal Fair Labor Standards Act (29 U.S.C. § 203(d));

(8) "Family and medical leave insurance benefits" means the benefits provided under this chapter;

(9) "Family member" means:

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

(B) A biological, foster, stepparent, or adoptive parent or legal guardian of a covered individual; a covered individual's spouse or domestic partner; or a person who stood in loco parentis when the employee or the employee's spouse or domestic partner was a minor child;

(C) A person to whom the employee is legally married under the laws of any state;

(D) A grandparent or step-grandparent of the employee or the employee's spouse or domestic partner;

(E) A grandchild or step-grandchild of the employee or the employee's spouse or domestic partner;

(F) A biological, foster, or adopted sibling or the spouse or domestic partner of the sibling;

(G) A domestic partner registered as such under the laws of any state or political subdivision; or

(H) Any other individual related by blood or whose close association with the covered individual is the equivalent of a family relationship;

(10) "Qualifying exigency leave" means leave for the family member of a servicemember for a need arising out of a covered individual's family member's active duty service or notice of an impending call or order to active duty in the United States armed forces, including, but not limited to, providing for the care or other needs of the military member's child or other family member, making financial or legal arrangements for the military member, attending counseling, attending military events or ceremonies, spending time with the military member during a rest and recuperation leave, or following return from deployment or making arrangements following the death of the military member;

(11) "Serious health condition" has the same meaning as defined in the federal Family and Medical Leave Act (29 U.S.C. 2611(11)); and

(12) "State average weekly wage" has the same meaning as the term "average weekly wages", as defined in § 50-6-102.

50-11-103.

(a) Notwithstanding § 4-21-408 to the contrary, family and medical leave insurance benefits are payable to a covered individual who meets one (1) of the following requirements:

(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 employee; or

(4) Has a qualifying exigency, which is a need arising out of the deployment of a family member of the covered individual.

(b) Benefits are payable to an individual who is not currently employed, but who is a covered individual meeting one (1) of the requirements listed in subdivisions (a)(1)-(4).

50-11-104.

The maximum number of weeks during which family and medical leave insurance benefits are payable in an application year is twelve (12) weeks.

50-11-105.

The amount of family and medical leave insurance benefits are determined as follows:

(1) The weekly benefit is two-thirds (2/3) of an employee's state average weekly wage up to a maximum benefit level of eight hundred fifty dollars (\$850). However, annually, not later than October 1 of each year thereafter, the department shall adjust the maximum weekly benefit amount to be ninety percent (90%) of the state average weekly wage and the adjusted maximum weekly benefit amount shall take effect on January 1 of the year following the adjustment. If an employee's state average weekly wage is less than thirty dollars (\$30.00), the weekly benefit must be thirty dollars (\$30.00); and

(2) Family and medical leave insurance benefits are not payable for less than one (1) day or eight (8) consecutive hours of family and medical leave taken in one (1) work week.

50-11-106.

(a) There is hereby created in the state treasury the family and medical leave insurance fund, referred to in this section as the "fund". Moneys in the fund may be used only to pay benefits under and to administer the family and medical leave insurance program pursuant to this part. Interest earned on the investment of moneys in the fund, and any moneys remaining in the fund at the end of a fiscal year, remain in the fund and do not revert to the general fund or any other fund.

(b) The state treasurer is responsible for determining the amount of premiums necessary to finance the family and medical leave insurance program.

(c) Premiums must be paid by employees in an amount to be determined by the state treasurer.

(d) Each employer shall collect the premium amount from each employee and shall remit the premium amount to the state treasurer, which shall transfer the premiums to the state treasury for deposit in the fund.

50-11-107.

(a) Any covered individual who exercises the individual's right to family and medical leave insurance benefits shall, upon the expiration of that leave, be entitled to be restored by the employer to the position held by the covered individual when the leave commenced, or to a position with equivalent seniority, status, employment benefits, pay, and other terms and conditions of employment, including fringe benefits and service credits that the covered individual had been entitled to at the commencement of leave.

(b) During any leave taken pursuant to § 50-11-103, the employer shall maintain any healthcare benefits the covered individual had prior to taking the leave for the duration of the leave as if the covered individual had continued in employment continuously from the date the individual commenced the leave until the date the family

and medical leave insurance benefits terminate. However, the covered individual shall continue to pay the covered individual's share of the cost of healthcare benefits as required prior to the commencement of the leave.

(c) This section must be enforced in the manner provided in § 50-2-204.

50-11-108.

(a) It is unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this part.

(b) An employer, temporary help company, employment agency, employee organization, or other person shall not discharge, expel, demote, or otherwise discriminate or take adverse employment action against a person because the person has filed, applied for, or used benefits provided for under this part, or has taken leave from work under this part, or communicated to the employer an intent to file a claim, a complaint, or an appeal, or has testified or is about to testify or has assisted in any proceeding under this part at any time, including the period in which the person receives family and medical leave insurance benefits under this part, or has exercised any other right under this part.

(c) It is unlawful for an employer's absence control policy to count paid family and medical leave taken under this chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

(d) The protections provided pursuant to this section apply to any person who mistakenly but in good faith alleges violations of this part.

(e) This section must be enforced in the manner provided in § 50-2-204.

50-11-109.

(a)

(1) If time taken with wage replacement under this part also qualifies as a reason for leave under the federal Family and Medical Leave Act (FMLA) (29 U.S.C. § 2601 et seq.), time paid for pursuant to this chapter must run concurrently with leave taken under the FMLA.

(2) An employer may require that payment made pursuant to this part 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. The employer shall give individuals in its employ written notice of this requirement.

(b)

(1) This part does not diminish an employer's obligation to comply with a collective bargaining agreement or employer policy, as applicable, that provides greater leave for any of the purposes in § 50-11-103(a).

(2) An individual's right to leave under this part must not be diminished by a collective bargaining agreement entered into, amended, or renewed, or an employer policy adopted or retained, on or after January 20, 2020. Any agreement by an individual to waive the individual's rights under this part is void as against public policy.

50-11-110.

(a) Claims for benefits must be made in accordance with regulations the commissioner prescribes.

(b) A claimant dissatisfied with a determination with respect to eligibility under this part or the amount of benefits determined payable under this part has the right to appeal in the manner provided in § 50-7-304(c).

(c) The claimant has ninety (90) days from the date of notification of the determination of eligibility and amount of benefits to appeal the determination in the manner provided in subsection (b).

50-11-111.

(a) A covered individual is disqualified from family and medical leave insurance benefits for one (1) year if the individual knowingly made a false statement or misrepresentation regarding a material fact, or knowingly failed to report a material fact, to obtain benefits under this part.

(b) If family and medical leave insurance benefits are paid erroneously or as a result of knowing misrepresentation, or if a claim for family and medical leave benefits is rejected after benefits are paid, the department may seek repayment of benefits from the recipient. The commissioner shall exercise the commissioner's discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

50-11-112.

(a) A self-employed person, including a sole proprietor, partner, or joint venturer, may elect coverage under this part for an initial period of not less than three (3) years or a subsequent period of not less than one (1) year immediately following another period of coverage. The self-employed person must file a notice of election in writing with the commissioner, as required by the department. The election becomes effective on the date of filing the notice.

(b) A self-employed person who has elected coverage may withdraw from coverage within thirty (30) days after the end of the three-year period of coverage, or at other times as the commissioner may prescribe by rule, by filing written notice with the

commissioner, the withdrawal to take effect not sooner than thirty (30) days after filing the notice.

50-11-113.

(a) The department shall establish and administer a family and medical leave insurance program and pay family and medical leave insurance benefits as specified in this part.

(b) The department shall establish procedures and forms for filing claims for benefits under this part. The department shall notify the employer within five (5) business days of a claim being filed pursuant to this part.

(c) The department 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 in the manner provided by applicable law.

(d) Information contained in the files and records pertaining to an individual under this part are confidential and not open to public inspection under title 10, chapter 7, part 5, other than to public employees in the performance of their official duties. However, 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.

(e) The commissioner may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as necessary to implement this part. In promulgating rules, the commissioner shall to the extent possible maintain consistency with the rules promulgated to implement the federal Family and Medical Leave Act (29 U.S.C. 2601 et seq.).

50-11-114.

If the internal revenue service determines that family and medical leave insurance benefits under this part are subject to federal income tax, the department must advise an individual filing a new claim for family and medical leave insurance benefits, at the time of filing the claim, that:

(1) The internal revenue service has determined that benefits are subject to federal income tax; and

(2) Requirements exist pertaining to estimated tax payments.

50-11-115.

(a) The family and medical leave insurance account is created in the custody of the state treasurer. Expenditures from the account may be used only for the purposes of the family and medical leave insurance program. Only the commissioner may authorize expenditures from the account.

(b) Whenever, in the judgment of the state treasurer, there are in the family and medical leave insurance account funds in excess of that amount deemed by the state treasurer to be sufficient to meet the current expenditures properly payable therefrom, the state treasurer has full power to invest, reinvest, manage, contract, sell, or exchange investments acquired with such excess funds in the manner prescribed by title 9, chapter 4, parts 1-4 and 6-8.

50-11-116.

(a) An employee is entitled, at the option of the employee, to take family and medical leave on an intermittent leave schedule.

(b) 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 healthcare 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 must result in a reduction of the total amount of leave to which an employee is entitled beyond the amount of leave actually taken.

50-11-117.

Beginning January 2, 2021, the department shall report to the general assembly by September 1 of each year on projected and actual program participation, premium rates, fund balances, and outreach efforts.

50-11-118.

The department shall conduct a public education campaign to inform workers and employers regarding the availability of paid family leave and medical leave. The department may use a portion of the funds collected for the paid family and medical leave insurance program in a given year to pay for the public education campaign. Outreach information must be available in English and other languages spoken by more than ten percent (10%) of the state's population as that group's primary language.

50-11-119.

The department is encouraged to use state data collection and technology to the extent possible in order to keep the cost of the family and medical leave insurance program down and to integrate the program with existing state policies.

50-11-120.

(a) Each employer shall provide written notice to each employee upon hiring and annually thereafter. An employer shall also provide written notice to an employee when the employee requests leave under this part, or when the employer acquires knowledge that an employee's leave may be for a qualifying reason under § 50-11-103(a). Such notice must include:

(1) The employee's right to family and medical leave insurance benefits under this part and the terms under which it may be used;

(2) The amount of family and medical leave insurance benefits;

(3) The procedure for filing a claim for benefits;

(4) The right to job protection and benefits continuation under § 50-11-107;

(5) A statement that discrimination and retaliatory personnel actions against a person for requesting, applying for, or using family and medical leave insurance benefits is prohibited under § 50-11-108; and

(6) That the employee has a right to file a complaint for violations of this chapter.

(b) An employer shall also display and maintain a poster in a conspicuous place accessible to employees at the employer's place of business that contains the information required by subsection (a) in English, Spanish, and any language that is the first language spoken by at least ten percent (10%) of the employer's workforce, provided that the notice has been provided by the department. The commissioner may adopt regulations to establish additional requirements concerning the means by which employers provide the notice.

50-11-121.

If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 2. For purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, the act shall take effect January 1, 2020, the public welfare requiring it.