
OLR Bill Analysis

sHB 5003

AN ACT IMPLEMENTING A PAID FAMILY MEDICAL LEAVE PROGRAM.

This bill creates the Family and Medical Leave Insurance (FMLI) program to provide wage replacement benefits to certain employees taking leave for reasons allowed under the state's Family and Medical Leave Act (FMLA) or the family violence leave law, as amended by the bill. It provides them with up to 12 weeks of FMLI benefits over a 12-month period in an amount equal to 100% of the employee's weekly earnings, up to a maximum of \$1,000 per week (or an inflation-adjusted equivalent). The program also provides two additional weeks of benefits for a serious health condition that occurs during pregnancy and results in incapacitation.

Under the bill, employees eligible for benefits (“covered employees”) are:

1. people who earned at least \$2,325 from one or more employers during their highest earning quarter within the five most recently completed calendar quarters and are (a) employed by an employer with at least one employee or (b) unemployed;
2. sole practitioners and self-employed people who enroll in the program; and
3. “covered public employees.”

Covered public employees include those who are (1) employed in state service (i.e., state employees), but are not in a collective bargaining unit and (2) state, municipal, or local or regional board of education (BOE) employees who collectively bargain to join the program. Once a municipal employer or BOE collectively bargains to include one of its bargaining units in the program, any of the

municipality's or BOE's employees who are not part of a collective bargaining unit also become covered public employees.

The bill requires the Department of Labor (DOL) to administer the FMLI program and, among other things, determine the amount that employees must contribute to the program to ensure (1) its solvency and (2) that total employee contributions are at least \$4 million per month. By July 1, 2020, DOL must begin collecting contributions from (1) private-sector employees, (2) the self-employed and sole proprietors who enroll in the program, and (3) covered public employees. The program must begin paying FMLI benefits by July 1, 2021. Anyone aggrieved by a denial of benefit may file a complaint with the labor commissioner.

The bill caps employee contributions at 0.5% of an employee's earnings. It also caps the amount of an employee's earnings subject to contributions at the amount of earnings subject to Social Security taxes (currently \$132,900). However, if employee contributions are not sufficient to ensure the program's solvency, DOL, subject to legislative approval, must increase the amount of employee earnings subject to contributions to an amount that ensures the program's solvency.

The program is funded by employee contributions, although the bill also authorizes up to \$20 million in bonds (\$10 million in FY 20 and \$10 million in FY 21) to pay for the program's start-up costs. Any funds expended from the General Fund to administer the program or provide benefits must be reimbursed to the General Fund by October 1, 2021. The bill establishes the FMLI Trust Fund, administered by the state treasurer, to hold employee contributions and pay for FMLI benefits and administrative costs.

Starting on July 1, 2021, (when the FMLI program begins paying benefits), the bill also changes various provisions of the state's FMLA, which generally requires certain private-sector employers to provide job-protected unpaid leave to employees for various reasons related to their health or their family members' health. Among other things, the bill:

1. extends the FMLA to cover private-sector employers with at least one, rather than 75, employees;
2. changes the criteria for employees to qualify for leave from (a) 12 months of employment and 1,000 work-hours with their employer to (b) having earned at least \$2,325 from one or more employers during their highest earning quarter within the five most recently completed calendar quarters;
3. changes the maximum FMLA leave allowed from 16 weeks over a 24-month period to 12 weeks over a 12-month period, and allows an additional two weeks of leave due to a serious health condition that occurs during pregnancy and results in incapacitation;
4. eliminates an employer's ability to require an employee taking FMLA leave to use his or her employer-provided paid sick time or other employer-provided paid leave;
5. adds to the family members for whom an employee can take FMLA leave to include the employee's siblings, grandparents, grandchildren, and anyone else related by blood or whose close association with the employee is the equivalent of a family member; and
6. requires employers to allow their employees to use up to two weeks of any employer-provided paid sick leave for the serious health condition of the employee's sibling, grandparent, and grandchild (including each of those related by marriage) and anyone else related by blood or whose close association with the employee is the equivalent of a family member.

The bill requires the labor commissioner to adopt regulations by July 1, 2021, to implement the FMLI program and the bill's changes to the FMLA. It also makes numerous minor and conforming changes.

EFFECTIVE DATE: Upon passage, except the provisions that (1) extend requirements for funds administered by the treasurer to the

FMLI Trust Fund are effective July 1, 2019; (2) require DOL to conduct a public education campaign are effective January 1, 2020; (3) require the labor commissioner to adopt regulations are effective July 1, 2020; and (4) establish employer notice requirements and affect the terms of the current family and medical leave laws are effective July 1, 2021.

FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

Administration (§§ 2, 6, 19, & 20)

The bill establishes the FMLI program and requires DOL to administer it. It authorizes DOL to do the following:

1. determine if a person is eligible for FMLI;
2. require a covered employee to provide certification from a health care provider or certain other documents related to family violence leave to support the employee's FMLI claim;
3. request and examine any books, records, documents, contracts, or other papers relevant to a covered employee's eligibility;
4. summon and examine under oath any witnesses that can provide information relevant to a covered employee's FMLI claim;
5. establish procedures and forms for filing FMLI claims; and
6. ensure the confidentiality of records and documents related to medical certification, recertifications, or medical histories of covered employees and their family members, as required under the FMLA.

The bill also requires DOL, in consultation with the state treasurer and the Department of Revenue Services, to establish the procedures needed to implement the program. DOL must:

1. design, establish, and operate the program to ensure transparency in program management and the FMLI Trust Fund through oversight and ethics reviews of plan fiduciaries;

2. establish and maintain a secure Internet website that displays public notices from DOL and other information it deems relevant and necessary to implement the program and educate the public about it; and
3. submit a report to the General Assembly by January 1, 2020, with recommendations for legislative action needed to implement the program.

The bill requires the labor commissioner, by July 1, 2021, to adopt regulations to establish the procedures and guidelines needed to implement the (1) FMLI program and (2) bill's related changes to the private-sector FMLA. The regulations must at least include procedures for hearings and redress, including restoration and restitution, for an employee who believes an employer has violated any of the bill's or these laws' provisions. Unlike the current regulations for private-sector FMLA and state employee family medical leave, the commissioner does not have to make reasonable efforts to ensure the regulations are compatible with the federal FMLA and its regulations.

The bill authorizes the State Bond Commission to authorize an aggregate of up to \$20 million in general obligation bonds, with \$10 million of the proceeds to be used by DOL for the program's start-up costs in FY 20 and again in FY 21.

Employee Contributions (§§ 2 & 6)

The bill requires DOL to begin collecting employee contributions to the FMLI Trust Fund by July 1, 2020. Private-sector employees (except nonpublic elementary or secondary school employees), covered public employees, and the self-employed and sole proprietors who opt in to the program must contribute a percentage of their weekly earnings to the trust fund in a manner the commissioner prescribes.

“Employers” under the bill are private-sector employers (except nonpublic elementary or secondary schools) with at least one employee. DOL must determine the number of employees of an employer as of October first each year. The state, municipalities, and

local or regional boards of education are also employers under the bill, but only for each of their covered public employees (they are not considered employers for employees who are not covered public employees).

The bill requires DOL to determine the amount of contributions necessary to ensure (1) the program's solvency and (2) that contributions total at least \$4 million per month. It caps an employee's contributions at 0.5% of his or her weekly earnings. It also uses the Social Security contribution base (i.e., amount of earnings subject to Social Security taxes, currently \$132,900) to cap the annual amount of an employee's earnings subject to contributions, but this cap may be exceeded to protect the program's solvency (see "Solvency Adjustment" below).

The bill also requires DOL to:

1. design and establish the process by which employees must contribute a portion of their salaries to the trust fund, including creating an information packet with the necessary paperwork for self-employed people or sole proprietors to participate;
2. evaluate and establish a process that allows employers to credit their employee's contributions to the trust fund through payroll deposit; and
3. ensure that contributions are only used for (1) providing FMLI benefits, (2) educating and informing people about the program, and (3) paying the trust's (presumably, the program's) operational, administrative, and investment costs.

FMLI Benefits (§ 2)

The bill requires DOL, by July 1, 2021, to begin paying FMLI benefits to covered employees who file claims. The program must provide up to 12 weeks of FMLI benefits to covered employees during any 12-month period, plus two additional weeks of benefits for a serious health condition that occurs during a pregnancy and results in incapacitation.

Under the bill, a covered employee's weekly benefit is 100% of his or her weekly earnings, but it cannot be more than \$1,000 per week or an inflation adjusted equivalent. If the IRS determines that the benefits are subject to federal income taxes and the employee chooses to have the taxes withheld from the benefits, DOL must deduct and withhold the amount required by the U.S. Internal Revenue Code in a manner consistent with state law (in practice, the employee may not have a choice of whether to have taxes withheld, depending on the IRS's determination).

Starting July 1, 2022, and by July 15 each following year, the bill requires the labor commissioner to annually announce an adjustment to the benefit cap based on the Consumer Price Index (CPI) for urban wage earners and clerical workers in the northeast urban area of New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, with no seasonal adjustment, as calculated by the U.S. Bureau of Labor Statistics. The adjustment must be the CPI's percentage increase between the last complete calendar year and the previous calendar year, rounding the increase amount to the nearest five cents. The adjusted benefit cap takes effect on the following January first.

Solvency Adjustment

If employee contributions are at the maximum allowed rate (0.5%), but DOL determines that it is not enough to ensure the program's solvency, the bill requires the department to increase the amount of earnings subject to contributions to an appropriate amount that exceeds the Social Security contribution base (see "Employee Contributions" above) in order to ensure the program's solvency. However, DOL may not increase the amount of earnings subject to contributions unless the legislature approves it by resolution.

To do so, the bill requires DOL to submit the proposed increase to the legislature, where it must be referred to the Labor and Public Employees Committee. The legislature may reject the proposal by a three-fifths vote of each house, but if the legislature fails to vote on it within 30 days after DOL submits it, the proposal will be deemed approved.

Benefit Uses (§§ 2 & 15)

The bill generally allows a covered employee to receive FMLI benefits for leave taken for the same reasons allowed under the state's FMLA, as amended by the bill, or family violence leave law.

Under current law, these allow leave:

1. on the birth of the employee's son or daughter;
2. on the placement of a son or daughter with the employee for adoption or foster care;
3. for a spouse's, son's, daughter's, or parent's serious health condition;
4. for the employee's own serious health condition;
5. to serve as an organ or bone marrow donor;
6. for certain family members who are armed forces members undergoing treatment for an injury or illness incurred in the line of duty; and
7. for family violence victims, to (a) seek medical care or psychological counseling, (b) obtain services from a victim services organization, (c) relocate because of family violence, or (d) participate in any civil or criminal proceeding related to, or resulting from, the family violence.

Since the bill also adds to the family members for whom an employee can take FMLA leave (see “Changes to Current FMLA, below), FMLI benefits will also be available for these types of leave. Under the bill, the added family members include the employee's siblings, grandparents, grandchildren, and anyone else related by blood or whose close association with the employee is the equivalent of a family member (presumably, DOL will establish how to determine such associations). Although the FMLA allows leave under certain circumstances when certain family members are in the armed forces and on active duty or have been notified of an impending call or order

to active duty, the bill does not provide FMLI benefits for employees on this type of leave.

To qualify for benefits under the bill, an employee must notify DOL and his or her employer, if applicable, of the need for FMLI benefits. The department must determine the notice's form and manner. If DOL requests it, the employee must also provide a health care provider's certification as required under the FMLA law.

The bill allows an employee to receive benefits for nonconsecutive hours of leave, but limits the benefits to a four-hour minimum in any work week. If an employee takes benefits for at least four hours, but less than one week, the employee's hourly compensation must be determined on a pro rata basis at DOL's discretion.

The bill allows employees to receive FMLI benefits concurrently with any employer-provided employment benefits as long as their total compensation while they are on leave does not exceed their regular compensation rate. Under the bill, no employees can receive FMLI benefits concurrently with unemployment compensation benefits or workers' compensation benefits.

Participation by Sole Proprietors and the Self-Employed (§ 8)

The bill allows sole proprietors and the self-employed to enroll in the FMLI program and includes them in its definition of "covered employees" and "employees." They must apply to DOL for enrollment in the program in a form and manner the department prescribes. Their initial enrollment must be for a term of at least three years and they will be automatically re-enrolled for subsequent periods of at least one year beginning immediately after their current period of participation in the program. They can withdraw from the program by submitting a written notice to DOL (1) at least 30 days before their initial or subsequent enrollment period expires or (2) at other times the department may prescribe by rule.

Complaints and Enforcement (§§ 9 & 11)

The bill allows an FMLI participant aggrieved by a denial of benefits

to file a complaint with the labor commissioner. The commissioner must hold a hearing after receiving the complaint and must subsequently send each party a written copy of his decision. The commissioner may award the participant all appropriate relief, including any compensation or benefits to which the participant would have otherwise been eligible. Any party aggrieved by the commissioner's decision may appeal to the Superior Court under the Uniform Administrative Procedure Act.

Under the bill, anyone who willfully makes a false statement or misrepresentation regarding a material fact or willfully fails to report a material fact to obtain FMLI benefits is disqualified from receiving program benefits for one year. DOL can also seek repayment of any benefits paid (1) erroneously, (2) due to willful misrepresentation, or (3) before a FMLI claim was rejected. The bill gives the labor commissioner discretion to waive any repayments, in whole or in part, when they would be against equity and good conscience.

§§ 3-5 & 21 — THE FMLI TRUST FUND

Trust Fund

The bill establishes the FMLI Trust Fund to provide FMLI benefits to covered employees taking leave under the FMLA or the family violence leave law, as amended by the bill. The trust's assets must be used for (1) FMLI benefits; (2) educating and informing people about the program; and (3) paying the trust's operational, administrative, and investment costs. It must be a non-lapsing fund held by the state treasurer separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the fund must become part of it.

The bill makes the trust an instrumentality of the state and requires it to perform essential government functions under the bill. It must receive and hold all payments and deposits or contributions intended for it, plus any gifts, bequests, and endowments; federal, state, or local grants; any other funds from a public or private source; and all earnings until disbursed under the bill's provisions.

Under the bill, the amounts deposited in the trust are not state property, and the trust must not be construed as a state department, institution, or agency. Amounts in the trust cannot be comingled with state funds, and the state must not have any claim to or against, or interest in, the funds. If the fund is terminated by law, however, any unclaimed funds become assets of the state.

Any contract or obligation made by the trust is not a state debt or obligation, and the state does not have any obligation to a designated beneficiary or any other person because of the trust. All debts owed by the trust are limited to the amounts available to pay the debt deposited in the trust. The trust must exist (1) as long as it holds any deposits or has any obligations and (2) until it is terminated by law.

The law for determining when property held by a fiduciary is presumed abandoned applies to the trust's property (CGS § 3-61a). Thus, property in the trust is presumed abandoned unless, within seven years after it became payable or distributable, the owner has (1) increased or decreased the principal; (2) accepted payment of principal or income; (3) corresponded in writing with the fiduciary concerning the property; or (4) otherwise indicated an interest through a memorandum on file with the fiduciary.

State Treasurer's Duties

The bill makes the state treasurer responsible for receiving and investing money held by the trust. The trust can only receive cash deposits, and no depositor or designated beneficiary may direct the investments of any contributions or amounts in the trust other than the specific fund options the trust provides.

The bill requires the treasurer, on behalf of the FMLI Trust Fund and for its purposes, to:

1. receive and invest the trust's funds in any instruments, obligations, securities, or property required under the bill;
2. procure insurance, if he deems it necessary, to protect the trust's property, assets, activities, deposits, or contributions; and

3. apply for, accept, and expend gifts, grants, or donations from public or private sources to carry out the trust's objectives.

The bill requires the treasurer to invest the trust's fund in a manner reasonable and appropriate to the trust's objectives, using the discretion and care of a reasonable person in similar circumstances with similar objectives. The treasurer must give due consideration to (1) rate of return; (2) risk; (3) term or maturity; (4) diversification of the trust's total portfolio; (5) liquidity; (6) projected disbursements and expenditures; and (7) expected payments, deposits, contributions, and gifts to be received.

The bill prohibits the treasurer from requiring the trust to invest directly in (1) any obligations of the state or its political subdivisions or (2) any other treasurer-administered investment or fund. The trust's assets must be continuously invested and reinvested in a manner consistent with the trust's objectives until they are disbursed under DOL's order or spent on the trust's operating expenses.

The bill places the treasurer's trust investments under the same oversight and requirements the law establishes for treasurer-administered funds, including the Teachers' Pension Fund, the State Employee Retirement Fund, and the Connecticut Municipal Employees' Retirement Fund.

§ 7 — FMLI PUBLIC EDUCATION CAMPAIGN

The bill requires DOL, in consultation with the state treasurer, to conduct a public education campaign to inform the public and employers about the FMLI program. The campaign must at least include information about (1) the requirements for receiving benefits under the program and (2) how to apply for benefits and the circumstances under which benefits may be available. The bill allows DOL to use funds from the FMLI Trust Fund for the public education campaign. Information distributed or available under the campaign must be in English, Spanish, and any other language the department prescribes.

§ 10 — EMPLOYER NOTICE REQUIREMENT

Starting July 1, 2021, the bill requires employers to notify their employees at the time of hiring and every year thereafter:

1. of their entitlement to family and medical leave, as amended by the bill, and family violence leave, and the terms under which the leave may be used;
2. that employer retaliation against an employee for requesting, applying for, or using family medical leave for which an employee is eligible is prohibited; and
3. that the employee can file a complaint with the labor commissioner for any violation of the FMLA or family violence leave law, as amended by the bill.

The labor commissioner may adopt regulations to establish additional requirements about how employers must provide notice.

§ 12 — SEVERABILITY AND EXCEPTIONS

The bill specifies that its FMLI provisions are severable, and if any are found to contravene state or federal law, then the remainder remain in full force and effect.

It also specifies that nothing in its FMLI provisions or the state FMLA, as amended by the bill, (1) prevents employers from providing more expansive benefits; (2) diminishes any rights provided under a collective bargaining agreement; or (3) interferes with, impedes, or diminishes the right of any employee to collectively bargain for wages or working conditions that exceed the minimums established in the bill's FMLI program or the state FMLA.

§ 13 — REPORT REQUIREMENT

Beginning by July 1, 2022, the bill requires the labor commissioner to submit an annual report to the Labor and Appropriations committees on:

1. the projected and actual participation in the program;

2. the balance in the trust;
3. the size of employers at which covered employees are employed;
4. the reasons why covered employees are receiving FMLI benefits;
5. the success of DOL's outreach and education efforts; and
6. demographic information on covered employees, including their gender, age, town of residence, and income level.

§§ 14-19 — CHANGES TO CURRENT FMLA

Covered Employers & Employee Eligibility (§ 14)

Current law requires private-sector employers with at least 75 employees to provide eligible employees with unpaid FMLA leave. The bill reduces this employee threshold from 75 to one.

Under current law, private sector employees are eligible for leave once they work for their employer for at least 12 months and 1,000 work-hours. The bill instead makes employees eligible if they earned at least \$2,325 from one or more employers during their highest earning quarter within the five most recently completed calendar quarters.

Maximum Leave Duration (§ 15)

The bill changes the maximum amount of leave an employee may take from 16 weeks over a 24-month period to 12 weeks over a 12-month period. It also allows an additional two weeks of leave due to a serious health condition that occurs during pregnancy and results in incapacitation.

Uses of Leave for Serious Health Conditions (§ 14)

Current law allows employees to take leave for their own serious health condition or to provide care when their children who are either under age 18 or unable to care for themselves, their spouses, or their parents (including in-laws) have a serious health condition.

The bill expands the family members for whom an employee can

take leave to include the employee's adult children, siblings, grandparents, and grandchildren. All of these family members include those related by adoption and through foster care. Siblings, grandparents, and grandchildren also include those related by marriage. The bill also allows an employee to take leave to care for anyone else with a serious health condition if they are related by blood or have a close association with the employee that is equivalent to a family member.

Military Caregiver Leave (§ 15)

The law allows employees covered by the FMLA to take a one-time benefit of up to 26 weeks of unpaid leave when certain family members or “next of kin” in the armed forces undergo treatment for an injury or illness incurred in the line of duty. The bill allows the injured armed forces member to designate someone as their “next of kin” (thus making him or her eligible for the leave and FMLI benefits) if their close association is the equivalent of a family member.

Employer-provided Paid Leave (§ 15)

Current law allows an employer to require employees to use their accrued employer-provided paid vacation, personal, family, medical, or sick leave during the time they are on FMLA leave. Employers can no longer require this under the bill. By law, unchanged by the bill, employees can opt to use their employer-provided paid leave while they are on FMLA leave.

Current law requires employers to allow their employees to use up to two weeks of their employer-provided paid sick leave for a spouse's or child's serious health condition or the birth or adoption of a child. The bill expands this requirement to include serious health conditions of siblings, grandparents, grandchildren, or anyone else related by blood or whose close association with the employee is equivalent to a family member.

Confidentiality (§ 17)

With certain exceptions, the FMLA requires employers to keep records and documents related to their employees' medical histories

and medical certifications as confidential medical records under the state's Personnel Files Act. The bill extends this requirement to include the same records related to providing FMLI benefits.

BACKGROUND

Related Bill

sSB 1, reported favorably by the Labor and Public Employees Committee, is identical to sHB 5003.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 9 Nay 5 (02/19/2019)