

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 955**

Introduced by Dubas, 34; Conrad, 46; Cook, 13; Howard, 9; McGill,  
26; Nordquist, 7.

Read first time January 16, 2014

Committee: Business and Labor

A BILL

- 1 FOR AN ACT relating to employment; to adopt the Paid Family Medical
- 2 Leave Act; and to provide an operative date.
- 3 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 15 of this act shall be known  
2 and may be cited as the Paid Family Medical Leave Act.

3           Sec. 2. The Legislature finds that very few employees are  
4 protected from income losses caused by the need to take time off from  
5 work to care for family members who are incapable of self-care,  
6 including newborn and newly-adopted children. The growing portion of  
7 middle-income families in which all adult family members work,  
8 largely due to economic necessity, points to the desperate need for  
9 replacement income when a working family member must take time to  
10 care for family members who are unable to take care of themselves.  
11 The Legislature also finds that the Paid Family Medical Leave Act  
12 will help families adapt to the competing interests of work and home  
13 and not only benefits employees, but also benefits employers by  
14 reducing employee turnover and increasing employee productivity.

15           Sec. 3. For purposes of the Paid Family Medical Leave  
16 Act:

17           (1) Commissioner means the Commissioner of Labor;

18           (2) Covered employer means an employer subject to the  
19 Employment Security Law;

20           (3) Employee means an individual employed by a covered  
21 employer;

22           (4) Family member means a child, spouse, or parent of an  
23 employee;

24           (5) Paid family medical leave means paid leave taken by  
25 an employee from work to (a) participate in providing care for a

1 family member made necessary by a serious health condition of the  
2 family member or (b) be with a child during the first twelve months  
3 after the child's birth, if the employee is a biological parent of  
4 the child or the first twelve months after a placement for adoption;

5 (6) Parent of an employee means a biological parent,  
6 foster parent, adoptive parent, or stepparent of the employee;

7 (7) Placement for adoption means the time when an  
8 employee adopts a child or becomes responsible for a child pending  
9 adoption by the employee; and

10 (8) Serious health condition means an illness, injury,  
11 impairment, or physical or mental condition which requires inpatient  
12 care in a hospital, hospice, or residential medical care facility or  
13 continuing medical treatment or continuing supervision by a health  
14 care provider.

15 Sec. 4. On and after the operative date of this act, an  
16 employee who qualifies for paid family medical leave shall be  
17 entitled to wages during the time the employee qualifies for paid  
18 family medical leave under the Paid Family Medical Leave Act. Wages  
19 paid during such leave shall be the average wage of the employee over  
20 the last calendar quarter, or portion thereof, while employed by his  
21 or her current employer.

22 Sec. 5. An employee may take up to six consecutive work  
23 weeks or up to forty-two days on an intermittent basis of paid family  
24 medical leave per year if eligible for such leave under the Paid  
25 Family Medical Leave Act.

1           Sec. 6. (1) When paid family medical leave is taken by an  
2 employee, the covered employer shall issue to the employee and to the  
3 commissioner printed notices on forms prescribed by the commissioner  
4 containing: The name, address, and social security number of the  
5 employee; such wage information as the commissioner may require to  
6 determine the employee's eligibility for paid family medical leave  
7 including any other fully paid leave provided by the covered employer  
8 during the period of paid family medical leave; and the name,  
9 address, and identity number of the covered employer. Such notices  
10 shall be issued not later than the ninth day of such leave including  
11 any time in which the covered employer provides other fully paid  
12 leave. Not later than thirty days after the commencement of the paid  
13 family medical leave for which the notices are furnished by the  
14 covered employer, the employee shall furnish to the commissioner a  
15 notice and claim for paid family medical leave benefits. Upon the  
16 submission of the notices by the covered employer and the employee,  
17 the commissioner may issue paid family medical leave wages. For paid  
18 family medical leave taken to care for a family member with a serious  
19 health condition, wages shall be paid for periods not exceeding three  
20 weeks pending the receipt of the certification required pursuant to  
21 section 11 of this act. Failure to furnish notice and certification  
22 shall not invalidate or reduce any claim if it is shown to the  
23 satisfaction of the commissioner that it was not reasonably possible  
24 to furnish the notice and certification within the time prescribed in  
25 this section and that the notice and certification was furnished as

1 soon as reasonably possible.

2 (2) An employee taking paid family medical leave or a  
3 covered employer from whom the employee is taking the leave may  
4 appeal the commissioner's determination of eligibility. Such appeal  
5 shall be pursuant to the Administrative Procedure Act.

6 (3) An employee shall not simultaneously receive paid  
7 family medical leave wages and unemployment compensation.

8 Sec. 7. Nothing in the Paid Family Medical Leave Act  
9 shall be construed as nullifying any provision of an existing  
10 collective bargaining agreement or employer policy or preventing any  
11 new provision of a collective bargaining agreement or employer policy  
12 which provides employees more generous leave or gives employees  
13 greater rights to select which kind of leave is used or select the  
14 order in which the different kinds of leave are used. Nothing in the  
15 act shall be construed as preventing a covered employer from  
16 providing more generous benefits or providing benefits which  
17 supplement the benefits provided under the act for some or all of the  
18 covered employer's employees.

19 Sec. 8. An employee who is entitled to leave under the  
20 federal Family and Medical Leave Act of 1993, 29 U.S.C. 2601 et seq.,  
21 shall take any paid family medical leave under the Paid Family  
22 Medical Leave Act concurrently with leave taken pursuant to the  
23 federal Family and Medical Leave Act of 1993.

24 Sec. 9. Each covered employer shall conspicuously post  
25 notification by a form prescribed by the commissioner in a place or

1 places accessible to all employees in each of the covered employer's  
2 workplaces of employee's rights regarding paid family medical leave.  
3 The covered employer shall also provide each employee with a written  
4 copy of the notification: (1) Not later than thirty days after the  
5 form of the notification is prescribed by the commissioner; (2) at  
6 the time of the employee's hiring if the employee is hired after the  
7 form is prescribed; (3) whenever the employee notifies the covered  
8 employer that the employee is taking time off for circumstances under  
9 which the employee is eligible for paid family medical leave; and (4)  
10 at any time, upon the first request of the employee.

11 Sec. 10. (1) Paid family medical leave taken for a family  
12 member who has a serious health condition may be taken  
13 intermittently, when medically necessary, if: (a) The total time  
14 within which the leave is taken does not exceed twelve months; (b)  
15 the employee provides the covered employer with a copy of the  
16 certification required pursuant to section 11 of this act; (c) the  
17 employee provides the covered employer with prior notice of the leave  
18 not less than fifteen days before the first day of such leave, unless  
19 an emergency or other unforeseen circumstance precludes prior notice;  
20 and (d) the employee makes a reasonable effort to schedule the leave  
21 so as not to unduly disrupt the operations of the covered employer  
22 and, if possible, provide the covered employer, prior to the  
23 commencement of intermittent leave, with a regular schedule of the  
24 days or days of the week on which the intermittent leave will be  
25 taken.

1           (2) If paid family medical leave is taken for a family  
2 member who has a serious health condition on a continuous basis of up  
3 to six work weeks, the employee shall: (a) Provide the covered  
4 employer with prior notice of the leave in a reasonable and  
5 practicable manner, unless an emergency or other unforeseen  
6 circumstance precludes prior notice; (b) provide a copy of the  
7 certification required pursuant to section 11 of this act; and (c)  
8 make a reasonable effort to schedule the leave so as not to unduly  
9 disrupt the operations of the covered employer.

10           Sec. 11. Any period of paid family medical leave for the  
11 serious health condition of a family member shall be supported by  
12 certification provided by a health care provider. The certification  
13 shall be sufficient if it states:

14           (1) The date, if known, on which the serious health  
15 condition commenced;

16           (2) The probable duration of the condition;

17           (3) The medical facts within the knowledge of the health  
18 care provider of the certification regarding the condition;

19           (4) An estimate of the amount of time that the employee  
20 is needed for participation in the care of the family member;

21           (5) If the leave is intermittent, a statement of the  
22 medical necessity for the intermittent leave and the expected  
23 duration of the intermittent leave; and

24           (6) If the leave is intermittent and for planned medical  
25 treatment, the dates of the treatment.

1           Sec. 12. (1) All of the paid family medical leave wages  
2 paid to an employee during a period of paid family medical leave with  
3 respect to any one birth or placement for adoption shall be for a  
4 single continuous period of time up to six consecutive work weeks,  
5 except that the covered employer may permit the employee to receive  
6 the paid family medical leave wages during nonconsecutive weeks in a  
7 manner mutually agreed to by the employer and the employee and  
8 disclosed to the commissioner by the covered employer.

9           (2) The employee shall provide the covered employer with  
10 notice of the period of paid family medical leave with respect to  
11 birth or placement for adoption not less than thirty days before the  
12 leave commences. The amount of paid leave shall be reduced by two  
13 weeks if the employee does not provide notice to a covered employer  
14 as required by this subsection unless the time of the leave is  
15 unforeseeable or the time of the leave changes due to unforeseeable  
16 reasons.

17           (3) Paid family medical leave taken because of a birth or  
18 placement for adoption may be taken at any time within one year after  
19 the date of the birth or placement for adoption.

20           Sec. 13. The commissioner shall issue and make available  
21 to the public, not later than December 31, 2016, and each year  
22 thereafter, annual reports providing data on paid family medical  
23 leave, including separate data for claims involving care of family  
24 members in the following categories: (a) Care of newborn children;  
25 (b) care of adopted children; (c) care of sick children; (d) care of

1 sick spouses; and (e) care of other sick family members. The reports  
2 shall include, for each category of claims, the number of employees  
3 receiving the paid family medical leave wages, the amount of the  
4 wages paid, the average duration of such leave, and the average  
5 weekly wage. The reports shall also provide the total costs of wages  
6 paid, the total cost of administration, and the total revenue from  
7 employee contributions.

8           Sec. 14. (1) The Paid Family Medical Leave Fund is  
9 created. Any money in the fund available for investment shall be  
10 invested by the state investment officer pursuant to the Nebraska  
11 Capital Expansion Act and the Nebraska State Funds Investment Act.

12           (2) The commissioner shall administer the Paid Family  
13 Medical Leave Fund. Employee contributions shall be collected by  
14 covered employers as payroll deductions and shall be remitted to the  
15 State Treasurer for credit to the fund. Paid family medical leave  
16 wages and administration costs for the Paid Family Medical Leave Act  
17 shall be paid from the fund.

18           (3) The commissioner shall determine the payroll  
19 contribution for employees to be collected beginning on the operative  
20 date of this act necessary to cover the costs of the Paid Family  
21 Medical Leave Act. The commissioner shall redetermine such amount for  
22 each fiscal year thereafter.

23           Sec. 15. If an employee receives paid family medical  
24 leave wages to which the employee was not entitled because the  
25 employee knowingly misrepresented or withheld any material fact to

1 obtain such wages, the employee shall be liable for repayment of the  
2 wages. The commissioner shall promptly notify the employee by mail of  
3 the repayment determination and the reasons for the determination.  
4 Unless the employee files an appeal of the determination within  
5 twenty calendar days following the receipt of the notice or within  
6 twenty-four days after the notice was mailed to the employee's last-  
7 known address, the determination shall be final.

8                   Sec. 16. This act becomes operative on July 1, 2015.