

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 305

Introduced by Crawford, 45.

Read first time January 12, 2017

Committee: Business and Labor

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

1 Section 1. Sections 1 to 17 of this act shall be known and may be
2 cited as the Paid Family Medical Leave Insurance Act.

3 Sec. 2. For purposes of the Paid Family Medical Leave Insurance
4 Act:

5 (1) Base period means the first four of the last five completed
6 calendar quarters immediately preceding the first day of a covered
7 individual's benefit year;

8 (2) Benefit year means the one-year period beginning with the first
9 day of the first week with respect to which the covered individual first
10 files a valid claim for family medical leave benefits, and thereafter the
11 one-year period beginning with the first day of the first week with
12 respect to which the covered individual next files a valid claim for
13 family medical leave benefits after the termination of his or her last
14 preceding benefit year. For the purposes of this subdivision, a week with
15 respect to which a covered individual files a valid claim shall be deemed
16 to be in, within, or during that benefit year which includes the greater
17 part of such week;

18 (3) Commissioner means the Commissioner of Labor;

19 (4) Covered active duty or call to covered active duty status has
20 the definition found in 29 C.F.R. 825.126(a)(1) and (2);

21 (5) Covered employer means an employer subject to the Employment
22 Security Law;

23 (6) Covered individual means an individual who is employed by a
24 covered employer;

25 (7) Covered servicemember has the definition found in 29 U.S.C.
26 2611(15);

27 (8) Family medical leave benefits means the benefits provided under
28 section 4 of this act for periods of paid family medical leave;

29 (9) Family member means:

30 (a) A biological, adopted, or foster child, a stepchild, or a legal
31 ward of a covered individual or the covered individual's spouse or a

1 person to whom the covered individual or the covered individual's spouse
2 stood in loco parentis when such person was a minor child;

3 (b) A biological, adoptive, or foster parent, a stepparent, or a
4 legal guardian of a covered individual or the covered individual's spouse
5 or a person who stood in loco parentis to the covered individual or the
6 covered individual's spouse when the covered individual or the covered
7 individual's spouse was a minor child;

8 (c) A covered individual's spouse; or

9 (d) A grandparent, grandchild, or sibling, whether of a biological,
10 foster, adoptive, or step relationship, of the covered individual or the
11 covered individual's spouse;

12 (10) Health care provider means any person licensed under federal or
13 state law to provide medical or emergency services, including, but not
14 limited to, doctors, nurses, emergency room personnel, and certified
15 nurse midwives;

16 (11) Individual average weekly wage means:

17 (a) For a covered individual who has been employed for the full base
18 period, the amount of wages paid to the covered individual in the highest
19 quarter of the base period divided by thirteen; or

20 (b) For a covered individual who has been employed for less than the
21 full base period, the covered individual's weekly wage at the time he or
22 she takes the paid family medical leave;

23 (12) Military member means a covered individual's family member who
24 is in the armed forces of the United States;

25 (13) Next of kin has the definition found in 29 U.S.C. 2611(17);

26 (14) Paid family medical leave means leave taken by a covered
27 individual for a qualifying reason described in section 3 of this act for
28 which the covered individual is eligible for family medical leave
29 benefits;

30 (15) Qualifying exigency leave means leave taken by a covered
31 individual for the following purposes if the covered individual's family

1 member is on covered active duty or call to covered active duty status:

2 (a) Any of the purposes specified in 29 C.F.R. 825.126(b)(3)(i)
3 through (iv);

4 (b) Any of the purposes specified in 29 C.F.R. 825.126(b)(8)(i)
5 through (iv);

6 (c) To address any issue that arises from the fact that the military
7 member is notified of an impending call or order to covered active duty
8 seven or fewer calendar days prior to the date of deployment. Leave taken
9 for this purpose can be used for a period of seven calendar days
10 beginning on the date the military member is notified of an impending
11 call or order to covered active duty;

12 (d) To attend any official ceremony, program, or event sponsored by
13 the military that is related to the covered active duty or call to
14 covered active duty status of the military member;

15 (e) To attend family support or assistance programs and
16 informational briefings sponsored or promoted by the military, military
17 service organizations, or the American Red Cross that are related to the
18 covered active duty or call to covered active duty status of the military
19 member;

20 (f) To make or update financial or legal arrangements to address the
21 military member's absence while on covered active duty or call to covered
22 active duty status, such as preparing and executing financial and health
23 care powers of attorney, transferring bank account signature authority,
24 obtaining military identification cards, or preparing or updating a will
25 or living trust;

26 (g) To act as the military member's representative before a federal,
27 state, or local agency for the purposes of obtaining, arranging, or
28 appealing military service benefits while the military member is on
29 covered active duty or call to covered active duty status, and for a
30 period of ninety days following the termination of the military member's
31 covered active duty status;

1 (h) To attend counseling provided by someone other than a health
2 care provider for the covered individual, for the military member, for
3 the biological, adopted, or foster child, the stepchild, or the legal
4 ward of the military member, for a child of the military member's spouse,
5 or for a child to whom the military member stands in loco parentis, if
6 the need for counseling arises from the covered active duty status or
7 call to covered active duty status of the military member;

8 (i) To spend time with the military member who is on short-term,
9 temporary, rest and recuperation leave during the period of deployment.
10 Leave taken for this purpose can be used for a period of fifteen calendar
11 days beginning on the date the military member commences each instance of
12 rest and recuperation leave;

13 (j) To attend arrival ceremonies, reintegration briefings and
14 events, and any other official ceremony or program sponsored by the
15 military during a period of ninety days following the termination of the
16 military member's covered active duty status;

17 (k) To address issues that arise from the death of the military
18 member while on covered active duty status, such as meeting and
19 recovering the body of the military member, making funeral arrangements,
20 and attending funeral services; and

21 (l) To address other events which arise out of the military member's
22 covered active duty or call to covered active duty status if the covered
23 employer and covered individual agree that such leave qualifies as an
24 exigency and agree to both the timing and duration of such leave;

25 (16) Retaliatory personnel action means denial of any right
26 guaranteed under the Paid Family Medical Leave Insurance Act, including,
27 but not limited to:

28 (a) Any threat, discharge, suspension, demotion, or reduction of
29 hours of a covered individual or any other adverse action against a
30 covered individual for the exercise of any right guaranteed in the act;
31 and

1 (b) Interference with or punishment for participating in or
2 assisting with an investigation, proceeding, or hearing under the act;

3 (17) Serious health condition means an illness, injury, impairment,
4 or physical or mental condition which requires (a) inpatient care in a
5 hospital, hospice, or residential medical care facility or (b) continuing
6 medical treatment or continuing supervision by a health care provider;
7 and

8 (18) State average weekly wage means the state average weekly wage
9 as annually determined under section 48-121.02.

10 Sec. 3. (1) Beginning April 1, 2020, a covered individual may take
11 paid family medical leave for the following qualifying reasons:

12 (a) To care for a new child of the covered individual during the
13 first year after the birth, adoption, or placement through foster care of
14 that child;

15 (b) Because the covered individual has a serious health condition,
16 including pregnancy, that makes the covered individual unable to perform
17 the functions of the position held by such covered individual;

18 (c) To care for a family member of the covered individual who has a
19 serious health condition;

20 (d) To care for a covered servicemember who is the covered
21 individual's next of kin; or

22 (e) For qualifying exigency leave.

23 (2)(a) A covered individual shall be eligible to take paid family
24 medical leave for the qualifying reason described in subdivision (1)(b)
25 of this section once he or she has been employed by a covered employer
26 for:

27 (i) Four or more consecutive weeks if the individual works full-
28 time; or

29 (ii) Twenty-five days if the individual works part-time.

30 (b) A covered individual shall be eligible to take paid family
31 medical leave for a qualifying reason described in subdivision (1)(a),

1 (c), (d), or (e) of this section once he or she has been employed by a
2 covered employer for:

3 (i) Twenty-six or more consecutive weeks if the individual works
4 full-time; or

5 (ii) One hundred seventy-five days if the individual works part-
6 time.

7 (3) A covered individual shall not take paid family medical leave
8 for more than one qualifying reason in any benefit year.

9 (4) The maximum amount of paid family medical leave that a covered
10 individual may take shall be:

11 (a) Twelve weeks during any benefit year if such leave is taken for
12 a qualifying reason described in subdivision (1)(a) or (b) of this
13 section; or

14 (b) Six weeks during any benefit year if such leave is taken for a
15 qualifying reason described in subdivision (1)(c), (d), or (e) of this
16 section, except as otherwise provided in subdivisions (15)(c) and (15)(i)
17 of section 2 of this act.

18 Sec. 4. (1) Subject to subsection (2) of this section, the family
19 medical leave benefits to be paid to the covered individual for any week
20 of paid family medical leave shall be:

21 (a) For a covered individual whose individual average weekly wage is
22 not more than twenty percent of the state average weekly wage, an amount
23 equal to ninety-five percent of such individual average weekly wage;

24 (b) For a covered individual whose individual average weekly wage is
25 more than twenty percent but not more than thirty percent of the state
26 average weekly wage, an amount equal to ninety percent of such individual
27 average weekly wage;

28 (c) For a covered individual whose individual average weekly wage is
29 more than thirty percent but not more than fifty percent of the state
30 average weekly wage, an amount equal to eighty-five percent of such
31 individual average weekly wage; or

1 (d) For a covered individual whose individual average weekly wage is
2 more than fifty percent of the state average weekly wage, an amount equal
3 to sixty-six percent of such individual average weekly wage.

4 (2) The amount of family medical leave benefits to be paid to a
5 covered individual in any week shall not exceed sixty-six percent of the
6 state average weekly wage.

7 (3) Except as provided in subdivisions (15)(c) and (15)(i) of
8 section 2 of this act, family medical leave benefits are not payable for
9 the first week in any benefit year that a covered individual takes paid
10 family medical leave. Such week shall be known as the waiting period. If
11 the covered individual takes ten or more days of paid family medical
12 leave in such benefit year, the covered individual shall be paid for the
13 waiting period. The waiting period shall occur only once in any benefit
14 year.

15 (4) Family medical leave benefits are not payable for less than
16 eight hours of paid family medical leave taken in any one workweek.

17 (5) The first payment of family medical leave benefits must be made
18 to the covered individual within two weeks after a claim is filed under
19 section 5 of this act, and subsequent payments of such benefits must be
20 made every two weeks thereafter for as long as the covered individual is
21 eligible.

22 (6) If a covered individual has wages payable to him or her with
23 respect to any week in which he or she is receiving paid family medical
24 leave benefits, the amount of paid family medical leave benefits for such
25 week shall be reduced by the amount of wages that the covered individual
26 receives for such week.

27 (7) For purposes of the calculations required under this section,
28 only wages earned in employment as defined in section 48-604 shall be
29 considered.

30 (8) A covered individual shall not receive family medical leave
31 benefits at the same time that he or she is receiving workers'

1 compensation benefits or unemployment compensation.

2 Sec. 5. (1) To receive family medical leave benefits, a covered
3 individual shall file a claim for such benefits with the commissioner on
4 a form prescribed by the commissioner. The claim shall include:

5 (a) The name, address, and social security number of the covered
6 individual;

7 (b) The reason for taking the paid family medical leave;

8 (c) Such wage information as the commissioner may require to
9 determine the amount of family medical leave benefits;

10 (d) Such documentation as the commissioner may require from a health
11 care provider for proof of a serious health condition;

12 (e) The name and address of the covered employer; and

13 (f) Such other information as required by the commissioner to
14 calculate and determine eligibility for family medical leave benefits.

15 (2) After a claim is filed, the commissioner shall notify the
16 covered employer of such claim and shall determine the covered
17 individual's eligibility for family medical leave benefits. If the
18 commissioner determines that the covered individual is eligible, the
19 commissioner shall pay family medical leave benefits to the covered
20 individual pursuant to section 4 of this act. If the commissioner
21 determines that the covered individual is ineligible, the commissioner
22 shall notify the covered individual of the commissioner's determination.
23 Such determination of ineligibility may be appealed, and the appeal shall
24 be in accordance with the Administrative Procedure Act.

25 (3) Claims filed under this section and all related information are
26 confidential and shall not be public records. A covered individual or his
27 or her authorized representative may review the claim and related
28 information upon the presentation of the covered individual's signed
29 authorization.

30 Sec. 6. (1) The Paid Family Medical Leave Insurance Fund is
31 created. Any money in the fund available for investment shall be invested

1 by the state investment officer pursuant to the Nebraska Capital
2 Expansion Act and the Nebraska State Funds Investment Act.

3 (2) The commissioner shall administer the Paid Family Medical Leave
4 Insurance Fund. The fund shall consist of contributions from covered
5 individuals. Such contributions shall be collected by covered employers
6 as payroll deductions from covered individuals beginning on the operative
7 date of this act. The contributions shall become due and be paid by each
8 covered employer to the commissioner in such manner and at such times as
9 the commissioner shall, by rule and regulation, prescribe. The
10 commissioner may require any covered employer whose annual payroll for
11 either of the two preceding calendar years has equaled or exceeded one
12 hundred thousand dollars to pay the contributions by an electronic method
13 approved by the commissioner, except when the covered employer
14 establishes to the satisfaction of the commissioner that payment of the
15 contribution by an electronic method would work a hardship on the covered
16 employer. The commissioner shall remit the contributions to the State
17 Treasurer for credit to the fund. Such contributions shall be used to pay
18 family medical leave benefits payable under the Paid Family Medical Leave
19 Insurance Act and the administrative costs incurred in administering the
20 act. The commissioner shall be responsible for evaluating and determining
21 on an annual basis the amount of contributions necessary to finance the
22 total amount of family medical leave benefits payable under the act. In
23 no case shall the contributions from a covered individual exceed one-half
24 of one percent of his or her gross wages in any twelve-month period. Any
25 covered employer that willfully fails or refuses to pay a contribution
26 required under this section shall be guilty of a Class III misdemeanor.
27 Each day of such failure or refusal shall constitute a separate offense.

28 (3) On the operative date of this act, the State Treasurer shall
29 transfer four million dollars from the Nebraska Health Care Cash Fund to
30 the Paid Family Medical Leave Insurance Fund. Such funds shall be used by
31 the commissioner to pay the upfront administrative costs related to the

1 Paid Family Medical Leave Insurance Act. The four million dollars shall
2 be repaid to the Nebraska Health Care Cash Fund as follows:

3 (a) On December 31, 2020, the State Treasurer shall transfer eight
4 hundred thousand dollars from the Paid Family Medical Leave Insurance
5 Fund to the Nebraska Health Care Cash Fund;

6 (b) On December 31, 2021, the State Treasurer shall transfer eight
7 hundred thousand dollars from the Paid Family Medical Leave Insurance
8 Fund to the Nebraska Health Care Cash Fund;

9 (c) On December 31, 2022, the State Treasurer shall transfer eight
10 hundred thousand dollars from the Paid Family Medical Leave Insurance
11 Fund to the Nebraska Health Care Cash Fund;

12 (d) On December 31, 2023, the State Treasurer shall transfer eight
13 hundred thousand dollars from the Paid Family Medical Leave Insurance
14 Fund to the Nebraska Health Care Cash Fund; and

15 (e) On December 31, 2024, the State Treasurer shall transfer eight
16 hundred thousand dollars from the Paid Family Medical Leave Insurance
17 Fund to the Nebraska Health Care Cash Fund.

18 Sec. 7. (1) A covered individual may take paid family medical leave
19 on an intermittent basis if:

20 (a) The intermittent leave is to care for a family member with a
21 serious health condition or because of the covered individual's serious
22 health condition; or

23 (b) The intermittent leave is to care for a newborn or a newly
24 placed adopted or foster care child of the covered individual and the
25 covered individual has received the employer's approval for such
26 intermittent leave.

27 (2) Family medical leave benefits for intermittent leave shall be
28 prorated.

29 (3) A covered individual in need of intermittent leave for
30 foreseeable medical treatment must work with his or her covered employer
31 to schedule the leave so as not to unduly disrupt the operations of the

1 covered employer. In such cases, the covered employer may transfer the
2 covered individual temporarily to an alternative job with equivalent pay
3 and benefits that accommodates recurring periods of leave better than the
4 covered individual's regular job.

5 (4) Paid family medical leave taken intermittently under this
6 section shall not result in a reduction of the total amount of leave to
7 which a covered individual is entitled beyond the amount of leave
8 actually taken.

9 (5) Nothing in this section shall be construed to entitle a covered
10 individual to more paid family medical leave than he or she is entitled
11 to under sections 3 and 4 of this act.

12 Sec. 8. (1) Any covered individual who exercises his or her right
13 to paid family medical leave shall, upon the expiration of such leave, be
14 entitled to be restored by the covered employer to the position held by
15 the covered individual when the leave commenced or to a different
16 position with equivalent seniority, status, employment benefits, pay, and
17 other terms and conditions of employment, including fringe benefits and
18 service credits.

19 (2) During any paid family medical leave taken, the covered employer
20 shall maintain any health benefits the covered individual had prior to
21 taking such leave for the duration of the leave as if the covered
22 individual had continued in employment continuously from the date he or
23 she commenced the leave until the date the family medical leave benefits
24 terminate if the covered individual continues to pay the covered
25 individual's share of the cost of such health benefits as required prior
26 to the commencement of the leave.

27 (3) Certain types of earned benefits, such as seniority or paid
28 leave, need not continue to accrue during periods of paid family medical
29 leave if such benefits do not accrue for employees on other types of
30 leave.

31 (4) Nothing in this section shall be construed to entitle any

1 covered individual to any right, benefit, or position of employment other
2 than any right, benefit, or position to which the covered individual
3 would have been entitled had the covered individual not taken the leave.

4 Sec. 9. (1) It shall be unlawful for a covered employer to
5 interfere with, restrain, or deny the exercise of, or the attempt to
6 exercise, any right protected under the Paid Family Medical Leave
7 Insurance Act or to take a retaliatory personnel action against a covered
8 individual because he or she exercised rights protected under the act.
9 Such rights include, but are not limited to:

10 (a) The right to request or use paid family medical leave;

11 (b) The right to communicate to the covered employer an intent to
12 file a claim for family medical leave benefits;

13 (c) The right to appeal eligibility determinations;

14 (d) The right to testify or participate in any investigation,
15 hearing, or proceeding under the act; and

16 (e) The right to inform the commissioner of any alleged violation of
17 the act.

18 (2) It shall be unlawful for a covered employer's absence control
19 policy to count paid family medical leave taken under the act as an
20 absence that may lead to or result in discipline, discharge, demotion,
21 suspension, or any other adverse action.

22 (3) The commissioner may investigate any complaint of a violation of
23 this section and may subpoena records and witnesses related to such
24 investigation.

25 (4) Any covered employer that violates this section shall be guilty
26 of a Class III misdemeanor.

27 Sec. 10. (1) A covered individual who is entitled to leave under
28 the federal Family and Medical Leave Act of 1993, 29 U.S.C. 2601 et seq.,
29 shall take any paid family medical leave under the Paid Family Medical
30 Leave Insurance Act concurrently with leave taken pursuant to the federal
31 Family and Medical Leave Act of 1993.

1 (2) A covered employer may require that payments made pursuant to
2 the Paid Family Medical Leave Insurance Act be made concurrently or
3 otherwise coordinated with payments made or leave allowed as disability
4 or family care leave under a collective-bargaining agreement or employer
5 policy. The covered employer must give covered individuals written notice
6 of this requirement.

7 (3) The Paid Family Medical Leave Insurance Act does not diminish a
8 covered employer's obligation to comply with any of the following that
9 provide more generous leave:

10 (a) A collective-bargaining agreement;

11 (b) An employer policy; or

12 (c) Any state or federal law.

13 (4) A covered individual's right to paid family medical leave under
14 the Paid Family Medical Leave Insurance Act may not be diminished by a
15 collective-bargaining agreement entered into or renewed, or an employer
16 policy adopted or retained, after the operative date of this act.

17 Sec. 11. (1) Each covered employer shall provide written notice
18 regarding the Paid Family Medical Leave Insurance Act to each covered
19 individual upon hiring and annually thereafter. A covered employer shall
20 also provide written notice to a covered individual when he or she
21 requests leave under the act or when the covered employer acquires
22 knowledge that a covered individual's leave may qualify for family
23 medical leave benefits. Such notice shall include:

24 (a) An explanation of the covered individual's right to family
25 medical leave benefits and the terms under which it may be used;

26 (b) The amount of family medical leave benefits;

27 (c) The procedure for filing a claim for family medical leave
28 benefits;

29 (d) An explanation of the right to job protection and benefits
30 continuation under section 8 of this act;

31 (e) A statement explaining that retaliatory personnel actions

1 against a covered individual for requesting or using paid family medical
2 leave are prohibited; and

3 (f) A statement explaining that the covered individual has a right
4 to file a complaint for violations of the Paid Family Medical Leave
5 Insurance Act.

6 (2) A covered employer shall also display and maintain a poster in a
7 conspicuous place accessible to covered individuals at the covered
8 employer's place of business that contains the information required under
9 subsection (1) of this section.

10 Sec. 12. The commissioner shall implement procedures to ensure the
11 confidentiality of all information related to any claims filed or appeals
12 taken pursuant to the Paid Family Medical Leave Insurance Act to the
13 maximum extent permitted by applicable laws.

14 Sec. 13. (1) A covered individual is disqualified from receiving
15 family medical leave benefits for one year if he or she is determined by
16 the commissioner to have willfully made a false statement or
17 misrepresentation regarding a material fact, or willfully failed to
18 report a material fact, to obtain family medical leave benefits.

19 (2) If family medical leave benefits are paid erroneously or as a
20 result of willful misrepresentation, or if a claim for family medical
21 leave benefits is rejected after benefits are paid, the commissioner may
22 seek repayment of such benefits from the recipient.

23 Sec. 14. It is the intent of the Legislature that the commissioner
24 utilize state data and technology that is used for other state programs,
25 including, but not limited to, unemployment insurance, to the maximum
26 extent possible for purposes of carrying out his or her responsibilities
27 under the Paid Family Medical Leave Insurance Act.

28 Sec. 15. (1) If the Internal Revenue Service determines that family
29 medical leave benefits are subject to federal income tax, the
30 commissioner shall advise any covered individual filing a claim for
31 family medical leave benefits, at the time of filing such claim, that:

1 (a) The Internal Revenue Service has determined that family medical
2 leave benefits are subject to federal income tax;

3 (b) Requirements exist pertaining to estimated tax payments;

4 (c) The covered individual may elect to have federal income tax
5 deducted and withheld from the covered individual's family medical leave
6 benefits; and

7 (d) The covered individual is permitted to change a previously
8 elected income withholding status.

9 (2) If the individual elects to have federal tax payments withheld,
10 the commissioner shall deduct and withhold the amount specified in the
11 Internal Revenue Code in a manner consistent with state and federal law.
12 Amounts deducted and withheld must remain in the Paid Family Medical
13 Leave Insurance Fund until transferred to the federal taxing authority as
14 a payment of income tax.

15 Sec. 16. On or before December 31, 2020, and on or before December
16 31 of each year thereafter, the commissioner shall electronically submit
17 a report to the Legislature. The report shall include:

18 (1) The amount and percentage of family medical leave benefits paid
19 for each type of paid family medical leave described in subsection (1) of
20 section 3 of this act;

21 (2) The percentage of family medical leave benefits paid to each
22 gender for each type of paid family medical leave described in subsection
23 (1) of section 3 of this act;

24 (3) The amount of the contributions collected by covered employers
25 as payroll deductions under section 6 of this act;

26 (4) The median benefit payment level;

27 (5) The occupation and industry of covered individuals receiving
28 family medical leave benefits;

29 (6) The balance of the Paid Family Medical Leave Insurance Fund;

30 (7) A summary of the outreach efforts made by the commissioner to
31 increase awareness of the availability of paid family medical leave; and

1 (8) The types of family members for whom paid family medical leave
2 as described in subdivision (1)(c) of section 3 of this act was taken.

3 Sec. 17. The commissioner shall adopt and promulgate rules and
4 regulations as necessary to carry out the Paid Family Medical Leave
5 Insurance Act.

6 Sec. 18. This act becomes operative on July 1, 2019.

7 Sec. 19. If any section in this act or any part of any section is
8 declared invalid or unconstitutional, the declaration shall not affect
9 the validity or constitutionality of the remaining portions.