

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5975

65th Legislature
2017 3rd Special Session

Passed by the Senate June 30, 2017
Yeas 37 Nays 12

President of the Senate

Passed by the House June 30, 2017
Yeas 65 Nays 29

Speaker of the House of Representatives
Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5975** as passed by Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5975

Passed Legislature - 2017 3rd Special Session

State of Washington 65th Legislature 2017 3rd Special Session

By Senate Ways & Means (originally sponsored by Senators Fain, Lias, Keiser, Saldaña, Miloscia, Cleveland, McCoy, Nelson, Ranker, Conway, Mullet, Hobbs, Takko, Palumbo, Pedersen, and Chase)

READ FIRST TIME 06/30/17.

1 AN ACT Relating to paid family and medical leave; amending RCW
2 49.76.020, 49.76.130, 49.77.020, and 49.77.030; reenacting and
3 amending RCW 50.29.021 and 43.79A.040; adding new sections to chapter
4 49.77 RCW; adding a new Title to the Revised Code of Washington to be
5 codified as Title 50A RCW; repealing RCW 49.78.010, 49.78.020,
6 49.78.090, 49.78.220, 49.78.230, 49.78.240, 49.78.250, 49.78.260,
7 49.78.270, 49.78.280, 49.78.290, 49.78.300, 49.78.310, 49.78.320,
8 49.78.330, 49.78.340, 49.78.350, 49.78.360, 49.78.370, 49.78.380,
9 49.78.390, 49.78.400, 49.78.410, 49.78.901, 49.78.904, 49.86.005,
10 49.86.010, 49.86.020, 49.86.030, 49.86.040, 49.86.050, 49.86.060,
11 49.86.070, 49.86.080, 49.86.090, 49.86.100, 49.86.110, 49.86.120,
12 49.86.130, 49.86.140, 49.86.150, 49.86.160, 49.86.170, 49.86.180,
13 49.86.210, 49.86.902, and 49.86.903; prescribing penalties; and
14 providing an effective date.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

16 NEW SECTION. **Sec. 1.** INTENT. The legislature finds that the
17 demands of the workplace and of families need to be balanced to
18 promote family stability and economic security. The legislature also
19 finds that families across the state own and operate businesses.
20 Workplace leave policies are desirable to accommodate changes in the
21 workforce such as rising numbers of dual-career couples, working

1 single parents, and an aging population. In addition the impact of
2 significant new requirements should be reasonably balanced to help
3 small businesses thrive.

4 The legislature also finds that access to paid leave is
5 associated with many important health benefits. Research confirms
6 that paid leave results in decreased infant mortality and more well-
7 baby visits and reductions in maternal postpartum depression and
8 stress. The legislature further finds that paid leave increases the
9 duration of breastfeeding, which supports bonding, stimulates
10 positive neurological and psychological development, strengthens a
11 child's immune system, and reduces the risks of serious or costly
12 health problems such as asthma, acute ear infections, obesity, Type 2
13 diabetes, leukemia, and sudden infant death syndrome. The legislature
14 also finds that when fathers have access to paid leave they are more
15 directly engaged during the child's first few months, thereby
16 increasing father infant bonding and reducing overall stress on the
17 family.

18 The legislature declares it to be in the public interest to
19 create a family and medical leave insurance program to provide
20 reasonable paid family leave for the birth or placement of a child
21 with the employee, for the care of a family member who has a serious
22 health condition, and for a qualifying exigency under the federal
23 family and medical leave act, and reasonable paid medical leave for
24 an employee's own serious health condition and to reasonably assist
25 businesses in implementing and maintaining a program to support their
26 employees and family.

27 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
28 requires otherwise, the definitions in this section apply throughout
29 this chapter.

30 (1) "Child" includes a biological, adopted, or foster child, a
31 stepchild, or a child to whom the employee stands in loco parentis,
32 is a legal guardian, or is a de facto parent, regardless of age or
33 dependency status.

34 (2) "Commissioner" means the commissioner of the department or
35 the commissioner's designee.

36 (3) "Department" means the employment security department.

37 (4)(a) "Employee" means an individual who is in the employment of
38 an employer.

1 (b) "Employee" does not include employees of the United States of
2 America.

3 (5) "Employee's average weekly wage" means the quotient derived
4 by dividing the employee's total wages during the two quarters of the
5 employee's qualifying period in which total wages were highest by
6 twenty-six. If the result is not a multiple of one dollar, the
7 department must round the result to the next lower multiple of one
8 dollar.

9 (6)(a) "Employer" means: (i) Any individual or type of
10 organization, including any partnership, association, trust, estate,
11 joint stock company, insurance company, limited liability company, or
12 corporation, whether domestic or foreign, or the receiver, trustee in
13 bankruptcy, trustee, or the legal representative of a deceased
14 person, having any person in employment or, having become an
15 employer, has not ceased to be an employer as provided in this
16 chapter; (ii) the state, state institutions, and state agencies; and
17 (iii) any unit of local government including, but not limited to, a
18 county, city, town, municipal corporation, quasi-municipal
19 corporation, or political subdivision.

20 (b) "Employer" does not include the United States of America.

21 (7)(a) "Employment" means personal service, of whatever nature,
22 unlimited by the relationship of master and servant as known to the
23 common law or any other legal relationship performed for wages or
24 under any contract calling for the performance of personal services,
25 written or oral, express or implied. The term "employment" includes
26 an individual's entire service performed within or without or both
27 within and without this state, if:

28 (i) The service is localized in this state; or

29 (ii) The service is not localized in any state, but some of the
30 service is performed in this state; and

31 (A) The base of operations of the employee is in the state, or if
32 there is no base of operations, then the place from which such
33 service is directed or controlled is in this state; or

34 (B) The base of operations or place from which such service is
35 directed or controlled is not in any state in which some part of the
36 service is performed, but the individual's residence is in this
37 state.

38 (b) "Employment" does not include:

39 (i) Self-employed individuals;

1 (ii) Services for remuneration when it is shown to the
2 satisfaction of the commissioner that:

3 (A)(I) Such individual has been and will continue to be free from
4 control or direction over the performance of such service, both under
5 his or her contract of service and in fact; and

6 (II) Such service is either outside the usual course of business
7 for which such service is performed, or that such service is
8 performed outside of all the places of business of the enterprises
9 for which such service is performed; and

10 (III) Such individual is customarily engaged in an independently
11 established trade, occupation, profession, or business, of the same
12 nature as that involved in the contract of service; or

13 (B) As a separate alternative:

14 (I) Such individual has been and will continue to be free from
15 control or direction over the performance of such service, both under
16 his or her contract of service and in fact; and

17 (II) Such service is either outside the usual course of business
18 for which such service is performed, or that such service is
19 performed outside of all the places of business of the enterprises
20 for which such service is performed, or the individual is
21 responsible, both under the contract and in fact, for the costs of
22 the principal place of business from which the service is performed;
23 and

24 (III) Such individual is customarily engaged in an independently
25 established trade, occupation, profession, or business, of the same
26 nature as that involved in the contract of service, or such
27 individual has a principal place of business for the work the
28 individual is conducting that is eligible for a business deduction
29 for federal income tax purposes; and

30 (IV) On the effective date of the contract of service, such
31 individual is responsible for filing at the next applicable filing
32 period, both under the contract of service and in fact, a schedule of
33 expenses with the internal revenue service for the type of business
34 the individual is conducting; and

35 (V) On the effective date of the contract of service, or within a
36 reasonable period after the effective date of the contract, such
37 individual has established an account with the department of revenue,
38 and other state agencies as required by the particular case, for the
39 business the individual is conducting for the payment of all state
40 taxes normally paid by employers and businesses and has registered

1 for and received a unified business identifier number from the state
2 of Washington; and

3 (VI) On the effective date of the contract of service, such
4 individual is maintaining a separate set of books or records that
5 reflect all items of income and expenses of the business which the
6 individual is conducting; or

7 (iii) Services that require registration under chapter 18.27 RCW
8 or licensing under chapter 19.28 RCW rendered by an individual when:

9 (A) The individual has been and will continue to be free from
10 control or direction over the performance of the service, both under
11 the contract of service and in fact;

12 (B) The service is either outside the usual course of business
13 for which the service is performed, or the service is performed
14 outside of all the places of business of the enterprise for which the
15 service is performed, or the individual is responsible, both under
16 the contract and in fact, for the costs of the principal place of
17 business from which the service is performed;

18 (C) The individual is customarily engaged in an independently
19 established trade, occupation, profession, or business, of the same
20 nature as that involved in the contract of service, or the individual
21 has a principal place of business for the business the individual is
22 conducting that is eligible for a business deduction for federal
23 income tax purposes, other than that furnished by the employer for
24 which the business has contracted to furnish services;

25 (D) On the effective date of the contract of service, the
26 individual is responsible for filing at the next applicable filing
27 period, both under the contract of service and in fact, a schedule of
28 expenses with the internal revenue service for the type of business
29 the individual is conducting;

30 (E) On the effective date of the contract of service, or within a
31 reasonable period after the effective date of the contract, the
32 individual has an active and valid certificate of registration with
33 the department of revenue, and an active and valid account with any
34 other state agencies as required by the particular case, for the
35 business the individual is conducting for the payment of all state
36 taxes normally paid by employers and businesses and has registered
37 for and received a unified business identifier number from the state
38 of Washington;

39 (F) On the effective date of the contract of service, the
40 individual is maintaining a separate set of books or records that

1 reflect all items of income and expenses of the business that the
2 individual is conducting; and

3 (G) On the effective date of the contract of service, the
4 individual has a valid contractor registration pursuant to chapter
5 18.27 RCW or an electrical contractor license pursuant to chapter
6 19.28 RCW.

7 (8) "Employment benefits" means all benefits provided or made
8 available to employees by an employer, including group life
9 insurance, health insurance, disability insurance, sick leave, annual
10 leave, educational benefits, and pensions except benefits that are
11 provided by a practice or written policy of an employer or through an
12 employee benefit plan as defined in 29 U.S.C. Sec. 1002(3).

13 (9) "Family leave" means any leave taken by an employee from
14 work:

15 (a) To participate in providing care, including physical or
16 psychological care, for a family member of the employee made
17 necessary by a serious health condition of the family member;

18 (b) To bond with the employee's child during the first twelve
19 months after the child's birth, or the first twelve months after the
20 placement of a child under the age of eighteen with the employee; or

21 (c) Because of any qualifying exigency as permitted under the
22 federal family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(e)
23 and 29 C.F.R. Sec. 825.126(a)(1) through (8), as they existed on the
24 effective date of this section for family members as defined in
25 subsection (10) of this section.

26 (10) "Family member" means a child, grandchild, grandparent,
27 parent, sibling, or spouse of an employee.

28 (11) "Grandchild" means a child of the employee's child.

29 (12) "Grandparent" means a parent of the employee's parent.

30 (13) "Health care provider" means: (a) A person licensed as a
31 physician under chapter 18.71 RCW or an osteopathic physician and
32 surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced
33 registered nurse practitioner under chapter 18.79 RCW; or (c) any
34 other person determined by the commissioner to be capable of
35 providing health care services.

36 (14) "Medical leave" means any leave taken by an employee from
37 work made necessary by the employee's own serious health condition.

38 (15) "Parent" means the biological, adoptive, de facto, or foster
39 parent, stepparent, or legal guardian of an employee or the

1 employee's spouse, or an individual who stood in loco parentis to an
2 employee when the employee was a child.

3 (16) "Period of incapacity" means an inability to work, attend
4 school, or perform other regular daily activities because of a
5 serious health condition, treatment of that condition or recovery
6 from it, or subsequent treatment in connection with such inpatient
7 care.

8 (17) "Premium" or "premiums" means the payments required by
9 section 8 of this act and paid to the department for deposit in the
10 family and medical leave insurance account under section 82 of this
11 act.

12 (18) "Qualifying period" means the first four of the last five
13 completed calendar quarters or, if eligibility is not established,
14 the last four completed calendar quarters immediately preceding the
15 application for leave.

16 (19)(a) "Serious health condition" means an illness, injury,
17 impairment, or physical or mental condition that involves:

18 (i) Inpatient care in a hospital, hospice, or residential medical
19 care facility, including any period of incapacity; or

20 (ii) Continuing treatment by a health care provider. A serious
21 health condition involving continuing treatment by a health care
22 provider includes any one or more of the following:

23 (A) A period of incapacity of more than three consecutive, full
24 calendar days, and any subsequent treatment or period of incapacity
25 relating to the same condition, that also involves:

26 (I) Treatment two or more times, within thirty days of the first
27 day of incapacity, unless extenuating circumstances exist, by a
28 health care provider, by a nurse or physician's assistant under
29 direct supervision of a health care provider, or by a provider of
30 health care services, such as a physical therapist, under orders of,
31 or on referral by, a health care provider; or

32 (II) Treatment by a health care provider on at least one occasion
33 which results in a regimen of continuing treatment under the
34 supervision of the health care provider;

35 (B) Any period of incapacity due to pregnancy, or for prenatal
36 care;

37 (C) Any period of incapacity or treatment for such incapacity due
38 to a chronic serious health condition. A chronic serious health
39 condition is one which:

1 (I) Requires periodic visits, defined as at least twice a year,
2 for treatment by a health care provider, or by a nurse under direct
3 supervision of a health care provider;

4 (II) Continues over an extended period of time, including
5 recurring episodes of a single underlying condition; and

6 (III) May cause episodic rather than a continuing period of
7 incapacity, including asthma, diabetes, and epilepsy;

8 (D) A period of incapacity which is permanent or long term due to
9 a condition for which treatment may not be effective. The employee or
10 family member must be under the continuing supervision of, but need
11 not be receiving active treatment by, a health care provider,
12 including Alzheimer's, a severe stroke, or the terminal stages of a
13 disease; or

14 (E) Any period of absence to receive multiple treatments,
15 including any period of recovery from the treatments, by a health
16 care provider or by a provider of health care services under orders
17 of, or on referral by, a health care provider, either for: (I)
18 Restorative surgery after an accident or other injury; or (II) a
19 condition that would likely result in a period of incapacity of more
20 than three consecutive, full calendar days in the absence of medical
21 intervention or treatment, such as cancer, severe arthritis, or
22 kidney disease.

23 (b) The requirement in (a)(i) and (ii) of this subsection for
24 treatment by a health care provider means an in-person visit to a
25 health care provider. The first, or only, in-person treatment visit
26 must take place within seven days of the first day of incapacity.

27 (c) Whether additional treatment visits or a regimen of
28 continuing treatment is necessary within the thirty-day period shall
29 be determined by the health care provider.

30 (d) The term extenuating circumstances in (a)(ii)(A)(I) of this
31 subsection means circumstances beyond the employee's control that
32 prevent the follow-up visit from occurring as planned by the health
33 care provider. Whether a given set of circumstances are extenuating
34 depends on the facts. For example, extenuating circumstances exist if
35 a health care provider determines that a second in-person visit is
36 needed within the thirty-day period, but the health care provider
37 does not have any available appointments during that time period.

38 (e) Treatment for purposes of (a) of this subsection includes,
39 but is not limited to, examinations to determine if a serious health
40 condition exists and evaluations of the condition. Treatment does not

1 include routine physical examinations, eye examinations, or dental
2 examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of
3 continuing treatment includes, but is not limited to, a course of
4 prescription medication, such as an antibiotic, or therapy requiring
5 special equipment to resolve or alleviate the health condition, such
6 as oxygen. A regimen of continuing treatment that includes taking
7 over-the-counter medications, such as aspirin, antihistamines, or
8 salves, or bed rest, drinking fluids, exercise, and other similar
9 activities that can be initiated without a visit to a health care
10 provider, is not, by itself, sufficient to constitute a regimen of
11 continuing treatment for purposes of this chapter.

12 (f) Conditions for which cosmetic treatments are administered,
13 such as most treatments for acne or plastic surgery, are not serious
14 health conditions unless inpatient hospital care is required or
15 unless complications develop. Ordinarily, unless complications arise,
16 the common cold, the flu, ear aches, upset stomach, minor ulcers,
17 headaches other than migraines, routine dental or orthodontia
18 problems, and periodontal disease are examples of conditions that are
19 not serious health conditions and do not qualify for leave under this
20 chapter. Restorative dental or plastic surgery after an injury or
21 removal of cancerous growths are serious health conditions provided
22 all the other conditions of this section are met. Mental illness
23 resulting from stress or allergies may be serious health conditions,
24 but only if all the conditions of this section are met.

25 (g)(i) Substance abuse may be a serious health condition if the
26 conditions of this section are met. However, leave may only be taken
27 for treatment for substance abuse by a health care provider or by a
28 licensed substance abuse treatment provider. Absence because of the
29 employee's use of the substance, rather than for treatment, does not
30 qualify for leave under this chapter.

31 (ii) Treatment for substance abuse does not prevent an employer
32 from taking employment action against an employee. The employer may
33 not take action against the employee because the employee has
34 exercised his or her right to take medical leave for treatment.
35 However, if the employer has an established policy, applied in a
36 nondiscriminatory manner that has been communicated to all employees,
37 that provides under certain circumstances an employee may be
38 terminated for substance abuse, pursuant to that policy the employee
39 may be terminated whether or not the employee is presently taking
40 medical leave. An employee may also take family leave to care for a

covered family member who is receiving treatment for substance abuse. The employer may not take action against an employee who is providing care for a covered family member receiving treatment for substance abuse.

(h) Absences attributable to incapacity under (a)(ii)(B) or (C) of this subsection qualify for leave under this chapter even though the employee or the family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

(20) "Service is localized in this state" has the same meaning as described in RCW 50.04.120.

(21) "Spouse" means a husband or wife, as the case may be, or state registered domestic partner.

(22) "State average weekly wage" means the most recent average weekly wage calculated under RCW 50.04.355 and available on January 1st of each year.

(23) "Typical workweek hours" means:

(a) For an hourly employee, the average number of hours worked per week by an employee since the beginning of the qualifying period; and

(b) Forty hours for a salaried employee, regardless of the number of hours the salaried employee typically works.

(24) "Wage" means the same as "wages" under RCW 50.04.320(2), except that: (a) The term employment as used in RCW 50.04.320(2) is defined in this chapter; and (b) the maximum wages subject to a premium assessment are those wages as set by the commissioner under section 8(4) of this act. "Wages" for purposes of elective coverage under section 9 of this act has the meaning as defined by rule.

NEW SECTION. **Sec. 3.** **BENEFIT ELIGIBILITY.** Employees are eligible for family and medical leave benefits as provided in this chapter after working for at least eight hundred twenty hours in employment during the qualifying period.

1 NEW SECTION. **Sec. 4.** LEAVE ENTITLEMENT EXPIRATION. (1) The
2 entitlement to family leave benefits for the birth or placement of a
3 child expires at the end of the twelve-month period beginning on the
4 date of such birth or placement.

5 (2) The entitlement to family leave benefits for a family
6 member's serious health condition, or leave for qualifying exigency,
7 expires at the end of the twelve-month period beginning on the date
8 of which the employee filed an application for the benefits.

9 (3) The entitlement to medical leave benefits for the employee's
10 own serious health condition expires at the end of the twelve-month
11 period beginning on the date on which the employee filed an
12 application for medical leave benefits.

13 NEW SECTION. **Sec. 5.** LIMITATIONS, DISQUALIFICATIONS, AND
14 EMPLOYEE PENALTIES. (1) An employee is not entitled to paid family or
15 medical leave benefits under this chapter:

16 (a) For any absence occasioned by the willful intention of the
17 employee to bring about injury to or the sickness of the employee or
18 another, or resulting from any injury or sickness sustained in the
19 perpetration by the employee of an illegal act;

20 (b) For any family or medical leave commencing before the
21 employee becomes qualified for benefits under this chapter;

22 (c) For an employee who is on suspension from his or her
23 employment; or

24 (d) For any day in which a family or medical leave care recipient
25 works at least part of that day for remuneration or profit during the
26 same or substantially similar working hours as those of the employer
27 from which family or medical leave benefits are claimed, except that
28 occasional scheduling adjustments with respect to secondary
29 employments shall not prevent receipt of family or medical leave
30 benefits.

31 (2) An employer may allow an employee who has accrued vacation,
32 sick, or other paid time off to choose whether: (a) To take such
33 leave; or (b) not to take such leave and receive paid family or
34 medical leave benefits, as provided in section 6 of this act.

35 (3) An individual is disqualified for benefits for any week he or
36 she has knowingly and willfully made a false statement or
37 representation involving a material fact or knowingly and willfully
38 failed to report a material fact and, as a result, has obtained or
39 attempted to obtain any benefits under the provisions of this

chapter. An individual disqualified for benefits under this subsection (3) for the:

(a) First time is disqualified for an additional twenty-six weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of fifteen percent of the amount of benefits overpaid or deemed overpaid;

(b) Second time is also disqualified for an additional fifty-two weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of twenty-five percent of the amount of benefits overpaid or deemed overpaid;

(c) Third time and any time thereafter is also disqualified for an additional one hundred four weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of fifty percent of the amount of benefits overpaid or deemed overpaid.

(4) All penalties collected under this section must be deposited in the family and medical leave enforcement account created under section 76 of this act.

NEW SECTION. **Sec. 6.** BENEFIT AMOUNTS AND DURATION. (1) Beginning January 1, 2020, family and medical leave are available and benefits are payable to a qualified employee under this section. Following a waiting period consisting of the first seven calendar days of leave, benefits are payable when family or medical leave is required. However, no waiting period is required for leave for the birth or placement of a child. Benefits may continue during the continuance of the need for family and medical leave, subject to the maximum and minimum weekly benefits, duration, and other conditions and limitations established in this chapter. Successive periods of family and medical leave caused by the same or related injury or sickness are deemed a single period of family and medical leave only if separated by less than four months.

(2) The weekly benefit shall be prorated by the percentage of hours on leave compared to the number of hours provided as the typical workweek hours as defined in section 2 of this act.

(a) The benefits in this section, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar.

1 (b) Hours on leave claimed for benefits under this chapter, if
2 not a multiple of one hour, shall be reduced to the next lower
3 multiple of one hour.

4 (c) The minimum claim duration payment is for eight consecutive
5 hours of leave.

6 (3)(a) The maximum duration of paid family leave may not exceed
7 twelve times the typical workweek hours during a period of fifty-two
8 consecutive calendar weeks.

9 (b) The maximum duration of paid medical leave may not exceed
10 twelve times the typical workweek hours during a period of fifty-two
11 consecutive calendar weeks. This leave may be extended an additional
12 two times the typical workweek hours if the employee experiences a
13 serious health condition with a pregnancy that results in incapacity.

14 (c) An employee is not entitled to paid family and medical leave
15 benefits under this chapter that exceeds a combined total of sixteen
16 times the typical workweek hours. The combined total of family and
17 medical leave may be extended to eighteen times the typical workweek
18 hours if the employee experiences a serious health condition with a
19 pregnancy that results in incapacity.

20 (4) The weekly benefit for family and medical leave shall be
21 determined as follows: If the employee's average weekly wage is: (a)
22 Fifty percent or less of the state average weekly wage, the
23 employee's weekly benefit is ninety percent of the employee's average
24 weekly wage; or (b) greater than fifty percent of the state average
25 weekly wage, the employee's weekly benefit is the sum of: (i) Ninety
26 percent of the employee's average weekly wage up to fifty percent of
27 the state average weekly wage; and (ii) fifty percent of the
28 employee's average weekly wage that is greater than fifty percent of
29 the state average weekly wage.

30 (5)(a) The maximum weekly benefit for family and medical leave
31 that occurs on or after January 1, 2020, shall be one thousand
32 dollars. By September 30, 2020, and by each subsequent September
33 30th, the commissioner shall adjust the maximum weekly benefit amount
34 to ninety percent of the state average weekly wage. The adjusted
35 maximum weekly benefit amount takes effect on the following January
36 1st.

37 (b) The minimum weekly benefit shall not be less than one hundred
38 dollars per week except that if the employee's average weekly wage at
39 the time of family and medical leave is less than one hundred dollars
40 per week, the weekly benefit shall be the employee's full wage.

1 NEW SECTION. **Sec. 7.** TIME OF PAYMENT—CONTESTING APPLICATION.

2 (1) Benefits provided under this chapter shall be paid periodically
3 and promptly, except when an employer contests a period of family or
4 medical leave. The department must send the first benefit payment to
5 the employee within fourteen calendar days after the first properly
6 completed weekly application is received by the department.
7 Subsequent payments must be sent at least biweekly thereafter. If the
8 employer contests an initial application for family or medical leave
9 benefits, the employer must notify the employee and the department in
10 a manner prescribed by the commissioner within eighteen days of
11 receipt of notice from the department of the employee's filing of an
12 application for benefits, as provided under section 29 of this act.
13 Failure to timely contest an initial application shall constitute a
14 waiver of objection to the family or medical leave application. Any
15 inquiry which requires the employee's response in order to continue
16 benefits uninterrupted or unmodified shall provide a reasonable time
17 period in which to respond and include a clear and prominent
18 statement of the deadline for responding and consequences of failing
19 to respond.

20 (2) If an employee has received one or more benefit payments
21 under this chapter, is in continued claim status, and his or her
22 eligibility for benefits is questioned by the department or contested
23 by the employer, the employee will be conditionally paid benefits
24 without delay for any periods for which the employee files a claim
25 for benefits, until and unless the employee has been provided
26 adequate notice and an opportunity to be heard. The employee's right
27 to retain such payments is conditioned upon the department's finding
28 the employee to be eligible for such payments.

29 (a) At the employee's request, the department may hold
30 conditional payments until the question of eligibility has been
31 resolved.

32 (b) Payments will be issued for any benefits withheld under (a)
33 of this subsection if the department determines the employee is
34 eligible for benefits.

35 (c) If it is determined that the employee is ineligible for the
36 weeks paid conditionally, the overpayment cannot be waived and must
37 be repaid.

38 (3) The department must develop, in rule, a process by which an
39 employer may contest an initial application for family or medical
40 leave benefits.

1 NEW SECTION. **Sec. 8. PREMIUMS.** (1)(a) Beginning January 1,
2 2019, the department shall assess for each individual in employment
3 with an employer and for each individual electing coverage a premium
4 based on the amount of the individual's wages subject to subsection
5 (4) of this section.

6 (b) The premium rate for family leave benefits shall be equal to
7 one-third of the total premium rate.

8 (c) The premium rate for medical leave benefits shall be equal to
9 two-thirds of the total premium rate.

10 (2) For calendar year 2022 and thereafter, the commissioner shall
11 determine the percentage of paid claims related to family leave
12 benefits and the percentage of paid claims related to medical leave
13 benefits and adjust the premium rates set in subsection (1)(b) and
14 (c) of this section by the proportional share of paid claims.

15 (3)(a) Beginning January 1, 2019, and ending December 31, 2020,
16 the total premium rate shall be four-tenths of one percent of the
17 individual's wages subject to subsection (4) of this section.

18 (b) For family leave premiums, an employer may deduct from the
19 wages of each employee up to the full amount of the premium required.

20 (c) For medical leave premiums, an employer may deduct from the
21 wages of each employee up to forty-five percent of the full amount of
22 the premium required.

23 (d) An employer may elect to pay all or any portion of the
24 employee's share of the premium for family leave or medical leave
25 benefits, or both.

26 (4) The commissioner must annually set a maximum limit on the
27 amount of wages that is subject to a premium assessment under this
28 section that is equal to the maximum wages subject to taxation for
29 social security as determined by the social security administration.

30 (5)(a) Employers with fewer than fifty employees employed in the
31 state are not required to pay the employer portion of premiums for
32 family and medical leave.

33 (b) If an employer with fewer than fifty employees elects to pay
34 the premiums, the employer is then eligible for assistance under
35 section 84 of this act.

36 (6) For calendar year 2021 and thereafter, the total premium rate
37 shall be based on the family and medical leave insurance account
38 balance ratio as of September 30th of the previous year. The
39 commissioner shall calculate the account balance ratio by dividing
40 the balance of the family and medical leave insurance account by

1 total covered wages paid by employers and those electing coverage.
2 The division shall be carried to the fourth decimal place with the
3 remaining fraction disregarded unless it amounts to five hundred-
4 thousandths or more, in which case the fourth decimal place shall be
5 rounded to the next higher digit. If the account balance ratio is:

6 (a) Zero to nine hundredths of one percent, the premium is six
7 tenths of one percent of the individual's wages;

8 (b) One tenth of one percent to nineteen hundredths of one
9 percent, the premium is five tenths of one percent of the
10 individual's wages;

11 (c) Two tenths of one percent to twenty-nine hundredths of one
12 percent, the premium is four tenths of one percent of the
13 individual's wages;

14 (d) Three tenths of one percent to thirty-nine hundredths of one
15 percent, the premium is three tenths of one percent of the
16 individual's wages;

17 (e) Four tenths of one percent to forty-nine hundredths of one
18 percent, the premium is two tenths of one percent of the individual's
19 wages; or

20 (f) Five tenths of one percent or greater, the premium is one
21 tenth of one percent of the individual's wages.

22 (7) Beginning January 1, 2021, if the account balance ratio
23 calculated in subsection (6) of this section is below five hundredths
24 of one percent, the commissioner must assess a solvency surcharge at
25 the lowest rate necessary to provide revenue to pay for the
26 administrative and benefit costs of family and medical leave, for the
27 calendar year, as determined by the commissioner. The solvency
28 surcharge shall be at least one-tenth of one percent and no more than
29 six-tenths of one percent and be added to the total premium rate for
30 family and medical leave benefits.

31 (8)(a) The employer must collect from the employees the premiums
32 and any surcharges provided under this section through payroll
33 deductions and remit the amounts collected to the department.

34 (b) In collecting employee premiums through payroll deductions,
35 the employer shall act as the agent of the employees and shall remit
36 the amounts to the department as required by this chapter.

37 (c) On September 30th of each year, the department shall average
38 the number of employees reported by an employer over the last four
39 completed calendar quarters to determine the size of the employer for

1 the next calendar year for the purposes of sections 8 and 84 of this
2 act.

3 (9) Premiums shall be collected in the manner and at such
4 intervals as provided in this chapter and directed by the department.

5 (10) Premiums collected under this section are placed in trust
6 for the employees and employers that the program is intended to
7 assist.

8 (11) A city, code city, town, county, or political subdivision
9 may not enact a charter, ordinance, regulation, rule, or resolution:

10 (a) Creating a paid family or medical leave insurance program
11 that alters or amends the requirements of this chapter for any
12 private employer;

13 (b) Providing for local enforcement of the provisions of this
14 chapter; or

15 (c) Requiring private employers to supplement duration of leave
16 or amount of wage replacement benefits provided under this chapter.

17 NEW SECTION. **Sec. 9. PREMIUMS—OUT-OF-STATE WAIVER.** (1) An
18 employer may file an application with the department for a
19 conditional waiver for the payment of family and medical leave
20 premiums, assessed under section 8 of this act, for any employee who
21 is:

22 (a) Physically based outside of the state;

23 (b) Employed in the state on a limited or temporary work
24 schedule; and

25 (c) Not expected to be employed in the state for eight hundred
26 twenty hours or more in a qualifying period.

27 (2) The department must approve an application that has been
28 signed by both the employee and employer verifying their belief that
29 the conditions in this subsection will be met during the qualifying
30 period.

31 (3) If the employee exceeds the eight hundred twenty hours or
32 more in a qualifying period, the conditional waiver expires and the
33 employer and employee will be responsible for their shares of all
34 premiums that would have been paid during the qualifying period in
35 which the employee exceeded the eight hundred twenty hours had the
36 waiver not been granted. Upon payment of the missed premiums, the
37 employee will be credited for the hours worked and will be eligible
38 for benefits under this chapter as if the premiums were originally
39 paid.

1 NEW SECTION. **Sec. 10.** ELECTIVE COVERAGE. (1) For benefits
2 payable beginning January 1, 2020, any self-employed person,
3 including a sole proprietor, independent contractor, partner, or
4 joint venturer, may elect coverage under this chapter for an initial
5 period of not less than three years and subsequent periods of not
6 less than one year immediately following a period of coverage. Those
7 electing coverage under this section must elect coverage for both
8 family leave and medical leave and are responsible for payment of one
9 hundred percent of all premiums assessed to an employee under section
10 8 of this act. The self-employed person must file a notice of
11 election in writing with the department, in a manner as required by
12 the department in rule. The self-employed person is eligible for
13 family and medical leave benefits after working eight hundred twenty
14 hours in the state during the qualifying period following the date of
15 filing the notice.

16 (2) A self-employed person who has elected coverage may withdraw
17 from coverage within thirty days after the end of each period of
18 coverage, or at such other times as the commissioner may adopt by
19 rule, by filing a notice of withdrawal in writing with the
20 commissioner, such withdrawal to take effect not sooner than thirty
21 days after filing the notice with the commissioner.

22 (3) The department may cancel elective coverage if the self-
23 employed person fails to make required payments or file reports. The
24 department may collect due and unpaid premiums and may levy an
25 additional premium for the remainder of the period of coverage. The
26 cancellation shall be effective no later than thirty days from the
27 date of the notice in writing advising the self-employed person of
28 the cancellation.

29 (4) Those electing coverage are considered employers or employees
30 where the context so dictates.

31 (5) For the purposes of this section, "independent contractor"
32 means an individual excluded from employment under section 2(7)(b)
33 (ii) and (iii) of this act.

34 (6) In developing and implementing the requirements of this
35 section, the department shall adopt government efficiencies to
36 improve administration and reduce costs. These efficiencies may
37 include, but are not limited to, requiring that payments be made in a
38 manner and at intervals unique to the elective coverage program.

(7) The department shall adopt rules for determining the hours worked and the wages of individuals who elect coverage under this section and rules for enforcement of this section.

NEW SECTION. **Sec. 11.** TRIBES. A federally recognized tribe may elect coverage under section 9 of this act. The department shall adopt rules to implement this section.

NEW SECTION. **Sec. 12.** NOTICE TO EMPLOYERS. (1) If the necessity for leave for the birth or placement of a child with the employee is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than thirty days' notice, before the date the leave is to begin, of the employee's intention to take leave for the birth or placement of a child, except that if the date of the birth or placement requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable.

(2) If the necessity for leave for a family member's serious health condition or the employee's serious health condition is foreseeable based on planned medical treatment, the employee:

(a) Must make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the family member, as appropriate; and

(b) Must provide the employer with not less than thirty days' notice, before the date the leave is to begin, of the employee's intention to take leave for a family member's serious health condition or the employee's serious health condition, except that if the date of the treatment requires leave to begin in less than thirty days, the employee must provide such notice as is practicable.

NEW SECTION. **Sec. 13.** APPLICATION, CERTIFICATION, AND VERIFICATION. (1) Family and medical leave insurance benefits are payable to an employee during a period in which the employee is unable to perform his or her regular or customary work because he or she is on family and medical leave if the employee:

(a) Files an application for benefits as required by rules adopted by the commissioner;

(b) Has met the eligibility requirements of section 3 of this act or the elective coverage requirements under section 10 of this act;

1 (c) Consents to the disclosure of information or records deemed
2 private and confidential under state law. Initial disclosure of this
3 information and these records by another state agency to the
4 department is solely for purposes related to the administration of
5 this chapter. Further disclosure of this information or these records
6 is subject to chapter 50.13 RCW and sections 29(3) and 33 of this
7 act;

8 (d) Discloses whether or not he or she owes child support
9 obligations as defined in RCW 50.40.050;

10 (e) Provides his or her social security number;

11 (f) Provides a document authorizing the family member's or
12 employee's health care provider, as applicable, to disclose the
13 family member's or employee's health care information in the form of
14 the certification of a serious health condition;

15 (g) Provides the employer from whom family and medical leave is
16 to be taken with written notice of the employee's intention to take
17 family leave in the same manner as an employee is required to provide
18 notice in section 12 of this act and, in the employee's initial
19 application for benefits, attests that written notice has been
20 provided; and

21 (h) If requested by the employer, provides documentation of a
22 military exigency.

23 (2) An employee who is not in employment for an employer at the
24 time of filing an application for benefits is exempt from subsection
25 (1)(g) and (h) of this section.

26 NEW SECTION. **Sec. 14. VOLUNTARY PLAN—GENERAL.** (1) An employer
27 may apply to the commissioner for approval of a voluntary plan for
28 the payment of either family leave benefits or medical leave
29 benefits, or both. The application must be submitted on a form and in
30 the manner as prescribed by the commissioner in rule. The fee for the
31 department's review of each application for approval of a voluntary
32 plan is two hundred fifty dollars.

33 (2) The benefits payable as indemnification for loss of wages
34 under any voluntary plan must be separately stated and designated
35 separately and distinctly in the plan from other benefits, if any.

36 (3) Neither an employee nor his or her employer are liable for
37 any premiums for benefits covered by an approved voluntary plan.

38 (4) Except as provided in this section, an employee covered by an
39 approved voluntary plan at the commencement of a period of family

1 leave or a medical leave benefit period is not entitled to benefits
2 from the state program. Benefits payable to that employee is the
3 liability of the approved voluntary plan under which the employee was
4 covered at the commencement of the family leave or medical leave
5 benefit period, regardless of any subsequent serious health condition
6 or family leave which may occur during the benefit period. The
7 commissioner must adopt rules to allow benefits or prevent
8 duplication of benefits to employees simultaneously covered by one or
9 more approved voluntary plans and the state program.

10 (5) The commissioner must approve any voluntary plan as to which
11 the commissioner finds that there is at least one employee in
12 employment and all of the following exist:

13 (a) The benefits afforded to the employees must be at least
14 equivalent to the benefits the employees are entitled to as part of
15 the state's family and medical leave program, including but not
16 limited to the duration of leave. The employer must offer at least
17 one-half of the length of leave as provided in section 6(2) of this
18 act with pay and provide a monetary payment in an amount equal to or
19 higher than the total amount of monetary benefits the employee would
20 be entitled to receive as part of the state-run program. The employer
21 may offer the same duration of leave and monetary benefits as offered
22 under the state program.

23 (b) The sick leave an employee is entitled to under RCW 49.46.210
24 is in addition to the employer's provided benefits and is in addition
25 to any family and medical leave benefits.

26 (c) The plan is available to all of the eligible employees of the
27 employer employed in this state, including future employees.

28 (d) The employer has agreed to make the payroll deductions
29 required, if any, and transmit the proceeds to the department for any
30 portions not collected for the voluntary plan.

31 (e) The plan will be in effect for a period of not less than one
32 year and, thereafter, continuously unless the commissioner finds that
33 the employer has given notice of withdrawal from the plan in a manner
34 specified by the commissioner in rule. The plan may be withdrawn by
35 the employer on the date of any law increasing the benefit amounts or
36 the date of any change in the rate of employee premiums, if notice of
37 the withdrawal from the plan is transmitted to the commissioner not
38 less than thirty days prior to the date of that law or change. If the
39 plan is not withdrawn, it must be amended to conform to provide the

1 increased benefit amount or change in the rate of the employee's
2 premium on the date of the increase or change.

3 (f) The amount of payroll deductions from the wages of an
4 employee in effect for any voluntary plan may not exceed the maximum
5 payroll deduction for that employee as authorized under section 8 of
6 this act. The deductions may not be increased on other than an
7 anniversary of the effective date of the plan, except to the extent
8 that any increase in the deductions from the wages of an employee do
9 not exceed the maximum rate authorized under the state program.

10 (g) The voluntary plan provides that an employee of an employer
11 with a voluntary plan for either family leave or medical leave, or
12 both, is eligible for the plan benefits if the employee meets the
13 requirements of section 3 of this act and has worked at least three
14 hundred forty hours for the employer during the twelve months
15 immediately preceding the date leave will commence.

16 (h) The voluntary plan provides that an employee of an employer
17 with a voluntary plan for either family leave or medical leave, or
18 both, who takes leave under the voluntary plan is entitled to the
19 employment protection provisions contained in section 31 of this act
20 if the employee has worked for the employer for at least nine months
21 and nine hundred sixty-five hours during the twelve months
22 immediately preceding the date leave will commence.

23 (i) The voluntary plan provides that the employer maintains the
24 employee's existing health benefits as provided under section 70 of
25 this act.

26 (6)(a) The department must conduct a review of the expenses
27 incurred in association with the administration of the voluntary
28 plans during the first three years after implementation and report
29 its findings to the legislature.

30 (b) The review must include an analysis of the adequacy of the
31 fee in subsection (1) of this section to cover the department's
32 administrative expenses related to reviewing and approving or denying
33 the applications and administering appeals related to voluntary
34 plans. The review must include an estimate of the next year's
35 projected administrative costs related to the voluntary plans. The
36 legislature shall adjust the fee in subsection (1) of this section as
37 needed to ensure the department's administrative expenses related to
38 the voluntary plans are covered by the fee.

39 (c) If the current receipts from the fee in subsection (1) of
40 this section are inadequate to cover the department's administrative

1 expenses related to the voluntary plans, the department may use funds
2 from the family and medical leave insurance account under section 82
3 of this act to pay for these expenses.

4 NEW SECTION. **Sec. 15.** VOLUNTARY PLAN—SUCCESSOR EMPLOYER. A
5 voluntary plan in force and effect at the time a successor acquires
6 the organization, trade, or business, or substantially all the assets
7 thereof, or a distinct and severable portion of the organization,
8 trade, or business, and continues its operation without substantial
9 reduction of personnel resulting from the acquisition, must continue
10 the voluntary plan and may not withdraw the plan without a specific
11 request for withdrawal in a manner and at a time specified by the
12 commissioner. A successor may terminate a voluntary plan with notice
13 to the commissioner and without a request to withdraw the plan within
14 ninety days from the date of the acquisition.

15 NEW SECTION. **Sec. 16.** VOLUNTARY PLAN—REAPPROVAL. The employer
16 must have the voluntary plan approved by the commissioner annually
17 for the first three years. After the first three years, the employer
18 is only required to have the approval if the employer makes changes
19 to the plan that were not mandated by changes to state law.

20 NEW SECTION. **Sec. 17.** VOLUNTARY PLAN—EMPLOYEE COSTS. An
21 employer may assume all or a greater part of the cost of the
22 voluntary plan than required under the state program. An employer may
23 deduct from the wages of an employee covered by the voluntary plan,
24 for the purpose of providing the benefits specified in this chapter,
25 an amount not in excess of that which would be required if the
26 employee was not covered by the plan.

27 NEW SECTION. **Sec. 18.** VOLUNTARY PLAN—WAGE DEDUCTIONS UPON
28 WITHDRAWAL. All deductions from the wages of an employee remaining in
29 the possession of the employer upon the employer's withdrawal of the
30 voluntary plan as a result of plan contributions being in excess of
31 plan costs, that are not disposed of in conformity with the
32 department's rules, must be remitted to the department and deposited
33 in the family and medical leave insurance account.

1 NEW SECTION. **Sec. 19.** VOLUNTARY PLAN—TRUST FUNDS. Any employee
2 contributions to and income arising from an approved voluntary plan
3 received or retained by an employer under an approved voluntary plan
4 are trust funds that are not considered to be part of an employer's
5 assets. An employer must maintain a separate, specifically
6 identifiable account for voluntary plan trust funds in a financial
7 institution.

8 NEW SECTION. **Sec. 20.** VOLUNTARY PLANS—PENALTIES. (1) An
9 employer of a voluntary plan found to have violated this act shall be
10 assessed the following monetary penalties:

11 (a) One thousand dollars for the first violation; and
12 (b) Two thousand dollars for the second and subsequent
13 violations.

14 (2) The commissioner shall waive collection of the penalty if the
15 employer corrects the violation within thirty days of receiving a
16 notice of the violation and the notice is for a first violation.

17 (3) The commissioner may waive collection of any penalties if the
18 commissioner determines the violation to be an inadvertent error by
19 the employer.

20 (4) Monetary penalties collected under this section shall be
21 deposited in the family and medical leave enforcement account.

22 (5) The department shall enforce the collection of penalties
23 through conference and conciliation.

24 (6) These penalties may be appealed as provided in sections 34
25 through 53 of this act.

26 NEW SECTION. **Sec. 21.** VOLUNTARY PLAN—TERMINATION. (1) The
27 commissioner may terminate any voluntary plan if the commissioner
28 finds that there is risk that the benefits accrued or that will
29 accrue will not be paid or for other good cause shown.

30 (2) The commissioner must give notice of the commissioner's
31 intention to terminate a plan to the employer at least ten days
32 before taking any final action. The notice must state the effective
33 date and the reason for the termination.

34 (3) On the effective date of the termination of a plan by the
35 commissioner, all moneys in the plan, including moneys paid by the
36 employer, moneys paid by the employees, moneys owed to the voluntary
37 plan by the employer but not yet paid to the plan, and any interest

1 accrued on all these moneys, must be remitted to the department and
2 deposited into the family and medical leave insurance account.

3 (4) The employer may, within ten days from mailing or personal
4 service of the notice, file an appeal in the time, manner, method,
5 and procedure provided in section 34 of this act.

6 (5) The payment of benefits and the transfer of moneys in the
7 voluntary plan may not be delayed during an employer's appeal of the
8 termination of a voluntary plan.

9 (6) If an employer's voluntary plan has been terminated by the
10 commissioner the employer is not eligible to apply for approval of
11 another voluntary plan for a period of three years.

12 NEW SECTION. **Sec. 22.** VOLUNTARY PLAN—EMPLOYEES COVERED. (1) To
13 be eligible for any family and medical leave, an employee must be in
14 employment for eight hundred twenty hours during the qualifying
15 period, by an employer with a voluntary plan or an employer utilizing
16 the state family and medical leave plan. An employee qualifies for
17 benefits under an employer's voluntary plan only after the employee
18 works at least three hundred forty hours for the current employer.

19 (2) An employee who had coverage under the state plan retains
20 coverage under the state plan until such time as the employee is
21 qualified for coverage under the new employer's voluntary plan.

22 (3) An employee who was eligible for benefits under a voluntary
23 plan is immediately eligible for benefits under a new employer's
24 voluntary plan.

25 NEW SECTION. **Sec. 23.** VOLUNTARY PLAN—EMPLOYEES NO LONGER
26 COVERED. (1) An employee is no longer covered by an approved
27 voluntary plan if family leave or the employee's medical leave
28 occurred after the employment relationship with the voluntary plan
29 employer ends, or if the commissioner terminates a voluntary plan.

30 (2) An employee who has ceased to be covered by an approved
31 voluntary plan is, if otherwise eligible, immediately entitled to
32 benefits from the state program to the same extent as though there
33 had been no exemption as provided in this chapter.

34 NEW SECTION. **Sec. 24.** VOLUNTARY PLAN—APPEAL. An employer may
35 appeal any adverse decision by the department regarding the voluntary
36 plan and an employee may appeal an employer's denial of liability

1 upon the claim of an employee for family or medical leave benefits
2 under an approved plan, in the manner specified under section 34 of
3 this act.

4 NEW SECTION. **Sec. 25.** VOLUNTARY PLAN—INFORMATION. An employer
5 with a voluntary plan must provide a notice prepared by or approved
6 by the commissioner regarding the voluntary plan consistent with the
7 provisions of section 75 of this act.

8 NEW SECTION. **Sec. 26.** VOLUNTARY PLAN—REPORTS AND RECORDS.
9 Employers whose employees are participating in an approved voluntary
10 plan must maintain all reports, information, and records as relating
11 to the voluntary plan and claims for six years and furnish for the
12 commissioner upon request.

13 NEW SECTION. **Sec. 27.** VOLUNTARY PLAN—AMENDMENTS. (1) The
14 commissioner must approve any amendment to a voluntary plan adjusting
15 the provisions thereof, as to periods after the effective date of the
16 amendment, when the commissioner finds: (a) That the plan, as
17 amended, will conform to the standards set forth in this chapter; and
18 (b) that notice of the amendment has been delivered to the employees
19 at least ten days prior to the approval.

20 (2) Nothing contained in this section is intended to deny or
21 limit the right of the commissioner to adopt supplementary rules
22 regarding voluntary plans.

23 NEW SECTION. **Sec. 28.** ADVISORY COMMITTEE. (1) The commissioner
24 shall appoint an advisory committee to review issues and topics of
25 interest related to this chapter.

26 (2) The committee is composed of ten members: (a) Four members
27 representing employees' interests in paid family and medical leave,
28 each of whom shall be appointed from a list of at least four names
29 submitted by a recognized statewide organization of employees; (b)
30 four members representing employers, each of whom shall be appointed
31 from a list of at least four names submitted by a recognized
32 statewide organization of employers; and (c) two ex officio members,
33 without a vote, one of whom shall represent the department and the
34 other shall be the ombuds for the family and medical leave program.
35 The member representing the department shall be the chair.

1 (3) The committee shall provide comment on department rule
2 making, policies, implementation of this chapter, utilization of
3 benefits, and other initiatives, and study issues the committee
4 determines to require its consideration.

5 (4) The members shall serve without compensation, but are
6 entitled to reimbursement for travel expenses as provided in RCW
7 43.03.050 and 43.03.060. The committee may utilize such personnel and
8 facilities of the department as it needs, without charge. All
9 expenses of the committee must be paid by the family and medical
10 leave insurance account.

11 NEW SECTION. **Sec. 29.** DEPARTMENT TO ADMINISTER—INFORMATION AND
12 OUTREACH. (1) The department shall establish and administer the
13 family and medical leave program and pay family and medical leave
14 benefits as specified in this chapter. The department shall adopt
15 government efficiencies to improve administration and reduce costs.
16 These efficiencies shall include, to the extent feasible, combined
17 reporting and payment, with a single return, of premiums under this
18 chapter and contributions under chapter 50.24 RCW.

19 (2) The department shall establish procedures and forms for
20 filing applications for benefits under this chapter. The department
21 shall notify the employer within five business days of an application
22 being filed.

23 (3) The department shall use information sharing and integration
24 technology to facilitate the disclosure of relevant information or
25 records by the department, so long as an employee consents to the
26 disclosure as required under section 13 of this act.

27 (4) Information contained in the files and records pertaining to
28 an employee under this chapter are confidential and not open to
29 public inspection, other than to public employees in the performance
30 of their official duties. However, the employee or an authorized
31 representative of an employee may review the records or receive
32 specific information from the records on the presentation of the
33 signed authorization of the employee. An employer or the employer's
34 duly authorized representative may review the records of an employee
35 employed by the employer in connection with a pending application. At
36 the department's discretion, other persons may review records when
37 such persons are rendering assistance to the department at any stage
38 of the proceedings on any matter pertaining to the administration of
39 this chapter.

(5) The department shall develop and implement an outreach program to ensure that employees who may be qualified to receive family and medical leave benefits under this chapter are made aware of these benefits. Outreach information shall explain, in an easy to understand format, eligibility requirements, the application process, weekly benefit amounts, maximum benefits payable, notice and certification requirements, reinstatement and nondiscrimination rights, confidentiality, voluntary plans, and the relationship between employment protection, leave from employment, and wage replacement benefits under this chapter and other laws, collective bargaining agreements, and employer policies. Outreach information shall be available in English and other primary languages as defined in RCW 74.04.025.

(6) The department is authorized to inspect and audit employer files and records relating to the family and medical leave program, including employer voluntary plans.

NEW SECTION. **Sec. 30.** CHILD SUPPORT. If an employee discloses that he or she owes child support obligations under section 13 of this act and the department determines that the employee is qualified for benefits, the department shall notify the applicable state or local child support enforcement agency and deduct and withhold an amount from benefits in a manner consistent with RCW 50.40.050. Consistent with section 13(1)(c) of this act, the department may verify delinquent child support obligations with the department of social and health services.

NEW SECTION. **Sec. 31.** EMPLOYMENT PROTECTION. (1) Except as provided in section 14(5) of this act and subsection (6) of this section, any employee who takes family or medical leave under this chapter is entitled, on return from the leave:

(a) To be restored by the employer to the position of employment held by the employee when the leave commenced; or

(b) To be restored by the employer to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) The taking of leave under this chapter may not result in the loss of any employment benefits accrued before the date on which the leave commenced.

1 (3) Nothing in this section shall be construed to entitle any
2 restored employee to:

3 (a) The accrual of any seniority or employment benefits during
4 any period of leave; or

5 (b) Any right, benefit, or position of employment other than any
6 right, benefit, or position to which the employee would have been
7 entitled had the employee not taken the leave.

8 (4) As a condition of restoration under subsection (1) of this
9 section for an employee who has taken medical leave, the employer may
10 have a uniformly applied practice or policy that requires each such
11 employee to receive certification from the employee's health care
12 provider that the employee is able to resume work.

13 (5) Nothing in this section shall be construed to prohibit an
14 employer from requiring an employee on leave to report periodically
15 to the employer on the status and intention of the employee to return
16 to work.

17 (6)(a) This section does not apply unless the employee: (i) Works
18 for an employer with fifty or more employees; (ii) has been employed
19 by the current employer for twelve months or more; and (iii) has
20 worked for the current employer for at least one thousand two hundred
21 fifty hours during the twelve months immediately preceding the date
22 on which leave will commence. For the purposes of this subsection, an
23 employer shall be considered to employ fifty or more employees if the
24 employer employs fifty or more employees for each working day during
25 each of twenty or more calendar workweeks in the current or preceding
26 calendar year.

27 (b) An employer may deny restoration under this section to any
28 salaried employee who is among the highest paid ten percent of the
29 employees employed by the employer within seventy-five miles of the
30 facility at which the employee is employed if:

31 (i) Denial is necessary to prevent substantial and grievous
32 economic injury to the operations of the employer;

33 (ii) The employer notifies the employee of the intent of the
34 employer to deny restoration on such basis at the time the employer
35 determines that the injury would occur; and

36 (iii) The leave has commenced and the employee elects not to
37 return to employment after receiving the notice.

38 NEW SECTION. **Sec. 32. RECOVERY OF BENEFIT PAYMENTS.** (1) An
39 individual who is paid any amount as benefits under this act to which

1 he or she is not entitled shall, unless otherwise relieved pursuant
2 to this section, be liable for repayment of the amount overpaid. The
3 department shall issue an overpayment assessment setting forth the
4 reasons for and the amount of the overpayment. The amount assessed,
5 to the extent not collected, may be deducted from any future benefits
6 payable to the individual: PROVIDED, That in the absence of a back
7 pay award, a settlement affecting the allowance of benefits, fraud,
8 misrepresentation, or willful nondisclosure, every determination of
9 liability shall be mailed or personally served not later than two
10 years after the close of or final payment made on the individual's
11 applicable eligibility period for which the purported overpayment was
12 made, whichever is later, unless the merits of the claim are
13 subjected to administrative or judicial review in which event the
14 period for serving the determination of liability shall be extended
15 to allow service of the determination of liability during the six-
16 month period following the final decision affecting the claim.

17 (2) The commissioner may waive an overpayment if the commissioner
18 finds that the overpayment was not the result of fraud,
19 misrepresentation, willful nondisclosure, conditional payment, or
20 fault attributable to the individual and that the recovery thereof
21 would be against equity and good conscience. An overpayment waived
22 under this subsection shall be charged against the individual's
23 applicable entitlement for the eligibility period containing the
24 weeks to which the overpayment was attributed as though such benefits
25 had been properly paid.

26 (3) Any assessment herein provided shall constitute a
27 determination of liability from which an appeal may be had in the
28 same manner and to the same extent as provided for appeals relating
29 to determinations in respect to claims for benefits: PROVIDED, That
30 an appeal from any determination covering overpayment only shall be
31 deemed to be an appeal from the determination which was the basis for
32 establishing the overpayment unless the merits involved in the issue
33 set forth in such determination have already been heard and passed
34 upon by the appeal tribunal. If no such appeal is taken to the appeal
35 tribunal by the individual within thirty days of the delivery of the
36 notice of determination of liability, or within thirty days of the
37 mailing of the notice of determination, whichever is the earlier, the
38 determination of liability shall be deemed conclusive and final.
39 Whenever any such notice of determination of liability becomes
40 conclusive and final, the commissioner, upon giving at least twenty

1 days' notice, using a method by which the mailing can be tracked or
2 the delivery can be confirmed, may file with the superior court clerk
3 of any county within the state a warrant in the amount of the notice
4 of determination of liability plus a filing fee under RCW
5 36.18.012(10). The clerk of the county where the warrant is filed
6 shall immediately designate a superior court cause number for the
7 warrant, and the clerk shall cause to be entered in the judgment
8 docket under the superior court cause number assigned to the warrant,
9 the name of the person(s) mentioned in the warrant, the amount of the
10 notice of determination of liability, and the date when the warrant
11 was filed. The amount of the warrant as docketed shall become a lien
12 upon the title to, and any interest in, all real and personal
13 property of the person(s) against whom the warrant is issued, the
14 same as a judgment in a civil case duly docketed in the office of
15 such clerk. A warrant so docketed shall be sufficient to support the
16 issuance of writs of execution and writs of garnishment in favor of
17 the state in the manner provided by law for a civil judgment. A copy
18 of the warrant shall be mailed within five days of its filing with
19 the clerk to the person(s) mentioned in the warrant using a method by
20 which the mailing can be tracked or the delivery can be confirmed.

21 (4) Any employer who is a party to a back pay award or settlement
22 due to loss of wages shall, within thirty days of the award or
23 settlement, report to the department the amount of the award or
24 settlement, the name and social security number of the recipient of
25 the award or settlement, and the period for which it is awarded. When
26 an individual has been awarded or receives back pay, for benefit
27 purposes the amount of the back pay shall constitute wages paid in
28 the period for which it was awarded. For premium purposes, the back
29 pay award or settlement shall constitute wages paid in the period in
30 which it was actually paid. The following requirements shall also
31 apply:

32 (a) The employer shall reduce the amount of the back pay award or
33 settlement by an amount determined by the department based upon the
34 amount of paid family or medical leave benefits received by the
35 recipient of the award or settlement during the period for which the
36 back pay award or settlement was awarded;

37 (b) The employer shall pay to the paid family and medical leave
38 fund, in a manner specified by the commissioner, an amount equal to
39 the amount of such reduction;

1 (c) The employer shall also pay to the department any premiums
2 due for paid family and medical leave insurance purposes on the
3 entire amount of the back pay award or settlement notwithstanding any
4 reduction made pursuant to (a) of this subsection;

5 (d) If the employer fails to reduce the amount of the back pay
6 award or settlement as required in (a) of this subsection, the
7 department shall issue an overpayment assessment against the
8 recipient of the award or settlement in the amount that the back pay
9 award or settlement should have been reduced; and

10 (e) If the employer fails to pay to the department an amount
11 equal to the reduction as required in (b) of this subsection, the
12 department shall issue an assessment of liability against the
13 employer that shall be collected pursuant to the procedures for
14 collection of assessments provided herein and in section 62 of this
15 act.

16 (5) When an individual fails to repay an overpayment assessment
17 that is due and fails to arrange for satisfactory repayment terms,
18 the commissioner shall impose an interest penalty of one percent per
19 month of the outstanding balance. Interest shall accrue immediately
20 on overpayments assessed pursuant to section 5 of this act and shall
21 be imposed when the assessment becomes final. For any other
22 overpayment, interest shall accrue when the individual has missed two
23 or more of the individual's monthly payments either partially or in
24 full.

25 (6) Any penalties and interest collected pursuant to this section
26 must be deposited into the family and medical leave enforcement
27 account.

28 (7) The department shall: (a) Conduct social security number
29 cross-match audits or engage in other more effective activities that
30 ensure that individuals are entitled to all amounts of benefits that
31 they are paid; and (b) engage in other detection and recovery of
32 overpayment and collection activities.

33 NEW SECTION. **Sec. 33.** EMPLOYER REQUIREMENTS—COMPANIES. (1) In
34 the form and at the times specified in this chapter and by the
35 commissioner, an employer shall make reports, furnish information,
36 and collect and remit premiums as required by this chapter to the
37 department. If the employer is a temporary help company that provides
38 employees on a temporary basis to its customers, the temporary help
39 company is considered the employer for purposes of this section.

1 (2)(a) An employer must keep at the employer's place of business
2 a record of employment, for a period of six years, from which the
3 information needed by the department for purposes of this chapter may
4 be obtained. This record shall at all times be open to the inspection
5 of the commissioner.

6 (b) Information obtained under this chapter from employer records
7 is confidential and not open to public inspection, other than to
8 public employees in the performance of their official duties.
9 However, an interested party shall be supplied with information from
10 employer records to the extent necessary for the proper presentation
11 of the case in question. An employer may authorize inspection of the
12 employer's records by written consent.

13 (3) The requirements relating to the collection of family and
14 medical leave premiums are as provided in this chapter. Before
15 issuing a warning letter, the department shall enforce the collection
16 of premiums through conference and conciliation. These requirements
17 apply to:

18 (a) An employer that fails under this chapter to make the
19 required reports, or fails to remit the full amount of the premiums
20 when due;

21 (b) An employer that willfully makes a false statement or
22 misrepresentation regarding a material fact, or willfully fails to
23 report a material fact, to avoid making the required reports or
24 remitting the full amount of the premiums when due under this
25 chapter;

26 (c) A successor in the manner specified in section 67 of this
27 act; and

28 (d) An officer, member, or owner having control or supervision of
29 payment and/or reporting of family and medical leave premiums, or who
30 is charged with the responsibility for the filing of returns, in the
31 manner specified in section 68 of this act.

32 (4) Notwithstanding subsection (3) of this section, appeals are
33 governed by section 34 of this act.

34 NEW SECTION. **Sec. 34.** APPEALS—GENERAL. (1) Any aggrieved person
35 may file an appeal from any determination or redetermination with the
36 commissioner within thirty days after the date of notification or
37 mailing, whichever is earlier, of such determination or
38 redetermination to the person's last known address. If an appeal with
39 respect to any determination is pending as of the date when a

1 redetermination is issued, such appeal, unless withdrawn, shall be
2 treated as an appeal from such redetermination.

3 (2) Any appeal from a determination of denial of benefits shall
4 be deemed to be an appeal as to all weeks subsequent to the effective
5 date of the denial for which benefits have already been denied. If no
6 appeal is taken from any determination, or redetermination, within
7 the time allowed by the provisions of this section for appeal, the
8 determination or redetermination, as the case may be, shall be
9 conclusively deemed to be correct except as provided in respect to
10 reconsideration by the commissioner of any determination.

11 (3) Upon receipt of a notice of appeal, the commissioner shall
12 request the assignment of an administrative law judge in accordance
13 with chapter 34.12 RCW to conduct a hearing and issue a proposed
14 order.

15 NEW SECTION. **Sec. 35.** APPEALS—FILING PROCESS. The appeal or
16 petition from a determination, redetermination, order and notice of
17 assessment, appeals decision, or commissioner's decision is deemed
18 filed and received if properly addressed and with sufficient postage:

19 (1) If transmitted through the United States mail, on the date
20 shown by the United States postal service cancellation mark;

21 (2) If mailed but not received by the addressee, or where
22 received and the United States postal service cancellation mark is
23 illegible, erroneous, or omitted, on the date it was mailed, if the
24 sender establishes by competent evidence that the appeal or petition
25 was deposited in the United States mail on or before the date due for
26 filing; or

27 (3) In the case of a metered cancellation mark by the sender and
28 a United States postal service cancellation mark on the same envelope
29 or other wrapper, the latter shall control.

30 NEW SECTION. **Sec. 36.** APPEALS—ASSESSMENT. (1) When an order and
31 notice of assessment has been served upon or mailed to a delinquent
32 employer, the employer may within thirty days file an appeal with the
33 department, stating that the assessment is unjust or incorrect and
34 requesting a hearing. The appeal must set forth the reasons why the
35 assessment is objected to and the amount of premiums, if any, which
36 the employer admits to be due. If no appeal is filed, the assessment
37 shall be conclusively deemed to be just and correct except that in
38 such case, and in cases where payment of premiums, interest, or

penalties has been made pursuant to a jeopardy assessment, the commissioner may properly entertain a subsequent application for refund. The filing of an appeal on a disputed assessment with the administrative law judge stays the distraint and sale proceeding provided for in this chapter until a final decision has been made, but the filing of an appeal shall not affect the right of the commissioner to perfect a lien, as provided by this chapter, upon the property of the employer. The filing of a petition on a disputed assessment stays the accrual of interest and penalties on the disputed premiums until a final decision is made.

(2) Within thirty days after notice of denial of refund or adjustment has been mailed or delivered, whichever is the earlier, to an employer, the employer may file an appeal with the department for a hearing unless assessments have been appealed from and have become final. The employer shall set forth the reasons why such hearing should be granted and the amount which the employer believes should be adjusted or refunded. If no appeal is filed within said thirty days, the determination of the commissioner as stated in the notice shall be final.

NEW SECTION. **Sec. 37. APPEALS—BENEFIT APPEAL PROCEDURE.** (1) In any proceeding before an administrative law judge involving a dispute of an employee's initial determination, claim for waiting period credit or claim for benefits, all matters and provisions of this chapter relating to the employee's initial determination, or right to receive such credit or benefits for the period in question, shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal in single employee cases.

(2) In any proceeding before an administrative law judge involving an employee's right to benefits, all parties shall be afforded an opportunity for hearing after not less than seven days' notice in accordance with RCW 34.05.434.

(3) In any proceeding involving an appeal relating to benefit determinations or benefit claims, the administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall render its decision affirming, modifying, or setting aside the determination or decisions of the department. The parties shall be duly notified of such decision together with the reasons, which shall be deemed to be the final decision unless, within thirty days after the date of notification or mailing, whichever is the earlier, of

1 such decision, further appeal is perfected pursuant to section 39 of
2 this act.

3 NEW SECTION. **Sec. 38.** APPEALS—ASSESSMENT APPEAL PROCEDURE. In
4 any proceeding before an administrative law judge involving an appeal
5 from a disputed order and notice of assessment or a disputed denial
6 of refund or adjustment, the administrative law judge, after
7 affording the parties a reasonable opportunity for hearing, shall
8 affirm, modify, or set aside the notice of assessment or denial of
9 refund. The parties shall be duly notified of such decision together
10 with the reasons, which shall be deemed to be the final decision
11 unless within thirty days after the date of notification or mailing,
12 whichever is the earlier, of such decision, further appeal is
13 perfected pursuant to the provisions of this chapter relating to
14 review by the commissioner.

15 NEW SECTION. **Sec. 39.** APPEALS—HEARINGS. The manner in which any
16 dispute is presented to the administrative law judge, and the conduct
17 of hearings and appeals, shall be in accordance with rules adopted by
18 the commissioner. A full and complete record shall be kept of all
19 administrative law judge proceedings. All testimony at any appeal
20 hearing shall be recorded, but need not be transcribed unless further
21 appeal is taken.

22 NEW SECTION. **Sec. 40.** APPEALS—PETITION FOR REVIEW BY
23 COMMISSIONER. Within thirty days from the date of notification or
24 mailing, whichever is the earlier, of any decision of an
25 administrative law judge, the commissioner on the commissioner's own
26 order may, or upon petition of any interested party shall, take
27 jurisdiction of the proceedings for the purpose of review. Appeal
28 from any decision of an administrative law judge may be perfected so
29 as to prevent finality of such decision if, within thirty days from
30 the date of notification or mailing of the decision, whichever is the
31 earlier, a petition in writing for review by the commissioner is
32 received by the commissioner or by such representative of the
33 commissioner as the commissioner by rule shall prescribe. The
34 commissioner may also prevent finality of any decision of an
35 administrative law judge and take jurisdiction of the proceedings for
36 his or her review by entering an order so providing on his or her own

1 motion and mailing a copy thereof to the interested parties within
2 the same period allowed for receipt of a petition for review. The
3 time limit provided for the commissioner's assumption of jurisdiction
4 on his or her own motion for review shall be deemed to be
5 jurisdictional.

6 NEW SECTION. **Sec. 41.** APPEALS—WAIVER OF TIME. For good cause
7 shown the administrative law judge or the commissioner may waive the
8 time limitations for administrative appeals or petitions set forth in
9 this chapter.

10 NEW SECTION. **Sec. 42.** APPEALS—COMMISSIONER REVIEW PROCEDURE.
11 After having acquired jurisdiction for review, the commissioner shall
12 review the proceedings in question. Prior to rendering a decision,
13 the commissioner may order the taking of additional evidence by an
14 administrative law judge to be made a part of the record in the case.
15 Upon the basis of evidence submitted to the administrative law judge
16 and such additional evidence as the commissioner may order to be
17 taken, the commissioner shall render a decision in writing affirming,
18 modifying, or setting aside the decision of the administrative law
19 judge. Alternatively, the commissioner may order further proceedings
20 to be held before the administrative law judge, upon completion of
21 which the administrative law judge shall issue a decision in writing
22 affirming, modifying, or setting aside its previous decision. The new
23 decision may be appealed as provided under section 39 of this act.
24 The commissioner shall mail the decision to the interested parties at
25 their last known addresses.

26 NEW SECTION. **Sec. 43.** APPEALS—COMMISSIONER DECISIONS. Any
27 decision of the commissioner involving a review of an administrative
28 law judge decision, in the absence of a petition as provided in
29 chapter 34.05 RCW, becomes final thirty days after notification or
30 mailing, whichever is earlier. The commissioner shall be deemed to be
31 a party to any judicial action involving any such decision and shall
32 be represented in any such judicial action by the attorney general.

33 NEW SECTION. **Sec. 44.** APPEALS—JUDICIAL REVIEW PROCEDURE.
34 Judicial review of a decision of the commissioner involving the
35 review of a decision of an administrative law judge under this

chapter may be had only in accordance with the procedural requirements of RCW 34.05.570.

NEW SECTION. **Sec. 45.** APPEALS—SEEKING JUDICIAL REVIEW. (1) A bond of any kind shall not be required of any employee seeking judicial review from a commissioner's decision affecting such employee's application for initial determination or claim for waiting period credit or for benefits.

(2) A commissioner's decision shall not be stayed by a petition for judicial review unless the petitioning employer shall first deposit an undertaking in an amount deemed by the commissioner to be due, if any, from the petitioning employer, together with interest thereon, if any, with the commissioner or in the registry of the court.

(3) This section does not authorize a stay in the payment of benefits to an employee when such employee has been held entitled thereto by a decision of the commissioner which decision either affirms, reverses, or modifies a decision of an appeals tribunal.

NEW SECTION. **Sec. 46.** APPEALS—INTERSTATE PETITIONS TO THURSTON COUNTY. RCW 34.05.514 to the contrary notwithstanding, petitions to the superior court from decisions of the commissioner dealing with the applications or claims relating to benefit payments that were filed outside of this state with an authorized representative of the commissioner shall be filed with the superior court of Thurston county that shall have the original venue of such appeals.

NEW SECTION. **Sec. 47.** APPEALS—JUDICIAL REVIEW. (1) In all court proceedings under or pursuant to this chapter the decision of the commissioner shall be prima facie correct, and the burden of proof shall be upon the party attacking the decision.

(2) If the court determines that the commissioner has acted within the commissioner's power and has correctly construed the law, the decision of the commissioner shall be confirmed; otherwise, the decision shall be reversed or modified. In case of a modification or reversal the superior court shall refer the decision to the commissioner with an order directing the commissioner to proceed in accordance with the findings of the court.

1 (3) Whenever any order and notice of assessment shall have become
2 final in accordance with the provisions of this chapter, the court
3 shall upon application of the commissioner enter a judgment in the
4 amount provided for in the order and notice of assessment, and the
5 judgment shall have and be given the same effect as if entered
6 pursuant to a civil action instituted in the court.

7 NEW SECTION. **Sec. 48.** APPEALS—APPLICABILITY OF FINDING,
8 DETERMINATION, ETC., TO OTHER ACTION. Any finding, determination,
9 conclusion, declaration, or final order made by the commissioner, or
10 his or her representative or delegate, or by an appeal tribunal,
11 administrative law judge, reviewing officer, or other agent of the
12 department for the purposes of this chapter, shall not be conclusive,
13 nor binding, nor admissible as evidence in any separate action
14 outside the scope of this chapter between an employee and the
15 employee's present or prior employer before an arbitrator, court, or
16 judge of this state or the United States, regardless of whether the
17 prior action was between the same or related parties or involved the
18 same facts or was reviewed pursuant to section 44 of this act.

19 NEW SECTION. **Sec. 49.** APPEALS—FEES FOR ADMINISTRATIVE HEARINGS.
20 An individual shall not be charged fees of any kind in any proceeding
21 involving the employee's application for initial determination, or
22 claim for waiting period credit, or claim for benefits, under this
23 chapter by the commissioner or his or her representatives, or by an
24 appeal tribunal, or any court, or any officer thereof. Any employee
25 in any such proceeding before the commissioner or any appeal tribunal
26 may be represented by counsel or other duly authorized agent who
27 shall neither charge nor receive a fee for such services in excess of
28 an amount found reasonable by the officer conducting such proceeding.

29 NEW SECTION. **Sec. 50.** APPEALS—ATTORNEYS' FEES. It shall be
30 unlawful for any attorney engaged in any appeal to the courts on
31 behalf of an employee involving the employee's application for
32 initial determination or claim for benefits to charge or receive any
33 fee in excess of a reasonable fee to be fixed by the superior court
34 in respect to the services performed in connection with the appeal
35 taken and to be fixed by the supreme court or the court of appeals in
36 the event of appellate review, and if the decision of the

1 commissioner shall be reversed or modified, such fee and the costs
2 shall be payable out of the family and medical leave enforcement
3 account.

4 NEW SECTION. **Sec. 51.** APPEALS—REMEDIES EXCLUSIVE. The remedies
5 provided in this chapter for determining the justness or correctness
6 of assessments, refunds, adjustments, or claims shall be exclusive
7 and no court shall entertain any action to enjoin an assessment or
8 require a refund or adjustment except in accordance with the
9 provisions of this chapter. Matters which may be determined by the
10 procedures set out in this chapter shall not be the subject of any
11 declaratory judgment.

12 NEW SECTION. **Sec. 52.** APPEALS—EXPENSES. (1) Whenever any appeal
13 is taken from any decision of the commissioner to any court, all
14 expenses and costs incurred by the commissioner, including court
15 reporter costs and attorneys' fees and all costs taxed against such
16 commissioner, shall be paid out of the family and medical leave
17 enforcement account.

18 (2) Neither the commissioner nor the state shall be charged any
19 fee for any service rendered in connection with litigation under this
20 chapter by the clerk of any court.

21 NEW SECTION. **Sec. 53.** APPEALS—REDETERMINATIONS. (1) A
22 determination of amount of benefits potentially payable under this
23 chapter is not a basis for appeal. However, the determination is
24 subject to request by the employee on family and medical leave for
25 redetermination by the commissioner at any time within one year from
26 the date of delivery or mailing of such determination, or any
27 redetermination thereof. A redetermination shall be furnished to the
28 employee in writing and provide the basis for appeal.

29 (2) A determination of denial of benefits becomes final, in the
30 absence of timely appeal therefrom. The commissioner may redetermine
31 such determinations at any time within one year from delivery or
32 mailing to correct an error in identity, omission of fact, or
33 misapplication of law with respect to the facts.

34 (3) A determination of allowance of benefits becomes final, in
35 the absence of a timely appeal therefrom. The commissioner may
36 redetermine such allowance at any time within two years following the

1 eligibility period in which such allowance was made in order to
2 recover any benefits for which recovery is provided under this
3 chapter.

4 (4) A redetermination may be made at any time: (a) To conform to
5 a final court decision applicable to either an initial determination
6 or a determination of denial or allowance of benefits; (b) in the
7 event of a back pay award or settlement affecting the allowance of
8 benefits; or (c) in the case of misrepresentation or willful failure
9 to report a material fact. Written notice of any such redetermination
10 shall be promptly given by mail or delivered to such interested
11 parties as were notified of the initial determination or
12 determination of denial or allowance of benefits and any new
13 interested party or parties who, pursuant to such rule as the
14 commissioner may adopt, would be an interested party.

15 NEW SECTION. **Sec. 54.** **AUTHORITY TO COMPROMISE.** The commissioner
16 may compromise any claim for premiums, interest, or penalties due and
17 owing from an employer, and any amount owed by an individual because
18 of benefit overpayments existing or arising under this chapter in any
19 case where collection of the full amount due and owing, whether
20 reduced to judgment or otherwise, would be against equity and good
21 conscience. Whenever a compromise is made by the commissioner in the
22 case of a claim for premiums, interest, or penalties, whether reduced
23 to judgment or otherwise, there shall be placed on file in the
24 department a statement of the amount of premiums, interest, and
25 penalties imposed by law and claimed due, attorneys' fees and costs,
26 if any, a complete record of the compromise agreement, and the amount
27 actually paid in accordance with the terms of the compromise
28 agreement. Whenever a compromise is made by the commissioner in the
29 case of a claim of a benefit overpayment, whether reduced to judgment
30 or otherwise, there shall be placed on file in the department a
31 statement of the amount of the benefit overpayment, attorneys' fees
32 and costs, if any, a complete record of the compromise agreement, and
33 the amount actually paid in accordance with the terms of the
34 compromise agreement. If any such compromise is accepted by the
35 commissioner, within such time as may be stated in the compromise or
36 agreed to, such compromise shall be final and conclusive and except
37 upon showing of fraud or malfeasance or misrepresentation of a
38 material fact the case shall not be reopened as to the matters agreed
39 upon. In any suit, action, or proceeding, such agreement or any

determination, collection, payment, adjustment, refund, or credit made in accordance therewith shall not be annulled, modified, set aside, or disregarded.

NEW SECTION. **Sec. 55.** **INTEREST ON DELINQUENT PREMIUMS.** If premiums are not paid on the date on which they are due and payable as prescribed by the commissioner, the whole or part thereof remaining unpaid shall bear interest at the rate of one percent per month or fraction thereof from and after such date until payment plus accrued interest is received by him or her. The date as of which payment of premiums, if mailed, is deemed to have been received may be determined by such regulations as the commissioner may prescribe. Interest collected pursuant to this section shall be paid into the family and medical leave enforcement account. Interest shall not accrue on premiums from any estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer qualifies as such, but premiums accruing with respect to employment of persons by any receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer shall become due and shall draw interest in the same manner as premiums due from other employers. Where adequate information has been furnished to the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, interest may be waived.

NEW SECTION. **Sec. 56.** **LIEN FOR PREMIUMS GENERALLY.** The claim of the employment security department for any premiums, interest, or penalties not paid when due, shall be a lien prior to all other liens or claims and on a parity with prior tax liens against all property and rights to property, whether real or personal, belonging to the employer. In order to avail itself of the lien hereby created, the department shall file with any county auditor where property of the employer is located a statement and claim of lien specifying the amount of delinquent premiums, interest, and penalties claimed by the department. From the time of filing for record, the amount required to be paid shall constitute a lien upon all property and rights to property, whether real or personal, in the county, owned by the

1 employer or acquired by him or her. The lien shall not be valid
2 against any purchaser, holder of a security interest, mechanic's
3 lien, or judgment lien creditor until notice thereof has been filed
4 with the county auditor. This lien shall be separate and apart from,
5 and in addition to, any other lien or claim created by, or provided
6 for in, this chapter. When any such notice of lien has been so filed,
7 the commissioner may release the same by filing a certificate of
8 release when it shall appear that the amount of delinquent premiums,
9 interest, and penalties have been paid, or when such assurance of
10 payment shall be made as the commissioner may deem to be adequate.
11 Fees for filing and releasing the lien provided herein may be charged
12 to the employer and may be collected from the employer utilizing the
13 remedies provided in this chapter for the collection of premiums.

14 NEW SECTION. **Sec. 57.** LIEN IN EVENT OF INSOLVENCY OR
15 DISSOLUTION. In the event of any distribution of an employer's assets
16 pursuant to an order of any court, including any receivership,
17 probate, legal dissolution, or similar proceeding, or in case of any
18 assignment for the benefit of creditors, composition, or similar
19 proceeding, premiums, interest, or penalties then or thereafter due
20 shall be a lien upon all the assets of such employer. Said lien is
21 prior to all other liens or claims except prior tax liens, other
22 liens provided by this chapter, and claims for remuneration for
23 services of not more than two hundred fifty dollars to each claimant
24 earned within six months of the commencement of the proceeding. The
25 mere existence of a condition of insolvency or the institution of any
26 judicial proceeding for legal dissolution or of any proceeding for
27 distribution of assets shall cause such a lien to attach without
28 action on behalf of the commissioner or the state. In the event of an
29 employer's adjudication in bankruptcy, judicially confirmed extension
30 proposal, or composition, under the federal bankruptcy act of 1898,
31 as amended, premiums, interest, or penalties then or thereafter due
32 shall be entitled to such priority as provided in that act, as
33 amended.

34 NEW SECTION. **Sec. 58.** ORDER AND NOTICE OF ASSESSMENT. At any
35 time after the commissioner shall find that any premiums, interest,
36 or penalties have become delinquent, the commissioner may issue an
37 order and notice of assessment specifying the amount due, which order
38 and notice of assessment shall be served upon the delinquent employer

1 in the manner prescribed for the service of a summons in a civil
2 action, or using a method by which the mailing can be tracked or the
3 delivery can be confirmed. Failure of the employer to receive such
4 notice or order whether served or mailed shall not release the
5 employer from any tax, or any interest or penalties thereon.

6 NEW SECTION. **Sec. 59.** JEOPARDY ASSESSMENT. If the commissioner
7 has reason to believe that an employer is insolvent or if any reason
8 exists why the collection of any premiums accrued will be jeopardized
9 by delaying collection, he or she may make an immediate assessment
10 thereof and may proceed to enforce collection immediately, but
11 interest and penalties shall not begin to accrue upon any premiums
12 until the date when such premiums would normally have become
13 delinquent.

14 NEW SECTION. **Sec. 60.** DISTRAINT, SEIZURE, AND SALE. If the
15 amount of premiums, interest, or penalties assessed by the
16 commissioner by order and notice of assessment provided in this
17 chapter is not paid within ten days after the service or mailing of
18 the order and notice of assessment, the commissioner or his or her
19 duly authorized representative may collect the amount stated in said
20 assessment by the distraint, seizure, and sale of the property,
21 goods, chattels, and effects of said delinquent employer. There shall
22 be exempt from distraint and sale under this section such goods and
23 property as are exempt from execution under the laws of this state.

24 NEW SECTION. **Sec. 61.** DISTRAINT PROCEDURE. The commissioner,
25 upon making a distraint, shall seize the property and shall make an
26 inventory of the property distrained, a copy of which shall be mailed
27 to the owner of such property or personally delivered to him or her,
28 and shall specify the time and place when said property shall be
29 sold. A notice specifying the property to be sold and the time and
30 place of sale shall be posted in at least two public places in the
31 county wherein the seizure has been made. The time of sale shall be
32 not less than ten nor more than twenty days from the date of posting
33 of such notices. Said sale may be adjourned from time to time at the
34 discretion of the commissioner, but not for a time to exceed in all
35 sixty days. Said sale shall be conducted by the commissioner or his
36 or her authorized representative who shall proceed to sell such
37 property by parcel or by lot at a public auction, and who may set a

1 minimum price to include the expenses of making a levy and of
2 advertising the sale, and if the amount bid for such property at the
3 sale is not equal to the minimum price so fixed, the commissioner or
4 his or her representative may declare such property to be purchased
5 by the employment security department for such minimum price. In such
6 event the delinquent account shall be credited with the amount for
7 which the property has been sold. Property acquired by the employment
8 security department as herein prescribed may be sold by the
9 commissioner or his or her representative at public or private sale,
10 and the amount realized shall be placed in the family and medical
11 leave account. In all cases of sale, as aforesaid, the commissioner
12 shall issue a bill of sale or a deed to the purchaser and said bill
13 of sale or deed shall be prima facie evidence of the right of the
14 commissioner to make such sale and conclusive evidence of the
15 regularity of his or her proceeding in making the sale, and shall
16 transfer to the purchaser all right, title, and interest of the
17 delinquent employer in said property. The proceeds of any such sale,
18 except in those cases wherein the property has been acquired by the
19 employment security department, shall be first applied by the
20 commissioner in satisfaction of the delinquent account, and out of
21 any sum received in excess of the amount of delinquent premiums,
22 interest, and penalties the administration fund shall be reimbursed
23 for the costs of distraint and sale. Any excess which shall
24 thereafter remain in the hands of the commissioner shall be refunded
25 to the delinquent employer. Sums so refundable to a delinquent
26 employer may be subject to seizure or distraint in the hands of the
27 commissioner by any other taxing authority of the state or its
28 political subdivisions.

29 NEW SECTION. **Sec. 62.** NOTICE AND ORDER TO WITHHOLD AND DELIVER.
30 The commissioner is hereby authorized to issue to any person, firm,
31 corporation, political subdivision, or department of the state, a
32 notice and order to withhold and deliver property of any kind
33 whatsoever when the commissioner has reason to believe that there is
34 in the possession of such person, firm, corporation, political
35 subdivision, or department, property which is due, owing, or
36 belonging to any person, firm, or corporation upon whom the
37 department has served a benefit overpayment assessment or a notice
38 and order of assessment for premiums, interest, or penalties. The
39 effect of a notice to withhold and deliver shall be continuous from

1 the date such notice and order to withhold and deliver is first made
2 until the liability is satisfied or becomes unenforceable because of
3 a lapse of time. The notice and order to withhold and deliver shall
4 be served by the sheriff or the sheriff's deputy of the county
5 wherein the service is made, using a method by which the mailing can
6 be tracked or the delivery can be confirmed, or by any duly
7 authorized representative of the commissioner. Any person, firm,
8 corporation, political subdivision, or department upon whom service
9 has been made is hereby required to answer the notice within twenty
10 days exclusive of the day of service, under oath and in writing, and
11 shall make true answers to the matters inquired of in the notice. In
12 the event there is in the possession of any such person, firm,
13 corporation, political subdivision, or department, any property which
14 may be subject to the claim of the employment security department of
15 the state, such property shall be delivered forthwith to the
16 commissioner or the commissioner's duly authorized representative
17 upon demand to be held in trust by the commissioner for application
18 on the indebtedness involved or for return, without interest, in
19 accordance with final determination of liability or nonliability, or
20 in the alternative, there shall be furnished a good and sufficient
21 bond satisfactory to the commissioner conditioned upon final
22 determination of liability. Should any person, firm, or corporation
23 fail to make answer to an order to withhold and deliver within the
24 time prescribed herein, it shall be lawful for the court, after the
25 time to answer such order has expired, to render judgment by default
26 against such person, firm, or corporation for the full amount claimed
27 by the commissioner in the notice to withhold and deliver, together
28 with costs.

29 NEW SECTION. **Sec. 63.** ~~WARRANT—AUTHORIZED—FILING—LIEN—~~
30 ~~ENFORCEMENT.~~ Whenever any order and notice of assessment or jeopardy
31 assessment has become final in accordance with the provisions of this
32 chapter the commissioner may file with the clerk of any county within
33 the state a warrant in the amount of the notice of assessment plus
34 interest, penalties, and a filing fee under RCW 36.18.012(10). The
35 clerk of the county wherein the warrant is filed shall immediately
36 designate a superior court cause number for such warrant, and the
37 clerk shall cause to be entered in the judgment docket under the
38 superior court cause number assigned to the warrant, the name of the
39 employer mentioned in the warrant, the amount of the tax, interest,

1 penalties, and filing fee and the date when such warrant was filed.
2 The aggregate amount of such warrant as docketed shall become a lien
3 upon the title to, and interest in all real and personal property of
4 the employer against whom the warrant is issued, the same as a
5 judgment in a civil case duly docketed in the office of such clerk.
6 Such warrant so docketed shall be sufficient to support the issuance
7 of writs of execution and writs of garnishment in favor of the state
8 in the manner provided by law in the case of civil judgment, wholly
9 or partially unsatisfied. The clerk of the court shall be entitled to
10 a filing fee under RCW 36.18.012(10), which shall be added to the
11 amount of the warrant, and charged by the commissioner to the
12 employer or employing unit. A copy of the warrant shall be mailed to
13 the employer or employing unit using a method by which the mailing
14 can be tracked or the delivery can be confirmed within five days of
15 filing with the clerk.

16 NEW SECTION. **Sec. 64.** COLLECTION BY CIVIL ACTION. (1) If after
17 due notice, any employer defaults in any payment of premiums,
18 interest, or penalties, the amount due may be collected by civil
19 action in the name of the state, and the employer adjudged in default
20 shall pay the cost of such action. Any lien created by this chapter
21 may be foreclosed by decree of the court in any such action. Civil
22 actions brought under this chapter to collect premiums, interest, or
23 penalties from an employer shall be heard by the court at the
24 earliest possible date and shall be entitled to preference upon the
25 calendar of the court over all other civil actions except petitions
26 for judicial review under this chapter, cases arising under the
27 unemployment compensation laws of this state, and cases arising under
28 the industrial insurance laws of this state.

29 (2) Any employing unit that is not a resident of this state and
30 that exercises the privilege of having one or more individuals
31 perform service for it within this state, and any resident employing
32 unit that exercises that privilege and thereafter removes from this
33 state, shall be deemed thereby to appoint the secretary of state as
34 its agent and attorney for the acceptance of process in any action
35 under this chapter. In instituting such an action against any such
36 employing unit the commissioner shall cause such process or notice to
37 be filed with the secretary of state and such service shall be
38 sufficient service upon such employing unit, and shall be of the same
39 force and validity as if served upon it personally within this state:

1 PROVIDED, That the commissioner shall forthwith send notice of the
2 service of such process or notice, together with a copy thereof, by
3 registered mail, return receipt requested, to such employing unit at
4 its last known address and such return receipt, the commissioner's
5 affidavit of compliance with the provisions of this section, and a
6 copy of the notice of service shall be appended to the original of
7 the process filed in the court in which such action is pending.

8 NEW SECTION. **Sec. 65.** INJUNCTION PROCEEDINGS. Any employer who
9 is delinquent in the payment of premiums, interest, or penalties may
10 be enjoined upon the suit of the state of Washington from continuing
11 in business in this state or employing persons herein until the
12 delinquent premiums, interest, and penalties have been paid, or until
13 the employer has furnished a good and sufficient bond in a sum equal
14 to double the amount of premiums, interest, and penalties already
15 delinquent, plus such further sum as the court deems adequate to
16 protect the department in the collection of premiums, interest, and
17 penalties which will become due from such employer during the next
18 ensuing calendar year, said bond to be conditioned upon payment of
19 all premiums, interest, and penalties due and owing within thirty
20 days after the expiration of the next ensuing calendar year or at
21 such earlier date as the court may fix. Action under this section may
22 be instituted in the superior court of any county of the state
23 wherein the employer resides, has its principal place of business, or
24 where it has anyone performing services for it, whether or not such
25 services constitute employment.

26 NEW SECTION. **Sec. 66.** CHARGE OFF OF UNCOLLECTIBLE ACCOUNTS. The
27 commissioner may charge off as uncollectible and no longer an asset
28 of the family and medical leave account, any delinquent premiums,
29 interest, penalties, credits, or benefit overpayments if the
30 commissioner is satisfied that there are no cost-effective means of
31 collecting the premiums, interest, penalties, credits, or benefit
32 overpayments.

33 NEW SECTION. **Sec. 67.** PREMIUMS DUE AND PAYABLE UPON TERMINATION
34 OR DISPOSAL OF BUSINESS—SUCCESSOR LIABILITY. Whenever any employer
35 quits business, or sells out, exchanges, or otherwise disposes of the
36 employer's business or stock of goods, any premiums payable under
37 this chapter shall become immediately due and payable, and the

1 employer shall, within ten days, make a return and pay the premiums
2 due; and any person who becomes a successor to such business shall
3 become liable for the full amount of the premiums and withhold from
4 the purchase price a sum sufficient to pay any premiums due from the
5 employer until such time as the employer produces a receipt from the
6 employment security department showing payment in full of any
7 premiums due or a certificate that no premium is due and, if such
8 premium is not paid by the employer within ten days from the date of
9 such sale, exchange, or disposal, the successor shall become liable
10 for the payment of the full amount of premiums, and the payment
11 thereof by such successor shall, to the extent thereof, be deemed a
12 payment upon the purchase price, and if such payment is greater in
13 amount than the purchase price the amount of the difference shall
14 become a debt due such successor from the employer. A successor may
15 not be liable for any premiums due from the person from whom that
16 person has acquired a business or stock of goods if that person gives
17 written notice to the employment security department of such
18 acquisition and no assessment is issued by the department within one
19 hundred eighty days of receipt of such notice against the former
20 operator of the business and a copy thereof mailed to such successor.

21 NEW SECTION. **Sec. 68.** EMPLOYER PENALTIES. (1) An employer who
22 willfully fails to make the required reports is subject to penalties
23 as follows: (a) For the second occurrence, the penalty is seventy-
24 five dollars; (b) for the third occurrence, the penalty is one
25 hundred fifty dollars; and (c) for the fourth occurrence and for each
26 occurrence thereafter, the penalty is two hundred fifty dollars.

27 (2) An employer who willfully fails to remit the full amount of
28 the premiums when due is liable, in addition to the full amount of
29 premiums due and amounts assessed as interest under section 55 of
30 this act, to a penalty equal to the premiums and interest.

31 (3) Any penalties under this section shall be deposited into the
32 family and medical leave enforcement account.

33 (4) For the purposes of this section, "willful" means a knowing
34 and intentional action that is neither accidental nor the result of a
35 bona fide dispute.

36 (5) The department shall enforce the collection of penalties
37 through conference and conciliation.

38 (6) These penalties may be appealed as provided in sections 34
39 through 53 of this act.

1 NEW SECTION. **Sec. 69.** OTHER BENEFITS. (1) Leave from employment
2 under this chapter is in addition to leave from employment during
3 which benefits are paid or are payable under Title 51 RCW or other
4 applicable federal or state industrial insurance laws.

5 (2) In any week in which an employee is eligible to receive
6 benefits under Title 50 or 51 RCW, or other applicable federal or
7 state unemployment compensation, industrial insurance, or disability
8 insurance laws, the employee is disqualified from receiving family or
9 medical leave benefits under this chapter.

10 NEW SECTION. **Sec. 70.** HEALTH BENEFITS. If required by the
11 federal family and medical leave act, as it existed on the effective
12 date of this section during any period of family or medical leave
13 taken under this chapter, the employer shall maintain any existing
14 health benefits of the employee in force for the duration of such
15 leave as if the employee had continued to work from the date the
16 employee commenced family or medical leave until the date the
17 employee returns to employment. If the employer and employee share
18 the cost of the existing health benefits, the employee remains
19 responsible for the employee's share of the cost. This section does
20 not apply to an employee who is not in employment for an employer at
21 the time of filing an application for benefits.

22 NEW SECTION. **Sec. 71.** EMPLOYEE NOTICE OF RIGHTS. Whenever an
23 employee of an employer who is qualified for benefits under this
24 chapter is absent from work to provide family leave, or take medical
25 leave for more than seven consecutive days, the employer shall
26 provide the employee with a written statement of the employee's
27 rights under this chapter in a form prescribed by the commissioner.
28 The statement must be provided to the employee within five business
29 days after the employee's seventh consecutive day of absence due to
30 family or medical leave, or within five business days after the
31 employer has received notice that the employee's absence is due to
32 family or medical leave, whichever is later.

33 NEW SECTION. **Sec. 72.** EMPLOYER PROHIBITIONS. (1) It is unlawful
34 for any employer to:

35 (a) Interfere with, restrain, or deny the exercise of, or the
36 attempt to exercise, any valid right provided under this chapter; or

1 (b) Discharge or in any other manner discriminate against any
2 employee for opposing any practice made unlawful by this chapter.

3 (2) It is unlawful for any person to discharge or in any other
4 manner discriminate against any employee because the employee has:

5 (a) Filed any complaint, or has instituted or caused to be
6 instituted any proceeding, under or related to this chapter;

7 (b) Given, or is about to give, any information in connection
8 with any inquiry or proceeding relating to any right provided under
9 this chapter; or

10 (c) Testified, or is about to testify, in any inquiry or
11 proceeding relating to any right provided under this chapter.

12 NEW SECTION. **Sec. 73.** INVESTIGATIONS AND APPEALS. Upon
13 complaint by an employee, the commissioner shall investigate to
14 determine if there has been compliance with this chapter and the
15 rules adopted under this chapter. If the investigation indicates that
16 a violation may have occurred, a hearing must be held in accordance
17 with chapter 34.05 RCW. The commissioner must issue a written
18 determination including the commissioner's findings after the
19 hearing. A judicial appeal from the commissioner's determination may
20 be taken in accordance with chapter 34.05 RCW.

21 NEW SECTION. **Sec. 74.** REMEDIES. Any employer who violates
22 section 72 of this act is liable for damages equal to:

23 (1) The amount of:

24 (a) Any wages, salary, employment benefits, or other compensation
25 denied or lost to such employee by reason of the violation; or

26 (b) In a case in which wages, salary, employment benefits, or
27 other compensation have not been denied or lost to the employee, any
28 actual monetary losses sustained by the employee as a direct result
29 of the violation, such as the cost of providing care, up to a sum
30 equal to wages or salary for the employee for up to sixteen weeks, or
31 eighteen weeks if the employee experiences a serious health condition
32 with a pregnancy that results in incapacity.

33 (2)(a) The interest on the amount described in subsection (1) of
34 this section calculated at the prevailing rate; and

35 (b) For a willful violation, an additional amount as liquidated
36 damages equal to the sum of the amount described in subsection (1) of
37 this section and the interest described in this subsection (2). For
38 purposes of this section, "willful" means a knowing and intentional

1 action that is neither accidental nor the result of a bona fide
2 dispute.

3 NEW SECTION. **Sec. 75.** POSTING OF NOTICE. Each employer shall
4 post and keep posted, in conspicuous places on the premises of the
5 employer where notices to employees and applicants for employment are
6 customarily posted, a notice, to be prepared or approved by the
7 commissioner, setting forth excerpts from, or summaries of, the
8 pertinent provisions of this chapter and information pertaining to
9 the filing of a complaint. Any employer that willfully violates this
10 section may be subject to a civil penalty of not more than one
11 hundred dollars for each separate offense. Any penalties collected by
12 the department under this section shall be deposited into the family
13 and medical leave enforcement account.

14 NEW SECTION. **Sec. 76.** FAMILY AND MEDICAL LEAVE ENFORCEMENT
15 ACCOUNT. The family and medical leave enforcement account is created
16 in the custody of the state treasurer. Any money in the family leave
17 insurance account created in section 19, chapter 357, Laws of 2007 is
18 transferred to the account created in this section. Any penalties and
19 interest collected under sections 5, 20, 32, 33, 55, 68, and 75 of
20 this act shall be deposited into the account and shall be used only
21 for the purposes of administering and enforcing this chapter. Only
22 the commissioner may authorize expenditures from the account. The
23 account is subject to allotment procedures under chapter 43.88 RCW,
24 but an appropriation is not required for expenditures.

25 NEW SECTION. **Sec. 77.** OTHER LAWS—DISCRIMINATION. Nothing in
26 this chapter shall be construed to modify or affect any state or
27 local law prohibiting discrimination on the basis of race, creed,
28 religion, color, national origin, families with children, sex,
29 marital status, sexual orientation including gender expression or
30 identity, age, honorably discharged veteran or military status, or
31 the presence of any sensory, mental, or physical disability or the
32 use of a trained dog guide or service animal by a person with a
33 disability.

34 NEW SECTION. **Sec. 78.** MISCELLANEOUS RIGHTS. (1) Nothing in this
35 chapter shall be construed to discourage employers from:

1 (a) Adopting or retaining leave policies more generous than any
2 policies that comply with the requirements under this chapter; or

3 (b) Making payments to supplement the benefit payments provided
4 under section 6 of this act to an employee on family or medical
5 leave.

6 (2) Any agreement by an individual to waive his or her rights
7 under this chapter is void as against public policy.

8 (3) After January 1, 2020, subject to section 87 of this act, an
9 employee's rights under this chapter may not be diminished by a
10 collective bargaining agreement or employer policy.

11 NEW SECTION. **Sec. 79.** COORDINATION OF LEAVE UNDER OTHER LAWS.

12 (1) Leave under this chapter and leave under the federal family and
13 medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6,
14 as it existed on the effective date of this section) is in addition
15 to any leave for sickness or temporary disability because of
16 pregnancy or childbirth.

17 (2) Unless otherwise expressly permitted by the employer, leave
18 taken under this chapter must be taken concurrently with any leave
19 taken under the federal family and medical leave act of 1993 (Act
20 Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on the effective
21 date of this section).

22 NEW SECTION. **Sec. 80.** FEDERAL INCOME TAXES. (1) If the internal
23 revenue service determines that family or medical leave benefits
24 under this chapter are subject to federal income tax, the department
25 must advise an employee filing a new application for benefits, at the
26 time of filing such application, that:

27 (a) The internal revenue service has determined that benefits are
28 subject to federal income tax;

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

30 (c) The employee may elect to have federal income tax deducted
31 and withheld from the employee's payment of benefits at the amount
32 specified in the federal internal revenue code; and

33 (d) The employee is permitted to change a previously elected
34 withholding status.

35 (2) Amounts deducted and withheld from benefits must remain in
36 the family and medical leave insurance account until transferred to
37 the federal taxing authority as a payment of income tax.

1 (3) The commissioner shall follow all procedures specified by the
2 federal internal revenue service pertaining to the deducting and
3 withholding of income tax.

4 NEW SECTION. **Sec. 81.** NO CONTINUING RIGHT. This chapter does
5 not create a continuing entitlement or contractual right. The
6 legislature reserves the right to amend or repeal all or part of this
7 chapter at any time, and a benefit or other right granted under this
8 chapter exists subject to the legislature's power to amend or repeal
9 this chapter. There is no vested private right of any kind against
10 such amendment or repeal.

11 NEW SECTION. **Sec. 82.** FAMILY AND MEDICAL LEAVE INSURANCE
12 ACCOUNT. (1) The family and medical leave insurance account is
13 created in the custody of the state treasurer. All receipts from
14 premiums imposed under this chapter must be deposited in the account.
15 Expenditures from the account may be used only for the purposes of
16 the family and medical leave program. Only the commissioner or the
17 commissioner's designee may authorize expenditures from the account.
18 The account is subject to the allotment procedures under chapter
19 43.88 RCW. An appropriation is required for administrative expenses,
20 but not for benefit payments.

21 (2) Money deposited in the account shall remain a part of the
22 account until expended pursuant to the requirements of this chapter
23 or transferred in accordance with subsection (3) of this section. The
24 commissioner shall maintain a separate record of the deposit,
25 obligation, expenditure, and return of funds so deposited. Any money
26 so deposited which either will not be obligated within the period
27 specified by the appropriations act or remains unobligated at the end
28 of the period, and any money which has been obligated within the
29 period but will not be expended, shall be returned promptly to the
30 family and medical leave insurance account.

31 (3) Money shall be transferred from the family and medical leave
32 insurance account and deposited in the unemployment trust fund solely
33 for the repayment of benefits not charged to employers as defined in
34 RCW 50.29.021(4)(a)(vii). The commissioner shall direct the transfer,
35 which must occur on or before the cut-off date as defined in RCW
36 50.29.010.

37 (4) Money transferred as provided in subsection (3) of this
38 section for the repayment of benefits not charged to employers shall

1 be deposited in the unemployment compensation fund and shall remain a
2 part of the unemployment compensation fund until expended pursuant to
3 RCW 50.16.030. The commissioner shall maintain a separate record of
4 the deposit, obligation, expenditure, and return of funds so
5 deposited. Any money so deposited which either will not be obligated
6 within the period specified by the appropriation law or remains
7 unobligated at the end of the period, and any money which has been
8 obligated within the period but will not be expended, shall be
9 returned promptly to the account of this state in the unemployment
10 trust fund.

11 **Sec. 83.** RCW 50.29.021 and 2013 c 244 s 1 and 2013 c 189 s 3 are
12 each reenacted and amended to read as follows:

13 UNEMPLOYMENT NONCHARGING OF BENEFITS. (1) This section applies to
14 benefits charged to the experience rating accounts of employers for
15 claims that have an effective date on or after January 4, 2004.

16 (2)(a) An experience rating account shall be established and
17 maintained for each employer, except employers as described in RCW
18 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make
19 payments in lieu of contributions, taxable local government employers
20 as described in RCW 50.44.035, and those employers who are required
21 to make payments in lieu of contributions, based on existing records
22 of the employment security department.

23 (b) Benefits paid to an eligible individual shall be charged to
24 the experience rating accounts of each of such individual's employers
25 during the individual's base year in the same ratio that the wages
26 paid by each employer to the individual during the base year bear to
27 the wages paid by all employers to that individual during that base
28 year, except as otherwise provided in this section.

29 (c) When the eligible individual's separating employer is a
30 covered contribution paying base year employer, benefits paid to the
31 eligible individual shall be charged to the experience rating account
32 of only the individual's separating employer if the individual
33 qualifies for benefits under:

34 (i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and
35 became unemployed after having worked and earned wages in the bona
36 fide work; or

37 (ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through
38 (x).

1 (3) The legislature finds that certain benefit payments, in whole
2 or in part, should not be charged to the experience rating accounts
3 of employers except those employers described in RCW 50.44.010,
4 50.44.030, and 50.50.030 who have properly elected to make payments
5 in lieu of contributions, taxable local government employers
6 described in RCW 50.44.035, and those employers who are required to
7 make payments in lieu of contributions, as follows:

8 (a) Benefits paid to any individual later determined to be
9 ineligible shall not be charged to the experience rating account of
10 any contribution paying employer, except as provided in subsection
11 (5) of this section.

12 (b) Benefits paid to an individual filing under the provisions of
13 chapter 50.06 RCW shall not be charged to the experience rating
14 account of any contribution paying employer only if:

15 (i) The individual files under RCW 50.06.020(1) after receiving
16 crime victims' compensation for a disability resulting from a
17 nonwork-related occurrence; or

18 (ii) The individual files under RCW 50.06.020(2).

19 (c) Benefits paid which represent the state's share of benefits
20 payable as extended benefits defined under RCW 50.22.010(6) shall not
21 be charged to the experience rating account of any contribution
22 paying employer.

23 (d) In the case of individuals who requalify for benefits under
24 RCW 50.20.050 or 50.20.060, benefits based on wage credits earned
25 prior to the disqualifying separation shall not be charged to the
26 experience rating account of the contribution paying employer from
27 whom that separation took place.

28 (e) Benefits paid to an individual who qualifies for benefits
29 under RCW 50.20.050 (1)(b) (iv) or (xi) or (2)(b) (iv) or (xi), as
30 applicable, shall not be charged to the experience rating account of
31 any contribution paying employer.

32 (f) With respect to claims with an effective date on or after the
33 first Sunday following April 22, 2005, benefits paid that exceed the
34 benefits that would have been paid if the weekly benefit amount for
35 the claim had been determined as one percent of the total wages paid
36 in the individual's base year shall not be charged to the experience
37 rating account of any contribution paying employer. This subsection
38 (3)(f) does not apply to the calculation of contribution rates under
39 RCW 50.29.025 for rate year 2010 and thereafter.

1 (g) The forty-five dollar increase paid as part of an
2 individual's weekly benefit amount as provided in RCW 50.20.1201 and
3 the twenty-five dollar increase paid as part of an individual's
4 weekly benefit amount as provided in RCW 50.20.1202 shall not be
5 charged to the experience rating account of any contribution paying
6 employer.

7 (h) With respect to claims where the minimum amount payable
8 weekly is increased to one hundred fifty-five dollars pursuant to RCW
9 50.20.1201(3), benefits paid that exceed the benefits that would have
10 been paid if the minimum amount payable weekly had been calculated
11 pursuant to RCW 50.20.120 shall not be charged to the experience
12 rating account of any contribution paying employer.

13 (i) Upon approval of an individual's training benefits plan
14 submitted in accordance with RCW 50.22.155(2), an individual is
15 considered enrolled in training, and regular benefits beginning with
16 the week of approval shall not be charged to the experience rating
17 account of any contribution paying employer.

18 (j) Training benefits paid to an individual under RCW 50.22.155
19 shall not be charged to the experience rating account of any
20 contribution paying employer.

21 (4)(a) A contribution paying base year employer, except employers
22 as provided in subsection (6) of this section, not otherwise eligible
23 for relief of charges for benefits under this section, may receive
24 such relief if the benefit charges result from payment to an
25 individual who:

26 (i) Last left the employ of such employer voluntarily for reasons
27 not attributable to the employer;

28 (ii) Was discharged for misconduct or gross misconduct connected
29 with his or her work not a result of inability to meet the minimum
30 job requirements;

31 (iii) Is unemployed as a result of closure or severe curtailment
32 of operation at the employer's plant, building, worksite, or other
33 facility. This closure must be for reasons directly attributable to a
34 catastrophic occurrence such as fire, flood, or other natural
35 disaster;

36 (iv) Continues to be employed on a regularly scheduled permanent
37 part-time basis by a base year employer and who at some time during
38 the base year was concurrently employed and subsequently separated
39 from at least one other base year employer. Benefit charge relief
40 ceases when the employment relationship between the employer

1 requesting relief and the claimant is terminated. This subsection
2 does not apply to shared work employers under chapter 50.60 RCW;

3 (v) Continues to be employed on a regularly scheduled permanent
4 part-time basis by a base year employer and who qualified for two
5 consecutive unemployment claims where wages were attributable to at
6 least one employer who employed the individual in both base years.
7 Benefit charge relief ceases when the employment relationship between
8 the employer requesting relief and the claimant is terminated. This
9 subsection does not apply to shared work employers under chapter
10 50.60 RCW; ((or))

11 (vi) Was hired to replace an employee who is a member of the
12 military reserves or National Guard and was called to federal active
13 military service by the president of the United States and is
14 subsequently laid off when that employee is reemployed by their
15 employer upon release from active duty within the time provided for
16 reemployment in RCW 73.16.035; or

17 (vii) Worked for an employer for twenty weeks or less, and was
18 laid off at the end of temporary employment when that employee
19 temporarily replaced a permanent employee receiving family or medical
20 leave benefits under this chapter, and the layoff is due to the
21 return of that permanent employee. This subsection (4)(a)(vii)
22 applies to claims with an effective date on or after January 1, 2020.

23 (b) The employer requesting relief of charges under this
24 subsection must request relief in writing within thirty days
25 following mailing to the last known address of the notification of
26 the valid initial determination of such claim, stating the date and
27 reason for the separation or the circumstances of continued
28 employment. The commissioner, upon investigation of the request,
29 shall determine whether relief should be granted.

30 (5) When a benefit claim becomes invalid due to an amendment or
31 adjustment of a report where the employer failed to report or
32 inaccurately reported hours worked or remuneration paid, or both, all
33 benefits paid will be charged to the experience rating account of the
34 contribution paying employer or employers that originally filed the
35 incomplete or inaccurate report or reports. An employer who
36 reimburses the trust fund for benefits paid to workers and who fails
37 to report or inaccurately reported hours worked or remuneration paid,
38 or both, shall reimburse the trust fund for all benefits paid that
39 are based on the originally filed incomplete or inaccurate report or
40 reports.

1 (6) An employer's experience rating account may not be relieved
2 of charges for a benefit payment and an employer who reimburses the
3 trust fund for benefit payments may not be credited for a benefit
4 payment if a benefit payment was made because the employer or
5 employer's agent failed to respond timely or adequately to a written
6 request of the department for information relating to the claim or
7 claims without establishing good cause for the failure and the
8 employer or employer's agent has a pattern of such failures. The
9 commissioner has the authority to determine whether the employer has
10 good cause under this subsection.

11 (a) For the purposes of this subsection, "adequately" means
12 providing accurate information of sufficient quantity and quality
13 that would allow a reasonable person to determine eligibility for
14 benefits.

15 (b)(i) For the purposes of this subsection, "pattern" means a
16 benefit payment was made because the employer or employer's agent
17 failed to respond timely or adequately to a written request of the
18 department for information relating to a claim or claims without
19 establishing good cause for the failure, if the greater of the
20 following calculations for an employer is met:

21 (A) At least three times in the previous two years; or

22 (B) Twenty percent of the total current claims against the
23 employer.

24 (ii) If an employer's agent is utilized, a pattern is established
25 based on each individual client employer that the employer's agent
26 represents.

27 NEW SECTION. **Sec. 84.** SMALL BUSINESS ASSISTANCE. (1) The
28 legislature recognizes that while family leave and medical leave
29 benefit both employees and employers, there may be costs that
30 disproportionately impact small businesses. To equitably balance the
31 risks among employers, the legislature intends to assist small
32 businesses with the costs of an employee's use of family or medical
33 leave.

34 (2) Employers with one hundred fifty or fewer employees and
35 employers with fifty or fewer employees who are assessed all premiums
36 under section 8(5)(b) of this act may apply to the department for a
37 grant under this section.

1 (3)(a) An employer may receive a grant of three thousand dollars
2 if the employer hires a temporary worker to replace an employee on
3 family or medical leave for a period of seven days or more.

4 (b) For an employee's family or medical leave, an employer may
5 receive a grant of up to one thousand dollars as reimbursement for
6 significant additional wage-related costs due to the employee's
7 leave.

8 (c) An employer may receive a grant under (a) or (b) of this
9 subsection, but not both, except that an employer who received a
10 grant under (b) of this subsection may receive a grant of the
11 difference between the grant awarded under (b) of this subsection and
12 three thousand dollars if the employee on leave extended the leave
13 beyond the leave initially planned and the employer hired a temporary
14 worker for the employee on leave.

15 (4) An employer may apply for a grant no more than ten times per
16 calendar year and no more than once for each employee on leave.

17 (5) To be eligible for a grant, the employer must provide the
18 department written documentation showing the temporary worker hired
19 or significant wage-related costs incurred are due to an employee's
20 use of family or medical leave.

21 (6) The department must assess an employer with fewer than fifty
22 employees who receives a grant under this section for all premiums
23 for three years from the date of receipt of a grant.

24 (7) The grants under this section shall be funded from the family
25 and medical leave insurance account.

26 (8) The commissioner shall adopt rules as necessary to implement
27 this section.

28 (9) For the purposes of this section, the number of employees
29 must be calculated as provided in section 8 of this act.

30 (10) An employer who has an approved voluntary plan is not
31 eligible to receive a grant under this section.

32 NEW SECTION. **Sec. 85.** RULES. The commissioner shall adopt rules
33 as necessary to implement this chapter.

34 NEW SECTION. **Sec. 86.** REPORTS. Beginning December 1, 2020, and
35 annually thereafter, the department shall report to the legislature
36 on the entire program, including:

- 37 (1) Projected and actual program participation;
38 (2) Premium rates;

- 1 (3) Fund balances;
- 2 (4) Benefits paid;
- 3 (5) Demographic information on program participants, including
- 4 income, gender, race, ethnicity, geographic distribution by county
- 5 and legislative district, and employment sector;
- 6 (6) Costs of providing benefits;
- 7 (7) Elective coverage participation;
- 8 (8) Voluntary plan participation;
- 9 (9) Outreach efforts; and
- 10 (10) Small business assistance.

11 NEW SECTION. **Sec. 87.** COLLECTIVE BARGAINING. Nothing in this
12 act requires any party to a collective bargaining agreement in
13 existence on the effective date of this section to reopen
14 negotiations of the agreement or to apply any of the rights and
15 responsibilities under this act unless and until the existing
16 agreement is reopened or renegotiated by the parties or expires.

17 NEW SECTION. **Sec. 88.** OMBUDS. (1) The commissioner shall
18 establish an ombuds office for family and medical leave within the
19 department. The ombuds shall be appointed by the governor and report
20 directly to the commissioner of the department. The ombuds is
21 available to all employers and employees in the state.

22 (2) The person appointed ombuds shall hold office for a term of
23 six years and shall continue to hold office until reappointed or
24 until his or her successor is appointed. The governor may remove the
25 ombuds only for neglect of duty, misconduct, or inability to perform
26 duties. Any vacancy shall be filled by similar appointment for the
27 remainder of the unexpired term.

28 (3) The ombuds shall:

29 (a) Offer and provide information on family and medical leave to
30 employers and employees;

31 (b) Act as an advocate for employers and employees in their
32 dealings with the department;

33 (c) Identify, investigate, and facilitate resolution of disputes
34 and complaints under this chapter; and

35 (d) Refer complaints to the department when appropriate.

36 (4) The ombuds may conduct surveys of employees. Survey questions
37 and results are confidential and not subject to public disclosure.

(5) The ombuds is not liable for the good faith performance of responsibilities under this chapter.

Sec. 89. RCW 43.79A.040 and 2017 c 322 s 5, 2017 c 285 s 5, and 2017 c 257 s 5 are each reenacted and amended to read as follows:

TREASURY INTEREST. (1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury, and may be commingled with moneys in the state treasury for cash management and cash balance purposes.

(2) All income received from investment of the treasurer's trust fund must be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments must occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer must distribute the earnings credited to the investment income account to the state general fund except under (b), (c), and (d) of this subsection.

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The 24/7 sobriety account, the Washington promise scholarship account, the Gina Grant Bull memorial legislative page scholarship account, the Washington advanced college tuition payment program account, the Washington college savings program account, the accessible communities account, the Washington achieving a better life experience program account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county enhanced 911 excise tax account, the toll collection account, the developmental disabilities endowment trust fund, the energy

1 account, the fair fund, the family and medical leave insurance
2 account, the food animal veterinarian conditional scholarship
3 account, the fruit and vegetable inspection account, the future
4 teachers conditional scholarship account, the game farm alternative
5 account, the GET ready for math and science scholarship account, the
6 Washington global health technologies and product development
7 account, the grain inspection revolving fund, the industrial
8 insurance rainy day fund, the juvenile accountability incentive
9 account, the law enforcement officers' and firefighters' plan 2
10 expense fund, the local tourism promotion account, the low-income
11 home rehabilitation revolving loan program account, the multiagency
12 permitting team account, the northeast Washington wolf-livestock
13 management account, the pilotage account, the produce railcar pool
14 account, the regional transportation investment district account, the
15 rural rehabilitation account, the Washington sexual assault kit
16 account, the stadium and exhibition center account, the youth
17 athletic facility account, the self-insurance revolving fund, the
18 children's trust fund, the Washington horse racing commission
19 Washington bred owners' bonus fund and breeder awards account, the
20 Washington horse racing commission class C purse fund account, the
21 individual development account program account, the Washington horse
22 racing commission operating account, the life sciences discovery
23 fund, the Washington state heritage center account, the reduced
24 cigarette ignition propensity account, the center for childhood
25 deafness and hearing loss account, the school for the blind account,
26 the Millersylvania park trust fund, the public employees' and
27 retirees' insurance reserve fund, and the radiation perpetual
28 maintenance fund.

29 (c) The following accounts and funds must receive eighty percent
30 of their proportionate share of earnings based upon each account's or
31 fund's average daily balance for the period: The advanced right-of-
32 way revolving fund, the advanced environmental mitigation revolving
33 account, the federal narcotics asset forfeitures account, the high
34 occupancy vehicle account, the local rail service assistance account,
35 and the miscellaneous transportation programs account.

36 (d) Any state agency that has independent authority over accounts
37 or funds not statutorily required to be held in the custody of the
38 state treasurer that deposits funds into a fund or account in the
39 custody of the state treasurer pursuant to an agreement with the
40 office of the state treasurer shall receive its proportionate share

1 of earnings based upon each account's or fund's average daily balance
2 for the period.

3 (5) In conformance with Article II, section 37 of the state
4 Constitution, no trust accounts or funds shall be allocated earnings
5 without the specific affirmative directive of this section.

6 **Sec. 90.** RCW 49.76.020 and 2008 c 286 s 2 are each amended to
7 read as follows:

8 TECHNICAL AMENDMENT TO ADDRESS CROSS-REFERENCE TO REPEALED
9 SECTION. The definitions in this section apply throughout this
10 chapter unless the context clearly requires otherwise.

11 (1) "Child," "spouse," "parent," "parent-in-law," "grandparent,"
12 and "sick leave and other paid time off" have the same meanings as in
13 RCW 49.12.265.

14 (2) "Dating relationship" has the same meaning as in RCW
15 26.50.010.

16 (3) "Department," "director," "employer," and "employee" have the
17 same meanings as in RCW 49.12.005.

18 (4) "Domestic violence" has the same meaning as in RCW 26.50.010.

19 (5) "Family member" means any individual whose relationship to
20 the employee can be classified as a child, spouse, parent, parent-in-
21 law, grandparent, or person with whom the employee has a dating
22 relationship.

23 (6) "Intermittent leave" ~~((and "reduced leave schedule" have the~~
24 ~~same meanings as in RCW 49.78.020))~~ is leave taken in separate blocks
25 of time due to a single qualifying reason.

26 (7) "Reduced leave schedule" means a leave schedule that reduces
27 the usual number of hours per workweek, or hours per workday, of an
28 employee.

29 ~~((7))~~ (8) "Sexual assault" has the same meaning as in RCW
30 70.125.030.

31 ~~((8))~~ (9) "Stalking" has the same meaning as in RCW 9A.46.110.

32 **Sec. 91.** RCW 49.76.130 and 2008 c 286 s 13 are each amended to
33 read as follows:

34 TECHNICAL AMENDMENT TO ADDRESS CROSS-REFERENCE TO REPEALED
35 SECTION. The department shall include notice of the provisions of
36 this chapter in the next reprinting of employment posters ~~((printed~~
37 ~~under RCW 49.78.340. Employers shall post this notice as required in~~
38 ~~RCW 49.78.340))~~. Each employer shall post and keep posted, in

1 conspicuous places on the premises of the employer where notices to
2 employees and applicants for employment are customarily posted, a
3 notice, to be prepared or approved by the director, setting forth
4 excerpts from, or summaries of, the pertinent provisions of this
5 chapter and information pertaining to the filing of a charge. Any
6 employer that willfully violates this section may be subject to a
7 civil penalty of not more than one hundred dollars for each separate
8 offense. Any penalties collected by the department under this section
9 shall be deposited into the family and medical leave enforcement
10 account.

11 **Sec. 92.** RCW 49.77.020 and 2008 c 71 s 2 are each amended to
12 read as follows:

13 TECHNICAL AMENDMENT TO ADDRESS CROSS-REFERENCE TO REPEALED
14 SECTION. The definitions in this section apply throughout this
15 chapter unless the context clearly requires otherwise.

16 (1) "Department" (~~((and "spouse" have the same meanings as in RCW~~
17 ~~49.78.020))~~) means the department of labor and industries.

18 (2) "Employee" means a person who performs service for hire for
19 an employer, for an average of twenty or more hours per week, and
20 includes all individuals employed at any site owned or operated by an
21 employer, but does not include an independent contractor.

22 (3) "Employer" means: (a) Any person, firm, corporation,
23 partnership, business trust, legal representative, or other business
24 entity which engages in any business, industry, profession, or
25 activity in this state; (b) the state, state institutions, and state
26 agencies; and (c) any unit of local government including, but not
27 limited to, a county, city, town, municipal corporation,
28 quasi-municipal corporation, or political subdivision.

29 (4) "Period of military conflict" means a period of war declared
30 by the United States Congress, declared by executive order of the
31 president, or in which a member of a reserve component of the armed
32 forces is ordered to active duty pursuant to either sections 12301
33 and 12302 of Title 10 of the United States Code or Title 32 of the
34 United States Code.

35 (5) "Spouse" means a husband or wife, as the case may be, or
36 state registered domestic partner.

37 **Sec. 93.** RCW 49.77.030 and 2008 c 71 s 3 are each amended to
38 read as follows:

1 TECHNICAL AMENDMENT TO ADDRESS CROSS-REFERENCE TO REPEALED
2 SECTION. (1) During a period of military conflict, an employee who is
3 the spouse of a member of the armed forces of the United States,
4 national guard, or reserves who has been notified of an impending
5 call or order to active duty or has been deployed is entitled to a
6 total of fifteen days of unpaid leave per deployment after the
7 military spouse has been notified of an impending call or order to
8 active duty and before deployment or when the military spouse is on
9 leave from deployment.

10 (2)(a) Except as provided in (b) of this subsection, any employee
11 who takes leave under this chapter for the intended purpose of the
12 leave is entitled((:(a))), on return from the leave:

13 (i) To be restored by the employer to ((a)) the position of
14 employment ((in the same manner as an employee entitled to leave
15 under chapter 49.78 RCW is restored to a position of employment, as
16 specified in RCW 49.78.280; and (b) to continue benefits in the same
17 manner as an employee entitled to leave under chapter 49.78 RCW
18 continues benefits, as specified in RCW 49.78.290.

19 (3))) held by the employee when the leave commenced; or

20 (ii) To be restored to an equivalent position with equivalent
21 employment benefits, pay, and other terms and conditions of
22 employment at a workplace within twenty miles of the employee's
23 workplace when leave commenced.

24 (b) The taking of leave under this chapter may not result in the
25 loss of any employment benefits accrued before the date on which the
26 leave commenced.

27 (c) Nothing in this section entitles any restored employee to:

28 (i) The accrual of any seniority or employment benefits during
29 any period of leave; or

30 (ii) Any right, benefit, or position of employment other than any
31 right, benefit, or position to which the employee would have been
32 entitled had the employee not taken the leave.

33 (d) Nothing in this subsection (2) prohibits an employer from
34 requiring an employee on leave to report periodically to the employer
35 on the status and intention of the employee to return to work.

36 (3) An employer may deny restoration under subsection (2) of this
37 section to any salaried employee who is among the highest paid ten
38 percent of the employees employed by the employer within seventy-five
39 miles of the facility at which the employee is employed if:

1 (a) Denial is necessary to prevent substantial and grievous
2 economic injury to the operations of the employer;

3 (b) The employer notifies the employee of the intent of the
4 employer to deny restoration on such basis at the time the employer
5 determines that the injury would occur; and

6 (c) The leave has commenced and the employee elects not to return
7 to employment after receiving the notice.

8 (4) If the employee on leave under this chapter is not eligible
9 for any employer contribution to medical or dental benefits under an
10 applicable collective bargaining agreement or employer policy during
11 any period of leave, an employer shall allow the employee to
12 continue, at the employee's expense, medical or dental insurance
13 coverage, in accordance with state or federal law. The premium to be
14 paid by the employee shall not exceed one hundred two percent of the
15 applicable premium for the leave period.

16 (5) An employee who seeks to take leave under this chapter must
17 provide the employer with notice, within five business days of
18 receiving official notice of an impending call or order to active
19 duty or of a leave from deployment, of the employee's intention to
20 take leave under this chapter.

21 ~~((4) An employer from which an employee seeks to take leave or~~
22 ~~takes leave under this chapter shall not engage in prohibited acts as~~
23 ~~specified in RCW 49.78.300.~~

24 ~~(5))~~ (6) An employee who takes leave under this chapter may
25 elect to substitute any of the accrued leave to which the employee
26 may be entitled for any part of the leave provided under this
27 chapter.

28 ~~((6))~~ (7) The department shall administer the provisions of
29 this chapter, and may adopt rules as necessary to implement this
30 chapter.

31 ~~((7) This chapter shall be enforced as provided in chapter 49.78~~
32 ~~RCW-))~~

33 **NEW SECTION. Sec. 94.** A new section is added to chapter 49.77
34 RCW to read as follows:

35 **TECHNICAL SECTION TO ADDRESS CROSS-REFERENCE TO REPEALED SECTION.**

36 (1) It is unlawful for any employer to:

37 (a) Interfere with, restrain, or deny the exercise of, or the
38 attempt to exercise, any right provided under this chapter; or

(b) Discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this chapter.

(2) It is unlawful for any person to discharge or in any other manner discriminate against any individual because the individual has:

(a) Filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this chapter;

(b) Given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this chapter; or

(c) Testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this chapter.

NEW SECTION. Sec. 95. A new section is added to chapter 49.77 RCW to read as follows:

TECHNICAL SECTION TO ADDRESS CROSS-REFERENCE TO REPEALED SECTION.
Upon complaint by an employee, the director shall investigate to determine if there has been compliance with this chapter and the rules adopted under this chapter. If the investigation indicates that a violation may have occurred, a hearing must be held in accordance with chapter 34.05 RCW. The director must issue a written determination including his or her findings after the hearing. A judicial appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys' fees.

NEW SECTION. Sec. 96. A new section is added to chapter 49.77 RCW to read as follows:

TECHNICAL SECTION TO ADDRESS CROSS-REFERENCE TO REPEALED SECTION.
An employer who is found, in accordance with section 95 of this act, to have violated a requirement of this chapter and the rules adopted under this chapter, is subject to a civil penalty of not less than one thousand dollars for each violation. Civil penalties must be collected by the department and deposited into the family and medical leave enforcement account.

NEW SECTION. Sec. 97. A new section is added to chapter 49.77 RCW to read as follows:

TECHNICAL SECTION TO ADDRESS CROSS-REFERENCE TO REPEALED SECTION.
(1) Any employer who violates section 94 of this act is liable:

(a) For damages equal to:

(i) The amount of:

(A) Any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or

(B) In a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to twelve weeks of wages or salary for the employee;

(ii) The interest on the amount described in (a)(i) of this subsection calculated at the prevailing rate; and

(iii) An additional amount as liquidated damages equal to the sum of the amount described in (a)(i) of this subsection and the interest described in (a)(ii) of this subsection, except that if an employer who has violated section 94 of this act proves to the satisfaction of the court that the act or omission which violated section 94 of this act was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of section 94 of this act, the court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under (a)(i) and (ii) of this subsection, respectively; and

(b) For such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(2) An action to recover the damages or equitable relief prescribed in subsection (1) of this section may be maintained against any employer in any court of competent jurisdiction by any one or more employees for and on behalf of:

(a) The employees; or

(b) The employees and other employees similarly situated.

(3) The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow reasonable attorneys' fees, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

NEW SECTION. **Sec. 98.** **REPEALERS.** The following acts or parts of acts are each repealed:

(1) RCW 49.78.010 (Legislative findings) and 2006 c 59 s 1 & 1989 1st ex.s. c 11 s 1;

(2) RCW 49.78.020 (Definitions) and 2009 c 521 s 135, 2006 c 59 s 2, 1996 c 178 s 14, & 1989 1st ex.s. c 11 s 2;

(3) RCW 49.78.090 (Administration) and 1989 1st ex.s. c 11 s 9;
(4) RCW 49.78.220 (Entitlement to leave) and 2006 c 59 s 3;
(5) RCW 49.78.230 (Leave taken intermittently or on reduced leave schedule) and 2006 c 59 s 4;
(6) RCW 49.78.240 (Unpaid leave permitted—Relationship to paid leave) and 2006 c 59 s 5;
(7) RCW 49.78.250 (Foreseeable leave) and 2006 c 59 s 6;
(8) RCW 49.78.260 (Spouses employed by same employer) and 2006 c 59 s 7;
(9) RCW 49.78.270 (Certification) and 2006 c 59 s 8;
(10) RCW 49.78.280 (Employment protection) and 2006 c 59 s 9;
(11) RCW 49.78.290 (Employment benefits) and 2006 c 59 s 10;
(12) RCW 49.78.300 (Prohibited acts) and 2006 c 59 s 11;
(13) RCW 49.78.310 (Complaint investigations by director) and 2006 c 59 s 12;
(14) RCW 49.78.320 (Civil penalty) and 2006 c 59 s 13;
(15) RCW 49.78.330 (Civil action by employees) and 2006 c 59 s 14;
(16) RCW 49.78.340 (Notice—Penalties) and 2006 c 59 s 15;
(17) RCW 49.78.350 (Family and medical leave enforcement account) and 2006 c 59 s 16;
(18) RCW 49.78.360 (Effect on other laws) and 2006 c 59 s 17;
(19) RCW 49.78.370 (Effect on existing employment benefits) and 2006 c 59 s 18;
(20) RCW 49.78.380 (Encouragement of more generous leave policies) and 2006 c 59 s 19;
(21) RCW 49.78.390 (Relationship to federal family and medical leave act) and 2006 c 59 s 20;
(22) RCW 49.78.400 (Rules) and 2006 c 59 s 21;
(23) RCW 49.78.410 (Construction) and 2006 c 59 s 22;
(24) RCW 49.78.901 (Effective date—1989 1st ex.s. c 11) and 1989 1st ex.s. c 11 s 27; and
(25) RCW 49.78.904 (Construction—Chapter applicable to state registered domestic partnerships—2009 c 521) and 2009 c 521 s 134.

Sec. 99. REPEALERS. The following acts or parts of acts are each repealed:

- (1) RCW 49.86.005 (Findings) and 2007 c 357 s 1;
- (2) RCW 49.86.010 (Definitions) and 2007 c 357 s 3;

1 (3) RCW 49.86.020 (Family leave insurance program) and 2007 c 357
2 s 4;
3 (4) RCW 49.86.030 (Eligibility for benefits) and 2013 2nd sp.s. c
4 26 s 1, 2011 1st sp.s. c 25 s 1, 2009 c 544 s 1, & 2007 c 357 s 5;
5 (5) RCW 49.86.040 (Disqualification from benefits) and 2007 c 357
6 s 6;
7 (6) RCW 49.86.050 (Duration of benefits—Payment of benefits) and
8 2007 c 357 s 7;
9 (7) RCW 49.86.060 (Amount of benefits) and 2007 c 357 s 8;
10 (8) RCW 49.86.070 (Federal income tax) and 2007 c 357 s 9;
11 (9) RCW 49.86.080 (Erroneous payments—Payments induced by willful
12 misrepresentation—Claim rejected after payments) and 2007 c 357 s 10;
13 (10) RCW 49.86.090 (Leave and employment protection) and 2007 c
14 357 s 11;
15 (11) RCW 49.86.100 (Employment by same employer) and 2007 c 357 s
16 12;
17 (12) RCW 49.86.110 (Elective coverage) and 2007 c 357 s 13;
18 (13) RCW 49.86.120 (Appeals) and 2007 c 357 s 14;
19 (14) RCW 49.86.130 (Prohibited acts—Discrimination—Enforcement)
20 and 2007 c 357 s 15;
21 (15) RCW 49.86.140 (Coordination of leave) and 2007 c 357 s 16;
22 (16) RCW 49.86.150 (Continuing entitlement or contractual rights—
23 Not created) and 2007 c 357 s 17;
24 (17) RCW 49.86.160 (Rules) and 2007 c 357 s 18;
25 (18) RCW 49.86.170 (Family leave insurance account) and 2009 c 4
26 s 905 & 2007 c 357 s 19;
27 (19) RCW 49.86.180 (Family leave insurance account funds—
28 Investment) and 2007 c 357 s 20;
29 (20) RCW 49.86.210 (Reports) and 2013 2nd sp.s. c 26 s 2, 2011
30 1st sp.s. c 25 s 2, 2009 c 544 s 2, & 2007 c 357 s 26;
31 (21) RCW 49.86.902 (Effective dates—2007 c 357) and 2007 c 357 s
32 30; and
33 (22) RCW 49.86.903 (Construction—Chapter applicable to state
34 registered domestic partnerships—2009 c 521) and 2009 c 521 s 136.

35 NEW SECTION. **Sec. 100.** CODIFICATION. Sections 1 through 82, 84
36 through 88, and 101 of this act constitute a new chapter in a new
37 title to be codified as Title 50A RCW.

1 NEW SECTION. **Sec. 101.** FEDERAL SEVERABILITY. If any part of
2 this act is found to be in conflict with federal requirements that
3 are a prescribed condition to the allocation of federal funds to the
4 state or the eligibility of employers in this state for federal
5 unemployment tax credits, the conflicting part of this act is
6 inoperative solely to the extent of the conflict, and the finding or
7 determination does not affect the operation of the remainder of this
8 act. Rules adopted under this act must meet federal requirements that
9 are a necessary condition to the receipt of federal funds by the
10 state or the granting of federal unemployment tax credits to
11 employers in this state.

12 NEW SECTION. **Sec. 102.** STATE SEVERABILITY. If any provision of
13 this act or its application to any person or circumstance is held
14 invalid, the remainder of the act or the application of the provision
15 to other persons or circumstances is not affected.

16 NEW SECTION. **Sec. 103.** EFFECTIVE DATE. Sections 90 through 98
17 of this act take effect December 31, 2019.

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