
The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Thomas L. Tyler.

DIGEST

SB 186 Original

2019 Regular Session

Morrell

Proposed law creates the Louisiana Family and Medical Leave Benefits Act, implemented through the Louisiana Workforce Commission (Commission), to protect employees who need to take leave from their job due to certain family or medical circumstances.

Proposed law defines "covered individual" as any individual who performs services for compensation or under any written or oral contract for hire, whether the contract is express or implied, and who satisfies all of the following criteria:

- (1) The individual's compensation is subject to withholding payroll taxes for unemployment compensation benefits and the individual has worked the length of time necessary to be entitled to receive unemployment compensation benefits.
- (2) The individual has been employed on a part-time basis and has been employed and received compensation for a minimum of 820 hours in the last five calendar quarters.
- (3) The individual has been employed and for whom monies have been paid into the Louisiana Family and Medical Leave Account Fund.
- (4) The individual satisfies the eligibility requirements for benefits as in proposed law.

Provides that the term "covered individual" shall not include an individual who has been and will continue to be free from any control or direction over the performance of his or her services, whose service rendered is outside the usual course of the business for which service is performed or is performed outside all the places of business of the enterprise for which the service is performed, and the individual is customarily engaged in an independently established trade, occupation, profession, or business.

Proposed law defines "employer" as defined in the Louisiana Employment Security Law for unemployment compensation except the term "employer" does not include for any of the following:

- (1) A self-employed individual who does not elect coverage under proposed law.
- (2) Any agency, board, committee, department, division, commission, office, or other organizational unit of the state.
- (3) Any local governmental unit or political subdivision of the state.
- (4) Any individual, company, or other entity that employs nineteen or less employees unless the

employees agree to pay their portion of the premium for benefits..

Defines "family member" as any of the following individuals:

- (1) The biological, adopted, or foster child, step-child, legal ward, or a child to whom a covered individual stands *in loco parentis*.
- (2) The biological, foster, step-parent, or adoptive parent, or legal guardian of a covered individual or his or her spouse or a person who stood *in loco parentis* when the covered individual or his or her spouse was a minor child.
- (3) The person to whom a covered individual is legally married under the laws of this state.
- (4) The grandparent or step-grandparent of a covered individual or his or her spouse.
- (5) The grandchild or step-grandchild of a covered individual or his or her spouse.
- (6) The biological, foster, or adopted sibling, or the spouse of the sibling of a covered individual.

Proposed law defines "qualifying military exigency leave" as leave for the family member of a military service member for any of the following reasons:

- (1) Leave needed because of a notice of seven days or less before deployment of the service member.
- (2) Leave to attend military events and related activities of the service member.
- (3) Leave to attend child care and school activities if the leave is required due, indirectly or directly, to the active duty call or active duty status of a family member.
- (4) Leave to make financial and legal arrangements due to the service member's absence.
- (5) Leave to attend counseling provided by someone other than a healthcare provider, if the need for counseling arises from the active duty or a call to active duty status of a military service member.
- (6) Leave to spend time with a service member who is on short-term, temporary rest and recuperation leave during the period of deployment. The eligible employee may take up to five days of leave for each instance of rest and recuperation.
- (7) Leave to attend post deployment activities of the service member.
- (8) Any leave related to issues that arise out of active duty or a call to active duty that the employer and covered individual agree will be covered.

Defines "serious health condition" as an illness, injury, impairment, pregnancy, recuperation from childbirth, including any impairment or injury related to or resulting from domestic abuse, sexual abuse, stalking, or any physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a healthcare provider, and which injury is not eligible for workers' compensation benefits.

Proposed law provides that a covered individual is eligible to receive family and medical leave benefits under any one of the following circumstances:

- (1) Because of the birth, adoption, or placement through foster care, the individual is caring for a new child during the first year after the birth, adoption, or placement.
- (2) The individual is caring for a family member with a serious health condition.
- (3) The individual has a serious health condition that makes him or her unable to perform the functions of his or her position of employment.
- (4) The individual is caring for a military service member who is the covered individual's family member.
- (5) The leave for the individual is "qualifying military exigency leave".

Provides that benefits are only payable to a covered individual who has been employed and for whom monies have been paid into the Louisiana Family and Medical Leave Account Fund for no less than a base period of not less than four quarters unless the individual has been employed on a part-time basis and been employed and received compensation for a minimum of 820 hours in the last five calendar quarters. Requires that calculation of the base period and the calculation of quarters be the same method used in computing unemployment compensation benefits provided in Chapter 11 of this Title.

Proposed law, relative to the duration of benefits, provides for a twelve-week maximum in an application year. Provides that benefits are not payable for the first five consecutive calendar days in an application year. Provides that if the individual uses 10 or more days of paid leave in an application year, then he or she shall be paid for the five-day waiting period. Prohibits employers from forcing a covered individual to use accrued vacation or sick leave during the five-day waiting period. Requires that first payment of benefits be made within two weeks after a claim for benefits is filed and that subsequent payments be made twice a month.

Proposed law provides that leave benefits be determined by rules and regulations adopted by the commission and that benefits not be paid for less than one day or eight consecutive hours in any one work week. Provides that rules and regulations include the following items or parameters:

- (a) Benefits be based on the individual's wage in relation to the average weekly wage established for workers' compensation claims.

- (b) Requires that the individual receive 90% of his average weekly wage that is less than 50% of the average weekly wage and that 50% of wages that equal or exceed 50% of the average weekly wage up to a maximum weekly benefit of the average weekly wage as calculated by the secretary.

Proposed law provides that a covered individual, upon completion of benefits, is entitled to be restored to an equivalent position of employment in the same manner as an employee entitled to leave under the federal Family and Medical Leave Act.

Proposed law prohibits discrimination against an employee who files or receives family or medical leave benefits.

Provides that any covered individual who is denied benefits, job restoration, or discriminated against in violation of proposed law is entitled to recover a civil penalty payable from the employer of not more than \$200 per violation as provided in rules promulgated by the commission. Each day a violation continues shall constitute a separate offense. Proposed law does not create or be construed to create a new private right of action that is not otherwise available to a covered individual. Provides that this penalty not exceed the total compensation the covered individual would have received had he or she not been on family or medical leave.

Provides for coordination of benefits and that compensation received pursuant to proposed law run concurrently with that taken under the federal Family Medical Leave Act. Provides that the employer may require that state family and medical leave payments be made concurrently or otherwise coordinated with payments made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy.

Provides that proposed law not be construed to diminish an employer's obligation to comply with a collective bargaining agreement or employer policy, as applicable, that provides greater leave for any of the items eligible for benefits.

Provides that any agreement involving a covered individual in which he or she waives his or her rights under proposed law is null and void and against public policy.

Provides for disqualification from benefits if the covered individual willfully makes a false statement or misrepresentation regarding a material fact, or willfully fails to report a material fact, in order to receive benefits under proposed law. Authorizes the commission to seek repayment of benefits paid erroneously or as a result of willful misrepresentation, or if a claim for leave benefits is rejected after benefits are paid and authorizes the secretary to waive, in whole or in part, the amount of any payment to be made if the recovery would be contrary to equity and good conscience.

Proposed law authorizes a self-employed person to elect coverage under proposed law for an initial period of not less than three years or a subsequent period of not less than one year immediately following another period of coverage. Authorizes the self-employed person who has elected coverage to withdraw from coverage within 30 days after the end of the three-year period of coverage, or at other times as the commission may prescribe by rule.

Proposed law authorizes a covered individual to take family and medical leave provided in proposed law on an intermittent leave schedule not exceeding 24 consecutive weeks unless it is determined to be medically necessary. Requires that a covered individual make reasonable efforts to schedule intermittent leave so as not to unduly disrupt the operations of the employer. Requires that the covered individual provide the employer with prior written notice of the care, medical treatment, or continuing supervision by a healthcare provider necessary due to a serious health condition of a family member. Provides that leave on an intermittent leave schedule not result in a reduction of the total amount of leave to which a covered individual is entitled.

Proposed law requires that the commission conduct a public education campaign to inform workers and employers regarding the availability of paid family and medical leave benefits and requires that outreach information be available in English and other languages spoken by more than five percent of the state's population as that group's primary language.

Proposed law encourages the commission to use state data collection and technology to the extent possible in order to keep the cost of the program down and to integrate the program with existing state policies.

Provides for quarterly reports to the Senate Committee on Labor and Industrial Relations and the House of Representatives Committee on Labor and Industrial Relations that advise the legislature of projected and actual program participation, funding, fund balances, and outreach efforts by the commission.

Proposed law creates the "Louisiana Family and Medical Leave Account Fund" (Fund) as a special fund in the state treasury and provides for deposit of monies into the Fund and provides for the investment and administration of monies in the Fund by the state treasurer.

Proposed law provides for confidentiality of records and information as to the administration of the program by the commission and that they are exempt from the Public Records Law. Provides for exceptions for certain public employees in performance of their official duties, the covered individual, and his or her authorized representative.

Proposed law is not effective until a bill which originates in the House of Representatives is enacted and becomes effective and which provides that monies from family and medical leave premium payments be deposited into the Louisiana Family and Medical Leave Account Fund and provides for premium payment by employers and employees equal to .064% of the maximum amount of wages subject to the federal Social Security Old-Age, Survivors, and Disability Insurance Tax and that premiums be split between the employer (45%) and employee (55%), or for premium payments and a premium distribution that is substantially similar.

Effective August 1, 2019.

(Amends R.S. 44:4.1(B)(12); adds R.S. 23:671-688)