

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 311

Introduced by Crawford, 45; Blood, 3; Cavanaugh, 6; Hansen, M., 26;
Hilkemann, 4; Howard, 9; Hunt, 8; Lathrop, 12; McDonnell,
5; Morfeld, 46; Pansing Brooks, 28; Quick, 35; Walz, 15;
Wishart, 27.

Read first time January 15, 2019

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to employment; to amend section 48-652,
- 2 Revised Statutes Cumulative Supplement, 2018; to adopt the Paid
- 3 Family and Medical Leave Insurance Act; to change provisions
- 4 relating to experience accounts under the Employment Security Law;
- 5 to provide severability; and to repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 19 of this act shall be known and may be
2 cited as the Paid Family and Medical Leave Insurance Act.

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

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

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

18 (3) Commissioner means the Commissioner of Labor;

19 (4) Covered active duty or call to covered active duty status has
20 the same meaning as in 29 C.F.R. 825.126(a)(1) and (2), as such
21 regulation existed on January 1, 2019;

22 (5) Covered employer means an employer that is subject to the
23 Employment Security Law;

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

26 (7) Covered servicemember has the same meaning as in 29 U.S.C. 2611
27 and the regulations issued thereunder, as such section and regulations
28 existed on January 1, 2019;

29 (8) Domestic partner means an individual who (a) shares common
30 living quarters with another person, (b) lives in a committed, intimate
31 relationship with that other person, and (c) is not married to that other

1 person;

2 (9) Family and medical leave benefits means the benefits provided
3 under section 4 of this act for periods of paid family and medical leave;

4 (10) Family member means:

5 (a) A biological, adopted, or foster child, a stepchild, or a legal
6 ward of a covered individual or the covered individual's spouse or
7 domestic partner or a person to whom the covered individual or the
8 covered individual's spouse or domestic partner stood in loco parentis
9 when such person was a minor child, regardless of the age or dependency
10 status of such child, stepchild, legal ward, or person;

11 (b) A biological, adoptive, or foster parent, a stepparent, or a
12 legal guardian of a covered individual or the covered individual's spouse
13 or a person who stood in loco parentis to the covered individual or the
14 covered individual's spouse when the covered individual or the covered
15 individual's spouse was a minor child;

16 (c) A covered individual's spouse or domestic partner; or

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

20 (11) Health care provider means any person licensed under federal or
21 state law to provide medical or emergency services, including, but not
22 limited to, doctors, nurses, emergency room personnel, and certified
23 nurse midwives;

24 (12) Individual average weekly wage means:

25 (a) For a covered individual who has earned wages during each
26 calendar quarter of the base period, the amount of wages paid to the
27 covered individual in the highest calendar quarter of the base period
28 divided by thirteen; or

29 (b) For a covered individual who has not earned wages during each
30 calendar quarter of the base period, the covered individual's average
31 weekly wage during the most recent calendar quarter;

1 (13) Military member means a covered individual's family member who
2 is in the armed forces of the United States;

3 (14) Next of kin has the same meaning as in 29 U.S.C. 2611 and the
4 regulations issued thereunder, as such section and regulations existed on
5 January 1, 2019;

6 (15) Paid family and medical leave means leave taken by a covered
7 individual for a qualifying reason described in section 3 of this act for
8 which the covered individual is eligible for family and medical leave
9 benefits;

10 (16) Qualifying exigency leave means leave taken by a covered
11 individual for the following purposes if the covered individual's family
12 member is on covered active duty or call to covered active duty status:

13 (a) Any of the purposes specified in 29 C.F.R. 825.126(b)(3)(i)
14 through (iv), as such regulation existed on January 1, 2019;

15 (b) Any of the purposes specified in 29 C.F.R. 825.126(b)(8)(i)
16 through (iv), as such regulation existed on January 1, 2019;

17 (c) To address any issue that arises from the fact that the military
18 member is notified of an impending call or order to covered active duty
19 seven or fewer calendar days prior to the date of deployment. Leave taken
20 for this purpose can be used for a period of seven calendar days
21 beginning on the date the military member is notified of an impending
22 call or order to covered active duty;

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

26 (e) To attend family support or assistance programs and
27 informational briefings sponsored or promoted by the military, military
28 service organizations, or the American Red Cross that are related to the
29 covered active duty or call to covered active duty status of the military
30 member;

31 (f) To make or update financial or legal arrangements to address the

1 military member's absence while on covered active duty or call to covered
2 active duty status, such as preparing and executing financial and health
3 care powers of attorney, transferring bank account signature authority,
4 obtaining military identification cards, or preparing or updating a will
5 or living trust;

6 (g) To act as the military member's representative before a federal,
7 state, or local agency for the purposes of obtaining, arranging, or
8 appealing military service benefits while the military member is on
9 covered active duty or call to covered active duty status, and for a
10 period of ninety days following the termination of the military member's
11 covered active duty status;

12 (h) To attend counseling provided by someone other than a health
13 care provider for the covered individual, for the military member, for
14 the biological, adopted, or foster child, the stepchild, or the legal
15 ward of the military member, for a child of the military member's spouse,
16 or for a child to whom the military member stands in loco parentis, if
17 the need for counseling arises from the covered active duty or call to
18 covered active duty status of the military member;

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

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

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

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

5 (17) Retaliatory personnel action means denial of any right
6 guaranteed under the Paid Family and Medical Leave Insurance Act,
7 including, but not limited to:

8 (a) Any threat, discharge, suspension, demotion, or reduction of
9 hours of a covered individual or any other adverse action against a
10 covered individual for the exercise of any right guaranteed in the act;
11 and

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

14 (18) Serious health condition has the same meaning as in 29 U.S.C.
15 2611 and the regulations issued thereunder, as such section and
16 regulations existed on January 1, 2019;

17 (19) State average weekly wage means the state average weekly wage
18 as annually determined under section 48-121.02; and

19 (20) Week means a period of seven consecutive days ending Saturday
20 at midnight.

21 Sec. 3. (1) Beginning July 1, 2021, a covered individual may take
22 paid family and medical leave for the following qualifying reasons:

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

26 (b) To care for a family member of the covered individual who has a
27 serious health condition;

28 (c) To care for a covered servicemember if the covered individual is
29 a family member or the next of kin of the covered servicemember;

30 (d) For qualifying exigency leave; or

31 (e) Because the covered individual has a serious health condition,

1 including pregnancy, that makes the covered individual unable to perform
2 the functions of the position held by such covered individual;

3 (2) A covered individual shall be eligible to take paid family and
4 medical leave for a qualifying reason described in subsection (1) of this
5 section once he or she has been employed by a covered employer for
6 twenty-six or more consecutive weeks.

7 (3) The maximum amount of paid family and medical leave that a
8 covered individual may take shall be:

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

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

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

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

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

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

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

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

8 (3) Family and medical leave benefits are not payable for the first
9 week in any benefit year that a covered individual takes paid family and
10 medical leave. Such week shall be known as the waiting period. If the
11 covered individual takes ten or more days of paid family and medical
12 leave in such benefit year, the covered individual shall be paid for the
13 waiting period. The waiting period shall occur only once in any benefit
14 year. This subsection shall not apply to paid family and medical leave
15 taken for the reasons stated in subdivisions (16)(c) and (16)(i) of
16 section 2 of this act or for the reason stated in subdivision (1)(a) of
17 section 3 of this act.

18 (4) Family and medical leave benefits are not payable for less than
19 one workday of paid family and medical leave taken in any one workweek.

20 (5) The first payment of family and medical leave benefits must be
21 made to the covered individual within three weeks after the initial claim
22 is filed under section 5 of this act, and subsequent payments of such
23 benefits must be made every week thereafter for as long as the covered
24 individual is eligible. Family and medical leave benefits shall be paid
25 in the manner prescribed by the commissioner, which may include
26 electronic payments.

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

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

1 compensation benefits for total disability or benefits under the
2 Employment Security Law.

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

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

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

10 (c) A schedule showing the dates during which the covered individual
11 intends to take paid family and medical leave, to the extent such dates
12 are known;

13 (d) Such wage information as the commissioner may require to
14 determine the amount of family and medical leave benefits;

15 (e) Such documentation as the commissioner may require from a health
16 care provider for proof of a serious health condition;

17 (f) The name and address of each covered employer that employs the
18 covered individual; and

19 (g) Such other information as required by the commissioner to
20 calculate and determine eligibility for family and medical leave
21 benefits.

22 (2) After an initial claim is filed, the commissioner shall send
23 notice of the filing of such claim to each covered employer that employs
24 the covered individual and shall include with such notice the schedule of
25 leave submitted under subdivision (1)(c) of this section. The
26 commissioner shall then determine the covered individual's eligibility
27 for family and medical leave benefits. If the commissioner determines
28 that the covered individual is eligible, the commissioner shall begin to
29 pay family and medical leave benefits to the covered individual pursuant
30 to section 4 of this act. If the commissioner determines that the covered
31 individual is ineligible, the commissioner shall notify the covered

1 individual of the commissioner's determination. Such determination of
2 ineligibility may be appealed, and the appeal shall be in accordance with
3 the Administrative Procedure Act.

4 (3) A covered individual whose initial claim is approved under
5 subsection (2) of this section shall be eligible to receive family and
6 medical leave benefits with respect to any week after the first week of
7 eligibility only if the covered individual makes a weekly claim for
8 family and medical leave benefits in accordance with such rules and
9 regulations as the commissioner may adopt and promulgate. The
10 commissioner shall make available to each covered individual, at the time
11 he or she is approved for family and medical leave benefits, a printed or
12 electronic statement of such rules and regulations. Such weekly claims
13 shall calculate the amount of paid family and medical leave that has been
14 utilized by such covered individual in the previous week and in total.
15 The information relating to the covered individual's use of paid family
16 and medical leave may be shared with any covered employer that employs
17 the covered individual upon the covered employer's request in a manner
18 prescribed by the commissioner. Such weekly claims shall not require
19 covered individuals to recertify the reason for taking the paid family
20 and medical leave.

21 (4) The commissioner shall notify a covered individual when such
22 covered individual's paid family and medical leave is set to terminate.
23 Such notification shall be sent in a manner prescribed by the
24 commissioner. The notification must be received by the covered individual
25 one week in advance of the day when such paid family and medical leave is
26 set to expire. If the covered individual does not return to work after
27 the expiration of the paid family and medical leave and receipt of
28 notification under this subsection, the employee protections provided in
29 section 8 of this act shall no longer apply.

30 Sec. 6. (1) The Paid Family and Medical Leave Insurance Fund is
31 created. The fund shall be administered by the commissioner and shall

1 consist of private donations, money transferred to the fund by the
2 Legislature, and contributions from covered employers. Any money in the
3 fund available for investment shall be invested by the state investment
4 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
5 State Funds Investment Act.

6 (2) Beginning January 1, 2021, covered employers shall be required
7 to remit contributions as provided in this section. The contributions
8 shall become due and be paid by each covered employer to the commissioner
9 in such manner and at such times as the commissioner shall, by rule and
10 regulation, prescribe. The commissioner may require any covered employer
11 that had an annual payroll of one hundred thousand dollars or more in
12 either of the two preceding calendar years to pay the contributions by an
13 electronic method approved by the commissioner, except when the covered
14 employer establishes to the satisfaction of the commissioner that payment
15 of the contributions by an electronic method would work a hardship on the
16 covered employer. The commissioner shall remit the contributions to the
17 State Treasurer for credit to the Paid Family and Medical Leave Insurance
18 Fund. Such contributions shall be used to pay family and medical leave
19 benefits payable under the Paid Family and Medical Leave Insurance Act
20 and the administrative costs incurred in administering the act. The
21 commissioner shall be responsible for evaluating and determining on an
22 annual basis the contribution amounts necessary to finance the total
23 amount of family and medical leave benefits payable under the act. If at
24 any time during the year the commissioner determines that the
25 contribution amounts are not sufficient to pay the family and medical
26 leave benefits payable under the act, the commissioner shall increase the
27 contribution amounts by the lowest amount necessary to pay all such
28 benefits. In no case shall the contributions required from a covered
29 employer under this section exceed one percent of the gross wages paid to
30 covered individuals by such covered employer.

31 (3) Beginning on the effective date of this act and continuing until

1 September 30, 2019, the commissioner shall accept donations from any
2 private individual or entity and shall remit all donations received to
3 the State Treasurer for credit to the Paid Family and Medical Leave
4 Insurance Fund. Such private donations shall be used to pay the upfront
5 administrative costs related to the Paid Family and Medical Leave
6 Insurance Act. On October 1, 2019, the State Treasurer shall transfer XX
7 dollars from the Nebraska Health Care Cash Fund to the Paid Family and
8 Medical Leave Insurance Fund. Such transferred amount shall also be used
9 to pay the upfront administrative costs related to the act. The
10 transferred amount shall be repaid to the Nebraska Health Care Cash Fund
11 when the commissioner determines that the Paid Family and Medical Leave
12 Insurance Fund will have sufficient funds to pay all required family and
13 medical leave benefits after such repayment is made, but in no case shall
14 such repayment be made later than October 1, 2021. The commissioner shall
15 notify the State Treasurer when to make such repayment, and the State
16 Treasurer shall then transfer XX dollars from the Paid Family and Medical
17 Leave Insurance Fund to the Nebraska Health Care Cash Fund.

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

20 (a) The intermittent leave is to care for a family member with a
21 serious health condition; or

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

26 (2) A covered individual in need of intermittent leave to care for a
27 family member with a foreseeable serious health condition shall work with
28 his or her covered employer to schedule the leave so as not to unduly
29 disrupt the operations of the covered employer. In such cases, the
30 covered employer may transfer the covered individual temporarily to an
31 alternative job with equivalent pay and benefits that accommodates

1 recurring periods of leave better than the covered individual's regular
2 job. When the need for intermittent leave is unforeseeable, the covered
3 individual shall provide notice as soon as possible and practicable under
4 the circumstances.

5 (3) The minimum amount of intermittent leave that may be taken at
6 any one time is one workday.

7 (4) Family and medical leave benefits for intermittent leave shall
8 be prorated.

9 (5) The periods of intermittent leave shall not be separated by more
10 than four months.

11 (6) Taking intermittent leave under this section shall not result in
12 a reduction of the total amount of leave to which a covered individual is
13 entitled beyond the amount of leave actually taken.

14 (7) Nothing in this section shall be construed to entitle a covered
15 individual to more paid family and medical leave than he or she is
16 otherwise entitled to under the Paid Family and Medical Leave Insurance
17 Act.

18 Sec. 8. (1) Any covered individual who takes paid family and
19 medical leave under the Paid Family and Medical Leave Insurance Act is
20 entitled, on return from the leave:

21 (a) To be restored by the covered employer to the position of
22 employment held by the covered individual when the leave commenced; or

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

26 (2) During any paid family and medical leave taken, the covered
27 employer shall maintain any health benefits the covered individual had
28 prior to taking such leave for the duration of the leave as if the
29 covered individual had continued in employment continuously from the date
30 he or she commenced the leave until the date the family and medical leave
31 benefits terminate if the covered individual continues to pay the covered

1 individual's share of the cost of such health benefits as required prior
2 to the commencement of the leave.

3 (3) The taking of paid family and medical leave under the act may
4 not result in the loss of any employment benefits accrued before the date
5 on which the leave commenced.

6 (4) A covered employer shall not require a covered individual to
7 exhaust his or her accrued vacation or sick time prior to taking paid
8 family and medical leave.

9 (5) Nothing in this section shall be construed to entitle any
10 covered individual to:

11 (a) The accrual of any seniority or employment benefits during any
12 period of paid family and medical leave; or

13 (b) Any right, benefit, or position of employment other than any
14 right, benefit, or position to which the covered individual would have
15 been entitled had he or she not taken the paid family and medical leave.

16 (6) Nothing in this section shall be construed to prohibit a covered
17 employer from requiring a covered individual on paid family and medical
18 leave to report periodically to the covered employer on the status of the
19 covered individual and his or her intention to return to work.

20 (7) A covered individual who fraudulently obtains family and medical
21 leave benefits shall not be entitled to any of the protections provided
22 in this section.

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

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

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

1 (c) The right to appeal eligibility determinations;

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

4 (e) The right to inform the commissioner of any alleged violation of
5 the act.

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

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

15 (2) A covered individual who is entitled to any kind of disability
16 or family care leave under a collective-bargaining agreement or employer
17 policy shall take any paid family and medical leave allowed under the
18 Paid Family and Medical Leave Insurance Act concurrently with such
19 disability or family care leave if the different types of leave are being
20 granted for the same reason.

21 (3) Nothing in the Paid Family and Medical Leave Insurance Act shall
22 prohibit covered employers from providing leave benefits that are in
23 addition to the family and medical leave benefits required under the act.
24 Such additional leave benefits shall not be considered when calculating
25 family and medical leave benefits under section 4 of this act.

26 (4) The Paid Family and Medical Leave Insurance Act does not
27 diminish a covered employer's obligation to comply with any of the
28 following that provide more generous leave:

29 (a) A collective-bargaining agreement;

30 (b) An employer policy; or

31 (c) Any state or federal law.

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

6 Sec. 11. (1) Each covered employer shall provide written notice
7 regarding the Paid Family and Medical Leave Insurance Act to each covered
8 individual upon hiring and annually thereafter. A covered employer shall
9 also provide written notice to a covered individual when he or she
10 requests paid family and medical leave under the act or when the covered
11 employer acquires knowledge that a covered individual's leave may qualify
12 for family and medical leave benefits. Such notice shall include:

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

15 (b) The amount of family and medical leave benefits;

16 (c) The procedure for filing a claim for family and medical leave
17 benefits;

18 (d) An explanation of the employee protections provided under
19 section 8 of this act;

20 (e) A statement explaining that retaliatory personnel actions
21 against a covered individual for requesting or using paid family and
22 medical leave are prohibited; and

23 (f) A statement explaining that the covered individual has a right
24 to file a complaint for violations of the Paid Family and Medical Leave
25 Insurance Act.

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

30 Sec. 12. (1) Claims filed and appeals taken pursuant to the Paid
31 Family and Medical Leave Insurance Act and all related information shall

1 be confidential and shall not be a public record, except that:

2 (a) Information may be disclosed to a public official for use in the
3 performance of his or her official duties. For purposes of this
4 subdivision, performance of official duties means the administration or
5 enforcement of law or the execution of the official responsibilities of a
6 federal, state, or local elected official. Administration of law includes
7 research related to the law administered by the public official.
8 Execution of official responsibilities does not include solicitation of
9 contributions or expenditures to or on behalf of a candidate for public
10 office or to a political party;

11 (b) Information may be disclosed in response to a court order or
12 subpoena; and

13 (c) Information about a particular covered individual or covered
14 employer may be disclosed to:

15 (i) Such covered individual or covered employer upon the
16 individual's or employer's written request;

17 (ii) One who acts as an agent for the covered individual or covered
18 employer if the agent presents a written release from the covered
19 individual or covered employer, where practicable, or other evidence of
20 authority to act on behalf of the covered individual or covered employer;

21 (iii) An elected official who is performing constituent services if
22 the official presents reasonable evidence that the covered individual or
23 covered employer has authorized such disclosure; or

24 (iv) An attorney who presents written evidence that he or she is
25 representing the covered individual or covered employer in a matter
26 arising under the Paid Family and Medical Leave Insurance Act.

27 (2) Any person who receives information under this section and
28 rediscloses such information for any purpose other than the purpose for
29 which it was originally obtained shall be guilty of a Class III
30 misdemeanor.

31 Sec. 13. (1) A covered individual is disqualified from receiving

1 family and medical leave benefits for one year if he or she is determined
2 by the commissioner to have willfully made a false statement or
3 misrepresentation regarding a material fact, or willfully failed to
4 report a material fact, to obtain family and medical leave benefits.

5 (2) If family and medical leave benefits are paid erroneously or as
6 a result of willful misrepresentation, or if a claim for family and
7 medical leave benefits is rejected after benefits are paid, the
8 commissioner may seek repayment of such benefits from the recipient (a)
9 by civil action in the name of the commissioner, (b) by offset against
10 any future family and medical leave benefits payable to the covered
11 individual with respect to the benefit year current at the time of such
12 receipt or any benefit year which may commence within three years after
13 the end of such current benefit year, or (c) by issuing a levy on salary,
14 wages, or other regular payments due to or received by the covered
15 individual and such levy shall be continuous from the date the levy is
16 served until the amount of the levy is satisfied. Notice of the levy
17 shall be mailed to the covered individual whose salary, wages, or other
18 regular payment is levied upon at his or her last-known address not later
19 than the date that the levy is served. Exemptions or limitations on the
20 amount of salary, wages, or other regular payment that can be garnished
21 or levied upon by a judgment creditor shall apply to levies made pursuant
22 to this section. Any person upon whom a levy is served who fails or
23 refuses to honor the levy without cause may be held liable for the amount
24 of the levy up to the value of the assets of the covered individual
25 liable to repay the overpayment that are under the control of the person
26 upon whom the levy is served at the time of service and thereafter.

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

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

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

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

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

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

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

20 Sec. 16. (1) The commissioner may conduct investigations in order
21 to determine whether there has been compliance with the Paid Family and
22 Medical Leave Insurance Act. Investigations shall take place at such
23 times and places as the commissioner directs. Investigations shall be
24 conducted so as not to unduly disrupt the operations of covered
25 employers.

26 (2) For purposes of any investigation under this section, the
27 commissioner may administer oaths and affirmations, subpoena witnesses,
28 compel their attendance, take evidence, and require the production of any
29 books, papers, correspondence, memoranda, agreements, or other documents
30 or records which the commissioner deems relevant or material to the
31 inquiry.

1 (3) In case of contumacy by or refusal to obey a subpoena issued to
2 any person, any court of competent jurisdiction, upon application by the
3 commissioner, may issue to such person an order requiring him or her to
4 appear before the commissioner and produce documentary evidence if so
5 ordered or give evidence touching the matter under investigation or in
6 question. Any failure to obey the order of the court may be punished by
7 the court as a contempt.

8 (4) The commissioner shall issue a citation to a covered employer
9 when an investigation reveals that the covered employer has violated the
10 act. When a citation is issued, the commissioner shall notify the covered
11 employer of the proposed administrative penalty, if any, by certified
12 mail or any other manner of delivery by which the United States Postal
13 Service can verify delivery. The administrative penalty shall be not more
14 than five hundred dollars in the case of a first violation and not more
15 than five thousand dollars in the case of a second or subsequent
16 violation. The covered employer shall have fifteen working days from the
17 date of the citation to contest it. Notice of contest shall be sent to
18 the commissioner who shall provide a hearing pursuant to the
19 Administrative Procedure Act.

20 Sec. 17. On or before December 31, 2021, and on or before December
21 31 of each year thereafter, the commissioner shall electronically submit
22 a report to the Legislature. The report shall include:

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

26 (2) The percentage of family and medical leave benefits paid to each
27 gender for each type of paid family and medical leave described in
28 subsection (1) of section 3 of this act;

29 (3) The amount of contributions remitted by covered employers
30 pursuant to section 6 of this act;

31 (4) The median payment level for family and medical leave benefits;

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

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

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

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

10 Sec. 18. (1) A covered employer that voluntarily provides its
11 covered employees with a form of paid leave that is at least as generous
12 as the paid family and medical leave provided under the Paid Family and
13 Medical Leave Insurance Act may apply to the commissioner for an
14 exemption from the requirement to remit contributions under section 6 of
15 this act. If the commissioner determines that the covered employer is
16 providing a form of paid leave that is at least as generous as paid
17 family and medical leave, he or she shall grant the exemption to such
18 covered employer.

19 (2) A covered employer that is granted an exemption under subsection
20 (1) of this section shall reapply for the exemption on an annual basis
21 thereafter at such times and in such manner as the commissioner shall, by
22 rule and regulation, prescribe.

23 (3) A covered employer that is granted an exemption under subsection
24 (1) of this section shall:

25 (a) Be subject to the same requirements and prohibitions as are
26 provided under sections 8 and 9 of this act, except that such
27 requirements and prohibitions shall relate to the paid leave voluntarily
28 provided by such covered employer;

29 (b) Provide notice to covered individuals and display a poster as
30 required under section 11 of this act, except that such notice and poster
31 shall relate to the paid leave voluntarily provided by such covered

1 employer; and

2 (c) Be subject to investigations and citations under section 16 of
3 this act, except that such investigations and citations shall relate to
4 the paid leave voluntarily provided by such covered employer.

5 Sec. 19. The commissioner shall adopt and promulgate rules and
6 regulations as necessary to carry out the Paid Family and Medical Leave
7 Insurance Act.

8 Sec. 20. Section 48-652, Revised Statutes Cumulative Supplement,
9 2018, is amended to read:

10 48-652 (1)(a) A separate experience account shall be established for
11 each employer who is liable for payment of combined tax. Whenever and
12 wherever in the Employment Security Law the terms reserve account or
13 experience account are used, unless the context clearly indicates
14 otherwise, such terms shall be deemed interchangeable and synonymous and
15 reference to either of such accounts shall refer to and also include the
16 other.

17 (b) A separate reimbursement account shall be established for each
18 employer who is liable for payments in lieu of contributions. All
19 benefits paid with respect to service in employment for such employer
20 shall be charged to his or her reimbursement account, and such employer
21 shall be billed for and shall be liable for the payment of the amount
22 charged when billed by the commissioner. Payments in lieu of
23 contributions received by the commissioner on behalf of each such
24 employer shall be credited to such employer's reimbursement account, and
25 two or more employers who are liable for payments in lieu of
26 contributions may jointly apply to the commissioner for establishment of
27 a group account for the purpose of sharing the cost of benefits paid that
28 are attributable to service in the employ of such employers. The
29 commissioner shall adopt and promulgate such rules and regulations as he
30 or she deems necessary with respect to applications for establishment,
31 maintenance, and termination of group accounts authorized by this

1 subdivision.

2 (2) All contributions paid by an employer shall be credited to the
3 experience account of such employer. State unemployment insurance tax
4 payments shall not be credited to the experience account of each
5 employer. Partial payments of combined tax shall be credited so that at
6 least eighty percent of the combined tax payment excluding interest and
7 penalty is credited first to contributions due. Contributions with
8 respect to prior years which are received on or before January 31 of any
9 year shall be considered as having been paid at the beginning of the
10 calendar year. All voluntary contributions which are received on or
11 before January 10 of any year shall be considered as having been paid at
12 the beginning of the calendar year.

13 (3)(a) Each experience account shall be charged only for benefits
14 based upon wages paid by such employer. No benefits shall be charged to
15 the experience account of any employer if:

16 (i) Such benefits were paid on the basis of a period of employment
17 from which the claimant (A) left work voluntarily without good cause, (B)
18 left work voluntarily due to a nonwork-connected illness or injury, (C)
19 left work voluntarily with good cause to escape abuse as defined in
20 section 42-903 between household members as provided in subdivision (1)
21 of section 48-628.13, (D) left work from which he or she was discharged
22 for misconduct connected with his or her work, (E) left work voluntarily
23 and is entitled to unemployment benefits without disqualification in
24 accordance with subdivision (3) or (5) of section 48-628.13, or (F) was
25 involuntarily separated from employment and such benefits were paid
26 pursuant to section 48-628.17; and

27 (ii) The employer has filed timely notice of the facts on which such
28 exemption is claimed in accordance with rules and regulations adopted and
29 promulgated by the commissioner.

30 (b) No benefits shall be charged to the experience account of any
31 employer if such benefits were paid during a week when the individual was

1 participating in training approved under section 236(a)(1) of the federal
2 Trade Act of 1974, 19 U.S.C. 2296(a)(1).

3 (c) No benefits shall be charged to the experience account of any
4 employer if such benefits were paid to an individual who:

5 (i) Worked for an employer for twenty weeks or less to temporarily
6 replace a permanent employee receiving family and medical leave benefits
7 under the Paid Family and Medical Leave Insurance Act and who was laid
8 off due to the return of such permanent employee;

9 (ii) Was discharged due to his or her failure to return to work
10 after the expiration of paid family and medical leave taken pursuant to
11 the Paid Family and Medical Leave Insurance Act; or

12 (iii) Left work voluntarily while on paid family and medical leave
13 taken pursuant to the Paid Family and Medical Leave Insurance Act.

14 (d) (e) Each reimbursement account shall be charged only for
15 benefits paid that were based upon wages paid by such employer in the
16 base period that were wages for insured work solely by reason of section
17 48-627.01.

18 (e)(i) (d)(i) Benefits paid to an eligible individual shall be
19 charged against the account of his or her most recent employers within
20 his or her base period against whose accounts the maximum charges
21 hereunder have not previously been made in the inverse chronological
22 order in which the employment of such individual occurred. The maximum
23 amount so charged against the account of any employer, other than an
24 employer for which services in employment as provided in subdivision (4)
25 (a) of section 48-604 are performed, shall not exceed the total benefit
26 amount to which such individual was entitled as set out in section 48-626
27 with respect to base period wages of such individual paid by such
28 employer plus one-half the amount of extended benefits paid to such
29 eligible individual with respect to base period wages of such individual
30 paid by such employer. The commissioner shall adopt and promulgate rules
31 and regulations determining the manner in which benefits shall be charged

1 against the account of several employers for whom an individual performed
2 employment during the same quarter or during the same base period.

3 (ii) Any benefit check duly issued and delivered or mailed to a
4 claimant and not presented for payment within one year from the date of
5 its issue may be invalidated and the amount thereof credited to the
6 Unemployment Compensation Fund, except that a substitute check may be
7 issued and charged to the fund on proper showing at any time within the
8 year next following. Any charge made to an employer's account for any
9 such invalidated check shall stand as originally made.

10 (4)(a) An employer's experience account shall be terminated one
11 calendar year after such employer has ceased to be subject to the
12 Employment Security Law, except that if the commissioner finds that an
13 employer's business is closed solely because one or more of the owners,
14 officers, partners, or limited liability company members or the majority
15 stockholder entered the armed forces of the United States, or of any of
16 its allies, such employer's account shall not be terminated and, if the
17 business is resumed within two years after the discharge or release from
18 active duty in the armed forces of such person or persons, the employer's
19 experience account shall be deemed to have been continuous throughout
20 such period.

21 (b) An experience account terminated pursuant to this subsection
22 shall be reinstated if:

23 (i) The employer becomes subject again to the Employment Security
24 Law within one calendar year after termination of such experience
25 account;

26 (ii) The employer makes a written application for reinstatement of
27 such experience account to the commissioner within two calendar years
28 after termination of such experience account; and

29 (iii) The commissioner finds that the employer is operating
30 substantially the same business as prior to the termination of such
31 experience account.

1 (5) All money in the Unemployment Compensation Fund shall be kept
2 mingled and undivided. In no case shall the payment of benefits to an
3 individual be denied or withheld because the experience account of any
4 employer does not have a total of contributions paid in excess of
5 benefits charged to such experience account.

6 (6)(a) For benefit years beginning before September 3, 2017, if an
7 individual's base period wage credits represent part-time employment for
8 a contributory employer and the contributory employer continues to employ
9 the individual to the same extent as during the base period, then the
10 contributory employer's experience account shall not be charged if the
11 contributory employer has filed timely notice of the facts on which such
12 exemption is claimed in accordance with rules and regulations adopted and
13 promulgated by the commissioner.

14 (b) For benefit years beginning on or after September 3, 2017, if an
15 individual's base period wage credits represent part-time employment for
16 an employer and the employer continues to employ the individual to the
17 same extent as during the base period, then the employer's experience
18 account, in the case of a contributory employer, or the employer's
19 reimbursement account, in the case of a reimbursable employer, shall not
20 be charged if the employer has filed timely notice of the facts on which
21 such exemption is claimed in accordance with rules and regulations
22 prescribed by the commissioner.

23 (7) If a contributory employer responds to the department's request
24 for information within the time period set forth in subsection (1) of
25 section 48-632 and provides accurate information as known to the employer
26 at the time of the response, the employer's experience account shall not
27 be charged if the individual's separation from employment is voluntary
28 and without good cause as determined under section 48-628.12.

29 Sec. 21. If any section in this act or any part of any section is
30 declared invalid or unconstitutional, the declaration shall not affect
31 the validity or constitutionality of the remaining portions.

1 Sec. 22. Original section 48-652, Revised Statutes Cumulative
2 Supplement, 2018, is repealed.