

HOUSE BILL 1591

By Lamar

AN ACT to amend Tennessee Code Annotated, Title 4;  
Title 8 and Title 50, relative to family and medical  
leave.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 4-3-1408(a), is amended by adding the following as a new subdivision:

(4) The division of family and medical leave insurance.

SECTION 2. Tennessee Code Annotated, Section 4-3-1408(b), is amended by deleting the language "The division of employment security and the division of occupational health and safety" and substituting the language "The division of employment security, the division of occupational health and safety, and the division of family and medical leave insurance".

SECTION 3. Tennessee Code Annotated, Section 4-3-1408(c)(1)(A), is amended by deleting the language "subdivisions (a)(1)-(3)" and substituting the language "subdivisions (a)(1)-(4)".

SECTION 4. Tennessee Code Annotated, Section 4-3-1408(c)(1), is amended by adding the following as a new subdivision:

(E) The administrator of the division of family and medical leave insurance is responsible for administering, implementing, and enforcing the Tennessee Family and Medical Leave Insurance Act, compiled in title 50, chapter 10, and any rules promulgated in accordance with that chapter.

SECTION 5. Tennessee Code Annotated, Section 4-3-1408(c), is amended by adding the following as a new subdivision:

(5) The commissioner of labor and workforce development shall appoint the administrator of the division of family and medical leave insurance for a term of four (4) years. The first appointment must be made July 1, 2020, or as soon as practicable thereafter. Each four-year term begins on July 1 and ends on June 30 of appropriate years. The commissioner of labor and workforce development has the authority to remove the administrator only for non-performance of duties and responsibilities. If removed, a vacancy shall exist in the office of the administrator. A vacancy in the office must be filled for the unexpired term with a person meeting the requirements applicable to the original appointee.

SECTION 6. Tennessee Code Annotated, Title 50, is amended by adding the following as a new chapter:

**50-10-101. Short title.**

This chapter shall be known and may be cited as the "Tennessee Family and Medical Leave Insurance Act."

**50-10-102. Chapter definitions.**

As used in this chapter:

(1) "Adopted child" means a child adopted by or placed for adoption with an employee or the employee's spouse or domestic partner;

(2) "Application year" means the twelve-month period beginning on the first business day of the calendar week in which a covered employee files an application for benefits;

(3) "Benefits" means the money payable under this chapter to a covered employee;

(4) "Child" means:

(A) An adopted child;

(B) A biological child;

(C) A foster child;

- (D) A legal ward;
- (E) A stepchild; or
- (F) A child with respect to whom an individual stands in loco parentis;

(5) "Chronic serious health condition" means a condition that continues over an extended period of time and requires intermittent treatment;

(6) "Commissioner" means the commissioner of labor and workforce development or the commissioner's designee;

(7) "Covered employee" means an employee who has worked at least six hundred eighty hours (680) hours over a twelve-month period;

(8) "Department" means the department of labor and workforce development;

(9) "Employer" means a person or governmental entity that employs at least one (1) individual in this state;

(10) "Family member" means:

- (A) A child of an employee or the employee's spouse or domestic partner;

- (B) A parent of an employee or the employee's spouse or domestic partner;

- (C) A parent-in-law;

- (D) A son- or daughter-in-law of an employee or the employee's spouse or domestic partner;

- (E) A grandparent or step-grandparent of an employee or the employee's spouse or domestic partner;

(F) A grandchild or step-grandchild of an employee or the employee's spouse or domestic partner;

(G) A spouse of an employee;

(H) A domestic partner of an employee;

(I) A sibling of an employee or the employee's spouse or domestic partner;

(J) The spouse or domestic partner of a sibling of an employee or the employee's spouse or domestic partner; or

(K) Any other individual related by blood or affinity whose close association with the employee is equivalent to a family relationship;

(11) "Fund" means the family and medical leave insurance fund established under § 50-10-501;

(12) "Governmental entity" means this state and any political subdivision of this state;

(13) "Individual who stands in loco parentis" means, whether or not a biological or legal relationship exists, an individual:

(A) Who has day-to-day responsibilities to care for and financially support a child; or

(B) In the case of an employee or the employee's spouse or domestic partner, who had responsibility for the employee or the spouse or domestic partner when the employee or the spouse or domestic partner was a child;

(14) "Newborn child" means a child less than one (1) year of age;

(15) "Next of kin" means the nearest blood relative;

(16) "Parent" means:

- (A) An adoptive parent;
- (B) A biological parent;
- (C) A foster parent;
- (D) A legal guardian;
- (E) A stepparent; or
- (F) An individual who stands in loco parentis to an employee;

(17) "Parent-in-law" means:

- (A) The parent of an employee's spouse or domestic partner; or
- (B) An individual who stands in loco parentis to an employee's

spouse or domestic partner;

(18) "Program" means the family and medical leave insurance program created in § 50-10-301;

(19) "Qualifying exigency" means any of the following reasons for which leave may be needed by a family member of a service member:

- (A) Because the service member has received notice of deployment within seven (7) days before the deployment is to begin;
- (B) To attend military events and related activities;
- (C) To attend child care or school activities only when the service member is on active duty or called to active duty status;
- (D) To make financial and legal arrangements for the service member's absence or because of the absence;
- (E) To attend counseling that:
  - (i) Is needed due to the active duty or call to active duty status of the service member; and

(ii) Is provided by an individual who is not a licensed healthcare provider;

(F) To spend no more than five (5) days with a service member who is on short-term temporary rest and recuperation leave during the period of deployment;

(G) To attend post deployment activities; or

(H) Because of any other issues that arise out of active duty or a call to active duty that an employer and an employee agree should be covered;

(20) "Serious health condition" means a physical or mental illness or impairment that involves:

(A) Inpatient care in a hospital, hospice, or residential healthcare facility;

(B) Continued treatment by a licensed healthcare provider;

(C) Continued treatment or supervision at home by a licensed healthcare provider or other competent individual; or

(D) A chronic serious health condition;

(21) "Service member" means an individual who is an active duty member of:

(A) The United States armed forces;

(B) A reserve component of the United States armed forces; or

(C) The national guard of any state; and

(22) "Treatment" includes examinations to determine the extent of a serious health condition and evaluations of the condition.

**50-10-103. Disclosure of information.**

(a) An employee of the department shall not disclose information pertaining to an individual who has applied for or received benefits under this chapter.

(b) Subsection (a) does not apply to the disclosure of information to:

(1) A public employee in the performance of the public employee's official duties;

(2) The individual to whom the information pertains; or

(3) If an authorized representative has the signed authorization of the individual to whom the information pertains, the authorized representative.

**50-10-201. Participation in the program.**

(a)

(1) A self-employed individual may elect to participate in the program by filing a written notice of election with the commissioner.

(2) An election made under subdivision (a)(1) is effective on the date the written notice is filed.

(b)

(1) If a self-employed individual elects to participate in the program under subsection (a), then the individual must participate for an initial period of not less than three (3) years.

(2) Once the initial participation period expires, the self-employed individual may renew participation in the program for a period of not less than one (1) year.

(3) If the self-employed individual does not wish to renew participation in the program under subdivision (b)(2), within thirty (30) days before the participation period expires, the self-employed individual must notify the

commissioner in writing of the self-employed individual's withdrawal from the program.

(c) During the period a self-employed individual participates in the program, the self-employed individual shall pay the employee contribution required under § 50-10-601.

**50-10-202. Obligations under collective bargaining agreements or employer policies.**

(a) This chapter does not diminish an employer's obligation to comply with a collective bargaining agreement or an employer policy that allows an employee to take leave for a longer period of time than the employee would be able to receive benefits under this chapter.

(b) An employee's right to benefits under this chapter must not be diminished by a collective bargaining agreement entered into or renewed, or by an employer policy adopted or retained, on or after January 1, 2021.

(c) An agreement by an employee to waive the employee's rights under this chapter is void as against public policy.

**50-10-203. Construction with state and federal law.**

Nothing in this chapter diminishes or restricts the rights of employees who take leave pursuant to the following:

- (1) Section 4-21-408;
- (2) Section 8-8-413;
- (3) Section 8-33-105;
- (4) Section 8-33-109;
- (5) Section 8-33-110;
- (6) Section 8-50-109;

- (7) Section 8-50-113;
- (8) Title 8, chapter 50, part 8;
- (9) Title 8, chapter 50, part 11;
- (10) Title 49, chapter 5, part 7; or
- (11) The federal Family and Medical Leave Act (29 U.S.C. § 2612).

**50-10-301. Establishment of program.**

- (a) There is created a family and medical leave insurance program.
- (b) The purpose of the program is to provide temporary benefits to an employee who is taking partially paid or unpaid leave from employment:

- (1) To care for a newborn child, a child entering into a new kinship care arrangement, or a child newly placed for adoption or foster care with the employee during the first year after the birth, adoption, or placement;

- (2) To care for a family member with a serious health condition;

- (3) Because the employee has a serious health condition that results in the employee being unable to perform the functions of the position of the employee;

- (4) To care for a service member who is a family member of the employee; or

- (5) Because the employee has a qualifying exigency arising out of the deployment of a family member of the employee.

**50-10-401. Division of family and medical leave insurance.**

- (a) There is created in the department of labor and workforce development a division of family and medical leave insurance.

- (b) The division of family and medical leave insurance shall perform any function that the commissioner assigns to it to carry out this chapter.

**50-10-402. Administrator of the division of family and medical leave insurance.**

(a) The administrator of the division of family and medical leave insurance as described in § 4-3-1408(c)(1)(E) shall administer this chapter under the supervision of the commissioner.

(b) The commissioner may delegate to the administrator of the division of family and medical leave insurance, or any employee of the department, any power or duty that is reasonable and proper for the administration of this chapter.

**50-10-403. Rules.**

(a) The commissioner shall:

(1) Subject to subsection (b), adopt rules necessary to carry out this chapter;

(2) Establish procedures and forms for filing claims for benefits, including procedures for notifying an employer within five (5) business days after an employee of the employer files a claim for benefits under this chapter;

(3) Use information-sharing and integration technology to facilitate the disclosure of relevant information or records needed for the administration of this chapter; and

(4) Subject to subsection (c):

(A) Carry out a public education program for the purpose of educating the public about benefits available to employees under this chapter; and

(B) Develop incentives or provide assistance to small businesses to help small businesses comply with program requirements.

(b) The rules adopted under subdivision (a)(1) must be consistent with rules adopted to implement the state and federal laws described in § 50-10-203.

(c)

(1) The commissioner may use a portion of the funds paid under § 50-10-601, or other available funding, to pay for and carry out the requirements under subdivision (a)(4).

(2) Materials used in the public education program required under subdivision (a)(4)(A) must be made available in English and Spanish.

**50-10-404. Enforcement.**

(a) To enforce this chapter, the commissioner may:

(1) Conduct an investigation under this chapter, on the commissioner's own initiative or by receipt of a written complaint;

(2) Administer an oath;

(3) Certify to an official act;

(4) Take a deposition;

(5) Issue a subpoena for the attendance of a witness to testify or the production of books, correspondence, memoranda, papers, or other records; and

(6) Bring a civil action in the county where the violation allegedly occurred.

(b)

(1) A subpoena issued under subdivision (a)(5) may be served in any manner in which a subpoena of a court may be served.

(2) If a person fails to comply with a subpoena issued under subdivision (a)(5) on a complaint filed by the commissioner, then the circuit court for the county where the investigation is being conducted, or where the person resides, is present, or transacts business, may issue an order directing compliance with the subpoena or compelling testimony.

(3) If the person commits perjury, as described in title 39, chapter 16, part 7, while giving testimony pursuant to this subsection (b), then the person is subject to prosecution for that offense.

(c) In a civil action to enforce this chapter, the commissioner and the state may be represented by:

(1) The attorney general and reporter; or

(2) Any qualified attorney who:

(A) Is a salaried employee of the commissioner; and

(B) On recommendation of the attorney general and reporter, is designated to represent the commissioner and the state.

**50-10-405. Annual report.**

(a) By January 1, 2021, and each subsequent January 1, the commissioner shall submit to the governor and the general assembly an annual report on the administration of this chapter during the previous fiscal year.

(b) The annual report must include information regarding:

(1) Projected and actual program participation rates;

(2) Contribution rates;

(3) Fund balances; and

(4) Public outreach efforts.

**50-10-501. Establishment of the fund.**

(a) There is created a family and medical leave insurance fund, which must be invested pursuant to § 9-4-603. Moneys from the fund must be used only for the purposes described in this chapter. Any revenues deposited in this fund remain in the fund until expended for purposes consistent with this chapter. Any appropriation for the

fund does not revert to the general fund on June 30, but remains available for expenditure in subsequent fiscal years.

(b) The commissioner shall administer the fund. In accordance with adopted rules, money in the fund:

- (1) Must be used to pay benefits under this chapter; and
- (2) May be used to pay for:
  - (A) The public education program and small business incentives required under § 50-10-403(a)(4); and
  - (B) Any costs associated with the initial implementation of this chapter.

**50-10-502. Money in the fund.**

- (a) The fund consists of:
- (1) Employee contributions;
  - (2) Employer contributions;
  - (3) Money paid to the fund for the purpose of reimbursing the commissioner under § 50-10-802 for benefits paid in error;
  - (4) Interest earned on money in the fund; and
  - (5) Money received for the fund from any other source.
- (b) Money in the fund may be commingled.

**50-10-503. Check to pay benefits.**

Any check issued to pay benefits or refunds must:

- (1) Be issued only on a warrant signed by the commissioner;
- (2) Bear the signature of the state treasurer; and
- (3) Be countersigned by an authorized agent.

**50-10-504. No prior claim by employee.**

This chapter does not grant an employee any prior claim or right to money the employee pays into the fund.

**50-10-601. Contributions.**

(a) Beginning January 1, 2021, each employee and employer shall pay to the commissioner contributions for the fund on wages for employment that is performed for an employer.

(b)

(1) Subject to subdivision (b)(2), the commissioner shall establish in rule the rates of contribution an employee and an employer are required to pay under subsection (a).

(2) The rates of contribution established under subdivision (b)(1) must be sufficient to fund the benefits payable under this chapter.

**50-10-701. Qualifications for benefits.**

(a) Beginning July 1, 2022, to be eligible for benefits, a covered employee must be taking partially paid or unpaid leave from employment because the covered employee:

(1) Is caring for a newborn child or a child newly placed for adoption or foster care with the covered employee during the first year after the birth, adoption, or placement;

(2) Is caring for a family member with a serious health condition;

(3) Has a serious health condition that results in the covered employee being unable to perform the functions of the position of the covered employee;

(4) Is caring for a service member who is a family member of the employee; or

(5) Has a qualifying exigency arising out of the deployment of a family member of the covered employee.

(b)

(1) Subject to subdivision (b)(2), a covered employee may take the leave for which the employee is eligible for benefits under subsection (a) on an intermittent leave schedule.

(2) If leave is taken on an intermittent leave schedule, then the covered employee shall:

(A) Make a reasonable effort to schedule the intermittent leave in a manner that does not unduly disrupt the operations of the employer; and

(B) Provide the employer with reasonable and practicable prior notice of the reason for which the intermittent leave is necessary.

(3) If leave is taken on an intermittent leave schedule, then an employer shall not:

(A) Unless the intermittent leave schedule is medically necessary, be required to allow an intermittent leave schedule for more than twenty-four (24) consecutive weeks; or

(B) Reduce the total amount of leave to which the covered employee is entitled.

**50-10-702. Allowable weeks of benefits.**

(a)

(1) Except as provided in subdivision (a)(2), a covered employee may not receive more than twelve (12) weeks of benefits in an application year.

(2) A covered employee may receive an additional twelve (12) weeks of benefits if the covered employee during the same application year:

(A) Received benefits because the covered employee was eligible for benefits under § 50-10-701(a)(3); and

(B) Becomes eligible for benefits under § 50-10-701(a)(1), (2), (4), or (5).

(b) A covered employee must not be paid benefits for less than one (1) day, or eight (8) consecutive hours, of leave taken in one (1) work week.

**50-10-703. Coordinated payment with other benefits.**

If an employer provides a covered employee with written notice, then the employer may require that benefits paid under this chapter to the covered employee be coordinated with payment made, or leave allowed, under the terms of disability or family care leave under a collective bargaining agreement or employer policy.

**50-10-704. Calculation of benefit.**

(a)

(1) Subject to subdivision (a)(2), the weekly benefit amount payable to a covered employee under this chapter is:

(A) If the employee's average weekly wage is fifty percent (50%) or less of the state average weekly wage, then ninety percent (90%) of the employee's average weekly wage;

(B) If the employee's average weekly wage is greater than fifty percent (50%) of the state average weekly wage, then the sum of:

(i) Ninety percent (90%) of the employee's average weekly wage up to fifty percent (50%) of the state average weekly wage;  
and

(ii) Fifty percent (50%) of the employee's average weekly wage that is greater than fifty percent (50%) of the state average weekly wage; or

(C) If the employee is taking partially paid leave, then the lesser of:

(i) The amount required to make up the difference between the wages paid to the employee while the employee is taking partially paid leave and the full wages normally paid to the employee; and

(ii) If the employee's average weekly wage is greater than fifty percent (50%) of the state average weekly wage, the sum of:

(a) Ninety percent (90%) of the employee's average weekly wage up to fifty percent (50%) of the state average weekly wage; and

(b) Fifty percent (50%) of the employee's average weekly wage that is greater than fifty percent (50%) of the state average weekly wage.

(2) The weekly benefit amount payable under subdivision (a)(1):

(A) Must be at least fifty dollars (\$50.00); and

(B) Must not exceed:

(i) For the twelve-month period beginning July 1, 2022, one thousand dollars (\$1,000) per week; and

(ii) For the twelve-month period beginning July 1, 2023, and each subsequent twelve-month period, the amount

determined and announced by the commissioner under subdivision (a)(3).

(3)

(A) In this subdivision (a)(3), "consumer price index" means the consumer price index (all items-United States city average), as published by the United States department of labor, bureau of labor statistics.

(B) Except as provided in subdivision (a)(3)(C), for the twelve-month period beginning July 1, 2023, and each subsequent twelve-month period, the maximum weekly benefit amount must be increased by the amount, rounded to the nearest cent, that equals the product of:

(i) The maximum weekly benefit amount in effect for the preceding twelve-month period; and

(ii) The annual percent growth in the consumer price index for the immediately preceding twelve-month period, as determined by the commissioner under subdivision (a)(3)(C).

(C) By July 1, 2023, and each subsequent July 1, the commissioner shall determine and announce:

(i) The annual percent growth, if any, in the consumer price index based on the most recent twelve-month period for which data are available on September 1; and

(ii) The maximum weekly benefit amount effective for the twelve-month period beginning the following July 1.

(D) If there is a decline or no growth in the consumer price index, then the maximum weekly benefit amount must remain the same as the amount that was in effect for the preceding twelve-month period.

(b) An increase in the weekly benefit amount under subdivision (a)(3) applies only to a claim for benefits filed on or after the date the increase becomes effective.

(c) Subject to § 50-10-703, the division shall:

(1) Make the first payment of benefits to a covered employee within two

(2) weeks after the claim is filed; and

(2) Make subsequent payments every two (2) weeks until the benefit period ends.

**50-10-705. Federal income tax.**

(a) If the internal revenue service determines that benefits paid under this chapter are subject to federal income tax, then, at the time an individual files a new claim for benefits, the division shall notify the individual that:

(1) The internal revenue service has determined that the benefits are subject to federal income tax payments;

(2) There are requirements regarding estimated tax;

(3) The individual may elect to have federal income tax deducted and withheld from the benefits that the individual receives under this chapter at the amount specified in the internal revenue code; and

(4) The individual is permitted to change a previously elected withholding status.

(b)

(1) If an individual elects to have federal income tax deducted and withheld under subdivision (a)(3), then the division must deduct and withhold the amount specified in the internal revenue code in a manner required by the internal revenue service.

(2) If the division deducts and withholds federal income tax under subdivision (b)(1), then the amount deducted and withheld must remain in the fund until it is transferred to the internal revenue service as a payment of income tax.

**50-10-801. Prohibited acts by employees.**

It is a class C misdemeanor for an individual to willfully make a false statement or misrepresentation regarding a material fact, or to willfully fail to report a material fact, to obtain benefits under this chapter. In addition to any other penalty, an individual committing an offense under this section is disqualified from receiving benefits for one (1) year following conviction.

**50-10-802. Repayment of benefits.**

(a) The division may seek repayment of benefits from an individual who received benefits under this chapter if:

(1) The benefits were paid erroneously or as a result of the commission of an offense under § 50-10-801; or

(2) A claim for benefits under this chapter is rejected after the benefits are paid.

(b) The commissioner may waive the repayment of benefits under subsection (a) if the repayment would be against equity and good conscience as determined by the commissioner.

**50-10-803. Prohibited acts by employers.**

An employer, or any person representing the employer, shall not discharge, demote, or otherwise discriminate or take adverse action against a covered employee because the covered employee:

(1) Files for, applies for, or receives benefits under this chapter;

(2) Communicates to the person an intent to file a claim, a complaint, or an appeal under this chapter; or

(3) Testifies or intends to testify, or otherwise assists, in a proceeding under this chapter.

SECTION 7. This act applies prospectively and shall not be applied or interpreted to have any effect on or application to any collective bargaining agreement entered into before January 1, 2021.

SECTION 8. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 9. The commissioner of labor and workforce development is authorized to promulgate rules to effectuate the purposes of this act. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 10. For purposes of creating the division of unemployment insurance within the department of labor and workforce development, appointing an administrator of the division of unemployment insurance, and promulgating rules to effectuate this act, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2021, the public welfare requiring it.