
Senate Bill 275

Date: March 24, 2022
Committee: House Economic Matters
Bill Title: Labor and Employment – Family and Medical Leave Insurance Program –
Establishment (Time to Care Act of 2022)
Re: Letter of Concern

Senate Bill 0275 (“S.B. 275” or “the Bill”) would establish the Family and Medical Leave Insurance Program (“Program”) within the Department of Labor.

In order to implement and administer the Program, the Department would need to:

- Develop processes for receipt and review of applications for benefits, for determining benefit eligibility, and for payment of benefits to those eligible;
- Develop a complaint, investigation, and prosecution process for those who attempt to avoid or reduce their proper contribution amount;
- Develop a complaint, investigation, and prosecution process for those who attempt to obtain benefits that they are not eligible for;
- Develop employer and employee outreach and education materials;
- Develop a structure to calculate (including interest and penalties on employers), collect, and monitor tax contributions from employers;
- Develop a structure to calculate, collect, and monitor contributions from covered employees and self-employed individuals participating in the Program;
- Develop a system for reviewing private employee plans (employers who satisfy the requirements of the Title through a private employer are exempt from the requirements of the Bill, but the private employer plan must be filed with the Division for approval);
- Adopt regulations necessary to carry out the Title;
- Comply with the reporting requirements specified in the Bill.

Because the Bill would create a new Program, expenditures would be extensive.

Given the scope and size of the program, comparable to the state's unemployment insurance program, the Department estimates it would require nearly 400 employees to administer the program at a cost of approximately \$45,000,000 (to include salaries and personnel benefits). Furthermore, the Department estimates that it would cost a vendor approximately \$50,000,000 to build the IT system required to administer this new program. Additional costs, difficult to estimate, would include contractual employees, maintenance costs, building and facility costs, supplies and equipment, and other workplace expenses.

Because this bill imposes a new wage tax, revenues would be significant.

Based on previous analysis it is assumed that the total employer payroll in 2021 was \$195 billion. While the contribution rate under this proposal shall be set by the Secretary, it may not exceed 0.75% of an employee's wage (up to and including the social security wages base) and shall be shared equally by employers and employees. Assuming universal participation and the highest contribution rate allowed by statute, the **revenue from the wage tax could be \$1,460,000,000.**

The Bill would require the Division to engage in extensive rulemaking.

Because the Bill leaves many decisions about how to implement the Program up to the Department (the process for determining if a private employer plan allows exemption from contributions, how to process claims when an employee works more than one job, what documentation is sufficient to establish eligibility, etc.), the Bill would require the Department to engage in extensive rulemaking. The state of Washington, for example, completed six phases of rulemaking when they implemented their paid family medical leave in 2019.

Unforeseen Challenges and Risks

States like Oregon and Washington are examples of unforeseen challenges that arise when implementing a program of this magnitude. For example, Oregon has recognized that perhaps one of their biggest challenges will be the processing of employer equivalent plan applications. This function will require significant rulemaking, staff hours, and resources to ensure timely processing of such applications. S.B. 275 exempts employers from contributing to the Fund if they offer a private employer plan consisting of employer-provided benefits, insurance, or a combination of both to all of their eligible employees that meets or exceeds the rights, protections, and benefits provided to a covered employee under the Title. The Bill does specify that the private employer plan shall be filed with the Division, but it does not specify the analysis required by Division employees to determine whether the private employer plan meets those requirements to exempt the employer from contributions.

Washington, which implemented paid family medical leave in 2019 and began paying benefits in January 2020, has struggled with their fund solvency: "Projections for the [paid family medical leave] Fund have been challenging as the program has only two years of data on benefit payments and revenues received [The Employment Security Division] is currently concerned about the fund's solvency given recent cash projections which show that a deficit cash position in March or April of 2022 is likely."

The timelines within the bill are daunting and unrealistic.

Assuming passage of this legislation with a June 1, 2022 effective date, the Department would only have 5 months to go through the state procurement process to select a vendor to conduct the actuary analysis intended to guide many of the decisions concerning implementation of the program. Furthermore, the Department would need to identify and procure the necessary facilities to house this new Program, draft the necessary regulations to carry out the title, hire through the state hiring procedures an estimated 400 staff, procure a vendor to design, test, launch and maintain an IT system to manage the program, and conduct several iterations of extensive rules making processes. The Bill requires the Department to begin collecting contributions by October 1, 2023 which makes the timeline for achieving the above mentioned necessities daunting at best.

For the above reasons, the Department respectfully requests reconsideration of SB 275.