

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 3439

By: Albright

AS INTRODUCED

An Act relating to labor; defining terms; providing criteria for family and medical leave insurance benefits; providing for maximum number of weeks; providing for waiting period; providing for determination of family and medical leave insurance benefits; authorizing payroll contributions; providing for ratio amounts of contribution; allowing intermittent or reduced leave schedule; providing for restoration of position; requiring employer to maintain health care benefits; making certain acts unlawful; prohibiting retaliatory action; providing certain leave run concurrently with federal leave; prohibiting diminishment of certain rights; requiring certain written notice from employer; establishing system for appeals; providing for judicial review; providing for disqualification of certain individuals; authorizing repayment of benefits based on misrepresentation; allowing certain persons coverage for time certain; requiring Department of Labor to administer act; authorizing adoption of rules; providing for tax implications; creating the Family and Medical Leave Insurance Fund; requiring certain report to Legislature; directing Department of Labor to conduct public education campaign; encouraging use of state data collection and technology; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901 of Title 40, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Application year" is the twelve-month period beginning on the first day of the calendar week in which an individual files an application for family and medical leave insurance benefits;

2. "Covered active duty" is as defined in Section 101(14) of the Family and Medical Leave Act, 29 U.S.C. 2611(14);

3. "Covered individual" is any person who:

- a. worked for twenty (20) calendar weeks for any employer during the twelve-month period prior to submitting an application, or
- b. earned one thousand (1,000) times the state minimum wage from work during the twelve-month period prior to submitting an application, or
- c. is self-employed, elects coverage and meets the requirements of Section 13 of this act, and
- d. meets the administrative requirements outlined in this act and in regulations, and
- e. submits an application.

4. "Covered servicemember" is as defined in Section 101(15) of the Family and Medical Leave Act, 29 U.S.C., Section 2611(15);

5. "Department" is the Department of Labor;
6. "Director" is the Director of the Department;
7. "Employee" is as defined in Section 197.4 of Title 40 of the Oklahoma Statutes;
8. "Employer" is as defined in Section 197.4 of Title 40 of the Oklahoma Statutes;
9. "Family and medical leave insurance benefits" are the benefits provided under the terms of this act;
10. "Family member" is:
 - a. regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the covered individual stands in loco parentis, or a person to whom the covered individual stood in loco parentis when the person was a minor,
 - b. a biological, adoptive or foster parent, stepparent or legal guardian of a covered individual or a covered individual's spouse or domestic partner or a person who stood in loco parentis when the covered individual or the covered individual's spouse or domestic partner was a minor child,
 - c. a person to whom the covered individual is legally married under the laws of any state, or a domestic

partner of a covered individual as registered under the laws of any state or political subdivision,

- d. a grandparent, grandchild or sibling, whether a biological, foster, adoptive or step relationship, of the covered individual or the covered individual's spouse or domestic partner, or
- e. a designated person, which shall mean one additional person designated by a covered individual for whom the covered individual will provide care under this act if the designated person has a serious health condition;

11. "Health care provider" is any person licensed under federal or state law to provide medical or emergency services, including, but not limited to, doctors, nurses and emergency room personnel, or certified midwives;

12. "Next of kin" is as defined in Section 101(17) of the Family and Medical Leave Act, 29 U.S.C. 2611(17);

13. "Qualifying exigency leave" is leave for the family member of a military member for the purposes specified in subsections (i) through (iv) of 29 C.F.R. 825.126(b)(3) and subsections (i) through (iv) of 29 C.F.R. 825.126(b)(8), as well as the following reasons:

- a. to address any issue that arises from the fact that the military member is notified of an impending call or order to covered active duty seven (7) or less calendar days prior to the date of deployment. Leave

taken for this purpose can be used for a period of seven (7) calendar days beginning on the date the military member is notified of an impending call or order to covered active duty,

- b. to attend any official ceremony, program or event sponsored by the military that is related to the covered active duty or call to covered active duty status of the military member,
- c. to attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations or the American Red Cross that are related to the covered active duty or call to covered active duty status of the military member,
- d. to make or update financial or legal arrangements to address the military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and health care powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards or preparing or updating a will or living trust,

- e. to act as the military member's representative before a federal, state or local agency for purposes of obtaining, arranging or appealing military service benefits while the military member is on covered active duty or call to covered active duty status, and for a period of ninety (90) days following the termination of the military member's covered active duty status,
- f. to attend counseling provided by someone other than a health care provider, for oneself, for the military member, or for the biological, adopted or foster child, stepchild or legal ward of the military member, a child of the military member's domestic partner, or a child to whom the military member stands in loco parentis, provided that the need for counseling arises from the covered active duty or call to covered active duty status of the military member,
- g. to spend time with the military member who is on short-term, temporary, Rest and Recuperation leave during the period of deployment. Leave taken for this purpose can be used for a period of fifteen (15) calendar days beginning on the date the military member commences each instance of Rest and Recuperation leave,

- h. to attend arrival ceremonies, reintegration briefings and events and any other official ceremony or program sponsored by the military for a period of ninety (90) days following the termination of the military member's covered active duty status,
- i. to address issues that arise from the death of the military member while on covered active duty status, such as meeting and recovering the body of the military member, making funeral arrangements and attending funeral services,
- j. to address other events which arise out of the military member's covered active duty or call to covered active duty status, provided that the employer and employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of such leave;

14. "Retaliatory personnel action" means denial of any right guaranteed under this act, including, but not limited to, any threat, discharge, suspension, demotion, reduction of hours, any other adverse action against an employee for the exercise of any right guaranteed herein, or reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member of the employee to a federal, state or local agency. Retaliatory

personnel actions shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this act; and

15. "Serious health condition" is an illness, injury, impairment, pregnancy, recovery from childbirth, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a health care provider.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902 of Title 40, unless there is created a duplication in numbering, reads as follows:

Beginning twelve (12) months following establishment of the Family and Medical Leave Insurance Program, family and medical leave insurance benefits are payable to an individual who:

1. Meets the definition of "covered individual" under Section 1 of this act; and

2. Meets one of the following requirements:

- a. because of birth, adoption or placement through foster care, is caring for a new child during the first year after the birth, adoption or placement of that child,
- b. is caring for a family member with a serious health condition,

- c. has a serious health condition (including pregnancy) that makes the covered individual unable to perform the functions of the position of such employee,
- d. is caring for a covered servicemember who is the covered individual's next of kin,
- e. because of any qualifying exigency leave arising out of the fact that the family member of the covered individual is on covered active duty, or has been notified of an impending call or order to covered active duty, in the Armed Forces, or
- f. any reason set forth in this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. 1. The maximum number of weeks during which family and medical leave insurance benefits are payable under subparagraph c of paragraph 2 of Section 2 of this act in an application year is eight (8) weeks.

2. The maximum number of weeks during which family and medical leave insurance benefits are payable under subparagraphs a, b, d or e of paragraph 2 of Section 2 of this act in an application year is four (4) weeks.

3. A covered individual is eligible for eight (8) weeks of leave under paragraph 1 of this subsection and also four (4) weeks

of leave under paragraph 2 of this subsection in an application year.

B. Family and medical leave insurance benefits are not payable for the first five (5) calendar days in an application year that a covered individual meets the eligibility requirements of paragraphs 1 and 2 of Section 2 of this act. This shall be known as the waiting period referred to in paragraph 3 of this section.

C. If the covered individual uses ten (10) or more days of family and medical leave insurance benefits in an application year, the covered individual shall be paid for the waiting period. The waiting period need only be served once every application year.

D. The first payment of benefits must be made to an individual within four (4) weeks after the claim is filed and subsequent payments must be made semimonthly thereafter.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. The amount of family and medical leave insurance benefits shall be determined as follows:

1. The weekly benefit shall be fifty percent (50%) of the covered individual's average weekly wages during the twelve (12) months preceding submission of the application, or the average weekly wages during the time the covered individual worked if it was

less than twelve (12) months, up to a maximum of fifty percent (50%) of the statewide average weekly wage; or

2. In no case shall the weekly benefit be less than Five Hundred Dollars (\$500.00).

B. Family and medical leave insurance benefits are not payable for less than eight (8) hours of family and medical leave taken in one workweek.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 905 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Payroll contributions shall be authorized in order to finance the payment of benefits under the family and medical leave insurance program.

B. Payroll contributions shall be paid by employers and employees in the ratio of 1:1 in an amount to be determined by the State Treasurer. The State Treasurer shall be responsible for evaluating and determining on an annual basis the amount of payroll contributions and maximum employee contribution necessary to finance the family and medical leave insurance benefits program.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 906 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. A covered individual shall be entitled, at the option of the covered individual, to take paid family and medical leave on an

intermittent or reduced leave schedule in which all of the leave authorized under this act is not taken sequentially. Family and medical leave insurance benefits for intermittent or reduced leave schedules shall be prorated.

B. The covered individual shall make a reasonable effort to schedule paid family and medical leave under this section so as not to unduly disrupt the operations of the employer. The covered individual shall provide the employer with prior notice of the schedule on which the covered individual will be taking the leave, to the extent practicable. Paid family and medical leave taken under this section shall not result in a reduction of the total amount of leave to which an employee is entitled beyond the amount of leave actually taken.

C. Nothing in this section shall be construed to entitle a covered individual to more leave than required under Section 3 of this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 907 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Any covered individual who exercises his or her right to family and medical leave insurance benefits or earns waiting period credits under paragraph 3 of subsection A of Section 3 of this act shall, upon the expiration of that leave, be entitled to be restored by the employer to the position held by the covered individual when

the leave commenced, or to a position with equivalent seniority, status, employment benefits, pay and other terms and conditions of employment including fringe benefits and service credits that the covered individual had been entitled to at the commencement of leave.

B. During any leave taken pursuant to Section 2 of this act, the employer shall maintain any health care benefits the covered individual had prior to taking such leave for the duration of the leave as if the covered individual had continued in employment continuously from the date he or she commenced the leave until the date the family and medical leave insurance benefits terminate; provided, however, that the covered individual shall continue to pay the covered individual's share of the cost of health benefits as required prior to the commencement of the leave.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 908 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this act.

B. An employer, temporary help company, employment agency, employee organization or other person shall not take retaliatory personnel action or otherwise discriminate against a person because he or she exercised rights protected under this act. Such rights

include, but are not limited to, the right to request, file for, apply for or use benefits provided for under this act; communicate to the employer or any other person or entity an intent to file a claim, a complaint with the Department or courts, or an appeal, or has testified or is about to testify or has assisted in any investigation, hearing or proceeding under this act, at any time, including during the waiting period and the period in which the person receives family and medical leave insurance benefits under this act; inform any person about any employer's alleged violation of this act; and the right to inform any person of his or her rights under this act.

C. It shall be unlawful for an employer's absence control policy to count paid family and medical leave taken under this act as an absence that may lead to or result in discipline, discharge, demotion, suspension or any other adverse action.

D. Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 909 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. 1. Leave taken with wage replacement under this act that also qualifies as leave under the federal Family and Medical Leave Act (FMLA) shall run concurrently with leave taken under the federal FMLA.

2. An employer may require that payment made pursuant to this act be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy. The employer must give employees written notice of this requirement.

B. 1. This act shall not diminish an employer's obligation to comply with any of the following that provide more generous leave:

- a. a collective bargaining agreement,
- b. an employer policy, or
- c. any law.

2. An individual's right to leave under this act may not be diminished by a collective bargaining agreement entered into or renewed, or an employer policy adopted or retained, after the effective date of this act. Any agreement by an individual to waive his or her rights under this act is void as against public policy.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Each employer shall provide written notice to each employee upon hiring and annually thereafter. An employer shall also provide written notice to an employee when the employee requests leave under this act, or when the employer acquires knowledge that an employee's leave may be for a qualifying reason under paragraph 2 of Section 2 of this act. Such notice shall include:

1. The employee's right to family and medical leave insurance benefits under this act and the terms under which it may be used;

2. The amount of family and medical leave insurance benefits;

3. The procedure for filing a claim for benefits;

4. The procedure for selecting a designated person as defined in this act;

5. The right to job protection and benefits continuation under Section 7 of this act;

6. That discrimination and retaliatory personnel actions against a person for requesting, applying for or using family and medical leave insurance benefits are prohibited under Section 8 of this act; and

7. That the employee has a right to file a complaint for violations of this act.

An employer shall also display and maintain a poster in a conspicuous place accessible to employees at the employer's place of business that contains the information required by this section in English, and any language that is the first language spoken by at least thirty percent (30%) of the employer's workforce, provided that such notice has been provided by the Department. The Director may adopt regulations to establish additional requirements concerning the means by which employers shall provide such notice.

B. An employer may establish a uniform process for employees to select a designated person as defined in this act within thirty (30)

days of the individual's date of hire. Thereafter, the employer must permit the employee to make or change such a designation, as applicable, on an annual basis. If an employer establishes a uniform process, the covered employee must make such a designation using the employer's process. If an employer does not establish such a uniform process, the employee may make such a designation when filing a claim for benefits.

C. Employees shall provide notice to their employers as soon as practicable of their intention to take leave under this act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 911 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. The Director shall establish a system for appeals in the case of a denial of family and medical leave insurance benefits. In establishing such system, the Director may utilize any and all procedures and appeals mechanisms established under the Employment Security Act of 1980.

B. Judicial review of any decision with respect to family and medical leave insurance benefits shall be permitted in a court of competent jurisdiction after a party aggrieved thereby has exhausted all administrative remedies established by the Director.

C. The Director shall implement procedures to ensure confidentiality of all information related to any claims filed or appeals taken to the maximum extent permitted by applicable laws.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 912 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. A covered individual is disqualified from family and medical leave insurance benefits for one (1) year if the individual is determined by the Director to have willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this act.

B. If family and medical leave insurance benefits are paid erroneously or as a result of willful misrepresentation, or if a claim for family and medical leave insurance benefits is rejected after benefits are paid, the Department may seek repayment of benefits from the recipient. The Director shall exercise his or her discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 913 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. A self-employed person, including a sole proprietor, partner or joint venturer, may elect coverage under this act for an initial period of not less than three (3) years. The self-employed person must file a notice of election in writing with the Director, as required by the Department. The election becomes effective on the

date of filing the notice. As a condition of election, the self-employed person must agree to supply any information concerning income that the Department deems necessary.

B. A self-employed person who has elected coverage may withdraw from coverage within thirty (30) days after the end of the three-year period of coverage, or at such other times as the Director may prescribe by rule, by filing written notice with the Director, such withdrawal to take effect not sooner than thirty (30) days after filing the notice.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 914 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Within twelve (12) months of the effective date of this act, the Department shall establish and administer a family and medical leave insurance program and within twelve (12) months following establishment of the program pay family and medical leave insurance benefits as specified in this act.

B. The Department shall establish reasonable procedures and forms for filing claims for benefits under this act and shall specify what supporting documentation is necessary to support a claim for benefits, including any documentation required from a health care provider for proof of a serious health condition.

C. The Department shall notify the employer within five (5) business days of a claim being filed pursuant to this act.

D. The Department shall use information sharing and integration technology to facilitate the disclosure of relevant information or records so long as an individual consents to the disclosure as required under state law.

E. Information contained in the files and records pertaining to an individual under this act are confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, the individual or an authorized representative of an individual may review the records or receive specific information from the records upon the presentation of the individual's signed authorization.

F. The Director shall adopt rules as necessary to implement this act.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 915 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. If the Internal Revenue Service determines that family and medical leave insurance benefits under this act are subject to federal income tax, the Department must advise an individual filing a new claim for family and medical leave insurance benefits, at the time of filing such claim, that:

1. The Internal Revenue Service has determined that benefits are subject to federal income tax;

2. Requirements exist pertaining to estimated tax payments;

3. The individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits in the amount specified in the federal Internal Revenue Code; and

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

B. If the individual elects to have federal tax payments withheld, the Department shall deduct and withhold the amount specified in the Internal Revenue Code in a manner consistent with [laws of the state], and amounts deducted and withheld from benefits must remain in the Family and Medical Leave Insurance Fund established in Section 16 of this act until transferred to the federal taxing authority as a payment of income tax.

C. The Director shall follow all procedures specified by the Internal Revenue Service pertaining to the deducting and withholding of income tax.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 916 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. The Family and Medical Leave Insurance Fund is created in the custody of the State Treasurer. Expenditures from the fund may be used only for the purposes of the family and medical leave insurance benefits program. Only the Director of the Department or the Director's designee may authorize expenditures from the fund.

B. Whenever, in the judgment of the State Treasurer, there shall be in the Family and Medical Leave Insurance Fund an amount of funds in excess of that amount deemed by the State Treasurer to be sufficient to meet the current expenditures properly payable therefrom, the State Treasurer shall have full power to invest, reinvest, manage, contract, sell or exchange investments acquired with such excess funds in the manner prescribed by state law.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 917 of Title 40, unless there is created a duplication in numbering, reads as follows:

Beginning January 1, 2021, the Department shall report to the Legislature by September 1 of each year on projected and actual program participation by paragraph 2 of Section 2 of this act purpose, gender of beneficiary, premium rates, fund balances, outreach efforts, and, for leaves taken under subparagraph b of paragraph 2 of Section 2 of this act, family members for whom leave was taken to provide care.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 918 of Title 40, unless there is created a duplication in numbering, reads as follows:

The Department of Labor shall conduct a public education campaign to inform workers and employers regarding the availability of family and medical leave insurance benefits. The Department may use ten percent (10%) of the funds collected for the family and

medical leave insurance benefits program in a given year to pay for the public education program. Outreach information shall be available in English and other languages spoken by more than thirty percent (30%) of the state's population.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 919 of Title 40, unless there is created a duplication in numbering, reads as follows:

The Department is encouraged to use state data collection and technology to the extent possible and to integrate the program with existing state policies.

SECTION 20. This act shall become effective November 1, 2020.

57-2-9503 LRB 01/15/20