

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 1994

By: Dollens

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5
6 AS INTRODUCED

7 An Act relating to labor; ordering a legislative
8 referendum pursuant to the Oklahoma Constitution;
9 creating the Paid Family Leave Act; providing short
10 title; declaring legislative findings; authorizing
11 Department of Labor to establish a family temporary
12 disability insurance program; providing for
13 eligibility of certain benefits; providing for
14 maximum amount of benefits; providing for time frame
15 of benefits; providing for filing of claim for
16 benefits; defining terms; providing for benefit
17 period; providing for determination of eligibility;
18 providing for penalties; authorizing Department to
19 request certain medical information; authorizing
20 initial payment of benefits; authorizing Department
21 to promulgate rules; requiring certain information be
22 made accessible; providing for certificate of
23 eligibility; providing for confidentiality of
24 records; providing for payment and rate of
contributions by employees; creating a Disability
Trust Fund for the Department; providing for
codification; providing ballot title; and directing
filing.

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

SECTION 1. Pursuant to Section 3 of Article V of the Oklahoma
Constitution, there is hereby ordered the following legislative
referendum which shall be filed with the Secretary of State and
addressed to the Governor of the state, who shall submit the same to

1 the people for their approval or rejection at the next General
2 Election.

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 901 of Title 40, unless there is
5 created a duplication in numbering, reads as follows:

6 A. This act shall be known and may be cited as the "Paid Family
7 Leave Act".

8 B. The Legislature finds the following:

9 1. It is in the public benefit to provide family temporary
10 disability insurance benefits to employees to care for their family
11 members. The need for family temporary disability insurance
12 benefits has intensified as the participation of both parents in the
13 workforce has increased and the number of single parents in the
14 workforce has grown. The need for partial wage replacement for
15 employees taking family care leave will be exacerbated as the
16 population of those needing care, both children and parents of
17 employees, increases in relation to the number of working-age
18 adults;

19 2. Developing systems that help families adapt to the competing
20 interests of work and home not only benefits employees but also
21 benefits employers by increasing employee productivity and reducing
22 employee turnover;

23 3. The majority of employees in this state are unable to take
24 family care leave because they are unable to afford leave without

1 pay. When employees do not receive some form of wage replacement
2 during family care leave, families suffer from the employee's loss
3 of income, increasing the demand on the state unemployment insurance
4 system and dependence on the state's welfare system; and

5 4. It is the intent of the Legislature to create a family
6 temporary disability insurance program to help reconcile the demands
7 of work and family. The family temporary disability insurance
8 program shall be established by the Department of Labor, and shall
9 be funded through employee contributions, and shall be administered
10 in accordance with the policies of the family temporary disability
11 insurance program created pursuant to this act. Initial and ongoing
12 administrative costs associated with the family temporary disability
13 insurance program shall be payable from the Disability Trust Fund.

14 SECTION 3. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 902 of Title 40, unless there is
16 created a duplication in numbering, reads as follows:

17 A. The Department of Labor shall establish a family temporary
18 disability insurance program. Family temporary disability insurance
19 shall provide up to twelve (12) weeks of wage replacement benefits
20 to employees who take time off work to care for a seriously ill or
21 injured child, spouse, parent, grandparent, grandchild, sibling, or
22 domestic partner, or to bond with a minor child within one (1) year
23 of the birth or placement of the child in connection with foster
24 care or adoption.

1 B. An individual shall be eligible to receive family temporary
2 disability insurance benefits equal to sixty-five percent (65%) of
3 his or her weekly wage amount for each full day during which he or
4 she is unable to work due to caring for a seriously ill or injured
5 family member or bonding with a minor child within one (1) year of
6 the birth or placement of the child in connection with foster care
7 or adoption.

8 C. The maximum amount payable to an individual during any
9 disability benefit period for family temporary disability insurance
10 shall be six (6) times his or her weekly benefit amount, but in no
11 case shall the total amount of benefits payable be more than the
12 total wages paid to the individual during his or her disability base
13 period. If the benefit is not a multiple of One Dollar (\$1.00), it
14 shall be computed to the next higher multiple of One Dollar (\$1.00).

15 D. No more than twelve (12) weeks of family temporary
16 disability insurance benefits shall be paid within any twelve-month
17 period.

18 E. An individual shall file a claim for family temporary
19 disability insurance benefits not later than the forty-first
20 consecutive day following the first compensable day with respect to
21 which the claim is made for benefits, which time shall be extended
22 by the Department upon a showing of good cause. If a first claim is
23 not complete, the claim form shall be returned to the claimant for
24 completion and it shall be completed and returned not later than the

1 tenth consecutive day after the date it was mailed by the Department
2 to the claimant, except that such time shall be extended by the
3 Department upon a showing of good cause.

4 SECTION 4. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 903 of Title 40, unless there is
6 created a duplication in numbering, reads as follows:

7 As used in the Paid Family Leave Act:

8 1. "Care recipient" means the family member who is receiving
9 care for a serious health condition or the new child with whom the
10 care provider is bonding;

11 2. "Care provider" means the family member who is providing the
12 required care for a serious health condition or the family member
13 who is bonding with the new child;

14 3. "Child" means a biological, adopted, or foster son or
15 daughter, a stepson or stepdaughter, a legal ward, a son or daughter
16 of a domestic partner, or the person to whom the employee stands in
17 loco parentis;

18 4. "Department" means the Department of Labor;

19 5. "Family care leave" means any of the following:

20 a. leave to bond with a minor child within the first year
21 of the child's birth or placement in connection with
22 foster care or adoption, or
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1 b. leave to care for a child, parent, grandparent,
2 grandchild, sibling, spouse, or domestic partner who
3 has a serious health condition;

4 6. "Family member" means child, parent, grandparent,
5 grandchild, sibling, spouse, or domestic partner as defined in this
6 section;

7 7. "Grandchild" means a child of the employee's child;

8 8. "Grandparent" means a parent of the employee's parent;

9 9. "Parent" means a biological, foster, or adoptive parent, a
10 parent-in-law, a stepparent, a legal guardian, or other person who
11 stood in loco parentis to the employee when the employee was a
12 child;

13 10. "Parent-in-law" means the parent of a spouse or a domestic
14 partner of the employee;

15 11. "Serious health condition" means an illness, injury,
16 impairment, or physical or mental condition that involves inpatient
17 care in a hospital, hospice, or residential health care facility, or
18 continuing treatment or continuing supervision by a health care
19 provider;

20 12. "Sibling" means a person related to another person by
21 blood, adoption, or affinity through a common biological or legal
22 parent;

23 13. "Spouse" means a partner to a lawful marriage;

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1 14. "Valid claim" means any claim for family temporary
2 disability insurance benefits made in accordance with the provisions
3 of this act, and any rules and regulations adopted thereunder, if
4 the individual claiming benefits is unemployed and has been paid the
5 necessary wages in employment for employers to qualify for benefits
6 and is caring for a seriously ill or injured family member, or
7 bonding with a minor child during the first year after the birth or
8 placement of the child in connection with foster care or adoption;
9 and

10 15. "Twelve-month period", with respect to any individual,
11 means the three hundred sixty-five (365) consecutive days that begin
12 with the first day the individual first establishes a valid claim
13 for family temporary disability benefits.

14 SECTION 5. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 904 of Title 40, unless there is
16 created a duplication in numbering, reads as follows:

17 A. "Disability benefit period", with respect to any individual,
18 means the period of unemployment beginning with the first day an
19 individual establishes a valid claim for family temporary disability
20 insurance benefits to care for a seriously ill or injured family
21 member or to bond with a minor child during the first year after the
22 birth or placement of the child in connection with foster care or
23 adoption.

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1 B. Periods of family care leave for the same care recipient
2 within a twelve-month period shall be considered one disability
3 benefit period.

4 C. Periods of disability for pregnancy and periods of family
5 care leave for bonding associated with the birth of that child shall
6 be considered one disability benefit period.

7 SECTION 6. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 905 of Title 40, unless there is
9 created a duplication in numbering, reads as follows:

10 An individual shall be deemed eligible for family temporary
11 disability insurance benefits equal to sixty-five percent (65%) of
12 his or her weekly benefit amount on any day in which he or she is
13 unable to perform his or her regular or customary work because he or
14 she is bonding with a minor child during the first year after the
15 birth or placement of the child in connection with foster care or
16 adoption or caring for a seriously ill or injured child, parent,
17 grandparent, grandchild, sibling, spouse, or domestic partner, only
18 if the Department of Labor finds all of the following:

19 1. The individual has made a claim for family temporary
20 disability benefits as required by authorized regulations;

21 2. The individual has been unable to perform his or her regular
22 or customary work for a seven-day waiting period during each
23 disability benefit period, with respect to which waiting period no
24 family temporary disability insurance benefits are payable; and

1 3. The individual has filed a certificate pursuant to
2 subsection B of Section 12 of this act.

3 SECTION 7. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 906 of Title 40, unless there is
5 created a duplication in numbering, reads as follows:

6 A. An individual shall not be eligible for family temporary
7 disability insurance benefits with respect to any day that any of
8 the following apply:

9 1. The individual has received, or is entitled to receive,
10 unemployment compensation benefits or is under an unemployment
11 compensation act of any other state or of the federal government; or

12 2. Another family member is ready, willing, able, and available
13 to provide care for the same period of time in a day that the
14 individual is providing the required care.

15 B. An individual who is entitled to leave under the Family
16 Medical Leave Act must take family temporary disability insurance
17 leave concurrent with leave taken under the Family Medical Leave
18 Act.

19 C. As a condition of an employee's initial receipt of family
20 temporary disability insurance benefits during any twelve-month
21 period in which an employee is eligible for these benefits, an
22 employer may require an employee to take up to two (2) weeks of
23 earned but unused vacation leave prior to the employee's initial
24 receipt of these benefits. If an employer requires an employee to

1 take vacation leave, that portion of the vacation leave that does
2 not exceed one (1) week shall be applied to the waiting period
3 required pursuant to Section 6 of this act.

4 SECTION 8. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 907 of Title 40, unless there is
6 created a duplication in numbering, reads as follows:

7 If the Department of Labor finds that any individual falsely
8 certifies the medical condition of any person in order to obtain
9 family temporary disability insurance benefits, with the intent to
10 defraud, whether for the maker or for any other person, the
11 Department shall assess a penalty against the individual for the
12 total amount of twenty-five percent (25%) of the benefits paid as a
13 result of the false certification. In addition, the employee shall
14 be liable to the Department for any benefits paid as a result of the
15 false certification. Penalties collected under this section shall
16 be deposited in the Disability Trust Fund.

17 SECTION 9. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 908 of Title 40, unless there is
19 created a duplication in numbering, reads as follows:

20 A. The Department of Labor may request additional medical
21 evidence to supplement the first or any continued claim if the
22 additional evidence can be procured without additional cost to the
23 care recipient. The Department may require that the additional
24 evidence include any or all of the following information:

1 1. Identification of diagnoses;
2 2. Identification of symptoms; and
3 3. A statement setting forth the facts of the care recipient's
4 serious health condition that warrants the participation of the
5 employee. The statement shall be completed and signed by any of the
6 following:

- 7 a. the physician or practitioner treating the care
8 recipient,
- 9 b. the registrar, authorized medical officer, or other
10 duly authorized official of the hospital or health
11 facility treating the care recipient, or
- 12 c. an examining physician or other representative of the
13 Department.

14 B. The Department may require the care recipient to submit to
15 reasonable examinations for the purpose of determining all of the
16 following:

- 17 1. Whether a serious health condition exists;
- 18 2. Whether a care provider's participation is warranted; and
- 19 3. The period of time that the care provider's participation is
20 warranted.

21 SECTION 10. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 909 of Title 40, unless there is
23 created a duplication in numbering, reads as follows:

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1 The Department shall issue the initial payment for family
2 temporary disability insurance benefits to a monetarily eligible
3 claimant who is otherwise determined eligible by the Department
4 under applicable law and regulation within fourteen (14) days after
5 receipt of his or her properly completed disability claim.

6 SECTION 11. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 910 of Title 40, unless there is
8 created a duplication in numbering, reads as follows:

9 Claims for family temporary disability insurance benefits shall
10 be made in accordance with promulgated rules of the Department of
11 Labor. Each employer shall post and maintain in places readily
12 accessible to individuals in his or her service printed statements
13 concerning such regulations and shall make available to each such
14 individual copies of such printed statements, regulations, or
15 matters relating to claims for disability benefits as the Department
16 may prescribe. Such printed statements shall be supplied to each
17 employer by the Department without cost to the employer.

18 SECTION 12. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 911 of Title 40, unless there is
20 created a duplication in numbering, reads as follows:

21 A. In accordance with the rules promulgated by the Department
22 of Labor, a claimant shall establish medical eligibility for each
23 uninterrupted period of full term disability by filing a first claim
24 for disability benefits supported by the certificate of a treating

1 physician or practitioner that establishes the sickness, injury, or
2 pregnancy of the employee, or the condition of the family member
3 that warrants the care of the employee.

4 B. An employee shall be required to file a certificate to
5 establish eligibility when taking leave to care for a family member
6 with a serious health condition. The certificate shall be developed
7 by the Department. In order to establish medical eligibility of the
8 serious health condition of the family member that warrants the care
9 of the employee, the information shall be within the physician's or
10 practitioner's knowledge and shall be based on a physical
11 examination and documented medical history of the family member and
12 shall contain all of the following:

13 1. A diagnosis and diagnostic code prescribed in the
14 International Classification of Diseases, or, if no diagnosis has
15 yet been obtained, a detailed statement of symptoms;

16 2. The date, if known, on which the condition commenced;

17 3. The probable duration of the condition;

18 4. An estimate of the amount of time that the physician or
19 practitioner believes the employee needs to care for the child,
20 parent, grandparent, grandchild, sibling, spouse, or domestic
21 partner; and

22 5. A statement that the serious health condition warrants the
23 participation of the employee to provide care for his or her child,
24 parent, grandparent, grandchild, sibling, spouse, or domestic

1 partner. "Warrants the participation of the employee" includes, but
2 is not limited to, providing psychological comfort and arranging
3 third-party care for the child, parent, grandparent, grandchild,
4 sibling, spouse, or domestic partner, as well as directly providing,
5 or participating in the medical care.

6 C. The Department shall develop a certification form for
7 bonding that is separate and distinct from the certificate required
8 in subsection A of this section for an employee taking leave to bond
9 with a minor child within the first year of the child's birth or
10 placement in connection with foster care or adoption.

11 D. The first and any continuing claim of an individual who
12 obtains care and treatment outside this state shall be supported by
13 a certificate of a treating physician or practitioner duly licensed
14 or certified by the state or foreign country in which the claimant
15 is receiving the care and treatment. If a physician or practitioner
16 licensed by and practicing in a foreign country is under
17 investigation by the Department for filing false claims and the
18 Department does not have legal remedies to conduct a criminal
19 investigation or prosecution in that country, the Department may
20 suspend the processing of all further certifications until the
21 physician or practitioner fully cooperates, and continues to
22 cooperate, with the investigation. A physician or practitioner
23 licensed by and practicing in a foreign country who has been
24 convicted of filing false claims with the Department may not file a

1 certificate in support of a claim for disability benefits for a
2 period of five (5) years.

3 SECTION 13. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 912 of Title 40, unless there is
5 created a duplication in numbering, reads as follows:

6 All medical records obtained by the Department of Labor pursuant
7 to the Paid Family Leave Act, except to the extent necessary for the
8 proper administration of this act, or as provided elsewhere in law,
9 shall be confidential and shall not be published or be open to
10 public inspection in any manner revealing the identity of the
11 claimant or family member or the nature or cause of his or her
12 illness or injury.

13 SECTION 14. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 913 of Title 40, unless there is
15 created a duplication in numbering, reads as follows:

16 A. Each employee shall pay employee contributions at the rate
17 determined by the Department of Labor. On or before October 31 of
18 each calendar year, the Department shall prepare a statement, which
19 shall be a public record, declaring the rate of employee
20 contributions for the calendar year and shall promptly notify all
21 employers of employees covered by family temporary disability
22 insurance benefits.

23 B. The rate of employee contributions shall be established by
24 the Department.

1 C. There is hereby created in the State Treasury a revolving
2 fund for the Department of Labor to be designated as the "Disability
3 Trust Fund". The fund shall be a continuing fund, not subject to
4 fiscal year limitations, and shall consist of all contributions,
5 penalties, and interest provided for in this act. All monies
6 accruing to the credit of the fund are hereby appropriated and may
7 be budgeted and expended by the Department of Labor to perform
8 duties as prescribed by this act. Expenditures from the fund shall
9 be made upon warrants issued by the State Treasurer against claims
10 filed as prescribed by law with the Department of Labor for approval
11 and payment. All benefits provided for in this act shall be payable
12 from the fund. All benefits shall be paid in accordance with the
13 rules as the Department of Labor may prescribe.

14 SECTION 15. The Ballot Title for the proposed act shall be in
15 the following form:

16 BALLOT TITLE

17 Legislative Referendum No. _____ State Question No. _____

18 THE GIST OF THE PROPOSITION IS AS FOLLOWS:

19 This measure creates the Paid Family Leave Act. The measure
20 establishes a family temporary disability insurance program
21 under the Oklahoma Department of Labor. The program will allow
22 up to twelve (12) weeks of wage replacement benefits within a
23 twelve-month period to employees who take time off to care for a
24 seriously ill or injured child, spouse, parent, grandparent,

1 grandchild, sibling, or domestic partner or to care for a newly
2 born or adopted child. The employee will be entitled to receive
3 family temporary disability insurance benefits equal to sixty-
4 five percent (65%) of their wages.

5 SHALL THE PROPOSAL BE APPROVED?

6 FOR THE PROPOSAL - YES _____

7 AGAINST THE PROPOSAL - NO _____

8 SECTION 16. The Chief Clerk of the House of Representatives,
9 immediately after the passage of this act, shall prepare and file
10 one copy thereof, including the Ballot Title set forth in SECTION 15
11 hereof, with the Secretary of State and one copy with the Attorney
12 General.

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