

HOUSE BILL NO. 1441

Introduced by

Representatives Hanson, Boschee, Meier, Richter

Senators Mathern, Oban, Oehlke

1 A BILL for an Act to create and enact chapter 34-06.2, a new section to chapter 57-38, and a
2 new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code,
3 relating to a paid family medical leave program and an income tax credit for contributions paid
4 into the paid family medical leave fund on behalf of eligible employees; to provide an
5 appropriation; to provide for a transfer; and to provide an effective date.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1.** Chapter 34-06.2 of the North Dakota Century Code is created and enacted as
8 follows:

9 **34-06.2-01. Definitions.**

10 As used in this chapter:

- 11 1. "Eligible employee" means an employee who works for a single employer.
12 2. "Employee" means an individual, regardless of age, who performs part-time or
13 full-time services for an employer for remuneration.
14 3. "Employer" means a person within the state which engages the services of employees
15 for remuneration. The term includes:
16 a. The state and its political subdivisions.
17 b. A public and quasi-public corporation in the state.
18 c. A partnership, limited liability company, association, and private corporation,
19 including a public service corporation.
20 4. "Family member" includes a child, stepchild, sibling, spouse, parent, step-parent,
21 grandparent, legal guardian of an eligible employee, grandchild, and relative of an
22 eligible employee living in the same home as the eligible employee.
23 5. "Fund" means the paid family medical leave fund.

1 6. "Wages" means remuneration for services to an employer by an employee, regardless
2 of source, including remuneration based on time, piece-rate, job, or incentive.

3 **34-06.2-02. Paid family medical leave program - Administration.**

4 1. The labor commissioner shall establish a division to administer a paid family medical
5 leave program under this chapter. The labor commissioner shall adopt rules and hire
6 staff, as the commissioner determines necessary, to administer the program under this
7 chapter.

8 2. Eligible employees and employers may contribute to the fund beginning July 1, 2022,
9 and eligible employees may withdraw from the fund for an eligible event under section
10 34-06.2-05 beginning July 1, 2023.

11 **34-06.2-03. Paid family medical leave fund.**

12 There is created in the state treasury a special fund known as the paid family medical leave
13 fund. The fund consists of all moneys deposited in the fund from employers and employees for
14 contributions into the paid family medical leave program. The moneys in the fund may be
15 expended by the labor commissioner only to pay for wages of an eligible employee under the
16 program, and to pay for administrative costs associated with the administration of the program.

17 **34-06.2-04. Program requirements.**

18 The paid family medical leave program must:

19 1. Require an employer to annually notify all employees of the program and of the
20 employee's rights under the program.

21 2. Allow eligible employees and employers to participate in the program.

22 a. Except as provided in subdivision b, an eligible employee who chooses to
23 participate in the program shall contribute to the fund six cents for every ten
24 dollars of wages earned for the benefit of the eligible employee to take leave for
25 an eligible event as described under section 34-06.2-05.

26 b. An employer who chooses to participate in the program may contribute all or a
27 portion of the contributions under subdivision a for eligible employees
28 participating in the program.

29 3. Allow sole proprietors and independent contractors, as determined under the
30 common-law test, to participate in the program. A sole proprietor or independent
31 contractor who chooses to participate in the program shall contribute to the fund six

1 cents for every ten dollars of wages earned for the benefit of the sole proprietor or
2 independent contractor to take leave for an eligible event as described under section
3 34-06.2-05.

4 4. Allow an eligible employee to take leave for an eligible event as described under
5 section 34-06.2-05 if the eligible employee has accrued at least five hundred hours of
6 service before taking leave.

7 5. Provide for sixty-six percent of an eligible employee's average weekly wages, up to a
8 maximum of one thousand dollars per week.

9 6. Provide up to twelve calendar weeks of coverage per calendar year for an eligible
10 employee on leave under the program. An eligible employee may take leave on an
11 intermittent basis.

12 7. Allow an eligible employee to return to the position held with the employer before
13 taking leave, or an equivalent position with commensurate pay and benefits, upon the
14 conclusion of the leave period.

15 8. Allow an eligible employee to maintain the employee's existing benefits while taking
16 leave under the program.

17 9. Allow an employer to require eligible employees to use up to two weeks of sick or
18 vacation leave before using leave under the program.

19 **34-06.2-05. Eligible events.**

20 1. An employer shall grant leave to an eligible employee participating in the program to
21 care for:

22 a. A serious physical or mental health condition of the eligible employee;

23 b. A serious physical or mental health condition of a family member;

24 c. A child during the first calendar year after the date of the child's birth, adoption, or
25 after the date the child's foster care began; or

26 d. The eligible employee's well being or a family member if the eligible employee or
27 family member was the victim of domestic violence, sexual assault, or human
28 trafficking.

29 2. An employer may grant leave to an eligible employee participating in the program for
30 additional events as determined by the employer.

1 **34-06.2-06. Additional family medical leave benefits.**

2 This chapter does not preclude an employer from providing family medical leave benefits
3 that exceed the requirements of this chapter.

4 **34-06.2-07. Retaliation - Discrimination - Prohibition.**

5 An employer may not take retaliatory or discriminatory action against an eligible or potential
6 employee for requesting or taking leave under the program, or indicating the intent to take leave
7 under the program if hired. Retaliatory action includes discharge from or termination of
8 employment, threatening discharge or termination, suspension of employment, demotion, or
9 reduction of hours or wages.

10 **SECTION 2.** A new section to chapter 57-38 of the North Dakota Century Code is created
11 and enacted as follows:

12 **Paid family medical leave program tax credit.**

13 A taxpayer that is an employer within this state and which contributes to the paid family
14 medical leave fund under section 34-06.2-04 is entitled to a credit against state income tax
15 liability under section 57-38-30 or 57-38-30.3 in an amount equal to twenty percent of the
16 contributions paid by the taxpayer to the fund on behalf of eligible employees participating in the
17 program during the taxable year.

18 **SECTION 3.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota
19 Century Code is created and enacted as follows:

20 Paid family medical leave program tax credit under section 2 of this Act.

21 **SECTION 4. APPROPRIATION - TRANSFER TO PAID FAMILY MEDICAL LEAVE FUND -**

22 **INTENT.** There is appropriated out of any moneys in the general fund in the state treasury, not
23 otherwise appropriated, the sum of \$5,000,000, or so much of the sum as may be necessary,
24 which the office of management and budget shall transfer to the paid family medical leave fund
25 for the purpose of administering a paid family medical leave program, for the biennium
26 beginning July 1, 2021, and ending June 30, 2023. The funds must be paid back to the general
27 fund over a period of twenty years. It is the intent of the sixty-seventh legislative assembly that
28 the funds transferred be derived from legacy fund earnings transferred to the general fund
29 during the biennium beginning July 1, 2021, and ending June 30, 2023.

30 **SECTION 5. EFFECTIVE DATE.** Sections 2 and 3 of this Act are effective for taxable years
31 beginning after December 31, 2020.