

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.~~ for an Act to provide for
6 a legislative management study regarding a paid family medical leave program.

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

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

10 ~~— **34-06.2-01. Definitions.**~~

11 ~~— As used in this chapter:~~

12 ~~— 1. "Eligible employee" means an employee who works for a single employer.~~

13 ~~— 2. "Employee" means an individual, regardless of age, who performs part-time or~~
14 ~~full-time services for an employer for remuneration.~~

15 ~~— 3. "Employer" means a person within the state which engages the services of employees~~
16 ~~for remuneration. The term includes:~~

17 ~~— a. The state and its political subdivisions.~~

18 ~~— b. A public and quasi-public corporation in the state.~~

19 ~~— c. A partnership, limited liability company, association, and private corporation,~~
20 ~~including a public service corporation.~~

21 ~~— 4. "Family member" includes a child, stepchild, sibling, spouse, parent, step-parent,~~
22 ~~grandparent, legal guardian of an eligible employee, grandchild, and relative of an~~
23 ~~eligible employee living in the same home as the eligible employee.~~

24 ~~— 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.~~

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - PAID FAMILY MEDICAL LEAVE PROGRAMS.

1. During the 2021-22 interim, the legislative management shall consider studying the financial impact of implementing a state-facilitated paid family medical leave program that builds on the federal Family Medical Leave Act, which provides job-protected but unpaid time off to eligible individuals. The study must include:
 - a. A review of the feasibility and desirability of creating a state-facilitated paid family medical leave program that has optional employer and employee participation and provides replacement salary for eligible employees during an eligible event; and
 - b. A review of the financial impact a paid family medical leave program would have on North Dakota workers and businesses and the financial viability of a program.
2. The legislative management shall contract with a private third party to conduct an actuarial analysis and provide a report to the legislative management. The analysis and report must consider the feasibility of multiple contribution and benefit levels, and provide a review of state-facilitated paid leave programs that have been enacted in other states.
3. The legislative management shall report its findings and recommendations, together with any legislation to implement the recommendations, to the sixty-eighth legislative assembly.