

Introduced by

Senators Sinner, Mathern, Poolman

Representatives Hawken, Meier, Strinden

1 A BILL for an Act to create and enact a new section to chapter 34-06, a new section to chapter
2 57-38, and a new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century
3 Code, relating to an employer tax credit for wages paid for family medical leave; and to provide
4 an effective date.

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

6 **SECTION 1.** A new section to chapter 34-06 of the North Dakota Century Code is created
7 and enacted as follows:

8 **Employer-paid family medical leave.**

9 1. As used in this section and section 2 of this Act:

- 10 a. "Employee" means an employee who has been employed by the employer for at
11 least twelve months and has at least one thousand two hundred fifty hours of
12 employment for the employer during the twelve-month period immediately
13 preceding the family medical leave. The term does not include an independent
14 contractor.
- 15 b. "Employer" means a private sector employer.
- 16 c. "Family medical leave" means leave under an employer-paid family medical
17 leave policy that complies with subsection 2.
- 18 d. "Wages" means the hourly rate of pay for employment. If an employee is not paid
19 on an hourly basis, the wages of such employee are to be prorated to an hourly
20 basis.

21 2. An employer may qualify for an employer-paid family medical leave tax credit under
22 section 2 of this Act if the employer grants an employee's request for family medical
23 leave under a family medical leave policy that complies with this subsection.

24 a. The employer's family medical leave policy:

- 1 (1) Must allow an employee to take up to twelve workweeks of leave in a
2 twelve-month period for one or more of the following reasons:
3 (a) The birth of a child or placement of a child with the employee for
4 adoption or foster care;
5 (b) To care for a spouse, child, or parent who has a serious health
6 condition;
7 (c) For a serious health condition that makes the employee unable to
8 perform the essential functions of the employee's job; and
9 (d) For any qualifying exigency arising out of the fact a spouse, child, or
10 parent is a military member on covered active duty or call to covered
11 active duty status.
12 (2) Must provide wages during the period of leave which may not be less than
13 seventy-five percent of the employee's normal wages.
14 (3) Upon approval of the employer, may allow an employee to take family
15 medical leave on an intermittent or reduced schedule basis.
16 (4) Must maintain the employee's health coverage under any group health plan
17 on the same terms as if the employee had not taken leave and may not
18 result in the loss of any employment benefit that accrued before the start of
19 the employee's leave.
20 (5) Upon the employee's return from leave, must restore the employee to the
21 employee's original or equivalent position with equivalent pay, benefits, and
22 other employment terms.
23 b. Under a family medical leave policy that meets the requirements of subdivision a:
24 (1) The employer may establish reasonable notice requirements for an
25 employee requesting leave under the family medical leave policy. However,
26 these notice requirements may not be significantly different from notice
27 requirements for other leave offered by the employer, such as paid time off,
28 sick leave, and annual leave.
29 (2) The employer may require an employee to provide certification from a
30 health care provider confirming or in support of the reason the employee
31 provided for requesting leave.

1 (3) The employer may require an employee to use any accrued paid leave
2 before taking family medical leave.

3 3. This section does not require an employer to provide an employee with employer-paid
4 family medical leave. Other than ineligibility for the credit allowed under section 2 of
5 this Act, this section does not subject an employer to any penalty, liability, or other
6 consequence for failure to comply with the family medical leave policy requirements of
7 subsection 2.

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

10 **Employer-paid family medical leave credit.**

11 1. To qualify for a credit under this section, the taxpayer's family medical leave policy
12 must meet the requirements under section 1 of this Act.

13 2. A taxpayer that is an employer in this state is entitled to a credit against tax liability as
14 determined under sections 57-38-30 and 57-38-30.3 for a portion of the family medical
15 leave wages paid to an individual employed in this state by the taxpayer. The amount
16 of the credit to which a taxpayer is entitled is up to five hundred dollars of the amount
17 of family medical leave wages paid to each qualifying employee per week for up to a
18 maximum of twelve weeks.

19 3. Only wages actually paid during the taxpayer's taxable year may be considered for
20 purposes of this section.

21 4. The credit under this section may not exceed a taxpayer's liability as determined under
22 this chapter for any taxable year.

23 5. If the amount of the credit determined under this section exceeds the liability for tax
24 under this chapter, the excess may be carried forward to each of the next five
25 succeeding taxable years.

26 6. A partnership, subchapter S corporation, limited partnership, limited liability company,
27 or any other passthrough entity entitled to the credit under this section must be
28 considered to be the taxpayer for purposes of calculating the credit. The amount of the
29 allowable credit must be determined at the passthrough entity level. The total credit
30 determined at the entity level must be passed through to the partners, shareholders, or
31 members in proportion to their respective interests in the passthrough entity. An

1 individual taxpayer may take the credit passed through under this subsection against
2 the individual's state income tax liability under section 57-38-30.3.

3 7. To receive the tax credit provided under this section, a taxpayer shall claim the credit
4 in the form and manner prescribed by the tax commissioner.

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

7 Employer-paid family medical leave credit under section 2 of this Act.

8 **SECTION 4. EFFECTIVE DATE.** Sections 2 and 3 of this Act are effective for taxable years
9 beginning after December 31, 2014.