

HOUSE BILL No. 6192

September 30, 1992, Introduced by Reps. Brown, Kilpatrick, Berman, Barns, Stallworth, Varga, Wallace, Harrison, Jacobetti, Pitoniak, Joe Young, Sr., Yokich, Profit, Baade, Jonker, Gire, Leland, Jondahl, Ciaramitaro and Hollister and referred to the Committee on Labor.

A bill to provide for family and medical leave for certain employees; to prescribe the powers and duties of employers, employees, and certain state officials and agencies; and to prescribe penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "family and medical leave act".

3 Sec. 2. As used in this act:

4 (a) "Department" means the department of labor.

5 (b) "Director" means the director of labor or his or her
6 designee.

7 (c) "Eligible employee" means an individual employed by an
8 employer and who meets both of the following conditions:

9 (i) Has been employed for at least 12 months by the employer
10 with respect to whom leave is requested under section 3.

1 (ii) Has been employed for at least 1,250 hours of service
2 with the employer during the 12-month period described in
3 subparagraph (i).

4 Eligible employee does not include an employee who is employed at
5 a worksite at which the employer employs fewer than 50 employees
6 if the total number of employees employed by that employer within
7 75 miles of that worksite is fewer than 50.

8 (d) "Employee" means an individual employed by an employer.

9 (e) "Employer" means a person who employs 50 or more employ-
10 ees for each working day during each of 20 or more calendar work-
11 weeks in the current or immediately preceding calendar year.

12 Employer includes, but is not limited to:

13 (i) Any person who acts, directly or indirectly, in the
14 interest of an employer to any of the employees of the employer.

15 (ii) A successor in interest of the employer.

16 (iii) The state or a political subdivision of the state.

17 (f) "Employment benefits" means all benefits provided or
18 made available to employees by an employer, including, but not
19 limited to, group life insurance, health insurance, disability
20 insurance, sick leave, annual leave, educational benefits, and
21 pensions, regardless of whether the benefits are provided by a
22 practice or written policy of an employer or through an employee
23 benefit plan as defined in section 3(3) of subtitle A of title I
24 of the employee retirement income security act of 1974, Public
25 Law 93-406, 29 U.S.C. 1002.

26 (g) "Health care provider" means:

1 (i) A doctor of medicine or osteopathy who is authorized to
2 practice medicine or surgery, as appropriate, by this state.

3 (ii) Any person determined by the director to be capable of
4 providing health care services.

5 (h) "Parent" means the biological parent of an employee or
6 an individual who stood in loco parentis to an employee when the
7 employee was a son or daughter.

8 (i) "Person" means an individual, partnership, corporation,
9 association, or other legal entity.

10 (j) "Reduced leave schedule" means leave that reduces the
11 usual number of hours per workweek or hours per workday of an
12 employee.

13 (k) "Serious health condition" means an illness, injury,
14 impairment, or physical or mental condition that involves either
15 of the following:

16 (i) Inpatient care in a hospital, hospice, or residential
17 medical care facility.

18 (ii) Continuing treatment by a health care provider.

19 (l) "Son or daughter" means a biological child, adopted
20 child, foster child, stepchild, legal ward, or child of a person
21 standing in loco parentis who is either of the following:

22 (i) Less than 18 years of age.

23 (ii) Eighteen years of age or older and incapable of
24 self-care because of a mental or physical disability.

25 Sec. 3. (1) Subject to section 4, an eligible employee is
26 entitled to a total of 12 workweeks of leave during any 12-month
27 period for 1 or more of the following:

1 (a) Because of the birth of a son or daughter of the
2 employee and in order to care for the son or daughter.

3 (b) Because of the placement of a son or daughter with the
4 employee for adoption or foster care.

5 (c) In order to care for the spouse, or a son, daughter, or
6 parent, of the employee, if the spouse, son, daughter, or parent
7 has a serious health condition.

8 (d) Because of a serious health condition that makes the
9 employee unable to perform the functions of his or her position.

10 (2) The entitlement to leave under subsection (1)(a) and (b)
11 for a birth or placement of a son or daughter expires at the end
12 of the 12-month period beginning on the date of the birth or
13 placement.

14 (3) An employee shall not take a leave under
15 subsection (1)(a) or (b) intermittently unless the employee and
16 his or her employer agree otherwise. Subject to this act, an
17 employee may take a leave under subsection (1)(c) or (d) inter-
18 mittently when medically necessary. If an employee requests
19 intermittent leave under subsection (1)(c) or (d) that is fore-
20 seeable based on planned medical treatment, the employer may
21 require the employee to transfer temporarily to an available
22 alternative position offered by the employer for which the
23 employee is qualified and that has equivalent pay and benefits
24 and better accommodates recurring periods of leave than the regu-
25 lar employment position of the employee.

26 (4) On agreement between the employer and the employee, an
27 employee may take a leave under subsection (1) on a reduced leave

1 schedule. The reduced leave schedule shall not result in a
2 reduction in the total amount of leave to which the employee is
3 entitled under subsection (1).

4 (5) Except as provided in subsection (6), leave granted
5 under subsection (1) may consist of unpaid leave.

6 (6) If an employer provides paid leave for fewer than 12
7 workweeks, the additional weeks of leave necessary to attain the
8 12 workweeks of leave required under this act may be provided
9 without compensation.

10 (7) An eligible employee may elect, or an employer may
11 require an employee, to substitute any of the accrued paid vaca-
12 tion leave, personal leave, or family leave of the employee for
13 leave provided under subsection (1)(a), (b), or (c) for any part
14 of the 12-week period of the leave. An eligible employee may
15 elect, or an employer may require an employee, to substitute any
16 of the accrued paid vacation leave, personal leave, or medical or
17 sick leave of the employee for leave provided under
18 subsection (1)(c) or (d) for any part of the 12-week period of
19 the leave. However, this act does not require an employer to
20 provide paid sick leave or paid medical leave in any situation in
21 which the employer would not normally provide paid leave.

22 (8) If the necessity for leave under subsection (1)(a) or
23 (b) is foreseeable based on an expected birth or adoption, the
24 employee shall provide the employer with not less than 30 days'
25 notice before the date the leave is to begin of his or her inten-
26 tion to take the leave. However, if the date of the birth or
27 adoption requires the leave to begin in less than 30 days, the

1 employee shall provide the notice as is practicable. If the
2 necessity for leave under subsection (1)(c) or (d) is foreseeable
3 based on planned medical treatment, the employee shall do both of
4 the following:

5 (a) Make a reasonable effort to schedule the treatment so as
6 to not unnecessarily disrupt the operations of the employer,
7 subject to the approval of the health care provider of the
8 employee or of the son, daughter, spouse, or parent of the
9 employee, as applicable.

10 (b) Provide the employer with not less than 30 days' notice
11 before the date the leave is to begin of the employee's intention
12 to take leave. However, if the date of the treatment requires
13 leave to begin in less than 30 days, the employee shall provide
14 the notice as is practicable.

15 (9) If a husband and wife entitled to leave under
16 subsection (1) are employed by the same employer, the aggregate
17 number of workweeks of leave to which both are entitled may be
18 limited to 12 workweeks during any 12-month period if the leave
19 is taken under subsection (1)(a), (b), or (c).

20 Sec. 4. (1) An employer may require that a request for
21 leave under section 3(1)(c) or (d) be supported by a certifica-
22 tion issued by the health care provider of the eligible employee
23 or of the son, daughter, spouse, or parent of the employee, as
24 appropriate. The employee shall provide, in a timely manner, a
25 copy of the certification to the employer.

26 (2) Certification provided under subsection (1) is
27 sufficient if it states all of the following, as applicable:

1 (a) The date on which the serious health condition
2 commenced.

3 (b) The probable duration of the condition.

4 (c) The appropriate medical facts within the knowledge of
5 the health care provider regarding the condition.

6 (d) Either of the following:

7 (i) For purposes of leave under section 3(1)(c), a statement
8 that the eligible employee is needed to care for the son, daugh-
9 ter, spouse, or parent and an estimate of the amount of time that
10 the employee is needed to care for the son, daughter, spouse, or
11 parent.

12 (ii) For purposes of leave under section 3(1)(d), a state-
13 ment that the employee is unable to perform the functions of the
14 position of the employee.

15 (e) In the case of certification for intermittent leave for
16 planned medical treatment, the dates on which the treatment is
17 expected to be given and the duration of the treatment.

18 (3) If an employer has reason to doubt the validity of the
19 certification provided under subsection (1) for leave under
20 section 3(1)(c) or (d), the employer may require, at his or her
21 expense, that the eligible employee obtain the opinion of a
22 second health care provider designated or approved by the
23 employer concerning any information certified under
24 subsection (2) for the leave. A health care provider designated
25 or approved under this subsection shall not be employed on a reg-
26 ular basis by the employer.

1 (4) In any case in which the second opinion described in
2 subsection (3) differs from the opinion in the original
3 certification provided under subsection (1), the employer may
4 require, at his or her expense, that the employee obtain the
5 opinion of a third health care provider designated or approved
6 jointly by the employer and the employee concerning the informa-
7 tion certified under subsection (2). The opinion of the third
8 health care provider concerning the information certified under
9 subsection (2) shall be final and binding on the employer and the
10 employee.

11 (5) The employer may require that an eligible employee
12 obtain subsequent recertifications on a reasonable basis.

13 Sec. 5. (1) Except as provided in subsection (4), an eligi-
14 ble employee who takes a leave under section 3 for the intended
15 purpose of the leave is entitled on return from the leave to
16 either of the following:

17 (a) Restoration by the employer to the position of employ-
18 ment held by the employee when the leave commenced.

19 (b) Restoration to an equivalent position with equivalent
20 employment benefits, pay, and other terms and conditions of
21 employment.

22 (2) The taking of leave under section 3 shall not result in
23 the loss of any employment benefit accrued before the date on
24 which the leave commenced.

25 (3) As a condition of restoration under subsection (1), the
26 employer may have a uniformly applied practice or policy that
27 requires each employee to receive certification from the health

1 care provider of the employee that the employee is able to resume
2 work. However, this subsection does not supersede a state statute,
3 local ordinance, or collective bargaining agreement that
4 governs the return to work of employees taking leave under
5 section 3.

6 (4) An employer may deny restoration under subsection (1) to
7 a salaried eligible employee who is among the highest paid 10% of
8 the employees employed by the employer within 75 miles of the
9 facility at which the employee is employed if:

10 (a) The denial is necessary to prevent substantial and
11 grievous economic injury to the operations of the employer.

12 (b) The employer notifies the employee of his or her intent
13 to deny restoration at the time the employer determines that the
14 injury would occur.

15 (c) In any case in which the leave has commenced, the
16 employee elects not to return to employment after receiving the
17 notice.

18 (5) This section shall not be construed to entitle a
19 restored employee to the following:

20 (a) The accrual of any seniority or employment benefits
21 during any period of leave.

22 (b) Any right, benefit, or position of employment other than
23 a right, benefit, or position to which the employee would have
24 been entitled had the employee not taken the leave.

25 (6) This section does not prohibit an employer from requiring
26 an employee on leave under section 3 to report periodically

1 to the employer on the status and intention of the employee to
2 return to work.

3 Sec. 6. (1) Except as provided in subsection (2), during
4 any period that an eligible employee takes a leave under
5 section 3, the employer shall maintain coverage under any group
6 health plan as defined in section 5000(b)(1) of the internal rev-
7 enue code of 1986, 26 U.S.C. 5000, for the duration of the leave
8 at the level and under the conditions coverage would have been
9 provided if the employee had continued in employment continuously
10 from the date the employee commenced the leave until the date the
11 employee is restored under section 5.

12 (2) The employer may recover the premium that the employer
13 paid for maintaining coverage for the employee under the group
14 health plan during any period of unpaid leave under section 3 if
15 both of the following apply:

16 (a) The employee fails to return from a leave under
17 section 3 after the period of leave to which the employee is
18 entitled has expired.

19 (b) The employee fails to return to work for a reason other
20 than either of the following:

21 (i) The continuation, recurrence, or onset of a serious
22 health condition that entitled the employee to leave under
23 section 3(1)(c) or (d).

24 (ii) Other circumstances beyond the control of the
25 employee.

26 (3) An employer may require that a claim that an employee is
27 unable to return to work because of the continuation, recurrence,

1 or onset of the serious health condition described in
2 subsection (2)(b)(i) be supported by either of the following:

3 (i) A certification issued by the health care provider of
4 the eligible employee, in the case of an employee unable to
5 return to work because of a condition specified in
6 section 3(1)(d).

7 (ii) A certification issued by the health care provider of
8 the son, daughter, spouse, or parent of the employee, in the case
9 of an employee unable to return to work because of a condition
10 specified in section 3(1)(c).

11 The employee shall provide in a timely manner a copy of the cer-
12 tification to the employer.

13 (4) The certification described in subsection (3)(i) is suf-
14 ficient if the certification states that a serious health condi-
15 tion prevented the employee from being able to perform the func-
16 tions of the position of the employee on the date that the leave
17 of the employee expired. The certification described in
18 subsection (3)(ii) is sufficient if the certification states that
19 the employee is needed to care for the son, daughter, spouse, or
20 parent who has a serious health condition on the date that the
21 leave of the employee expired.

22 Sec. 7. (1) An employer shall not do any of the following:

23 (a) Interfere with, restrain, or deny the exercise of or the
24 attempt to exercise any right provided under this act.

25 (b) Discharge or in any other manner discriminate against
26 any individual for opposing any practice made unlawful by this
27 act.

1 (2) A person shall not discharge or in any other manner
2 discriminate against any individual because the individual did
3 any of the following:

4 (a) Filed a charge, or has instituted or caused to be insti-
5 tuted a proceeding under or related to this act.

6 (b) Gave, or is about to give, any information in connection
7 with an inquiry or proceeding relating to any right provided
8 under this act.

9 (c) Testified, or is about to testify, in any inquiry or
10 proceeding relating to any right provided under this act.

11 Sec. 8. (1) To ensure compliance with this act or any rule
12 promulgated under this act, the director may investigate any com-
13 plaint made under this act.

14 (2) An employer shall keep and preserve records related to
15 leave taken under this act and in accordance with rules promul-
16 gated by the department.

17 (3) The director shall not under this act require an
18 employer or any plan, fund, or program to submit to the director
19 any books or records more than once during any 12-month period
20 unless he or she has reasonable cause to believe there may exist
21 a violation of this act or any rule promulgated under this act,
22 or is investigating a complaint made under this act.

23 (4) The director may issue subpoenas, as necessary, for pur-
24 poses of any investigation provided for in this section.

25 Sec. 9. (1) An employer who violates section 7 is liable to
26 an eligible affected employee for both of the following, as
27 appropriate:

1 (a) Damages equal to all of the following, as appropriate:

2 (i) The amount of:

3 (A) Any wages, salary, employment benefits, or other compen-
4 sation denied or lost to the employee by reason of the
5 violation.

6 (B) In a case in which wages, salary, employment benefits,
7 or other compensation have not been denied or lost to the employ-
8 ee, any actual monetary losses sustained by the employee as a
9 direct result of the violation, such as the cost of providing
10 care, up to a sum equal to 12 weeks of wages or salary for the
11 employee.

12 (ii) The interest on the amount described in
13 subparagraph (i) calculated at the prevailing rate.

14 (iii) An additional amount as liquidated damages equal to
15 the sum of the amount described in subparagraph (i) and the
16 interest described in subparagraph (ii). However, if an employer
17 who has violated section 7 proves to the satisfaction of the
18 court that the act or omission that violated section 7 was in
19 good faith and that the employer had reasonable grounds for
20 believing that the act or omission was not a violation of
21 section 7, the court, in its discretion, may reduce the amount of
22 the liability to the amount and interest determined under
23 subparagraphs (i) and (ii), respectively.

24 (b) Such equitable relief as may be appropriate, including,
25 but not limited to, employment, reinstatement, and promotion.

26 (2) An action to recover the damages or equitable relief
27 described in subsection (1) may be maintained against an employer

1 in any court of competent jurisdiction by 1 or more employees for
2 and in behalf of the employees or the employees and other employ-
3 ees similarly situated.

4 (3) In an action brought under this section, the court, in
5 addition to any judgment awarded to the plaintiff, shall award
6 reasonable attorney's fees, reasonable expert witness fees, and
7 court costs.

8 (4) The right provided by subsection (1) to bring an action
9 by or on behalf of an employee terminates, unless an action is
10 dismissed without prejudice on motion of the director, on:

11 (a) The filing of a complaint by the director in an action
12 under section 10 in which either of the following is sought:

13 (i) Restraint of any further delay in the payment of the
14 damages described in subsection (1)(a) to an employee by an
15 employer liable under subsection (1) for the damages.

16 (ii) Equitable relief as a result of alleged violations of
17 section 7.

18 (b) The filing of a complaint by the director in an action
19 under section 10 in which a recovery is sought of the damages
20 described in subsection (1)(a) owing to an eligible employee by
21 an employer liable under subsection (1).

22 Sec. 10. (1) The director shall receive, investigate, and
23 attempt to resolve complaints of violations of section 7.

24 (2) The director may bring an action in any court of compe-
25 tent jurisdiction for appropriate injunctive relief and to
26 recover on behalf of an eligible employee the damages described
27 in section 9(1).

1 (3) Any money recovered by the director on behalf of an
2 employee pursuant to subsection (2) shall be held in a special
3 deposit account and shall be paid promptly, on order of the
4 director, directly to each employee affected. Any money not paid
5 to an employee because of inability to do so within a period of 3
6 years shall be deposited into the state treasury as miscellaneous
7 receipts.

8 Sec. 11. (1) Except as provided in subsection (2), an
9 action may be brought under section 9 or 10 not later than 2
10 years after the date of the last event constituting the alleged
11 violation for which the action is brought.

12 (2) In the case of an action brought for a willful violation
13 of section 7, the action may be brought within 3 years of the
14 date of the last event constituting the alleged violation for
15 which the action is brought.

16 (3) In determining when an action is commenced by the direc-
17 tor under section 10 for the purposes of this subsection, it is
18 considered to be commenced on the date when the complaint is
19 filed.

20 Sec. 12. The department shall promulgate, as necessary,
21 rules to implement this act pursuant to the administrative proce-
22 dures act of 1969, Act No. 306 of the Public Acts of 1969, being
23 sections 24.201 to 24.328 of the Michigan Compiled Laws.