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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

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SB 84 Original	DIGEST 2015 Regular Session	Peterson
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Proposed law creates the "Louisiana Family and Medical Leave Benefits Act" (FMLA).

Proposed law provides for the following definitions:

- (1) "Covered individual" means any person who meets all of the following:
  - (a) Is employed in a job which is subject to withholding payroll taxes for unemployment compensation benefits.
  - (b) Has worked the length of time necessary to be entitled to receive unemployment compensation benefits.
  - (c) Meets the eligibility requirements to receive family and medical leave insurance benefits.
  - (d) Has been employed and payroll taxes have been paid by the employee and the employer into the La. FMLA Fund.
  - (e) Submits an application on forms promulgated by the Workforce Commission.
- (2) "Commission" means the La. Workforce Commission.
- (3) "Director" means the Executive Director of La. Workforce Commission.
- (4) "Employer" means that individual, company or other entity which meets the definition of "employer" under Louisiana law for unemployment benefits except for all of the following:
  - (a) A self-employed individual who does not elect FMLA coverage.
  - (b) Any department, office, division, agency, commission, board, committee or other organizational unit of the state.
  - (c) Any local government or political subdivision of the state.
  - (d) An individual, company, or other entity which employs 20 or less employees.
- (5) "Family member" means any of the following:

- (a) A biological, adopted or foster child, stepchild or legal ward, or a child to whom the employee stands in loco parentis.
  - (b) A biological, foster, stepparent or adoptive parent, or legal guardian of an employee or an employee's spouse or a person who stood in loco parentis when the employee or the employee's spouse was a minor child.
  - (c) A person to whom the employee is legally married under the laws of La.
  - (d) A domestic partner of the employee when the employer provides benefits to domestic partners as part of the employee's benefit compensation package.
  - (e) A grandparent or step-grandparent of employee or employee's spouse or domestic partner.
  - (f) A grandchild or step-grandchild of employee or employee's spouse or domestic partner.
  - (g) A biological, foster, or adopted sibling, or the spouse or domestic partner of such a sibling.
  - (h) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- (6) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a health care provider and which injury is not eligible for workers' compensation benefits.
- (7) "Application year" means the 12-month period beginning on the 1st day of the calendar week in which an individual files an application for family leave insurance benefits.
- (8) "Family and medical leave insurance benefits" means the benefits provided under the La. FMLA.
- (9) "Federal Family Medical Leave Act" means that federal law known as the "Family Medical Leave Act of 1993".
- (10) "Qualifying exigency leave" means leave for the family member of a service member of the military for any of the following reasons:
- (a) Leave needed because of notice of seven days or less before deployment.
  - (b) Leave to attend military events and related activities.

- (c) Leave to attend child care and school activities if and only if the leave is required due, indirectly or directly, to the active duty call or active duty status of the family member.
- (d) Leave to make financial and legal arrangements for the service member's absence or because of the absence.
- (e) Leave to attend counseling provided by someone other than a healthcare provider, provided that the need for counseling arises from the active duty or call to active duty status of a covered military member.
- (f) Leave to spend time with a service member who is on short-term, temporary rest and recuperation leave during the period of deployment. Eligible employees may take up to five days of leave for each instance of rest and recuperation.
- (g) Leave to attend post deployment activities.
- (h) Any leave related to issues that arise out of active duty or a call to active duty that an employer and employee agree should be covered.

Proposed law provides that, beginning Jan. 1, 2017, La. FMLA insurance benefits are payable to an individual who is a "covered individual" who meets any of the following:

- (1) Because of birth, adoption, or placement through foster care, is caring for a new child during the first year after the birth, adoption, or placement.
- (2) Is caring for a family member with a serious health condition.
- (3) Has a serious health condition that makes the covered individual unable to perform the functions of the position of such employee.
- (4) Is caring for a qualifying service member who is the covered individual's next of kin.
- (5) Has a "qualifying exigency" arising out of the deployment of a family member of the covered individual.

Proposed law provides that benefits are only payable to an individual who has been employed and payroll taxes have been paid into the La. FMLA Account Fund by and on behalf of the employee as provided for in at least one year. The calculation of the length of time needed to be eligible for FMLA insurance benefits will be the same as the length of time necessary to be eligible for unemployment compensation benefits.

Proposed law provides that the maximum number of weeks during which FMLA benefits are payable in an application year is 12 weeks, except if a covered individual receives benefits because the individual has a serious health condition that makes the covered individual unable to perform the

functions at work.

Proposed law provides benefits are not payable for the initial five consecutive calendar days in an application year that a covered individual would otherwise be eligible for benefits.

Proposed law provides that, if the covered individual uses 10 or more days of paid family and medical leave benefits in an application year, the covered individual will be paid for the five-day waiting period. The waiting period need only be served once every application year. Employers may not force an employee to use accrued leave, such as vacation or sick leave, during the waiting period.

Proposed law provides that the first payment of benefits must be made to an individual within two weeks after the claim is filed and subsequent payments must be made semimonthly thereafter.

Proposed law provides that the amount of FMLA insurance benefits shall be determined as follows:

- (1) The weekly benefit shall be calculated and paid in the same manner as unemployment compensation.
- (2) FMLA insurance benefits are not payable for less than one day or eight consecutive hours of family and medical leave taken in one work week.
- (3) If the IRS determines that family and medical leave insurance benefits are subject to federal income tax and an individual elects to have federal income tax deducted and withheld from benefits, the commission shall deduct and withhold the amount specified in the Internal Revenue Code.

Present law provides that unemployment compensation taxes are to be paid exclusively by the employer.

Proposed law provides that payroll taxes shall be calculated and withheld in the same manner and in the same amounts as unemployment compensation, except that the payroll taxes for the FMLA insurance benefits shall be paid 50% by the employer and 50% by employee.

Proposed law provides that, after a period in which a covered individual receives family and medical leave insurance benefits, the covered individual is entitled to be restored to an equivalent position of employment in the same manner as an employee entitled to leave under federal Family Medical Leave Act, with the employer from whom leave was taken, provided that the covered individual meets the standards for reinstatement.

Proposed law provides that the covered individual entitled to family and medical leave insurance benefits shall have their employment benefits continued in a manner identical to that required under the federal Family and Medical Leave Act for the time that the covered individual is absent from work and receiving family and medical leave insurance benefits.

Proposed law provides that an employer may not discharge, expel, demote, or take adverse

employment action against an employee because the employee filed for, applied for, or used FMLA benefits or communicated to the employer an intent to file a claim, a complaint, or an appeal, or has testified or is about to testify for another employee in any proceeding for FMLA.

Proposed law provides, if time taken with wage replacement also qualifies as a reason for leave under the federal Family Medical Leave Act, time paid for La. FMLA shall run concurrently with leave taken under the federal FMLA.

Proposed law provides that an employer may require that FMLA payments made be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy. Proposed law further provides that the employer must give individuals in its employ written notice of this requirement.

Proposed law provides that the employer's obligation to comply with a collective bargaining agreement or employer policy that provides greater leave cannot be diminished to the level of benefits required in the La. FMLA. Proposed law provides that an employee's right to leave under the La. FMLA may not be diminished by a collective bargaining agreement entered into or renewed, or an employer policy adopted or retained, after the effective date of proposed law.

Proposed law provides that any agreement by an individual to waive the individual's rights under this the La. FMLA is null and void and against public policy.

Proposed law provides that whoever violates a provision of the La. FMLA will be subject to a civil fine of not less than \$20 nor more than \$200 dollars. Each day such violation continues shall constitute a separate offense.

Proposed law provides that a covered individual is disqualified from FMLA insurance benefits for one year if the individual willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under the FMLA.

Proposed law provides that if FMLA insurance benefits are paid erroneously or as a result of willful misrepresentation, or if a claim for family and medical leave benefits is rejected after benefits are paid, the commission may seek repayment of benefits from the recipient. Proposed law provides that the director shall exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

Proposed law provides that a self-employed person may elect coverage under the La. FMLA for an initial period of not less than three years or a subsequent period of not less than one year immediately following another period of coverage. Proposed law further provides that the self-employed person must file a notice of election in writing with the director on a form promulgated by the commission and the election becomes effective on the date of filing the notice.

Proposed law provides that a self-employed person who has elected coverage may withdraw from coverage within 30 days after the end of the three-year period of coverage, or at such other times as

the commission may prescribe by rule, by filing written notice with the director, such withdrawal to take effect not sooner than 30 days after filing the notice.

Proposed law provides that the commission shall establish and administer the family and medical leave insurance program and pay family and medical leave insurance benefits as specified in the La. FMLA.

Proposed law provides that the commission shall promulgate rules and forms for filing claims for benefits.

Proposed law provides that the commission shall notify the employer within five business days of a claim being filed. The commission shall use information sharing and integration technology to facilitate the disclosure of relevant information or records so long as an individual consents to the disclosure as required under state law.

Proposed law provides that information contained in the files and records pertaining to an individual are confidential and not open to public inspection, other than to public employees in the performance of their official duties. Proposed law, however, provides that the individual or an authorized representative of an individual may review the records or receive specific information from the records on the presentation of the signed authorization of the individual.

Proposed law provides that, if the IRS determines that family leave insurance benefits under the La. FMLA are subject to federal income tax, the commission must advise an individual filing a new claim for family leave insurance benefits, at the time of filing such claim, all of the following:

- (1) The IRS has determined that benefits are subject to federal income tax.
- (2) Requirements exist pertaining to estimated tax payments.
- (3) The individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits at the amount specified in the Internal Revenue Code.
- (4) The individual is permitted to change a previously elected withholding status.
- (5) Amounts deducted and withheld from benefits must remain in the family leave insurance account until transferred to the federal taxing authority as a payment of income tax.
- (6) The director shall follow all procedures specified by the federal internal revenue service pertaining to the deducting and withholding of income tax.

Proposed law provides that there is created in the state treasury a special fund to be known as the Louisiana Family and Medical Leave Account Fund. All monies which are deposited or paid into this fund are appropriated and made available to the director and shall be expended solely for the purpose of defraying the cost of the administration of the FMLA and the payment of family and medical leave insurance benefits.

Proposed law provides that the fund shall consist of payroll taxes collected pursuant to the La. FMLA. Proposed law provides that the fund may receive any and all grants, appropriations from the U.S. government, or any agency thereof, or from any other source, to carry out the purpose of the La. FMLA.

Proposed law provides that all monies in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury, except that monies in this fund shall not be commingled with other state funds, but they shall be maintained in a separate account on the books of the depository. Proposed law provides that the state treasurer shall, in accordance with law, require collateral security from the depository bank in the full amount of all employment security administration funds on deposit, and said depository bank is authorized to pledge such collateral security. Proposed law further provides that the collateral security shall be kept separate and distinct at all times from any collateral taken by the state treasury for other state funds and that such collateral security shall be pledged at an amount not to exceed face value. Proposed law provides that any balances in this fund shall not lapse at any time, but shall be continuously available to the administrator for expenditure consistent with the purposes of the La. FMLA.

Proposed law provides that whenever, in the judgment of the treasurer, there shall be in the La. FMLA Fund monies in excess of that amount deemed by the treasurer to be sufficient to meet the current expenditures, the treasurer shall have full power to invest, reinvest, manage, contract, sell, or exchange investments acquired with such excess funds in the manner prescribed by La. law.

Proposed law provides that a covered individual shall be entitled, at the option of the employee, to take this leave on an intermittent leave schedule, except that the employee shall not be entitled to an intermittent leave schedule for a period exceeding 24 consecutive weeks unless shown to be medically necessary.

Proposed law provides the employee shall make a reasonable effort to schedule intermittent leave so as not to disrupt unduly the operations of the employer. The employee shall provide the employer with prior notice of the care, medical treatment, or continuing supervision by a health care provider necessary due to a serious health condition of a family member, in a manner which is reasonable and practicable. Leave taken on an intermittent leave schedule shall not result in a reduction of the total amount of leave to which an employee is entitled.

Proposed law provides beginning Jan. 1, 2016, the commission shall report quarterly to the Senate Committee on Labor and Industrial Relations and the House Committee on Labor and Industrial Relations which committees shall have legislative oversight of program. Proposed law provides that the report will advise the legislature of projected and actual program participation, premium rates, fund balances, and outreach efforts by the department.

Proposed law provides that the commission shall conduct a public education campaign to inform workers and employers regarding the availability of paid family and medical leave. Proposed law provides the commission may use no more than ½ of 1% of the funds collected for the La. FMLA program in a given year to pay for the public education program. Proposed law provides that

outreach information shall be available in English and other languages spoken by more than five percent of the state's population as that group's primary language.

Proposed law provides that the commission is encouraged to use state data collection and technology to the extent possible in order to keep the cost of the program down and to integrate the program with existing state policies.

Proposed law provides that the legislature finds that Louisiana law has historically provided two wage replacement programs to provide income security to employees who find themselves unable to work. First, the unemployment insurance benefit program was enacted for workers who are laid off from their jobs. Second, the workers' compensation benefits system was enacted to cover workers who are injured in the course and scope of employment. Historically, however, Louisiana has not provided for all other hardships which could render an employee unable to work through no fault of their own; namely those hardships related to an employee's serious sickness or illness, hardships resulting from a family member serving in the military, or hardships related to any other family emergency which would lead to a job loss. The purpose of the La. FMLA is to provide for employment benefits related to all other hardships which an employee may encounter other than job layoffs and workers' compensation injuries so as to insure that no worker is involuntarily unemployed due to any fault other than their own.

Effective upon signature of the governor or lapse of time for gubernatorial action if and when the House of Representatives passes legislation to assess the payroll taxes which would then be collected to fund the program, except as follows:

- (1) All rules and forms promulgated by the Workforce Commission shall be completed before Jan. 1, 2016.
- (2) On January 1, 2016, payroll taxes shall begin being collected and paid by the employer and employee.
- (3) On or after Jan. 1, 2017, applications may be made for payment of benefits.

(Amends R.S. 44:4.1(B)(12); adds R.S. 23:671 through 687)