

HB 1161 -- MISSOURI FAMILY LEAVE ACT

SPONSOR: McCreery

This bill establishes the Missouri Family Leave Act. This program is authorized to provide up to six weeks of wage replacement benefits to employees who take time off work to care for a family member with a serious health condition or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption.

The Department of Labor and Industrial Relations must administer and implement the program and pay Missouri family leave benefits as specified in these provisions.

An individual is eligible to receive Missouri family leave program benefits equal to one-seventh of his or her weekly benefit amount for each full day during which he or she is unable to work due to caring for a family member with a serious health condition or bonding with a minor child within one year of the birth or placement of the child in connection with foster care or adoption. Individuals are subject to a seven-day waiting period during each family care leave period and Missouri family leave benefits are not payable during the waiting period.

The maximum amount payable to an individual during any family care leave period for Missouri family leave benefits is six times their weekly benefit amount, but in no case can the total amount of benefits payable be more than the total wages paid to the individual during his or her base period. If the benefit is not a multiple of \$1, it must be computed to the next higher multiple of \$1.

A maximum of six weeks of Missouri family leave benefits can be paid within any 12 month period. An individual must file a claim for Missouri family leave benefits no later than the 41st consecutive day following the first compensable day that a claim is made for benefits, the time must be extended by the department upon a showing of good cause. If a first claim is not complete, the claim form must be returned to the claimant for completion, and it must be completed and returned not later than the 10th consecutive day after the date it was mailed by the department to the claimant, except that the time must be extended by the department upon a showing of good cause.

An individual is not eligible for Missouri family leave program benefits for any day that they receive any unemployment, disability, or workers compensation benefits; or disability insurance benefits.

An individual who is entitled to leave under the Family and Medical Leave Act (FMLA) must take Missouri family leave concurrent with leave taken under the FMLA. The first payment of Missouri family leave benefits must be made to an individual within two weeks after the completed claim is received or the family leave began, whichever is later, and subsequent payments must be made biweekly thereafter.

A claimant must establish medical eligibility for each uninterrupted family care leave period by filing a first claim for benefits supported by the certificate of a treating physician or health care provider that establishes the serious health condition of the family member that warrants the care of the employee. For subsequent periods of uninterrupted leave after the period covered by the initial certificate or any preceding continued claim, a claimant must file a continued claim for those benefits supported by the certificate of a treating physician or health care provider.

An employee must be required to file a certificate to establish eligibility when taking leave to care for a family member with a serious health condition. The certificate must be developed by the department. In order to establish medical eligibility of the serious health condition of the family member that warrants the care of the employee, the information must be within the physician's or health care provider's knowledge and must be based on a physical examination and documented medical history of the family member and contain certain specified information.

The department must develop a certificate form for bonding that is separate and distinct from the certificate required for medical eligibility for an employee taking leave to bond with a minor child within the first year of the child's birth or placement in connection with foster care or adoption.

The first and any continuing claim of an individual who obtains care and treatment outside the state must be supported by a certificate of a treating physician or health care provider duly licensed or certified by the state or foreign country in which the claimant is receiving the care and treatment.

The department may request additional medical evidence to supplement the first or any continued claim. Any cost incurred for procuring additional medical evidence must be paid by the employer.

Except as otherwise provided, an individual may file a notice of appeal from any determination or redetermination made by the department by mail or in person within 30 days after the date the individual received a copy of the department's decision. Upon

receipt of the notice of appeal, the department must request the assignment of an administrative law judge to conduct a hearing and issue a proposed decision and order. The administrative law judge's proposed decision and order must be final and not subject to further appeal, unless within 30 days after the decision is served on the interested parties, a party files a petition for judicial review. If upon judicial review the final decision of the department is reversed or modified, the court in its discretion may award the prevailing party, other than the department, reasonable attorneys' fees and costs. Attorneys' fees and costs owed by the department, if any, is payable from employer contributions collected.

A determination of amount of benefits potentially payable must not serve as a basis for appeal, however, the determination must be subject to request by the individual on family leave for redetermination by the department at any time within one year from the date of delivery or mailing of the determination, or any redetermination thereof. A redetermination must be furnished to the individual in writing and provide the basis for appeal.

A determination of denial of benefits are final if an appeal is not filed. The department may redetermine a determination at any time within one year from delivery or mailing to correct an error in identity, omission of fact, or misapplication of law with respect to the facts.

A determination of allowance of benefits is final if an appeal is not filed. The department may redetermine the allowance at any time within two years following the application year that the allowance was made in order to recover any benefits for which recovery is provided under these provisions.

A redetermination may be made at any time to conform to a final court decision applicable to either an initial determination or a determination of denial or allowance of benefits, in the event of a back pay award or settlement affecting the allowance of benefits, or in the case of misrepresentation or willful failure to report a material fact.

Written notice of any such redetermination must be promptly given by mail or delivered to the interested parties that were notified of the initial determination or determination of denial or allowance of benefits and any new interested party or parties who, under the rule as the department may adopt, would be an interested party.

It is unlawful for any person to discharge or in any other manner discriminate against an individual because the individual has

applied for, indicated an intent to apply for, or received Missouri family leave benefits.

Any person who violates these provisions is liable to any individual employed by the person who is affected by the violation for the equitable relief as may be appropriate. An action to recover the damages or equitable relief may be maintained against any person in any court of competent jurisdiction by any individual for and on behalf of the individual or the individual and other individuals similarly situated. The court in any action under this section must, in addition to any judgment awarded to the plaintiff, allow reasonable attorneys' fees, expert witness fees, and other costs of the action to be paid by the defendant.

The bill specifies when the right to bring an action by or on behalf of any individual must terminate.

The department may bring an action in any court of competent jurisdiction to recover the damages and any sums recovered by the department must be held in a special deposit account and must be paid, on order of the department, directly to each individual affected.

An action may be brought not later than three years after the date of the last event constituting the alleged violation for which the action is brought. An action brought by the department under this section must be considered to be commenced on the date when the complaint is filed.

The circuit courts have jurisdiction, for cause shown, in an action brought by the department to restrain violations of these provisions, including the restraint of any withholding of payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due to an individual, or to award such other equitable relief as may be appropriate including employment, reinstatement, and promotion.

The department is required to develop and implement an outreach program to ensure that individuals who may be eligible to receive Missouri family leave benefits are made aware of the benefits. Outreach information must easily explain eligibility requirements, the claims process, weekly benefit amounts, maximum benefits payable, notice and medical certification requirements, reinstatement and nondiscrimination rights, confidentiality, and the relationship between employment protection, leave from employment, wage replacement benefits, and other laws, collective bargaining agreements, and employer policies.

No later than three years after the effective date of these

provisions, the state auditor must submit to the General Assembly a report on the Missouri family leave benefits paid for any month during the one-year period beginning on the effective date. The bill specifies information the report must include.

In order to provide funding to implement the provisions of these provisions, each employer that is liable for contributions must have an additional surcharge of .008% added to the employer's contribution rate calculated under Section 288.120, RSMo.