House Bill 4124

Sponsored by Representative KENY-GUYER; Senator BOQUIST (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Allows eligible employees to take family leave to deal with death of family member. Limits period of leave to two weeks or to six weeks with medical verification. Requires that leave be counted toward total period of authorized family leave.

A BILL FOR AN ACT

Relating to employment leave; amending ORS 659A.156, 659A.159, 659A.162, 659A.165, 659A.168, 659A.177 and 659A.186.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 659A.159 is amended to read:

659A.159. (1) Family leave under ORS 659A.150 to 659A.186 may be taken by an eligible employee for any of the following purposes:

(a) To care for an infant or newly adopted child under 18 years of age, or for a newly placed foster child under 18 years of age, or for an adopted or foster child older than 18 years of age if the child is incapable of self-care because of a mental or physical disability.

(b) To care for a family member with a serious health condition.

(c) To recover from or seek treatment for a serious health condition of the employee that renders the employee unable to perform at least one of the essential functions of the employee's regular position.

(d) To care for a child of the employee who is suffering from an illness, injury or condition that is not a serious health condition but that requires home care.

(e) To deal with the death of a family member by:

(A) Attending the funeral or alternative to a funeral of the family member;

(B) Making arrangements necessitated by the death of the family member;

(C) Grieving the death of the family member; or

(D) Receiving counseling or other medical treatment to cope with the death of the family member.

(2) Leave under subsection (1)(a) of this section must be completed within 12 months after birth or placement of the child, and an eligible employee is not entitled to any period of family leave under subsection (1)(a) of this section after the expiration of 12 months after birth or placement of the child.

(3) Leave under subsection (1)(e) of this section must be completed within two months after the death of a family member or the discovery of the death of a family member unless the period of leave is extended as provided by ORS 659A.162 (2)(a)(B). If the period of leave is extended as provided by ORS 659A.162 (2)(a)(B), leave under subsection (1)(e) of this section must be completed within 12 months after the death of a family member or the discov-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

ery of the death of a family member. An eligible employee is not entitled to any period of family leave under subsection (1)(e) of this section after the expiration of 12 months after the death of a family member or the discovery of the death of a family member.

SECTION 2. ORS 659A.156 is amended to read:

659A.156. (1) All employees of a covered employer are eligible to take leave for one of the purposes specified in ORS 659A.159 (1)(b) to [*(d)*] **(e)** except:

(a) An employee who was employed by the covered employer for fewer than 180 days immediately before the date on which the family leave would commence.

(b) An employee who worked an average of fewer than 25 hours per week for the covered employer during the 180 days immediately preceding the date on which the family leave would commence.

(2) All employees of a covered employer are eligible to take leave for the purpose specified in ORS 659A.159 (1)(a) except an employee who was employed by the covered employer for fewer than 180 days immediately before the date on which the family leave would commence.

SECTION 3. ORS 659A.162 is amended to read:

659A.162. (1) Except as specifically provided by ORS 659A.150 to 659A.186, an eligible employee is entitled to up to **a total of** 12 weeks of family leave within any one-year period.

(2)(a) Except as provided by paragraph (b) of this subsection, an eligible employee is entitled to:

(A) Up to two weeks of leave for the purposes described in ORS 659A.159 (1)(e); or

(B) Up to six weeks of leave for the purpose described in ORS 659A.159 (1)(e)(D), upon receipt of medical verification from the health care provider of the employee as described in ORS 659A.168.

(b) An eligible employee is entitled to the period of leave described in paragraph (a) of this subsection upon the death of each family member of the employee within any one-year period, except that leave taken as provided by this subsection may not exceed the total period of family leave authorized by subsection (1) of this section.

(c) A covered employer may not require an eligible employee to take multiple periods of leave described in ORS 659A.159 (1)(e) concurrently if more than one family member of the employee dies during the one-year period.

(d) All leave taken for the purposes described in ORS 659A.159 (1)(e) shall be counted toward the total period of family leave authorized by subsection (1) of this section.

[*(2)(a)*] **(3)(a)** In addition to the 12 weeks of **family** leave authorized by subsection (1) of this section, [*an eligible*] **a** female **eligible** employee may take a total of 12 weeks of leave within any one-year period for an illness, injury or condition related to pregnancy or childbirth that disables the eligible employee from performing any available job duties offered by the **covered** employer.

(b) An eligible employee who takes 12 weeks of family leave within a one-year period for the purpose specified in ORS 659A.159 (1)(a) may take up to an additional 12 weeks of leave within the one-year period for the purpose specified in ORS 659A.159 (1)(d).

[*(3)*] **(4)** When two **or more** family members work for the same covered employer, the eligible employees may not take concurrent family leave unless:

(a) One employee needs to care for [*the other*] **another** employee who **is a family member and who** is suffering from a serious health condition; [*or*]

(b) One employee needs to care for a child who has a serious health condition while [*the other*] **another** employee **who is a family member** is also suffering **from** a serious health condition[.]**;**

or

(c) The employees are taking leave described in ORS 659A.159 (1)(e).

[*(4)*] **(5)** An eligible employee may take family leave for the [*purposes*] **purpose** specified in ORS 659A.159 (1)(a) in two or more nonconsecutive periods of leave only with the approval of the employer.

[*(5)*] **(6)** Leave need not be provided to an eligible employee by a covered employer for the purpose specified in ORS 659A.159 (1)(d) if another family member is available to care for the child.

[*(6)*] **(7)** A covered employer may not reduce the amount of family leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury.

[*(7)*] **(8)(a)** The Commissioner of the Bureau of Labor and Industries shall adopt rules governing when family leave for a serious health condition of an eligible employee or a family member of the eligible employee may be taken intermittently or by working a reduced workweek. Rules adopted by the commissioner under this [*subsection*] **paragraph** shall allow taking of family leave on an intermittent basis or by use of a reduced workweek to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis or by use of a reduced workweek [*will*] **does** not result in the loss of an eligible employee's exempt status under the federal Fair Labor Standards Act.

(b) The commissioner shall adopt rules governing when family leave for the purposes described in ORS 659A.159 (1)(e) may be taken intermittently. Rules adopted by the commissioner under this paragraph shall allow taking of family leave for the purposes described in ORS 659A.159 (1)(e) on an intermittent basis to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis does not result in the loss of an eligible employee's exempt status under the federal Fair Labor Standards Act.

SECTION 4. ORS 659A.165 is amended to read:

659A.165. (1) Except as provided in subsection (2) of this section, a covered employer may require an eligible employee to give the employer written notice at least 30 days before commencing family leave. The employer may require the employee to include an explanation of the need for the leave in the notice.

(2) An eligible employee may commence taking family leave without prior notice under the following circumstances:

(a) An unexpected serious health condition of an employee or family member of an employee;

(b) An unexpected illness, injury or condition of a child of the employee that requires home care; [*or*]

(c) A premature birth, unexpected adoption or unexpected foster placement[.]**; or**

(d) The death of a family member.

(3) If an employee commences leave without prior notice under subsection (2) of this section, the employee must give oral notice to the employer within 24 hours of the commencement of the leave[,] and must provide the written notice required by subsection (1) of this section within three days after the employee returns to work. The oral notice required by this subsection may be given by any other person on behalf of the employee taking the leave.

(4) **Except as provided in this subsection,** if the employee fails to give notice as required by subsections (1) and (3) of this section, the employer may reduce the **total** period of family leave [*required*] **authorized** by ORS 659A.162 by three weeks, and the employee may be subject to disciplinary action under a uniformly applied policy or practice of the employer. **A reduction in the**

total period of family leave under this subsection may not limit leave described in ORS 659A.159 (1)(e)(A) to (C).

SECTION 5. ORS 659A.168 is amended to read:

659A.168. (1) Except as provided in subsection (2) of this section, a covered employer may require medical verification from a health care provider of the need for the leave if the leave is for a purpose described in ORS 659A.159 (1)(b) to (d) **or (e)(D)**. If an employee is required to give notice under ORS 659A.165 (1), the employer may require that medical verification be provided by the employee before the leave period commences. If the employee commences family leave without prior notice pursuant to ORS 659A.165 (2), the medical verification must be provided by the employee within 15 days after the employer requests the medical verification. The employer may require an employee to obtain the opinion of a second health care provider designated by the employer, at the employer's expense. If the opinion of the second health care provider conflicts with the medical verification provided by the employee, the employer may require the two health care providers to designate a third health care provider to provide an opinion at the employer's expense. The opinion of the third health care provider shall be final and binding on the employer and employee. In addition to the medical verifications provided for in this subsection, an employer may require subsequent medical verification on a reasonable basis.

(2) A covered employer may require medical verification for leave taken for the purpose described in ORS 659A.159 (1)(d) only after an employee has taken more than three days of leave under ORS 659A.159 (1)(d) during any one-year period. Any medical verification required under this subsection must be paid for by the covered employer. An employer may not require an employee to obtain the opinion of a second health care provider for the purpose of medical verification required under this subsection.

(3) Subject to the approval of the health care provider, the employee [*taking family leave for a serious health condition of the employee or a family member of the employee*] shall make a reasonable effort to schedule medical treatment or supervision at times that will minimize disruption of the employer's operations **if the employee is taking leave for a serious health condition of the employee or a family member of the employee or is taking leave described in ORS 659A.159 (1)(e)(D)**.

SECTION 6. ORS 659A.177 is amended to read:

659A.177. (1) Notwithstanding any other provision of ORS 659A.150 to 659A.186, if a teacher requests leave for one of the purposes specified in ORS 659A.159 (1)(b)**,** [*or*] (c) **or (e)(D)**, the need for the leave is foreseeable, and the employee will be on leave for more than 20 percent of the total number of working days in the period during which the leave would extend, the employer of the teacher may require that the employee elect one of the two following options:

(a) The employee may elect to take leave for a period or periods of a particular duration, not to exceed the duration of the anticipated medical treatment **or counseling**; or

(b) The employee may elect to transfer temporarily to an available alternative position that better accommodates recurring periods of leave than the regular position of the employee. The teacher must be qualified for the alternative position, and the position must have pay and benefits that are equivalent to the pay and benefits of the employee's regular position.

(2) Notwithstanding any other provision of ORS 659A.150 to 659A.186, if a teacher commences a period of family leave for the purpose specified in ORS 659A.159 (1)(c) more than five weeks before the end of an academic term, the employer of the teacher may require that the employee continue on family leave until the end of the term if:

(a) The leave is of at least three weeks' duration; and

(b) The employee's return to employment would occur during the three-week period before the end of the term.

(3) Notwithstanding any other provision of ORS 659A.150 to 659A.186, if a teacher commences a period of family leave for one of the purposes specified in ORS 659A.159 (1)(a)**,** [*or*] (b) **or (e)** during the five weeks before the end of an academic term, the employer of the teacher may require that the employee continue on family leave until the end of the term if:

(a) The leave is of at least two weeks' duration; and

(b) The employee's return to employment would occur during the two-week period before the end of the term.

(4) Notwithstanding any other provision of ORS 659A.150 to 659A.186, if a teacher commences a period of family leave for one of the purposes specified in ORS 659A.159 (1)(a)**,** [*or*] (b) **or (e)** during the three-week period before the end of the term, and the duration of the leave is greater than five working days, the employer of the teacher may require that the employee continue on family leave until the end of the term.

(5) The provisions of this section apply only to an employee who is employed principally in an instructional capacity by a public kindergarten, elementary school, secondary school or education service district.

SECTION 7. ORS 659A.186 is amended to read:

659A.186. (1) ORS 659A.150 to 659A.186 do not limit any right of an employee to [*family medical leave*] **any leave that is similar to the leave described in ORS 659A.159 (1) and** to which the employee may be entitled under any agreement between the employer and the employee, collective bargaining agreement or employer policy.

(2) ORS 659A.150 to 659A.186 shall be construed to the extent possible in a manner that is consistent with any similar provisions of the federal Family and Medical Leave Act of 1993. Family leave taken under ORS 659A.150 to 659A.186 must be taken concurrently with any leave taken under the federal Family and Medical Leave Act of 1993.