

HB 2005 -3 STAFF MEASURE SUMMARY

House Committee On Rules

Prepared By: Josh Nasbe, Counsel

Meeting Dates: 6/11

WHAT THE MEASURE DOES:

Creates insurance program to provide employees with portion of wages while on family and medical leave or military family leave. Requires eligible employee to have received at least \$1,000 in wages during base year and to have contributed to fund in an amount determined by Director of Employment Department. Allows self-employed individuals and tribal government employers to opt into program starting in 2022. Directs Employment Department to set contribution rates, collect payroll contributions and otherwise administer program. Authorizes department to contract with third party to implement program and serve as administrator. Requires employee and employer to make equal contributions to insurance fund and caps combined contributions at one percent of employee's wages. Establishes formula for calculating benefit payment. Increases, over three-year period, length of leave employee may take; when fully implemented, allows 14 weeks for parental leave, 12 weeks for medical leave, and additional 4 weeks for pregnancy disability, with total leave capped at 26 weeks. Requires leave be taken concurrently with any leave taken by employee eligible for Oregon Family Leave Act or federal Family and Medical Leave Act. Provides job protection to employee returning from family and medical leave if employee was employed at least 90 days by employer. Creates grant program for employers with fewer than 25 employees. Establishes civil penalty not to exceed \$1,000 for employer who fails to make contributions. Provides employee with private right of action or ability to file complaint with Bureau of Labor and Industries for violation of job protection right, interference with right to take leave, or retaliation for inquiring about, applying for, or invoking any provision of program. Preempts and supersedes any local government ordinance or rule regarding paid family and medical leave. Requires contributions begin January 1, 2021, and provides eligibility for leave benefits beginning January 1, 2022. Takes effect 91st day following adjournment sine die.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-3 Reduces length of leave to 12 weeks per year. Allows additional 4 weeks for leave allowed under Oregon Family Leave Act that does not otherwise qualify for family and medical leave insurance (i.e., bereavement leave and sick child leave). Allows additional 2 weeks for leave related to pregnancy, childbirth, or related medical condition. Allows employee to use accrued paid leave (i.e., vacation leave, sick time) in addition to receiving paid family and medical leave insurance benefits to replace wages up to 100 percent. Authorizes use of leave for specified crime-related purposes ("safe leave"). Changes share of contributions paid to require employee to pay 60 percent and employer to pay 40 percent. Exempts employers with fewer than 25 employees from requirement to pay employer contributions. Caps eligible employee's average weekly wage used in calculation at \$132,900. Caps weekly benefit amount at 120 percent of state average weekly wage (approximately \$1,215). Establishes minimum weekly benefit amount as 5 percent of state average weekly wage (approximately \$50).

Requires employee who commences unforeseeable leave without advance notice to provide oral notice to employer within 24 hours and written notice within three days. Modifies job protections for employee who work for employer with fewer than 25 employees: they may be returned to a different position with similar job duties and with the same pay and benefits. Prohibits civil action against employer who takes necessary action to restore employee returning from leave by terminating temporary replacement or returning employee transferred to fill vacancy to prior position. Prohibits unemployment insurance benefits paid to a replacement worker from being

charged to the employer.

Establishes civil penalty not to exceed \$1,000 for employer who willfully makes false statements or willfully fails to report material fact regarding claim for family and medical leave insurance benefits. Disqualifies for one year any employee for same violations. Establishes process to collect unpaid contributions from employer or benefits paid to employee not entitled to receive them. Establishes penalty for employer who fails to pay contributions and allows Department to require employer make deposit or post bond equal to contributions due over 9-month period. Allows Department to bring civil action against employer in default. Authorizes issuance of warrant in lieu of civil action. Grants sheriff authority to enforce warrant in same manner as civil judgment. Establishes personal liability for certain officers, members, partners for amounts in default. Provides criminal penalty for violation of measure.

Allows employer, with Department approval, to provide leave benefits through equivalent plan. Provides that state-administered plan provides gap coverage to employee not yet meeting eligibility under employer-provided plan or is no longer covered by employer-provided plan. Provides that collective bargaining agreements entered into before January 1, 2022, need not be reopened or renegotiated prior to date on which agreement expires. Requires Director to report to Legislative Assembly by February 15, 2020, September 1, 2021, and biennially after July 2023.

Appropriates from General Fund unstated amount to enable Department to implement program with requirement Department reimburse General Fund by January 1, 2023. Requires contributions begin January 1, 2022, and eligibility for leave benefits begin January 1, 2023. Private right of action becomes operative January 1, 2025.

BACKGROUND:

Family and medical leave is protected time off from work to recover from a serious illness, care for a family member who is ill, or bond with your newborn or newly adopted child. More than half of Oregon workers are eligible for unpaid family and medical leave benefits under the federal Family and Medical Leave Act of 1993 (FMLA) and the Oregon Family Leave Act (OFLA). Other Oregon laws provide unpaid protected leave for employees to address events arising from domestic violence, sexual assault, stalking, and criminal harassment, and for an employee whose spouse is notified of an impending call or order to active duty or impending leave from deployment (Oregon Military Family Leave Act). However, neither Oregon nor federal law requires any employer to pay employees for time on medical and family leave beyond the amount of vacation and sick leave accrued by the employee. Oregon does require employers of 10 or more workers (six for employers in Portland) to allow employees to accrue and use up to 40 hours of paid sick leave each year.

California, Massachusetts, New Jersey, New York, Rhode Island, Washington, and the District of Columbia have adopted paid family leave programs.