

HOUSE BILL No. 2644

By Representative Horn

2-12

1 AN ACT enacting the Kansas paid family leave act; concerning paid
2 family leave for covered individuals; notice required by employers;
3 establishing the family and medical leave insurance fund.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. The provisions of sections 1 through 5, and amendments
7 thereto, shall be known and may be cited as the Kansas paid family leave
8 act.

9 Sec. 2. As used in the Kansas paid family leave act:

10 (a) "Act" means the Kansas paid family leave act.

11 (b) "Covered individuals" means:

12 (1) Any employee of any employer in this state who, during the 12
13 months prior to submitting an application, worked either for 26 weeks at a
14 regular schedule of 20 or more hours per week or for 175 days at a regular
15 schedule of less than 20 hours per week;

16 (2) a self-employed person, including a sole proprietor, partner or
17 joint partner, who may elect coverage pursuant to section 3, and
18 amendments thereto; and

19 (3) a person who meets other requirements of this act and submits an
20 application as prescribed by the department.

21 (c) "Department" means the Kansas department of labor, unless
22 otherwise specified.

23 (d) "Family member" means:

24 (1) Regardless of age, a biological, adopted or foster child, stepchild,
25 legal ward, child of a domestic partner, child to whom the employee stands
26 in loco parentis or an individual to whom the employee stood in loco
27 parentis when the individual was a minor;

28 (2) a biological, adoptive or foster parent, stepparent, legal guardian
29 of an employee or an employee's spouse or domestic partner;

30 (3) a person to whom the employee is married or a domestic partner
31 of the employee as registered under the laws of any state;

32 (4) a grandparent, grandchild or sibling, whether of a biological,
33 adoptive, foster or step relationship, of the employee or the employee's
34 spouse or domestic partner;

35 (5) any other individual related by blood or affinity whose close
36 association with the employee is the equivalent of a family relationship;

1 and

2 (6) a designated person, which shall mean one additional person
3 designated by a covered individual for whom the covered individual will
4 provide care under this act if the designated person has a serious health
5 condition. An employer may establish a uniform process for employees to
6 select a designated person. Thereafter, the employer shall permit the
7 employee to make or change such a designation, as applicable, on an
8 annual basis. If an employer does not establish such a uniform process, the
9 employee may make such a designation when filing a claim for benefits.

10 (e) "Needs of military families" includes the needs of the covered
11 individual or family member to address exigencies as outlined in 29 CFR §
12 825.126.

13 Sec. 3. (a) A self-employed person, including a sole proprietor,
14 partner or joint partner, may elect coverage in the Kansas paid family leave
15 act for an initial period of not less than three years. The self-employed
16 person shall file a notice of election in writing with the department, as
17 required by the department. The election becomes effective on the date of
18 filing the notice. As a condition of election, the self-employed person shall
19 agree to supply any information concerning income that the department
20 deems necessary.

21 (b) A self-employed person who has elected coverage may withdraw
22 from coverage within 30 days after the end of the three-year period of
23 coverage, or at such other times as the department may prescribe by rule
24 and regulation, by filing written notice with the department, such
25 withdrawal to take effect not sooner than 30 days after filing the notice.

26 Sec. 4. (a) Beginning July 1, 2021, covered individuals who submit
27 an application will have access to paid family leave benefits under the
28 following circumstances:

29 (1) To bond with a child within one year of the child's birth or
30 placement for foster care or adoption;

31 (2) to care for a family member with a serious health condition;

32 (3) to recover from the covered individual's own serious health
33 condition; and

34 (4) for certain needs of military families as specified in section 2(e),
35 and amendments thereto.

36 (b) Paid family leave benefits shall be payable as follows:

37 (1) Following a waiting period consisting of the first seven calendar
38 days of leave, benefits are payable when family or medical leave is
39 required. No waiting period is required for leave for the birth or placement
40 of a child. Benefits may continue during the continuance of the need for
41 family and medical leave, subject to the minimum and maximum weekly
42 benefits, duration and other conditions and limitations established in this
43 act. Successive periods of family leave caused by the same or related

1 injury or sickness are deemed a single period of family and medical leave
2 only if separated by less than four months.

3 (2) The weekly benefit shall be prorated by the percentage of hours
4 on leave compared to the number of hours provided as the typical
5 workweek hours.

6 (3) The minimum claim duration payment is for eight consecutive
7 hours of leave.

8 (4) Starting on January 1, 2022, the maximum duration of paid family
9 leave may not exceed 12 times the typical workweek hours during a period
10 of 52 consecutive calendar weeks. Prior to January 1, 2022, the department
11 may set a maximum between eight and 12 times the typical workweek
12 hours.

13 (5) The entitlement to family leave benefits for the birth or placement
14 of a child expires at the end of the 12-month period beginning on the date
15 of such birth or placement. The entitlement to family leave benefits for a
16 family member's serious health condition, or leave for qualifying exigency,
17 expires at the end of the 12-month period beginning on the date when the
18 employee filed an application for the benefits.

19 (6) The weekly benefit for family and medical leave shall be 67% of
20 the employee's average weekly wage during the 12 months preceding
21 submission of the application or the average weekly wages during the time
22 the covered individual worked if it was less than 12 months.

23 (7) The maximum weekly benefit for family and medical leave that
24 occurs on or after January 1, 2022, shall be \$1,000. On or before
25 September 30, 2020, and on or before each subsequent September 30, the
26 department shall adjust the maximum weekly benefit amount to 90% of
27 the state average weekly wage. The adjusted maximum weekly benefit
28 amount takes effect on the following January 1.

29 (8) The minimum weekly benefit shall not be less than \$100 per
30 week, except that if the employee's average weekly wage at the time of
31 family leave is less than \$100 per week, the weekly benefit shall be the
32 employee's full wage.

33 Sec. 5. (a) Beginning January 1, 2021, the department shall assess for
34 each individual in employment with an employer and for each self-
35 employed individual electing coverage a premium based on the amount of
36 the individual's wages and pursuant to a schedule released by the
37 department.

38 (b) The department, with advice from the pooled money investment
39 board, shall evaluate and determine on an annual basis the premium
40 schedule of employee contributions necessary to finance the paid family
41 and medical leave program outlined in this act.

42 (c) An employer may deduct from the wages of each employee up to
43 the full amount of the premium required.

1 (d) An employer may elect to pay all or any portion of the employee's
2 share of the premium.

3 (e) Premiums shall be collected through payroll deductions and
4 remitted to the family and medical leave insurance fund.

5 (f) In collecting employee premiums through payroll deductions, the
6 employer shall act as the agent of the employees. Premiums shall be
7 collected in the manner and at such intervals as provided by the
8 department.

9 (g) Benefits provided under this act shall be paid periodically and
10 promptly, except when an employer contests a period of family or medical
11 leave. The department shall adopt rules and regulations to develop a
12 process that shall allow an employer to contest an initial application for
13 family leave benefits.

14 (h) The department shall establish reasonable procedures and forms
15 for filing claims for benefits under this act and shall specify what
16 documentation is necessary to support a claim for benefits, including any
17 documentation required from a healthcare provider for proof of a serious
18 health condition.

19 (i) The family and medical leave insurance fund is created in the state
20 treasury and shall be administered by the pooled money investment board.
21 The fund may be used only to advance the purposes of the family and
22 medical leave insurance benefits program created by this act. The pooled
23 money investment board shall have full power to invest, reinvest, manage,
24 contract, sell or exchange investments acquired with the fund in the
25 manner prescribed by K.S.A. 12-1677a, and amendments thereto.

26 (j) The department shall conduct a public education campaign to
27 inform workers and employers regarding the availability of family and
28 medical leave insurance benefits. Outreach information shall be available
29 in English and other languages spoken by significant portions of this state's
30 population.

31 (k) The department is encouraged to use state data collection and
32 sharing technology to the extent possible and to integrate the program with
33 existing state policies, programs and systems.

34 (l) (1) Any covered individual who exercises such individual's right
35 to family and medical leave insurance benefits under this act, upon the
36 expiration of that leave, shall be entitled by the employer to the restoration
37 of the position held by the covered individual when the leave commenced,
38 or to a position with equivalent seniority, status, employment benefits, pay
39 and other terms and conditions of employment including fringe benefits
40 and service credits that the covered individual had been entitled at the
41 commencement of leave.

42 (2) During any leave taken pursuant to this act, the employer shall
43 maintain any healthcare benefits the covered individual had prior to taking

1 such leave for the duration of the leave as if the covered individual had
2 continued in employment continuously from the date the covered
3 individual commenced the leave until the date the family and medical
4 leave insurance benefits terminate, except that the covered individual shall
5 continue to pay the covered individual's share of the cost of health benefits
6 as required prior to the commencement of the leave.

7 (3) This act does not diminish an employer's obligation to comply
8 with any of the following that provide more generous leave:

- 9 (A) A collective bargaining agreement;
10 (B) an employer policy; or
11 (C) any other law.

12 (4) An individual's right to leave under this act may not be
13 diminished by a collective bargaining agreement entered into or renewed,
14 or an employer policy adopted or retained, on and after July 1, 2020. Any
15 agreement by an individual to waive such individual's rights under this act
16 is void as against public policy.

17 (5) It shall be unlawful for an employer or any other person to
18 interfere with, restrain or deny the exercise of or the attempt to exercise
19 any right protected under this act. Any employer or employer's agent shall
20 not take retaliatory personnel action or otherwise discriminate against a
21 person because such person exercised rights protected under this act. It
22 shall be unlawful for an employer's absence control policy to count paid
23 family and medical leave taken under this act as an absence that may lead
24 to or result in discipline, discharge, demotion, suspension or any other
25 adverse action.

26 (6) Leave taken with wage replacement under this act that also
27 qualifies as leave under the federal family and medical leave act shall run
28 concurrently with leave taken under the federal family and medical leave
29 act. An employer may require that payment made pursuant to this act be
30 made concurrently or otherwise coordinated with payment made or leave
31 allowed under the terms of disability or family care leave under a
32 collective bargaining agreement or employer policy. The employer shall
33 give employees written notice of this requirement.

34 (7) A covered individual shall be entitled, at the option of the covered
35 individual, to take paid family and medical leave on an intermittent or
36 reduced leave schedule in which all of the leave authorized under this act
37 is not taken sequentially. Family and medical leave insurance benefits for
38 intermittent or reduced leave schedules shall be prorated.

39 (8) The covered individual shall make a reasonable effort to schedule
40 paid family and medical leave under this act so as not to unduly disrupt the
41 operations of the employer. The covered individual shall provide the
42 employer with prior notice of the schedule on which the covered
43 individual will be taking the leave to the extent practicable. This paragraph

1 shall not result in a reduction of the total amount of leave to which an
2 employee is entitled beyond the amount of leave taken.

3 (9) If the covered individual uses 10 or more days of family and
4 medical leave insurance benefits in an application year, the covered
5 individual shall be paid for the waiting period. The waiting period need
6 only be served once every application year.

7 (10) Employees should notify their employer of the need to take leave
8 as soon as practicable.

9 (m) (1) Each employer shall provide written notice to each employee
10 upon hiring and annually thereafter of employee rights under this act, if
11 such notice has been made accessible by the department on its website.
12 Such notice shall be provided in English and any language that is the first
13 language spoken by at least 40% of employer's workforce, if such notice
14 has been made accessible by the department on its website.

15 (2) An employer shall also provide written notice to an employee
16 when the employee requests leave under this act or when the employer
17 acquires knowledge that an employee's leave may be for a qualifying
18 reason under this act.

19 (3) The department may adopt rules and regulations to establish
20 additional requirements concerning the means by which employers shall
21 provide such notice.

22 (n) (1) This act shall be enforced by the department as provided in
23 K.S.A. 44-601 et seq., and amendments thereto.

24 (2) The department shall establish a system for appeals in the case of
25 a denial of family and medical leave insurance benefits. In establishing
26 such system, the secretary may use any and all procedures and appeals
27 mechanisms established under K.S.A. 44-701 et seq., and amendments
28 thereto.

29 (3) Judicial review of any decision with respect to family and medical
30 leave insurance benefits shall be permitted in a court of competent
31 jurisdiction after a party aggrieved thereby has exhausted all
32 administrative remedies established by the department.

33 (4) (A) The department shall implement procedures to ensure
34 confidentiality of all information related to any claims filed or appeals
35 taken to the maximum extent permitted by applicable laws.

36 (B) The provisions of this paragraph providing for the confidentiality
37 of public records shall expire on July 1, 2025, unless the legislature
38 reviews and continues such provisions in accordance with K.S.A. 45-229,
39 and amendments thereto.

40 (o) On and after July 1, 2021, the department shall submit a report to
41 the legislature by January 1 of each year regarding the effectiveness of the
42 program established by this act and any needed changes, projected and
43 actual program participation by purpose, gender of beneficiary, premium

1 rates and other information useful for research purposes, fund balances and
2 projections and outreach efforts undertaken.

3 (p) If any provision of this act or its application to any person or
4 circumstance is held invalid, the remainder of the act or the application of
5 the provision to other persons or circumstances is not affected.

6 Sec. 6. This act shall take effect and be in force from and after its
7 publication in the statute book.