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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

Bill Number	<u>HB38/aHCEDC/aHJC</u>	Sponsor	<u>Chandler/Roybal Caballero/Serrato</u>
Tracking Number	<u>.218534.3</u>	Committee Referrals	<u>HCEDC/HJC</u>
Short Title	<u>Paid Family & Medical Leave Act</u>		
Analyst	<u>Canada</u>	Original Date	<u>1/28/2021</u>
		Last Updated	<u>3/02/2021</u>

BILL SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 38 (HB38/aHJC) reinstates section 13 of the original bill, which guarantees that the new provisions would not affect collective bargaining agreements. Throughout the bill, HB38/aHJC makes changes to references of “application for leave compensation” and replaces it with the phrase “application for leave.” HB38/HCEDC adds an exemption that the provisions of the act would not apply to employees under the federal Railway Labor Act. HB38/HCEDC adds a new section that specifies that employers’ must still allow an employee to take up to twelve weeks paid medical or family leave in a twelve-month period. HB38/HCEDC prohibits a city, county, home rule municipality, or other political subdivision of the state to adopt or continue policies that establish similar programs, rights, and benefits laid out in the Paid Family and Leave Act, except for policies related to paid sick leave or paid time off.

Synopsis of HCEDC Amendment

The House Commerce and Economic Development Committee amendment to HB38 (HB38/aHCEDC) clarifies that both taxes employers are required to pay will fund leave compensation payments. HB38/aHCEDC also clarifies requirements for self-employed individuals. The bill specifies that in order to receive leave compensation an eligible employee had to have their claim approved. The bill also omits the right of action for employees against employers who are in violation of the act in district court to recover lost wages, salaries, and employment benefits.

Synopsis of Bill

House Bill 38 (HB38) creates the Paid Family and Medical Leave Act and the paid family and medical leave trust fund. HB38 requires employees and employers to pay contributions to cover the cost of the leave and administrative costs for the Department of Workforce Solutions (WSD) to administer the program. The bill allows employees to take up to 12 weeks of leave during any 12-month period. HB38 allows employees who become unemployed and are eligible for paid leave under this act to receive leave compensation from WSD if the individual is not receiving

unemployment insurance benefits. The bill details circumstances when an employee is ineligible to receive leave compensation. The bill sets up an appeal process that employees can participate in if the department denies a claim. HB38 creates a temporary Paid Family and Medical Leave Implementation Advisory Committee within WSD to help with implementation of the new policy.

This analysis is only specific to the impact to public schools.

FISCAL IMPACT

The bill does not include an appropriation.

The bill creates a nonreverting fund in the state treasury and the Workforce Solutions Department will administer the fund. Money in the fund shall be invested by the state investment officer and income from the earnings of the investment shall remain in the fund. Money in the fund would be appropriated to distribute leave compensation and to cover the costs of administering the paid family and medical leave program.

Beginning in 2023, HB38/aHJC requires all public and private employees to contribute one-half percent of the employee's earning to fund leave compensation payments. The bill stipulates an employee's contribution to the fund shall not be deducted from the employee's leave compensation. Also beginning in 2023, employers will be required to contribute four-tenths percent of each participating employee's earnings to fund administrative costs and leave compensation payments. According to data from PED, total payroll for school districts and charter schools in FY20 was \$2.184 billion. At the rate specified in HB38/aHJC, school districts and charter schools would need to make contributions totaling \$8.7 million, assuming FY20 payroll levels. The House Appropriations and Finance Committee Substitute for House Bill 2 and 3 (HB2/HAFCS) currently does not include an appropriation for this purpose.

The bill allows WSD to assess an administrative penalty of up to \$10 thousand against an employee who files a fraudulent claim for leave. HB38/aHJC also allows the department to administer a penalty of up to \$10 thousand dollars an employer who wrongfully denies an employee the employee's right to leave pursuant to the Paid Family and Medical Leave Act.

SUBSTANTIVE ISSUES

Employee leave benefit offerings can consist of parental, family care, medical, and sick leave. These benefits offered by employers can be paid, unpaid or a combination of both.

Federal Family and Medical Leave Act. The federal Family and Medical Leave Act (FMLA) of 1993 offers 12 weeks of unpaid, job-protected leave to care for newborns or seriously ill family members. Eligible employees include those working for employers with at least 50 employees for at least a year. Research has shown these protections cover about 60 percent of the U.S. workforce, but about half of eligible employees do not take leave because they cannot afford it. HB38/aHJC acknowledges the FMLA provisions and allows employers to require employees to take these two types of leave concurrently. HB38/aHJC would fund leave currently offered under FMLA.

Benefits, like sick leave and other types of paid leave for school employees, are determined differently across the United States. For example, some states set minimum requirements for paid sick leave for school employees in state law, whereas New Mexico does not. A sample of school district leave policies shows most school districts in the state mention the use of FMLA in their

human resources handbook. Depending on the school district policy, other stipulations may apply to use this type of leave by employees. For example, in one policy reviewed the school district required employees who used FMLA to concurrently use their paid leave until it ran out. Another school district's policies prohibits employees from using paid sick leave and requires those who want to participate to take unpaid leave. From school policies reviewed in New Mexico, paid sick leave allocations range from between eight and 12 days per year.

Paid Family and Medical Leave Act. To be eligible for paid leave under HB38/aHJC, an employee must file a claim for leave approved by WSD, agree the employee will not obtain new employment while on leave, and contribute to the fund for at least six months during employment. To access funds, the employee needs to file a claim with WSD and provide information on total earnings, total number of weeks worked, and the average number of hours worked per week. The department is required to notify the employer and employee within 10 days of the application to update them on the status of the paid leave request. HB38/aHJC describes when an employee would be ineligible to receive leave compensation. The employee would be disqualified if (1) the employee files a fraudulent claim for leave, (2) the employee willingly brings on the injury or sickness for the filed claim, and (3) the employee does not use the leave in alignment with their claim.

Similar to FMLA, HB38/aHJC requires the employer to hold the place of the employee's position until they come back from leave and notify the department when an employee returns to work. HB38 specifies the employer must continue to pay its share of health insurance premiums and maintain an employee's health coverage while the employee is on approved leave.

HB38/aHJC allows employers to be granted a waiver if the employer has adopted and operates a paid family and medical leave program that provides leave and leave compensation equal to or greater than the leave offered through the Paid Family and Medical Leave Act.

ADMINISTRATIVE IMPLICATIONS

HB38/aHJC allows employees to appeal the department's decision to offer paid leave and sets up an appeal process the department must follow.

OTHER SIGNIFICANT ISSUES

Teacher-Specific Duties. HB38/aHJC requires employees to make an effort to schedule leave to not disrupt the operations of the employer and to provide prior notice of the leave to the greatest extent possible. Some paid sick leave benefits offered to school employees across the state have stipulations due to the unique features of school employee positions, such as teachers. Some school-specific paid sick leave plans require supervisors to monitor when employees request sick leave days and determine if a pattern is established, such as an employee taking leave before or after holidays or on staff development days, for potential disciplinary action. Additionally, some policies require employees to provide a medical note from a doctor when leave is submitted or if the leave is taken after a number of consequent days.

Teacher-specific contracts are usually nine-month contracts with shorter hours than the typical eight-hour workday. According to research from the National Bureau of Economic Research, teacher attendance is directly related to student outcomes; the more teachers are absent, the more student achievement is affected. For example, when teachers are absent 10 days, the decrease in student achievement is equivalent to the difference between having a brand new teacher and one with two or three years more experience. Research suggests absent teachers are typically replaced

by less qualified substitute teachers and instructional intensity and consistency may decline. Additional research indicates teacher absences represent significant costs to school districts that must pay for substitutes and associated administrative costs. To encourage less teacher absenteeism, within the previous now defunct NMTeach evaluation system, teacher attendance made up 5 percent of a teacher's summative evaluation rating, although teachers were allowed to take up to six days of leave before it impacted their annual performance evaluation.

RELATED BILLS

Relates to *HB37, Paid Sick Leave Act, which establishes a statewide paid leave program.

Relates to HB20, Health Workplaces Act, which requires employers to provide paid sick leave to employees.

SOURCES OF INFORMATION

- LESC Files

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