STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE BILL 2927          By: Dunnington

AS INTRODUCED

An Act relating to labor; creating the Paid Family Leave Act; declaring legislative findings; authorizing Department of Labor to establish a family temporary disability insurance program; providing for eligibility of certain benefits; providing for maximum amount of benefits; providing for time frame of benefits; providing for filing of claim for benefits; defining terms; providing for benefit period; providing for determination of eligibility; providing for penalties; authorizing Department to request certain medical information; authorizing initial payment of benefits; authorizing Department to promulgate rules; requiring certain information be made accessible; providing for certificate of eligibility; providing for confidentiality of records; providing for payment and rate of contributions by workers; creating a Disability Trust Fund for the Department; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1.     NEW LAW      A new section of law to be codified in the Oklahoma Statutes as Section 901 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known as the "Paid Family Leave Act".

B. The Legislature finds the following:
1. It is in the public benefit to provide family temporary disability insurance benefits to workers to care for their family members. The need for family temporary disability insurance benefits has intensified as the participation of both parents in the workforce has increased, and the number of single parents in the workforce has grown. The need for partial wage replacement for workers taking family care leave will be exacerbated as the population of those needing care, both children and parents of workers, increases in relation to the number of working-age adults;

2. Developing systems that help families adapt to the competing interests of work and home not only benefits workers, but also benefits employers by increasing worker productivity and reducing employee turnover;

3. The majority of workers in this state are unable to take family care leave because they are unable to afford leave without pay. When workers do not receive some form of wage replacement during family care leave, families suffer from the worker's loss of income, increasing the demand on the state unemployment insurance system and dependence on the state's welfare system; and

4. It is the intent of the Legislature to create a family temporary disability insurance program to help reconcile the demands of work and family. The family temporary disability insurance program shall be established by the Department of Labor, and shall be funded through employee contributions, and shall be administered
in accordance with the policies of the state disability insurance program created pursuant to this act. Initial and ongoing administrative costs associated with the family temporary disability insurance program shall be payable from the Disability Trust Fund.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. The Department of Labor shall establish a family temporary disability insurance program. Family temporary disability insurance shall provide up to six (6) weeks of wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner, 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.

B. An individual shall be eligible to receive family temporary disability insurance benefits equal to sixty-five percent (65%) of his or her weekly wage amount for each full day during which he or she is unable to work due to caring for a seriously ill or injured family member or bonding with a minor child within one year of the birth or placement of the child in connection with foster care or adoption.

C. The maximum amount payable to an individual during any disability benefit period for family temporary disability insurance
shall be six (6) times his or her weekly benefit amount, but in no case shall the total amount of benefits payable be more than the total wages paid to the individual during his or her disability base period. If the benefit is not a multiple of one dollar ($1.00), it shall be computed to the next higher multiple of one dollar ($1.00).

D. No more than six (6) weeks of family temporary disability insurance benefits shall be paid within any twelve-month period.

E. An individual shall file a claim for family temporary disability insurance benefits not later than the forty-first consecutive day following the first compensable day with respect to which the claim is made for benefits, which time shall be extended by the Department upon a showing of good cause. If a first claim is not complete, the claim form shall be returned to the claimant for completion and it shall be completed and returned not later than the tenth consecutive day after the date it was mailed by the Department to the claimant, except that such time shall be extended by the Department upon a showing of good cause.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903 of Title 40, unless there is created a duplication in numbering, reads as follows:

As used in the Paid Family Leave Act:

1. "Care recipient" means the family member who is receiving care for a serious health condition or the new child with whom the care provider is bonding;
2. "Care provider" means the family member who is providing the required care for a serious health condition or the family member who is bonding with the new child;

3. "Child" means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or the person to whom the employee stands in loco parentis;

4. "Department" means the "Department of Labor";

5. "Family care leave" means any of the following:
   a. 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, or
   b. leave to care for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner who has a serious health condition;

6. "Family member" means child, parent, grandparent, grandchild, sibling, spouse, or domestic partner as defined in this section;

7. "Grandchild" means a child of the employee's child;

8. "Grandparent" means a parent of the employee's parent;

9. "Parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child;
10. "Parent-in-law" means the parent of a spouse or a domestic partner;

11. "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential health care facility, or continuing treatment or continuing supervision by a health care provider;

12. "Sibling" means a person related to another person by blood, adoption, or affinity through a common biological or legal parent;

13. "Spouse" means a partner to a lawful marriage;

14. "Valid claim" means any claim for family temporary disability insurance benefits made in accordance with the provisions of this code, and any rules and regulations adopted thereunder, if the individual claiming benefits is unemployed and has been paid the necessary wages in employment for employers to qualify for benefits and is caring for a seriously ill family member, or bonding with a minor child during the first year after the birth or placement of the child in connection with foster care or adoption; and

15. "Twelve-month period," with respect to any individual, means the three hundred sixty-five (365) consecutive days that begin with the first day the individual first establishes a valid claim for family temporary disability benefits.
SECTION 4. NEW LAW  
A new section of law to be codified in the Oklahoma Statutes as Section 904 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. "Disability benefit period" with respect to any individual means the period of unemployment beginning with the first day an individual establishes a valid claim for family temporary disability insurance benefits to care for a seriously ill family member or to bond with a minor child during the first year after the birth or placement of the child in connection with foster care or adoption.

B. Periods of family care leave for the same care recipient within a twelve-month period shall be considered one disability benefit period.

C. Periods of disability for pregnancy and periods of family care leave for bonding associated with the birth of that child shall be considered one disability benefit period.

SECTION 5. NEW LAW  
A new section of law to be codified in the Oklahoma Statutes as Section 905 of Title 40, unless there is created a duplication in numbering, reads as follows:

An individual shall be deemed eligible for family temporary disability insurance benefits equal to sixty-five percent (65%) of his or her weekly benefit amount on any day in which he or she is unable to perform his or her regular or customary work because he or she is bonding with a minor child during the first year after the birth or placement of the child in connection with foster care or
adoption or caring for a seriously ill child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, only if the Department of Labor finds all of the following:

1. The individual has made a claim for temporary disability benefits as required by authorized regulations; and

2. The individual has been unable to perform his or her regular or customary work for a seven-day waiting period during each disability benefit period, with respect to which waiting period no family temporary disability insurance benefits are payable; and

3. The individual has filed a certificate pursuant to subsection B of Section 11 of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 906 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. An individual shall not be eligible for family temporary disability insurance benefits with respect to any day that any of the following apply:

1. The individual has received, or is entitled to receive, unemployment compensation benefits or is under an unemployment compensation act of any other state or of the federal government; or

2. Another family member is ready, willing, able, and available to provide care for the same period of time in a day that the individual is providing the required care.
B. An individual who is entitled to leave under the Family Medical Leave Act must take family temporary disability insurance leave concurrent with leave taken under the Family Medical Leave Act.

C. As a condition of an employee's initial receipt of family temporary disability insurance benefits during any twelve-month period in which an employee is eligible for these benefits, an employer may require an employee to take up to two (2) weeks of earned but unused vacation leave prior to the employee's initial receipt of these benefits. If an employer requires an employee to take vacation leave, that portion of the vacation leave that does not exceed one (1) week shall be applied to the waiting period required pursuant to section 5 of this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 907 of Title 40, unless there is created a duplication in numbering, reads as follows:

If the Department of Labor finds that any individual falsely certifies the medical condition of any person in order to obtain family temporary disability insurance benefits, with the intent to defraud, whether for the maker or for any other person, the Department shall assess a penalty against the individual for the total amount of twenty-five percent (25%) of the benefits paid as a result of the false certification. In addition, the employee shall be liable to the Department for any benefits paid as a result of the
false certification. Penalties collected under this section shall be deposited in the Disability Trust Fund.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 908 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. The Department of Labor may request additional medical evidence to supplement the first or any continued claim if the additional evidence can be procured without additional cost to the care recipient. The Department may require that the additional evidence include any or all of the following information:

1. Identification of diagnoses;
2. Identification of symptoms; and
3. A statement setting forth the facts of the care recipient's serious health condition that warrants the participation of the employee. The statement shall be completed and signed by any of the following:
   a. the physician or practitioner treating the care recipient,
   b. the registrar, authorized medical officer, or other duly authorized official of the hospital or health facility treating the care recipient, or
   c. an examining physician or other representative of the Department.
B. The Department may require the care recipient to submit to reasonable examinations for the purpose of determining all of the following:

1. Whether a serious health condition exists;
2. Whether a care provider's participation is warranted; and
3. The period of time that the care provider's participation is warranted.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 909 of Title 40, unless there is created a duplication in numbering, reads as follows:

The Department shall issue the initial payment for family temporary disability insurance benefits to a monetarily eligible claimant who is otherwise determined eligible by the department under applicable law and regulation within fourteen (14) days after receipt of his or her properly completed disability claim.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910 of Title 40, unless there is created a duplication in numbering, reads as follows:

Claims for disability benefits shall be made in accordance with promulgated rules of the Department of Labor. Each employer shall post and maintain in places readily accessible to individuals in his or her service printed statements concerning such regulations and shall make available to each such individual copies of such printed statements, regulations or matters relating to claims for disability
benefits as the Department may prescribe. Such printed statements shall be supplied to each employer by the Department without cost to the employer.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 911 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. In accordance with the rules promulgated by the Department of Labor, a claimant shall establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits supported by the certificate of a treating physician or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee.

B. An employee shall 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 shall 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 shall be within the physician's or practitioner's knowledge and shall be based on a physical examination and documented medical history of the family member and shall contain all of the following:
1. A diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, if no diagnosis has yet been obtained, a detailed statement of symptoms;

2. The date, if known, on which the condition commenced;

3. The probable duration of the condition;

4. An estimate of the amount of time that the physician or practitioner believes the employee needs to care for the child, parent, grandparent, grandchild, sibling, spouse, or domestic partner; and

5. A statement that the serious health condition warrants the participation of the employee to provide care for his or her child, parent, grandparent, grandchild, sibling, spouse, or domestic partner. "Warrants the participation of the employee" includes, but is not limited to, providing psychological comfort, and arranging "third-party" care for the child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, as well as directly providing, or participating in, the medical care.

C. The Department shall develop a certification form for bonding that is separate and distinct from the certificate required in subsection A of this section 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.

D. The first and any continuing claim of an individual who obtains care and treatment outside this state shall be supported by
a certificate of a treating physician or practitioner duly licensed or certified by the state or foreign country in which the claimant is receiving the care and treatment. If a physician or practitioner licensed by and practicing in a foreign country is under investigation by the Department for filing false claims and the Department does not have legal remedies to conduct a criminal investigation or prosecution in that country, the Department may suspend the processing of all further certifications until the physician or practitioner fully cooperates, and continues to cooperate, with the investigation. A physician or practitioner licensed by, and practicing in, a foreign country who has been convicted of filing false claims with the Department may not file a certificate in support of a claim for disability benefits for a period of five (5) years.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 912 of Title 40, unless there is created a duplication in numbering, reads as follows:

All medical records of the Department obtained pursuant to the Paid Family Leave Act, except to the extent necessary for the proper administration of this act, or as provided elsewhere in law shall be confidential and shall not be published or be open to public inspection in any manner revealing the identity of the claimant or family member, or the nature or cause of his or her disability.
SECTION 13. NEW LAW  A new section of law to be codified in the Oklahoma Statutes as Section 913 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Each worker shall pay worker contributions at the rate determined by the Department of Labor. On or before October 31 of each calendar year, the Department shall prepare a statement, which shall be a public record, declaring the rate of worker contributions for the calendar year and shall notify promptly all employers of employees covered for family temporary disability insurance.

B. The rate of worker contributions shall be established by the Department.

C. There is created in the State Treasury a revolving fund for the Department of Labor to be designated as the "Disability Trust Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all contributions, penalties, and interest provided for in this act. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Department of Labor to perform duties as prescribed by this act. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Department of Labor for approval and payment. All benefits provided for in this act shall be payable from the fund. All benefits shall be paid in accordance with the rules as the Department of Labor may prescribe.
SECTION 14. This act shall become effective November 1, 2016.

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