

FIRST REGULAR SESSION

SENATE BILL NO. 44

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR DOUGHERTY.

Pre-filed December 1, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0252S.011

AN ACT

To amend chapter 288, RSMo, by adding thereto eleven new sections relating to the family leave act, with an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 288, RSMo, is amended by adding thereto eleven new sections, to be known as sections 288.510, 288.512, 288.514, 288.516, 288.518, 288.520, 288.522, 288.524, 288.526, 288.528, and 288.530 to read as follows:

288.510. As used in sections 288.510 to 288.530, the following terms mean:

(1) "Child", a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or a son or daughter of an employee who stands in loco parentis to that child;

(2) "Domestic partner", two consenting adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring;

(3) "Domestic partnership":

(a) Both persons have a common residence;

(b) Both persons agree to be jointly responsible for each other's basic living expenses incurred during the domestic partnership;

(c) Neither person is married or a member of another domestic partnership;

(d) Both persons are at least eighteen years of age; and

(e) Both persons are members of the same sex;

(4) "Family care leave", any of the following:

(a) Leave for reason of the birth of a child of the employee or the employee's domestic partner, the placement of a child with an employee in connection with the

adoption or foster care of the child by the employee or domestic partner, or the serious health condition of a child of the employee, spouse, or domestic partner;

(b) Leave to care for a parent, spouse, or domestic partner who has a serious health condition;

(5) "Family member", child, parent, spouse, or domestic partner;

(6) "Parent", a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child;

(7) "Physician", a person licensed as a physician pursuant to chapter 334, RSMo;

(8) "Practitioner", a person duly licensed or certified in this state acting within the scope of his or her license or certification who is a dentist, podiatrist, or as to normal pregnancy or childbirth, a midwife, nurse midwife, or nurse practitioner;

(9) "Serious health condition", 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.

288.512. The provisions of sections 288.510 to 288.530 shall apply to all employers in this state as defined in this chapter.

288.514. 1. It shall be unlawful to:

(1) Falsely certify the medical condition of any person in order to obtain family temporary disability insurance benefits;

(2) Knowingly present or cause to be presented any false or fraudulent written or oral material statement in support of any claim for family temporary disability insurance benefits;

(3) Knowingly solicit, receive, offer, pay, or accept any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for soliciting a claimant to apply for family temporary disability insurance benefits unless the payment is lawful; or

(4) Knowingly assist, abet, solicit, or conspire with any person who engages in an unlawful act pursuant to this section.

2. Anyone in violation of subsection 1 of this section shall be civilly liable for damages on all payments erroneously collected.

288.516. 1. The director of the division of employment security shall develop and maintain a program of education concerning family temporary disability insurance rights and benefits.

2. Beginning January 1, 2004, the director shall provide to each employer of employees subject to sections 288.510 to 288.530 a notice informing workers of their family temporary disability insurance rights and benefits due to the employee's own sickness, injury, or pregnancy, or the employee's need to provide care for any sick or injured family member or new child who is unable to care for himself or herself. The notice shall be given by every employer to each new employee hired on or after January 1, 2004, and to each employee leaving work on or after July 1, 2004, due to pregnancy, nonoccupational sickness or injury, or the need to provide care for any sick or injured family member or new child who is unable to care for himself or herself.

288.518. 1. (1) Pursuant to the rules and regulations promulgated by the director, 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. For subsequent periods of uninterrupted disability after the period covered by the initial certificate or any preceding continued claim, a claimant shall file a continued claim for those benefits supported by the certificate of a treating physician or practitioner. A certificate filed to establish medical eligibility for the employee's own sickness, injury, or pregnancy shall contain a diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) A certificate filed to establish medical eligibility of the employee's own sickness, injury, or pregnancy shall also contain a statement of medical facts including secondary diagnoses when applicable, within the physician's or practitioner's knowledge, based on a physical examination and a documented medical history of the claimant by the physician or practitioner, indicating his or her conclusion as to the claimant's disability, and a statement of his or her opinion as to the expected duration of the disability.

2. A certificate filed to establish medical eligibility of the serious health condition of the family member that warrants the care of the employee shall contain:

(1) A diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, where 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 is needed to care for the child, parent, spouse, or domestic partner;

(5) A statement that the serious health condition warrants the participation of the employee to provide care for his or her child, parent, 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, spouse, or domestic partner, as well as directly providing, or participating in, the medical care.

3. The division shall develop a certification form for an employee taking leave for reason of the birth of a child of the employee or the employee's domestic partner, or the placement of a child who is unable to care for himself or herself with the employee in connection with the adoption or foster care of the child by the employee or domestic partner.

4. 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 division for filing false claims and the division does not have legal remedies to conduct a criminal investigation or prosecution in that country, the division 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 division may not file a certificate in support of a claim for disability benefits for a period of five years.

5. For a claimant who is hospitalized in or under the authority of a hospital in this state, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by the hospital's registrar. For a claimant hospitalized in or under the care of a medical facility of the United States government, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by a medical officer of the facility duly authorized to do so.

6. Nothing in this section shall be construed to preclude the division from requesting additional medical evidence to supplement the first or any continued claim if the additional evidence can be procured without additional cost to the

claimant. The division may require that the additional evidence include identification of diagnoses, symptoms, or a statement as to the facts of the claimant's disability by the physician or practitioner treating the claimant, by the registrar, authorized medical officer, or other duly authorized official of the hospital or health facility treating the claimant, or by an examining physician or other representative of the division.

288.520. There is hereby created the "Family Temporary Disability Insurance Program" to provide up to six weeks of wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child. The program shall be a component of the division of employment security, shall be funded through employee contributions, and shall be administered in accordance with the policies of the division. Initial and ongoing administrative costs associated with the family temporary disability insurance program shall be payable from the "Disability Fund", which is hereby created in the state treasury. The provisions of section 33.080, RSMo, to the contrary notwithstanding, moneys in the disability fund shall not be transferred and placed to the credit of the general revenue fund.

288.522. 1. Worker contributions required pursuant to sections 288.510 to 288.530 shall be at a rate determined by the director to reimburse the disability fund for unemployment compensation disability benefits paid and estimated to be paid to all employers and self-employed individuals covered by those sections. On or before August thirty-first of each calendar year, the director shall prepare a statement, which shall be a public record, declaring the rate of contributions for the succeeding calendar year for all employers and self-employed individuals covered pursuant to sections 288.510 to 288.530 and shall notify promptly the employers and self-employed individuals of the rate. The rate shall be determined by dividing the estimated benefits and administrative costs paid in the prior year by the product of the annual remuneration deemed to have been received pursuant to sections 288.510 to 288.530 and the estimated number of persons who were covered at any time in the prior year. The resulting rate shall be rounded to the next higher one-hundredth percentage point. The rate may also be reduced or increased by a factor estimated to maintain as nearly as practicable a cumulative zero balance in the funds contributed pursuant to sections 288.510 to 288.530. Estimates made pursuant to this subdivision may be made on the basis of statistical sampling, or another method determined by the director.

2. The rate of worker contributions shall not exceed one and one-half percent or be less than one-tenth percent of such employee's annual wage. The rate of worker

contributions shall not decrease from the rate in the previous year by more than two-tenths of one percent.

3. Notwithstanding the provisions of subsection 2 of this section, the director may, at his or her discretion, increase or decrease, by not to exceed one-tenth percent, the rate of worker contributions determined pursuant to subsection 2 of this section, up to a maximum worker contribution rate of one and one-half percent, if he or she determines the adjustment is necessary to reimburse the disability fund for disability benefits paid or estimated to be paid to individuals covered by this section or to prevent the accumulation of funds in excess of those needed to maintain an adequate fund balance.

4. Nothing in sections 288.510 to 288.530 shall prohibit an employer from contributing to the disability fund.

288.524. 1. An individual's weekly benefit amount shall be computed as follows:

(1) If the wages are fixed by the week, the amount so fixed shall be the average weekly wage;

(2) If the wages are fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve and divided by fifty-two;

(3) If the wages are fixed by the year, the average weekly wage shall be the yearly fixed wage divided by fifty-two;

(4) If the wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be computed by dividing by thirteen the wages earned while actually employed by the employer in each of the last thirteen calendar weeks immediately preceding the week in which the employee was injured or if actually employed by the employer for less than thirteen weeks, by the number of calendar weeks, or any portion of a week, during which the employee was actually employed by the employer. For purposes of computing the average weekly wage pursuant to this subdivision, absence of five regular or scheduled work days, even if not in the same calendar week, shall be considered as absence for a calendar week. If the employee commenced employment on a day other than the beginning of a calendar week, such calendar week and the wages earned during such week shall be excluded in computing the average weekly wage pursuant to this subdivision;

(5) If the employee has been employed less than two calendar weeks immediately preceding the injury, the employee's weekly wage shall be considered to be equivalent to the average weekly wage prevailing in the same or similar employment at the time of the injury, except if the employer has agreed to a certain hourly wage, then the hourly wage agreed upon multiplied by the number of weekly hours scheduled shall be the employee's average weekly wage;

(6) If the hourly wage has not been fixed or cannot be ascertained, or the employee earned no wage, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where such services are rendered by paid employees of the employer or any other employer;

(7) In computing the average weekly wage pursuant to subdivisions (1) to (6) of this subsection, an employee shall be considered to have been actually employed for only those weeks in which labor is actually performed by the employee for the employer and wages are actually paid by the employer as compensation for such labor.

2. The maximum amount payable to an individual during any disability benefit period for family temporary disability insurance shall be six 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, it shall be computed to the next higher multiple of one dollar.

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

288.526. 1. An individual shall be deemed eligible for family temporary disability insurance benefits on any day in which he or she is unable to perform his or her regular or customary work because he or she is caring for a new child during the first year after the birth or placement of the child or a seriously ill child, parent, spouse, or domestic partner, subject to a waiting period of seven consecutive days during each family temporary disability benefit period where no benefits are payable within that period.

2. An individual shall not be eligible for family temporary disability insurance benefits with respect to any day:

- (1) That he or she has received unemployment compensation benefits;
- (2) Of unemployment and disability for which he or she has received, or is entitled to receive, other benefits in the form of cash benefits;
- (3) That he or she is entitled to receive state disability insurance benefits; and
- (4) That another family member is able and available for the same period of time that the individual is providing the required care.

3. An individual who is entitled to leave under the federal Family and Medical Leave Act must take Family Temporary Disability Insurance leave concurrent with leave taken under the federal Family and Medical Leave Act 29 U.S.C.A., Section 2612, et seq.

4. 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 weeks of earned but unused vacation leave prior to the employee's initial receipt of these benefits. If an employer so requires an employee to take vacation leave, that portion of the vacation leave that does not exceed one week shall be applied to the waiting period required pursuant to subsection 1 of this section.

288.528. If the director 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 director shall assess a penalty against the individual in the amount of twenty-five percent of the benefits paid as a result of the false certification. Penalties collected pursuant to this section shall be deposited in the contingent fund.

288.530. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections 288.510 to 288.528 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. Sections 288.510 to 288.528 and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

Section B. Section A of this act shall become effective January 1, 2004, and benefits shall be payable for periods of family temporary disability leave commencing on or after July 1, 2004.