

SENATE BILL NO. 332

May 11, 2023, Introduced by Senators GEISS, BAYER, IRWIN, POLEHANKI, MCMORROW, SANTANA, CHANG, SHINK and CAVANAGH and referred to the Committee on Housing and Human Services.

A bill to provide family leave and family leave optimal coverage benefits to certain individuals; to establish the circumstances under which family leave may be granted and family leave optimal coverage benefits may be paid; to require employer and employee contributions; to require certain duties of an employer; to prohibit certain discrimination and certain retaliatory actions; to require the coordination of certain benefits; to provide for the powers and duties of certain state governmental officers and entities; to require the promulgation of

rules; to provide for certain procedures for the resolution of claims; to establish the family leave optimal coverage fund; to require reporting; to provide for remedies; and to prohibit certain actions and prescribe civil sanctions.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "family leave optimal
2 coverage act".

3 Sec. 3. As used in this act:

4 (a) "Alternative base period" means the last 4 completed
5 calendar quarters immediately preceding the first day of an
6 individual's benefit year.

7 (b) "Average weekly wage" means 1/13 of the wages paid during
8 the quarter of a covered individual's base period or alternative
9 base period in which the total wages were highest.

10 (c) "Base period" means the first 4 of the last 5 completed
11 calendar quarters immediately preceding the first day of a covered
12 individual's benefit year. However, if the first quarter of the
13 last 5 completed calendar quarters was included in the base period
14 applicable to a covered individual's previous benefit year, the
15 covered individual's base period shall be the last 4 completed
16 calendar quarters.

17 (d) "Benefit year" means a 12-month period that begins on the
18 first day of the week in which an individual submits a claim for
19 family leave optimal coverage benefits.

20 (e) "Bereavement leave" means time off from work or the
21 availability for employment because of the death of a covered
22 individual's family member.

23 (f) "Child" means an individual who is any of the following:

24 (i) A covered individual's biological, adopted, or foster

1 child, stepchild, or legal ward.

2 (ii) A child of a covered individual's domestic partner.

3 (iii) A child to whom a covered individual stands in loco
4 parentis.

5 (iv) An individual to whom a covered individual stood in loco
6 parentis when the individual was a minor.

7 (g) "Communicable disease" means that term as defined in
8 section 5101 of the public health code, 1978 PA 368, MCL 333.5101.

9 (h) "Covered individual" means either of the following:

10 (i) An individual who satisfies all of the following
11 conditions:

12 (A) Submits a claim for family leave optimal coverage benefits
13 to the department.

14 (B) Has done 1 of the following:

15 (I) Made contributions to the family leave optimal coverage
16 fund as required under section 11 during the 12-month period
17 immediately preceding the date the individual submits the
18 individual's claim. An employer's failure to remit contributions to
19 the family leave optimal coverage fund on behalf of an individual
20 does not affect the individual's eligibility for family leave
21 optimal coverage benefits.

22 (II) Elected coverage as a self-employed individual under
23 section 19.

24 (ii) An individual who meets both of the following conditions:

25 (A) The individual is a former employee who has been separated
26 from employment for not more than 26 weeks at the start of the
27 individual's family leave.

28 (B) The individual satisfies the requirements of subparagraph
29 (i).

1 (i) "Department" means the department of labor and economic
2 opportunity.

3 (j) "Director" means the director of the department or the
4 director's designee.

5 (k) "Domestic partner" means an individual who is 18 years of
6 age or older in a committed relationship with another individual
7 who is 18 years of age or older, including both same-sex and
8 different-sex relationships. As used in this subdivision,
9 "committed relationship" means a relationship in which the domestic
10 partners share responsibility for a significant measure of each
11 other's common welfare, including, but not limited to, any
12 relationship that is granted legal recognition as a marriage, civil
13 union, or analogous relationship by this state, a political
14 subdivision of this state, another state, or a political
15 subdivision of another state, or the District of Columbia.

16 (l) "Domestic violence" means that term as defined in section 1
17 of 1978 PA 389, MCL 400.1501.

18 (m) "Employee" means an individual engaged in service to an
19 employer in the business of the employer. Employee does not include
20 either of the following:

21 (i) An individual employed by the United States government.

22 (ii) An employee as that term is defined in section 351 of the
23 railroad unemployment insurance act, 45 USC 351.

24 (n) "Employer" means a person that employs 1 or more
25 employees. Employer does not include the United States government.

26 (o) "Family leave" means time off from work or the
27 availability of employment that can be used for the reasons
28 described in section 5(1).

29 (p) "Family leave optimal coverage benefits" means the

1 benefits paid to a covered individual for family leave taken under
2 this act.

3 (q) "Family member" includes any of the following:

4 (i) A child, regardless of the child's age.

5 (ii) A biological, adoptive, or foster parent of the covered
6 individual or of the covered individual's spouse or domestic
7 partner.

8 (iii) A stepparent or legal guardian of the covered individual
9 or of the covered individual's spouse or domestic partner.

10 (iv) A person who stood in loco parentis to the covered
11 individual when the covered individual was a minor child.

12 (v) A person who stood in loco parentis to the covered
13 individual's spouse or domestic partner when the covered
14 individual's spouse or domestic partner was a minor child.

15 (vi) The covered individual's spouse.

16 (vii) The covered individual's domestic partner.

17 (viii) A biological, foster, or adoptive grandparent or step-
18 grandparent of the covered individual or of the covered
19 individual's spouse or domestic partner.

20 (ix) A biological, foster, or adoptive grandchild or step-
21 grandchild of the covered individual or of the covered individual's
22 spouse or domestic partner.

23 (x) A biological, foster, or adoptive sibling or stepsibling
24 of the covered individual or of the covered individual's spouse or
25 domestic partner.

26 (xi) An individual to whom the covered individual is related by
27 blood and whose relationship with the covered individual is the
28 equivalent of a familial relationship.

29 (r) "Health care provider" means any of the following:

1 (i) An individual licensed or registered under article 15 of
2 the public health code, 1978 PA 368, MCL 333.16101 to 333.18838,
3 including, but not limited to, a doctor, nurse, or midwife.

4 (ii) An individual authorized under federal law, the laws of
5 another state, or the laws of another country to provide medical or
6 emergency services, including, but not limited to, a doctor, nurse,
7 emergency room personnel, clinical social worker, licensed
8 professional counselor, licensed midwife, or certified doula, if
9 the individual provides the medical or emergency services in
10 accordance with the authorization, and within the jurisdiction, of
11 the authorizing authority.

12 (s) "Interference" means an action that may have the effect of
13 preventing or discouraging an employee from exercising a right
14 guaranteed under this act, including, but not limited to, any of
15 the following:

16 (i) Failing to comply with the requirements of section 17.

17 (ii) Failing to provide an employee with complete and accurate
18 information related to an application for family leave optimal
19 coverage benefits as may be required from an employer under section
20 17.

21 (iii) Failing to accurately and timely complete and return an
22 application for family leave optimal coverage benefits as may be
23 required from an employer under section 17.

24 (iv) Providing the department with inaccurate or incomplete
25 information about an employee's wages or employment as it relates
26 to the employee's eligibility for family leave optimal coverage
27 benefits.

28 (t) "Military member" means a member of the Armed Forces of
29 the United States, a reserve branch of the Armed Forces of the

1 United States, or the national guard.

2 (u) "Person" means an individual or a partnership,
3 corporation, limited liability company, governmental entity, or
4 other legal entity.

5 (v) "Qualifying exigency leave" means time off from work or
6 the availability for employment taken by a family member of a
7 military member to do any of the following:

8 (i) Child care and school activities described in 29 CFR
9 825.126.

10 (ii) Parental care described in 29 CFR 825.126.

11 (iii) Address any issue that arises because the military member
12 is notified not more than 7 days before the date of deployment of
13 an impending call or order to active duty.

14 (iv) Attend an official ceremony, program, or event sponsored
15 by the military that is related to the military member's active
16 duty or call to active duty status.

17 (v) Attend family-support or assistance programs and
18 informational briefings sponsored or promoted by the military, a
19 military service organization, or the American Red Cross that are
20 related to the military member's active duty or call to active duty
21 status.

22 (vi) Make or update financial or legal arrangements to address
23 the military member's absence while the military member is on
24 active duty or call to active duty status, including, but not
25 limited to, any of the following:

26 (A) Prepare and execute financial or health care powers of
27 attorney.

28 (B) Transfer bank account signature authority.

29 (C) Enroll in the Defense Enrollment Eligibility Reporting

1 System through the United States Department of Defense.

2 (D) Obtain military identification cards.

3 (E) Prepare or update a will or living trust.

4 (vii) Act as the military member's representative before a
5 federal, state, or local agency to obtain, arrange, or appeal
6 military service benefits under either of the following
7 circumstances:

8 (A) While the military member is on active duty or call to
9 active duty status.

10 (B) During the 90-day period immediately following the
11 termination of the military member's active duty status.

12 (viii) If counseling is necessary because of the military
13 member's active duty or call to active duty status, attend
14 counseling provided by an individual other than a health care
15 provider for any of the following individuals:

16 (A) The family member.

17 (B) The military member.

18 (C) A biological, adopted, or foster child of the military
19 member.

20 (D) A stepchild or legal ward of the military member.

21 (E) A child of the military member's domestic partner.

22 (F) A child to whom the military member stands in loco
23 parentis.

24 (ix) If the military member is on Rest and Recuperation leave
25 during the military member's period of deployment, spend time with
26 the military member.

27 (x) Attend arrival ceremonies, reintegration briefings and
28 events, or any other official ceremony or program sponsored by the
29 military during the 90-day period immediately following the

1 termination of the military member's active duty status.

2 (xi) Address any issue that arises from the death of the
3 military member while on active duty status, including, but not
4 limited to, meeting and recovering the military member's body,
5 making funeral arrangements, and attending funeral services.

6 (xii) Address any other event that arises out of the military
7 member's active duty or call to active duty status if the family
8 member and family member's employer agree that the leave qualifies
9 as an exigency and agree to the timing and duration of the leave.

10 (w) "Retaliatory personnel action" means interference with or
11 an action to deny any right granted an employee under this act.
12 Retaliatory personnel action includes, but is not limited to, any
13 of the following:

14 (i) Threatening an employee.

15 (ii) Discharging, suspending, demoting, or reducing the work
16 hours of an employee.

17 (iii) Reporting or threatening to report the suspected
18 citizenship or immigration status of an employee or employee's
19 family member to a federal, state, or local agency.

20 (iv) Punishing an employee for an employee's participation in
21 or assistance with an investigation, proceeding, or hearing under
22 this act.

23 (v) Any other adverse action against an employee in response
24 to an employee's exercise of a right granted under this act.

25 (x) "Safe leave" means time off from work or the availability
26 for employment because the covered individual or the covered
27 individual's family member is a victim of an act of violence,
28 including, but not limited to, domestic violence or sexual assault.
29 Time off from work or the availability of employment under this

1 subdivision includes, but is not limited to, any of the following:

2 (i) Medical care for the covered individual's or family
3 member's physical injury or disability.

4 (ii) Psychological or other counseling for the covered
5 individual's or family member's psychological injury or disability.

6 (iii) To obtain services from a victim services organization.

7 (iv) To relocate from the covered individual's or family
8 member's place of residence to a new place of residence.

9 (v) To obtain legal services.

10 (vi) To participate in a civil or criminal proceeding.

11 (y) "Serious health condition" means an illness, injury,
12 impairment, pregnancy, recovery from childbirth, or physical or
13 mental condition that involves any of the following:

14 (i) Inpatient care in a hospital, hospice, or residential care
15 facility.

16 (ii) Continuous treatment by a health care provider.

17 (iii) A condition associated with a public health emergency.

18 (z) "Sexual assault" means any act that violates section 520b,
19 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328,
20 MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

21 (aa) "Spouse" means an individual who is 18 years of age or
22 older and who is legally married to another individual who is 18
23 years of age or older under the laws of this state or another
24 state.

25 (bb) "State average weekly wage" means the state average
26 weekly wage as determined by the unemployment insurance agency
27 under section 27 of the Michigan employment security act, 1936 (Ex
28 Sess) PA 1, MCL 421.27.

29 Sec. 5. (1) Beginning January 1, 2026, a covered individual

1 may take not more than 15 weeks of family leave in a benefit year.
2 A covered individual may take family leave for any of the following
3 reasons:

4 (a) The birth or adoption of a child or placement of a child
5 through foster care.

6 (b) An absence related to the adoption of a child or placement
7 of a child through foster care if the absence is necessary for the
8 adoption or placement to proceed.

9 (c) To care for a child during the first year after the
10 child's anticipated or actual birth, adoption, or placement through
11 foster care.

12 (d) The covered individual's mental or physical illness,
13 injury, or health condition.

14 (e) To obtain a medical diagnosis, care, or treatment of the
15 covered individual's mental or physical illness, injury, or health
16 condition.

17 (f) Preventative medical care for the covered individual.

18 (g) The covered individual's family member's mental or
19 physical illness, injury, or health condition.

20 (h) To obtain a medical diagnosis, care, or treatment of the
21 covered individual's family member's mental or physical illness,
22 injury, or health condition.

23 (i) Preventative medical care for the covered individual's
24 family member.

25 (j) A serious health condition.

26 (k) To care for a family member with a serious health
27 condition.

28 (l) To care for a military member who is the covered
29 individual's family member.

1 (m) Qualifying exigency leave.

2 (n) Safe leave.

3 (o) Bereavement leave taken not later than 3 months after the
4 death of the covered individual's family member.

5 (p) To attend a meeting at a school or place of care of a
6 family member of the covered individual who is a child related to
7 the family member's health or disability or any effects on the
8 family member related to domestic violence or sexual assault.

9 (q) Closure of the covered individual's primary workplace by
10 order of a public official because of a public health emergency.

11 (r) To care for a family member of the covered individual who
12 is a child because the family member's school or place of care has
13 been closed by order of a public official or by a school or place
14 of care administrator because of a public health emergency,
15 including, but not limited to, if the school or place of care is
16 closed, but the administrators provide instruction remotely.

17 (s) If a local health department or the covered individual's
18 health care provider determines that the covered individual's or a
19 family member of the covered individual's presence in the community
20 may jeopardize another individual's health because the covered
21 individual or the family member is exposed to a communicable
22 disease, even if the covered individual or family member does not
23 contract the communicable disease.

24 (t) If the President of the United States, governor of this
25 state, or a local official of this state declares an emergency, the
26 inability to work or work remotely during the emergency or an
27 extension of the emergency for any of the following reasons:

28 (i) If the declared emergency is because of a natural disaster
29 or public health crisis, the covered individual has to care for a

1 family member because the family member's usual care professional
2 is unavailable because of the declared emergency.

3 (ii) If the declared emergency is because of a public health
4 crisis related to a communicable disease, any one of the following:

5 (A) The covered individual has close contact with an
6 individual who tests positive for the communicable disease or with
7 an individual who has 1 or more principal symptoms of the
8 communicable disease.

9 (B) The covered individual is subject to a personal, local,
10 state, or federal quarantine or isolation order, including, but not
11 limited to, a shelter-in-place or stay-at-home order related to the
12 declared emergency.

13 (C) The covered individual has a condition or characteristic
14 that might increase the covered individual's susceptibility of
15 contracting, or increase the health risks associated with
16 contracting, the communicable disease, including, but not limited
17 to, age, heart disease, asthma, lung disease, diabetes, kidney
18 disease, or a weakened or compromised immune system.

19 (iii) For any other reason related to a declared emergency as
20 provided for in a rule promulgated under this act.

21 (2) If a covered individual qualifies for family leave under
22 this section and intends to take family leave, the covered
23 individual must provide notice to the covered individual's employer
24 as soon as possible. However, an employer shall not require a
25 covered individual to do either of the following:

26 (a) Provide notice to the employer more than 30 days before
27 the need to take family leave if the need to take family leave is
28 foreseeable.

29 (b) Provide notice to the employer by a specific time if the

1 need to take family leave is not foreseeable.

2 Sec. 7. (1) The department shall, in accordance with this act,
3 pay family leave optimal coverage benefits to a covered individual
4 who takes family leave in accordance with this act. Family leave
5 optimal coverage benefits are payable to a covered individual for
6 the time that the covered individual takes family leave. Family
7 leave optimal coverage benefits are payable to a covered individual
8 for not more than 15 weeks during a benefit year. Family leave
9 optimal coverage benefits for bereavement leave are payable to a
10 covered individual for not more than 10 days for each death of a
11 family member of the covered individual during a benefit year,
12 subject to the maximum number of weeks established under this
13 subsection.

14 (2) A covered individual who takes family leave for qualifying
15 exigency leave described in section 3(v) *(iii)* may use the family and
16 medical leave during the 7-day period that begins on the date the
17 military member is notified of an impending call to, or order to,
18 active duty.

19 (3) A covered individual who takes family leave for qualifying
20 exigency leave described in section 3(v) *(ix)* may use family leave
21 during the 15-day period that begins on the date the military
22 member's Rest and Recuperation leave begins.

23 (4) Family leave optimal coverage benefits are payable on the
24 date a covered individual's family leave begins.

25 (5) The department shall issue the first payment of family
26 leave optimal coverage benefits to a covered individual not more
27 than 14 days after the claim is approved by the department.
28 Following the first payment, all other payments must be made to the
29 covered individual every other week.

1 (6) A covered individual must not be paid family leave optimal
2 coverage benefits for less than 8 hours of family leave used in 1
3 work week.

4 (7) A covered individual may take paid family leave on an
5 intermittent or reduced leave schedule in which all of the leave
6 authorized under this act is not taken sequentially. Family leave
7 optimal coverage benefits for intermittent or reduced leave
8 schedules must be prorated. A covered individual shall make a
9 reasonable effort to schedule paid family leave under this
10 subsection so as not to unduly disrupt the operations of the
11 covered individual's employer. A covered individual shall, to the
12 extent practicable, provide the covered individual's employer with
13 notice of the schedule on which the covered individual will be
14 taking the leave. Paid family leave taken under this subsection
15 must not result in a reduction of the total amount of leave to
16 which a covered individual is entitled beyond the amount of leave
17 actually taken.

18 Sec. 9. (1) Subject to subsection (2), a covered individual
19 must be paid family leave optimal coverage benefits equal to the
20 sum of the following:

21 (a) 90% of the portion of the covered individual's average
22 weekly wage that is equal to or less than 50% of the state average
23 weekly wage.

24 (b) 50% of the portion of the covered individual's average
25 weekly wage that is more than 50% of the state average weekly wage.

26 (2) The maximum weekly benefit rate payable to a covered
27 individual is 65% of the state average weekly wage.

28 (3) If a covered individual taking family leave from a job
29 continues working at an additional job or jobs during the covered

1 individual's family leave, the department shall not consider the
2 covered individual's average weekly wage earned from the job or
3 jobs when calculating the covered individual's weekly benefit
4 amount. A covered individual with multiple jobs may elect whether
5 to take leave from 1 job or multiple jobs.

6 Sec. 11. (1) Payroll contributions must be authorized for the
7 exclusive purpose of financing the payment of family leave optimal
8 coverage benefits and administering the family leave optimal
9 coverage program.

10 (2) Beginning January 1, 2025, for each employee, an employer
11 shall remit contributions to the state treasurer for deposit into
12 the family leave optimal coverage fund in the form and manner
13 determined by the department.

14 (3) For the time period beginning on January 1, 2025 and
15 ending on December 31, 2026, the contribution amount is a
16 percentage of wages per employee to be determined by the director
17 as sufficient to fund the payments of family leave optimal coverage
18 benefits and to administer the provisions of this act.

19 (4) For the 2027 calendar year and each calendar year
20 thereafter, not later than October 31, the director shall evaluate
21 and determine the contribution rate for the immediately following
22 calendar year based on a percent of employee wages and at the rate
23 necessary to obtain a total amount of contributions equal to 135%
24 of the benefits paid during the previous fiscal year plus an amount
25 equal to 100% of the cost of administration of the payment of those
26 benefits during the previous fiscal year, minus the amount of net
27 assets remaining in the family leave optimal coverage fund as of
28 June 30 of the current calendar year.

29 (5) An employer may deduct from an employee up to 50% of the

1 contribution required under this section from the employee's wages
2 and shall remit 100% of the contribution required under this
3 section to the family leave optimal coverage fund. Payments made
4 under this subsection must be made each quarter.

5 (6) The legislature shall appropriate sufficient funds to the
6 family leave optimal coverage fund to fund the cost of
7 administering this act before the collection of payroll
8 contributions under this section. If the legislature does not
9 appropriate sufficient funds to fund the cost of administering this
10 act before the collection of payroll contributions under this
11 section, the payroll contributions described in this section must
12 be increased to fund the payment of family leave optimal coverage
13 benefits.

14 (7) An employer with an approved private plan under section 39
15 is not required to pay contributions under this section.

16 (8) An employer that does not or refuses to make contributions
17 as required under this section must be assessed a percentage of its
18 total annual payroll equal to the percentage of payroll
19 contributions required under this section for each year the
20 employer does not comply with the requirements of this section, in
21 addition to any amounts previously owed, or fraction thereof, in
22 addition to the total amount of benefits paid to covered
23 individuals for whom it did not make contributions. Assessments
24 collected under this subsection shall be deposited into the family
25 leave optimal coverage fund.

26 Sec. 13. (1) An employer shall restore an employee who takes
27 family leave to 1 of the following job positions upon the
28 employee's return from family leave:

29 (a) The job position that the employee held before the

1 employee took the family leave.

2 (b) A different job position, if the different job position is
3 equivalent to the job position the employee held before the
4 employee took the family leave in all of the following:

5 (i) Seniority.

6 (ii) Status.

7 (iii) Employment benefits.

8 (iv) Wage rate.

9 (v) Any other terms and conditions of employment, including,
10 but not limited to, fringe benefits and service credits.

11 (2) If an employee takes family leave, an employer shall
12 maintain any health care benefits that the employee had before the
13 employee took the family leave, but only if the employee continues
14 to pay the employee's costs for the health care benefits during the
15 family leave. The health care benefits must be maintained for the
16 duration of the employee's family leave.

17 Sec. 15. (1) Family leave that also qualifies as leave under
18 the family and medical leave act of 1993, 29 USC 2601 to 2654, must
19 run concurrently with leave taken under the family and medical
20 leave act of 1993, 29 USC 2601 to 2654.

21 (2) An employer may require that family leave optimal coverage
22 benefits be coordinated or paid concurrently with payments made or
23 leave taken in accordance with either of the following regarding
24 family or medical leave:

25 (a) A provision of a collective bargaining agreement to which
26 the employer is a party.

27 (b) A paid family leave policy of the employer.

28 (3) If an employer requires family leave optimal coverage
29 benefits to be coordinated or paid concurrently under subsection

1 (2), the employer must provide its employees with written notice of
2 the requirement.

3 (4) This act does not prohibit an employer from offering a
4 family leave policy that is more generous than the leave required
5 under this act. Except as otherwise provided in subsection (5),
6 this act does not diminish or affect an individual's right,
7 privilege, or remedy related to leave or a benefit under any of the
8 following:

9 (a) A collective bargaining agreement or employment agreement.

10 (b) An employer's policy.

11 (c) Any other law.

12 (5) If an employer or employee is a party to a collective
13 bargaining agreement that meets both of the following conditions,
14 this act applies to the parties to the agreement beginning on the
15 expiration date stated in the agreement or the effective date of a
16 new collective bargaining agreement entered into between the
17 parties, whichever is earlier:

18 (a) The agreement is in effect on the effective date of this
19 act.

20 (b) The agreement conflicts with this act.

21 (6) An employer shall not require an employee to waive or
22 limit a right granted under this act. An agreement to waive a right
23 under this act is void and unenforceable.

24 (7) Notwithstanding any other provision of this act, an
25 employee is not required to use or exhaust any accrued vacation
26 leave, sick leave, or other paid time off before or while receiving
27 family leave optimal coverage benefits under this act. However, a
28 covered individual may choose to use any accrued vacation leave,
29 sick leave, or other paid time off while receiving family leave

1 optimal coverage benefits under this act, unless the aggregate
2 amount the covered individual would receive would exceed the
3 covered individual's average weekly earnings. This section does not
4 require an employee to receive or use additional paid time off as
5 described in this section.

6 Sec. 17. (1) An employer shall provide written notice that
7 includes the information under subsection (2) to all of its
8 employees before January 31 of each year and to an employee under
9 the following circumstances:

10 (a) When the employee is hired.

11 (b) When the employee requests family leave.

12 (c) When the employer learns that the employee's request for
13 time off work may qualify for family leave.

14 (2) The department may promulgate rules to establish
15 additional requirements related to the manner in which the employer
16 provides the written notice. The written notice required under
17 subsection (1) must include all of the following information:

18 (a) The employee's right to family leave optimal coverage
19 benefits under this act.

20 (b) The terms under which family leave may be used.

21 (c) The amount of family leave optimal coverage benefits
22 available to an employee.

23 (d) The procedure to submit a claim for family leave optimal
24 coverage benefits to the department.

25 (e) The employee's right to job protection and continuation of
26 health care benefits.

27 (f) A statement that discrimination and retaliatory personnel
28 action against a person's request or claim for or use of family
29 leave optimal coverage benefits is prohibited.

1 (g) The employee's right to request a hearing under this act.

2 (3) An employer shall display and maintain a poster that
3 includes all of the information described in subsection (2) at the
4 employer's place of business in a conspicuous location that is
5 accessible to employees. The information on the poster must be
6 printed in English, Spanish, Arabic, French, Mandarin, Korean,
7 Tagalog, and any other language that is requested by an employee.

8 (4) An employer that violates this section is subject to a
9 civil fine of not more than \$100.00 per day per employee for each
10 violation. The prosecutor of the county in which the violation
11 occurred or the attorney general may bring an action to collect the
12 fine. A fine collected must be deposited into the family leave
13 optimal coverage fund.

14 Sec. 19. (1) A self-employed individual, including, but not
15 limited to, an independent contractor, sole proprietor, individual
16 who is a partner in a partnership, or individual in a joint venture
17 may elect coverage under this act for an initial period that is not
18 less than 3 years. A self-employed individual who elects coverage
19 is eligible for family leave optimal coverage benefits when that
20 individual has met the requirements of section 3(h) (i) (B) (I).

21 (2) To elect coverage, a self-employed individual must do all
22 of the following:

23 (a) Submit a notice of election in writing with the department
24 on a form and in the manner prescribed by the department.

25 (b) Pay both the employee and employer contributions to the
26 family leave optimal coverage fund as described in section 11(5).

27 (3) A self-employed individual who elects coverage may
28 withdraw from coverage not more than 30 days after the end of the
29 3-year period of coverage or at another time as provided for under

1 the rules promulgated by the department. The self-employed
2 individual must submit a written notice of the withdrawal to the
3 department on a form and in the manner prescribed by the
4 department. The withdrawal must take effect not less than 30 days
5 after the notice of withdrawal is submitted.

6 (4) An individual who has elected coverage under this section
7 and is no longer a self-employed individual is excused from their
8 obligations under this section, as the department shall prescribe
9 by rule.

10 Sec. 21. (1) Not more than 1 year after the effective date of
11 this act, the department shall establish reasonable procedures and
12 prescribe forms for submission of a claim for family leave optimal
13 coverage benefits that are not unduly burdensome to an individual
14 who submits a claim for family leave optimal coverage benefits.

15 (2) An individual may file a claim for family leave optimal
16 coverage benefits not more than 60 days before the anticipated
17 start date of family leave and not more than 90 days after the
18 start date of family leave.

19 (3) Certification for a covered individual taking leave under
20 section 5(1) (a) to (c) is sufficient if the covered individual
21 provides any of the following, as applicable:

22 (a) The child's birth certificate.

23 (b) A document that states the child's birth date or
24 anticipated birth date issued by the health care provider of the
25 child or the health care provider of the person who gave birth.

26 (c) A document issued by the health care provider of the
27 child, an adoption agency involved in the adoption, or other
28 individuals, as determined by the department, that confirms the
29 adoption or anticipated adoption and the date of adoption or

1 anticipated adoption.

2 (d) A document issued by the health care provider of the
3 child, a foster care agency involved in the placement, or other
4 individuals, as determined by the department, that confirms the
5 placement or anticipated placement and the date of placement or
6 anticipated placement.

7 (4) Certification for a covered individual taking leave under
8 section 5(1)(j) is sufficient if it states the date on which the
9 serious health condition commenced, the probable duration of the
10 condition, and the appropriate medical facts within the knowledge
11 of the health care provider as required by the department.

12 (5) Certification for a covered individual taking leave under
13 section 5(1)(k) is sufficient if it states the date on which the
14 family member's serious health condition commenced, the probable
15 duration of the condition, the appropriate medical facts within the
16 knowledge of the health care provider as required by the
17 department, a statement that the covered individual is needed to
18 care for the family member, and an estimate of the amount of time
19 that the covered individual is needed to care for the family
20 member.

21 (6) Certification for a covered individual taking leave under
22 section 5(1)(l) is sufficient if it includes all of the following:

23 (a) The date on which the condition necessitating care
24 commenced.

25 (b) The probable duration of the care.

26 (c) The appropriate medical facts within the knowledge of the
27 health care provider as required by the department.

28 (d) A statement that the covered individual is needed to care
29 for the family member.

1 (e) An estimate of the amount of time that the covered
2 individual is needed to care for the family member.

3 (f) An attestation by the covered individual that the health
4 condition is connected to the covered service member's military
5 service.

6 (7) Certification for a covered individual taking leave under
7 section 5(1)(m) is sufficient if it includes any of the following:

8 (a) A copy of the family member's active-duty orders.

9 (b) Other documentation issued by the Armed Forces.

10 (c) Other documentation permitted by the department.

11 (8) Certification for a covered individual taking leave under
12 section 5(1)(n) is sufficient if the covered individual provides
13 any of the following:

14 (a) A police report indicating that the covered individual or
15 covered individual's family member was a victim of an act of
16 violence.

17 (b) A court document indicating that the covered individual or
18 covered individual's family member is involved in legal action
19 related to an act of violence.

20 (c) A signed statement from an attorney, member of the clergy,
21 victim and witness advocate, or medical or other professional
22 affirming that the covered individual or covered individual's
23 family member is a victim of an act of violence.

24 (d) The covered individual's statement, which need not be
25 notarized or in any particular form, affirming that the covered
26 individual or the covered individual's family member is a victim of
27 an act of violence and that the leave was taken for safe leave.

28 (9) Notwithstanding subsections (3) to (8), the department
29 shall accept alternative certification for any leave under section

1 5(1) that demonstrates the covered individual's need for leave for
2 a purpose specified under section 5(1).

3 (10) Not more than 5 business days after an individual submits
4 a claim for family leave optimal coverage benefits, the department
5 must notify the individual's employer about the claim.

6 (11) Information that an individual or another person submits
7 to the department under this act is confidential and is not subject
8 to disclosure under the freedom of information act, 1976 PA 442,
9 MCL 15.231 to 15.246. This act does not require a covered
10 individual to provide as certification any information from a
11 health care provider that would result in a violation of section
12 1177 of the Social Security Act, 42 USC 1320d-6, or the regulations
13 promulgated under section 264(c) of the Health Insurance
14 Portability and Accountability Act of 1996, Public Law 104-191.

15 (12) Not more than 1 year after the effective date of this
16 act, the department shall promulgate rules to implement this act
17 pursuant to the administrative procedures act of 1969, 1969 PA 306,
18 MCL 24.201 to 24.328.

19 Sec. 23. (1) A covered individual who submits a claim for
20 family leave optimal coverage benefits shall not do any of the
21 following for the purpose of obtaining family leave optimal
22 coverage benefits:

23 (a) Willfully make a false statement to the department.

24 (b) Willfully misrepresent a material fact to the department.

25 (c) Willfully fail to report a material fact to the
26 department.

27 (2) If the department determines that a covered individual
28 violated subsection (1), the department may, at the department's
29 discretion, not pay the covered individual family leave optimal

1 coverage benefits for up to 1 year beginning on the date of the
2 department's determination.

3 (3) Subject to subsection (4), the department may recover, in
4 whole or in part, family leave optimal coverage benefits paid to an
5 individual under the following circumstances:

6 (a) The department erroneously paid family leave optimal
7 coverage benefits to the covered individual.

8 (b) The department paid family leave optimal coverage benefits
9 to the covered individual because the covered individual violated
10 subsection (1).

11 (c) The department denies the covered individual's claim after
12 it has already paid family leave optimal coverage benefits to the
13 covered individual.

14 (4) The department shall waive the recovery of family leave
15 optimal coverage benefits under subsection (3) if recovery would be
16 against equity and good conscience.

17 Sec. 25. (1) An individual may request a hearing before the
18 department under this act regarding any determination related to
19 the individual's claim for family leave optimal coverage benefits,
20 including the denial of benefits. An individual must request a
21 hearing under this subsection not later than 90 days after the
22 individual receives notice of the determination. If the department
23 receives a request for a hearing under this subsection, the
24 department must hold a hearing not later than 14 days after it
25 receives the request or, if the department decides that a hearing
26 is not necessary, notify the requester of the reasons for its
27 decision not later than 7 days after it receives the request.

28 (2) An individual who believes that the individual's rights
29 under section 13 or 29 have been violated may, not later than 3

1 years after the violation occurs or the individual should
2 reasonably have known that the violation occurred, whichever is
3 later, do either of the following:

4 (a) Bring a civil action for damages, injunctive relief, or
5 both. A court shall award to a plaintiff who prevails in an action
6 brought under this subdivision not more than 2 times the amount of
7 actual damages, injunctive relief, as appropriate, and costs,
8 including, but not limited to, reasonable attorney costs. An
9 individual is not required to file a complaint with the department
10 under subdivision (b) before bringing a civil action under this
11 subdivision.

12 (b) File a complaint with the department.

13 (3) If the department determines that an employer violated
14 section 13 or 29, the department shall do both of the following:

15 (a) Order the employer to take action to remedy the violation,
16 which may include, but need not be limited to, providing the
17 requested family leave, reinstating an employee, providing back pay
18 accrued not more than 3 years before the complaint was filed,
19 paying liquidated damages, paying reasonable actual attorney fees
20 to the complainant, and any other relief the department determines
21 is appropriate.

22 (b) Assess the employer an administrative fine of not less
23 than \$1,000.00. An administrative fine recovered under this
24 subdivision must be deposited into the family leave optimal
25 coverage fund.

26 (4) If the department determines that an employer violated
27 section 13 or 29, the department may bring a civil action under
28 subsection (2)(a) on behalf of every individual affected by the
29 violation who has not brought a civil action under subsection

1 (2) (a) .

2 (5) The department shall conduct a hearing under this section
 3 in accordance with the procedures provided by chapter 4 of the
 4 administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to
 5 24.287. A final decision issued by the department related to family
 6 leave optimal coverage benefits is subject to judicial review by
 7 the courts as provided in chapter 6 of the administrative
 8 procedures act of 1969, 1969 PA 306, MCL 24.301 to 24.306.

9 Sec. 27. (1) The family leave optimal coverage fund is created
 10 in the state treasury.

11 (2) The state treasurer shall deposit money and other assets
 12 received from employer and employee contributions under section 11
 13 or from any other source into the family leave optimal coverage
 14 fund. The state treasurer shall direct the investment of money in
 15 the family leave optimal coverage fund and credit interest and
 16 earnings from the investments to the fund.

17 (3) The department of labor and economic opportunity is the
 18 administrator of the family leave optimal coverage fund for audits
 19 of the fund.

20 (4) The department of labor and economic opportunity shall
 21 expend money from the family leave optimal coverage fund, upon
 22 appropriation, only for the following purposes:

23 (a) Implementing this act.

24 (b) Paying family leave optimal coverage benefits to covered
 25 individuals.

26 Sec. 29. (1) A person shall not commit interference or
 27 restrain or deny the exercise of, or the attempt to exercise, a
 28 right granted under this act.

29 (2) A person shall not take retaliatory personnel action or

1 otherwise discriminate against another person because the person
2 exercises, or attempts to exercise, a right granted under this act.

3 (3) An employer's absence control policy must not treat family
4 leave as an absence that may result in the discipline, discharge,
5 demotion, suspension, or any other adverse action of an employee
6 that uses family leave or submits a claim for family leave optimal
7 coverage benefits.

8 Sec. 31. If the United States Internal Revenue Service
9 determines that family leave optimal coverage benefits are subject
10 to federal income tax, the department or a private plan approved
11 under section 39 must inform an individual who submits a new claim
12 for family leave optimal coverage benefits, at the time of the
13 submission, of both of the following:

14 (a) Family leave optimal coverage benefits are subject to
15 federal income tax.

16 (b) Some taxpayers are required to make estimated tax
17 payments.

18 Sec. 33. Before September 30 of each year, the department
19 shall submit a report to the secretary of the senate and the clerk
20 of the house of representatives that includes all of the following
21 information:

22 (a) The amount of family leave optimal coverage benefits that
23 the department projected would be paid for the year covered by the
24 report delineated by each eligible reason described in section
25 5(1).

26 (b) The actual amount of family leave optimal coverage
27 benefits paid for the year covered by the report delineated by each
28 eligible reason described in section 5(1).

29 (c) The amount of family leave that the department projected

1 would be used for the year covered by the report delineated by each
2 eligible reason described in section 5(1).

3 (d) The actual amount of family leave used for the year
4 covered by the report delineated by each eligible reason described
5 in section 5(1).

6 (e) The age, gender, race, ethnicity, primary language,
7 residential zip code, average weekly wage, and occupation of each
8 individual who was paid family leave optimal coverage benefits.

9 (f) The age, gender, race, ethnicity, primary language,
10 residential zip code, average weekly wage, and occupation of each
11 individual who submitted a claim for family leave optimal coverage
12 benefits but was not paid family leave optimal coverage benefits.

13 (g) Whether each individual who received or submitted a claim
14 for family leave optimal coverage benefits was employed full- or
15 part-time, self-employed, or recently separated from employment.

16 (h) The average weekly rate of family leave optimal coverage
17 benefits.

18 (i) The average duration of family leave, delineated by
19 purpose under section 5(1).

20 (j) The contribution rates paid to the family leave optimal
21 coverage fund for both employers and employees.

22 (k) The amount of money in the family leave optimal coverage
23 fund on September 1 of the year covered by the report.

24 (l) The average processing time for initial claims.

25 (m) The average length of time between the submission of a
26 claim for family leave optimal coverage benefits and the receipt of
27 benefits on that claim.

28 (n) A summary of the outreach efforts made by the department
29 under section 35.

1 Sec. 35. (1) The department shall educate employers and
2 employees about this act and the availability of family leave
3 optimal coverage benefits under this act.

4 (2) Educational material that the department provides to the
5 employers and employees must be available in English, Spanish, and
6 any other language requested by an employee or employer.

7 (3) Each year, the department may use not more than 5% of the
8 funds in the family leave optimal coverage fund to fulfill its
9 duties under this section.

10 Sec. 37. Except as otherwise provided in this act, a person
11 that violates this act is subject to a civil fine of not more than
12 \$5,000.00. The prosecutor of the county in which the violation
13 occurred or the attorney general may bring an action to collect the
14 fine. A fine collected under this section must be deposited into
15 the family leave optimal coverage fund.

16 Sec. 39. (1) An employer may apply to the department for
17 approval to meet their obligations under this act through a private
18 plan. In order to be approved, a private plan must confer all of
19 the same rights, protections, and benefits provided to employees
20 under this act, including, but not limited to, all of the
21 following:

22 (a) Allowing family leave to be taken for any purpose
23 specified in section 5(1).

24 (b) Providing family leave optimal coverage benefits to a
25 covered individual for the maximum number of weeks required in
26 section 7(1) in a benefit year.

27 (c) Allowing family leave optimal coverage benefits under
28 section 5(1)(b)(v) through section 5(1)(b)(*xviii*) to be taken to care
29 for any family member.

1 (d) Allowing family leave optimal coverage benefits under
2 section 5(1)(b)(viii) to be taken by a covered individual with any
3 serious health condition.

4 (e) Allowing family leave optimal coverage benefits under
5 section 5(1)(b)(xii) to be taken for safe leave.

6 (f) Providing a wage replacement rate for all family leave
7 optimal coverage benefits that is equal to or greater than the
8 amount required by section 9(1).

9 (g) Providing a maximum weekly benefit for all family leave
10 optimal coverage benefits that is equal to or greater than the
11 amount specified in section 9(2).

12 (h) Allowing a covered individual to take intermittent leave
13 as authorized by section 7(7).

14 (i) Imposing no additional conditions or restrictions on
15 family leave or family leave optimal coverage benefits, beyond
16 those explicitly authorized by this act or the rules promulgated
17 under this act.

18 (j) Allowing any employee covered under the private plan who
19 is eligible for family leave optimal coverage benefits under this
20 act to receive benefits and take family leave under the private
21 plan.

22 (2) In order to be approved as meeting an employer's
23 obligations under this act, a private plan must comply with the
24 following provisions:

25 (a) If the private plan is in the form of self-insurance, the
26 employer must furnish a bond to the state, with a surety company
27 authorized to transact business in the state, in the form, amount,
28 and manner required by the department.

29 (b) The plan must provide coverage for all employees of the

1 employer throughout their period of employment with that employer.

2 (c) If the plan is in the form of a third party that provides
3 for insurance, the forms of the policy must be issued by an insurer
4 approved by this state.

5 (d) Provide written notice to employees covered by the private
6 plan that includes all of the following:

7 (i) Information about family leave optimal coverage benefits
8 available under the approved plan, including the duration of leave,
9 and specifically stating that family leave optimal coverage
10 benefits required by the state are being administered for this
11 employer under this private plan.

12 (ii) The process for filing a claim to receive family leave
13 optimal coverage benefits under the plan.

14 (iii) The process for employee contributions used to finance the
15 costs of the plan, if any.

16 (iv) An employee's right to a hearing before the department or
17 a court regarding a contested determination or denial of family
18 leave optimal coverage benefits as provided by section 25.

19 (v) The right to job restoration and health care benefits
20 continuation, if applicable, pursuant to section 13, and that the
21 employee has the right to a hearing before the department and a
22 court for any alleged violation of section 13.

23 (vi) A statement that discrimination and retaliatory personnel
24 action against an individual's request or claim for or use of
25 family leave optimal coverage benefits is prohibited.

26 (e) The cost to employees covered by the plan must not be
27 greater than the cost charged to employees under the state plan
28 under section 11.

29 (3) The department shall withdraw approval for a private plan

1 granted under subsection (1) when a term or condition of the plan
2 has been violated. Causes for plan termination include, but are not
3 limited to, any of the following:

4 (a) Failure to pay benefits.

5 (b) Failure to pay benefits timely and in a manner consistent
6 with this act.

7 (c) Failure to maintain an adequate surety bond under
8 subsection (2)(a).

9 (d) Misuse of private plan money.

10 (e) Failure to submit reports or comply with other compliance
11 requirements as required by the director by rule.

12 (f) Failure to comply with this act or the regulations
13 promulgated pursuant to this act.

14 (4) An employee covered by a private plan approved under this
15 section shall retain all applicable rights under section 13.

16 (5) A contested determination, denial of family leave optimal
17 coverage benefits, or an alleged violation of this act by a private
18 plan is subject to a hearing before the department or a court as
19 provided for in section 25.

20 (6) An employer or entity offering private plans that violates
21 this section shall be assessed an administrative fine of not less
22 than \$100.00 per violation. The director shall deposit any fines
23 collected under this subsection into the family leave optimal
24 coverage fund. The director shall establish a process for the
25 assessment and appeal of fines under this subsection.

26 (7) The director shall annually determine the total amount
27 expended by the department for costs arising out of the
28 administration of private plans. Each entity offering a private
29 plan shall reimburse the department for the costs arising out of

1 the private plans in the amount, form, and manner determined by the
2 director. The director shall deposit payments received under this
3 subsection into the family leave optimal coverage fund.

4 Enacting section 1. This act takes effect January 1, 2024.