

**SUBSTITUTE FOR
SENATE BILL NO. 332**

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 is the last 4 completed calendar
16 quarters.

17 (d) "Benefit year" means a 1-year 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
25 child, stepchild, or legal ward.

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

27 (iii) A child to whom a covered individual stands in loco
28 parentis.



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

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

5 (h) "Covered individual" means an individual who satisfies all
6 of the following conditions:

7 (i) The individual submits a claim for family leave optimal
8 coverage benefits to the department.

9 (ii) The individual has done 1 of the following:

10 (A) Earned \$3,000.00 or more in wages that are subject to
11 contributions under section 11 during the individual's base period
12 or alternative base period. An employer's failure to remit
13 contributions to the family leave optimal coverage fund on behalf
14 of an individual does not affect the individual's eligibility for
15 family leave optimal coverage benefits.

16 (B) Elected coverage as a self-employed individual under
17 section 19.

18 (iii) The individual is 1 of the following:

19 (A) Currently employed.

20 (B) A former employee who has been separated from employment
21 for not more than 26 weeks at the start of the individual's family
22 leave.

23 (i) "Department" means the department of labor and economic
24 opportunity.

25 (j) "Director" means the director of the department or the
26 director's designee.

27 (k) "Domestic partner" means that term as defined in section 2
28 of the earned sick time act, 2018 PA 338, MCL 408.962.

29 (l) "Domestic violence" means that term as defined in section 1



1 of 1978 PA 389, MCL 400.1501.

2 (m) "Employee" means an individual engaged in service to an
3 employer in the business of the employer. Employee does not include
4 either of the following:

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

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

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

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

13 (p) "Family leave optimal coverage benefits" means the
14 benefits paid to a covered individual for family leave taken under
15 this act.

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

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

18 (ii) A biological, adoptive, or foster parent of the covered
19 individual or of the covered individual's spouse or domestic
20 partner.

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

23 (iv) An individual who stood in loco parentis to the covered
24 individual when the covered individual was a minor child.

25 (v) An individual who stood in loco parentis to the covered
26 individual's spouse or domestic partner when the covered
27 individual's spouse or domestic partner was a minor child.

28 (vi) The covered individual's spouse.

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



1 (viii) A biological, foster, or adoptive grandparent or step-
2 grandparent of the covered individual or of the covered
3 individual's spouse or domestic partner.

4 (ix) A biological, foster, or adoptive grandchild or step-
5 grandchild of the covered individual or of the covered individual's
6 spouse or domestic partner.

7 (x) A biological, foster, or adoptive sibling or stepsibling
8 of the covered individual or of the covered individual's spouse or
9 domestic partner.

10 (xi) An individual to whom the covered individual is related by
11 blood or whose relationship with the covered individual is the
12 equivalent of a familial relationship.

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

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

17 (ii) An individual authorized under federal law, the laws of
18 another state, or the laws of another country to provide medical or
19 emergency services, including, but not limited to, a doctor, nurse,
20 emergency room personnel, clinical social worker, licensed
21 professional counselor, licensed midwife, or certified doula, if
22 the individual provides the medical or emergency services in
23 accordance with the authorization, and within the jurisdiction, of
24 the authorizing authority.

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

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



1 (ii) Failing to provide an employee with complete and accurate
2 information related to a claim for family leave optimal coverage
3 benefits as may be required from an employer under section 17.

4 (iii) Failing to accurately and timely complete and return a
5 claim for family leave optimal coverage benefits as may be required
6 from an employer under section 17.

7 (iv) Providing the department with inaccurate or incomplete
8 information about an employee's wages or employment as it relates
9 to the employee's eligibility for family leave optimal coverage
10 benefits.

11 (t) "Military member" means a member of the Armed Forces of
12 the United States, a reserve branch of the Armed Forces of the
13 United States, or the national guard.

14 (u) "Person" means an individual or a partnership,
15 corporation, limited liability company, governmental entity, or
16 other legal entity.

17 (v) "Qualifying act of violence" includes, but is not limited
18 to, any of the following:

19 (i) Domestic violence.

20 (ii) Sexual assault.

21 (iii) Stalking.

22 (iv) An act in which a person uses force to cause a personal
23 injury to an individual or an act in which a person causes a
24 personal injury to an individual by making a reasonably perceived
25 or actual threat of injury or death. As used in this subparagraph,
26 "personal injury" means that term as defined in section 1 of 1976
27 PA 223, MCL 18.351.

28 (w) "Qualifying exigency leave" means time off from work or
29 the availability for employment taken by a family member of a



1 military member to do any of the activities described in 29 CFR
2 825.126.

3 (x) "Retaliatory personnel action" means interference with or
4 an action to deny any right granted an employee under this act.
5 Retaliatory personnel action includes, but is not limited to, any
6 of the following:

7 (i) Threatening an employee.

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

10 (iii) Reporting or threatening to report the suspected
11 citizenship or immigration status of an employee or employee's
12 family member to a federal, state, or local governmental body.

13 (iv) Punishing an employee for an employee's participation in
14 or assistance with an investigation, proceeding, or hearing under
15 this act.

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

18 (y) "Safe leave" means time off from work or the availability
19 for employment because the covered individual or the covered
20 individual's family member is a victim of a qualifying act of
21 violence. Time off from work or the availability of employment
22 under this subdivision includes, but is not limited to, any of the
23 following:

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

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

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

29 (iv) To relocate from the covered individual's or family



1 member's place of residence to a new place of residence.

2 (v) To obtain legal services.

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

4 (z) "Serious health condition" means an illness, injury,
5 impairment, pregnancy, recovery from childbirth, or physical or
6 mental condition that involves either of the following:

7 (i) Inpatient care in a hospital, hospice, or residential care
8 facility.

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

10 (aa) "Sexual assault" means any act that violates section
11 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA
12 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

13 (bb) "Spouse" means an individual who is 18 years of age or
14 older and who is legally married to another individual who is 18
15 years of age or older under the laws of this state or another
16 state.

17 (cc) "Stalking" means that term as defined in section 411h of
18 the Michigan penal code, 1931 PA 328, MCL 750.411h.

19 (dd) "State average weekly wage" means the state average
20 weekly wage as determined by the unemployment insurance agency
21 under section 27 of the Michigan employment security act, 1936 (Ex
22 Sess) PA 1, MCL 421.27.

23 Sec. 5. (1) A covered individual may take family leave for any
24 of the following reasons:

25 (a) To bond with or care for a child during the first year
26 after either of the following:

27 (i) The child's birth.

28 (ii) The anticipated or actual date of the adoption of the
29 child or the placement of the child through foster care.



1 (b) An absence related to the adoption of a child or placement
2 of a child through foster care if the absence is necessary for the
3 adoption or placement to proceed.

4 (c) A serious health condition.

5 (d) To care for a family member with a serious health
6 condition.

7 (e) Qualifying exigency leave.

8 (f) Safe leave.

9 (g) Bereavement leave taken not later than 3 months after the
10 death of a family member of the covered individual.

11 (h) For a purpose described in section 4(1)(e) of the earned
12 sick time act, 2018 PA 338, MCL 408.964, if the covered individual
13 has used all earned sick time available under the earned sick time
14 act, 2018 PA 338, MCL 408.961 to 408.974, for the same purpose.

15 (i) If the governor of this state or a local official of this
16 state declares a state of disaster or a state of emergency because
17 of a natural disaster or public health crisis, the inability to
18 work or work remotely during the state of disaster or state of
19 emergency or during an extension of the state of disaster or state
20 of emergency for any of the following reasons:

21 (i) The covered individual has to care for a family member
22 because the family member's usual care professional is unavailable
23 because of the state of disaster or state of emergency.

24 (ii) The covered individual has close contact with an
25 individual who tests positive for a communicable disease or with an
26 individual who has 1 or more principal symptoms of a communicable
27 disease, if the communicable disease is related to the state of
28 disaster or state of emergency.

29 (iii) The covered individual is subject to a local or state



1 quarantine or isolation order, including, but not limited to, a
2 shelter-in-place or stay-at-home order related to the state of
3 disaster or state of emergency.

4 (iv) The covered individual has a condition or characteristic
5 that might increase the covered individual's susceptibility of
6 contracting, or increase the health risks associated with
7 contracting, a communicable disease, including, but not limited to,
8 age, heart disease, asthma, lung disease, diabetes, kidney disease,
9 or a weakened or compromised immune system, if the communicable
10 disease is related to the state of disaster or state of emergency.

11 (v) For any other reason related to a state of disaster or
12 state of emergency as provided for in the rules promulgated under
13 this act.

14 (2) A covered individual may take the following amounts of
15 family leave in a benefit year:

16 (a) For family leave that a covered individual begins taking
17 during the 1-year period beginning 1 year after the date described
18 in section 11(2), not more than 5 weeks.

19 (b) For family leave that a covered individual begins taking
20 during the 1-year period beginning 2 years after the date described
21 in section 11(2), not more than the following, as applicable:

22 (i) 10 weeks.

23 (ii) If the covered individual takes family leave under
24 subdivision (a), 10 weeks minus the amount of family leave that the
25 covered individual takes during the same benefit year under
26 subdivision (a).

27 (c) For family leave that a covered individual begins taking 3
28 years after the date described in section 11(2), not more than the
29 following, as applicable:



1 (i) 12 weeks.

2 (ii) If the covered individual takes family leave under
3 subdivision (b), 12 weeks minus the amount of family leave that the
4 covered individual takes during the same benefit year under
5 subdivision (b).

6 (3) If a covered individual qualifies for family leave under
7 this section and intends to take family leave, the covered
8 individual must provide notice to the covered individual's employer
9 as soon as possible. However, an employer shall not require a
10 covered individual to do either of the following:

11 (a) Provide notice to the employer more than 30 days before
12 the need to take family leave if the need to take family leave is
13 foreseeable.

14 (b) Provide notice to the employer by a specific time if the
15 need to take family leave is not foreseeable.

16 Sec. 7. (1) The department shall, in accordance with this act,
17 pay family leave optimal coverage benefits to a covered individual
18 who takes family leave in accordance with this act. Family leave
19 optimal coverage benefits are payable to a covered individual for
20 the time that the covered individual takes family leave. Family
21 leave optimal coverage benefits are payable to a covered individual
22 for not more than the number of weeks provided for in section 5(2).
23 Family leave optimal coverage benefits for bereavement leave are
24 payable to a covered individual for not more than 10 days for each
25 death of a family member of the covered individual during a benefit
26 year, subject to a combined total of 15 days during a benefit year.

27 (2) A covered individual who takes family leave for qualifying
28 exigency leave described in 29 CFR 825.126(b)(1), may use the
29 family and medical leave during the period described in 29 CFR



1 825.126(b)(1).

2 (3) A covered individual who takes family leave for qualifying
3 exigency leave described in 29 CFR 825.126(b)(6), may use family
4 leave during the period described in 29 CFR 825.126(b)(6).

5 (4) Family leave optimal coverage benefits are payable to a
6 covered individual beginning on the date the covered individual's
7 family leave begins.

8 (5) The department shall issue the first payment of family
9 leave optimal coverage benefits to a covered individual not more
10 than 14 days after the covered individual's claim is approved by
11 the department. Following the first payment, all other payments
12 must be made to the covered individual every other week.

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

16 (7) A covered individual may take family leave on an
17 intermittent or reduced leave schedule in which all of the family
18 leave authorized under this act is not taken sequentially. Family
19 leave optimal coverage benefits for intermittent or reduced leave
20 schedules must be prorated. A covered individual shall make a
21 reasonable effort to schedule foreseeable family leave under this
22 subsection so as not to unduly disrupt the operations of the
23 covered individual's employer. A covered individual shall, to the
24 extent practicable, provide the covered individual's employer with
25 notice of the schedule on which the covered individual will be
26 taking the family leave. Family leave taken under this subsection
27 must not result in a reduction of the total amount of family leave
28 to which a covered individual is entitled beyond the amount of
29 family leave actually taken.



1 Sec. 9. (1) Subject to subsection (2), a covered individual
2 must be paid family leave optimal coverage benefits equal to 100%
3 of the covered individual's average weekly wage.

4 (2) The maximum weekly benefit rate payable to a covered
5 individual is 2/3 of the state average weekly wage.

6 (3) If a covered individual taking family leave from a job
7 continues working at an additional job during the covered
8 individual's family leave, the department shall not consider the
9 covered individual's average weekly wage earned from the additional
10 job in calculating the covered individual's weekly benefit amount.
11 A covered individual with multiple jobs may elect whether to take
12 leave from 1 job or multiple jobs.

13 Sec. 11. (1) Payroll contributions must be authorized for the
14 exclusive purpose of financing the payment of family leave optimal
15 coverage benefits and administering the family leave optimal
16 coverage program.

17 (2) Beginning on a date determined by the director, for each
18 employee, an employer shall, except as otherwise provided in this
19 section, remit contributions to the state treasurer for deposit
20 into the family leave optimal coverage fund in the form and manner
21 determined by the department. The director shall determine a date
22 under this subsection that is not more than 2 years after the
23 effective date of this act.

24 (3) For the time period beginning on the date described in
25 subsection (2) and ending on December 31 of the immediately
26 following calendar year, the contribution amount is, subject to
27 subsection (5), a percentage of wages per employee to be determined
28 by the director as sufficient to fund the payments of family leave
29 optimal coverage benefits and to administer the provisions of this



1 act.

2 (4) By not later than October 31 of the calendar year
3 described in subsection (3), and by not later than October 31 of
4 each calendar year thereafter, the director shall, subject to
5 subsection (5), evaluate and determine the contribution rate for
6 the immediately following calendar year based on a percent of
7 employee wages and at the rate necessary to obtain a total amount
8 of contributions equal to 135% of the benefits paid during the
9 previous fiscal year plus an amount equal to 100% of the cost of
10 administration of the payment of those benefits during the previous
11 fiscal year, minus the amount of net assets remaining in the family
12 leave optimal coverage fund as of June 30 of the current calendar
13 year.

14 (5) An employer that employs 25 or more employees may deduct
15 from an employee up to 50% of the contribution required under this
16 section from the employee's wages and shall remit 100% of the
17 contribution required under this section to the family leave
18 optimal coverage fund. An employer that employs fewer than 25
19 employees may deduct from an employee up to 50% of the contribution
20 required under this section from the employee's wages and shall
21 remit 50% of the contribution required under this section to the
22 family leave optimal coverage fund.

23 (6) The legislature shall appropriate sufficient funds to the
24 family leave optimal coverage fund to fund the cost of
25 administering this act before the collection of payroll
26 contributions under this section. If the legislature does not
27 appropriate sufficient funds to fund the cost of administering this
28 act before the collection of payroll contributions under this
29 section, the payroll contributions described in this section must



1 be increased to fund the payment of family leave optimal coverage
2 benefits.

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

5 (8) If an employer provides Medicaid home- and community-based
6 services with funding provided by the department of health and
7 human services, through the behavioral and physical health and
8 aging services administration or the bureau of children's
9 coordinated health policy and supports, this state shall pay the
10 contributions that the employer is otherwise required to pay under
11 this section during the periods that the employer provides those
12 services.

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

23 (10) An employer shall remit the contributions required under
24 this section each quarter.

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

28 (a) The job position that the employee held before the
29 employee took the family leave.



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

4 (i) Seniority.

5 (ii) Status.

6 (iii) Employment benefits.

7 (iv) Wage rate.

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

10 (2) If an employee takes family leave, an employer shall, for
11 the duration of the employee's family leave, maintain every health
12 care benefit that the employee had before the employee took the
13 family leave, but only if the employee continues to pay the
14 employee's costs for the health care benefit during the family
15 leave.

16 (3) If an unconditional increase in a covered individual's
17 wages, such as a cost of living increase, is scheduled to take
18 effect or takes effect while the covered individual is taking
19 family leave, the covered individual's employer shall provide the
20 unconditional wage increase to the covered individual. If a
21 conditional increase in a covered individual's wages, such as an
22 increase based on seniority, length of service, or work performed,
23 is scheduled to take effect or takes effect while the covered
24 individual is taking family leave, the covered individual's
25 employer shall provide the conditional wage increase to the covered
26 individual in accordance with the employer's policy or practice
27 regarding conditional pay increases for an employee who takes time
28 off from work or the availability of employment for a reason that
29 is the same as or similar to, but that does not qualify for, family



1 leave.

2 Sec. 15. (1) Family leave that also qualifies as leave under
3 the family and medical leave act of 1993, 29 USC 2601 to 2654, must
4 be taken concurrently with leave taken under the family and medical
5 leave act of 1993, 29 USC 2601 to 2654.

6 (2) An employer may, if both of the following conditions are
7 met, require that an employee's family leave optimal coverage
8 benefits be coordinated or paid concurrently with payments made or
9 leave taken in accordance with a provision of a collective
10 bargaining agreement to which the employer and employee are parties
11 or a paid family leave policy of the employer:

12 (a) The collective bargaining agreement or policy requires
13 that the payments must be paid or leave must be used solely for
14 family leave.

15 (b) The employer notifies the employee, in writing, that the
16 employee's family leave optimal coverage benefits must be
17 coordinated or paid concurrently as allowed for under this
18 subsection.

19 (3) If an employer requires family leave optimal coverage
20 benefits to be coordinated or paid concurrently under subsection
21 (2), the employer must provide its employees with written notice of
22 the requirement.

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

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



1 (b) An employer's policy.

2 (c) Any other law.

3 (5) If an employer or employee is a party to a collective
4 bargaining agreement that meets both of the following conditions,
5 this act applies to the parties to the agreement beginning on the
6 expiration date stated in the agreement or the effective date of a
7 new collective bargaining agreement entered into between the
8 parties, whichever is earlier:

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

11 (b) The agreement conflicts with this act.

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

15 (7) Except as otherwise provided in subsection (2) or section
16 5(1)(h), an employee is not required to use or exhaust any accrued
17 vacation leave, sick leave, or other paid time off before or while
18 receiving family leave optimal coverage benefits under this act.
19 However, a covered individual may choose to use any accrued
20 vacation leave, sick leave, or other paid time off while receiving
21 family leave optimal coverage benefits under this act, unless the
22 aggregate amount the covered individual would receive would exceed
23 the covered individual's average weekly earnings. This section does
24 not require an employee to receive or use additional paid time off
25 as described in this section.

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



1 (a) When the employee is hired.

2 (b) When the employee requests family leave.

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

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

9 (a) The employee's right to family leave optimal coverage
10 benefits or to take family leave under this act.

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

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

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

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

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

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

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

28 (4) An employer that violates subsection (1) is subject to a
29 civil fine of not more than \$100.00 per day per employee for each



1 violation. An employer that violates subsection (3) is subject to a
 2 civil fine of not more than \$100.00 per day for each violation. The
 3 prosecutor of the county in which the violation occurred or the
 4 attorney general may bring an action to collect a fine under this
 5 subsection. A fine collected under this subsection must be
 6 deposited into the family leave optimal coverage fund.

7 Sec. 19. (1) A self-employed individual, including, but not
 8 limited to, an independent contractor, sole proprietor, individual
 9 who is a partner in a partnership, or individual in a joint
 10 venture, may elect coverage under this act for an initial period
 11 that is not less than 3 years. A self-employed individual who
 12 elects coverage is eligible for family leave optimal coverage
 13 benefits beginning on the date that the individual meets the
 14 applicable requirements of section 3(h).

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

17 (a) Submit a notice of election in writing to the department
 18 on a form and in the manner prescribed by the department.

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

21 (3) A self-employed individual who elects coverage may
 22 withdraw from coverage not more than 30 days after the end of the
 23 3-year period of coverage or at another time as provided for under
 24 the rules promulgated by the department. The self-employed
 25 individual must submit a written notice of the withdrawal to the
 26 department on a form and in the manner prescribed by the
 27 department. The withdrawal must take effect not less than 30 days
 28 after the notice of withdrawal is submitted.

29 (4) If an individual who has elected coverage under this



1 section is no longer a self-employed individual, the individual is
2 not required to comply with this section beginning on the date that
3 the individual is no longer a self-employed individual.

4 Sec. 21. (1) Not more than 3 years after the effective date of
5 this act, the department shall establish reasonable procedures and
6 prescribe forms for submission of a claim for family leave optimal
7 coverage benefits that are not unduly burdensome to an individual
8 who submits a claim for family leave optimal coverage benefits.

9 (2) An individual may submit a claim for family leave optimal
10 coverage benefits not more than 60 days before the anticipated
11 start date of family leave and not more than 90 days after the
12 start date of family leave. An individual shall include the
13 applicable certification under subsection (3) with the individual's
14 submission for a claim for family leave optimal coverage benefits.

15 (3) Certification for a covered individual taking leave under
16 section 5(1) (a) or (b) is sufficient if the covered individual
17 provides any of the following, as applicable:

18 (a) The child's birth certificate.

19 (b) A document that states the child's birth date or
20 anticipated birth date issued by the health care provider of the
21 child or the health care provider of the individual who gave birth.

22 (c) A document issued by the health care provider of the
23 child, an adoption agency involved in the adoption of the child, or
24 any other appropriate individual, as determined by the department,
25 that confirms the adoption or anticipated adoption of the child and
26 the date of adoption or anticipated adoption of the child.

27 (d) A document issued by the health care provider of the
28 child, a foster care agency involved in the placement of the child,
29 or other individuals, as determined by the department, that



1 confirms the placement or anticipated placement and the date of
2 placement or anticipated placement.

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

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

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

- 19 (a) A copy of the family member's active-duty orders.
20 (b) Other documentation issued by the Armed Forces.
21 (c) Other documentation permitted by the department.

22 (7) Certification for a covered individual taking leave under
23 section 5(1)(f) is sufficient if the covered individual provides
24 any of the following:

25 (a) A police report indicating that the covered individual or
26 covered individual's family member was a victim of a qualifying act
27 of violence.

28 (b) A court document indicating that the covered individual or
29 covered individual's family member is involved in legal action



1 related to a qualifying act of violence.

2 (c) A signed statement from an attorney, member of the clergy,
3 victim and witness advocate, or medical or other appropriate
4 professional affirming that the covered individual or covered
5 individual's family member is a victim of a qualifying act of
6 violence.

7 (d) The covered individual's statement affirming that the
8 covered individual or the covered individual's family member is a
9 victim of a qualifying act of violence and that the leave was taken
10 for safe leave. The covered individual's statement does not need to
11 be notarized or in any particular form.

12 (8) Notwithstanding subsections (3) to (7), the department
13 shall accept alternative certification for any leave under section
14 5(1) that demonstrates the covered individual's need for leave for
15 a purpose specified under section 5(1).

16 (9) Not more than 5 business days after an individual submits
17 a claim for family leave optimal coverage benefits, the department
18 shall notify the individual's employer about the claim.

19 (10) Information that an individual or another person submits
20 to the department under this act is confidential and is not subject
21 to disclosure under the freedom of information act, 1976 PA 442,
22 MCL 15.231 to 15.246. This act does not require a covered
23 individual to provide as certification any information from a
24 health care provider that would result in a violation of section
25 1177 of the Social Security Act, 42 USC 1320d-6, or the regulations
26 promulgated under section 264(c) of the Health Insurance
27 Portability and Accountability Act of 1996, Public Law 104-191.

28 (11) Not more than 2 years after the effective date of this
29 act, the department shall promulgate rules to implement this act



1 pursuant to the administrative procedures act of 1969, 1969 PA 306,
2 MCL 24.201 to 24.328.

3 Sec. 23. (1) A covered individual who submits a claim for
4 family leave optimal coverage benefits shall not do any of the
5 following for the purpose of obtaining family leave optimal
6 coverage benefits:

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

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

9 (c) Willfully fail to report a material fact to the
10 department.

11 (2) If the department determines that a covered individual
12 violated subsection (1), the department shall not pay the covered
13 individual family leave optimal coverage benefits, for a period not
14 to exceed 1 year beginning on the date of the department's
15 determination, unless not paying family leave optimal coverage
16 benefits to the individual during the period would be against
17 equity and good conscience.

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

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

23 (b) The department paid family leave optimal coverage benefits
24 to the covered individual because the covered individual violated
25 subsection (1).

26 (c) The department denies the covered individual's claim after
27 the department has already paid family leave optimal coverage
28 benefits to the covered individual for the same claim.

29 (4) The department shall waive the recovery of family leave



1 optimal coverage benefits under subsection (3) if recovery would be
2 against equity and good conscience.

3 Sec. 25. (1) An individual may request a hearing before the
4 department under this act regarding any determination related to
5 the individual's claim for family leave optimal coverage benefits,
6 including the denial of benefits. An individual must request a
7 hearing under this subsection not later than 90 days after the
8 individual receives notice of the determination. If the department
9 receives a request for a hearing under this subsection, the
10 department must hold a hearing not later than 14 days after it
11 receives the request or, if the department decides that a hearing
12 is not necessary to grant a redetermination or issue a decision,
13 notify the requester of the reasons for its decision not later than
14 7 days after it receives the request.

15 (2) An individual who believes that the individual's rights
16 under section 13 or 29 have been violated may, not later than 3
17 years after the violation occurs or the individual should
18 reasonably have known that the violation occurred, do either of the
19 following:

20 (a) Bring a civil action for damages, injunctive relief, or
21 both. A court shall award to a plaintiff who prevails in an action
22 brought under this subdivision not more than 2 times the amount of
23 actual damages, injunctive relief, as appropriate, and costs,
24 including, but not limited to, reasonable attorney costs. An
25 individual is not required to submit a complaint with the
26 department under subdivision (b) before bringing a civil action
27 under this subdivision.

28 (b) Submit a complaint with the department.

29 (3) If the department determines that an employer violated



1 section 13 or 29, the department shall do both of the following:

2 (a) Order the employer to take action to remedy the violation,
3 including, but not limited to, providing the requested family
4 leave, reinstating an employee, providing back pay accrued not more
5 than 3 years before the complaint was submitted, paying liquidated
6 damages, paying reasonable actual attorney fees to the complainant,
7 and any other relief the department determines is appropriate.

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

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

17 (5) The department shall conduct a hearing under this section
18 in accordance with the procedures provided by chapter 4 of the
19 administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to
20 24.287. A final decision issued by the department related to family
21 leave optimal coverage benefits is subject to judicial review by
22 the courts as provided in chapter 6 of the administrative
23 procedures act of 1969, 1969 PA 306, MCL 24.301 to 24.306.

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

26 (2) The state treasurer shall deposit money and other assets
27 received from employer and employee contributions under section 11
28 or from any other source into the family leave optimal coverage
29 fund. The state treasurer shall direct the investment of money in



1 the family leave optimal coverage fund and credit interest and
2 earnings from the investments to the fund.

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

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

9 (a) To implement and administer this act.

10 (b) To pay family leave optimal coverage benefits to covered
11 individuals.

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

15 (2) A person shall not take retaliatory personnel action or
16 otherwise discriminate against another person because the person
17 exercises, or attempts to exercise, a right granted under this act.

18 (3) An employer's absence control policy must not treat family
19 leave as an absence that may result in the discipline, discharge,
20 demotion, suspension, or any other adverse action of an employee
21 who uses family leave.

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

28 (a) Family leave optimal coverage benefits are subject to
29 federal income tax.



1 (b) Some taxpayers are required to make estimated tax
2 payments.

3 Sec. 33. (1) Before September 30 of each year, the department
4 shall submit a report to the secretary of the senate and the clerk
5 of the house of representatives that includes all of the following
6 information:

7 (a) The amount of family leave optimal coverage benefits that
8 the department projected would be paid for the year covered by the
9 report delineated by each eligible reason described in section
10 5(1).

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

14 (c) The amount of family leave that the department projected
15 would be used for the year covered by the report delineated by each
16 eligible reason described in section 5(1).

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

20 (e) The age, gender, race, ethnicity, primary language,
21 residential zip code, average weekly wage, and occupation of the
22 individuals who were paid family leave optimal coverage benefits.

23 (f) The age, gender, race, ethnicity, primary language,
24 residential zip code, average weekly wage, and occupation of the
25 individuals who submitted claims for family leave optimal coverage
26 benefits but who were not paid family leave optimal coverage
27 benefits.

28 (g) Whether individuals who received or submitted a claim for
29 family leave optimal coverage benefits were employed full- or part-



1 time, self-employed, or recently separated from employment.

2 (h) The average weekly rate of family leave optimal coverage
3 benefits.

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

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

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

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

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

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

16 (2) The information in a report submitted under subsection (1)
17 must be aggregated so that identifying a specific individual is not
18 possible.

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

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

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

28 Sec. 37. Except as otherwise provided in this act, a person
29 that violates this act is subject to a civil fine of not more than



1 \$5,000.00. The prosecutor of the county in which the violation
2 occurred or the attorney general may bring an action to collect the
3 fine. A fine collected under this section must be deposited into
4 the family leave optimal coverage fund.

5 Sec. 39. (1) An employer may apply to the department for
6 approval to meet the employer's obligations under this act through
7 a private plan. To be approved, a private plan must provide each
8 employee of the employer all of the same rights, protections, and
9 benefits provided to a covered individual under this act,
10 including, but not limited to, all of the following:

11 (a) Allowing family leave to be taken for each purpose
12 specified in section 5(1).

13 (b) Providing family leave optimal coverage benefits to a
14 covered individual for the maximum number of weeks required in
15 section 5(2) in a benefit year.

16 (c) Providing a wage replacement rate for all family leave
17 optimal coverage benefits that is equal to or greater than the
18 amount required by section 9(1).

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

22 (e) Allowing an employee to take intermittent leave as
23 authorized by section 7(7).

24 (f) Imposing no additional conditions or restrictions on
25 family leave or family leave optimal coverage benefits that are
26 beyond those explicitly authorized by this act or the rules
27 promulgated under this act.

28 (g) Allowing an employee covered under the private plan who is
29 eligible for family leave optimal coverage benefits under this act



1 to receive family leave optimal coverage benefits and take family
2 leave under the private plan.

3 (2) To be approved as meeting an employer's obligations under
4 this act, a private plan must comply with all of the following:

5 (a) If the private plan is in the form of self-insurance, the
6 employer must furnish a bond to this state, with a surety company
7 authorized to transact business in this state, in the form, amount,
8 and manner required by the department.

9 (b) The plan must provide coverage for each employee of the
10 employer whose wages would otherwise be subject to contributions
11 under section 11 throughout the employee's period of employment
12 with the employer.

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

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

18 (i) Information about family leave optimal coverage benefits
19 available under the approved plan, including the duration of leave,
20 and specifically stating that family leave optimal coverage
21 benefits required by this state are being administered for this
22 employer under this private plan.

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

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

27 (iv) An employee's right to a hearing before the department or
28 a court regarding a contested determination or denial of family
29 leave optimal coverage benefits as provided for in section 25.



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

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

8 (e) The cost to employees covered by the plan must not be
 9 greater than the cost charged to employees under the state plan
 10 under section 11.

11 (f) In accordance with the rules promulgated under this act,
 12 provide sufficient information to the department for the department
 13 to prepare reports under section 33.

14 (3) The department shall withdraw approval for a private plan
 15 granted under subsection (1) when a term or condition of the plan
 16 has been violated. Causes for plan termination include, but are not
 17 limited to, any of the following:

18 (a) Failure to pay benefits.

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

21 (c) Failure to maintain an adequate surety bond under
 22 subsection (2)(a).

23 (d) Misuse of private plan money.

24 (e) Failure to submit reports or comply with other compliance
 25 requirements as required by the rules promulgated under this act.

26 (f) Failure to comply with this act or the rules promulgated
 27 under this act.

28 (4) An employee covered by a private plan approved under this
 29 section retains all applicable rights under section 13.



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

5 (6) An employer or entity offering private plans that violates
6 this section must be assessed an administrative fine of not less
7 than \$100.00 per violation. The director shall deposit a fine
8 collected under this subsection into the family leave optimal
9 coverage fund. The director shall establish a process for the
10 assessment and appeal of fines under this subsection.

11 (7) The director shall annually determine the total amount
12 expended by the department for costs arising out of the
13 administration of private plans. Each entity offering a private
14 plan shall reimburse the department for the costs arising out of
15 the private plans in the amount, form, and manner determined by the
16 director. The director shall deposit payments received under this
17 subsection into the family leave optimal coverage fund.

