CHAPTER 103

Paid Family Leave Insurance

**SECTION 38-103-10. Definitions.**

For purposes of this section:

(1) "Child" means a biological, adopted, or foster son or daughter; a stepson or stepdaughter; a legal ward; a son or daughter of a domestic partner; or a son or daughter of a person to whom the employee stands in loco parentis who is either:

(a) under eighteen years of age; or

(b) eighteen years of age or older and incapable of self-care because of a mental or physical disability.

(2) "Department" means the Department of Insurance.

(3) "Director" means the director of the Department of Insurance.

(4) "Employee" means an individual for whom an employer must complete a Form I-9 pursuant to federal law and regulations and does not include an independent contractor.

(5) "Family leave" means any leave taken by an employee from work pursuant to Section 38-103-20.

(6) "Family leave insurance" means an insurance policy issued to an employer related to a benefit program provided to an employee to pay for a percentage or portion of the employee's income loss due to:

(a) the birth of a child or adoption of a child by the employee;

(b) the placement of a child with the employee for foster care;

(c) care of a family member of the employee who has a serious health condition; or

(d) the status of a family member of the employee who is a service member on active duty or who has been notified of an impending call or order to active duty.

(7) "Family member" means a child, spouse, or parent, or another person defined as a family member in a policy of insurance issued under this chapter.

(8) "Health care provider" means a person licensed to provide health care services under Title 40.

(9) "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stands in loco parentis to the employee when the employee was a child.

(10) "Serious health condition" means an illness, injury, impairment, or physical or mental condition, including transplantation preparation and recovery from surgery related to organ or tissue donation, that involves in-patient care in a hospital, hospice, or residential health care facility, continuing treatment or continuing supervision by a health care provider as defined in the insurance policy. Continuing supervision by a health care provider includes a period of incapacity which is permanent or long term due to a condition for which treatment may not be effective and where the family member need not be receiving active treatment by a health care provider.

(11) "Service member" means a member of the United States Armed Forces in active military service.

HISTORY: 2024 Act No. 206 (H.4832), § 2, eff May 21, 2024.

**SECTION 38-103-20. Family leave benefits.**

Family leave benefits may be provided for any leave taken by an employee from work to:

(1) participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member;

(2) bond with the employee's child during the first twelve months after the child's birth, or the first twelve months after the placement of the child for adoption or foster care with the employee;

(3) address a qualifying exigency as interpreted under the Family and Medical Leave Act, 29 U.S.C. Section 2612(a)(1)(e) and 29 C.F.R. Section 825.126(a)(1)-(8), arising out of the fact that the spouse, child, or parent of the employee is on active duty, or has been notified of an impending call or order to active duty, in the Armed Forces of the United States;

(4) care for a family service member injured in the line of duty; or

(5) take other leave to provide care for a family member or other family leave as specified in the policy of insurance.

HISTORY: 2024 Act No. 206 (H.4832), § 2, eff May 21, 2024.

**SECTION 38-103-30. Family leave insurance.**

(A) Family leave insurance may be written as:

(1) an amendment or rider to a group disability income policy or life insurance policy, included in a group disability income policy or life insurance policy; or

(2) a separate group insurance policy purchased by an employer.

(B) An insurer licensed to sell life insurance or disability income insurance in this State may issue a policy of family leave insurance in accordance with the bulletins adopted by the department.

(C) The commissioner may publish bulletins to administer this title and authorize the sale of family leave insurance in this State.

HISTORY: 2024 Act No. 206 (H.4832), § 2, eff May 21, 2024.

**SECTION 38-103-40. Policy requirements.**

A policy of insurance issued under this title must set forth the details and requirements with respect to each reason an employee is entitled to take family leave under the policy.

HISTORY: 2024 Act No. 206 (H.4832), § 2, eff May 21, 2024.

**SECTION 38-103-50. Length of benefits available.**

(A) The policy of insurance must set forth the length of family leave benefits that are available for each covered family leave reason, which will in no event be less than two weeks during a period of fifty-two consecutive calendar weeks.

(B) Fifty-two consecutive calendar weeks may be calculated by:

(1) a calendar year;

(2) any fixed period starting on a particular date such as the effective or anniversary date;

(3) the period measured forward from the employee's first day of family leave;

(4) a rolling period measured by looking back from the employee's first day of family leave; or

(5) any other method that is specified in the policy of insurance.

HISTORY: 2024 Act No. 206 (H.4832), § 2, eff May 21, 2024.

**SECTION 38-103-60. Unpaid waiting periods.**

The policy of insurance must set forth whether there is an unpaid waiting period and, if so, the terms and conditions of the unpaid waiting period, which may include, but are not limited to:

(1) whether the waiting period runs over a consecutive calendar day period;

(2) whether the waiting period is counted toward the annual allotment of family leave benefits or is in addition to the annual allotment of family leave benefits;

(3) whether the waiting period must be met only once per benefit year or must be met for each separate claim for benefits; and

(4) whether the employee may work or receive paid time off or other compensation by the employer during the waiting period.

HISTORY: 2024 Act No. 206 (H.4832), § 2, eff May 21, 2024.

**SECTION 38-103-70. Amount of benefits; offsets; payment of benefits.**

(A) The policy of insurance shall set forth:

(1) the amount of benefits that will be paid for covered family leave reasons;

(2) the definition of the wages or other income upon which the amount of family leave benefits will be based; and

(3) how wages or other income will be calculated.

(B) If the family leave benefits are subject to offsets for wages or other income received or for which the insured may be eligible, the policy shall set forth:

(1) all wages or other income that may be set off; and

(2) the circumstances under which it may be offset.

(C) Family leave benefits provided under a policy of insurance must be paid periodically and promptly except as to a contested period of family leave and subject to any of the provisions of Section 38-103-80.

HISTORY: 2024 Act No. 206 (H.4832), § 2, eff May 21, 2024.

**SECTION 38-103-80. Eligibility for family leave benefits.**

Eligibility for family leave benefits under this article may be limited, excluded, or reduced, but any limitations, exclusions, or reductions shall be set forth in the policy of insurance. Permissible limitations, exclusions, or reductions may include, but are not limited to, any of the following reasons:

(1) for any period of family leave wherein the required notice and medical certification as prescribed in the policy have not been provided;

(2) for any family leave related to a serious health condition or other harm to a family member brought about by the wilful intention of the employee;

(3) for any period of family leave during which the employee performed work for remuneration or profit;

(4) for any period of family leave for which the employee is eligible to receive from his employer, or from a fund to which the employer has contributed remuneration or maintenance;

(5) for any period of family leave which the employee is eligible to receive benefits under any other statutory program or employer-sponsored program including, but not limited to, unemployment insurance benefits, worker's compensation benefits, statutory disability benefits, statutory paid leave benefits, or any paid time off or employer's paid leave policy;

(6) for any period of family leave commencing before the employee becomes eligible for family leave benefits under the policy; or

(7) for periods of family leave where more than one person seeks family leave for the same family member.

HISTORY: 2024 Act No. 206 (H.4832), § 2, eff May 21, 2024.

**SECTION 38-103-90. Annual report to legislature.**

The department shall provide an annual report to the legislature and the public beginning on January 1, 2025, and each year thereafter, with information regarding the utilization of family leave insurance as authorized in this section, including:

(1) the number of insurers in the State who are currently offering family leave insurance;

(2) the total number of employers in the State who have purchased family leave insurance; and

(3) a breakdown of which employers in the State have purchased family leave insurance by industry and employer size.

HISTORY: 2024 Act No. 206 (H.4832), § 2, eff May 21, 2024.