

Introduced by

Senator Mathern

(Approved by the Delayed Bills Committee)

1 A BILL for an Act to create and enact chapter 65-05.3 of the North Dakota Century Code,
2 relating to a paid family medical leave program for eligible employees; to provide an
3 appropriation; to provide for a transfer; to provide an exemption; and to provide an effective
4 date.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** Chapter 65-05.3 of the North Dakota Century Code is created and enacted as
7 follows:

8 **65-05.3-01. Definitions.**

9 As used in this chapter:

- 10 1. "COVID-19" means:
- 11 a. Severe acute respiratory syndrome coronavirus 2 identified as SARS-CoV-2 and
12 any mutation or viral fragments of SARS-CoV-2; and
- 13 b. Any disease or condition caused by severe acute respiratory syndrome
14 coronavirus 2 identified as SARS-CoV-2.
- 15 2. "Eligible employee" means an employee who works for a single employer.
- 16 3. "Employee" means an individual, regardless of age, who performs part-time or
17 full-time services for an employer for remuneration.
- 18 4. "Employer" means a person within the state which engages the services of employees
19 for remuneration. The term includes:
- 20 a. The state and its political subdivisions.
- 21 b. A public and quasi-public corporation in the state.
- 22 c. A partnership, limited liability company, association, and private corporation,
23 including a public service corporation.

- 1 5. "Family member" includes a child, stepchild, sibling, spouse, parent, step-parent,
2 grandparent, legal guardian of an eligible employee, grandchild, and relative of an
3 eligible employee living in the same home as the eligible employee.
4 6. "Fund" means the paid family medical leave fund.
5 7. "Wages" means remuneration for services to an employer by an employee, regardless
6 of source, including remuneration based on time, piece-rate, job, or incentive.

7 **65-05.3-02. Paid family medical leave program - Administration.**

- 8 1. The director shall establish a division to administer a paid family medical leave
9 program under this chapter. The organization shall adopt rules and hire staff, as the
10 director determines necessary, to administer the program under this chapter.
11 2. Eligible employees and employers may contribute to the fund beginning July 1, 2022,
12 and eligible employees may withdraw from the fund:
13 a. Immediately if the eligible employee is unable to work due to an eligible event as
14 described under section 65-05.3-05 involving COVID-19 or a COVID-19-related
15 illness as determined by a licensed medical doctor; or
16 b. If the eligible employee is unable to work due to an eligible event as described
17 under section 65-05.3-05 which does not involve COVID-19 or a COVID-19-
18 related illness if the eligible employee has accrued at least five hundred hours of
19 service before taking leave.

20 **65-05.3-03. Paid family medical leave fund.**

21 The paid family medical leave fund is created within the workforce safety and insurance
22 fund to which the organization shall deposit all moneys received from employers and
23 employees for contributions into the paid family medical leave program. The moneys in the fund
24 may be expended by the director only to pay for wages of an eligible employee under the
25 program and to pay for administrative costs associated with the administration of the program.

26 **65-05.3-04. Program requirements.**

27 The paid family medical leave program must:

- 28 1. Require an employer to notify all employees annually of the program and of the
29 employee's rights under the program.
30 2. Allow eligible employees and employers to participate in the program.

- 1 a. An eligible employee who chooses to participate in the program shall contribute
2 to the fund three percent of all wages earned for the benefit of the eligible
3 employee to take leave for an eligible event as described under section
4 65-05.3-05.
- 5 b. An employer who chooses to participate in the program shall contribute to the
6 fund contributions matching the amount of funds contributed by the eligible
7 employee who chooses to participate in the program under subdivision a.
- 8 3. Allow sole proprietors and independent contractors, as determined under the
9 common-law test, to participate in the program. A sole proprietor or independent
10 contractor who chooses to participate in the program shall contribute to the fund three
11 percent of all wages earned for the benefit of the sole proprietor or independent
12 contractor to take leave for an eligible event as described under section 65-05.3-05.
- 13 4. Allow an eligible employee to take leave:
- 14 a. Immediately if the eligible employee is unable to work due to an eligible event as
15 described under section 65-05.3-05 involving COVID-19 or a COVID-19-related
16 illness as determined by a licensed medical doctor; or
- 17 b. If the eligible employee is unable to work due to an eligible event as described
18 under section 65-05.3-05 which does not involve COVID-19 or a COVID-19-
19 related illness if the eligible employee has accrued at least five hundred hours of
20 service before taking leave.
- 21 5. Provide for sixty-six percent of an eligible employee's average weekly wages, up to a
22 maximum of one thousand dollars per week.
- 23 6. Provide up to twelve calendar weeks of coverage per calendar year for an eligible
24 employee on leave under the program. An eligible employee may take leave on an
25 intermittent basis.
- 26 7. Allow an eligible employee to return to the position held with the employer before
27 taking leave, or an equivalent position with commensurate pay and benefits, upon the
28 conclusion of the leave period.
- 29 8. Allow an eligible employee to maintain the employee's existing benefits while taking
30 leave under the program.

1 9. Allow an employer to require eligible employees to use up to two weeks of sick or
2 vacation leave before using leave under the program.

3 **65-05.3-05. Eligible events.**

4 1. Subject to subsection 4 of section 65-05.3-04, an employer shall grant leave to an
5 eligible employee participating in the program to care for:

6 a. A serious physical or mental health condition of the eligible employee, including
7 COVID-19 or a COVID-19-related illness, as determined by a licensed medical
8 doctor;

9 b. A serious physical or mental health condition of a family member of the eligible
10 employee, including COVID-19 or a COVID-19-related illness, as determined by
11 a licensed medical doctor;

12 c. A child during the first calendar year after the date of the child's birth, adoption, or
13 after the date the child's foster care began; or

14 d. The eligible employee's well-being or a family member if the eligible employee or
15 family member was the victim of domestic violence, sexual assault, or human
16 trafficking.

17 2. An employer may grant leave to an eligible employee participating in the program for
18 additional events as determined by the employer.

19 **65-05.3-06. Additional family medical leave benefits.**

20 This chapter does not preclude an employer from providing family medical leave benefits
21 that exceed the requirements of this chapter.

22 **65-05.3-07. Retaliation - Discrimination - Prohibition.**

23 An employer may not take retaliatory or discriminatory action against an eligible or potential
24 employee for requesting or taking leave under the program, or indicating the intent to take leave
25 under the program if hired. Retaliatory action includes discharge from or termination of
26 employment, threatening discharge or termination, suspension of employment, demotion, or
27 reduction of hours or wages.

28 **SECTION 2. APPROPRIATION - INDUSTRIAL COMMISSION - STATE FISCAL**
29 **RECOVERY FUNDS - TRANSFER AUTHORITY - EXEMPTION.**

30 1. There is appropriated from federal funds derived from state fiscal recovery funds
31 received through the federal American Rescue Plan Act, the sum of \$507,000,000, or

1 so much of the sum as may be necessary, to the industrial commission for the purpose
2 of awarding funds for infrastructure projects in accordance with this section, for the
3 period beginning with the effective date of this Act and ending June 30, 2023.

4 2. The industrial commission shall develop an infrastructure grant program to distribute
5 funds to state agencies and political subdivisions for projects that address:

6 a. Long-term infrastructure projects including fiber optics, access to natural gas,
7 water projects, roads and bridges, and clean energy projects;

8 b. Facility needs of the department of corrections and rehabilitation;

9 c. Human services needs, including supportive services to individuals and
10 expansion of behavioral health services; and

11 d. Workforce issues affecting state and local public health units.

12 3. The office of management and budget shall transfer appropriation authority from the
13 industrial commission to a state agency for projects approved for the agency.

14 4. Section 54-44.1-11 does not apply to the funding appropriated in this section and any
15 unexpended amounts may be continued into the biennium beginning July 1, 2023, and
16 ending June 30, 2025.

17 **SECTION 3. APPROPRIATION - DEPARTMENT OF PUBLIC INSTRUCTION - STATE**
18 **FISCAL RECOVERY FUNDS - EXEMPTION.**

19 1. There is appropriated from federal funds derived from state fiscal recovery funds
20 received through the federal American Rescue Plan Act, the sum of \$400,000,000, or
21 so much of the sum as may be necessary, to the department of public instruction for
22 child care formula grants and early childhood care facility grants, for the period
23 beginning with the effective date of this Act and ending June 30, 2023.

24 2. Of the funding appropriated in this section, \$200,000,000 is to be distributed to child
25 care providers through a child care provider formula grant program developed by the
26 department. Formula grants may be up to \$1,400 annually to licensed child care
27 facilities for each full-time equivalent child cared for by the facility. The department
28 may use up to \$100,000 of the funding identified in this subsection for consulting costs
29 in the development of a funding formula to distribute grant funds.

30 3. Of the funding appropriated in this section, \$200,000,000 is for grants to school
31 districts to construct child care facilities on school grounds.

1 4. Section 54-44.1-11 does not apply to the funding appropriated in this section and any
2 unexpended amounts may be continued into the biennium beginning July 1, 2023, and
3 ending June 30, 2025.

4 **SECTION 4. APPROPRIATION - STATE FISCAL RECOVERY FUNDS - PAID FAMILY**

5 **MEDICAL LEAVE FUND.** There is appropriated from federal funds derived from state fiscal
6 recovery funds received through the federal American Rescue Plan Act, the sum of
7 \$100,000,000, or so much of the sum as may be necessary, to the office of management and
8 budget for deposit in the paid family medical leave fund, for the period beginning with the
9 effective date of this Act and ending June 30, 2023.

10 **SECTION 5. EFFECTIVE DATE.** This Act becomes effective December 1, 2021.