

**REPORT OF THE STUDY COMMITTEE ON
EMPLOYEE-FUNDED PAID FAMILY LEAVE**

Submitted to the House Committee on General, Housing and Military Affairs and the
Senate Committee on Economic Development, Housing and General Affairs

January 15, 2014

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EXECUTIVE SUMMARY

Charge: The Committee was created by Act 31 of the 2013 Session of the Vermont General Assembly “to study the issue of paid family leave in Vermont and to make recommendations regarding whether and how paid family leave may benefit Vermont citizens.” In particular, the Committee was asked to examine:

- (1) existing paid leave laws and proposed paid leave legislation in other states;
- (2) which employees should be eligible for paid leave benefits;
- (3) the appropriate level of wage replacement for eligible employees;
- (4) the appropriate duration of paid leave benefits;
- (5) mechanisms for funding paid leave through employee contributions;
- (6) administration of paid leave benefits;
- (7) transitioning to a funded paid leave program; and
- (8) any other issues relevant to paid leave.

The Committee was also asked to include proposed legislation with its recommendations. H.99 Sec. 13 (c), (d)(2013).

The composition of the 12-member Committee was set by the Legislature to cover a broad range of perspectives. The designations, membership, and process are included in Appendix A.

Members of the Committee participated in formulating the findings and recommendations contained in this report, but do not necessarily have the authority or desire to bind the entity or constituency they represented on the Committee. In particular, one representative of the business community opposes the proposal, believing that his employees would not benefit from the program, and that it would cost them approximately \$385 per year each, and that the program would alter the company’s current practice of

“working it out” with employees who require special consideration. As he wrote: “All good companies realize that there's a balance between personal and professional needs, and they are very cognizant of the need to address them properly.”

Approach: The Committee strove to produce a plan that is as simple as possible, follows existing law and structures as much as possible, and minimizes the burden on employers.

Benefit program: This report presents a medical and family leave benefit program for the Legislature’s consideration which would provide benefits for the serious illness of the employee or the employee’s family members, as well as for parental leave for the birth or adoption of a child. (The definition of significant terms are borrowed from Vermont’s Parental and Family Leave Act (PFLA), 21 V.S.A. § 470-474, without regard to the size of the employer.) The employee is responsible for verifying the qualifying event.

All employees who have earned at least \$9079 in the previous 12 months would be eligible, whether or not the employment was with one or multiple employers. Employees would not be able to draw from the fund if receiving benefits under a different program, such as employer-funded paid sick leave, vacation or other accrued paid leave (e.g., paid PFLA leave) or unemployment or workers compensation benefits.

The Committee recommends that in the future self-employed persons have the option of participating in the program once the Department of Labor has promulgated rules for their coverage.

Financial benefit: The Committee recommends that the financial benefit be 100% of the base period wages of the employee, up to two times the livable wage, for a maximum of six weeks in any 12-month period. The plan would provide for intermittent leave in certain circumstances.

Job Protection and Continuation of Benefits. For the period they are receiving benefits under this program, employees would enjoy the same rights of job protection and continuation of employer benefits (e.g., maintenance of health insurance) afforded under PFLA without regard to the size of the employer.

Funding: The Committee proposes that all employees in Vermont, whether or not they receive paid PFLA benefits from their employer, contribute a percentage of their income to a special fund in order to minimize the contribution of each employee.

Example #1: Based on estimates of usage from other states, if the Legislature adopted the recommended plan and provided for 6 weeks of benefits, employees will be required to contribute .5% of their income to the fund. Thus, an employee earning minimum wage will contribute \$1.75/week to the fund; employees earning \$30,000 and \$100,000/year will contribute \$2.88 and \$9.62 weekly, respectively.

A spreadsheet with formulas which calculate costs depending on selected variables will be made available on the Department of Labor website at:

<http://labor.vermont.gov/InfoCenter/PaidFamilyLeaveSummerStudyCommittee/tabid/1660/Default.asp>

Administration: The Committee recommends that administration of the program be handled by the Department of Labor since we believe the administration will most closely resemble administration of unemployment benefits. Payments into the fund will cover the costs of administration as well as payments to eligible employees. The Department estimates that the costs of administration will be approximately 7.5% of the annual payments into the fund. The Department is responsible for developing and conducting an outreach program and for annual reporting on the utilization to the Legislature for the first five years and thereafter when proposing an adjustment to the contribution rate.

Transition: The Committee recommends that employers commence payment into the fund on July 1, 2015, with benefits starting January 1, 2016. Rule-making would start as soon as the legislation is signed into law. The Committee also recommends an appropriation for the Department of Labor to cover the transitional period to put the payment system into place and educate employers and employees of their rights and responsibilities under the plan by July 1, 2015.

RATIONALE FOR PROVIDING PAID FAMILY LEAVE

While many employees nationally and in Vermont are eligible for unpaid family leave through the federal Family and Medical Leave Act (FMLA) and/or the Vermont Parental and Family Leave Act (PFLA), leave remains an inaccessible right for those who cannot afford it. Providing an employee-funded mechanism for paid family leave would increase access to this important support that will help workers, and provide greater stability for their families without undue impact on employers. The Committee hopes an employee-funded paid family leave program would prove to enhance recruitment and retention of Vermont workers, making Vermont an attractive place to locate a business.

Paid Family Leave Has Broad Benefits

Physicians recommend that working mothers take at least six to eight weeks of leave for the arrival of a new child and research shows that those who receive job-protected paid leave are more likely to take at least the recommended minimum.¹ When mothers take longer leaves, their babies are more likely to be seen by a pediatrician for immunizations and regular checkups, and they are more likely to be breastfed.² In California, which has provided a statewide paid leave program since 2004, breastfeeding mothers who take the paid leave under the program continue breastfeeding for approximately twice as long as mothers who don't use the program.³

Hospitalized children recover faster when they are cared for by their parents: when a parent is present, a child's hospital stay is shortened by 31 percent.⁴

¹ Gomby, D., & Pei, D. (2009). Newborn Family Leave: Effects on Children, Parents, and Business. David and Lucile Packard Foundation Publication. Retrieved 9 April 2012, from http://www.packard.org/wp-content/uploads/2011/06/NFLA_fullreport_final.pdf.

² Berger, L., Hill, J., & Waldfogel, J. (2005). Maternity Leave, Early Maternal Employment and Child Health and Development in the US. *The Economic Journal*, 115(501), F44.

³ Appelbaum, E., & Milkman, R. (2011). *Leaves That Pay: Employer and Worker Experiences with Paid Family Leave in California*. Center for Economic Policy Research Publication.

⁴ Heymann, J. (2001). *The Widening Gap: Why America's Working Families Are in Jeopardy - and What Can Be Done About It*. New York, NY: Basic Books.

Paid family leave benefits fathers as well as mothers, as it is equally available to them. Children benefit from their fathers' having access to paid leave, because men who take two or more weeks off after the birth of their child are more involved in the direct care of their children nine months later than fathers who take no leave.⁵

California's statewide, employee-funded paid family leave program has been in place since 2004, and has been the subject of at least two major research studies.⁶ The results of this research point to some clear benefits to workers and employers, and to no significant problems for employers.

The California studies have found:

- the overall use of maternity leave more than doubled, increasing from around three to six or seven weeks for new mothers, with particularly large growth for less advantaged mothers⁷
- one study suggests that paid family leave increased the usual work hours of employed mothers of one-to-three year-old children by 6 to 9% and that their wage incomes may have increased by a similar amount⁸
- in a 2010 study,⁹ the vast majority of employers reported that paid family leave had either a positive effect or no noticeable effect on:
 - productivity (report of 89% of employers)
 - profitability (91%)
 - turnover (93%)
 - morale (99%)
- 91% of employers reported no knowledge of abuse, and the 9% who were aware of abuse reported it as a rare occurrence¹⁰
- all workers – those in high-quality jobs paying over \$20 an hour with employer-provided health insurance as well as those in low-quality jobs – benefited from the program, with the greatest gains being among those in the lower-quality jobs¹¹
- the number of men using paid family leave to bond with a new child rose substantially, from 17% to 26% over the first six years of the program¹²

⁵ Nepomnyaschy, L., & Waldfogel, J. (2007). Paternity Leave and Fathers' Involvement with their Young Children. *Community, Work, and Family*, 10(4).

⁶ Maya Rossin-Slater & Christopher J. Ruhm & Jane Waldfogel, 2013. "The Effects of California's Paid Family Leave Program on Mothers' Leave-Taking and Subsequent Labor Market Outcomes," *Journal of Policy Analysis and Management*, John Wiley & Sons, Ltd., vol. 32(2); Appelbaum, E., & Milkman, R. (2011). *Leaves That Pay: Employer and Worker Experiences with Paid Family Leave in California*. Center for Economic Policy Research Publication.

⁷ Rossin-Slater, 224-245, 03.

⁸ *Id.*

⁹ Appelbaum.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

Family Leave is Insufficiently Accessible Nationally

Only half of all workers nationally are eligible for leave under the FMLA, but even those who are eligible often find that they can't afford to take the unpaid leave that it provides. Among those who are eligible and covered but chose not to take FMLA leave when they needed it, 78% said it was because they could not afford to lose the pay.¹³ Only 11% of workers in the United States have access to paid family leave through their employers, and fewer than 40% have access to personal medical leave through employer-provided short-term disability insurance.¹⁴

Only about half of all new mothers take any kind of paid leave time (including sick and vacation time) when their children are born.¹⁵ Mothers at the higher end of the economic scale are much more likely to utilize the unpaid leave available to them, whereas paid family leave is more likely to be utilized by those at the lower end of the scale.¹⁶

A 2007 study published in the American Journal of Medicine found that more than 40% of bankruptcies were the result of lost income due to serious illness, either the employee's own or that of a family member.¹⁷

SUMMARY OF FAMILY LEAVE PROGRAMS

Current Vermont and federal laws provide employees the right to *unpaid*, job-protected medical and family leave if they work for employers of a certain size. Three states, California, New Jersey, and Rhode Island, provide *paid* family leave benefits which are paid fully or partially by employees. (Washington has passed, but not implemented, such a program.)

Vermont's Parental and Family Leave Act (PFLA)

PFLA entitles employees to take job-protected unpaid parental and family leave if they work for an employer of a specific size and have been continuously employed by that employer for a period of one year for an average of at least 30 hours per week.

Parental and family leave can be taken for a combined maximum of 12 weeks in any 12-month period. The employer is required to continue employment benefits during the leave, and to offer the employee the same or a comparable job upon return (with some exceptions).

¹³ Cantor, D., Waldfogel, J., Kerwin, J., et al. (2001). Balancing the Needs of Families and Employers: Family and Medical Leave Surveys. 2000 Update. Department of Labor & Westat Publication. Retrieved 9 April 2012, from <http://www.dol.gov/whd/fmla/chapter2.htm>.

¹⁴ U.S. Department of Labor, Bureau of Labor Statistics. (2011, September). National Compensation Survey: Employee Benefits in the United States, March 2011 (Table 33). Retrieved 19 April 2012, from <http://www.bls.gov/ncs/ebs/benefits/2011/ebb10048.pdf>.

¹⁵ Laughlin, L. (2011, October). Maternity Leave and Employment Patterns of First-Time Mothers: 1961-2008. U.S. Census Bureau Publication. Retrieved 23 February 2012, from <http://www.census.gov/prod/2011pubs/p70-128.pdf>.

¹⁶ Maya Rossin-Slater, 224-245, 03.

¹⁷ David U. Himmelstein, Deborah Thorne, Elizabeth Warren, Steffie Woolhandler. Medical Bankruptcy in the United States, 2007: Results of a National Study. The American Journal of Medicine - August 2009 (Vol. 122, Issue 8, Pages 741-746, DOI: 10.1016/j.amjmed.2009.04.012.)

Parental leave may be taken by eligible employees who work for an employer which employs *ten or more employees*. It may be used within the first year the birth of the employee's child or the placement of a child for the purpose of adoption. *Family leave* may be taken by eligible employees who work for an employer which employs *15 or more employees*, for the serious illness of the employee or the employee's family members.

Federal Family and Medical Leave Act (FMLA)

FMLA applies to employees who have been employed by a covered employer for at least 12 months (which need not be consecutive) and worked at least 1,250 hours in the 12 months preceding the leave request. In the private sector, FMLA applies to employees if there are 50 or more employees working within a 75-mile radius of their worksite. In the public sector FMLA applies regardless of the employer's size.

Under FMLA, the employer is required to continue group health insurance coverage during the leave, and to offer the employee the same or a comparable job upon return (with some exceptions). FMLA leave may run concurrently with PFLA leave taken to care for and bond with a new child or taken for a serious illness.

Eligible employees may take up to 12 weeks of FMLA leave in a 12-month period for the birth or placement of a child or to care for him or herself or family members with a serious health condition. (FMLA defines "serious health condition" more specifically than PFLA's "serious illness.")

Paid Leave Laws of Other States

California: California employees who contribute to the California State Disability Insurance (SDI) fund are eligible to receive up to 55% of their weekly wages (up to a maximum amount) when they take leave for their own disability or illness, including pregnancy-related disabilities, or to provide care for a seriously ill family member or to bond with a new child.

New Jersey: Under the New Jersey Temporary Disability Benefits Law, eligible employees may receive up to 66% of their average weekly earnings when on leave for an illness or injury not caused by their job, or to provide care for a seriously ill family member or to bond with a newborn or newly adopted child.

Rhode Island: Starting January 5, 2014, Rhode Island's Temporary Disability Insurance (TDI) program was expanded to include Temporary Caregiver Insurance (TCI), allowing eligible employees to receive up to 66% of their average weekly earnings (up to a maximum amount) when on leave for a non-work-related illness or injury, or to provide care for a seriously ill family member or to bond with a newborn or newly adopted child.

DETAILED DESCRIPTION OF THE STUDY COMMITTEE'S RECOMMENDED BENEFIT PROGRAM

Following is a detailed description and explanation of the program the Committee recommends to the Legislature for employee-funded family leave without regard to the size of the employer. Although the essential elements of the program (eligibility, benefit amount and duration, contributions) are interrelated, they can work independently, and each has an impact on the costs of the program. Consequently, it is for the Legislature to balance the needs of individual employees seeking benefits, the cost to employees contributing to the fund, and the costs of administration. The spreadsheet at:

<http://labor.vermont.gov/InfoCenter/PaidFamilyLeaveSummerStudyCommittee/tabid/1660/Default.aspx> will allow for calculating the combination of different variables.

Eligibility

Employees are eligible under the program if they or a family member has a serious illness or they have a new child. Thus, benefits will be available for all forms of leave covered by Vermont's Parental and Family Leave Act (PFLA), i.e. the serious illness of the employee or specified family members, and the birth or initial placement of a child aged 16 or younger for purposes of adoption. All terms would be as defined in PFLA, 21 V.S.A. § 470-474, but without regard to the size of the employer. The employee is responsible for verifying the qualifying event.

All employees who have earned at least \$9079 in the previous 12 months are eligible for benefits under the program, whether or not the employment was with one or multiple employers. PFLA benefits are available only if the employee has been continuously employed by the same employer for a period of one year and for an average of at least 30 hours per week. The Committee concluded that eligibility for *employee-funded* paid family leave benefits should be based on attachment to the labor market, not attachment to a particular employer. The Committee was particularly concerned for low-wage workers who often have several part-time jobs, none of which average 30 hours per week or last a year.

The \$ 9079 figure is based on average employment of 20 hours per week for a year (1040 hours) at \$8.73/hour, Vermont's minimum wage as of January 1, 2014. Again, this standard is less than PFLA's standard in recognition of the fact that low-wage workers most often are not paid for holidays or annual leave, and often have little control over the number of hours they work per week.

Any employee is eligible as long as the earnings threshold is met, i.e. part-time workers and minors are not categorically exempt.

This recommendation will likely result in more employers having employees requesting leave than in the past because employees will be eligible even if they have not been with the employer for a year, and the employer is smaller than the minimums in PFLA, in addition to the employees having job protections that were not available in the past. At the same time, the hope is that Vermonter employers would benefit, as California employers have found, by positive or no-negative impact on productivity, profitability, turnover and morale.

Generally, employees will not be able to draw from the fund if receiving benefits under a different program, such as employer-funded PFLA benefits or unemployment or workers compensation benefits. The Committee recommends a program which supplements, not supplants, existing benefits granted to employees by their employer or state law. Thus, an employee is entitled to benefits under this program or under any other program at the employee's election, consistent with State law. The Committee recommends a limited exception to this rule when an employee's wages are above the wage replacement limit, the employee plans to draw from the fund up to the wage replacement limit, and the employer is willing to supplement that benefit up to the wages of the employee.

Example #2: An employee with a new baby has 4 weeks of unused sick time. She uses 2 weeks of sick-time benefits and an additional 6 weeks of employee-funded paid family leave benefits, and declines to take additional unpaid leave.

Example #3: An employee injured on the job receives temporary workers' compensation benefits until well enough to return to work. If the employee chooses not to return to work in order to care for a seriously ill parent, workers' compensation benefits would cease and the individual could receive paid family leave benefits.

Example #4: An employee becomes unable to work because of a serious illness. Because an individual who is not able to work due to illness is not eligible for unemployment benefits, the individual would be eligible for paid family leave benefits.

Example #5: Employee earning \$1500/week can receive nearly \$1000/week from the fund when on leave, and in addition, at the employer's option, just over \$500/week from her employer.

In the future self-employed persons have the option of participating in the program. Details of such a program would need to be studied further to address issues such as the appropriate time-period for paying into the fund before becoming eligible, verification of income, and the base period for determining benefits. The Committee anticipates that there will be relatively few self-employed persons seeking to utilize the fund, and so recommends that a program for self-employed persons be addressed only after the program has been in place for employed persons for at least a year, and perhaps only after obtaining confirmation that there is an interest within that sector.

Financial Benefits

The benefit will be 100% of wages reflected in the base period up to a cap. The Committee highly recommends that Vermont not provide less than 100% wage replacement even though other states and Vermont for other programs have elected to provide lower benefits. For example, for family and disability leave, other states provide 55% or 66% of average weekly earnings, a minimum weekly benefit, dependent benefits, and up to 4 to 8 weeks for family leave and 26 to 52 weeks for disability leave. Vermont's unemployment program provides wage replacement of approximately 50% of wages, up to a cap currently set at \$425; and unemployment benefits are taxed. Vermont's workers' compensation wage replacement benefits, known as temporary total disability benefits, are 66% of an employee's wages, and are not subject to tax.

The advantage of 100% wage replacement is that it is simpler than the other state programs, will make the program more accessible to Vermont workers, and 100% wage replacement, even for a lesser number of weeks, helps the low-income worker without disadvantaging the higher-income worker: the low-income worker might well not be able to manage receiving only 55-66% of earnings, and the higher-income worker can take leave for a greater number of weeks than that provided under the program merely by spreading the (higher) benefit amount over more weeks. Wage replacement at 100% also reflects the practices of most employers that cover wages when an employee is out on PFLA leave.

Example #6: Minimum-wage employee takes 6 weeks of paid leave under the program, obtaining approximately the same income as when working. Median-income employee decides to spread 6 weeks of benefits over 9 weeks of leave.

The Committee recommends that the base period be defined as the most recent quarterly report from the employer to the Department of Labor regarding the wages of the employee. Using this definition results in no extra reporting burden by the employer for an employee to receive benefits. It also means, in most instances (i.e. assuming wages generally rise over time) that 100% of base will be equal to or less than wages at the time leave is taken, reflecting, in a very rough way, the “savings” of work-related expenses for an employee when not working, and allowing for additional costs associated with parenting or a serious illness.

After an opportunity for rulemaking by the Department of Labor, an employee who has had an increase in wages since the base period should be able to appeal the base-period determination.

Because Vermont will provide 100% wage replacement, Vermont (unlike Rhode Island) would not provide a separate benefit for dependents.

The maximum weekly benefit is two times Vermont’s declared livable wage. Every two years the Joint Fiscal Office calculates the livable wage for Vermont based on a two person household with two wage earners. The current livable wage is \$12.48/ hour, or \$25,500/year, set in 2013. As a point of comparison, in 2012 (the most recent year for which the Department of Labor has accurate numbers), Vermont’s median income was \$16.61/hour, or \$35,000/year, and mean (average) income was \$21/hour, or \$40,000/year. At this point in time, two times the livable wage will provide 100% wage replacement for 75% of Vermont workers who take leave, and the cap proposed is approximately 75% of median income.

Capping the benefit at two times the livable wage will reduce the total amount that will be required from Vermont workers contributing to the fund, which is especially important to those of low or modest income. Not capping the benefit would inure to those least in need of it at the expense of those least able to contribute.

The benefit is available for a maximum of 6 weeks in any 12-month period. PFLA allows a worker to take up to 12 weeks unpaid leave for serious illness or new parental responsibilities. Under both programs, the weeks need not be consecutive or for the same basis for eligibility.

Example #7: Employee takes 4 weeks of leave for the adoption of a child and eight months later takes 2 weeks to care for a sick parent.

The number of weeks provided in this program reflects the Committee's sense of the realities of an acceptable amount for all Vermont employees to pay into the fund, balanced against the needs of those who must tend to a new child or a serious illness within the family. Two weeks leave seemed too little to be effective for the person on leave; 10 or 12 too great a cost to workers, many of whom will not draw from the fund because either their employers already provide more generous benefits than those provided under this program or they have no need for the benefits during their work life.

The plan provides for intermittent leave if the employer agrees. "Intermittent leave" is the term used when an employee takes leave only in days or hours, not weeks. PFLA does not explicitly provide for intermittent leave, but employees can take their PFLA leave intermittently if the employer agrees.¹⁸ Often an employer will agree to intermittent leave to support an employee or for business reasons such as not having to hire a temporary employee.

Example #8: With employers' permission, (1) Employee A takes Tuesday and Friday away from work to care for a dying parent, while other siblings cover other days, (2) Employee B is home Monday and Wednesday with a new child, while spouse and grandparent cover other days, and (3) Employee C, who works for an employer with only 4 employees, is absent one morning a week to take spouse to chemotherapy.

Job Protection and Continuation of Benefits.

Upon return to work, an employee is entitled to the same or a comparable job and to any other term or condition of employment as existed on the day leave began. Thus, an employee taking leave under this program is entitled to the same job protection and maintenance of benefits *rights* (not accrual of those rights) as they have under PFLA without regard to the size of the employer. 21 V.S.A. § 472(f).

The Committee considered whether there should be a special rule for small employers who need to replace an employee who takes leave, but concluded that they are already protected by subsection § 472 (f)(2). Under that subsection, the general rule does not apply "if the employer can demonstrate by clear and convincing evidence that: . . . (2) the employee performed unique services and hiring a permanent replacement during the leave, after giving reasonable notice to the employee of intent to do so, was the only alternative available to the employer to prevent substantial and grievous economic injury to the employer's operation." In addition, because benefits are paid from the fund, the employer has the employee's salary to spend on a replacement or on overtime for other employees.

Funding

As contemplated by the study mandated in Act 31 of the 2013 Session, the Committee looked only at funding through employee contributions. This would be accomplished, as it is in other states, through an

¹⁸ The Committee recommends that PFLA be amended to reflect this standard because the Attorney General's Office advises that it is an area of confusion for employers and clarity in the law would be helpful.

employee payroll deduction. In order to keep the individual contribution as low as possible, it should be assessed on all Vermont employees; even those who receive some form of paid family leave from their employers. Until such time as self-employed persons are eligible to draw from the fund and choose to participate in the program, they are not required to pay into the fund.

The Committee discussed whether there should be income limits for contributions – either at the low end of the income scale because those workers have least ability to absorb a cut in take-home pay, or at the high end since those workers will derive little or no benefit from the fund because the payment is capped at two times the livable wage, and their employer may already provide parental or family leave benefits at 100% of wages. Ultimately, the Committee decided to recommend that contributions be based on all wages as that will be a simpler system to administer and including all wages will minimize the contribution of each employee, which is especially significant for low and moderate income employees.

The following assumptions were made in calculating the potential cost of the program:

- A taxable workforce (referred to by the Department’s Labor Market Information Division as “covered employment”) of approximately 281,000.
- Approximately 5% of the workforce will avail themselves of the benefit in any given year. This number was arrived at by looking at utilization rates in other states, as well as the approximate usage of family leave taken by state employees who accrue paid sick leave and personal leave.
- A median taxable wage of \$16.61 per hour, and a mean taxable wage of \$21.00 per hour.
- Administrative costs of approximately 7.5 % of the total benefits paid out.
- 6 week of benefits per year.
- A benefit amount equal to 100% wage replacement, up to twice the livable wage.

Using the above assumptions, it is estimated that there will be an annual benefit payout of approximately \$56,000,000. Adding in administrative costs of \$4,200,000, or 7.5% of benefits, the total annual cost of the program will be \$62,000,000.

Financing the program adequately will require a payroll tax of approximately 0.5% on pre-tax wages. Assuming full-time employment, that works out to approximately \$91.00 a year for a minimum wage worker, and \$173.00 a year for a median wage worker.

The above benefit and tax numbers were arrived at using a spreadsheet created by the Vermont Department of Labor. Anyone wishing to input different variables and see different tax and benefit outcomes can do so using the spreadsheet at: <http://labor.vermont.gov/InfoCenter/PaidFamilyLeaveSummerStudyCommittee/tabid/1660/Default.aspx>

Beginning in calendar year 2017, annual review of the health of the fund will be necessary to determine whether adjustments need to be made.

Administration

The consensus of the Committee was that the paid family leave program should be administered by an agency of state government. The Department of Labor was suggested primarily because it already

administers similar benefits, such as unemployment insurance and workers' compensation, and because eligibility for paid family leave will be based on quarterly wage reports already collected by the Department. The committee briefly discussed contracting with a private party insurer for coverage, but decided not to pursue that option further.

Administration of a Paid Family Leave Program will require the following:

- Establishment of a fund
- Collection of a contribution, presumably on a quarterly basis
- Application intake and initial screening to determine eligibility
- Determination of weekly benefit amount, based on wage history
- Processing weekly claims and issuing weekly benefit checks
- Monitoring and oversight to detect fraud or overpayment
- Adjudication of disputed claims, internal review, and administrative appeal process to a program hearing officer
- Employer auditing and collection of unpaid contributions

The administration of this program within the Department of Labor will require the creation of a new division. The Committee found it helpful to look at Rhode Island's Temporary Disability and Temporary Caregiver Insurance Program. Of the three states with similar programs, Rhode Island's labor force is the closest in size to Vermont's, with approximately 550,000 individuals, compared to Vermont's labor force of approximately 350,000.¹⁹ Rhode Island's program is staffed with 50 positions. It is estimated that Vermont's program will need 20 FTE positions to administer the program.

The Department will be responsible for developing and conducting an outreach program to employers and employees, and for annual reporting on the utilization to the Legislature for the first five years and thereafter when proposing an adjustment to the tax rate.

The Department should have rulemaking authority to address elements of the program in greater detail than is included in any statutory provisions. For example, rules will be needed for creating the fund, for directing employers to deduct contributions from wages and to forward them to the fund, for appeals from the determination of base benefits, and for fraud prevention. Eventually, rulemaking or a statutory amendment will be required to proceed with extending benefits to self-employed persons.

Transition and Implementation

There will need to be three phases to the implementation of the fund. Initially, a project manager or management team will be needed to contract for a computer system and office space, establish a fund account, and identify program staffing needs and projected hiring and training deadlines. At the same time, intensive employer/employee outreach will be needed to prepare Vermonters for the implementation of the tax. This period is recommended to be one year.

¹⁹ The spreadsheet assumes 281,000 "covered employees", which is not the entire Vermont workforce.

Secondly, the tax will have to be imposed for a period of time prior to the availability of the benefit, in order to provide sufficient reserves in the fund to support projected benefit payments. In order for employees not to be paying in to the fund before benefits can be drawn from it, this period is recommended to be six months.

Finally, the benefit would become available, and the program would need to staff up to begin processing and paying claims.

Assuming passage of legislation in July 2014, there would need to be a minimum of six months to inform the public and to establish the banking and tax processing portions of the system sufficient to begin receiving payments into the fund. That would be followed by a year of building the fund.

Proposed Implementation Timeline

- Enactment of Legislation - July 1, 2014
- Establishment of Fund - July 1, 2015
- Availability of Benefit - January 1, 2016

CONCLUSION

The Committee appreciates the opportunity to consider how Vermont might provide paid family leave to workers who need time to care for a new child or to attend to a serious illness of their own or of a family member. Committee members welcome an opportunity to discuss this important issue with legislators.

Appendix A – STUDY COMMITTEE COMPOSITION AND PROCESS

The Study Committee was composed of the following persons in accordance with Sec 13(b) of H. 99 (2013):

- (1) One member of the House of Representatives chosen by the Speaker – Rep. Jill Krowinski
- (2) One member of the Senate chosen by the Committee on Committees – Sen. Donald Collins
- (3) three representatives from the business community, one appointed by the Speaker and two by the Committee on Committees – Howard Aiken, Vermont Information Processing Inc.; Eric Allen, of Sherman V. Allen, Inc.; and Beth Sachs, Vermont Energy Investment Corp
- (4) two representatives from labor organizations, one appointed by the Speaker and one by the Committee on Committees –Gretchen Naylor, Vermont State Employees’ Association; and Colin Robinson, Vermont NEA
- (5) one representative appointed by the Governor -- Vacant
- (6) the Attorney General or designee – Wendy Morgan, Chief of Public Protection Division, Attorney General’s Office
- (7) the Commissioner of Labor or designee –Dirk Anderson, General Counsel, Department of Labor
- (8) the Executive Director of the Vermont Commission on Women or Designee – Cary Brown, Executive Director, Vermont Commission on Women
- (9) the Executive Director of the Human Rights Commission or Designee – Ellen Maxon, JD, Investigator, Human Rights Commission

The Committee met in person or by conference call on August 14, September 27, October 27, November 6, November 25, December 19, 2013, and January 9 and January 13, 2014, not all of which were compensated.

Appendix B –VERMONT AND FEDERAL FAMILY LEAVE LAWS

Current Vermont and federal laws provide employees the right to unpaid, job-protected leave.

Vermont's Parental and Family Leave Act (PFLA)

<http://www.leg.state.vt.us/statutes/sections.cfm?Title=21&Chapter=005>

PFLA entitles employees who work for an employer of a specific size and who have been continuously employed by that employer for a period of one year for an average of at least 30 hours per week, to take job-protected unpaid parental, family, and short-term family leave.

Parental and family leave can be taken for a combined maximum of 12 weeks in any 12-month period. The employer is required to continue employment benefits during the leave, and to offer the employee the same or a comparable job upon return (with some exceptions). (The employee does not, however, accrue paid leave during the absence unless the employer agreed to provide that benefit. At the employee's option, the employee may use accrued sick leave or vacation leave or any other accrued paid leave, not to exceed six weeks. Using accrued paid leave does not extend the length of PFLA leave. 21 V.S.A. § 472(b).

Parental leave may be taken by eligible employees who work for an employer which employs *ten or more employees*. It may be used within the first year of the following:

- the birth of the employee's child, and
- the initial placement of a child 16 years of age or younger with the employee for the purpose of adoption.

Family leave may be taken by eligible employees who work for an employer which employs *15 or more employees*. It may be used:

- for the serious illness of the employee or the employee's child, stepchild, ward of the employee who lives with the employee, foster child, parent, spouse, or parent of the employee's spouse.

Under Vermont law, a "serious illness" means an accident, disease or physical or mental condition that (1) poses imminent danger of death; (2) requires inpatient care in a hospital; or (3) requires continuing in-home care under the direction of a physician. One example would be medical leave related to an employee's pregnancy.

Short-term family leave may be taken by eligible employees who work for an employer which employs *15 or more employees*. It may be used:

- To participate in preschool or school activities directly related to the academic educational advancement of the employee's child, stepchild, foster child or ward who lives with the employee, such as a parent-teacher conference.
- To attend or to accompany the employee's child, stepchild, foster child or ward who lives with the employee, or the employee's parent, spouse or parent-in-law to routine medical or dental appointments.

- To accompany the employee's parent, spouse or parent-in-law to other appointments for professional services related to their care and well-being.
- To respond to a medical emergency involving the employee's child, stepchild, foster child or ward who lives with the employee, or the employee's parent, spouse or parent-in-law.

Short-term family leave can be taken for a maximum of 4 hours in any 30-day period and may not exceed 24 hours in any 12-month period. The employer may require the employee to take leave in two-hour minimum increments. At the employee's discretion, the employee may use accrued paid leave, including vacation and personal leave. 21 V.S.A. § 472a(c)

Federal Family and Medical Leave Act (FMLA)

<http://www.dol.gov/whd/regs/statutes/fmla.htm>

FMLA also entitles many employees to job-protected unpaid leave. FMLA leave may run concurrently with PFLA leave taken to care for and bond with a new child or taken for a serious illness.

FMLA applies to certain employees who have been employed by a covered employer for at least 12 months (which need not be consecutive) and worked at least 1,250 hours in the 12 months preceding the leave request. In the private sector, the FMLA applies to such employees if there are 50 or more employees working within a 75-mile radius of their worksite. In the public sector, including for employees who work for private or public schools, the FMLA applies regardless of the employer's size.

Under FMLA, the employer is required to continue group health insurance coverage during the leave, and to offer the employee the same or a comparable job upon return (with some exceptions).

Eligible employees may take up to 12 weeks of FMLA leave in a 12-month period for the following reasons:

- The birth and care of the employee's child, within one year of birth;
- Placement with the employee of a child for adoption or foster care, within one year of the initial placement;
- To care for a spouse, child or parent who has a serious health condition (FMLA defines "serious health condition" more specifically than PFLA's "serious illness.");
- For the employee's serious health condition that makes the employee unable to perform the essential functions of his or her job; or
- For any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or has been notified of an impending order or call to covered active duty.

An eligible employee may also take up to 26 weeks of military caregiver leave during a single 12-month period to care for a covered service member with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the service member. During this single 12-month period, up to 12 of the 26 weeks may be for an FMLA-qualifying reason other than military caregiver leave. For example, if an employee uses 10 weeks of FMLA leave for his

or her own serious health condition during the single 12-month period, the employee has up to 16 weeks of FMLA leave left for military caregiver leave.

Appendix C – PAID LEAVE LAWS OF OTHER STATES

There are currently three states with paid family leave programs either in operation (California and New Jersey) or set to be implemented January 1, 2014 (Rhode Island). All three of these states have built their paid family leave benefit into their existing temporary disability insurance structures, all three are funded by employees, and one includes some employer contribution for disability leave for the employee. (Washington has passed, but not implemented, a paid family leave program.)

Following a brief summary of each state's program is a table with details about each.

California

California employees who contribute to the California State Disability Insurance (SDI) fund are eligible to receive some income replacement when they take leave:

- for their own disability or illness, including pregnancy-related disabilities
- to provide care for a seriously ill family member or to bond with a new child.

Prior to 2004, the SDI fund provided income replacement only for leave in the case of an employee's own disability or illness. The Paid Family Leave (PFL) program was created to expand the income replacement to provide care for a seriously ill family member or to bond with a new child. Beginning July 1, 2014, PFL will be expanded to include caring for seriously ill grandparents, grandchildren, siblings and parents-in-law.

Employees may receive up to 55% of their weekly wages up to a maximum weekly benefit amount, determined by weekly wages in the base period.

PFL can be taken intermittently on an hourly, daily or weekly basis as needed. Before receiving benefits, workers must serve a seven day non-payable waiting period.

PFL addresses only paid benefits; it does not provide job protection rights.

New Jersey

Under the New Jersey Temporary Disability Benefits Law, eligible employees can receive cash benefits when they take leave:

- because they cannot work because of an illness or injury NOT caused by their job
- to provide care for a seriously ill family member or to bond with a newborn or newly adopted child.

Under the Family Leave Insurance provision of the New Jersey Temporary Disability Benefits Law, employees may receive benefits for leave to provide care for a seriously ill family member or to bond with a new child for up to six weeks in a year.

Employees may receive up to 66% of their average weekly earnings, up to a maximum weekly benefit (adjusted annually).

Some employees may be eligible for benefits under the Family Leave During Unemployment program if their family leave begins more than 14 days after their last day of work. This program requires employees to meet all the requirements for unemployment benefits except being required to show their availability for work.

The law addresses only paid benefits; it does not provide job protection rights.

Rhode Island

Starting January 5, 2014, Rhode Island’s Temporary Disability Insurance (TDI) program will be expanded to include Temporary Caregiver Insurance (TCI). The expanded program will provide benefit payments to eligible workers:

- who are unable to work because of a non-work-related illness or injury
- to provide care for a seriously ill family member or to bond with a newborn or newly adopted child

Eligible employees may receive Temporary Caregiver Insurance benefits for up to 4 weeks in a year in 2014, 6 weeks in a year in 2015, and 8 weeks a year starting in 2016.

Employees may receive up to 66% of their average weekly earnings, with a minimum and a maximum weekly benefit (adjusted annually).

The TCI law provides job protection rights and the right to continued health care benefits during the caregiver leave.

The following table compares key provisions of the programs in the three states –eligibility, benefits, funding, and job protection:

	California Employment Development Department	New Jersey Department of Labor Division of Disability Insurance Service	Rhode Island Department of Labor and Training Temporary Disability Insurance Program
ELIGIBILITY: Condition	Own disability or illness, including pregnancy-related disabilities to provide care for a seriously ill family member to bond with a new child.	Cannot work because of an illness or injury not caused by their job to provide care for a seriously ill family member to bond with a newborn or newly adopted child.	Unable to work because of a non-work-related illness or injury to provide care for a seriously ill family member to bond with a newborn or newly adopted child

<p>ELIGIBILITY: Size of employer</p>	<p>Employees of employers of one or more employees with a quarterly payroll of \$100 or more, or of domestic employees with a quarterly payroll of \$750 or more.</p> <p>All employees who pay into the State Disability Insurance (SDI) Fund are covered by PFL. There are no minimum work hours or time-of-service requirements, but individuals must have earned at least \$300 in wages during the previous 12 months to be eligible.</p> <p>Employees are <i>not</i> eligible for benefits if they are receiving disability insurance, unemployment insurance, or workers compensation benefits during that same period.</p>	<p>Employees of employers of one or more employees for at least 30 days in a calendar year with minimum \$1,000 annual payroll.</p> <p>Workers who already pay into the state's existing Temporary Disability Insurance (TDI) program are eligible for wage replacement if they have earned at least \$143 in 20 base weeks or at least \$7,200 in the base year.</p>	<p>Employees of employers of one or more employees in the State of Rhode Island as long as the employee earned at least \$9,300 in 12-month base period; alternate calculation based on quarterly earnings.</p> <p>Employees are eligible to apply for leave if they worked an average of at least 30 hours/week and have been employed continuously for at least 12 months, whether or not for the same employer.</p>
<p>BENEFITS: Financial</p>	<p>55% of employee's average weekly earnings:</p> <p>Minimum weekly benefit: \$50.00</p> <p>Maximum weekly benefit: \$1067.00 (amount adjusted annually)</p> <p>Benefits payable for less than one week will be paid in increments of 1/7th of the weekly benefit.</p>	<p>66% of employee's average weekly earnings:</p> <p>Maximum weekly benefit: \$584.00 (amount adjusted annually)</p> <p>Benefits payable for less than one week will be paid in increments of 1/7th of the weekly benefit.</p>	<p>66% of employee's average weekly earnings:</p> <p>Minimum weekly benefit: \$72.00</p> <p>Maximum weekly benefit: \$752.00 (amount adjusted annually)</p> <p>Benefits payable for less than one week will be paid in increments of 1/5th of the weekly benefit.</p>

			An individual receiving benefits due to sickness is eligible for an additional dependent allowance in the amount of \$10.00/dependent/week or 7% of the individual's benefit rate, whichever is greater.
BENEFITS: Duration/year	6 weeks for family leave. 5 weeks for disability leave.	6 weeks for family leave. 26 weeks for disability leave.	Up to 4 weeks for family leave starting January 2014. (The amount of weeks will increase to 6 weeks in 2015, and 8 weeks in 2016.) 30 weeks for disability. No more than 30 weeks total per year for combined own disability and family care.
FUNDING	Funded entirely by employee contributions through payroll deductions; no employer contribution. Employee contribution rate: 1.0% with a maximum annual contribution of \$1,008.80 per year. (Workers' contributions fluctuate at a rate determined annually.)	Own disability funded by employer and employee. Employee contribution is .36% of taxable wage base annually with a maximum annual contribution of \$111.24 for 2013; employer contribution ranges from 0.10% to 0.75% of taxable wage base. Family care funded entirely by employee contributions through payroll deductions. Employee contribution rate: 0.1% of first \$30,900 of annual earnings. (Workers' contributions fluctuate at a rate determined annually.)	Funded entirely by employee payroll deductions; no employer contribution. Employee contribution rate to state fund: 1.2% of first \$61,400 of annual earning, resulting in a maximum annual contribution rate of \$736.80/year.

JOB PROTECTION WHILE ON PAID LEAVE	No — unless job protection is already provided by another law, such as FMLA or California’s Family Rights Act.	No — unless job protection is already provided by another law, such as FMLA or New Jersey’s Family Rights Act.	Yes – job protection and continuation of health benefits for period receiving paid benefits.
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