

HOUSE BILL NO. 228

INTRODUCED BY M. FUNK

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A MONTANA FAMILY AND MEDICAL LEAVE INSURANCE ACT; CREATING AN ENTERPRISE FUND WITH CONTRIBUTIONS FROM NONEXEMPT EMPLOYERS AND EMPLOYEES; PROVIDING CRITERIA FOR BENEFIT ELIGIBILITY, DURATION OF BENEFITS, COORDINATION OF BENEFITS, AND TERMS FOR MAKING CONTRIBUTIONS; IMMUNIZING THE STATE FROM TOTAL FUND LIABILITY IN CASE OF INSOLVENCY; PROVIDING THE COMMISSIONER OF LABOR AND INDUSTRY WITH THE DUTY TO DETERMINE AND MAINTAIN FUND SOLVENCY; EXTENDING PROTECTIONS FOR JOB RIGHTS AND HEALTH INFORMATION PRIVACY TO THOSE USING BENEFITS; PROVIDING FOR PUBLIC OUTREACH AND NOTIFICATIONS; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 2-18-606, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Short title.** [Sections 1 through 14] may be cited as the "Montana Family and Medical Leave Insurance Act".

**NEW SECTION. Section 2. Definitions.** For the purposes of [sections 1 through 14], the following definitions apply:

(1) "Average annual wage" has the meaning provided in 39-51-2201.

(2) "Base period":

(a) with respect to an eligible employee's benefit year under [sections 1 through 14], has the same meaning as provided in 39-51-201; or

(b) for a self-employed individual, means reported earnings on which contributions were assessed under [section 3] for the first 4 of the last 5 completed calendar quarters immediately preceding the first day of the self-employed individual's benefit year.

1           (3) "Base wages" means the annual earnings needed by an individual to qualify for the maximum  
2 weekly benefit under [section 7(3)].

3           (4) "Benefit year" means the 12-month period beginning on the first day of the calendar week in which  
4 an eligible employee files an application to be covered by family and medical leave insurance benefits allowed  
5 under [sections 1 through 14].

6           (5) "Child" means, regardless of age, a biological, adopted, or foster child, stepchild, or legal ward, a  
7 child of a domestic partner, or a child for whom the covered individual stood in loco parentis when the child was  
8 a minor.

9           (6) "Contributions" means the money payable to the family and medical leave insurance fund, as  
10 established in [section 3], by covered employers and eligible employees or by self-employed individuals who  
11 have elected coverage under [section 4].

12           (7) "Covered active duty" means:

13           (a) duty served by a member of a regular component of the armed forces while deployed with the  
14 armed forces to a foreign country; or

15           (b) duty served by a member of a reserve component of the armed forces, including a member of the  
16 national guard or reserves, who is deployed with the armed forces to a foreign country under a call or order to  
17 active duty under a provision of law referred to in 10 U.S.C. 101(a)(13)(B) regarding contingency military  
18 operations.

19           (8) (a) "Covered employer" means an employer as defined in 39-51-202.

20           (b) The term does not include a federal or tribal government employer.

21           (9) "Covered individual" means a natural person who is either:

22           (a) an eligible employee who has:

23           (i) earned qualifying wages from work during the 12-month period prior to submitting an application;

24 and

25           (ii) paid contributions into the family and medical leave insurance fund established in [section 3]; or

26           (b) a self-employed individual who has elected coverage under [section 4] and who has:

27           (i) earned qualifying income from work during the 12-month period prior to submitting an application;

28 and

1 (ii) paid contributions into the family and medical leave insurance fund for the period described in  
2 [section 4].

3 (10) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part  
4 17.

5 (11) "Eligible employee" means an individual in employment, as defined in 39-51-203, subject to the  
6 exclusions from employment described in 39-51-204, and employed by a covered employer.

7 (12) "Family and medical leave insurance benefits" means the money payable to a covered individual  
8 as provided in [sections 1 through 14].

9 (13) "Family member" means an individual with any of the following relationships to the covered  
10 individual:

11 (a) a spouse and a parent of the spouse;

12 (b) a child and a spouse of the child;

13 (c) a parent and a spouse of the parent;

14 (d) a sibling and a spouse of the sibling;

15 (e) a grandparent and a spouse of the grandparent;

16 (f) a grandchild and a spouse of the grandchild;

17 (g) a domestic partner and a parent of the domestic partner, including the domestic partner of any

18 individual provided in subsections (13)(a) through (13)(f); and

19 (h) any other individuals related to the covered individual by blood or whose close association with the  
20 covered individual is the equivalent of an acknowledged family relationship.

21 (14) "Health care provider" means an individual licensed in good standing pursuant to Title 37, chapter  
22 3, 4, 6, 8, 10, 11, 12, 17, 20, 22, 23, 26, 27, 35, or 37.

23 (15) "Parent" means a biological, adoptive, or foster parent, stepparent, or legal guardian of a covered  
24 individual or of a covered individual's spouse or domestic partner. The term includes a parent who stood in loco  
25 parentis when the covered individual or the covered individual's spouse or domestic partner was a minor child.

26 (16) "Qualifying exigency leave" is leave for the family member of a covered active duty service  
27 member for the purposes and periods outlined in 29 CFR 825.126, including short-notice deployment, military  
28 events and related activities, child care and school activities, financial and legal arrangements, counseling, rest

1 and recuperation, postdeployment activities, and parental care. The length of qualifying exigency leave is  
2 limited to the period provided under 29 CFR 825.126.

3 (17) "Qualifying wages" has the meaning of wages subject to contribution under 39-51-2105.

4 (18) "Self-employed individual" means an individual who has net earnings from self-employment in a  
5 trade or a business, which may be as a sole proprietor, an independent contractor, or a member of a  
6 partnership, and who includes those net earnings in reporting self-employment income for social security  
7 purposes as provided in 42 U.S.C. 411 or 20 CFR 404.1065.

8 (19) "Serious health condition" means an illness, injury, impairment, or physical or mental condition  
9 that, for the covered individual or the covered individual's family member, involves:

10 (a) inpatient care in a hospital, hospice, or residential medical care facility; or

11 (b) continuing treatment by a health care provider as defined in 29 CFR 825.102.

12 (20) "Wages" has the meaning provided in 39-51-201.

13

14 **NEW SECTION. Section 3. Creation of fund -- uses of fund -- schedule of contributions --**

15 **rulemaking.** (1) (a) There is an enterprise fund known as the family and medical leave insurance fund, which is  
16 to be kept separate from all other public money and used exclusively for the purposes of [sections 1 through  
17 14].

18 (b) The fund includes:

19 (i) contributions from covered employers and eligible employees of covered employers;

20 (ii) contributions from self-employed individuals who have elected coverage under [section 4];

21 (iii) interest earned on any money in the fund; and

22 (iv) any gifts, grants, or donations acquired to conduct the actuarial valuation and fund the  
23 administrative costs of setting up and maintaining the fund and program under [sections 1 through 14].

24 (2) The commissioner of labor and industry is the ex officio treasurer of the fund.

25 (3) Expenditures from the fund may be used only for the purposes and administration of the family  
26 and medical leave insurance benefits program outlined in [sections 1 through 14] and rules adopted to  
27 implement [sections 1 through 14]. Only the commissioner or the commissioner's designated agent may  
28 authorize expenditures from the fund. However, the commissioner may not prevent distributions from the fund

1 unless the fund is determined to be actuarially unsound.

2 (4) (a) The department shall evaluate and determine on an annual basis the amount of contributions  
3 needed to finance the family and medical leave insurance benefits program and shall determine by rule the  
4 amount of contributions needed to ensure solvency of the fund.

5 (b) The department may not require contributions by the covered employer and the eligible employee  
6 combined that exceed 1% of any eligible employee's monthly wages from a covered employer as calculated on  
7 base wages earned in a calendar year.

8 (5) (a) The department shall assess contributions and collect:

9 (i) from the covered employer, the amount to be submitted by the covered employer and the equal  
10 amount to be submitted on behalf of the covered employer's eligible employees; and

11 (ii) from a self-employed individual participating in the program, an amount equal to both the covered  
12 employer's share and the eligible employee's share.

13 (b) If a covered employer pays both the covered employer's and the eligible employee's share of the  
14 contribution, the eligible employee's share is considered to have been contributed by the eligible employee.

15 (c) If a covered employer assesses to eligible employees their share of the overall contribution, the  
16 covered employer shall collect each eligible employee's amount as a payroll deduction from the eligible  
17 employee's wages each payroll period and remit to the department as provided in subsection (7).

18 (6) The covered employer is responsible for remitting the full contribution to the department quarterly.

19 (7) The department shall adopt rules as necessary to implement [sections 1 through 14].

20

21 **NEW SECTION. Section 4. Elective coverage for self-employed individuals -- definition.** (1) A  
22 self-employed individual may elect coverage under [sections 1 through 14] during an open enrollment period  
23 and become a covered individual for an initial period of not less than 3 years and for subsequent periods of not  
24 less than 1 year immediately following a period of coverage.

25 (2) A self-employed individual electing coverage under this section:

26 (a) shall make payments in accordance with rules adopted by the department as to the covered  
27 employer and eligible employee contribution and payment schedules; and

28 (b) is responsible for 100% of the covered employer and eligible employee contributions, as provided

1 in [section 3].

2 (3) (a) The department shall notify the self-employed individual who fails to make timely and full  
3 payment of contributions required under this section.

4 (b) Notice to the self-employed individual must:

5 (i) be in writing sent by common carrier with tracking capability, unless the self-employed individual  
6 chooses to receive electronic notifications; and

7 (ii) include information as to when payment must be received to avoid disenrollment for nonpayment.

8 Any contributions made prior to disenrollment become those of the program and may not be returned.

9 (c) If payment is not received within 3 months of receipt of notice by the department, the department  
10 shall notify the self-employed individual that the self-employed individual is being disenrolled from the program  
11 and is ineligible for benefits under [section 7]. After the department receives payment of the past due amount,  
12 the self-employed individual may reenroll in the program consistent with the requirements in this section and as  
13 provided by rule.

14 (4) Subject to subsection (5)(b), beginning January 1, 2023, a self-employed individual who previously  
15 elected coverage and withdrew from the program is ineligible to receive benefits pursuant to [section 7] for the  
16 first year after enrolling or reenrolling in the program.

17 (5) (a) Subject to subsection (5)(b), a self-employed individual who withdraws from participation in  
18 the program two or more times in a 2-year period may not reenroll in the program for a period of 5 years from  
19 the date that the self-employed person last made payments into the system.

20 (b) Subsections (4) and (5)(a) do not apply to a self-employed individual who goes to work for an  
21 employer, regardless of whether the employer is a covered employer, and then returns to being a self-  
22 employed individual. The department may adopt rules to help determine that the self-employed individual is  
23 again eligible for participation, consistent with the requirements in this section.

24 (6) For the purposes of this section, the term "open enrollment period" means:

25 (a) the first 90 days after the start of contributions;

26 (b) the first 60 days after an individual becomes self-employed, as defined by department rule; or

27 (c) after January 1, 2023, and in each subsequent calendar year, the months of November and  
28 December of each year.

1

2           **NEW SECTION. Section 5. Rights to benefits subject to availability of funds -- state not liable**3 **for fund shortage -- dissolution.** (1) Family and medical leave insurance benefits payable under [sections 1  
4 through 14] are available only to the extent that money is available in the family and medical leave insurance  
5 fund.

6           (2) The state is subject to [sections 1 through 14] as an employer.

7           (3) The state has no more liability than any other employer if the department declares a shortage of  
8 funds.

9           (4) A shortage of funds must be addressed by using the payment determination in [section 3].

10           (5) There is no vested private right of any kind against amendment or repeal of [sections 1 through  
11 14]. If repealed and a balance remains in the family and medical leave insurance fund, the money not paid out  
12 in family and medical leave insurance benefits under [sections 1 through 14] must be transferred to the general  
13 fund.

14

15           **NEW SECTION. Section 6. Benefit payments -- eligibility -- application -- privacy protection.** (1)16 A payment to a covered individual under [sections 1 through 14] may be made no sooner than 30 days after the  
17 commissioner declares that the family and medical leave insurance fund is solvent.18           (2) To receive payments from the family and medical leave insurance fund, a covered individual must  
19 meet one of the following requirements:

20           (a) have a serious health condition;

21           (b) be caring for:

22           (i) a new child within the first year after the child's birth, the first year of adoption, or the first year of  
23 placement of a child through foster care into the covered individual's family; or

24           (ii) a family member who has a serious health condition;

25           (c) be taking qualifying exigency leave arising out of the fact that the family member of the covered  
26 individual is on covered active duty or has been notified of an impending call or order to covered active duty in  
27 the armed forces; or

28           (d) be taking any other leave from work authorized by the Family and Medical Leave Act of 1993, 29

1 U.S.C. 2601, et seq.

2 (3) The department may by rule determine whether a covered individual is subject to documenting the  
3 reason for eligibility under subsection (2). The rule may not be more restrictive than is required under the  
4 Family and Medical Leave Act.

5 (4) To begin receiving payments, a covered individual or a covered individual's authorized legal  
6 representative shall submit an application for family and medical leave insurance benefits under this section to  
7 the department and a copy of the application to the covered employer.

8 (5) Eligibility documentation, to be determined by the department by rule, must be submitted with the  
9 application. The department may not require documentation that exceeds the right to privacy allowed under the  
10 Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq., the Americans with  
11 Disabilities Act of 1990, 42 U.S.C. 12101, et seq., and the Genetic Information Nondiscrimination Act of 2008,  
12 42 U.S.C. 2000ff, et seq.

13 (6) If the department requires certification by a health care provider as to eligibility, the health care  
14 provider is responsible for retaining patient confidentiality if the applicant has not waived one or more portions  
15 of that confidentiality.

16 (7) The covered individual shall state in the application to the best of the covered individual's  
17 knowledge whether the leave eligible for family and medical leave insurance benefits under [sections 1 through  
18 14] is intended to be taken sequentially or intermittently and for how much time.

19  
20 **NEW SECTION. Section 7. Benefits -- duration.** (1) (a) Family and medical leave insurance benefits  
21 under [sections 1 through 14] correspond to the covered individual's base wages or earnings during the base  
22 period, subject to the provisions of subsection (1)(b) or (1)(c).

23 (b) The wages may be the sum of all covered employment for which the covered individual is taking  
24 leave under [sections 1 through 14].

25 (c) The department shall determine by rule the basis used for determining a self-employed individual's  
26 earnings during the base period.

27 (2) Subject to subsection (3), a weekly benefit amount is calculated as follows:

28 (a) for a covered individual whose wages, or earnings in the case of a self-employed individual, in the



1 base period are not more than 50% of the average annual wage, the department shall pay weekly benefits in an  
2 amount equal to 1.92% of the covered individual's wages in the base period; or

3 (b) for a covered individual whose wages, or earnings in the case of a self-employed individual, in the  
4 base period are more than 50% of the average annual wage, the department shall pay weekly benefits equal to  
5 1.92% of 50% of the average annual wage, plus 0.96% of the amount of wages in the base period that are in  
6 excess of 50% of the average annual wage.

7 (3) (a) A weekly benefit may not exceed \$1,000 or the average weekly wage, as defined in 39-51-  
8 2201, whichever is greater.

9 (b) Benefits for partial weeks of leave must be prorated.

10 (c) If a covered individual is eligible and seeking family and medical leave insurance benefits for more  
11 than one job, the benefits must be calculated by the department based on a combination of wages from all jobs  
12 from which the covered individual is taking leave based on [sections 1 through 14].

13 (4) A covered individual may receive no more than 480 hours of family and medical leave insurance  
14 benefits in a benefit year, regardless of whether the family and medical leave insurance benefits are for more  
15 than one reason of eligibility.

16  
17 **NEW SECTION. Section 8. Coordination of benefits.** (1) (a) The provisions of [sections 1 through  
18 14] run concurrently with the benefits covered by the Family and Medical Leave Act of 1993, 29 U.S.C. 2601, et  
19 seq.

20 (b) A covered employer may require that the covered individual take family and medical leave  
21 insurance benefits payments concurrently, or otherwise coordinated, with payment made or leave allowed  
22 under the terms of disability or family care leave under a collective bargaining agreement or employer policy.  
23 The covered employer shall give employees written notice of this requirement.

24 (2) The provisions of [sections 1 through 14] do not:

25 (a) supersede any provision of law, collective bargaining agreement, or other contract that provides  
26 paid leave rights in addition to the rights under [sections 1 through 14]; or

27 (b) prevent a covered employer from adopting or retaining a paid leave policy that provides greater  
28 benefits than are required by [sections 1 through 14].

1           (3) The department may not provide family and medical leave insurance benefits for any period in  
2 which the covered individual is receiving unemployment insurance benefits or workers' compensation,  
3 excluding medical benefits.

4  
5           NEW SECTION. Section 9. Employment and benefits protection -- rights -- enforcement --  
6 **penalties -- definitions.** (1) A covered employer shall restore a covered individual who receives family and  
7 medical leave insurance benefits under [sections 1 through 14] to the position that the covered individual held  
8 immediately prior to using the family and medical leave insurance benefits provided for in [sections 1 through  
9 14]. If the same position is not available, the covered employer shall provide a position with equivalent seniority,  
10 status, employment benefits, pay, and other terms and conditions of employment, including benefits and  
11 service credits that the covered individual had been entitled to immediately prior to taking leave under [sections  
12 1 through 14].

13           (2) A covered employer may not at any time, including in the period prior to the granting of family and  
14 medical leave insurance benefits but after an application is received, retaliate against an eligible employee for  
15 exercising the rights and provisions of [sections 1 through 14], including but not limited to the rights listed in  
16 subsection (3).

17           (3) Rights under [sections 1 through 14] include the right to:

18           (a) take leave from work while receiving benefits under [section 7];

19           (b) request, file for, apply for, or use family and medical leave insurance benefits;

20           (c) communicate to the covered employer or any other person or entity an intent to file a claim, a  
21 complaint with the department or courts, or an appeal;

22           (d) testify or assist in an investigation, hearing, or proceeding under [sections 1 through 14] at any  
23 time, including during the period in which the covered individual receives family and medical leave insurance  
24 benefits;

25           (e) inform any person about any covered employer's alleged violation of [sections 1 through 14]; and

26           (f) inform any person of the rights available under [sections 1 through 14].

27           (4) A covered employer who provides health and pension benefits to eligible employees shall  
28 continue coverage to a covered individual who is receiving family and medical leave insurance benefits under

1 [sections 1 through 14]. If the covered employer requires eligible employees to share the cost of health  
2 insurance premium payments or pension contributions, the same terms apply to a covered individual taking  
3 family and medical leave insurance benefits under [sections 1 through 14]. A covered individual who fails to pay  
4 the eligible employee's required share of a health insurance premium payment or pension contribution within 30  
5 days of written notification by a covered employer of an overdue payment is subject to loss of those benefits.

6 (5) For a violation of rights under this section, an eligible employee may:

7 (a) file a civil action for damages or equitable relief in district court; or

8 (b) seek arbitration for damages or equitable relief in the same manner as provided in 39-2-914(1)

9 through (3). A covered individual who makes a valid offer to arbitrate and who prevails in the arbitration is  
10 entitled to have the arbitrator's fee and all costs of arbitration paid by the covered employer.

11 (6) (a) Except as provided in subsection (6)(b), an action may be brought under this section no later  
12 than 2 years after the date of the last event constituting the alleged violation for which the action is brought.

13 (b) In the case of an action brought for a willful violation of this section, an action may be brought no  
14 later than 3 years after the date of the last event constituting the alleged violation for which the action is  
15 brought.

16 (7) For the purposes of this section, the following definitions apply:

17 (a) "Damages" means:

18 (i) wages, salary, employment benefits, or other compensation lost or denied to an eligible employee  
19 because of a violation of this section;

20 (ii) in a case in which wages, salary, employment benefits, or other compensation was not lost or  
21 denied to the eligible employee, any actual monetary losses sustained by the eligible employee as a direct  
22 result of the violation, including the cost of providing care, up to a sum equal to 12 weeks of wages or salary for  
23 the eligible employee;

24 (iii) interest on the amount described in subsection (7)(a)(i) at the prevailing rate; or

25 (iv) an additional amount as liquidated damages equal to the sum of the amount described in  
26 subsection (7)(a)(i) and the interest allowed under subsection (7)(a)(iii), except that a court has the discretion to  
27 reduce the liability under this subsection (7)(a)(iv) to the damages in subsections (7)(a)(i) and (7)(a)(iii) if a  
28 covered employer who has violated this section proves to the satisfaction of the court that the act or omission

1 was in good faith and that the covered employer had reasonable grounds for believing that the act or omission  
2 was not in violation of this section.

3 (b) "Equitable relief" means appropriate employment actions, including reinstatement and promotion.

4 (c) "Retaliate" means to discharge, demote, or otherwise discriminate or take an adverse employment  
5 action against the eligible employee.

6  
7 **NEW SECTION. Section 10. Disqualification for benefits -- erroneous payments -- enforcement**

8 **-- penalties.** (1) (a) An eligible employee is disqualified from receiving family and medical leave insurance  
9 benefits under [sections 1 through 14] for 1 year if the eligible employee, in connection with an application for  
10 benefits under [sections 1 through 14], knowingly makes a false statement or a misrepresentation regarding a  
11 material fact or knowingly fails to report a material fact.

12 (b) A self-employed individual may be disenrolled for knowingly making a false statement or a  
13 misrepresentation regarding a material fact or for knowingly failing to report a material fact.

14 (2) For family and medical leave insurance benefits paid erroneously under [sections 1 through 14],  
15 whether through error by the department or knowing misrepresentation by a covered individual, the department  
16 may seek repayment of family and medical leave insurance benefits from the covered individual. The  
17 department may adopt rules to determine reasons to waive the right to seek repayment and procedures for  
18 recovering erroneous payments.

19 (3) (a) The department shall assess a fine of no less than \$500 for each violation against a covered  
20 employer who:

21 (i) fails to reinstate a covered individual as provided in [section 9];

22 (ii) fails to continue health insurance or pension contributions for a covered individual; or

23 (iii) interferes with a covered individual's ability to use [sections 1 through 14].

24 (b) A covered employer who fails to forward to the department at the time specified by the department  
25 by rule both the covered employer's share and the eligible employee's share of the assessment for the family  
26 and medical leave insurance fund determined under [section 3] is guilty of a misdemeanor and subject to a fine  
27 of no more than 110% of the assessment due but not forwarded to the department.

28 (c) Fines received under this subsection (3) must be deposited in the family and medical leave

1 insurance fund.

2

3 **NEW SECTION. Section 11. Appeal process.** If the department denies an application from an  
4 eligible employee, the eligible employee has the right to a review and redetermination in the manner provided in  
5 39-51-2402, except that the time extensions in 39-51-2402(4) and (5) do not apply. Further appeal procedures  
6 are available in the manner provided in 39-51-2403, 39-51-2404, and 39-51-2407 through 39-51-2410.

7

8 **NEW SECTION. Section 12. Notice of eligibility.** (1) (a) A covered employer shall provide to each  
9 eligible employee, on hiring, a written notice that must include descriptions of:

10 (i) the eligible employee's right to family and medical leave insurance benefits under [sections 1  
11 through 14] and the terms under which family and medical leave insurance benefits may be accessed;

12 (ii) the amount of family and medical leave insurance benefits that the eligible employee may be  
13 eligible to receive;

14 (iii) the procedure for filing a claim for family and medical leave insurance benefits;

15 (iv) the right to job protection and continuation of benefits as provided in [section 9];

16 (v) protections against discriminatory and retaliatory personnel elections under [sections 1 through  
17 14]; and

18 (vi) the right to file a complaint for violations of [sections 1 through 14].

19 (b) A covered employer shall display and maintain a poster that includes the information required in  
20 subsection (1)(a) in a conspicuous place accessible to eligible employees at the covered employer's place of  
21 business.

22 (2) An eligible employee or the eligible employee's legal representative shall provide notice to the  
23 employee's covered employer as soon as practicable of the eligible employee's intention to access family and  
24 medical leave insurance benefits.

25

26 **NEW SECTION. Section 13. Public outreach.** (1) The department shall conduct public outreach to  
27 inform workers and employers regarding the availability of family and medical leave insurance benefits.

28 (2) The department shall use 1% of the funds collected for the family and medical leave insurance

1 fund in any one fiscal year to pay for the public outreach, including costs for posters.

2

3 **NEW SECTION. Section 14. Federal income tax -- rulemaking -- state income tax.** (1) If the  
4 internal revenue service determines that benefit payments under [sections 1 through 14] are subject to federal  
5 income tax, the department shall:

6 (a) inform an eligible employee filing an application for family and medical leave insurance benefits at  
7 the time of the filing that the internal revenue service has determined that family and medical leave insurance  
8 benefits are subject to federal and state taxes;

9 (b) inform the eligible employee that requirements exist pertaining to estimated tax payments or to  
10 withholding from family and medical leave insurance benefit payments; and

11 (c) adopt rules as necessary to implement [sections 1 through 14].

12 (2) An eligible employee shall notify the department whether to withhold estimated tax payments from  
13 family and medical leave insurance benefits.

14 (3) If the eligible employee elects for the department to handle withholding of federal income tax, the  
15 department shall retain the withheld amount in the family and medical leave insurance fund until transferring  
16 that amount to the federal taxing authority as a payment of federal income tax.

17 (4) Family and medical leave insurance benefits under [sections 1 through 14] are part of gross  
18 income under the state's individual income tax, as defined in 15-30-2101, and the provisions of subsections (1)  
19 through (3) of this section apply to withholding state income taxes.

20

21 **Section 15.** Section 2-18-606, MCA, is amended to read:

22 **"2-18-606. Parental leave for state employees.** (1) The department of administration shall develop a  
23 parental leave policy for permanent state employees that is in compliance with [sections 1 through 14]. The  
24 policy must ~~permit~~ coordinate the provisions in [sections 1 through 14] for an employee ~~to take a reasonable~~  
25 ~~leave of absence and permit the employee to use sick leave immediately following the birth or placement of a~~  
26 ~~child for a period not to exceed 15 working days if:~~

27 (a) ~~regardless of whether~~ the employee is adopting a child; or is

28 (b) ~~the employee is a~~ the birth mother or birth father.

