

By Senator Bullard

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1                                   A bill to be entitled  
2       An act relating to employment practices; creating ch.  
3       444, F.S.; creating s. 444.001, F.S.; providing a  
4       short title; creating s. 444.002, F.S.; providing  
5       legislative findings and intent; creating s. 444.003,  
6       F.S.; defining terms; creating s. 444.004, F.S.;  
7       requiring an employer to allow an employee to take  
8       paid family care leave to bond with a new child upon  
9       the child's birth, adoption, or foster care placement;  
10      requiring an employee to take certain action in order  
11      to receive family care leave; specifying limitations  
12      and duties with respect to an employer's  
13      administration of family care leave; requiring that  
14      family care leave be taken concurrently with any leave  
15      taken pursuant to federal family and medical leave  
16      provisions; creating s. 444.005, F.S.; requiring an  
17      employer to provide notice to employees of the right  
18      to paid family care leave; prescribing notice  
19      requirements; requiring the Department of Economic  
20      Opportunity to create a poster and a model notice that  
21      specify family care leave rights; specifying  
22      circumstances under which an employer is deemed in  
23      compliance with notice requirements; providing a  
24      penalty for an employer's failure to comply with such  
25      requirements; creating s. 444.006, F.S.; authorizing  
26      the executive director of the department to conduct an  
27      investigation under certain circumstances;  
28      establishing rebuttable presumptions that an employer  
29      has violated certain provisions of ch. 444, F.S.,

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30 under specified circumstances; authorizing the  
31 executive director to take certain action in the event  
32 of specified violations; authorizing an employee to  
33 bring a civil action against an employer for a  
34 violation within a specified timeframe; authorizing  
35 the award of specified compensation, damages, and  
36 fees; providing protections for an employee who acts  
37 in good faith; prohibiting an employee from taking  
38 certain actions in bad faith; providing a penalty;  
39 creating s. 444.007, F.S.; authorizing the department  
40 to adopt rules; creating s. 444.008, F.S.; providing  
41 for construction; amending s. 760.10, F.S.; revising  
42 the Florida Civil Rights Act of 1992 to prohibit  
43 specified employment practices on the basis of  
44 pregnancy, childbirth, or a related medical condition;  
45 providing for leave, maintenance of health coverage,  
46 reasonable accommodation and transfer, and return  
47 rights for an employee who is disabled from pregnancy,  
48 childbirth, or a related medical condition; providing  
49 for construction; reenacting and amending s.  
50 760.11(1), F.S., relating to administrative and civil  
51 remedies for violations of the Florida Civil Rights  
52 Act of 1992; conforming a cross-reference; providing  
53 an effective date.

54  
55 Be It Enacted by the Legislature of the State of Florida:

56  
57 Section 1. Chapter 444, Florida Statutes, to be entitled  
58 "Paid Family Care Leave," is created.

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59 Section 2. Section 444.001, Florida Statutes, is created to  
60 read:

61 444.001 Short title.—This chapter may be cited as the  
62 “Florida Paid Family Care Leave Act.”

63 Section 3. Section 444.002, Florida Statutes, is created to  
64 read:

65 444.002 Legislative findings and intent.—The Legislature  
66 finds that it is in the public interest to provide paid family  
67 care leave to workers for the birth, adoption, or foster care  
68 placement of a new child. The need for paid family care leave  
69 has increased as the participation of both parents in the  
70 workforce has increased and the number of single parents has  
71 grown. Despite knowledge of the importance of time spent bonding  
72 with a new child, the majority of workers in this state are  
73 unable to take family care leave because they are unable to  
74 afford leave without pay. When a worker does not receive income  
75 during a leave of absence, his or her family suffers as a result  
76 of the worker’s loss of income, increasing demand on the state’s  
77 reemployment assistance program and dependence on the state’s  
78 welfare system. Therefore, in an effort to assist workers in  
79 reconciling the demands of work and family, the Legislature  
80 intends to require employers to allow employees to take a paid  
81 family care leave to bond with their minor child during the  
82 first year after the birth of the child or the placement of the  
83 child through the foster care system or by adoption.

84 Section 4. Section 444.003, Florida Statutes, is created to  
85 read:

86 444.003 Definitions.—As used in this chapter, the term:  
87 (1) “Adverse action” includes:

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88        (a) Discharge.

89        (b) Demotion.

90        (c) A threat of discharge or demotion to an employee.

91        (d) Any other retaliatory action that results in a change  
92 in the terms or conditions of employment which would dissuade a  
93 reasonable employee from exercising a right under this chapter.

94        (2) "Child" means a biological, adopted, or foster son or  
95 daughter or a stepson or stepdaughter of an employee.

96        (3) "Department" means the Department of Economic  
97 Opportunity.

98        (4) "Employee" means a person who performs services for  
99 hire for an employer for an average of 20 or more hours per  
100 week. The term includes all individuals employed at any site  
101 owned or operated by an employer, not including an independent  
102 contractor.

103        (5) "Employer" has the same meaning as defined in s.  
104 760.02.

105        (6) "Executive director" means the executive director of  
106 the Department of Economic Opportunity.

107        (7) "Family care leave" means a paid leave of absence from  
108 employment for reason of the birth of an employee's child or the  
109 placement of a child with an employee through the foster care  
110 system or by adoption.

111        Section 5. Section 444.004, Florida Statutes, is created to  
112 read:

113        444.004 Family care leave upon the birth, adoption, or  
114 foster care placement of a child.-

115        (1) Beginning January 1, 2017, an employer shall allow an  
116 employee to take family care leave from employment, for up to 6

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117 weeks, for the employee to bond with his or her minor child  
118 during the first year after the birth or placement of the child  
119 in connection with foster care or adoption. Such family care  
120 leave shall be without loss of pay or diminution of any  
121 privilege, benefit, or right arising out of such employment.

122 (2) In order to receive family care leave, an employee  
123 shall:

124 (a) Request the leave from his or her employer as soon as  
125 practicable after the employee determines that he or she needs  
126 to take leave to bond with a new child.

127 (b) Notify the employer of the anticipated duration of the  
128 leave.

129 (c) Comply with any reasonable procedures established by  
130 the employer for an employee to follow when requesting and  
131 obtaining leave.

132 (3) An employer may require an employee who requests or  
133 obtains family care leave to provide reasonable documentation to  
134 verify eligibility to take family care leave.

135 (4) An employer may not take adverse action against an  
136 employee for requesting or obtaining family care leave  
137 authorized under this section.

138 (5) An employer shall retain a record of family care leave  
139 obtained by an employee for at least 3 years. After giving the  
140 employer notice and determining a mutually agreeable time for  
141 inspection, the executive director may inspect a record kept  
142 pursuant to this subsection for the purpose of determining the  
143 employer's compliance. If an employer fails to retain a record  
144 as required under this subsection or to allow the executive  
145 director to inspect such records, the executive director may

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146 take action pursuant to s. 444.006(3).

147 (6) Family care leave taken pursuant to this section must  
148 be taken concurrently with leave taken pursuant to the Family  
149 and Medical Leave Act of 1993, Pub. L. No. 103-3.

150 Section 6. Section 444.005, Florida Statutes, is created to  
151 read:

152 444.005 Notice requirements.-

153 (1) An employer shall notify his or her employee that the  
154 employee is entitled to family care leave to bond with a new  
155 child upon meeting the requirements for eligibility set forth in  
156 this chapter.

157 (2) The notice must include:

158 (a) The purposes for which the employer is required to  
159 allow an employee to take a leave of absence.

160 (b) A statement regarding the prohibition of the employer's  
161 taking adverse action against an employee who exercises a right  
162 under this section.

163 (c) Information regarding the right of an employee to  
164 report an alleged violation of this chapter by the employer to  
165 the executive director or to bring a civil action under s.  
166 444.006.

167 (3) The department shall create and make available a poster  
168 and a model notice that may be used by an employer in complying  
169 with subsection (1). The poster and model notice must be printed  
170 in English, Spanish, and any other language that the executive  
171 director determines is necessary to notify employees of their  
172 rights under this chapter.

173 (4) An employer is deemed to be in compliance with  
174 subsection (1) by:

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175 (a) Displaying the poster created by the executive director  
176 in a conspicuous and accessible area at the site at which the  
177 employees work;

178 (b) Including the model notice created by the executive  
179 director in an employee handbook or other written guide to  
180 employees concerning employee benefits or leave provided by the  
181 employer; or

182 (c) Providing the model notice created by the executive  
183 director to each employee at the time of initial hiring.

184 (5) If an employer decides not to use the model notice  
185 created by the executive director, the employer's notice must  
186 contain the same information that is included in the model  
187 notice.

188 (6) In lieu of posting the model notice, an employer may  
189 distribute the employer's notice to employees by electronic  
190 means.

191 (7) An employer who violates this section is subject to a  
192 civil penalty of not more than \$125 for the first violation and  
193 not more than \$250 for each subsequent violation.

194 Section 7. Section 444.006, Florida Statutes, is created to  
195 read:

196 444.006 Violations of chapter; civil action; penalties.—

197 (1) Upon the receipt of a written complaint from an  
198 employee, the executive director may conduct an investigation to  
199 determine whether the employer has acted in violation of this  
200 chapter.

201 (2) (a) There is a rebuttable presumption that an employer  
202 has violated this chapter if the employer takes adverse action  
203 against an employee within 90 days after the employee:

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204       1. Files a complaint with the executive director alleging a  
205 violation of this chapter or brings a civil action under this  
206 section;

207       2. Informs a person about an alleged violation of this  
208 chapter by his or her employer;

209       3. Cooperates with the executive director or another person  
210 in the investigation or prosecution of an alleged violation of  
211 this chapter by his or her employer; or

212       4. Opposes a policy or practice of his or her employer of  
213 an act committed by the employer which is prohibited under this  
214 chapter.

215       (b) The rebuttable presumption may be overcome by clear and  
216 convincing evidence.

217       (3) If the executive director determines that a violation  
218 of this chapter has occurred, the executive director may:

219       (a) Attempt to informally resolve any pertinent issue by  
220 mediation;

221       (b) With the written consent of the employee, request the  
222 Attorney General to bring an action on behalf of the employee in  
223 accordance with this section; or

224       (c) Bring an action on behalf of an employee in the county  
225 where the violation allegedly occurred.

226       (4) An employee may bring a civil action in a court of  
227 competent jurisdiction against his or her employer for a  
228 violation of this chapter regardless of whether the employee  
229 first filed a complaint with the executive director.

230       (5) An action brought under subsection (3) or subsection  
231 (4) must be filed within 3 years after the occurrence of the act  
232 on which the action is based.



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233 (6) (a) If a court finds that an employer violated this  
234 chapter in an action brought under subsection (3) or subsection  
235 (4), the court may award the employee:

236 1. The full monetary value of any unpaid family care leave  
237 that the employee was unlawfully denied;

238 2. Actual economic damages suffered by the employee as a  
239 result of the employer's violation of this chapter;

240 3. An additional amount not exceeding three times the  
241 damages awarded under subparagraph 2.;

242 4. Reasonable attorney fees and other costs; and

243 5. Any other relief that the court deems appropriate,  
244 including reinstatement of employment, back pay, and injunctive  
245 relief.

246 (b) If the full monetary value of any unpaid family care  
247 leave of an employee is recovered under this subsection, such  
248 leave shall be paid to the employee without cost to the  
249 employee.

250 (c) If the action was brought by the Attorney General under  
251 paragraph (3) (b), the court may order the employer to pay \$1,000  
252 per violation to the state.

253 (7) There is a rebuttable presumption that an employer has  
254 violated this chapter if the employer takes adverse action  
255 against an employee within 90 days after the employee:

256 (a) Files a complaint with the executive director alleging  
257 a violation of this chapter or brings a civil action under  
258 subsection (4);

259 (b) Informs a person about an alleged violation of this  
260 chapter by his or her employer;

261 (c) Cooperates with the executive director or another

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262 person in the investigation or prosecution of an alleged  
 263 violation of this chapter by his or her employer; or

264 (d) Opposes a policy or practice of his or her employer or  
 265 an act committed by his or her employer which is unlawful under  
 266 this chapter.

267  
 268 The protections afforded under this subsection apply to an  
 269 employee who mistakenly, but in good faith, alleges a violation  
 270 of this chapter.

271 (8) An employee, in bad faith, may not file a complaint  
 272 with the executive director alleging a violation of this chapter  
 273 or bring or testify in an action brought under this section. An  
 274 employee who violates this subsection commits a misdemeanor of  
 275 the first degree, punishable as provided in s. 775.082 or s.  
 276 775.083.

277 Section 8. Section 444.007, Florida Statutes, is created to  
 278 read:

279 444.007 Rules.—The department may adopt rules to implement  
 280 and administer this chapter.

281 Section 9. Section 444.008, Florida Statutes, is created to  
 282 read:

283 444.008 Construction.—

284 (1) This chapter does not diminish an employer's obligation  
 285 to comply with a collective bargaining agreement, contract,  
 286 employee benefit plan, or employer policy, as applicable, which  
 287 requires leave in excess of that required by this chapter for  
 288 the birth, adoption, or placement of a child.

289 (2) An individual's right to family care leave under this  
 290 chapter may not be diminished by a collective bargaining

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291 agreement entered into or renewed or an employer policy adopted  
292 or retained on or after July 1, 2016. Any agreement by an  
293 individual to waive his or her rights under this chapter is  
294 deemed against public policy and is void and unenforceable.

295 Section 10. Present subsections (2) through (10) of section  
296 760.10, Florida Statutes, are renumbered as subsections (3)  
297 through (11), respectively, and a new subsection (2) is added to  
298 that section, to read:

299 760.10 Unlawful employment practices.-

300 (2) In addition to the provisions governing pregnancy under  
301 subsection (1), it is an unlawful employment practice for an  
302 employer to:

303 (a) Refuse to allow a female employee disabled by  
304 pregnancy, childbirth, or a related medical condition to take  
305 unpaid leave for a period, not to exceed 4 months, during which  
306 the female employee is disabled on account of pregnancy,  
307 childbirth, or a related medical condition. An employee is  
308 entitled to use any accrued vacation leave to receive  
309 compensation during the unpaid period of leave. An employer may  
310 require an employee who plans to take leave pursuant to this  
311 paragraph to provide the employer reasonable notice of the date  
312 the leave will commence and the estimated duration of the leave.

313 (b) Refuse to maintain and pay for coverage for a group  
314 health plan, as defined in s. 5000(b)(1) of the Internal Revenue  
315 Code, for an eligible employee who takes leave pursuant to  
316 paragraph (a) at the level and under the conditions that  
317 coverage would have been provided if the employee had  
318 continuously worked for the duration of the leave. This  
319 paragraph does not preclude an employer from maintaining and

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320 paying for coverage under a group health plan for a period  
321 exceeding 4 months. An employer may recover the premium that the  
322 employer paid for maintaining coverage as required under this  
323 paragraph if:

324 1. The employee fails to return from leave after the period  
325 of leave to which the employee is entitled to has expired; and

326 2. The employee's failure to return from leave is for a  
327 reason other than the employee's taking paid family care leave  
328 pursuant to chapter 444 or other than the continuation,  
329 recurrence, or onset of a medical condition that entitles the  
330 employee to leave under paragraph (a) or circumstance beyond the  
331 control of the employee.

332 (c) Refuse to provide reasonable accommodation for an  
333 employee, if she so requests with the advice of her health care  
334 provider, for pregnancy, childbirth, or a medical condition  
335 related to pregnancy or childbirth. As an accommodation, and  
336 with the advice of her health care provider, an employee may  
337 request transfer to a less strenuous or hazardous position for  
338 the duration of her pregnancy. This paragraph does not require  
339 an employer to create additional employment duties that the  
340 employer would not otherwise have created, discharge another  
341 employee, transfer an employee with more seniority, or promote  
342 an employee who is not qualified to perform certain duties.

343 (d) Refuse to return an employee to the same position after  
344 the period of leave to which the employee is entitled has  
345 expired. If her same position is no longer available, an  
346 employer must offer a position that is comparable in terms of  
347 pay, location, job content, and promotional opportunities,  
348 unless the employer can prove that no comparable position

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349 exists.

350 (e) Otherwise interfere with, restrain, or deny the  
351 exercise of, or the attempt to exercise, any right provided  
352 under this subsection.

353  
354 This subsection may not be construed to affect any other  
355 provision of law relating to pregnancy, or in any way to  
356 diminish the coverage of pregnancy, childbirth, or a medical  
357 condition related to pregnancy or childbirth under any other  
358 law, including chapter 444. An employee is entitled to take  
359 leave pursuant to this subsection in addition to any paid family  
360 care leave that the employee may be eligible to receive pursuant  
361 to chapter 444.

362 Section 11. Subsection (1) of section 760.11, Florida  
363 Statutes, is reenacted and amended to read:

364 760.11 Administrative and civil remedies; construction.—

365 (1) Any person aggrieved by a violation of ss. 760.01-  
366 760.10 may file a complaint with the commission within 365 days  
367 of the alleged violation, naming the employer, employment  
368 agency, labor organization, or joint labor-management committee,  
369 or, in the case of an alleged violation of s. 760.10(6) ~~s.~~  
370 ~~760.10(5)~~, the person responsible for the violation and  
371 describing the violation. Any person aggrieved by a violation of  
372 s. 509.092 may file a complaint with the commission within 365  
373 days of the alleged violation naming the person responsible for  
374 the violation and describing the violation. The commission, a  
375 commissioner, or the Attorney General may in like manner file  
376 such a complaint. On the same day the complaint is filed with  
377 the commission, the commission shall clearly stamp on the face

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378 of the complaint the date the complaint was filed with the  
379 commission. In lieu of filing the complaint with the commission,  
380 a complaint under this section may be filed with the federal  
381 Equal Employment Opportunity Commission or with any unit of  
382 government of the state which is a fair-employment-practice  
383 agency under 29 C.F.R. ss. 1601.70-1601.80. If the date the  
384 complaint is filed is clearly stamped on the face of the  
385 complaint, that date is the date of filing. The date the  
386 complaint is filed with the commission for purposes of this  
387 section is the earliest date of filing with the Equal Employment  
388 Opportunity Commission, the fair-employment-practice agency, or  
389 the commission. The complaint shall contain a short and plain  
390 statement of the facts describing the violation and the relief  
391 sought. The commission may require additional information to be  
392 in the complaint. The commission, within 5 days of the complaint  
393 being filed, shall by registered mail send a copy of the  
394 complaint to the person who allegedly committed the violation.  
395 The person who allegedly committed the violation may file an  
396 answer to the complaint within 25 days of the date the complaint  
397 was filed with the commission. Any answer filed shall be mailed  
398 to the aggrieved person by the person filing the answer. Both  
399 the complaint and the answer shall be verified.

400 Section 12. This act shall take effect July 1, 2016.