

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.; providing definitions; creating s. 444.004,
7 F.S.; requiring an employer to allow certain employees
8 to take paid family leave to bond with a new child
9 upon the child's birth, adoption, or foster care
10 placement; requiring an employee to take certain
11 action in order to receive family leave; specifying
12 limitations and duties related to an employer's
13 administration of family leave; requiring that family
14 leave be taken concurrently with any leave taken
15 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 leave; prescribing notice requirements;
19 requiring the Department of Economic Opportunity to
20 create a poster and a model notice that specify family
21 leave rights; specifying circumstances under which an
22 employer is deemed in compliance with notice
23 requirements; providing a penalty for an employer's
24 failure to comply with such requirements; creating s.
25 444.006, F.S.; authorizing the executive director of

26 | the department to conduct an investigation under
27 | certain circumstances; establishing rebuttable
28 | presumptions that an employer has violated certain
29 | provisions of ch. 444, F.S., under specified
30 | circumstances; authorizing the executive director to
31 | take certain action in the event of specified
32 | violations; authorizing an employee to bring a civil
33 | action against an employer for a violation within a
34 | specified timeframe; authorizing the award of
35 | specified compensation, damages, and fees; providing
36 | protections for an employee who acts in good faith;
37 | prohibiting an employee from taking certain actions in
38 | bad faith; providing a penalty; creating s. 444.007,
39 | F.S.; authorizing the department to adopt rules;
40 | creating s. 444.008, F.S.; providing construction;
41 | amending s. 760.10, F.S.; revising the Florida Civil
42 | Rights Act of 1992 to prohibit specified employment
43 | practices on the basis of pregnancy, childbirth, or a
44 | related medical condition; providing for leave,
45 | maintenance of health coverage, reasonable
46 | accommodation and transfer, and return rights for an
47 | employee who is disabled from pregnancy, childbirth,
48 | or a related medical condition; providing
49 | construction; reenacting and amending s. 760.11(1),
50 | F.S., relating to administrative and civil remedies

51 for violations of the Florida Civil Rights Act of
52 1992; conforming a cross-reference; providing an
53 effective date.

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

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

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

61 444.001 Short title.—This chapter may be cited as the
62 "Florida Family Leave Act."

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

65 444.002 Legislative findings and intent.—The Legislature
66 finds that it is in the public interest to provide paid family
67 leave to workers for the birth, adoption, or foster care
68 placement of a new child. The need for paid family leave has
69 increased as the participation of both parents in the workforce
70 has increased and the number of single parents has grown.
71 Despite knowledge of the importance of time spent bonding with a
72 new child, the majority of workers in this state are unable to
73 take family leave because they are unable to afford leave
74 without pay. When a worker does not receive income during a
75 leave of absence, his or her family suffers as a result of the

76 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 paid
81 family leave to bond with their minor child during the first 6
82 months 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
85 to read:

86 444.003 Definitions.—As used in this chapter, the term:

87 (1) "Adverse action" includes:

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 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
112 to read:

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

115 (1) Beginning July 1, 2019, an employer shall allow an
116 employee who has been employed by the employer for at least 18
117 months to take family leave from employment, for up to 6 months,
118 for the employee to bond with his or her minor child during the
119 first 6 months after the birth or placement of the child in
120 connection with foster care or adoption. Such family leave shall
121 be without loss of pay or diminution of any privilege, benefit,
122 or right arising out of such employment.

123 (2) In order to receive family leave, an employee 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 leave to provide reasonable documentation to
134 verify eligibility to take family leave.

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

138 (5) An employer shall retain a record of family leave
139 taken 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
146 take action pursuant to s. 444.006(3).

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

150 Section 6. Section 444.005, Florida Statutes, is created

151 to read:

152 444.005 Notice requirements.—

153 (1) An employer shall notify his or her employees that
154 they are entitled to family leave to bond with a new child upon
155 meeting the requirements for eligibility set forth in this
156 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
161 employer's taking adverse action against an employee who
162 exercises a right 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 to
168 employers, a poster and a model notice that may be used by an
169 employer in complying with subsection (1). The poster and model
170 notice must be printed in English, Spanish, Haitian Creole, and
171 any other language that the executive director determines is
172 necessary to notify employees of their rights under this
173 chapter.

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

176 (a) Displaying the poster created by the department in a
177 conspicuous and accessible area at the site where employees
178 work;

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

183 (c) Providing the model notice created by the department
184 to each employee at the time of initial hiring.

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

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

190 (7) An employer who violates this section is subject to a
191 civil penalty of not more than \$500 for the first violation and
192 not more than \$1,000 for each subsequent violation.

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

195 444.006 Violations of chapter; civil action; penalties.—

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

200 (2) (a) There is a rebuttable presumption that an employer

201 has violated this chapter if the employer takes adverse action
202 against an employee within 90 days after the employee:

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

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

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

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

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

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

218 (a) Attempt to informally resolve any pertinent issue
219 through mediation;

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

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

225 (4) An employee may bring a civil action in a court of

226 competent jurisdiction against his or her employer for a
227 violation of this chapter regardless of whether the employee
228 first filed a complaint with the executive director.

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

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

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

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

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

241 4. Reasonable attorney fees and other costs.

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

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

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

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

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

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

259 (c) Cooperates with the executive director or another
260 person in the investigation or prosecution of an alleged
261 violation of this chapter by his or her employer; or

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

265
266 The protections afforded under this subsection apply to an
267 employee who mistakenly, but in good faith, alleges a violation
268 of this chapter.

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

275 Section 8. Section 444.007, Florida Statutes, is created

276 to read:

277 444.007 Rules.—The department may adopt rules to implement
278 and administer this chapter.

279 Section 9. Section 444.008, Florida Statutes, is created
280 to read:

281 444.008 Construction.—

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

287 (2) An individual's right to family leave under this
288 chapter may not be diminished by a collective bargaining
289 agreement entered into or renewed or an employer policy adopted
290 or retained on or after July 1, 2019. Any agreement by an
291 individual to waive his or her rights under this chapter is
292 deemed against public policy and is void and unenforceable.

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

297 760.10 Unlawful employment practices.—

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

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

311 (b) Refuse to maintain and pay for coverage for a group
312 health plan, as defined in s. 5000(b)(1) of the Internal Revenue
313 Code, for an eligible employee who takes leave pursuant to
314 paragraph (a) at the level and under the conditions that
315 coverage would have been provided if the employee had
316 continuously worked for the duration of the leave. This
317 paragraph does not preclude an employer from maintaining and
318 paying for coverage under a group health plan for a period
319 exceeding 4 months. An employer may recover the premium that the
320 employer paid for maintaining coverage as required under this
321 paragraph if:

322 1. The employee fails to return from leave after the
323 period of leave to which the employee is entitled to has
324 expired.

325 2. The employee's failure to return from leave is for a

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

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

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

349 (e) Otherwise interfere with, restrain, or deny the
350 exercise of, or the attempt to exercise, any right provided

351 under this subsection.

352

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

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

363 760.11 Administrative and civil remedies; construction.—

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

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

399 | Section 12. This act shall take effect July 1, 2019.