

By Senator Cruz

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

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30 ch. 444, F.S., under specified circumstances;  
31 authorizing the executive director to take certain  
32 action in the event of specified violations;  
33 authorizing an employee to bring a civil action  
34 against an employer for a violation within a specified  
35 timeframe; authorizing the award of specified  
36 compensation, damages, and fees; providing a civil  
37 penalty; prohibiting an employee from taking certain  
38 actions in bad faith; providing a criminal penalty;  
39 creating s. 444.007, F.S.; authorizing the department  
40 to adopt rules; creating s. 444.008, F.S.; providing  
41 construction; amending s. 760.10, F.S.; revising the  
42 Florida Civil Rights Act of 1992 to prohibit specified  
43 employment practices on the basis of pregnancy,  
44 childbirth, or a related medical condition; providing  
45 for leave, 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:

56  
57 Section 1. Chapter 444, Florida Statutes, entitled "Florida  
58 Family Leave Act," 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 Family 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 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 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 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 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

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

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146 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 to  
151 read:

152 444.005 Notice requirements.-

153 (1) An employer shall notify his or her employees that they  
154 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 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 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

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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 in  
180 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 to  
184 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 to  
194 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 a

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204 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 person  
209 in the investigation or prosecution of an alleged violation of  
210 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 and  
215 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



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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 under  
249 paragraph (3)(b), the court may order the employer to pay \$1,000  
250 per violation to the state.

251 (7) An employee may not file a complaint in bad faith with  
252 the executive director alleging a violation of this chapter or  
253 bring or testify in an action under this section in bad faith.  
254 An employee who violates this subsection commits a misdemeanor  
255 of the first degree, punishable as provided in s. 775.082 or s.  
256 775.083.

257 Section 8. Section 444.007, Florida Statutes, is created to  
258 read:

259 444.007 Rules.—The department may adopt rules to implement  
260 and administer this chapter.

261 Section 9. Section 444.008, Florida Statutes, is created to

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262 read:

263 444.008 Construction.-

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

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

275 Section 10. Present subsections (2) through (10) of section  
276 760.10, Florida Statutes, are renumbered as subsections (3)  
277 through (11), respectively, and a new subsection (2) is added to  
278 that section, to read:

279 760.10 Unlawful employment practices.-

280 (2) In addition to the provisions governing pregnancy under  
281 subsection (1), it is an unlawful employment practice for an  
282 employer to:

283 (a) Refuse to allow a female employee disabled by  
284 pregnancy, childbirth, or a related medical condition to take  
285 unpaid leave for a period, not to exceed 4 months, during which  
286 the female employee is disabled on account of pregnancy,  
287 childbirth, or a related medical condition. An employee is  
288 entitled to use any accrued vacation leave to receive  
289 compensation during the unpaid period of leave. An employer may  
290 require an employee who plans to take leave pursuant to this

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291 paragraph to provide the employer reasonable notice of the date  
292 the leave will commence and the estimated duration of the leave.

293 (b) Refuse to maintain and pay for coverage for a group  
294 health plan, as defined in s. 5000(b)(1) of the Internal Revenue  
295 Code, for an eligible employee who takes leave pursuant to  
296 paragraph (a) at the level and under the conditions that  
297 coverage would have been provided if the employee had  
298 continuously worked for the duration of the leave. This  
299 paragraph does not preclude an employer from maintaining and  
300 paying for coverage under a group health plan for a period  
301 exceeding 4 months. An employer may recover the premium that the  
302 employer paid for maintaining coverage as required under this  
303 paragraph if:

304 1. The employee fails to return from leave after the period  
305 of leave to which the employee is entitled to has expired.

306 2. The employee's failure to return from leave is for a  
307 reason other than the employee's taking paid family leave  
308 pursuant to chapter 444 or other than the continuation,  
309 recurrence, or onset of a medical condition that entitles the  
310 employee to leave under paragraph (a) or circumstances beyond  
311 the control of the employee.

312 (c) Refuse to provide reasonable accommodation for an  
313 employee, if she so requests with the advice of her health care  
314 provider, for pregnancy, childbirth, or a medical condition  
315 related to pregnancy or childbirth. As an accommodation, and  
316 with the advice of her health care provider, an employee may  
317 request a transfer to a less strenuous or hazardous position for  
318 the duration of her pregnancy. This paragraph does not require  
319 an employer to create additional employment duties that the

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320 employer would not otherwise have created, discharge another  
321 employee, transfer an employee with more seniority, or promote  
322 an employee who is not qualified to perform certain duties.

323 (d) Refuse to return an employee to the same position after  
324 the period of leave to which the employee is entitled has  
325 expired. If her same position is no longer available, an  
326 employer must offer a position that is comparable in terms of  
327 pay, location, job content, and promotional opportunities,  
328 unless the employer can prove that no comparable position  
329 exists.

330 (e) Otherwise interfere with, restrain, or deny the  
331 exercise of, or the attempt to exercise, any right provided  
332 under this subsection.

333  
334 This subsection may not be construed to affect any other  
335 provision of law relating to pregnancy, or in any way to  
336 diminish the coverage of pregnancy, childbirth, or a medical  
337 condition related to pregnancy or childbirth under any other  
338 law, including chapter 444. An employee is entitled to take  
339 leave pursuant to this subsection in addition to any paid family  
340 leave that the employee may be eligible to receive pursuant to  
341 chapter 444.

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

344 760.11 Administrative and civil remedies; construction.—

345 (1) Any person aggrieved by a violation of ss. 760.01-  
346 760.10 may file a complaint with the commission within 365 days  
347 of the alleged violation, naming the employer, employment  
348 agency, labor organization, or joint labor-management committee,

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349 or, in the case of an alleged violation of s. 760.10(6) ~~s.~~  
350 ~~760.10(5)~~, the person responsible for the violation and  
351 describing the violation. Any person aggrieved by a violation of  
352 s. 509.092 may file a complaint with the commission within 365  
353 days of the alleged violation naming the person responsible for  
354 the violation and describing the violation. The commission, a  
355 commissioner, or the Attorney General may in like manner file  
356 such a complaint. On the same day the complaint is filed with  
357 the commission, the commission shall clearly stamp on the face  
358 of the complaint the date the complaint was filed with the  
359 commission. In lieu of filing the complaint with the commission,  
360 a complaint under this section may be filed with the federal  
361 Equal Employment Opportunity Commission or with any unit of  
362 government of the state which is a fair-employment-practice  
363 agency under 29 C.F.R. ss. 1601.70-1601.80. If the date the  
364 complaint is filed is clearly stamped on the face of the  
365 complaint, that date is the date of filing. The date the  
366 complaint is filed with the commission for purposes of this  
367 section is the earliest date of filing with the Equal Employment  
368 Opportunity Commission, the fair-employment-practice agency, or  
369 the commission. The complaint shall contain a short and plain  
370 statement of the facts describing the violation and the relief  
371 sought. The commission may require additional information to be  
372 in the complaint. The commission, within 5 days of the complaint  
373 being filed, shall by registered mail send a copy of the  
374 complaint to the person who allegedly committed the violation.  
375 The person who allegedly committed the violation may file an  
376 answer to the complaint within 25 days of the date the complaint  
377 was filed with the commission. Any answer filed shall be mailed

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378 to the aggrieved person by the person filing the answer. Both  
379 the complaint and the answer shall be verified.

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