

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

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

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51 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Chapter 444, Florida Statutes, consisting of sections 444.001-444.008, Florida Statutes, is created to read:

CHAPTER 444

THE FLORIDA FAMILY LEAVE ACT

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

444.002 Legislative findings and intent.—The Legislature finds that it is in the public interest to provide paid family leave to employees for the birth, adoption, or foster care placement of a new child. The need for paid family leave has increased as the participation of both parents in the workforce has increased and the number of single parents has grown. Despite knowing the importance of time spent bonding with a new child, the majority of employees in this state are unable to take family leave because they are unable to afford leave without pay. When an employee does not receive income during a leave of absence, his or her family suffers as a result of the employee's loss of income, increasing demand on the state's reemployment assistance program and dependence on the state's welfare system. Therefore, in an effort to assist employees in reconciling the demands of work and family, the Legislature intends to require employers to allow employees to take paid family leave to bond with their minor child during the first 3

76 | months after the birth of the child or the placement of the  
 77 | child through the foster care system or by adoption.  
 78 | 444.003 Definitions.—As used in this chapter, the term:  
 79 | (1) "Adverse action" includes:  
 80 | (a) Discharge.  
 81 | (b) Demotion.  
 82 | (c) A threat of discharge or demotion to an employee.  
 83 | (d) Any other retaliatory action that results in a change  
 84 | in the terms or conditions of employment which would dissuade a  
 85 | reasonable employee from exercising a right under this chapter.  
 86 | (2) "Child" means a biological, adopted, or foster son or  
 87 | daughter or a stepson or stepdaughter of an employee.  
 88 | (3) "Department" means the Department of Economic  
 89 | Opportunity.  
 90 | (4) "Employee" means a person who performs services for  
 91 | hire for an employer for an average of 20 or more hours per  
 92 | week. The term includes all individuals employed at any site  
 93 | owned or operated by an employer, not including an independent  
 94 | contractor.  
 95 | (5) "Employer" has the same meaning as in s. 760.02(7).  
 96 | (6) "Executive director" means the executive director of  
 97 | the Department of Economic Opportunity.  
 98 | (7) "Family leave" means a paid leave of absence from  
 99 | employment because of the birth of an employee's child or the  
 100 | placement of a child with an employee through the foster care

101 system or by adoption.

102 444.004 Family leave upon the birth, adoption, or foster  
103 care placement of a child.-

104 (1) Beginning July 1, 2020, an employer shall allow an  
105 employee who has been employed by the employer for at least 18  
106 months to take paid family leave from employment, for up to 3  
107 months, for the employee to bond with his or her minor child  
108 during the first 3 months after the birth or placement of the  
109 child in connection with foster care or adoption. The family  
110 leave must be without loss of pay or diminution of any  
111 privilege, benefit, or right arising out of the employee's  
112 employment.

113 (2) In order to receive family leave, an employee must:

114 (a) Request the leave from his or her employer as soon as  
115 practicable after the employee determines that he or she needs  
116 to take leave to bond with his or her child.

117 (b) Notify the employer of the anticipated duration of the  
118 leave.

119 (c) Comply with any reasonable procedures established by  
120 the employer for an employee to follow when requesting and  
121 obtaining leave.

122 (3) An employer may require an employee who requests or  
123 obtains family leave to provide reasonable documentation to  
124 verify eligibility to take family leave.

125 (4) An employer may not take adverse action against an

126 employee for requesting or obtaining family leave authorized  
127 under this section.

128 (5) An employer shall retain a record of family leave  
129 taken by an employee for at least 3 years. After giving the  
130 employer notice and determining a mutually agreeable time for  
131 inspection, the executive director may inspect the record for  
132 the purpose of determining the employer's compliance with this  
133 section. If an employer fails to retain a record as required  
134 under this subsection or to allow the executive director to  
135 inspect such records, the executive director may take action  
136 under s. 444.006(3).

137 (6) Family leave taken under this section must be taken  
138 concurrently with leave taken under the Family Medical Leave  
139 Act.

140 444.005 Notice requirements.—

141 (1) An employer shall notify his or her employees that  
142 they are entitled to family leave to bond with a minor child  
143 upon meeting the requirements for eligibility set forth in this  
144 chapter.

145 (2) The notice must include all of the following:

146 (a) The purposes for which the employer is required to  
147 allow an employee to take family leave.

148 (b) A statement regarding the prohibition of the employer  
149 taking adverse action against an employee who exercises a right  
150 under this section.

151 (c) Information regarding the right of an employee to  
152 report an alleged violation of this chapter by the employer to  
153 the executive director or to bring a civil action under s.  
154 444.006.

155 (3) The department shall create and make available to  
156 employers a model notice that employers may use to comply with  
157 subsection (1). The model notice must be printed in English,  
158 Spanish, Haitian Creole, and any other language the executive  
159 director determines is necessary to notify employees of the  
160 rights under this chapter.

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

163 (a) Displaying the model notice created by the department  
164 in a conspicuous and accessible area at the site where employees  
165 work;

166 (b) Including the model notice created by the department  
167 in an employee handbook or other written guide for employees  
168 concerning employee benefits or leave provided by the employer;  
169 or

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

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

175 (6) In lieu of posting the model notice, an employer may

176 distribute the notice to employees by electronic means.

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

180 444.006 Violations of chapter; civil action; penalties.—

181 (1) Upon receiving a written complaint from an employee,  
 182 the executive director may conduct an investigation to determine  
 183 whether the employer has violated this chapter.

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

187 1. Files a complaint with the executive director alleging  
 188 a violation of this chapter or files a civil action under this  
 189 section;

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

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

195 4. Opposes a policy or practice of his or her employer or  
 196 an act committed by the employer which is prohibited under this  
 197 chapter.

198 (b) The rebuttable presumption may be overcome by clear  
 199 and convincing evidence.

200 (3) If the executive director determines that a violation

201 of this chapter has occurred, the executive director may:

202 (a) Attempt to informally resolve any pertinent issue  
203 through mediation;

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

207 (c) File a civil action on behalf of an employee in the  
208 county in which the violation allegedly occurred.

209 (4) An employee may file a civil action in a court of  
210 competent jurisdiction against his or her employer for a  
211 violation of this chapter regardless of whether the employee has  
212 first filed a complaint with the executive director.

213 (5) A civil action brought under subsection (3) or  
214 subsection (4) must be filed within 3 years after the occurrence  
215 of the act on which the action is based.

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

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

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

223 3. An additional amount not exceeding three times the  
224 damages awarded under subparagraph 2.

225 4. Reasonable attorney fees and other costs.

226        5. Any other relief the court deems appropriate, including  
227 reinstatement of employment, back pay, and injunctive relief.

228        (b) If the full monetary value of any unpaid family leave  
229 of an employee is recovered under this subsection, such leave  
230 must be paid to the employee without cost to the employee.

231        (c) If the action was brought by the Attorney General  
232 under paragraph (3) (b), the court may order the employer to pay  
233 \$1,000 per violation to the state.

234        (7) An employee may not file a complaint in bad faith with  
235 the executive director alleging a violation of this chapter or  
236 bring or testify in bad faith in an action under this section.  
237 An employee who violates this subsection commits a misdemeanor  
238 of the first degree, punishable as provided in s. 775.082 or s.  
239 775.083.

240        444.007 Rules.—The department may adopt rules to implement  
241 and administer this chapter.

242        444.008 Construction.—

243        (1) This chapter does not diminish an employer's  
244 obligation to comply with a collective bargaining agreement, a  
245 contract, an employee benefit plan, or an employer policy, as  
246 applicable, which requires leave in excess of that required  
247 under this chapter for the birth, adoption, or placement of a  
248 child.

249        (2) An employee's right to family leave under this chapter  
250 may not be diminished by a collective bargaining agreement

251 entered into or renewed, or an employer policy adopted or  
252 retained, on or after July 1, 2020. Any agreement by an employee  
253 to waive his or her rights under this chapter is deemed against  
254 public policy and is void and unenforceable.

255 Section 2. Subsections (2) through (10) of section 760.10,  
256 Florida Statutes, are renumbered as subsections (3) through  
257 (11), respectively, and a new subsection (2) is added to that  
258 section, to read:

259 760.10 Unlawful employment practices.—

260 (2) In addition to the provisions governing pregnancy  
261 under subsection (1), it is an unlawful employment practice for  
262 an employer to:

263 (a) Refuse to allow an employee disabled by pregnancy,  
264 childbirth, or a medical condition related to pregnancy or  
265 childbirth to take unpaid leave for a period, not to exceed 4  
266 months, during which the employee is disabled on account of  
267 pregnancy, childbirth, or a medical condition related to  
268 pregnancy or childbirth. An employee is entitled to use any  
269 accrued vacation leave in order to receive compensation during  
270 the unpaid period of leave. An employer may require an employee  
271 who plans to take leave under this paragraph to provide the  
272 employer reasonable notice of the date the leave will commence  
273 and the estimated duration of the leave.

274 (b) Refuse to maintain and pay for coverage for a group  
275 health plan, as defined in s. 5000(b)(1) of the Internal Revenue

276 Code, for an eligible employee who takes leave under paragraph  
277 (a) at the level and under the conditions that coverage would  
278 have been provided if the employee had continuously worked for  
279 the duration of the leave. This paragraph does not preclude an  
280 employer from maintaining and paying for coverage under a group  
281 health plan for a period exceeding 4 months. An employer may  
282 recover the premium that the employer paid for maintaining  
283 coverage as required under this paragraph if:

284 1. The employee fails to return to work after the period  
285 of leave to which the employee is entitled has expired.

286 2. The employee's failure to return to work is for a  
287 reason other than the employee's taking family leave under  
288 chapter 444 or other than the continuation, recurrence, or onset  
289 of a medical condition that entitles the employee to leave under  
290 paragraph (a) or circumstances beyond the employee's control.

291 (c) Refuse to provide reasonable accommodation for an  
292 employee, if she so requests with the advice of her health care  
293 provider, for pregnancy, childbirth, or a medical condition  
294 related to pregnancy or childbirth. As an accommodation, and  
295 with the advice of her health care provider, an employee may  
296 request a transfer to a less strenuous or hazardous position for  
297 the duration of her pregnancy. This paragraph does not require  
298 an employer to create additional employment duties that the  
299 employer would not otherwise have created, to discharge another  
300 employee, to transfer an employee who has more seniority, or to

301 promote an employee who is not qualified to perform certain  
302 duties.

303 (d) Refuse to return an employee to the same position  
304 after the period of leave to which the employee is entitled has  
305 expired. If her same position is no longer available, an  
306 employer must offer a position that is comparable in terms of  
307 pay, location, job content, and advancement opportunities,  
308 unless the employer can prove that no comparable position  
309 exists.

310 (e) Otherwise interfere with, restrain, or deny the  
311 exercise of, or the attempt to exercise, any right provided  
312 under this subsection.

313  
314 This subsection may not be construed to affect any other  
315 provision of law relating to pregnancy, or in any way to  
316 diminish the coverage of pregnancy, childbirth, or a medical  
317 condition related to pregnancy or childbirth under any other  
318 law, including chapter 444. An employee is entitled to take  
319 leave under this subsection in addition to any family leave the  
320 employee may be eligible to receive under chapter 444.

321 Section 3. Subsection (1) of section 760.11, Florida  
322 Statutes, is reenacted and amended to read:

323 760.11 Administrative and civil remedies; construction.—

324 (1) Any person aggrieved by a violation of ss. 760.01-  
325 760.10 may file a complaint with the commission within 365 days

326 of the alleged violation, naming the employer, employment  
327 agency, labor organization, or joint labor-management committee,  
328 or, in the case of an alleged violation of s. 760.10(6) ~~s.~~  
329 ~~760.10(5)~~, the person responsible for the violation and  
330 describing the violation. Any person aggrieved by a violation of  
331 s. 509.092 may file a complaint with the commission within 365  
332 days of the alleged violation naming the person responsible for  
333 the violation and describing the violation. The commission, a  
334 commissioner, or the Attorney General may in like manner file  
335 such a complaint. On the same day the complaint is filed with  
336 the commission, the commission shall clearly stamp on the face  
337 of the complaint the date the complaint was filed with the  
338 commission. In lieu of filing the complaint with the commission,  
339 a complaint under this section may be filed with the federal  
340 Equal Employment Opportunity Commission or with any unit of  
341 government of the state which is a fair-employment-practice  
342 agency under 29 C.F.R. ss. 1601.70-1601.80. If the date the  
343 complaint is filed is clearly stamped on the face of the  
344 complaint, that date is the date of filing. The date the  
345 complaint is filed with the commission for purposes of this  
346 section is the earliest date of filing with the Equal Employment  
347 Opportunity Commission, the fair-employment-practice agency, or  
348 the commission. The complaint shall contain a short and plain  
349 statement of the facts describing the violation and the relief  
350 sought. The commission may require additional information to be

351 in the complaint. The commission, within 5 days of the complaint  
352 being filed, shall by registered mail send a copy of the  
353 complaint to the person who allegedly committed the violation.  
354 The person who allegedly committed the violation may file an  
355 answer to the complaint within 25 days of the date the complaint  
356 was filed with the commission. Any answer filed shall be mailed  
357 to the aggrieved person by the person filing the answer. Both  
358 the complaint and the answer shall be verified.

359 Section 4. This act shall take effect July 1, 2020.