

By: Senator(s) Butler (38th)

To: Labor; Judiciary,
Division A

SENATE BILL NO. 2585

1 AN ACT TO ESTABLISH THE MISSISSIPPI PAID FAMILY LEAVE ACT TO
2 BE ADMINISTERED BY THE MISSISSIPPI DEPARTMENT OF EMPLOYMENT
3 SECURITY; TO PROVIDE DEFINITIONS; TO PROVIDE ENTITLEMENT
4 REQUIREMENTS AND CONDITIONS FOR PAID LEAVE; TO AUTHORIZE
5 INTERMITTENT OR REDUCED LEAVE; TO PROVIDE THAT THIS ACT IS TO BE
6 CONSTRUED WITH SIMILAR PROVISIONS IN THE FEDERAL FAMILY AND
7 MEDICAL LEAVE ACT; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1. Definitions.** Unless the context clearly requires
10 otherwise, the definitions in this section apply throughout this
11 section:

12 (a) "Child" means a biological, adopted, or foster
13 child, a stepchild, a legal ward, or a child of a person standing
14 in loco parentis, who is:

- 15 (i) Under eighteen (18) years of age; or
- 16 (ii) Eighteen (18) years of age or older and
- 17 incapable of self-care because of a mental or physical disability.

18 (b) "Department" means the Department of Labor and
19 Industries.

20 (c) Director means the director of the department.



21 (d) (i) "Employee" means a person who has been
22 employed:

23 1. For at least twelve (12) months by the
24 employer with respect to whom leave is requested; and

25 2. For at least one thousand two hundred
26 fifty (1,250) hours of service with the employer during the
27 previous twelve-month period.

28 (ii) "Employee" does not mean a person who is
29 employed at a worksite at which the employer as defined in
30 subparagraph (i) of this paragraph (d) employs less than fifty
31 (50) employees if the total number of employees employed by that
32 employer within seventy-five (75) miles of that worksite is less
33 than fifty (50).

34 (e) "Employer" means:

35 (i) Any person, firm, corporation, partnership,
36 business trust, legal representative, or other business entity
37 which engages in any business, industry, profession, or activity
38 in this state and includes any unit of local government including,
39 but not limited to, a county, city, town, municipal corporation,
40 quasi-municipal corporation, or political subdivision, which
41 employs fifty (50) or more employees for each working day during
42 each of twenty (20) or more calendar workweeks in the current or
43 preceding calendar year;

44 (ii) The state, state institutions and state
45 agencies; and



46 (iii) Any unit of local government including, but
47 not limited to, a county, city, town, municipal corporation,
48 quasi-municipal corporation, or political subdivision.

49 (f) "Employment benefits" means all benefits provided
50 or made available to employees by an employer, including group
51 life insurance, health insurance, disability insurance, sick
52 leave, annual leave, educational benefits and pensions except
53 benefits that are provided by a practice or written policy of an
54 employer or through an employee benefit plan as defined in 29 USC
55 Section 1002(3).

56 (g) "Family member" means a child, parent, spouse, or
57 state registered domestic partner of an employee.

58 (h) "Health care provider" means:

59 (i) A person licensed as a physician or an
60 osteopathic physician and surgeon;

61 (ii) A person licensed as an advanced registered
62 nurse practitioner; or

63 (iii) Any other person determined by the director
64 to be capable of providing health care services.

65 (i) "Intermittent leave" is leave taken in separate
66 blocks of time due to a single qualifying reason.

67 (j) "Leave for a family member's serious health
68 condition" means leave as defined in Section 3 of this act.

69 (k) "Leave for the birth or placement of a child" means
70 leave as defined in Section 3 of this act.



71 (1) "Leave for the employee's serious health condition"
72 as defined in Section 3 of this act.

73 (m) "Parent" means the biological or adoptive parent of
74 an employee or an individual who stood in loco parentis to an
75 employee when the employee was a child.

76 (n) "Period of incapacity" means an inability to work,
77 attend school, or perform other regular daily activities because
78 of the serious health condition, treatment of that condition or
79 recovery from it, or subsequent treatment in connection with such
80 inpatient care.

81 (o) "Reduced leave schedule" means a leave schedule
82 that reduces the usual number of hours per workweek, or hours per
83 workday, of an employee.

84 (p) (i) "Serious health condition" means an illness,
85 injury, impairment, or physical or mental condition that involves:

86 1. Inpatient care in a hospital, hospice, or
87 residential medical care facility, including any period of
88 incapacity; or

89 2. Continuing treatment by a health care
90 provider. A serious health condition involving continuing
91 treatment by a health care provider includes any one or more of
92 the following:

93 a. A period of incapacity of more than
94 three (3) consecutive calendar days, and any subsequent treatment



95 or period of incapacity relating to the same condition, that also
96 involves:

97 A. Treatment two (2) or more times
98 by a health care provider, by a nurse or physician's assistant
99 under direct supervision of a health care provider, or by a
100 provider of health care services under orders of, or on referral
101 by, a health care provider; or

102 B. Treatment by a health care
103 provider on at least one occasion which results in a regimen of
104 continuing treatment under the supervision of the health care
105 provider;

106 b. Any period of incapacity due to
107 pregnancy, or for prenatal care;

108 c. Any period of incapacity or treatment
109 for such incapacity due to a chronic serious health condition. A
110 chronic serious health condition is one which:

111 A. Requires periodic visits for
112 treatment by a health care provider, or by a nurse or physicians
113 assistant under direct supervision of a health care provider;

114 B. Continues over an extended
115 period of time, including recurring episodes of a single
116 underlying condition; and

117 C. May cause episodic rather than a
118 continuing period of incapacity;



119 d. A period of incapacity which is
120 permanent or long-term due to a condition for which treatment may
121 not be effective. The employee or family member must be under the
122 continuing supervision of, but need not be receiving active
123 treatment by, a health care provider; or

124 e. Any period of absence to receive
125 multiple treatments, including any period of recovery from the
126 treatments, by a health care provider or by a provider of health
127 care services under orders of, or on referral by, a health care
128 provider, either for restorative surgery after an accident or
129 other injury, or for a condition that would likely result in a
130 period of incapacity of more than three (3) consecutive calendar
131 days in the absence of medical intervention or treatment, such as
132 cancer, severe arthritis, or kidney disease.

133 (ii) Treatment for purposes of subparagraph (i) in
134 this paragraph (p) includes, but is not limited to, examinations
135 to determine if a serious health condition exists and evaluations
136 of the condition. Treatment does not include routine physical
137 examinations, eye examinations, or dental examinations. Under
138 subparagraph (i)2.a.B. of this paragraph (p), a regimen of
139 continuing treatment includes, but is not limited to, a course of
140 prescription medication or therapy requiring special equipment to
141 resolve or alleviate the health condition. A regimen of
142 continuing treatment that includes taking over-the-counter
143 medications, such as aspirin, antihistamines, or salves, or bed



144 rest, drinking fluids, exercise, and other similar activities that
145 can be initiated without a visit to a health care provider, is
146 not, by itself, sufficient to constitute a regimen of continuing
147 treatment for purposes of this act.

148 (iii) Conditions for which cosmetic treatments are
149 administered are not "serious health conditions" unless inpatient
150 hospital care is required or unless complications develop. Unless
151 complications arise, the common cold, the flu, earaches, upset
152 stomach, minor ulcers, headaches other than migraine, routine
153 dental or orthodontia problems and periodontal disease are
154 examples of conditions that do not meet the definition of a
155 "serious health condition" and do not qualify for leave under this
156 act. Restorative dental or plastic surgery after an injury or
157 removal of cancerous growths are serious health conditions
158 provided all the other conditions of this section are met. Mental
159 illness resulting from stress or allergies may be serious health
160 conditions provided all the other conditions of this section are
161 met.

162 (iv) Substance abuse may be a serious health
163 condition if the conditions of this section are met. However,
164 leave may only be taken for treatment for substance abuse by a
165 health care provider or by a provider of health care services upon
166 referral by a health care provider. Absence from work because of
167 the employee's use of the substance, rather than for treatment,
168 does not qualify for leave under this act.



169 (v) Absences attributable to incapacity under
170 subparagraph (i)2.b. or c. of this paragraph (p) qualify for leave
171 under this act even though the employee or the immediate family
172 member does not receive treatment from a health care provider
173 during the absence, and even if the absence does not last more
174 than three (3) days.

175 (q) "Spouse" means a husband or wife, as the case may
176 be, or state-registered domestic partner.

177 **SECTION 2. Administration.** The Mississippi Department of
178 Employment Security shall administer the provisions of this act.

179 **SECTION 3. Entitlement to paid leave.** (1) an employee is
180 entitled to a total of twelve (12) workweeks of paid leave during
181 any twelve-month period for one or more of the following:

182 (a) Because of the birth of a child of the employee and
183 in order to care for the child;

184 (b) Because of the placement of a child with the
185 employee for adoption or foster care;

186 (c) In order to care for a family member of the
187 employee, if the family member has a serious health condition; or

188 (d) Because of a serious health condition that makes
189 the employee unable to perform the functions of the position of
190 the employee.

191 (2) The entitlement to leave for the birth or placement of a
192 child expires at the end of the twelve-month period beginning on
193 the date of such birth or placement.



194 **SECTION 4. Leave taken intermittently or on reduced leave**

195 **schedule.** (1) (a) When paid leave is taken after the birth or
196 placement of a child for adoption or foster care, an employee may
197 take paid leave intermittently or on a reduced paid leave schedule
198 with the employer's agreement. The employer's agreement is not
199 required, however, for paid leave during which the employee has a
200 serious health condition in connection with the birth of a child
201 or if the newborn child has a serious health condition.

202 (b) Paid leave may be taken intermittently or on a
203 reduced leave schedule when medically necessary for medical
204 treatment of a serious health condition by or under the
205 supervision of a health care provider, or for recovery from
206 treatment or recovery from a serious health condition. It may
207 also be taken to provide care or psychological comfort to an
208 immediate family member with a serious health condition.

209 (i) Intermittent paid leave may be taken for a
210 serious health condition that requires treatment by a health care
211 provider periodically, rather than for one (1) continuous period
212 of time, and may include leave of periods from an hour or more to
213 several weeks.

214 (ii) Intermittent or reduced schedule paid leave
215 may be taken for absences where the employee or family member is
216 incapacitated or unable to perform the essential functions of the
217 position because of a chronic serious health condition even if he
218 or she does not receive treatment by a health care provider.



219 (c) There is no limit on the size of an increment of
220 paid leave when an employee takes intermittent paid leave or paid
221 leave on a reduced paid leave schedule. However, an employer may
222 limit leave increments to the shortest period of time that the
223 employers payroll system uses to account for absences or use of
224 leave, provided it is one (1) hour or less.

225 (d) The taking of paid leave intermittently or on a
226 reduced leave schedule under this section may not result in a
227 reduction in the total amount of leave to which the employee is
228 entitled beyond the amount of leave actually taken.

229 (2) If an employee requests intermittent paid leave, or
230 leave on a reduced leave schedule, for a family members serious
231 health condition or the employees serious health condition when
232 the condition is foreseeable based on planned medical treatment,
233 the employer may require such employee to transfer temporarily to
234 an available alternative position offered by the employer for
235 which the employee is qualified and that:

236 (a) Has equivalent pay and benefits; and

237 (b) Better accommodates recurring periods of leave than
238 the regular employment position of the employee.

239 **SECTION 5. Foreseeable paid leave.** (1) If the necessity
240 for paid leave for the birth or placement of a child is
241 foreseeable based on an expected birth or placement, the employee
242 shall provide the employer with not less than thirty (30) days'
243 notice, before the date the leave is to begin, of the employees



244 intention to take leave for the birth or placement of a child,
245 except that if the date of the birth or placement requires leave
246 to begin in less than thirty (30) days, the employee shall provide
247 such notice as is practicable.

248 (2) If the necessity for paid leave for a family member's
249 serious health condition or the employee's serious health
250 condition is foreseeable based on planned medical treatment, the
251 employee:

252 (a) Must make a reasonable effort to schedule the
253 treatment so as not to disrupt unduly the operations of the
254 employer, subject to the approval of the health care provider of
255 the employee or the health care provider of the family member, as
256 appropriate; and

257 (b) Must provide the employer with not less than thirty
258 (30) days' notice, before the date the leave is to begin, of the
259 employee's intention to take leave for a family member's serious
260 health condition or the employee's serious health condition,
261 except that if the date of the treatment requires leave to begin
262 in less than thirty (30) days, the employee must provide such
263 notice as is practicable.

264 **SECTION 6. Spouses employed by same employer.** If spouses
265 entitled to leave under this act are employed by the same
266 employer, the aggregate number of workweeks of paid leave to which
267 both may be entitled may be limited to twelve (12) workweeks
268 during any twelve-month period, if such leave is taken:



269 (a) For the birth or placement of a child; or

270 (b) For a parent's serious health condition.

271 **SECTION 7. Certification.** (1) An employer may require that
272 a request for paid leave for a family members serious health
273 condition or the employee's serious health condition be supported
274 by a certification issued by the health care provider of the
275 employee or of the family member, as appropriate. The employee
276 must provide, in a timely manner, a copy of the certification to
277 the employer.

278 (2) Certification provided under subsection (1) of this
279 section is sufficient if it states:

280 (a) The date on which the serious health condition
281 commenced;

282 (b) The probable duration of the condition;

283 (c) The appropriate medical facts within the knowledge
284 of the health care provider regarding the condition;

285 (d) (i) For purposes of leave for a family member's
286 serious health condition, a statement that the employee is needed
287 to care for the family member and an estimate of the amount of
288 time that such employee is needed to care for the family member;
289 and

290 (ii) For purposes of leave for the employee's
291 serious health condition, a statement that the employee is unable
292 to perform the functions of the position of the employee;



293 (e) In the case of certification for intermittent
294 leave, or leave on a reduced leave schedule, for planned medical
295 treatment, the dates on which the treatment is expected to be
296 given and the duration of the treatment;

297 (f) In the case of certification for intermittent
298 leave, or leave on a reduced leave schedule, for the employees
299 serious health condition, a statement of the medical necessity for
300 the intermittent leave or leave on a reduced leave schedule, and
301 the expected duration of the intermittent leave or reduced leave
302 schedule; and

303 (g) In the case of certification for intermittent
304 leave, or leave on a reduced leave schedule, for a family member's
305 serious health condition, a statement that the employee's
306 intermittent leave or leave on a reduced leave schedule is
307 necessary for the care of the family member who has a serious
308 health condition, or will assist in their recovery, and the
309 expected duration and schedule of the intermittent leave or
310 reduced leave schedule.

311 (3) If the employer has reason to doubt the validity of the
312 certification provided under subsection (1) of this section for
313 leave for a family member's serious health condition or the
314 employees serious health condition, the employer may require, at
315 the expense of the employer, that the employee obtain the opinion
316 of a second health care provider designated or approved by the
317 employer concerning any information certified under subsection (2)



318 of this section for the leave. The second health care provider
319 may not be employed on a regular basis by the employer.

320 (4) If the second opinion described in subsection (3) of
321 this section differs from the opinion in the original
322 certification provided under subsection (1) of this section, the
323 employer may require, at the expense of the employer, that the
324 employee obtain the opinion of a third health care provider
325 designated or approved jointly by the employer and the employee
326 concerning the information certified under subsection (2) of this
327 section. The opinion of the third health care provider concerning
328 the information certified under subsection (2) of this section is
329 considered to be final and is binding on the employer and the
330 employee.

331 (5) The employer may require that the employee obtain
332 subsequent recertifications on a reasonable basis.

333 **SECTION 8. Employment protection.** (1) (a) Except as
334 provided in paragraph (b) of this subsection, any employee who
335 takes paid leave for the intended purpose of the leave is
336 entitled, on return from the leave:

337 (i) To be restored by the employer to the position
338 of employment held by the employee when the leave commenced; or

339 (ii) To be restored to an equivalent position with
340 equivalent employment benefits, pay, and other terms and
341 conditions of employment at a workplace within twenty (20) miles
342 of the employees workplace when leave commenced.



343 (b) The taking of leave may not result in the loss of
344 any employment benefits accrued before the date on which the leave
345 commenced.

346 (c) Nothing in this section entitles any restored
347 employee to:

348 (i) The accrual of any seniority or employment
349 benefits during any period of leave; or

350 (ii) Any right, benefit, or position of employment
351 other than any right, benefit, or position to which the employee
352 would have been entitled had the employee not taken the leave.

353 (d) As a condition of restoration under paragraph (a)
354 of this subsection for an employee who has taken leave for the
355 employee's serious health condition, the employer may have a
356 uniformly applied practice or policy that requires each such
357 employee to receive certification from the health care provider of
358 the employee that the employee is able to resume work, except that
359 nothing in this paragraph (d) supersedes a valid local law or a
360 collective bargaining agreement that governs the return to work of
361 such employees.

362 (e) Nothing in this subsection (1) prohibits an
363 employer from requiring an employee on leave to report
364 periodically to the employer on the status and intention of the
365 employee to return to work.

366 (2) An employer may deny restoration under subsection (1) of
367 this section to any salaried employee who is among the highest



368 paid ten percent (10%) of the employees employed by the employer
369 within seventy-five (75) miles of the facility at which the
370 employee is employed if:

371 (a) Denial is necessary to prevent substantial and
372 grievous economic injury to the operations of the employer;

373 (b) The employer notifies the employee of the intent of
374 the employer to deny restoration on such basis at the time the
375 employer determines that the injury would occur; and

376 (c) The leave has commenced and the employee elects not
377 to return to employment after receiving the notice.

378 **SECTION 9. Employment benefits.** During any period of paid
379 leave taken, if the employee is not eligible for any employer
380 contribution to medical or dental benefits under an applicable
381 collective bargaining agreement or employer policy during any
382 period of leave, an employer shall allow the employee to continue,
383 at the employees expense, medical or dental insurance coverage,
384 including any spouse and dependent coverage, in accordance with
385 state or federal law. The premium to be paid by the employee
386 shall not exceed one hundred two percent (102%) of the applicable
387 premium for the leave period.

388 **SECTION 10. Prohibited acts.** (1) It is unlawful for any
389 employer to:

390 (a) Interfere with, restrain or deny the exercise of,
391 or the attempt to exercise, any right provided under this act; or



392 (b) Discharge or in any other manner discriminate
393 against any individual for opposing any practice made unlawful by
394 this act.

395 (2) It is unlawful for any person to discharge or in any
396 other manner discriminate against any individual because the
397 individual has:

398 (a) Filed any charge, or has instituted or caused to be
399 instituted any proceeding, under or related to this act;

400 (b) Given, or is about to give, any information in
401 connection with any inquiry or proceeding relating to any right
402 provided under this act; or

403 (c) Testified, or is about to testify, in any inquiry
404 or proceeding relating to any right provided under this act.

405 **SECTION 11. Complaint investigations by director.** Upon
406 complaint by an employee, the director shall investigate to
407 determine if there has been compliance with this act and the rules
408 adopted under this act. If the investigation indicates that a
409 violation may have occurred, a hearing must be held. The director
410 must issue a written determination, including his or her findings
411 after the hearing. A judicial appeal from the director's
412 determination may be taken, with the prevailing party entitled to
413 recover reasonable costs and attorneys' fees.

414 **SECTION 12. Civil penalty.** An employer who is found to have
415 violated a requirement of this act and the rules adopted under
416 this act, is subject to a civil penalty of not less than One



417 Thousand Dollars (\$1,000.00) for each violation. Civil penalties
418 must be collected by the department and deposited into the family
419 and medical leave enforcement account.

420 **SECTION 13. Civil action by employees.** (1) Any employer
421 who violates is liable:

422 (a) For damages equal to:

423 (i) The amount of:

424 1. Any wages, salary, employment benefits, or
425 other compensation denied or lost to such employee by reason of
426 the violation; or

427 2. In a case in which wages, salary,
428 employment benefits, or other compensation have not been denied or
429 lost to the employee, any actual monetary losses sustained by the
430 employee as a direct result of the violation, such as the cost of
431 providing care, up to a sum equal to twelve (12) weeks of wages or
432 salary for the employee;

433 (ii) The interest on the amount described in
434 subparagraph (i) of this paragraph (a) calculated at the
435 prevailing rate; and

436 (iii) An additional amount as liquidated damages
437 equal to the sum of the amount described in subparagraph (i) of
438 this paragraph (a) and the interest described in subparagraph (ii)
439 of this paragraph (a), except that if an employer who has violated
440 proves to the satisfaction of the court that the act or omission
441 which violated was in good faith and that the employer had



442 reasonable grounds for believing that the act or omission was not
443 a violation of, the court may, in the discretion of the court,
444 reduce the amount of the liability to the amount and interest
445 determined under subparagraphs (i) and (ii) of this paragraph (a),
446 respectively; and

447 (b) For such equitable relief as may be appropriate,
448 including employment, reinstatement, and promotion.

449 (2) An action to recover the damages or equitable relief
450 prescribed in subsection (1) of this section may be maintained
451 against any employer in any court of competent jurisdiction by any
452 one or more employees for and on behalf of:

453 (a) The employees; or

454 (b) The employees and other employees similarly
455 situated.

456 (3) The court in such an action shall, in addition to any
457 judgment awarded to the plaintiff, allow reasonable attorneys'
458 fees, reasonable expert witness fees, and other costs of the
459 action to be paid by the defendant.

460 **SECTION 14. Notice-Penalties.** Each employer shall post and
461 keep posted, in conspicuous places on the premises of the employer
462 where notices to employees and applicants for employment are
463 customarily posted, a notice, to be prepared or approved by the
464 director, setting forth excerpts from, or summaries of, the
465 pertinent provisions of this act and information pertaining to the
466 filing of a charge. Any employer that willfully violates this



467 section may be subject to a civil penalty of not more than One
468 Hundred Dollars (\$100.00) for each separate offense. Any
469 penalties collected by the department under this section shall be
470 deposited into the Family and Medical Leave Enforcement Account.

471 **SECTION 15. Effect on other laws.** Nothing in this act shall
472 be construed:

473 (a) To modify or affect any state or local law
474 prohibiting discrimination on the basis of race, religion, color,
475 national origin, sex, age or disability; or

476 (b) To supersede any provision of any local law that
477 provides greater family or medical leave rights than the rights
478 established under this act.

479 **SECTION 16. Effect on existing employment benefits.** Nothing
480 in this act diminishes the obligation of an employer to comply
481 with any collective bargaining agreement or any employment benefit
482 program or plan that provides greater family or medical leave
483 rights to employees than the rights established under this act.
484 The rights established for employees under this act may not be
485 diminished by any collective bargaining agreement or any
486 employment benefit program or plan.

487 **SECTION 17. Encouragement of more generous leave policies.**
488 Nothing in this act shall be construed to discourage employers
489 from adopting or retaining leave policies more generous than any
490 policies that comply with the requirements under this act.



491 **SECTION 18. Relationship to Federal Family and Medical Leave**

492 **Act.** (1) Leave under this act and leave under the Federal Family
493 and Medical Leave Act of 1993 (Act February 5, 1993, Public Law
494 103-3, 107 Stat. 6) is in addition to any leave for sickness or
495 temporary disability because of pregnancy or childbirth.

496 (2) Leave taken under this act must be taken concurrently
497 with any leave taken under the Federal Family and Medical Leave
498 Act of 1993 (Act February 5, 1993, Public Law 103-3, 107 Stat. 6).

499 **SECTION 19. Construction.** This act must be construed to the
500 extent possible in a manner that:

501 (a) Is consistent with similar provisions, if any, of
502 the Federal Family and Medical Leave Act of 1993 (Act February 5,
503 1993, Public Law 103-3, 107 Stat. 6); and

504 (b) Gives consideration to the rules, precedents, and
505 practices of the federal Department of Labor relevant to the
506 federal act.

507 **SECTION 20.** This act shall take effect and be in force from
508 and after July 1, 2022.

