

# HB 1441: Optional Paid Family Leave Program

IBL Committee – Feb. 3, 2021

Rep. Karla Rose Hanson

Mr. Chairman and Members of the Committee,

HB 1441 addresses a situation that nearly every person in North Dakota faces at some point in their life: the arrival of a new child or a serious health event with themselves or a loved one. The problem arises when a person can't balance that infrequent but important personal time in their life with their job.

Too many North Dakotans face this impossible choice: staying in their job or bonding with their new baby.... their paycheck or being by their dad's side during the last two months of his life.

Businesses are impacted by this too. They may lose a talented employee who prioritizes that temporary but critical personal situation – and then they have to re-recruit and re-train during a time when businesses are competing for talent in a tight labor market. Or an employee tries to juggle the job with their personal situation, only to be unproductive and demoralized.

HB 1441 aims to address these challenges by creating an optional paid family leave program in North Dakota. This will allow people to take care of themselves, their new child or a loved one – without having to leave their job permanently or without having to struggle financially if they stay in their job but take time off without pay.

A paid family leave program in ND is needed and it's a win-win for both families and businesses. The bill before you creates a program that is optional for employers & employees and flexible.

## **Paid Family Leave is Needed**

North Dakotans occasionally need to step away from their jobs for personal reasons. Around 11,000 babies are born each year in our state, and 62,000+ North Dakotans serve as caregivers for a loved one, according to the AARP. All of us know stories to illustrate those numbers.

A state-facilitated optional paid family leave program would build upon the Family Medical Leave Act (FMLA) and provide these individuals with needed financial assistance during a major event in their lives. The FMLA is federal legislation enacted in 1993 that allows up to 12 weeks of time away from work for qualified employees – this is job-protected but unpaid leave. While this is a critical benefit for families, too many people simply can't afford to take unpaid time off and many don't qualify.

I often hear: let's leave it to companies - they can offer paid leave benefits themselves. But the fact is, many don't. Many simply can't. Nationally, only 14% of employees have paid family leave from their employer according to the US Bureau of Labor Statistics. Here in ND, Job Service reports that just 12% of companies offer maternity leave and 6% offer paternity leave, which are even more limited programs than paid family leave.

In fact, a huge number of working North Dakotans don't even earn a single sick day as a benefit. According to Job Service ND, 31% of ND employers don't offer sick leave to their full-time employees and 88% don't offer sick leave to part-time employees. So, when we are in the middle of a pandemic and we tell people to stay home when they are sick, we are making them choose between their paycheck and their well-being and their co-workers well-being.

So, we know there is a need in North Dakota, and we know that need is going unmet.

### **Win-Win for Businesses & Families**

As we look to solve this problem, we can design a paid family leave program that is good for families and good for business.

Paid family leave is good for families because it provides *financial stability* during those occasional but major events in life. New parents are more likely to *return to work* overall and to the same employer when they have paid leave. I'll also note that many daycares don't even accept babies until they reach a certain age, and many ND communities have inadequate daycare capacity, so this puts new parents in a quandary: what do you do with a tiny newborn who can't go to daycare but you need to go back to your job? Paid leave can help address that.

Paid leave is also good for business. Research from other states shows that businesses that offer paid leave realize increases in recruitment, retention, productivity, and profitability. They avoid the costs of replacing and re-training employees. I'll note that many small businesses would LIKE to offer such a benefit to their employees but it's not affordable; a state-facilitated program enables them to participate in a bigger pool. This helps them compete for talent against big companies who already offer paid leave benefits. (Microsoft example)

Offering this as a benefit improves a business's reputation as a great place to work with family-friendly benefits. We can create a competitive advantage here by establishing something in ND that MN, SD and MT don't offer. We can give ND companies another tool to draw young workers and families here and to retain talented employees rather than lose them to a temporary event.

Paid family leave will be good for our state budget too. Research shows it reduces reliance on poverty-related programs. Here in ND, it could also reduce the need for programs that provide financial assistance for caregiving such as ND's Service Payments for Elderly & Disabled (SPED) and Expanded-SPED – especially as our population ages.

### **How It Would Work: Optional and Flexible**

This state-facilitated paid family leave program is funded through private contributions from employees and/or employers. It would be optional for all employers and employees in our state and it provides maximum flexibility as to how they participate.

- **The contributions:** HB 1441 says a participating employee must contribute six cents for every \$10 in wages. Other states that offer a similar program as this require an equal contribution from the employee and the employer. North Dakota's paid leave program

would have a different model in that the contributions into the fund could be shared by the employee & employer OR paid entirely by one party or the other.

- **The benefit to the employee:** If an employee has an eligible event, they will draw from the paid leave fund instead of taking their salary or leaving their job entirely. They withdraw 66% of their average weekly wage for up to 12 weeks in one calendar year. There would be a cap of \$1,000 per week. This program isn't intended to make anyone rich but rather to keep them from falling behind financially and able to pay their bills.
- **The benefit to the employer:** If the employer pays for any or all of an employee's contributions, the employer gets a tax credit. They would be entitled to a credit against state income tax liability equal to 20% of the contributions they made on behalf of that employee. That's on top of the boost to employee retention and productivity that I mentioned earlier.

Here's how this would look with a real-life example: the average North Dakota salary is approximately \$50,000 a year. For a participating employee earning that amount, the annual contributions into the paid leave fund would be \$300 a year (6 cents per \$10). Because HB 1441 maximizes flexibility, here are some options for who pays what:

**For an employee earning \$50,000 / year:**

<b>Contributions:</b>	<b>Employee pays:</b>	<b>Employer pays:</b>	<b>Employee gets:</b>	<b>Employer gets</b>
Employee pays 100% of the 6 cents per \$10/wage	\$300 / year or \$5.77 / week	\$0	\$634.60 per week for up to 12 weeks (66% of \$961.53 per week wage)	Increased retention and productivity
Employer pays 100%	\$0	\$300 / year or \$5.77 / week	\$634.60 per week	\$60 tax credit + retention/productivity
Employer & employee split 50/50	\$150 / year or \$2.88 / week	\$150 / year or \$2.88 / week	\$634.60 per week	\$30 tax credit + retention/productivity

10 states have enacted laws to *require* paid family leave; the latest is Colorado, which passed it at the ballot this past November. I know that many of my colleagues would prefer to have a say in how such a policy would look, rather than having the people take this into their own hands, so passing HB 1441 ensures that we have an *optional* program that maximizes *flexibility*.

**Program's Flexibility Includes Gig Workers**

Besides traditional employees, eligible participants include independent contractors and sole proprietors. "Gig workers" include a wide range of work: highly skilled contract workers and consultants, freelance writers, hairstylists, craft-sellers, Uber drivers, etc. This part of our economy is not just a "side hustle." Contingent workers are ~40% of the workforce and growing. It's projected that 60% of the US workforce will be independent by 2027 and 40% of organizations plan on using more gig workers in the next 5 years. Rather than tying paid leave

benefits to a traditional employer relationship, North Dakota can support our state's growing gig economy by passing HB 1441.

### **Phased-in Timeline**

This bill proposes a phased-in approach. If passed, the first year (July 2021 – June 2022) will be focused on hiring staff and establishing rules. The start-up funds for this program would be provided in the form of a loan of \$5 million from the Legacy Fund earnings. Contributions can then begin in July 2022, and withdrawals can begin in July 2023.

### **No concern about the model**

Some may worry that only those who need the benefit will participate – that self-selection will make the model unworkable. Even if we experienced the most extreme scenarios regarding numbers of participants contributing and withdrawing, this program will be financially viable.

Some may suggest that a better model may be something similar to a health savings account. However, the employees who need this – those who don't have paid leave from their employer – are unlikely to be able to save an amount that is equal to several weeks or months of salary. Research tells us that 40% of Americans would struggle to pay an unexpected expense of \$400.

### **No concern about abuse**

Some may be concerned about potential abuse – employees leaving an employer in the lurch for no good reason – but abuse concerns have gone unsubstantiated in states with paid leave.

Most businesses want to do right by an employee who is experiencing a difficult health situation or is expecting a new baby. Most employees are not motivated to earn just 2/3 of their salary. Trust is generally the foundation of this. For example, here in the ND House, every time we end a floor session – we excuse our absent members. This ensures they are paid for that day – whether they are absent because they were in the hospital with pneumonia or recovering from cancer treatment like two of our colleagues were in January or caring for their ailing spouse as has also been the case with our colleagues. We trust and support them.

However, if the committee wants to add protections for businesses that fear abuse, you can amend the bill: On page 3, at the end of line 30, insert the following: "If an employee requests leave for their own or a family member's serious health condition, an employer may request medical certification from a physician, physician's assistant, psychologist or advanced practice nurse practitioner that includes appropriate medical facts." The administrator of ND's paid family leave program can model the details of this policy after the FMLA's optional certification process. Under FMLA, an employer may not request certification for leave related to bonding with a new child.

FMLA data shows that nearly half of all leave events are 10 days or less while only 17% are 60 days or more. Additionally, 55% of all leave events are for the employee's own illness, 21% are to care for a new child, and 18% are to care for a family member.

### **Let's pass paid family leave and give ND a leg up**

In conclusion, a paid family leave program is a win-win: good for business and good for families. Thank you for considering this optional and flexible paid family leave program. Please give HB 1441 a do-pass recommendation.