

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 312

INTRODUCER: Senator Braynon

SUBJECT: Family Support Personnel Policies

DATE: April 12, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Pre-meeting
2.			GO	
3.			AGG	
4.			AP	
5.				
6.				

I. Summary:

SB 312 amends s. 110.1522, F.S., relating to a model rule establishing family support personnel policies, to require that the model rule promulgated by the Department of Management Services (DMS or agency) entitle certain state employees to take up to 12 months of leave in order to care for a family member with a serious health condition. The model rule that had been promulgated by DMS when this statutory provision was first enacted in 1991 was repealed on January 1, 2002.

In addition the bill requires the term “serious health condition” be defined pursuant to the federal Family and Medical Leave Act (FMLA) and its implementing regulations.

The bill is anticipated to have an indeterminate fiscal impact on state government and provides an effective date of July 1, 2013.

This bill substantially amends section 110.1522 of the Florida Statutes.

II. Present Situation:

Florida State Personnel System

DMS has jurisdiction over the personnel policies of the State Personnel System (SPS). It is the largest of the state’s employment systems, but does not include employees of the Florida Lottery,

the Legislature, the State Courts System, the Justice Administration System, or the State University System.¹

In 1991, the Legislature directed the Department of Management Services to develop a model rule for all executive branch agencies excluding the state universities to establish family support personnel policies.² “Family support personnel policies” means personnel policies affecting an employee’s ability to both work and devote care and attention to their families and includes policies on flexible hour work schedules, compressed time, job sharing, part-time employment, maternity or paternity leave for employees with a newborn or newly adopted child, and paid and unpaid family or administrative leave for family responsibilities.³

The model rule that had been promulgated by DMS when this statutory provision was first enacted in 1991 was repealed on January 1, 2002.⁴ Currently, DMS administers its family supportive workplace policies through administrative rule that applies exclusively to employees of the SPS.⁵ Since 1979, the family and parental leave policies of the SPS have also been governed by section 110.221, F.S., which currently provides up to six months of protected family medical leave for employees to care for a family member.⁶

Family and Medical Leave Act (FMLA)

In 1993, the federal Family and Medical Leave Act was enacted that entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. Covered employers and eligible employees include the following:

- **Covered employers**
 - Private-sector employer, with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer;
 - Public agency, including a local, state, or federal government agency, regardless of the number of employees it employs; or
 - Public or private elementary or secondary school, regardless of the number of employees it employs.

- **Eligible employees**
 - Works for a covered employer;
 - Has worked for the employer for at least 12 months;
 - Has at least 1,250 hours of service for the employer during the 12 month period immediately preceding the leave; and
 - Works at a location where the employer has at least 50 employees within 75 miles.⁷

¹ Section 110.1522, F.S.

² Chapter 91-184, Laws of Fla.

³ Section 110.1522, F.S.

⁴ Rule 60L-23, F.A.C.

⁵ Rule 60L-34.0051, F.A.C.

⁶ Chapter 79-190, Laws of Fla. (known as the Family Supportive Work Program (FSWP) leave).

⁷ U.S. Department of Labor, Wage and Hour Division, Family and Medical Leave Act, *available at* <http://www.dol.gov/whd/regs/compliance/whdfs28.pdf> (last visited April 10, 2013).

Eligible employees may take up to 12 work weeks of leave in a 12-month period for one or more of the following reasons:

- The birth of a child or placement of a child with the employee for adoption or foster care;
- To care for a spouse, son, daughter, or parent who has a serious health condition;
- For a serious health condition that makes the employee unable to perform the essential functions of his or her job; or
- For any qualifying urgent circumstance arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or is called to covered active duty status.⁸

Under some circumstances, employees may take FMLA leave on an intermittent or reduced schedule basis. That means an employee may take leave in separate blocks of time or by reducing the time he or she works each day or week for a single qualifying reason. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operations. If FMLA leave is for the birth, adoption, or foster placement of a child, use of intermittent or reduced schedule leave requires the employer's approval.⁹

Under certain conditions, employees may choose, or employers may require employees, to "substitute" (run concurrently) accrued paid leave, such as sick or vacation leave, to cover some or all of the FMLA leave period. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy.¹⁰

An employer may require the employee to submit a certification from a health care provider to support the employee's need for FMLA leave to care for a covered family member with a serious health condition or for the employee's own serious health condition. The employer may not request a certification for leave to bond with a newborn child or a child placed for adoption or foster care.¹¹

Duplicative or Conflicting Provisions

Although the FMLA only provides 12 weeks per 12-month period, it applies to employees as well as their family members and covers a wide range of medical conditions. While state government employers who are not governed by section 110.221, F.S., have the flexibility to align their family medical leave policies with the new federal law, the SPS is required to administer the overlapping provisions of section 110.221, F.S. and the FMLA. This requirement has complicated administration of leave provisions, which may be redundant or incompatible. Examples of duplicative or conflicting criteria that only SPS agencies must administer:¹²

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ U.S. Department of Labor, Wage and Hour Division, Certification of a Serious Health Condition under the Family and Medical Leave Act, available at <http://www.dol.gov/whd/regs/compliance/whdfs28g.htm> (last visited April 10, 2013).

¹² It is not known how SPS agencies resolve these inconsistencies.

- FMLA leave eligibility requires 12 months of aggregated service and a minimum of 1,250 hours worked in the previous 12 months; whereas agencies must allow FSWP leave from the moment of hire;
- FMLA leave entitles eligible employees to 12 weeks of leave per 12-month period, whereas FSWP leave applies per qualified event with no specified cap;
- FMLA leave must include persons who stand or once stood in loco parentis (i.e., holds certain parental responsibilities, regardless of biological/legal relationship) and foster children, legal wards, or children for whom the employee stands in loco parentis, whereas FSWP leave is limited to certain family members (a child, parent, or current spouse);
- FMLA provides 26 weeks (6 six months) of protected leave to care for any family member in the military who has a serious service-connected injury or illness and for whom the employee has been designated “next of kin”, whereas FSWP leave only applies if the service member is the child, parent, or current spouse;
- FMLA allows intermittent leave use, whereas FSWP contemplates one contiguous period;
- FMLA allows employers to require substitution of accrued leave, whereas FSWP provides that eligible employees cannot be denied leave without pay.
- Other state government employers (Florida Lottery, State Courts System, Justice Administration System, state universities, etc.) are not obligated to comply with any FSWP leave provisions, and have the discretion to administer parental and family medical leave solely on the basis of FMLA. This has resulted in inconsistent practices across state government.¹³

III. Effect of Proposed Changes:

Section 1 of the bill requires that the model rule promulgated by the Department of Management Services be amended to entitle certain state employees to take up to 12 months of leave in order to care for a family member with a serious health condition. In addition the bill requires the term “serious health condition” be defined pursuant to the federal Family and Medical Leave Act and its implementing regulations.

Section 2 of the bill provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹³ Department of Management Services, *Bill Analysis 2013, SB 312* (February 8, 2013) (on file with the Senate Committee on Children, Families and Elder Affairs).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The agency also reports that by extending eligibility for family medical leave for up to one year, the operational needs of agencies could be negatively impacted by staffing shortages of up to one year, over which they would not have any control. The proposed provision would also require additional administrative oversight at the agency level to ensure proper leave tracking and to prevent possible abuse.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

DMS has reported that if the amendment to section 110.1522, F.S., proposed by the bill is enacted, the agency would need to promulgate a rule that incorporates the provisions of both state and federal laws, in order to fully integrate the proposed family medical leave policies with the FSWP parental leave policies of the current law and the parental and family medical leave policies of the federal FMLA. This may also increase the state's overall liability for family medical leave benefits.¹⁵

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁴ *Id.*

¹⁵ *Id.*