

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 the "Florida Family Leave Act";  
4       providing a short title; providing legislative  
5       findings and intent; defining terms; requiring an  
6       employer to allow certain employees to take paid  
7       family leave to bond with a new 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 pursuant to federal  
14      family and medical leave provisions; requiring an  
15      employer to provide notice to employees of the right  
16      to paid family leave; prescribing notice requirements;  
17      requiring the Department of Economic Opportunity to  
18      create a poster and a model notice that specify family  
19      leave rights; specifying circumstances under which an  
20      employer is deemed in compliance with notice  
21      requirements; providing a civil penalty for an  
22      employer's failure to comply with the notice  
23      requirements; authorizing the executive director of  
24      the department to conduct an investigation under  
25      certain circumstances; establishing rebuttable  
26      presumptions that an employer has violated certain  
27      provisions of ch. 444, F.S., under specified  
28      circumstances; authorizing the executive director to  
29      take certain actions in the event of specified

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

48  
 49 Be It Enacted by the Legislature of the State of Florida:

50  
 51 Section 1. Chapter 444, Florida Statutes, consisting of  
 52 sections 444.001-444.008, Florida Statutes, is created to read:

53 CHAPTER 444

54 THE FLORIDA FAMILY LEAVE ACT

55 444.001 Short title.—This chapter may be cited as the  
 56 “Florida Family Leave Act.”

57 444.002 Legislative findings and intent.—The Legislature  
 58 finds that it is in the public interest to provide paid family

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59 leave to workers for the birth, adoption, or foster care  
60 placement of a new child. The need for paid family leave has  
61 increased as the participation of both parents in the workforce  
62 has increased and the number of single parents has grown.  
63 Despite knowing the importance of time spent bonding with a new  
64 child, the majority of workers in this state are unable to take  
65 family leave because they are unable to afford leave without  
66 pay. When a worker does not receive income during a leave of  
67 absence, his or her family suffers as a result of the worker's  
68 loss of income, increasing demand on the state's reemployment  
69 assistance program and dependence on the state's welfare system.  
70 Therefore, in an effort to assist workers in reconciling the  
71 demands of work and family, the Legislature intends to require  
72 employers to allow employees to take paid family leave to bond  
73 with their minor child during the first 3 months after the birth  
74 of the child or the placement of the child through the foster  
75 care system or by adoption.

76 444.003 Definitions.—As used in this chapter, the term:

77 (1) "Adverse action" includes:

78 (a) Discharge.

79 (b) Demotion.

80 (c) A threat of discharge or demotion to an employee.

81 (d) Any other retaliatory action that results in a change  
82 in the terms or conditions of employment which would dissuade a  
83 reasonable employee from exercising a right under this chapter.

84 (2) "Child" means a biological, adopted, or foster son or  
85 daughter or a stepson or stepdaughter of an employee.

86 (3) "Department" means the Department of Economic  
87 Opportunity.

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88           (4) "Employee" means a person who performs services for  
89 hire for an employer for an average of 20 or more hours per  
90 week. The term includes all individuals employed at any site  
91 owned or operated by an employer, not including an independent  
92 contractor.

93           (5) "Employer" has the same meaning as in s. 760.02.

94           (6) "Executive director" means the executive director of  
95 the Department of Economic Opportunity.

96           (7) "Family leave" means a paid leave of absence from  
97 employment because of the birth of an employee's child or the  
98 placement of a child with an employee through the foster care  
99 system or by adoption.

100           444.004 Family leave upon the birth, adoption, or foster  
101 care placement of a child.-

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

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

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

115           (b) Notify the employer of the anticipated duration of the  
116 leave.

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

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

123 (4) An employer may not take adverse action against an  
124 employee for requesting or obtaining family leave authorized  
125 under this section.

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

135 (6) Family leave taken pursuant to this section must be  
136 taken concurrently with leave taken pursuant to the Family and  
137 Medical Leave Act of 1993, Pub. L. No. 103-3.

138 444.005 Notice requirements.—

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

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

144 (a) The purposes for which the employer is required to  
145 allow an employee to take a leave of absence.

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

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

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

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

161       (a) Displaying the poster created by the department in a  
162 conspicuous and accessible area at the site where employees  
163 work;

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

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

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

173       (6) In lieu of posting the model notice, an employer may  
174 distribute the notice to employees by electronic means.

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

178 444.006 Violations of chapter; civil action; penalties.—

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

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

185 1. Files a complaint with the executive director alleging a  
186 violation of this chapter or brings a civil action under this  
187 section;

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

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

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

196 (b) The rebuttable presumption may be overcome by clear and  
197 convincing evidence.

198 (3) If the executive director determines that a violation  
199 of this chapter has occurred, the executive director may:

200 (a) Attempt to informally resolve any pertinent issue  
201 through mediation;

202 (b) With the written consent of the employee, request the  
203 Attorney General to bring an action on behalf of the employee in

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204 accordance with this section; or

205 (c) Bring an action on behalf of an employee in the county  
206 where the violation allegedly occurred.

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

211 (5) An action brought under subsection (3) or subsection  
212 (4) must be filed within 3 years after the occurrence of the act  
213 on which the action is based.

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

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

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

221 3. An additional amount not exceeding three times the  
222 damages awarded under subparagraph 2.

223 4. Reasonable attorney fees and other costs.

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

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

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

232 (7) An employee may not file a complaint in bad faith with

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233 the executive director alleging a violation of this chapter or  
234 bring or testify in bad faith in an action under this section.  
235 An employee who violates this subsection commits a misdemeanor  
236 of the first degree, punishable as provided in s. 775.082 or s.  
237 775.083.

238 444.007 Rules.—The department may adopt rules to implement  
239 and administer this chapter.

240 444.008 Construction.—

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

246 (2) An individual's right to family leave under this  
247 chapter may not be diminished by a collective bargaining  
248 agreement entered into or renewed, or an employer policy adopted  
249 or retained, on or after July 1, 2020. Any agreement by an  
250 individual to waive his or her rights under this chapter is  
251 deemed against public policy and is void and unenforceable.

252 Section 2. Present subsections (2) through (10) of section  
253 760.10, Florida Statutes, are redesignated as subsections (3)  
254 through (11), respectively, and a new subsection (2) is added to  
255 that section, to read:

256 760.10 Unlawful employment practices.—

257 (2) In addition to the provisions governing pregnancy under  
258 subsection (1), it is an unlawful employment practice for an  
259 employer to:

260 (a) Refuse to allow a female employee disabled by  
261 pregnancy, childbirth, or a related medical condition to take

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

270 (b) Refuse to maintain and pay for coverage for a group  
271 health plan, as defined in s. 5000(b)(1) of the Internal Revenue  
272 Code, for an eligible employee who takes leave pursuant to  
273 paragraph (a) at the level and under the conditions that  
274 coverage would have been provided if the employee had  
275 continuously worked for the duration of the leave. This  
276 paragraph does not preclude an employer from maintaining and  
277 paying for coverage under a group health plan for a period  
278 exceeding 4 months. An employer may recover the premium that the  
279 employer paid for maintaining coverage as required under this  
280 paragraph if:

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

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

289 (c) Refuse to provide reasonable accommodation for an  
290 employee, if she so requests with the advice of her health care

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

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

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

311  
312 This subsection may not be construed to affect any other  
313 provision of law relating to pregnancy, or in any way to  
314 diminish the coverage of pregnancy, childbirth, or a medical  
315 condition related to pregnancy or childbirth under any other  
316 law, including chapter 444. An employee is entitled to take  
317 leave pursuant to this subsection in addition to any paid family  
318 leave the employee may be eligible to receive pursuant to  
319 chapter 444.

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

322 760.11 Administrative and civil remedies; construction.—

323 (1) Any person aggrieved by a violation of ss. 760.01-  
324 760.10 may file a complaint with the commission within 365 days  
325 of the alleged violation, naming the employer, employment  
326 agency, labor organization, or joint labor-management committee,  
327 or, in the case of an alleged violation of s. 760.10(6) ~~s.~~  
328 ~~760.10(5)~~, the person responsible for the violation and  
329 describing the violation. Any person aggrieved by a violation of  
330 s. 509.092 may file a complaint with the commission within 365  
331 days of the alleged violation naming the person responsible for  
332 the violation and describing the violation. The commission, a  
333 commissioner, or the Attorney General may in like manner file  
334 such a complaint. On the same day the complaint is filed with  
335 the commission, the commission shall clearly stamp on the face  
336 of the complaint the date the complaint was filed with the  
337 commission. In lieu of filing the complaint with the commission,  
338 a complaint under this section may be filed with the federal  
339 Equal Employment Opportunity Commission or with any unit of  
340 government of the state which is a fair-employment-practice  
341 agency under 29 C.F.R. ss. 1601.70-1601.80. If the date the  
342 complaint is filed is clearly stamped on the face of the  
343 complaint, that date is the date of filing. The date the  
344 complaint is filed with the commission for purposes of this  
345 section is the earliest date of filing with the Equal Employment  
346 Opportunity Commission, the fair-employment-practice agency, or  
347 the commission. The complaint shall contain a short and plain  
348 statement of the facts describing the violation and the relief

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

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