

SSB 6158/HB 2353: A Flawed Approach to Delaying Paid Family Leave in Washington

Something Needs to Be Done – But Not This

Background: In 2007, Washington became the second state in the country to enact a paid family leave law, promising six weeks of wage replacement benefits and job-protected leave to Washington employees for the birth or adoption of a child.

Problem: This controversial new benefit was never funded and its requirements never implemented in 2007, 2008, or 2009. Still, benefits are payable and leave required for eligible individuals under the law starting October 1, 2009. *Clearly the Legislature must do something before October.* The business community has supported HB 1160/SB 5558, which simply repeal the unfunded law, as the superior policy choice for addressing the problem.

What SSB 6158/HB 2353 do: These bills replace the October 1, 2009 start date for the program with an unspecified start date determinable by the director of the Office of Financial Management based upon a determination that moneys are deposited and available in the family leave insurance account. The bill also extends authority that would otherwise expire to the director of Labor & Industries to make loans out of the workers' compensation supplemental pension fund for initial start-up costs of the program. **This approach has two major problems:**

Costly and Inappropriate Reliance on Workers' Compensation Fund: Workers' Compensation taxes are paid into a trust fund for industrial insurance benefits and administration and should never be used for other purposes. The Supplemental Pension Fund is especially problematic because it is a pay-as-you-go account for yearly cost-of-living increases for disabled pensioners and does not maintain a reserve.

- The Department of Labor & Industries has confirmed that a loan out of the Supplemental Pension Fund for paid family leave would result in a workers' comp premium increase for Washington employers and workers, at a rate of 3 percent for every \$10 million loaned. (Source: E-mail from Vickie Kennedy, L&I Special Assistant to the Director to Michael Bezanson, Senate Ways & Means, 4/15/09).

It is wrong to consider raising workers' comp taxes during a recession for purposes that have nothing to do with workers' comp. This provision should be amended out of SSB 6158/HB 2353.

Unconstitutional Delegation of Legislative Authority to OFM: Our courts have long held the Legislature may only delegate authority to an agency to implement a statutory directive if the agency to accomplish the directive is designated, there are clear standards to indicate what is to be done, and there are procedural safeguards to control arbitrary action and abuse of discretionary power.

- Here, the 2007 paid family leave law never designated an agency to implement its requirements. Further, allowing the program to start (with no agency to run it) based upon the mere determination of OFM that money has been deposited in the account provides no standards or procedural safeguards for when, how, whether, and under what circumstances that determination would be made, nor is the determination subject to legislative oversight or administrative appeal.

The delegation of authority to OFM should be amended out.

A superior approach to this problem, short of outright repeal, is to simply place an indefinite suspension of the program until after a funding source has been identified and activated, and an agency designated to run the program.