

Employment Security Department
Family Leave Insurance Program
E2SSB 5659 Fiscal Estimate

Appendices

- A. Potential Government Efficiencies
- B. Enforcement Assumptions
- C. Estimated Claims Volumes, Claims Counts and Claims Benefit Costs

Appendix A

Potential Government Efficiencies

The Joint Legislative Task Force on Family Leave Insurance asked the Employment Security Department (ESD) to examine the Family Leave Insurance legislation¹ (E2SSB 5659) to identify changes in the legislation that could result in efficiencies and reduced operating costs. Listed below are potential changes the Legislature could consider. At this time the Department is not supporting or recommending any specific changes. It is important to note that many of these changes would have policy implications that would need to be considered.

In most cases it was difficult to project cost savings for these ideas in isolation. The actual cost savings will depend upon which combination (if any) of ideas are eventually adopted. In addition, the Department is still analyzing these ideas to better determine cost savings particularly as they relate to their impact on the computer systems.

The ideas for changes fit into the following four broad categories:

1. Make eligibility decisions easier and less time consuming;
2. Simplify benefit calculation;
3. Reduce number and cost of appeals;
4. Enhance integrity (prevent/pursue fraud).

1. Make eligibility decisions easier and less time consuming

Initial Eligibility Decisions

a. Simplify application process

Current law: To implement the law as written, both ESD and L&I assumed that an applicant must provide verification of birth or adoption as part of the application process. The applicant must also have formally applied for leave with his/her employer as required under existing FMLA laws.

Potential Efficiency: Simplify the eligibility process by eliminating these requirements up front. Instead, require only one application, with no supporting documents required; the applicant would be asked to attest that he/she has had a child. Utilize a computer match (at a later date) to actually verify the birth or adoption. The Department would also not be expected to verify if the applicant provided the proper paperwork to their employer.

Estimated savings: \$115,000 (FY 2013) from reduced application processing, scanning and phone calls.

b. Reduce interstate eligibility determination costs by requiring 680 hours of work in Washington for eligibility.

Current law: The legislation doesn't require that hours worked to qualify for benefits have been earned in Washington.

¹ Chapter 357, Laws of 2007.

Potential Efficiency: Reduce operating costs (the need to call out of state employers or search other states' data) by requiring only hours worked in Washington count against the required 680 hour eligibility minimum. Note: a potential significant problem with this efficiency is the impact it would have on Washington residents who work in another state.

Estimated savings: Potential savings of \$37,000 in FY 2013 (approximately .5 FTE's worth of work). Under current law staff may have to call out of state employers to find out how many hours the applicant worked. There is also potential savings for up front computer programming costs. *Savings are still being assessed.*

c. **Eliminate the option of direct withholding of federal income taxes.**

Current law: The legislation requires that each claimant be given the option of withholding federal income taxes on family leave benefits.

Potential Efficiency: Reduce computer programming and operating costs by eliminating this option.

Estimated savings: \$50,000 in up front computer programming costs.

d. **Eliminate the requirement for elective coverage of self-employed individuals.**

Current law: The legislation requires that individuals who are self-employed can opt-in to the Family Leave Insurance program.

Potential Efficiency: Reduce operating costs by eliminating the option for self-employed individuals. Since individuals who are self-employed do not report their hours worked to ESD, there is no simple way to verify if they have worked the minimum number of hours needed to qualify for this program.

Estimated savings: Some savings in up front computer programming (savings are still being assessed). Ongoing savings depends on how many self-employed would have filed claims. Assuming self employed individuals file at one fourth the rate of general population, savings could be approximately \$60,000 in FY 2013.

Ongoing Eligibility Decisions

e. **Eliminate required weekly filing for benefits.**

Current law: The legislation requires applicants file weekly.

Potential Efficiency: Reduce operating costs by having applicant identify up-front how long leave will be, and simply require applicant to notify department if there are changes, as in the California program. This would eliminate the costs associated with each applicant filing a weekly claim with the Department.

Estimated savings: Reduces upfront computer programming costs by at least \$50,000. This will also reduce operating costs by an additional \$100,000 (reduced printing, 1-800 calls and staff time).

f. **Allow for leave payments for weeks prior to the Department receiving a formal application.**

Current law: The legislation does not allow for paid leave to start until the application is filed.

Potential Efficiency: Combined with the option above (1e) of eliminating the requirement for weekly filing, allow the option of filing an application after leave has begun. This could ensure a more accurate accounting of the number of weeks of leave taken and whether the individual worked part-time during those weeks. This is similar to how the California program is administered.

Estimated savings: Savings linked to option e above. Additional savings would be some reduction in number of checks mailed to claimants.

2. Simplify benefit calculation

a. **Have the same maximum benefit for all qualified applications.**

Current law: The legislation requires the department to calculate the maximum weekly benefit for each applicant based upon the numbers of hours a week the applicant worked during the past year. If an applicant is not working full time, he or she qualifies for less than \$250 in weekly benefits.

Potential Efficiency: Provide a flat \$250 weekly benefit regardless of the number of hours worked weekly in the qualifying period as long as the applicant worked at least 680 hours during the qualifying year.

Estimated savings: Potential reduction in up front computer programming costs. Also assume the time to adjudicate each claim will decrease. This combined with recommendation below could result in \$75,000 savings in FY 2013.

b. **Allow maximum \$250 weekly benefit for each week of leave taken unless applicant works more than 20 hours in that week.**

Current law: The legislation reduces benefits proportionally for less than full-time leave.

Potential Efficiency: Rather than having to calculate the benefit amount each week, have a simply formula. If an applicant takes 20 hours of leave a week or more, allow a \$250 weekly benefit. If an applicant takes 8 to 19 hours of leave a week, allow a fifty percent benefit, or \$125.

Estimated savings: Linked to option a above.

- c. **Send applicant one check instead of two checks each month.**
Current law: The legislation requires benefit payments twice a month after the initial payment.

Potential Efficiency: Possibly combined with recommendations above (eliminate weekly check in and allow for payment of leave for weeks before the Department receives an application), require the applicant to state how long leave will be, and issue a single check for the leave period.

Estimated savings: Up to \$75,000 in mail and check processing costs in FY 2013.

3. Reduce number and cost of appeals

- a. **Eliminate attorney's fees at the administrative level.**
Current law: The legislation allows the awarding of attorney's fees and costs at both the Office of Administrative Hearings and Superior Court.

Potential Efficiency: Reduce these costs by eliminating the option of attorney's fees and court costs at the administrative hearings level. Savings will include the use of Department staff rather than Attorney General Staff at OAH hearings. Additional savings will include the costs of agency attorneys at administrative hearings.

Estimated savings: Attorney's fee savings of \$1,140,000 in FY 2013. Staff savings \$300,000 in FY 2013 as a result of using ESD staff rather than AAG staff in most cases.

- b. **Limit appeals to Office of Administrative Hearings.**
Current law: The legislation requires the option of both hearings by a hearings officer (at the Office of Administrative Hearings) and a later director-level hearing.

Potential Efficiency: Reduce appeals costs by eliminating the commissioner/director-level review.

Estimated savings: \$70,000 in FY 2013.

4. Enhance integrity (prevent/pursue fraud)

- a. **Provide for collections tools similar to UI and Workers' Compensation.**
Current law: The legislation does not provide authority for warrants, garnishment, or lien authority to the operating department, which are collection options currently available to the Unemployment Insurance and Workers' Compensation programs.

Potential Efficiency: Provide the authority for warrants, garnishment, and lien authority.

Estimated savings: Indeterminate.

5. Other

a. **Eliminate payments to deceased applicants.**

Current law: Legislation requires payments owed to deceased applicants distributed according to applicant's will.

Potential Efficiency: Eliminate requirement to pay any benefits to applicants who have died.

Estimated savings: Indeterminate.

b. **Require direct deposit for payment of benefit.**

Current law: Legislation does not currently require applicants to have benefit payments directly deposited into a bank account.

Potential Efficiency: Require that benefit payments are directly deposited into applicants' bank account, thereby reducing the costs associated with printing and mailing warrants.

Estimated savings: Approximately \$100,000 in 2013, when program is at full capacity.

**Appendix B
Enforcement Assumptions**

ESD does not currently have an employment-standards’ enforcement function. Unemployment Insurance Tax staff audit employers for reporting and payment of taxes but not for complaints of discrimination, compliance with the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, or the like. L&I’s Employment Standards Program in the Specialty Compliance Services Division has this core competency. This fiscal assessment relies on L&I assumptions to estimate the cost of this program if implemented within ESD.

The L&I Employment Standards Program in the Specialty Compliance Services Division is charged with handling the complaints related to this proposed law. They expect complaints in two categories:

- Benefits not received as allowed under the law -- Based on labor statistics we assume there are approximately 200,000 employers in the state. We also assume that the majority of employers or 98 percent will comply with the law. At the one percent non-compliance rate, we expect 4,000 complaints will be filed. It is further assumed that 99 percent, of these complains will be resolved by action of the L&I agent, and 1 percent or 20, will move on to litigation.
- Job discrimination – These complaints include loss of job or demotion when family leave is used. We expect the majority of these complaints will be generated from small businesses which make up approximately half of the state’s employers or 100,000 employers. Assuming a 98 percent compliance rate, we expect an additional 840 complaints related to job discrimination, denial of family leave, and denial of employment after taking leave will be filed with the department. Consistent with the assumptions above, 99 percent of these will be resolved through L&I and 1 percent (an estimated 10 complaints) will move on to litigation.

To handle the expected workload of 840 family leave complaints annually, the Employment Standards program will need five FTEs:

- One Industrial Relation Agent 2 (IRA2) starting July 1, 2009.
- One Industrial Relation Agent 2 (IRA2) starting July 1, 2011.
- One Industrial Relations Agent (IRA3) FTE assigned in the field . The Industrial Relations Agent 3 will also help develop policies and rules, consultation with the field staff, training and outreach.
- Two Customer Service Specialist 2 (CSS2) to assist in complaint intake, handling, and processing. One FTE will be in headquarters. The other FTE will be split among the field offices.

	FY 2010	FY 2011	FY 2012	FY 2013
Enforcement FTE’s	3.5	4	5	5
Total Cost (per L&I)	\$413,000	\$397,00	\$493,000	\$489,000

Appendix C

Estimated Claims Volumes, Claims Counts and Claims Benefit Costs

Each agency planned and budgeted for benefit costs. L&I staff provided actuarial analysis behind caseload numbers based in large part by looking to California to build assumptions about claim volumes. ESD reviewed the work that L&I had done and provided input. The departments used the following assumptions related to benefit costs:

Item	Assumption ²
Average duration of family leave for claims filed by <u>female</u> parents	4.6 weeks ³
Average duration of family leave for claims filed by <u>male</u> parents	3.7 weeks
Average number of weeks eligible recipients will claim	4.21 weeks
Average weekly benefit	\$242.32
Eligible and qualified applicants	74,925
Take up rate – annual increase	8 percent ⁴

Estimated Claims Volumes, Claims Counts and Claims Benefit Costs

Using analysis and assumptions from Labor & Industries and relying on experience of the California program, the following claims and benefit payouts are estimated:

Base scenario⁵

	2010	2011	2012	2013	2014	2015
Births	92,441	94,114	95,705	97,380	98,880	99,866
Claim Counts	25,700	27,700	29,900	32,200	34,900	37,700
Percentage of Parents using the Program ⁶	27 %	29%	31%	33%	35%	37%
Benefit Outlays	\$31.3 M	\$33.7 M	\$36.6 M	39.4 M	\$42.6 M	\$46.1 M

² Assumptions for benefit costs were used by both departments.

³ Claim duration benefits were based on California's weekly duration data, with the benefit limited to the 5 week Washington family leave insurance program. The estimated claim benefit costs assume no inflationary change in benefits, consistent with OFM policy for fiscal note development.

⁴ Eight percent is the growth rate anticipated per year growth in program participation each of the first six years. The takeup rate increases 8 percent per year from a first year rate of 68.058 percent.

⁵ Not included in the claims count are an additional twelve percent of claims which are assumed to be denied and therefore, not counted in the caseload assumptions throughout the documents.

⁶ These percentages represent total births in the state; a number of parents may not meet eligibility requirements (for example, a mother who has not been employed in the past year) and therefore, would not be eligible to receive family leave insurance benefits.

Assumptions

3,400,000	future ESD Employed Workforce in 2010 (2005 was 3,109,900)
90%	% of employed workforce covered
3,060,000	covered employees
90%	% of covered employees > 680 hours (eligible)
2,754,000	covered & eligible
92,500	Assumed number of births in FY2010 based on OFM June 07 forecast
74,925	Assumed number of covered, eligible births (births * .9 * .9)
\$ 242.32	Average weekly benefit (\$250 and 35 hours per week for full-time)

Claims counts were estimated by L&I using the assumed number of covered and eligible births (74,925 in the first year) and based on California program's claim numbers as percentage of covered births. This number was then reduced by the estimated uptake rate of a program that grows about 8 percent per year and does not reach maturity until the sixth year.

Benefit outlays were estimated by L&I using the average weekly benefit estimate (\$242.32), times the estimated number of claims in a specific category (i.e., male parent with new child is 4,200 in first year), times the estimated average duration of benefits (which range from 3.4 weeks to 5 weeks, depending on the category of worker).

Higher-than-base scenario⁷

The “higher-than-base” scenario assumes the following differences in the count of claims and commensurate increases in claims’ costs:

	2010	2011	2012	2013	2014	2015
Births	92,441	94,114	95,705	97,380	98,880	99,866
Claim Counts	34,580	37,960	41,600	45,500	49,600	53,600
Percentage of Parents using the Program ⁸	37%	40%	43%	47%	50%	53%
Benefit Outlays	\$44.5 M	\$46.1 M	\$50.9 M	\$55.6 M	\$60.5 M	\$65.5M

⁷ For illustrative purposes, costs were estimated for a second scenario of claims’ volume – a “higher-than-base” scenario – to test sensitivity of cost to volume. For this purpose, it was assumed that the initial claims load in FY10 would represent 37 percent of all births rather than the 27 percent assumed in the base scenario. Similar to the base, the claims grow at eight percent per year, ending the sixth year with more than half of the births in the state resulting in a claim being filed. Should the claims rate reach the higher level, it is useful to know the financial and operational costs of this significantly higher participation rate. Start-up and implementation costs are similar under both scenarios; however, throughout the document there are references to base and higher-than-base utilization and associated ongoing program-cost impacts.

Not included in the claims count are an additional twelve percent of claims which are assumed to be denied and therefore, not counted in the caseload assumptions throughout the documents.

⁸ These percentages represent total births in the state; a number of parents may not meet eligibility requirements (for example, a mother who has not been employed in the past year) and therefore, would not be eligible to receive family leave insurance benefits.