

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

SB 1173

Introduced by
Senators Bowie: Alston, Engel, Gonzales, Marsh, Navarrete, Steele;
Representatives Jermaine, Pawlik, Shah

AN ACT

**AMENDING TITLE 23, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 11;
RELATING TO EMPLOYEE LEAVE.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 23, Arizona Revised Statutes, is amended by adding
3 chapter 11, to read:

4 CHAPTER 11
5 FAMILY LEAVE

6 ARTICLE 1. GENERAL PROVISIONS

7 23-1701. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "CHILD" MEANS A BIOLOGICAL, ADOPTED OR FOSTER CHILD, A
10 STEPCCHILD, A LEGAL WARD OR A CHILD OF A PERSON STANDING IN LOCO PARENTIS,
11 WHO IS EITHER OF THE FOLLOWING:

12 (a) UNDER EIGHTEEN YEARS OF AGE.

13 (b) EIGHTEEN YEARS OF AGE OR OLDER AND INCAPABLE OF SELF-CARE
14 BECAUSE OF A MENTAL OR PHYSICAL DISABILITY.

15 2. "DEPARTMENT" MEANS THE DEPARTMENT OF ECONOMIC SECURITY.

16 3. "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.

17 4. "EMPLOYEE":

18 (a) MEANS A PERSON WHO HAS BEEN EMPLOYED FOR BOTH OF THE FOLLOWING:

19 (i) AT LEAST TWELVE MONTHS BY THE EMPLOYER WITH RESPECT TO WHOM
20 LEAVE IS REQUESTED UNDER SECTION 23-1703.

21 (ii) AT LEAST ONE THOUSAND TWO HUNDRED FIFTY HOURS OF SERVICE WITH
22 THE EMPLOYER DURING THE PREVIOUS TWELVE-MONTH PERIOD.

23 (b) DOES NOT MEAN A PERSON WHO MEETS THE REQUIREMENTS OF
24 SUBDIVISION (a) OF THIS PARAGRAPH AND WHO IS EMPLOYED AT A WORKSITE AT
25 WHICH THE EMPLOYER EMPLOYS LESS THAN FIFTY EMPLOYEES IF THE TOTAL NUMBER
26 OF EMPLOYEES EMPLOYED BY THAT EMPLOYER WITHIN SEVENTY-FIVE MILES OF THAT
27 WORKSITE IS LESS THAN FIFTY.

28 5. "EMPLOYER" MEANS ANY OF THE FOLLOWING:

29 (a) ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, BUSINESS TRUST,
30 LEGAL REPRESENTATIVE OR OTHER BUSINESS ENTITY THAT ENGAGES IN ANY
31 BUSINESS, INDUSTRY, PROFESSION OR ACTIVITY IN THIS STATE AND THAT EMPLOYS
32 FIFTY OR MORE EMPLOYEES FOR EACH WORKING DAY DURING EACH OF TWENTY OR MORE
33 CALENDAR WORKWEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR.

34 (b) THIS STATE, ANY STATE INSTITUTION OR ANY STATE AGENCY.

35 (c) ANY UNIT OF LOCAL GOVERNMENT, INCLUDING A COUNTY, CITY, TOWN,
36 MUNICIPAL CORPORATION OR OTHER POLITICAL SUBDIVISION.

37 6. "EMPLOYMENT BENEFITS":

38 (a) MEANS ALL BENEFITS THAT ARE PROVIDED OR THAT ARE MADE AVAILABLE
39 TO EMPLOYEES BY AN EMPLOYER.

40 (b) INCLUDES GROUP LIFE INSURANCE, HEALTH INSURANCE, DISABILITY
41 INSURANCE, SICK LEAVE, ANNUAL LEAVE, EDUCATIONAL BENEFITS AND PENSIONS.

42 (c) DOES NOT INCLUDE BENEFITS THAT ARE PROVIDED BY A PRACTICE OR
43 WRITTEN POLICY OF AN EMPLOYER OR THROUGH AN EMPLOYEE BENEFIT PLAN AS
44 DEFINED IN 29 UNITED STATES CODE SECTION 1002(3).

1 7. "FAMILY MEMBER" MEANS A CHILD, PARENT, SPOUSE OR DOMESTIC
2 PARTNER OF AN EMPLOYEE.

3 8. "HEALTH CARE PROVIDER" MEANS ANY OF THE FOLLOWING:

4 (a) A PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13
5 OR 17.

6 (b) A REGISTERED NURSE PRACTITIONER WHO IS LICENSED PURSUANT TO
7 TITLE 32, CHAPTER 15.

8 (c) ANY OTHER PERSON THAT THE DIRECTOR DETERMINES TO BE CAPABLE OF
9 PROVIDING HEALTH CARE SERVICES.

10 9. "INTERMITTENT LEAVE" MEANS LEAVE THAT IS TAKEN IN SEPARATE
11 BLOCKS OF TIME DUE TO A SINGLE QUALIFYING REASON.

12 10. "LEAVE FOR A FAMILY MEMBER'S SERIOUS HEALTH CONDITION" MEANS
13 LEAVE AS DESCRIBED IN SECTION 23-1703, SUBSECTION A, PARAGRAPH 3.

14 11. "LEAVE FOR THE BIRTH OR PLACEMENT OF A CHILD" MEANS LEAVE AS
15 DESCRIBED IN SECTION 23-1703, SUBSECTION A, PARAGRAPH 1 OR 2.

16 12. "LEAVE FOR THE EMPLOYEE'S SERIOUS HEALTH CONDITION" MEANS LEAVE
17 AS DESCRIBED IN SECTION 23-1703, SUBSECTION A, PARAGRAPH 4.

18 13. "PARENT" MEANS THE BIOLOGICAL OR ADOPTIVE PARENT OF AN EMPLOYEE
19 OR AN INDIVIDUAL WHO STOOD IN LOCO PARENTIS TO AN EMPLOYEE WHEN THE
20 EMPLOYEE WAS A CHILD.

21 14. "PERIOD OF INCAPACITY" MEANS AN INABILITY TO WORK, ATTEND
22 SCHOOL OR PERFORM OTHER REGULAR DAILY ACTIVITIES BECAUSE OF A SERIOUS
23 HEALTH CONDITION, TREATMENT OF A SERIOUS HEALTH CONDITION OR RECOVERY FROM
24 A SERIOUS HEALTH CONDITION, OR SUBSEQUENT TREATMENT IN CONNECTION WITH
25 INPATIENT CARE.

26 15. "REDUCED LEAVE SCHEDULE" MEANS A LEAVE SCHEDULE THAT REDUCES
27 THE USUAL NUMBER OF HOURS PER WORKWEEK OR HOURS PER WORKDAY OF AN
28 EMPLOYEE.

29 16. "SERIOUS HEALTH CONDITION" MEANS AN ILLNESS, INJURY, IMPAIRMENT
30 OR PHYSICAL OR MENTAL CONDITION THAT INVOLVES EITHER:

31 (a) A PERIOD OF INCAPACITY OR TREATMENT CONNECTED WITH INPATIENT
32 CARE, SUCH AS AN OVERNIGHT STAY, IN A HOSPITAL OR A HOSPICE OR RESIDENTIAL
33 MEDICAL CARE FACILITY AND A PERIOD OF INCAPACITY OR SUBSEQUENT TREATMENT
34 OR RECOVERY IN CONNECTION WITH THE INPATIENT CARE.

35 (b) CONTINUING TREATMENT BY OR UNDER THE SUPERVISION OF A HEALTH
36 CARE PROVIDER OR A PROVIDER OF HEALTH CARE SERVICES AND INCLUDES A PERIOD
37 OF INCAPACITY, SUCH AS AN INABILITY TO WORK, ATTEND SCHOOL OR PERFORM
38 OTHER REGULAR DAILY ACTIVITIES.

39 17. "SPOUSE" MEANS A HUSBAND, WIFE OR DOMESTIC PARTNER.

40 23-1702. Administration; enforcement

41 THE DIRECTOR SHALL ADOPT RULES TO IMPLEMENT, ADMINISTER AND ENFORCE
42 THIS CHAPTER.

1 F. IF AN EMPLOYEE TAKES INTERMITTENT LEAVE OR LEAVE ON A REDUCED
2 LEAVE SCHEDULE UNDER THIS SECTION, THE EMPLOYER MAY NOT REDUCE THE TOTAL
3 AMOUNT OF LEAVE TO WHICH THE EMPLOYEE IS ENTITLED UNDER SECTION 23-1703
4 BEYOND THE AMOUNT OF LEAVE THAT IS ACTUALLY TAKEN.

5 G. IF AN EMPLOYEE REQUESTS INTERMITTENT LEAVE OR LEAVE ON A REDUCED
6 LEAVE SCHEDULE FOR A FAMILY MEMBER'S SERIOUS HEALTH CONDITION OR THE
7 EMPLOYEE'S SERIOUS HEALTH CONDITION WHEN THE CONDITION IS FORESEEABLE
8 BASED ON PLANNED MEDICAL TREATMENT, THE EMPLOYER MAY REQUIRE THE EMPLOYEE
9 TO TRANSFER TEMPORARILY TO AN AVAILABLE ALTERNATIVE POSITION OFFERED BY
10 THE EMPLOYER FOR WHICH THE EMPLOYEE IS QUALIFIED AND THAT BOTH:

- 11 1. HAS EQUIVALENT PAY AND BENEFITS.
- 12 2. BETTER ACCOMMODATES RECURRING PERIODS OF LEAVE THAN THE REGULAR
13 EMPLOYMENT POSITION OF THE EMPLOYEE.

14 23-1705. Unpaid leave allowed

15 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, LEAVE THAT
16 IS GRANTED UNDER SECTION 23-1703 MAY CONSIST OF UNPAID LEAVE.

17 B. IF AN EMPLOYER PROVIDES PAID LEAVE FOR FEWER THAN TWELVE
18 WORKWEEKS, THE ADDITIONAL WEEKS OF LEAVE NECESSARY TO ATTAIN THE TWELVE
19 WORKWEEKS OF LEAVE REQUIRED UNDER THE CHAPTER MAY BE PROVIDED WITHOUT
20 COMPENSATION.

21 23-1706. Foreseeable leave; notice

22 A. IF THE NECESSITY FOR LEAVE FOR THE BIRTH OR PLACEMENT OF A CHILD
23 IS FORESEEABLE BASED ON AN EXPECTED BIRTH OR PLACEMENT, THE EMPLOYEE SHALL
24 PROVIDE THE EMPLOYER WITH NOT LESS THAN THIRTY DAYS' NOTICE BEFORE THE
25 DATE THE LEAVE IS TO BEGIN OF THE EMPLOYEE'S INTENTION TO TAKE LEAVE FOR
26 THE BIRTH OR PLACEMENT OF A CHILD, EXCEPT THAT IF THE DATE OF THE BIRTH OR
27 PLACEMENT REQUIRES LEAVE TO BEGIN IN LESS THAN THIRTY DAYS, THE EMPLOYEE
28 SHALL PROVIDE THE NOTICE AS IS PRACTICABLE.

29 B. IF THE NECESSITY FOR LEAVE FOR A FAMILY MEMBER'S SERIOUS HEALTH
30 CONDITION OR THE EMPLOYEE'S SERIOUS HEALTH CONDITION IS FORESEEABLE BASED
31 ON PLANNED MEDICAL TREATMENT, THE EMPLOYEE MUST BOTH:

- 32 1. MAKE A REASONABLE EFFORT TO SCHEDULE THE TREATMENT SO AS NOT TO
33 DISRUPT UNDULY THE OPERATIONS OF THE EMPLOYER, SUBJECT TO THE APPROVAL OF
34 THE HEALTH CARE PROVIDER OF THE EMPLOYEE OR THE HEALTH CARE PROVIDER OF
35 THE FAMILY MEMBER, AS APPROPRIATE.

- 36 2. PROVIDE THE EMPLOYER WITH NOT LESS THAN THIRTY DAYS' NOTICE
37 BEFORE THE DATE THE LEAVE IS TO BEGIN OF THE EMPLOYEE'S INTENTION TO TAKE
38 LEAVE FOR A FAMILY MEMBER'S SERIOUS HEALTH CONDITION OR THE EMPLOYEE'S
39 SERIOUS HEALTH CONDITION, EXCEPT THAT IF THE DATE OF THE TREATMENT
40 REQUIRES LEAVE TO BEGIN IN LESS THAN THIRTY DAYS, THE EMPLOYEE SHALL
41 PROVIDE THE NOTICE AS IS PRACTICABLE.

42 23-1707. Spouses employed by the same employer

43 IF SPOUSES WHO ARE ENTITLED TO LEAVE UNDER THIS CHAPTER ARE EMPLOYED
44 BY THE SAME EMPLOYER, THE AGGREGATE NUMBER OF WORKWEEKS OF LEAVE TO WHICH

1 BOTH SPOUSES ARE ENTITLED MAY BE LIMITED TO TWELVE WORKWEEKS DURING ANY
2 TWELVE-MONTH PERIOD IF THE LEAVE IS TAKEN FOR EITHER OF THE FOLLOWING:

- 3 1. THE BIRTH OR PLACEMENT OF A CHILD.
- 4 2. A PARENT'S SERIOUS HEALTH CONDITION.

5 23-1708. Certification

6 A. AN EMPLOYER MAY REQUIRE THAT A REQUEST FOR LEAVE FOR A FAMILY
7 MEMBER'S SERIOUS HEALTH CONDITION OR THE EMPLOYEE'S SERIOUS HEALTH
8 CONDITION BE SUPPORTED BY A CERTIFICATION ISSUED BY THE HEALTH CARE
9 PROVIDER OF THE EMPLOYEE OR OF THE FAMILY MEMBER, AS APPROPRIATE. IF
10 REQUIRED, THE EMPLOYEE MUST PROVIDE, IN A TIMELY MANNER, A COPY OF THE
11 CERTIFICATION TO THE EMPLOYER.

12 B. CERTIFICATION PROVIDED UNDER SUBSECTION A OF THIS SECTION IS
13 SUFFICIENT IF THE CERTIFICATION INCLUDES ALL OF THE FOLLOWING:

- 14 1. THE DATE ON WHICH THE SERIOUS HEALTH CONDITION COMMENCED.
- 15 2. THE PROBABLE DURATION OF THE CONDITION.
- 16 3. THE APPROPRIATE MEDICAL FACTS WITHIN THE KNOWLEDGE OF THE HEALTH
17 CARE PROVIDER REGARDING THE CONDITION.
- 18 4. FOR THE PURPOSES OF LEAVE FOR A FAMILY MEMBER'S SERIOUS HEALTH
19 CONDITION, BOTH:

20 (a) A STATEMENT THAT THE EMPLOYEE IS NEEDED TO CARE FOR THE FAMILY
21 MEMBER.

22 (b) AN ESTIMATE OF THE AMOUNT OF TIME THAT THE EMPLOYEE IS NEEDED
23 TO CARE FOR THE FAMILY MEMBER.

24 5. FOR THE PURPOSES OF LEAVE FOR THE EMPLOYEE'S SERIOUS HEALTH
25 CONDITION, A STATEMENT THAT THE EMPLOYEE IS UNABLE TO PERFORM THE
26 FUNCTIONS OF THE POSITION OF THE EMPLOYEE.

27 6. IN THE CASE OF CERTIFICATION FOR INTERMITTENT LEAVE OR LEAVE ON
28 A REDUCED LEAVE SCHEDULE FOR PLANNED MEDICAL TREATMENT, THE DATES ON WHICH
29 THE TREATMENT IS EXPECTED TO BE GIVEN AND THE DURATION OF THE TREATMENT.

30 7. IN THE CASE OF CERTIFICATION FOR INTERMITTENT LEAVE OR LEAVE ON
31 A REDUCED LEAVE SCHEDULE FOR THE EMPLOYEE'S SERIOUS HEALTH CONDITION,
32 BOTH:

33 (a) A STATEMENT OF THE MEDICAL NECESSITY FOR THE INTERMITTENT LEAVE
34 OR LEAVE ON A REDUCED LEAVE SCHEDULE.

35 (b) THE EXPECTED DURATION OF THE INTERMITTENT LEAVE OR LEAVE ON A
36 REDUCED LEAVE SCHEDULE.

37 8. IN THE CASE OF CERTIFICATION FOR INTERMITTENT LEAVE OR LEAVE ON
38 A REDUCED LEAVE SCHEDULE FOR A FAMILY MEMBER'S SERIOUS HEALTH CONDITION,
39 BOTH:

40 (a) A STATEMENT THAT THE EMPLOYEE'S INTERMITTENT LEAVE OR LEAVE ON
41 A REDUCED LEAVE SCHEDULE IS NECESSARY FOR THE CARE OF THE FAMILY MEMBER
42 WHO HAS A SERIOUS HEALTH CONDITION OR WILL ASSIST IN THE FAMILY MEMBERS'
43 RECOVERY.

44 (b) THE EXPECTED DURATION AND SCHEDULE OF THE INTERMITTENT LEAVE OR
45 LEAVE ON A REDUCED LEAVE SCHEDULE.

1 C. IF THE EMPLOYER HAS REASON TO DOUBT THE VALIDITY OF THE
2 CERTIFICATION PROVIDED UNDER SUBSECTION A OF THIS SECTION FOR LEAVE FOR A
3 FAMILY MEMBER'S SERIOUS HEALTH CONDITION OR THE EMPLOYEE'S SERIOUS HEALTH
4 CONDITION, THE EMPLOYER MAY REQUIRE, AT THE EXPENSE OF THE EMPLOYER, THAT
5 THE EMPLOYEE OBTAIN THE OPINION OF A SECOND HEALTH CARE PROVIDER THAT IS
6 DESIGNATED OR APPROVED BY THE EMPLOYER CONCERNING ANY INFORMATION
7 CERTIFIED UNDER SUBSECTION B OF THIS SECTION FOR THE LEAVE. THE SECOND
8 HEALTH CARE PROVIDER MAY NOT BE EMPLOYED ON A REGULAR BASIS BY THE
9 EMPLOYER.

10 D. IF THE SECOND OPINION DESCRIBED IN SUBSECTION C OF THIS SECTION
11 DIFFERS FROM THE OPINION IN THE ORIGINAL CERTIFICATION PROVIDED UNDER
12 SUBSECTION A OF THIS SECTION, THE EMPLOYER MAY REQUIRE, AT THE EXPENSE OF
13 THE EMPLOYER, THAT THE EMPLOYEE OBTAIN THE OPINION OF A THIRD HEALTH CARE
14 PROVIDER THAT IS DESIGNATED OR APPROVED JOINTLY BY THE EMPLOYER AND THE
15 EMPLOYEE CONCERNING THE INFORMATION CERTIFIED UNDER SUBSECTION B OF THIS
16 SECTION. THE OPINION OF THE THIRD HEALTH CARE PROVIDER CONCERNING THE
17 INFORMATION CERTIFIED UNDER SUBSECTION B OF THIS SECTION IS FINAL AND
18 BINDING ON THE EMPLOYER AND THE EMPLOYEE.

19 E. THE EMPLOYER MAY REQUIRE THAT THE EMPLOYEE OBTAIN SUBSEQUENT
20 RECERTIFICATIONS ON A REASONABLE BASIS.

21 23-1709. Restoration of employment

22 A. EXCEPT AS PROVIDED IN SUBSECTION F OF THIS SECTION, ANY EMPLOYEE
23 WHO TAKES LEAVE UNDER SECTION 23-1703 FOR THE INTENDED PURPOSE OF THE
24 LEAVE IS ENTITLED ON RETURN FROM THE LEAVE TO BE EITHER:

25 1. RESTORED BY THE EMPLOYER TO THE POSITION OF EMPLOYMENT HELD BY
26 THE EMPLOYEE WHEN THE LEAVE COMMENCED.

27 2. RESTORED TO AN EQUIVALENT POSITION WITH EQUIVALENT EMPLOYMENT
28 BENEFITS, PAY AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT AT A WORKPLACE
29 WITHIN TWENTY MILES OF THE EMPLOYEE'S WORKPLACE WHEN LEAVE COMMENCED.

30 B. THE TAKING OF LEAVE UNDER SECTION 23-1703 MAY NOT RESULT IN THE
31 LOSS OF ANY EMPLOYMENT BENEFITS ACCRUED BEFORE THE DATE ON WHICH THE LEAVE
32 COMMENCED.

33 C. THIS SECTION DOES NOT ENTITLE ANY RESTORED EMPLOYEE TO EITHER:

34 1. THE ACCRUAL OF ANY SENIORITY OR EMPLOYMENT BENEFITS DURING ANY
35 PERIOD OF LEAVE.

36 2. ANY RIGHT, BENEFIT OR POSITION OF EMPLOYMENT OTHER THAN ANY
37 RIGHT, BENEFIT OR POSITION TO WHICH THE EMPLOYEE WOULD HAVE BEEN ENTITLED
38 HAD THE EMPLOYEE NOT TAKEN THE LEAVE.

39 D. AS A CONDITION OF RESTORATION UNDER SUBSECTION A OF THIS SECTION
40 FOR AN EMPLOYEE WHO HAS TAKEN LEAVE FOR THE EMPLOYEE'S SERIOUS HEALTH
41 CONDITION, THE EMPLOYER MAY HAVE A UNIFORMLY APPLIED PRACTICE OR POLICY
42 THAT REQUIRES EACH EMPLOYEE TO RECEIVE CERTIFICATION FROM THE HEALTH CARE
43 PROVIDER OF THE EMPLOYEE THAT THE EMPLOYEE IS ABLE TO RESUME WORK, EXCEPT
44 THAT THIS SUBSECTION DOES NOT SUPERSEDE A VALID LOCAL LAW OR A COLLECTIVE

1 BARGAINING AGREEMENT THAT GOVERNS THE RETURN TO WORK OF AN EMPLOYEE WHO
2 TAKES LEAVE FOR THE EMPLOYEE'S SERIOUS HEALTH CONDITION.

3 E. THIS SECTION DOES NOT PROHIBIT AN EMPLOYER FROM REQUIRING AN
4 EMPLOYEE ON LEAVE TO REPORT PERIODICALLY TO THE EMPLOYER ON THE EMPLOYEE'S
5 STATUS AND INTENTION TO RETURN TO WORK.

6 F. AN EMPLOYER MAY DENY RESTORATION UNDER THIS SECTION TO ANY
7 SALARIED EMPLOYEE WHO IS AMONG THE HIGHEST PAID TEN PERCENT OF THE
8 EMPLOYEES EMPLOYED BY THE EMPLOYER WITHIN SEVENTY-FIVE MILES OF THE
9 FACILITY AT WHICH THE EMPLOYEE IS EMPLOYED IF ALL OF THE FOLLOWING APPLY:

10 1. DENIAL IS NECESSARY TO PREVENT SUBSTANTIAL AND GRIEVOUS ECONOMIC
11 INJURY TO THE OPERATIONS OF THE EMPLOYER.

12 2. THE EMPLOYER NOTIFIES THE EMPLOYEE OF THE INTENT OF THE EMPLOYER
13 TO DENY RESTORATION ON THE BASIS DESCRIBED IN PARAGRAPH 1 OF THIS
14 SUBSECTION AT THE TIME THE EMPLOYER DETERMINES THAT THE INJURY WOULD
15 OCCUR.

16 3. THE LEAVE HAS COMMENCED AND THE EMPLOYEE ELECTS NOT TO RETURN TO
17 EMPLOYMENT AFTER RECEIVING THE NOTICE.

18 23-1710. Employment benefits

19 DURING ANY PERIOD OF LEAVE TAKEN UNDER SECTION 23-1703, IF THE
20 EMPLOYEE IS NOT ELIGIBLE FOR ANY EMPLOYER CONTRIBUTION TO MEDICAL OR
21 DENTAL BENEFITS UNDER AN APPLICABLE COLLECTIVE BARGAINING AGREEMENT OR
22 EMPLOYER POLICY DURING ANY PERIOD OF LEAVE, AN EMPLOYER SHALL ALLOW THE
23 EMPLOYEE TO CONTINUE, AT THE EMPLOYEE'S EXPENSE, MEDICAL OR DENTAL
24 INSURANCE COVERAGE, INCLUDING ANY SPOUSE AND DEPENDENT COVERAGE, IN
25 ACCORDANCE WITH STATE OR FEDERAL LAW. THE PREMIUM TO BE PAID BY THE
26 EMPLOYEE MAY NOT EXCEED ONE HUNDRED TWO PERCENT OF THE APPLICABLE PREMIUM
27 FOR THE LEAVE PERIOD.

28 23-1711. Prohibited acts

29 A. IT IS UNLAWFUL FOR ANY EMPLOYER TO EITHER:

30 1. INTERFERE WITH, RESTRAIN OR DENY THE EXERCISE OF, OR THE ATTEMPT
31 TO EXERCISE, ANY RIGHT PROVIDED UNDER THIS CHAPTER.

32 2. DISCHARGE OR IN ANY OTHER MANNER DISCRIMINATE AGAINST ANY
33 INDIVIDUAL FOR OPPOSING ANY PRACTICE MADE UNLAWFUL BY THIS CHAPTER.

34 B. IT IS UNLAWFUL FOR ANY PERSON TO DISCHARGE OR IN ANY OTHER
35 MANNER DISCRIMINATE AGAINST ANY INDIVIDUAL BECAUSE THE INDIVIDUAL HAS DONE
36 ANY OF THE FOLLOWING:

37 1. FILED ANY CHARGE, OR HAS INSTITUTED OR CAUSED TO BE INSTITUTED
38 ANY PROCEEDING, UNDER OR RELATED TO THIS CHAPTER.

39 2. GIVEN, OR IS ABOUT TO GIVE, ANY INFORMATION IN CONNECTION WITH
40 ANY INQUIRY OR PROCEEDING RELATING TO ANY RIGHT PROVIDED UNDER THIS
41 CHAPTER.

42 3. TESTIFIED, OR IS ABOUT TO TESTIFY, IN ANY INQUIRY OR PROCEEDING
43 RELATING TO ANY RIGHT PROVIDED UNDER THIS CHAPTER.

1 23-1712. Investigations; civil penalty; civil action

2 A. ON COMPLAINT BY AN EMPLOYEE, THE DIRECTOR SHALL INVESTIGATE TO
3 DETERMINE IF THE EMPLOYER OF THE EMPLOYEE HAS COMPLIED WITH THIS CHAPTER
4 AND THE RULES ADOPTED PURSUANT TO THIS CHAPTER. IF THE INVESTIGATION
5 INDICATES THAT A VIOLATION MAY HAVE OCCURRED, A HEARING MUST BE HELD IN
6 ACCORDANCE WITH TITLE 41, CHAPTER 6, ARTICLE 10. THE DIRECTOR SHALL ISSUE
7 A WRITTEN DETERMINATION THAT INCLUDES THE DIRECTOR'S FINDINGS AFTER THE
8 HEARING. EXCEPT AS PROVIDED IN SECTION 41-1092.08, SUBSECTION H, A
9 DECISION OF THE DEPARTMENT IS SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE
10 12, CHAPTER 7, ARTICLE 6. THE PREVAILING PARTY IS ENTITLED TO RECOVER
11 REASONABLE COSTS AND ATTORNEY FEES.

12 B. AN EMPLOYER WHO IS FOUND, IN ACCORDANCE WITH SUBSECTION A OF
13 THIS SECTION, TO HAVE VIOLATED A REQUIREMENT OF THIS CHAPTER OR THE RULES
14 ADOPTED PURSUANT TO THIS CHAPTER, IS SUBJECT TO A CIVIL PENALTY OF AT
15 LEAST \$1,000 FOR EACH VIOLATION. THE DEPARTMENT SHALL COLLECT CIVIL
16 PENALTIES AND DEPOSIT THEM INTO THE FAMILY AND MEDICAL LEAVE ENFORCEMENT
17 FUND ESTABLISHED BY SECTION 23-1714.

18 C. ANY EMPLOYER WHO VIOLATES SECTION 23-1711 IS LIABLE FOR BOTH:

19 1. DAMAGES EQUAL TO THE FOLLOWING:

20 (a) ANY WAGES, SALARY, EMPLOYMENT BENEFITS OR OTHER COMPENSATION
21 DENIED OR LOST TO THE EMPLOYEE BY REASON OF THE VIOLATION.

22 (b) IF WAGES, SALARY, EMPLOYMENT BENEFITS OR OTHER COMPENSATION
23 HAVE NOT BEEN DENIED OR LOST TO THE EMPLOYEE, ANY ACTUAL MONETARY LOSSES
24 SUSTAINED BY THE EMPLOYEE AS A DIRECT RESULT OF THE VIOLATION, SUCH AS THE
25 COST OF PROVIDING CARE, UP TO A SUM EQUAL TO TWELVE WEEKS OF WAGES OR
26 SALARY FOR THE EMPLOYEE.

27 (c) THE INTEREST ON THE AMOUNT DESCRIBED IN SUBDIVISION (a) OR (b)
28 OF THIS PARAGRAPH CALCULATED AT THE PREVAILING RATE.

29 (d) AN ADDITIONAL AMOUNT AS LIQUIDATED DAMAGES EQUAL TO THE SUM OF
30 THE AMOUNT DESCRIBED IN SUBDIVISION (a) OR (b) OF THIS PARAGRAPH AND THE
31 INTEREST DESCRIBED IN SUBDIVISION (c) OF THIS PARAGRAPH, EXCEPT THAT IF AN
32 EMPLOYER WHO HAS VIOLATED SECTION 23-1711 PROVES TO THE SATISFACTION OF
33 THE COURT THAT THE ACT OR OMISSION THAT VIOLATED SECTION 23-1711 WAS IN
34 GOOD FAITH AND THAT THE EMPLOYER HAD REASONABLE GROUNDS FOR BELIEVING THAT
35 THE ACT OR OMISSION WAS NOT A VIOLATION OF SECTION 23-1711, THE COURT MAY,
36 IN THE DISCRETION OF THE COURT, REDUCE THE AMOUNT OF THE LIABILITY TO THE
37 AMOUNT AND INTEREST DETERMINED UNDER SUBDIVISIONS (a) OR (b) AND (c) OF
38 THIS PARAGRAPH.

39 2. APPROPRIATE EQUITABLE RELIEF, INCLUDING EMPLOYMENT,
40 REINSTATEMENT AND PROMOTION.

41 D. AN ACTION TO RECOVER THE DAMAGES OR EQUITABLE RELIEF PRESCRIBED
42 IN SUBSECTION C OF THIS SECTION MAY BE MAINTAINED AGAINST ANY EMPLOYER IN
43 ANY COURT OF COMPETENT JURISDICTION BY ANY ONE OR MORE EMPLOYEES FOR AND
44 ON BEHALF OF EITHER:

1 B. LEAVE UNDER THIS CHAPTER AND LEAVE UNDER THE FAMILY AND MEDICAL
2 LEAVE ACT OF 1993 (P.L. 103-3; 107 STAT. 6; 29 UNITED STATES CODE SECTIONS
3 2601 THROUGH 2654) IS IN ADDITION TO ANY LEAVE FOR SICKNESS OR TEMPORARY
4 DISABILITY BECAUSE OF PREGNANCY OR CHILDBIRTH.
5 C. LEAVE TAKEN UNDER THIS CHAPTER MUST BE TAKEN CONCURRENTLY WITH
6 ANY LEAVE TAKEN UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993
7 (P.L. 103-3; 107 STAT. 6; 29 UNITED STATES CODE SECTIONS 2601 THROUGH
8 2654).
9 D. THIS CHAPTER MUST BE CONSTRUED TO THE EXTENT POSSIBLE IN A
10 MANNER THAT IS CONSISTENT WITH SIMILAR PROVISIONS, IF ANY, OF THE FAMILY
11 AND MEDICAL LEAVE ACT OF 1993 (P.L. 103-3; 107 STAT. 6; 29 UNITED STATES
12 CODE SECTIONS 2601 THROUGH 2654) AND THAT GIVES CONSIDERATION TO THE
13 RULES, PRECEDENTS AND PRACTICES OF THE UNITED STATES DEPARTMENT OF LABOR
14 RELEVANT TO THE FAMILY AND MEDICAL LEAVE ACT OF 1993 (P.L. 103-3; 107
15 STAT. 6; 29 UNITED STATES CODE SECTIONS 2601 THROUGH 2654).