

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL DRH40325-LR-102B

Short Title: NC Families First Act.

(Public)

Sponsors: Representatives Meyer, Batch, Clark, and Majeed (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA FAMILIES FIRST ACT.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. The General Statutes are amended by adding a new Chapter to read:

5 "Chapter 96A.

6 "North Carolina Families First Act.

7 "§ 96A-1. Short title; definitions.

8 (a) This Chapter shall be known and may be cited as the "North Carolina Families First
9 Act."

10 (b) The following definitions apply in this Chapter:

11 (1) Application year. – The 12-month period beginning on the first day of the
12 calendar week in which an individual files an application for family and
13 medical leave insurance benefits.

14 (2) Covered individual. – Any person who does all of the following:

15 a. Meets the monetary eligibility criteria set forth in G.S. 96-14.1(b) or
16 is self-employed, elects coverage, and meets the requirements of
17 G.S. 96A-13.

18 b. Meets the administrative requirements outlined in this Chapter and in
19 the rules adopted under this Chapter.

20 c. Submits an application.

21 (3) Covered service member. – Either:

22 a. A member of the Armed Forces including a member of the National
23 Guard or Reserves, who is (i) undergoing medical treatment,
24 recuperation, or therapy, (ii) otherwise in outpatient status, or (iii) is
25 otherwise on the temporary disability retired list for a serious injury or
26 illness that was incurred by the member in the line of duty on active
27 duty in the Armed Forces, or a serious injury or illness that existed
28 before the beginning of the member's active duty and was aggravated
29 by service in the line of duty on active duty in the Armed Forces; or

30 b. A former member of the Armed Forces, including a former member of
31 the National Guard or Reserves, who is undergoing medical treatment,
32 recuperation, or therapy for a serious injury or illness that was incurred
33 by the member in the line of duty on active duty in the Armed Forces,
34 or a serious injury or illness that existed before the beginning of the
35 member's active duty and was aggravated by service in the line of duty



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- 1 on active duty in the Armed Forces and manifested before or after the
2 member was discharged or released from service.
- 3 (4) Division. – The Division of Employment Security of the Department of
4 Commerce.
- 5 (5) Assistant Secretary. – The Assistant Secretary of the Division of Employment
6 Security.
- 7 (6) Employee. – Any individual employed by an employer.
- 8 (7) Employer. – Any person acting directly or indirectly in the interest of an
9 employer in relation to an employee. As used in this subdivision, "person"
10 means an individual, partnership, association, corporation, business trust,
11 legal representative, or any organized group of persons. For the purposes of
12 this Chapter, it also means the State of North Carolina, any city, town, county,
13 or municipality, or any State or local agency or instrumentality of government.
14 The term does not include the government of the United States and any agency
15 of the United States (including the United States Postal Service and Postal
16 Rate Commission).
- 17 (8) Family and medical leave insurance benefits. – The benefits provided under
18 the terms of this Chapter.
- 19 (9) Family member. – Any of the following:
- 20 a. Regardless of age, a biological, adopted, or foster child, stepchild, or
21 legal ward, a child of a domestic partner, a child to whom the employee
22 stands in loco parentis, or a person to whom the employee stood in
23 loco parentis when the person was a minor.
- 24 b. A biological, adoptive, or foster parent, stepparent, or legal guardian
25 of an employee or an employee's spouse or domestic partner or a
26 person who stood in loco parentis when the employee or the
27 employee's spouse or domestic partner was a minor.
- 28 c. A person to whom the employee is legally married under the laws of
29 any state or a domestic partner of an employee as registered under the
30 laws of any state or political subdivision.
- 31 d. A grandparent, grandchild, or sibling (whether a biological, foster,
32 adoptive, or step relationship) of the employee or the employee's
33 spouse or domestic partner.
- 34 e. Any other individual related by blood or whose close association with
35 the employee is the equivalent of a family relationship.
- 36 (10) Health care provider. – Any person licensed under federal or North Carolina
37 law to provide medical or emergency services, including, but not limited to,
38 doctors, nurses and emergency room personnel, or certified midwives.
- 39 (11) Next of kin. – As defined in Section 101(17) of the Family and Medical Leave
40 Act, 29 U.S.C. § 2611(17).
- 41 (12) Qualifying exigency leave. – Leave based on a need arising out of a covered
42 individual's family member's active duty service or notice of an impending
43 call or order to active duty in the Armed Forces, including, but not limited to,
44 providing for the care or other needs of the military member's child or other
45 family member, making financial or legal arrangements for the military
46 member, attending counseling, attending military events or ceremonies,
47 spending time with the military member during a rest and recuperation leave
48 or following return from deployment, or making arrangements following the
49 death of the military member.
- 50 (13) Retaliatory personnel action. – Denial of any right guaranteed under this
51 Chapter including, but not limited to, any threat, discharge, suspension,

1 demotion, reduction of hours, any other adverse action against an employee
2 for the exercise of any right guaranteed herein, or reporting or threatening to
3 report an employee's suspected citizenship or immigration status or the
4 suspected citizenship or immigration status of a family member of the
5 employee to a federal, state, or local agency. Retaliatory personnel actions
6 shall also include interference with or punishment for in any manner
7 participating in or assisting an investigation, proceeding, or hearing under this
8 Chapter.

9 (14) Serious health condition. – An illness, injury, impairment, pregnancy,
10 recovery from childbirth, or physical or mental condition that involves
11 inpatient care in a hospital, hospice, or residential medical care facility, or
12 continuing treatment by a health care provider.

13 (15) State average weekly wage. – The average weekly insured wage as defined in
14 G.S. 96-1(b)(2).

15 **"§ 96A-2. Eligibility for benefits.**

16 Beginning January 1, 2022, family and medical leave insurance benefits are payable to an
17 individual who:

18 (1) Meets the definition of "covered individual" as defined by G.S. 96A-1(b)(2);
19 and

20 (2) Meets one of the following requirements:

21 a. Because of birth, adoption, or placement through foster care, is caring
22 for a new child during the first year after the birth, adoption, or
23 placement of that child;

24 b. Is caring for a family member with a serious health condition;

25 c. Has a serious health condition;

26 d. Is caring for a covered service member who is the covered individual's
27 next of kin or other family member; or

28 e. Because of any "qualifying exigency leave" arising out of the fact that
29 the family member of the covered individual is on active duty (or has
30 been notified of an impending call or order to active duty) in the
31 Armed Forces.

32 **"§ 96A-3. Duration of benefits.**

33 (a) The maximum number of weeks during which family and medical leave insurance
34 benefits are payable under G.S. 96A-2(a)(2)c. in an application year is 18 weeks.

35 (b) The maximum number of weeks during which family and medical leave insurance
36 benefits are payable under G.S. 96A-2(a)(2)a., (2)b., or (2)e. in an application year is 12 weeks.

37 (c) The maximum number of weeks during which family and medical leave insurance
38 benefits are payable under G.S. 96A-2(a)(2)d. in an application year is 26 weeks.

39 (d) The first payment of benefits must be made to an individual within two weeks after
40 the claim is filed and subsequent payments must be made every two weeks thereafter.

41 **"§ 96A-4. Amount of benefits.**

42 (a) The amount of family and medical leave insurance benefits shall be determined as
43 follows:

44 (1) The weekly benefit shall be determined as follows: (i) the portion of the
45 covered individual's average weekly wage that is equal to or less than one
46 hundred percent (100%) of the State average weekly wage shall be replaced
47 at a rate of ninety percent (90%) and (ii) the portion of an employee's or
48 self-employed individual's average weekly wage that is more than one
49 hundred percent (100%) of the State average weekly wage shall be replaced
50 at a rate of fifty percent (50%).

- 1 (2) The maximum benefit shall be one hundred percent (100%) of the statewide
2 average weekly wage.
- 3 (3) The minimum weekly benefit shall not be less than one hundred dollars
4 (\$100.00) per week except that if the covered individual's average weekly
5 wage is less than one hundred dollars (\$100.00) per week, the weekly benefit
6 shall be the employee's full wage.
- 7 (4) For purposes of this section, a covered individual's average weekly wage shall
8 be the average weekly wage during the 12 months preceding submission of
9 the application (or the average weekly wages during the time the covered
10 individual worked, if it was less than 12 months).

11 (b) Family and medical leave insurance benefits are not payable for less than eight hours
12 of family and medical leave taken in one work week.

13 **"§ 96A-5. Contributions.**

14 (a) Payroll contributions shall be authorized in order to finance the payment of benefits
15 under the family and medical leave insurance program.

16 (b) Beginning on January 1, 2021, for each employee, an employer shall remit to the
17 Families First Fund (Fund), established under G.S. 96A-16, contributions in the form and manner
18 determined by the Division. Annually, not later than October 1, the Assistant Secretary shall fix
19 the contribution rate for the coming calendar year in the manner described in this subsection. For
20 calendar years 2021 and 2022, the Assistant Secretary shall do so based on sound actuarial
21 principles. For calendar year 2023 and thereafter, the Assistant Secretary shall first certify and
22 publish the following information:

- 23 (1) The total amount of family and medical leave insurance benefits paid by the
24 Division during the previous fiscal year;
- 25 (2) The total amount remaining in the Fund at the close of the fiscal year;
- 26 (3) The total amount equal to one hundred forty percent (140%) of the previous
27 fiscal year's expenditure for family and medical leave insurance benefits paid
28 and for the administration of the family and medical leave insurance program;
- 29 (4) The amount by which the total amount remaining in the Fund at the close of
30 the previous fiscal year is less than or greater than one hundred forty percent
31 (140%) of the previous fiscal year's expenditure for family and medical leave
32 insurance benefits paid and for the administration of the family and medical
33 leave insurance program; and
- 34 (5) The amount by which the contribution rate shall be adjusted to ensure that the
35 Fund shall maintain or achieve an annualized amount of not less than one
36 hundred forty percent (140%) of the previous fiscal year's expenditure for
37 family and medical leave insurance benefits paid and for the administration of
38 the family and medical leave insurance program. The contribution rate
39 adjustment, if any, made as the result of the Assistant Secretary's certification
40 and report under this subsection shall supersede the rate previously set forth
41 and shall become effective on January 1 of the following calendar year.

42 (c) A self-employed individual who is electing coverage under G.S. 96A-13 shall be
43 responsible for the employee's share of contributions set forth in subsection (b) of this section on
44 that individual's income from self-employment.

45 (d) An employer shall not deduct more than fifty percent (50%) of the contribution
46 required for an employee by subsection (b) of this section from that employee's wages and shall
47 remit the full contribution required under said subsection to the fund.

48 **"§ 96A-6. Reduced leave schedule.**

49 (a) A covered individual shall be entitled, at the option of the covered individual, to take
50 paid family and medical leave on an intermittent or reduced leave schedule in which all of the

1 leave authorized under this Chapter is not taken sequentially. Family and medical leave insurance
2 benefits for intermittent or reduced leave schedules shall be prorated.

3 (b) The covered individual shall make a reasonable effort to schedule paid family and
4 medical leave under this section so as not to unduly disrupt the operations of the employer. The
5 covered individual shall provide the employer with prior notice of the schedule on which the
6 covered individual will take the leave, to the extent practicable. Paid family and medical leave
7 taken under this section shall not result in a reduction of the total amount of leave to which an
8 employee is entitled beyond the amount of leave actually taken.

9 (c) Nothing in this section shall be construed to entitle a covered individual to more leave
10 than required under G.S. 96A-3.

11 **"§ 96A-7. Leave and employment protection.**

12 (a) Any covered individual who exercises his or her right to family and medical leave
13 insurance benefits shall, upon the expiration of that leave, be entitled to be restored by the
14 employer to the position held by the covered individual when the leave commenced, or to a
15 position with equivalent seniority, status, employment benefits, pay, and other terms and
16 conditions of employment, including fringe benefits and service credits that the covered
17 individual had been entitled to at the commencement of leave.

18 (b) During any leave taken pursuant to G.S. 96A-2, the employer shall maintain any
19 health care benefits the covered individual had prior to taking such leave for the duration of the
20 leave as if the covered individual had continued in employment continuously from the date he or
21 she commenced the leave until the date the family and medical leave insurance benefits
22 terminate; provided, however, that the covered individual shall continue to pay the covered
23 individual's share of the cost of health benefits as required prior to the commencement of the
24 leave.

25 (c) Any employer who violates G.S. 96A-7 or G.S. 96A-8 shall be liable to any eligible
26 employee affected as follows:

27 (1) For damages equal to the amount of (i) any wages, salary, employment
28 benefits, or other compensation denied or lost to such employee by reason of
29 the violation, or (ii) in a case in which wages, salary, employment benefits, or
30 other compensation have not been denied or lost to the employee, any actual
31 monetary losses sustained by the employee as a direct result of the violation,
32 such as the cost of providing care, up to a sum equal to 12 weeks of wages or
33 salary for the employee, (iii) the interest on the amount described in clause (i)
34 calculated at the prevailing rate, and (iv) an additional amount as liquidated
35 damages equal to the sum of the amount described in clause (i) and the interest
36 described in clause (ii), except that if an employer who has violated
37 G.S. 96A-7 or G.S. 96A-8 proves to the satisfaction of the court that the act
38 or omission which violated the section was in good faith and that the employer
39 had reasonable grounds for believing that the act or omission was not a
40 violation, the court may, in the discretion of the court, reduce the amount of
41 the liability to the amount and interest determined under clauses (i) and (ii),
42 respectively.

43 (2) For such equitable relief as may be appropriate, including employment,
44 reinstatement, and promotion.

45 (d) An action to recover the damages or equitable relief prescribed in subsection (c) of
46 this section may be maintained against any employer (including a public agency) in any federal
47 or State court of competent jurisdiction by any one or more employees for and on behalf of the
48 employees or the employees and other employees similarly situated.

49 (e) The court in such an action shall, in addition to any judgment awarded to the plaintiff,
50 allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to
51 be paid by the defendant.

1 (f) Except as provided by subsection (g) of this section, an action may be brought under
2 this section not later than two years after the date of the last event constituting the alleged
3 violation for which the action is brought.

4 (g) In the case of an action brought for a willful violation of G.S. 96A-7 or G.S. 96A-8,
5 the action may be brought within three years of the date of the last event constituting the alleged
6 violation for which such action is brought.

7 **"§ 96A-8. Retaliatory personnel actions prohibited.**

8 (a) It shall be unlawful for an employer or any other person to interfere with, restrain,
9 deny the exercise of, or the attempt to exercise, any right protected under this Chapter.

10 (b) An employer, temporary help company, employment agency, employee organization,
11 or other person shall not take retaliatory personnel action or otherwise discriminate against a
12 person because he or she exercised rights protected under this Chapter. Such rights include, but
13 are not limited to, the right to request, file for, apply for, or use benefits provided for under this
14 Chapter; to take leave from work under this Chapter; communicate to the employer or any other
15 person or entity an intent to file a claim, a complaint with the Division or courts, or an appeal; or
16 has testified or is about to testify or has assisted in any investigation, hearing, or proceeding under
17 this Chapter, at any time, including during the period in which the person receives family and
18 medical leave insurance benefits under this Chapter; inform any person about any employer's
19 alleged violation of this Chapter; and the right to inform any person of his or her rights under this
20 Chapter.

21 (c) It shall be unlawful for an employer's absence control policy to count paid family and
22 medical leave taken under this Chapter as an absence that may lead to or result in discipline,
23 discharge, demotion, suspension, or any other adverse action.

24 (d) Protections of this section shall apply to any person who mistakenly, but in good faith,
25 alleges violations of this Chapter.

26 (e) This section shall be enforced as provided in subsections (c) through (g) of
27 G.S. 96A-7.

28 **"§ 96A-9. Coordination of benefits.**

29 (a) Leave taken with wage replacement under this Chapter that also qualifies as leave
30 under the Family and Medical Leave Act shall run concurrently with leave taken under the
31 Family and Medical Leave Act.

32 (b) An employer may require that payment made pursuant to this Chapter be made
33 concurrently or otherwise coordinated with payment made or leave allowed under the terms of
34 disability or family care leave under a collective bargaining agreement or employer policy. The
35 employer must give employees written notice of this requirement.

36 (c) This Chapter does not diminish an employer's obligation to comply with any of the
37 following that provide more generous leave:

38 (1) A collective bargaining agreement;

39 (2) An employer policy; or

40 (3) Any law.

41 (d) An individual's right to leave under this Chapter may not be diminished by a collective
42 bargaining agreement entered into or renewed, or an employer policy adopted or retained, after
43 the effective date of this Chapter. Any agreement by an individual to waive his or her rights under
44 this Chapter is void as against public policy.

45 **"§ 96A-10. Notice.**

46 (a) Each employer shall provide written notice to each employee upon hiring and
47 annually thereafter. An employer shall also provide written notice to an employee when the
48 employee requests leave under this Chapter, or when the employer acquires knowledge that an
49 employee's leave may be for a qualifying reason under G.S. 96A-2. Such notice shall include: (i)
50 the employee's right to family and medical leave insurance benefits under this Chapter and the
51 terms under which it may be used, (ii) the amount of family and medical leave insurance benefits,

1 (iii) the procedure for filing a claim for benefits, (iv) the right to job protection and benefits
2 continuation under G.S. 96A-7, (v) that discrimination and retaliatory personnel actions against
3 a person for requesting, applying for, or using family and medical leave insurance benefits is
4 prohibited under G.S. 96A-8, and (vi) that the employee has a right to file a complaint for
5 violations of this Chapter. An employer shall also display and maintain a poster in a conspicuous
6 place accessible to employees at the employer's place of business that contains the information
7 required by this section in English, Spanish, and any language that is the first language spoken
8 by at least five percent (5%) of the employer's workforce, provided that such notice has been
9 provided by the Division. The Assistant Secretary may adopt regulations to establish additional
10 requirements concerning the means by which employers shall provide such notice.

11 (b) Employees shall provide notice to their employers as soon as practicable of their
12 intention to take leave under this Chapter.

13 **"§ 96A-11. Enforcement.**

14 (a) The Assistant Secretary shall establish a system for appeals in the case of a denial of
15 family and medical leave insurance benefits. In establishing such system, the Assistant Secretary
16 may utilize any and all procedures and appeals mechanisms established under G.S. 96-15.

17 (b) Judicial review of any decision with respect to family and medical leave insurance
18 benefits shall be permitted in a court of competent jurisdiction after a party aggrieved thereby
19 has exhausted all administrative remedies established by the Assistant Secretary.

20 (c) The Assistant Secretary shall implement procedures to ensure confidentiality of all
21 information related to any claims filed or appeals taken to the maximum extent permitted by
22 applicable laws.

23 **"§ 96A-12. Erroneous payments and disqualification for benefits.**

24 (a) A covered individual is disqualified from family and medical leave insurance benefits
25 for one year if the individual is determined by the Assistant Secretary to have willfully made a
26 false statement or misrepresentation regarding a material fact or willfully failed to report a
27 material fact, to obtain benefits under this Chapter.

28 (b) If family and medical leave insurance benefits are paid erroneously or as a result of
29 willful misrepresentation, or if a claim for family and medical leave insurance benefits is rejected
30 after benefits are paid, the Division may seek repayment of benefits from the recipient. The
31 Assistant Secretary shall exercise his or her discretion to waive, in whole or in part, the amount
32 of any such payments where the recovery would be against equity and good conscience.

33 **"§ 96A-13. Elective coverage.**

34 (a) A self-employed person, including a sole proprietor, partner, or joint venturer, may
35 elect coverage under this Chapter for an initial period of not less than three years. The
36 self-employed person must file a notice of election in writing with the Assistant Secretary, as
37 required by the Division. The election becomes effective on the date of filing the notice. As a
38 condition of election, the self-employed person must agree to supply any information concerning
39 income that the Division deems necessary.

40 (b) A self-employed person who has elected coverage may withdraw from coverage
41 within 30 days after the end of the three-year period of coverage, or at such other times as the
42 Assistant Secretary may prescribe by rule, by filing written notice with the Assistant Secretary,
43 such withdrawal to take effect not sooner than 30 days after filing the notice.

44 **"§ 96A-14. Family and medical leave insurance program.**

45 (a) By January 1, 2021, the Division shall establish and administer a family and medical
46 leave insurance program and begin collecting contributions as specified in this Chapter. By
47 January 1, 2022, the Division shall start receiving claims from and paying family and medical
48 leave insurance benefits to covered individuals.

49 (b) The Division shall establish reasonable procedures and forms for filing claims for
50 benefits under this Chapter and shall specify what supporting documentation is necessary to

1 support a claim for benefits, including any documentation required from a health care provider
2 for proof of a serious health condition.

3 (c) The Division shall notify the employer within five business days of a claim being
4 filed pursuant to this Chapter.

5 (d) The Division shall use information sharing and integration technology to facilitate the
6 disclosure of relevant information or records, so long as an individual consents to the disclosure
7 as required under State law.

8 (e) Information contained in the files and records pertaining to an individual under this
9 Chapter are confidential and not open to public inspection, other than to public employees in the
10 performance of their official duties. However, the individual or an authorized representative of
11 an individual may review the records or receive specific information from the records upon the
12 presentation of the individual's signed authorization.

13 (f) The Department of Commerce shall adopt rules as necessary to implement this
14 Chapter.

15 **"§ 96A-15. Federal income tax.**

16 If the Internal Revenue Service determines that family and medical leave insurance benefits
17 under this Chapter are subject to federal income tax, the Division must advise an individual filing
18 a new claim for family and medical leave insurance benefits, at the time of filing such claim, that
19 the Internal Revenue Service has determined that benefits are subject to federal income tax and
20 that requirements exist pertaining to estimated tax payments.

21 **"§ 96A-16. Family and medical leave insurance account fund; establishment and**
22 **investment.**

23 (a) The Families First Fund (Fund) is created in the custody of the Division. Expenditures
24 from the Fund may be used only for the purposes of the family and medical leave insurance
25 benefits program. Only the Assistant Secretary of the Division or the Assistant Secretary's
26 designee may authorize expenditures from the Fund.

27 (b) Whenever, in the judgment of the Division, there shall be in the Fund an amount of
28 funds in excess of that amount deemed by the Division to be sufficient to meet the current
29 expenditures properly payable therefrom, the Division shall have full power to invest, reinvest,
30 manage, contract, sell, or exchange investments acquired with such excess funds in the manner
31 prescribed by North Carolina law.

32 **"§ 96A-17. Reports.**

33 Beginning January 1, 2023, the Division shall report to the General Assembly by April 1 of
34 each year on projected and actual program participation by purpose listed in G.S. 96A-2, gender
35 of beneficiary, premium rates, fund balances, outreach efforts, and, for leaves taken under
36 G.S. 96A-2, family members for whom leave was taken to provide care.

37 **"§ 96A-18. Public education.**

38 The Division shall conduct a public education campaign to inform workers and employers
39 regarding the availability of family and medical leave insurance benefits. Outreach information
40 shall be available in English, Spanish, French, German, Vietnamese, Chinese, Arabic, Korean,
41 Tagalog, Hindi, Gujarati, Russian, Hmong, and other languages spoken by more than five percent
42 (5%) of the State's population.

43 **"§ 96A-19. Sharing technology.**

44 The Division is encouraged to use State data collection and technology to the extent possible
45 and to integrate the program with existing State policies.

46 **"§ 96A-20. Severability.**

47 If any provision of this Chapter or its application to any person or circumstance is held
48 invalid, the remainder of the Chapter or the application of the provision to other persons or
49 circumstances is not affected."

50 **SECTION 2.** All rules necessary for implementation of this act shall be adopted by
51 July 1, 2020.

1

SECTION 3. This act becomes effective January 1, 2020.