

Amendment No. 580

Assembly Amendment to Assembly Bill No. 266 (BDR 32-709)

Proposed by: Assembly Committee on Taxation

Amendment Box: Replaces Amendment No. 436.

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

CBC/BJF



Date: 4/20/2017

A.B. No. 266—Authorizes tax credits for employers who provide paid family medical leave for employees. (BDR 32-709)



ASSEMBLY BILL NO. 266—COMMITTEE ON TAXATION

MARCH 7, 2017

Referred to Committee on Taxation

SUMMARY—~~Authorizes tax credits.~~ Provides for ~~employers who provide~~ a deduction from certain taxes for certain wages paid by an employer under a qualifying paid family medical leave ~~for employees.~~ policy. (BDR 32-709)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to taxation; ~~authorizing credits against~~ providing a deduction from the payroll tax ~~for commerce tax imposed on a business~~ for certain amounts of wages paid by ~~the business for~~ an employer under a qualifying paid family medical leave policy for employees; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law imposes a tax, commonly known as the modified business tax, on financial institutions and other businesses based on the amount of wages paid to employees each calendar quarter. (NRS 363A.130, 363B.110) ~~Existing law also imposes an annual commerce tax on each business entity engaged in business in this State whose Nevada gross revenue in a fiscal year exceeds \$4,000,000 at a rate that is based on the industry in which the business entity is primarily engaged. (NRS 363C.200).~~

Sections 1 and 2 of this bill ~~entitle~~ authorize an employer ~~who provides paid~~ to deduct from the total amount of wages reported and upon which the tax is imposed the family medical leave ~~to a credit against the modified business tax based on the amount~~ wages paid by the employer ~~for paid family medical leave to the employees of the employer.~~ Section 3 of this bill entitles a business entity to such a credit against the commerce tax if the business entity has not also applied for a credit against the modified business tax based on paid family medical leave paid in the same quarter. to an employee who has taken leave under the employer's paid family medical leave policy: (1) for the birth of a child or placement of a child with the employee for adoption or foster care; (2) to care for a spouse, domestic partner, child, ward, grandchild or parent who has a serious health condition; (3) for a serious health condition that makes the employee unable to perform the essential functions of his or her position; or (4) for any exigency arising out of the fact that a spouse, child or parent of the employee is a member of the Armed Forces of the United States assigned to active duty or called to active duty. To be eligible for the ~~credit~~ deduction, an employer must provide paid family medical leave under a family medical leave policy that satisfies certain requirements. The amount of the ~~credit~~ deduction is equal to the family medical leave wages paid by the employer during the period for which the tax is paid, but an employer is not allowed to receive a ~~credit~~ deduction for any ~~portion of the~~ family medical leave wages ~~paid to an employee~~ that ~~exceeds~~ exceed \$500 per employee per week. ~~for family.~~ In addition, an employer is not authorized to receive a

deduction for family medical leave wages paid to an employee after the employee has taken 12 weeks. ~~Sections 1-3 also authorize the credit to be carried forward to future years under certain circumstances, except that any credit expires on the date that is 5 years after the end of the period in which the credit is claimed and prohibit the carry forward or application of the credit to any tax liability of the employer incurred after that date.~~ of leave in a 12-month period. Finally, an employer is not authorized to receive a deduction for family medical leave wages paid to an employee if the employer receives from a governmental agency any benefit or compensation directly relating to the family medical leave wages paid to the employee.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 363A of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsections 2 and 3, an employer may deduct from the total amount of wages reported and upon which the excise tax is imposed pursuant to NRS 363A.130 in an amount provided for in subsection 2, which is based on the amount off the family medical leave wages paid in a calendar quarter by the employer to an employee of the employer pursuant to under a paid family medical leave policy that satisfies the requirements of subsections 3, 4 and 5, if the employee has taken leave under the policy for one or more of the following reasons:

(a) The birth of a child or placement of a child with the employee for adoption or foster care.

(b) To care for a spouse, domestic partner as defined in NRS 122A.030, child, ward, grandchild or parent of the employee who has a serious health condition.

(c) For a serious health condition that makes the employee unable to perform the essential functions of his or her position.

(d) For any qualifying exigency arising out of the fact that a spouse, child or parent of the employee is a member of the Armed Forces of the United States assigned to active duty or called to active duty.

2. Except as otherwise provided in this subsection, a credit authorized by subsection 1 must be in an amount equal to the family medical leave wages paid by the employer to employees of the employer during the calendar quarter for which the tax is paid. An employer may not receive credit for the portion of the total amount of the family medical leave wages paid to an employee that exceeds that may be deducted pursuant to subsection 1 may not exceed \$500 per employee per week for any employee receiving family medical leave wages for a period of more than any leave taken after the employee has taken 12 weeks of leave in a 12-month period.

3. An employer may not claim a deduction for family medical leave wages paid to an employee if the employer receives from a governmental agency any benefit or compensation directly relating to the family medical leave wages paid to the employee.

4. To qualify for a credit authorized by subsection 1, an employer must provide paid family medical leave to employees of the employer pursuant to a family medical leave policy that must:

1 (a) ~~Must allow~~ Allow an employee to take up to 12 weeks of leave in a 12-
2 month period for one or more of the ~~following~~ reasons ~~+~~

3 ~~(1) The birth of a child or placement of a child with the employee for~~
4 ~~adoption or foster care.~~

5 ~~(2) To care for a spouse, child or parent who has a serious health~~
6 ~~condition.~~

7 ~~(3) For a serious health condition that makes the employee unable to~~
8 ~~perform the essential functions of his or her position.~~

9 ~~(4) For any qualifying exigency arising out of the fact that a spouse,~~
10 ~~child or parent is a member of the Armed Forces of the United States assigned to~~
11 ~~active duty or called to active duty.~~ set forth in paragraphs (a) to (d), inclusive, of
12 subsection 1.

13 (b) ~~Must require~~ Provide for the payment of family medical leave wages to
14 the employee while the employee is taking leave that may not be less than 75
15 percent of his or her normal wages.

16 (c) ~~Upon approval of the employer, may allow an employee to take paid~~
17 ~~family medical leave on an intermittent or reduced schedule basis.~~

18 ~~(d) Must provide~~ Provide that the health coverage of the employee under
19 any health insurance or health benefit plan provided by the employer is
20 maintained on the same terms as if the employee had not taken leave and that the
21 taking of leave may not result in the loss of any employment benefit that accrued
22 before the start of his or her leave.

23 ~~+~~ ~~(e) Must provide~~

24 (d) Provide that upon the employee's return from leave, the employee is
25 restored to his or her original or equivalent position with equivalent pay, benefits
26 and other terms of employment.

27 ~~++ 5.~~ A paid family medical leave policy that meets the requirements of
28 subsection 3+ 4 may: ~~require an employee to~~

29 (a) ~~Request~~ Allow an employee, upon approval of the employer, to take paid
30 family medical leave on an intermittent or reduced-schedule basis.

31 (b) Require an employee to request leave under the family medical leave
32 policy within a reasonable time before taking the leave except that such time may
33 not be significantly different from the time required to request paid time off, sick
34 leave, annual leave or other leave offered by the employer.

35 ~~+~~ ~~(b) Provide~~

36 (c) Require an employee to provide to the employer certification ~~from a~~
37 ~~provider of health care~~ that confirms or supports the reason the employee
38 provided for requesting leave.

39 ~~+~~ ~~(c) Use~~

40 (d) Require an employee to use any other accrued paid leave before taking
41 paid family medical leave.

42 ~~+~~ ~~5. A credit described in subsection 1 must not be applied retroactively.~~

43 6. If the amount of a credit described in subsection 1 exceeds the tax
44 liability of an employer pursuant to this chapter for the calendar quarter in which
45 the credit is claimed, the excess amount of the credit may be carried forward and
46 applied to the tax liability of the employer pursuant to this chapter for the next
47 following calendar quarter or calendar quarters for which the employer has a tax
48 liability pursuant to this chapter, except that any credit or the excess amount of
49 any credit expires on the date that is 5 years after the end of the calendar quarter
50 in which the credit is claimed and must not be applied to any tax liability of the
51 employer incurred pursuant to this chapter on or after that date. If the excess
52 amounts of credits for more than 1 calendar quarter are carried forward by an
53 employer pursuant to this subsection, the excess amount of the credit from the

~~earliest calendar quarter must be applied first.~~ To claim a deduction pursuant to subsection 1, the employer must:

(a) Obtain from each employee to whom family medical leave wages are paid documentation to verify that the employee took leave for one or more of the reasons specified in paragraphs (a) to (d), inclusive, of subsection 1; and

(b) Submit to the Department an affidavit under penalty of perjury stating that the requirements for claiming the deduction pursuant to this section have been satisfied.

7. An employer claiming the deduction allowed pursuant to this section shall, upon the request of the Department, provide the Department with such documentation as the Department deems appropriate to substantiate that claim.

8. As used in this section:

~~(a) "Employee" means an employee whose wages are included within the measure of the tax imposed upon an employer by NRS 363A.130.~~

~~(b) "Family," "family medical leave wages" means wages paid to an employee while the employee is taking paid family medical leave.~~

Sec. 2. Chapter 363B of NRS is hereby amended by adding thereto a new section to read as follows:

1. ~~An employer is entitled to a credit against the tax imposed upon the employer by~~ Except as otherwise provided in subsections 2 and 3, an employer may deduct from the total amount of wages reported and upon which the excise tax is imposed pursuant to NRS 363B.110 ~~in an amount provided for in subsection 2, which is based on the amount off~~ the family medical leave wages paid in a calendar quarter by the employer to an employee ~~for the employer pursuant to~~ under a paid family medical leave policy that satisfies the requirements of subsections ~~3~~ 4 and ~~4~~ 5, if the employee has taken leave under the policy for one or more of the following reasons:

(a) The birth of a child or placement of a child with the employee for adoption or foster care.

(b) To care for a spouse, domestic partner as defined in NRS 122A.030, child, ward, grandchild or parent of the employee who has a serious health condition.

(c) For a serious health condition that makes the employee unable to perform the essential functions of his or her position.

(d) For any qualifying exigency arising out of the fact that a spouse, child or parent of the employee is a member of the Armed Forces of the United States assigned to active duty or called to active duty.

2. ~~Except as otherwise provided in this subsection, a credit authorized by subsection 1 must be in an amount equal to the family medical leave wages paid by the employer to employees of the employer during the calendar quarter for which the tax is paid. An employer may not receive credit for the portion of the total amount of the family medical leave wages paid to an employee that exceeds~~ that may be deducted pursuant to subsection 1 may not exceed \$500 per employee per week ~~for~~ and no family medical leave wages ~~paid to an employee~~ may be deducted for any employee receiving family medical leave wages for ~~a period of more than~~ any leave taken after the employee has taken 12 weeks ~~of~~ of leave in a 12-month period.

3. An employer may not claim a deduction for family medical leave wages paid to an employee if the employer receives from a governmental agency any benefit or compensation directly relating to the family medical leave wages paid to the employee.

1 4. To qualify for a credit authorized by subsection 1, an employer must
2 provide paid family medical leave to employees of the employer pursuant to a
3 family medical leave policy that ~~it~~ must:

4 (a) ~~Must allow~~ Allow an employee to take up to 12 weeks of leave in a 12-
5 month period for one or more of the ~~following~~ reasons ~~it~~:

6 ~~(1) The birth of a child or placement of a child with the employee for~~
7 ~~adoption or foster care.~~

8 ~~(2) To care for a spouse, child or parent who has a serious health~~
9 ~~condition.~~

10 ~~(3) For a serious health condition that makes the employee unable to~~
11 ~~perform the essential functions of his or her position.~~

12 ~~(4) For any qualifying exigency arising out of the fact that a spouse,~~
13 ~~child or parent is a member of the Armed Forces of the United States assigned to~~
14 ~~active duty or called to active duty.] set forth in paragraphs (a) to (d), inclusive, of~~
15 subsection 1.

16 (b) ~~Must require~~ Provide for the payment of family medical leave wages to
17 the employee while the employee is taking leave that may not be less than 75
18 percent of his or her normal wages.

19 (c) ~~Upon approval of the employer, may allow an employee to take paid~~
20 ~~family medical leave on an intermittent or reduced schedule basis.~~

21 ~~(d) Must provide~~ Provide that the health coverage of the employee under
22 any health insurance or health benefit plan provided by the employer is
23 maintained on the same terms as if the employee had not taken leave and that the
24 taking of leave may not result in the loss of any employment benefit that accrued
25 before the start of his or her leave.

26 ~~(e) Must provide~~

27 (d) Provide that upon the employee's return from leave, the employee is
28 restored to his or her original or equivalent position with equivalent pay, benefits
29 and other terms of employment.

30 ~~it~~ 5. A paid family medical leave policy that meets the requirements of
31 subsection ~~3~~ 4 may: ~~require an employee to~~

32 (a) ~~Request~~ Allow an employee, upon approval of the employer, to take paid
33 family medical leave on an intermittent or reduced-schedule basis.

34 (b) Require an employee to request leave under the family medical leave
35 policy within a reasonable time before taking the leave except that such time may
36 not be significantly different from the time required to request paid time off, sick
37 leave, annual leave or other leave offered by the employer.

38 ~~(b) Provide~~

39 (c) Require an employee to provide to the employer certification ~~from a~~
40 ~~provider of health care~~ that confirms or supports the reason the employee
41 provided for requesting leave.

42 ~~(c) Use~~

43 (d) Require an employee to use any other accrued paid leave before taking
44 paid family medical leave.

45 ~~5.~~ A credit described in subsection 1 must not be applied retroactively.]

46 6. ~~If the amount of a credit described in subsection 1 exceeds the tax~~
47 ~~liability of an employer pursuant to this chapter for the calendar quarter in which~~
48 ~~the credit is claimed, the excess amount of the credit may be carried forward and~~
49 ~~applied to the tax liability of the employer pursuant to this chapter for the next~~
50 ~~following calendar quarter or calendar quarters for which the employer has a tax~~
51 ~~liability pursuant to this chapter, except that any credit or the excess amount of~~
52 ~~any credit expires on the date that is 5 years after the end of the calendar quarter~~
53 ~~in which the credit is claimed and must not be applied to any tax liability of the~~

~~employer incurred pursuant to this chapter on or after that date. If the excess amounts of credits for more than 1 calendar quarter are carried forward by an employer pursuant to this subsection, the excess amount of the credit from the earliest calendar quarter must be applied first.~~ To claim a deduction pursuant to subsection 1, the employer must:

(a) Obtain from each employee to whom family medical leave wages are paid documentation to verify that the employee took leave for one or more of the reasons specified in paragraphs (a) to (d), inclusive, of subsection 1; and

(b) Submit to the Department an affidavit under penalty of perjury stating that the requirements for claiming the deduction pursuant to this section have been satisfied.

7. An employer claiming the deduction allowed pursuant to this section shall, upon the request of the Department, provide the Department with such documentation as the Department deems appropriate to substantiate that claim.

8. As used in this section:

(a) "Employee" means an employee whose wages are included within the measure of the tax imposed upon an employer by NRS 363B.110.

(b) "Family", "family medical leave wages" means wages paid to an employee while the employee is taking paid family medical leave.

~~Sec. 3. Chapter 363C of NRS is hereby amended by adding thereto a new section to read as follows:~~

~~1. A business entity is entitled to a credit against the tax imposed upon the business entity by NRS 363C.200 in an amount provided for in subsection 2, which is based on the amount of family medical leave wages paid by the business entity to an employee of the business entity pursuant to a family medical leave policy that satisfies the requirements of subsections 3 and 4.~~

~~2. Except as otherwise provided in this subsection, a credit authorized by subsection 1 must be in an amount equal to the family medical leave wages paid by the business entity to employees of the business entity during the taxable year. An employer may not receive credit for the portion of the family medical leave wages paid to an employee that exceeds \$500 per week or for family medical leave wages paid to an employee for a period of more than 12 weeks.~~

~~3. To qualify for a credit authorized by subsection 1, the business entity must provide paid family medical leave pursuant to a family medical leave policy that:~~

~~(a) Must allow an employee to take up to 12 weeks of leave in a 12-month period for one or more of the following reasons:~~

~~(1) The birth of a child or placement of a child with the employee for adoption or foster care;~~

~~(2) To care for a spouse, child or parent who has a serious health condition;~~

~~(3) For a serious health condition that makes the employee unable to perform the essential functions of his or her position;~~

~~(4) For any qualifying exigency arising out of the fact that a spouse, child or parent is a member of the Armed Forces of the United States assigned to active duty or called to active duty.~~

~~(b) Must require the payment of family medical leave wages to the employee while the employee is taking leave that may not be less than 75 percent of his or her normal wages;~~

~~(c) Upon approval of the business entity, may allow an employee to take paid family medical leave on an intermittent or reduced schedule basis;~~

~~(d) Must provide that the health coverage of the employee under any health insurance or health benefit plan provided by the business entity is maintained on~~

~~the same terms as if the employee had not taken leave and that the taking of leave may not result in the loss of any employment benefit that accrued before the start of his or her leave.~~

~~(c) Must provide that upon the employee's return from leave, the employee is restored to his or her original or equivalent position with equivalent pay, benefits and other terms of employment.~~

~~4. A paid family medical leave policy that meets the requirements of subsection 3 may require an employee to:~~

~~(a) Request leave under the family medical leave policy within a reasonable time before taking the leave except that such time may not be significantly different from the time required to request paid time off, sick leave, annual leave or other leave offered by the business entity.~~

~~(b) Provide to the business entity certification from a provider of health care that confirms or supports the reason the employee provided for requesting leave.~~

~~(c) Use any accrued paid leave before taking paid family medical leave.~~

~~5. A credit described in subsection 1 must not be applied retroactively.~~

~~6. If the amount of a credit described in subsection 1 exceeds the tax liability of a business entity pursuant to this chapter for the taxable year in which the credit is claimed, the excess amount of the credit may be carried forward and applied to the tax liability of the business entity pursuant to this chapter for the next following taxable year or taxable years for which the business entity has a tax liability pursuant to this chapter, except that any credit or the excess amount of any credit expires on the date that is 5 years after the end of the taxable year in which the credit is claimed and must not be applied to any tax liability of the business entity incurred pursuant to this chapter on or after that date. If the excess amounts of credits for more than 1 taxable year are carried forward by a business entity pursuant to this subsection, the excess amount of the credit from the earliest taxable year must be applied first.~~

~~7. A business entity that receives a credit pursuant to section 1 or 2 of this act for any wages paid during a calendar quarter is not entitled to the credit described in subsection 1 for any wages paid during the same calendar quarter.~~

~~8. As used in this section:~~

~~(a) "Employee" means a natural person whose manner and means of performance of work are subject to the right of control of, or are controlled by, the business entity. The term does not include independent contractors or persons rendering professional services to a business entity on a fee, retainer or contract basis.~~

~~(b) "Family medical leave wages" means wages paid to an employee while the employee is taking paid family medical leave.] (Deleted by amendment.)~~

Sec. 4. 1. This act becomes effective upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks necessary to carry out the provisions of this act.

2. This section and sections 1 and 2 of this act become effective on January 1, 2018, for all other purposes.

~~3. Section 3 of this act becomes effective on July 1, 2018, for all other purposes.]~~