

Temporary Caregiver Insurance

This act establishes a state temporary disability insurance program to provide benefits to workers who take time off for a seriously ill child, spouse, parent, parent-in-law, grandparent, domestic partner or to bond with a new child. Temporary caregiver benefits for an individual shall be limited to a maximum of four weeks in a benefit year and no individual shall be paid temporary caregiver benefits and temporary disability benefits which together exceed 30 times his or her weekly benefit rate in any benefit year.

Submitted as:

Rhode Island

[SB 231](#)

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Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] Temporary Caregiver Insurance.
2
- 3 Section 2. [*Temporary caregiver insurance.*]
4 The purpose of this chapter is to establish, within the state temporary disability insurance
5 program, a temporary caregiver insurance program to provide wage replacement benefits in
6 accordance with the provisions of this chapter, to workers who take time off work to care for a
7 seriously ill child, spouse, domestic partner, parent, parent-in-law, grandparent, or to bond with a
8 new child.
9
- 10 Definitions as used in this chapter:
11 (1) "Child" means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a
12 legal ward, a son or daughter of a domestic partner, or a son or daughter of an employee who
13 stands in loco parentis to that child.
14 (2) "Newborn child" means a child under one year of age.
15 (3) "Adopted child" means a child adopted by, or placed for adoption with, the employee.
16 (4) "Bonding or bond" means to develop a psychological and emotional attachment between a
17 child and his or her parent(s) or persons who stand in loco parentis. This shall involve being
18 in one another's physical presence.
19 (5) "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other
20 person who stands in loco parentis to the employee or the employee's spouse or domestic
21 partner when he/she was a child.
22 (6) "Domestic partner" means a party to a civil union as defined by chapter 15-3.1.
23 (7) "Spouse" means a party in a common law marriage, a party in a marriage conducted and
24 recognized by another state or country, or in a marriage as defined by chapter 15-3.
25 (8) "Grandparent" means a parent of the employee's parent.
26 (9) "Parent-in-law" means the parent of the employee's spouse or domestic partner.
27 (10) "Employee" means any person who is or has been employed by an employer subject to
28 [insert citation] of this title and in employment subject to those chapters.

- 1 (11) "Serious health condition" means any illness, injury, impairment, or physical or mental
2 condition that involves inpatient care in a hospital, hospice, residential health care facility, or
3 continued treatment or continuing supervision by a licensed health care provider.
- 4 (12) "Department" means the department of labor and training.
- 5 (13) "Persons who stand in loco parentis" means those with day-to-day responsibilities to care
6 for and financially support a child or, in the case of an employee, who had such responsibility
7 for the employee when the employee was a child. A biological or legal relationship shall not
8 be required.

9
10 Section 3. [*Benefits.*]

- 11 (a) Subject to the conditions set forth in this chapter, an employee shall be eligible for temporary
12 caregiver benefits for any week in which he or she is unable to perform his or her regular and
13 customary work because he or she is:
- 14 (1) Bonding with a newborn child or a child newly placed for adoption or foster care with the
15 employee or domestic partner in accordance with the provisions of Section 4(c)(1); or
16 (2) Caring for a child, a parent, parent-in-law, grandparent, spouse, or domestic partner, who
17 has a serious health condition, subject to a waiting period in accordance with the
18 provisions of [Insert citation]. Employees may use accrued sick time during eligibility
19 waiting period in accordance with the policy of the individual's employer.
- 20 (b) Temporary caregiver benefits shall be available only to the employee exercising his or her
21 right to leave while covered by the temporary caregiver insurance program. An employee
22 shall file a written intent with their employer, in accordance with rules and regulations
23 promulgated by the department, with a minimum of thirty (30) days notice prior to
24 commencement of the family leave. Failure by the employee to provide the written intent
25 may result in delay or reduction in the claimant's benefits, except in the event the time of the
26 leave is unforeseeable or the time of the leave changes for unforeseeable circumstances.
- 27 (c) Employees cannot file for both temporary caregiver benefits and temporary disability
28 benefits for the same purpose, concurrently, in accordance with all provisions of this act and
29 [Insert citation].
- 30 (d) Temporary caregiver benefits may be available to any individual exercising his or her right to
31 leave while covered by the temporary caregiver insurance program, commencing on or after
32 [Insert effective date], which shall not exceed the individual's maximum benefits in
33 accordance with [Insert citation]. The benefits for the temporary caregiver program shall be
34 payable with respect to the first day of leave taken after the waiting period and each
35 subsequent day of leave during that period of family temporary disability leave. Benefits
36 shall be in accordance with the following:
- 37 (1) Beginning [Insert effective date], temporary caregiver benefits shall be limited to a
38 maximum of four (4) weeks in a benefit year;
- 39 (e) In addition, no individual shall be paid temporary caregiver benefits and temporary disability
40 benefits which together exceed thirty (30) times his or her weekly benefit rate in any benefit
41 year.
- 42 (f) Any employee who exercises his or her right to leave covered by temporary caregiver
43 insurance under this chapter shall, upon the expiration of that leave, be entitled to be restored
44 by the employer to the position held by the employee when the leave commenced, or to a
45 position with equivalent seniority, status, employment benefits, pay, and other terms and

1 conditions of employment including fringe benefits and service credits that the employee had
2 been entitled to at the commencement of leave.

- 3 (g) During any caregiver leave taken pursuant to this chapter, the employer shall maintain any
4 existing health benefits of the employee in force for the duration of the leave as if the
5 employee had continued in employment continuously from the date he or she commenced the
6 leave until the date the caregiver benefits terminate; provided, however, that the employee
7 shall continue to pay any employee shares of the cost of health benefits as required prior to
8 the commencement of the caregiver benefits.
- 9 (h) No individual shall be entitled to waiting period credit or temporary caregiver benefits under
10 this section for any week beginning prior to [Insert effective date].
- 11 (i) Temporary caregiver benefits shall be in accordance with federal Family and Medical Leave
12 Act (FMLA) P.L. 103-3 and [insert state citation] An employer may require an employee
13 who is entitled to leave under the federal Family and Medical Leave Act, PL 103-3 and/or
14 the [state] Parental and Family Medical Leave Act who exercises his or her right to benefits
15 under the temporary caregiver insurance program under this chapter, to take any temporary
16 caregiver benefits received, concurrently, with any leave taken pursuant to the federal Family
17 and Medical Leave Act and/or the [state] Parental and Family Medical Leave Act.

18
19 Section 4. [*Certification of eligibility for leave.*]

- 20 (a) An individual who exercises his or her right to leave covered by the temporary caregiver
21 insurance program under this chapter shall file a certificate form with all information
22 required by the department.
- 23 (b) For leave for reason of caring for a seriously ill family member, an employee shall file a
24 certificate with the department that shall contain:
- 25 (1) A diagnosis and diagnostic code prescribed in the international classification of diseases,
26 or where no diagnosis has yet been obtained, a detailed statement of symptoms;
 - 27 (2) The date if known, on which the condition commenced;
 - 28 (3) The probable duration of the condition;
 - 29 (4) An estimate of the amount of time that the licensed qualified health care provider
30 believes the employee is needed to care for the family member;
 - 31 (5) A statement that the serious health condition warrants the participation of the employee
32 to provide care for his or her family member. "Warrants the participation of the
33 employee" includes, but is not limited to, providing psychological comfort, arranging
34 third-party care for the family member as well as directly providing, or participating in
35 the medical and physical care of the patient; and
 - 36 (6) A certificate filed to establish medical eligibility of the serious health condition of the
37 employee's family member shall be made by the family member's treating licensed
38 qualified health care provider.
 - 39 (7) In the case of a parent, or persons who are in loco parentis caring for the serious health
40 condition of a foster care child, the employee shall submit all required information in
41 accordance with this section, with a written request to the department of children, youth
42 and families for the release of medical information by the child's treating licensed
43 qualified health care provider. The department of children, youth and families shall
44 transmit the requested medical information, pending all properly submitted forms, to the
45 department of labor and training, within ten (10) business days of request. In the absence
46 of the requested transmitted medical information by the department of children, youth

1 and families within ten (10) business days, the employee may request the licensed
2 qualified healthcare provider to directly transmit the medical eligibility of the serious
3 health condition to the department of labor and training. Payment shall not be delayed, in
4 accordance with all provisions of [Insert citation], as a result of delays by the department
5 of children, youth and families in transmitting medical information.

6 (c) The department shall develop a certificate of eligibility form for leave in the case of bonding
7 as defined herein, for the birth of a newborn child of the employee or the employee's
8 domestic partner, or the placement of a child with the employee in connection with the
9 adoption or foster care of the child by the employee or domestic partner, or persons in loco
10 parentis. Information shall include the following:

11 (1) A birth certificate, certificate of adoption, or other competent evidence showing the
12 employee or the employee's domestic partner, or persons in loco parentis is the parent of
13 the child within twelve (12) months of the child's adoption, birth or placement for
14 adoption or foster care with the employee.
15

16 Section 5. [*Determination of a claim.*]

17 (a) In accordance with [insert citation], upon the filing of a claim, the director shall promptly
18 examine the claim and on the basis of facts found by the director and records maintained by
19 the department, the claim shall be determined to be valid or invalid, if the claim is
20 determined to be valid, the director shall promptly notify the claimant as to the week with
21 respect to which benefits shall commence, the weekly benefit amount payable, and the
22 maximum duration of those benefits. If the claim is determined to be invalid, the director
23 shall likewise notify the claimant and any other interested parties of that determination and
24 the reasons for it. if the processing of the claim is delayed for any reason, the director shall
25 notify the claimant, in writing, within three (3) weeks of the date the application for benefits
26 is filed of the reason for the delay. Unless the claimant or any other interested party, within
27 fifteen (15) days, requests a hearing before the board of review, the determination with
28 reference to the claim is final. However, for good cause shown the fifteen (15) day period
29 may be extended after notification by the director has been mailed to his or her last known
30 address, as provided in this section. At any time within one year from the date of a monetary
31 determination, the director, upon request of the claimant or on his or her own motion, may
32 reconsider his or her determination if he or she finds that an error in computation or identity
33 has occurred in connection with it or that additional wages pertinent to the claimant's status
34 have become available, or if that determination has been made as a result of a nondisclosure
35 or misrepresentation of a material fact.

36 (b) If an appeal is duly filed, benefits with respect to the period prior to the final decision, if it is
37 found that those benefits are payable, shall be paid only after the decision. If an appeal
38 tribunal affirms a decision of the director, or the board of review affirms a decision of an
39 appeal tribunal allowing benefits, those benefits shall be paid regardless of any appeal which
40 may subsequently be taken.
41

42 Section 6. [*Confidential health information.*]

43 Information pursuant to any individual's temporary disability claim or temporary caregiver
44 insurance claim shall be held confidential in accordance with [Insert citation] and all applicable
45 state and federal regulations.
46

1 Section 7. [*Powers and duties.*]

2 (a) The [director of the department of labor and training] shall have the following powers and
3 duties:

4 (1) To promulgate regulations relative to the operation of the temporary caregiver insurance
5 program;

6 (2) To create all necessary applications and certificates to fulfill the purposes of this section;

7 (3) To disseminate information regarding the program to [State] employers and shall carry
8 out a public education program to inform workers and employers about the availability of
9 benefits under the temporary caregiver insurance program. The director may use a
10 proportion of the funds collected for the temporary caregiver insurance program in a
11 given year to pay for the public education program and/or funding received from other
12 sources for the purpose of educating the public about their benefits. Outreach information
13 shall be available in English and other languages; and

14 (4) To inform [State] employees of their disability insurance rights and benefits due to the
15 employee's own sickness, injury, or pregnancy, or the employee's need to provide care for
16 any sick or injured family member or new child. The notice shall be given by every
17 eligible employer to each new employee hired on or after [Insert effective date], and to
18 each employee taking leave from work on or after [Insert effective date], due to
19 pregnancy or the need to provide care for any sick or injured family member or new
20 child. The director shall require each employer to post and maintain information
21 regarding the program in accordance with [Insert citation].
22

23 Section 8. [*Fraud and misrepresentation of benefits.*]

24 (a) The temporary caregiver insurance program shall be part of the temporary disability
25 insurance fund. If the director finds that any individual falsely certifies the medical condition
26 of any person in order to obtain family temporary disability insurance benefits, with the
27 intent to defraud, whether for the maker or for any other person, the director shall assess a
28 penalty against the individual in the amount of twenty-five percent (25%) of the benefits paid
29 as a result of the false certification. Unless otherwise specified to the contrary, all of the
30 provisions of [Insert citation] of this title shall apply to the temporary caregiver insurance
31 program.

32 (b) If a physician or other qualified health care provider licensed by a foreign country is under
33 investigation by the department for assisting in the filing of false claims and the department
34 does not have the legal remedies to conduct a criminal investigation or prosecution in that
35 country, the department may suspend the processing of all further certifications until the
36 licensed qualified health care provider fully cooperates and continues to cooperate with the
37 investigation. A qualified health care provider licensed by and practicing in a foreign
38 country who has been convicted of filing false claims with the department shall be barred
39 indefinitely from filing a certificate in support of a temporary disability insurance or
40 temporary caregiver insurance claim in the [State].
41

42 Section 9. [*Criminal prosecution.*]

43 All criminal actions for any violation of [insert citation], or any rule or regulation of the
44 department shall be prosecuted by the attorney general, or by any qualified member of the Rhode
45 Island bar, that shall be designated by the director and approved by the attorney general to
46 institute and prosecute that action.

1 Section 10. [*Receipt of federal funds.*]
2 To the extent that funds are made available by the federal government, under title III of the
3 Social Security Act, (42 U.S.C. 501 et seq.), or otherwise for such purpose, the expenses of
4 administering [Insert citation] shall be paid from those funds, provided that this section shall not
5 be considered to permit any expenditure of funds from the employment security administration
6 account contrary to [insert citation]. In the event that the Social Security Act is amended to
7 permit funds granted under Title III to be used to pay expenses of administering a sickness
8 compensation law, such as [insert citation], then from and after the effective date of that
9 amendment, the expenses of administering those chapters shall be paid out of the employment
10 security administration account or any other account or fund in which funds granted under Title
11 III are deposited.
12
13 Section 11. [*Severability.*] Insert severability clause.
14
15 Section 12. [*Repealer.*] Insert repealer clause.
16
17 Section 13. [*Effective Date.*] Insert effective date.