

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 344
Finance

(Senator Garagiola, *et al.*)

Economic Matters

The Flexible Leave Act

This bill requires a private-sector employer who provides paid leave to allow an employee to use earned paid leave for the illness of the employee's child if the child is younger than age 18 or at least age 18 and incapable of self-care due to a mental or physical disability. An employer is prohibited from taking action against an employee who exercises the rights granted under the bill or an employee who takes legal action against an employer for violating the bill.

Fiscal Summary

State Effect: None. The bill pertains exclusively to private-sector activities.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: As it relates to the bill, an employer is considered a person that employs 15 or more individuals and is engaged in a business, industry, profession, trade, or other enterprise in the State, including a person who acts directly or indirectly in the interest of another employer. State and local governments are not specifically included.

An employee who earns more than one type of paid leave from an employer may elect the type and amount of paid leave to be used in caring for his or her child, complying with any applicable terms of a collective bargaining agreement or employment policy.

The bill does not affect leave granted under the federal Family Medical Leave Act of 1993.

Current Law: Maryland statute requires that an employer that provides paid leave to an employee following the birth of an employee’s child must provide the same benefit to an employee following an adoption. For the purposes of providing adoption leave benefits, Maryland statute defines “employer” as a person who is engaged in a business, industry, profession, trade, or other enterprise in the State. Employer includes a unit of State or local government, except those agencies that employ individuals subject to the State Personnel Management System leave policy. State law does not include any other provisions relating to use of paid leave by private-sector employees.

Federal Family Medical Leave Act of 1993

FMLA requires covered employers to provide eligible employees with up to 12 work weeks of unpaid leave during any 12-month period under the following conditions:

- the birth and care of an employee’s newborn child;
- the adoption or placement of a child with an employee for foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition; or
- medical leave when the employee is unable to work due to a serious health condition.

Generally, an FMLA-covered employer is an entity engaged in commerce that employs more than 50 employees. Public agencies are considered to be covered employers regardless of the number of individuals they employ.

An eligible employee is an individual employed by a covered employer who has been employed for at least 12 months; however, these may be nonconsecutive months. Among other criteria, the individual must have been employed for at least 1,250 hours of service during the 12-month period.

State Personnel Management System Leave Policy

State law generally mirrors FMLA provisions, authorizing nontemporary SPMS employees to use sick leave with pay:

- for the illness or disability of an employee;

- for the death, illness, or disability of a member of an employee's immediate family;
- following the birth of an employee's child;
- when a child is placed with an employee for adoption; or
- for a medical appointment for an employee or a member of an employee's immediate family.

SPMS is the personnel system governing the largest number of Executive Branch employees. Unless specified otherwise (*e.g.*, positions covered by independent salary setting authority in the Maryland Department of Transportation or the State's higher education institutions), all regular positions in the Executive Branch are included in the personnel system.

Background:

Laws in Other States

Several other states require employers to provide paid family medical leave. In California, an employer who provides sick leave for employees must allow employees to use available sick leave to attend to the illness of a child, parent, spouse, or domestic partner.

In Maine, a public or private employer with more than 25 employees that provides paid leave must allow an employee to use the paid leave to care for a child, spouse, or parent who is ill.

In Minnesota, an employee may use sick leave benefits provided by the employer for absences due to an illness of or injury to an employee's child.

In Washington, an employer must allow an employee to use accrued sick leave to care for his/her child with a health condition that requires treatment or supervision. In addition, an employer must allow an employee to use sick leave to care for his/her spouse, parent, parent-in-law, or grandparent who has a serious health condition.

Small Business Effect: The bill would not impact those small businesses that do not offer paid leave benefits, nor would it impact those that offer paid leave and allow employees to use paid leave to care for a sick family member. To the extent that a small business offers paid leave to its employees and does not allow employees to use the leave to care for a sick family member, the bill could have a negative impact.

A small business of fewer than 50 employees is generally excluded from FMLA and is not required to provide unpaid leave for its employees to care for an immediate family member with a serious illness. Under the bill, however, any private-sector employer in the State with 15 or more employees that offers paid leave benefits would be required to allow an employee to use accrued paid leave to care for an ill child. In addition to paying the salary of the employee taking leave, a small business affected by the bill could experience a loss of productivity and may incur additional overtime expenses to compensate for the absence of an employee taking leave under the bill.

Additional Information

Prior Introductions: Similar legislation was introduced in 2007 as HB 212 and SB 260. The House Economic Matters Committee did not take action on HB 212. The Senate Finance Committee reported SB 260 unfavorably.

Cross File: HB 40 (Delegate Doory) – Economic Matters.

Information Source(s): Department of Budget and Management; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; Department of Legislative Services

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