

SENATE BILL 562

K3

EMERGENCY BILL

9lr1475

By: **Senators Garagiola, Kittleman, ~~and Middleton~~ Middleton, Exum, Glassman, Klausmeier, and Pugh**

Introduced and read first time: February 5, 2009

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 25, 2009

CHAPTER _____

AN ACT concerning

Labor and Employment - Flexible Leave

FOR the purpose of altering a certain provision so as to prohibit an employer from discharging, demoting, suspending, disciplining, or otherwise discriminating or threatening to take any of those actions against an employee ~~solely~~ because an employee acts in a certain manner; establishing a certain purpose for certain provisions of the Flexible Leave Act; clarifying the applicability of certain provisions of the Flexible Leave Act to include certain employees and employers; defining, altering, and clarifying certain terms; making certain stylistic changes; making this Act an emergency measure; and generally relating to an employee's use of leave with pay to care for an immediate family member who is ill.

BY repealing and reenacting, with amendments,

Article - Labor and Employment

Section 3-802

Annotated Code of Maryland

(2008 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Labor and Employment

3-802.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



(a) (1) In this section the following words have the meanings indicated.

(2) “CHILD” MEANS AN ADOPTED, BIOLOGICAL, OR FOSTER CHILD, A STEPCHILD, OR A LEGAL WARD WHO IS:

(I) UNDER THE AGE OF 18 YEARS; OR

(II) AT LEAST 18 YEARS OLD AND INCAPABLE OF SELF-CARE DUE TO A MENTAL OR PHYSICAL DISABILITY.

[(2)] (3) (i) “Employer” means a person that [employs 15 or more individuals and] is engaged in a business, industry, profession, trade, or other enterprise in the State.

(ii) “Employer” includes a person who acts directly or indirectly in the interest of another employer with an employee.

[(3)] (4) “Immediate family” [includes] **MEANS** a child, spouse, [and] **OR** parent.

[(4)] (5) (i) “Leave with pay” means **PAID** time away from work [for which an employee receives compensation] **THAT IS EARNED AND AVAILABLE TO AN EMPLOYEE:**

1. BASED ON HOURS WORKED; OR

2. AS AN ANNUAL GRANT OF A FIXED NUMBER OF HOURS OR DAYS OF LEAVE FOR PERFORMANCE OF SERVICE.

(ii) “Leave with pay” includes sick leave, vacation time, **PAID TIME OFF**, and compensatory time.

(III) “LEAVE WITH PAY” DOES NOT INCLUDE:

1. A BENEFIT PROVIDED UNDER AN EMPLOYEE WELFARE BENEFIT PLAN SUBJECT TO THE FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974;

2. AN INSURANCE BENEFIT, INCLUDING BENEFITS FROM AN EMPLOYER’S SELF-INSURED PLAN;

3. WORKERS’ COMPENSATION;

4. UNEMPLOYMENT COMPENSATION;

5. A DISABILITY BENEFIT; OR

6. A SIMILAR BENEFIT.

(6) “PARENT” MEANS AN ADOPTIVE, BIOLOGICAL, OR FOSTER PARENT, A STEPPARENT, A LEGAL GUARDIAN, OR A PERSON STANDING IN LOCO PARENTIS.

(b) (1) THIS SECTION APPLIES TO AN EMPLOYEE WHO IS PRIMARILY EMPLOYED IN THE STATE.

(2) This section applies to an employer that:

(I) provides leave with pay under the terms of[:

(1)] a collective bargaining agreement[;] or

[(2)] an employment policy; AND

(II) EMPLOYS 15 OR MORE EMPLOYEES FOR EACH WORKING DAY IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR.

(C) THE PURPOSE OF THIS SECTION IS TO ALLOW AN EMPLOYEE OF AN EMPLOYER TO USE LEAVE WITH PAY TO CARE FOR AN IMMEDIATE FAMILY MEMBER WHO IS ILL UNDER THE SAME CONDITIONS AND POLICY RULES THAT WOULD APPLY IF THE EMPLOYEE TOOK LEAVE FOR THE EMPLOYEE’S OWN ILLNESS.

[(c)] (D) An employee of an employer may use leave with pay for the illness of the employee’s immediate family.

[(d)] (E) (1) An employee of an employer:

(i) may only use leave with pay under this section that has been earned; and

(ii) who earns more than one type of leave with pay may elect the type and amount of leave with pay to be used under this section.

(2) Except as provided in paragraph (3) of this subsection, an employee of an employer who uses leave under this section shall comply with the terms of a collective bargaining agreement or employment policy.

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(3) If the terms of a collective bargaining agreement with an employer or an employment policy of an employer provide a leave with pay benefit that is equal to or greater than the benefit provided under this section, the collective bargaining agreement or employment policy prevails.

[(e)] (F) An employer may not discharge, demote, suspend, discipline, or otherwise discriminate against an employee or threaten to take any of these actions against an employee ~~SOLELY BECAUSE THE EMPLOYEE:~~

(1) [who exercises rights granted under] **HAS TAKEN LEAVE AUTHORIZED UNDER** this section; [or]

(2) **HAS OPPOSED A PRACTICE MADE UNLAWFUL BY THIS SECTION; OR**

[(2)] (3) [who files a complaint, testifies against, or assists in an action brought against the employer for a violation of this section] **HAS MADE A CHARGE, TESTIFIED, ASSISTED, OR PARTICIPATED IN AN INVESTIGATION, PROCEEDING, OR HEARING UNDER THIS SECTION.**

[(f)] (G) This section does not [affect leave granted]:

(1) **EXTEND THE MAXIMUM PERIOD OF LEAVE AN EMPLOYEE HAS** under the federal Family and Medical Leave Act of 1993; **OR**

(2) **LIMIT THE PERIOD OF LEAVE TO WHICH AN EMPLOYEE IS ENTITLED UNDER THE FEDERAL FAMILY AND MEDICAL LEAVE ACT OF 1993.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act ~~shall take effect October 1, 2009~~ is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.