

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 562
Finance

(Senator Garagiola, *et al.*)

Economic Matters

Labor and Employment - Flexible Leave

This emergency bill clarifies the definition of leave with pay and that employees may use leave with pay to care for an immediate family member who is ill. It also establishes that an employee may only use leave with pay that has been earned and narrows the provision prohibiting an employer from discharging, demoting, suspending, disciplining, or threatening to take such actions against an employee.

Fiscal Summary

State Effect: None. The bill does not apply to State agencies nor does it provide administrative authority or enforcement responsibility to the Division of Labor and Industry.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The definition of “leave with pay” is clarified to mean paid time that is earned and available to an employee based on hours worked or as an annual grant of a fixed number of days of leave for performance of service. Leave with pay does not include a benefit provided under an employee welfare benefit plan subject to the federal Employee Retirement Income Security Act of 1974; an insurance benefit, including benefits from an employer’s self-insured plan; workers’ compensation; unemployment compensation; a disability benefit; or a similar benefit.

The bill forbids an employer from taking disciplinary action (*i.e.*, discharging, demoting, suspending, disciplining, or otherwise discriminating) against an employee, or threatening to do so, because the employee has taken authorized leave; opposed a practice made unlawful by the bill; or made a change, testified, assisted, or participated in an investigation, proceeding or hearing related to the Flexible Leave Act (Chapter 644 of 2008).

The bill establishes that the Flexible Leave Act applies to employers with 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. The definition of immediate family is clarified to mean only a child, spouse, or parent – with “child” and “parent” further defined.

The bill also clarifies that Chapter 644 does not limit or extend the period of leave an employee has under the federal Family and Medical Leave Act (FMLA) of 1993.

Current Law:

Flexible Leave Act

Chapter 644 established that a private-sector employer who provides paid leave must allow an employee to use earned paid leave to care for immediate family members, including a child, spouse, or parent, with an illness. An employer is prohibited from taking action against an employee who exercises the rights granted or an employee who files a complaint, testifies against, or assists in an action brought against the employer for a violation of Chapter 644.

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 immediate family, complying with any applicable terms of a collective bargaining agreement or employment policy.

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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Cecil, Harford, and Montgomery counties; Department of Labor, Licensing, and Regulation; Human Relations Commission; Injured Workers' Insurance Fund; Judiciary (Administrative Office of the Courts); Maryland Department of Transportation; Subsequent Injury Fund; Uninsured Employers' Fund; Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2009
ncs/mcr Revised - Senate Third Reader - March 26, 2009

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