HB 1335

Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 1335 (Delegate A. Miller, *et al.*)
Economic Matters and Appropriations

Labor and Employment - Short-Term Disability Insurance for Pregnancy - Requirement

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This bill requires an employer, including the State and local governments, to offer short-term disability insurance to an employee who is pregnant. If an employee accepts an offer of short-term disability insurance, the employer must pay 80% of the premium cost of the insurance.

Fiscal Summary

State Effect: Significant expenditure increase (all funds) to provide subsidized short-term disability insurance to pregnant State employees. The total increase is likely in the millions of dollars. The Department of Labor, Licensing, and Regulation (DLLR) can implement the bill with existing resources. General fund revenues increase – potentially significantly – in FY 2014 and subsequent years due to the imposition of a 2% premium tax on short-term disability insurance policies sold in the State. Special fund revenues increase minimally in FY 2014 for the Maryland Insurance Administration (MIA) from the $125 rate and form filing fee.

Local Effect: Local government expenditures increase significantly to provide subsidized short-term disability insurance to an employee who is pregnant. **This bill may impose a mandate on a unit of local government**

Small Business Effect: Meaningful.

Analysis

Bill Summary: The short-term disability insurance must provide income replacement for a percentage of the employee's income for 125 work days for an employee who is unable to work due to a condition related to the employee's pregnancy and for 30 work days for an employee who is on maternity leave. "Maternity leave" is time off work that is taken by an employee who has given birth to a child.

Benefits are payable as described below for a maximum of 125 days.

	Benefit Payment as a Percent of Income		
Months of Employment	**100% for First**	**80% for Next**	**60% for Next**
Less than 60	5 days	20 days	100 days
60 to 119	25 days	25 days	75 days
120 to 179	25 days	50 days	50 days
180 or more	25 days	75 days	25 days

Current Law: Disabilities caused or contributed to by pregnancy or childbirth are temporary disabilities for all job-related purposes and must be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions of leave, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan must be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

Federal Family and Medical Leave Act of 1993 (FMLA)

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;
- medical leave when the employee is unable to work due to a serious health condition; or
- any qualifying circumstance arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty."

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.

Maryland Flexible Leave Act

Chapter 644 of 2008 (HB 40) requires a private-sector employer who provides paid leave to its employees to 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 against 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 included.

Employees who earn more than one type of paid leave from their employers may elect the type and amount of paid leave to be used in caring for their immediate family members.

Background: Disability insurance is a type of health insurance that pays a monthly income to the policyholder in the event the policyholder is unable to work because of illness or accident.

Virginia provides short-term disability benefits to state employees (including public safety employees) who are disabled, on maternity leave, or have a major chronic condition.

State Revenues: General fund revenues increase – potentially significantly – in fiscal 2014 and subsequent years due to the imposition of a 2% premium tax on short-term disability insurance policies sold in the State. The amount of the increase cannot be reliably estimated; however, since the bill affects all employers in the State, it could be significant. MIA special fund revenues increase in fiscal 2014 from the $125 rate and form filing fee. The number of filings as a result of the bill is unknown.

State Expenditures: The Department of Legislative Services (DLS) assumes the short-term disability insurance policy is in addition to, rather than a replacement of, existing sick leave policies, and insurance providers are willing to provide this insurance. The Department of Budget and Management estimates expenditures increase by $7.2 million in fiscal 2014 based on actuarial calculations related to State employees in the State Personnel Management System. Future year expenditures increase to reflect any cost-of-living adjustments or incremental increases.

The University System of Maryland (USM) provides eight weeks of paid maternity or paternity leave for faculty and staff, although employees must use their accrued leave before they can access new paid leave. However, USM does not provide short-term disability insurance for maternity leave, so USM's expenditures increase under the bill. Additionally, expenditures for the Maryland Department of Transportation, Judiciary, and DLS increase. The actual impact depends on the number of pregnant employees electing coverage, the length of service of the employee, the salary of the employee, and the costs for such insurance.

The bill does not require or authorize DLLR to investigate and enforce any claims stemming from the bill, and DLLR estimates the outreach and response to be minimal, so DLLR can handle the bill with existing resources. Also, MIA can review any additional rate and form filings with existing resources.

Local Expenditures: Many local jurisdictions do not offer this type of short-term disability insurance coverage, so many local jurisdictions may incur significant increases in expenditures. The actual impact depends on the number of pregnant employees electing coverage, the length of service of the employee, the salary of the employee, and the costs for such insurance.

For some local jurisdictions that already offer short-term disability insurance, expenditures may only increase minimally. The City of Laurel self-insures for short-term disability for full- and part-time employees starting on the ninetieth day of employment for up to 90 days of leave, and the city purchases long-term disability insurance for leave of over 90 days. Both short-term and long-term disability policies provide 60% of base pay. Washington County pays 80% of the premiums for short-term disability insurance for pregnant employees, so any increase in expenditures is likely negligible.

Small Business Effect: To the extent that short-term disability for pregnant employees increases the cost to an employer of hiring an employee, employers may experience increased costs.

Additional Comments: Some local governments advise that they have been informed by their insurance companies that the type of insurance required by the bill is not available in the insurance market, in part because it is not actuarially sound.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Kent, Montgomery, Washington, and Worcester counties; City of Laurel; Baltimore City; Department of Budget and Management; Maryland Insurance Administration; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Association of Counties; Maryland Municipal League; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

Fiscal Note History: First Reader - March 11, 2013
ncs/mcr

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