Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL NOTE
Revised

House Bill 1026 (Delegate A. Kelly, *et al.*)

Economic Matters Finance

Labor and Employment - Unpaid Parental Leave - Birth or Adoption of a Child

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This bill requires firms with 15 to 49 employees to provide employees with unpaid parental leave benefits. The bill establishes the regulatory authority of the Commissioner of Labor and Industry within the Department of Labor, Licensing, and Regulation (DLLR) and allows affected employees to bring an action for damages against an employer that violates the bill's provisions.

Fiscal Summary

State Effect: DLLR can implement the bill with existing resources. The bill does not apply to the State as an employer. Revenues are not affected.

Local Effect: None. The bill does not apply to local governments as employers.

Small Business Effect: Meaningful. Approximately 4,440 small businesses are affected.

Analysis

Bill Summary: An eligible employee may take unpaid parental leave up to a total of six weeks in a 12-month period for the birth, adoption, or foster placement of a child. During parental leave, the employer must maintain existing coverage for a group health plan and, in specified circumstances, may recover the premium if the employee fails to return to work.

To be eligible for the unpaid parental leave, an employee must have worked for the employer for at least one year and for 1,250 hours in the previous 12 months. An eligible

employee does not include an independent contractor or an individual who is employed at a work site at which the employer employs fewer than 15 employees if the total number of employees employed by that employer within 75 miles of the work site is also fewer than 15. An eligible employee has to provide the employer with 30-day prior notice of parental leave. However, prior notice is not required if the employee takes leave because of a premature birth, unexpected adoption, or unexpected foster placement.

The bill establishes that an employer may deny unpaid parental leave to an eligible employee if (1) the denial is necessary to prevent substantial and grievous economic injury to the operations of the employer and (2) the employer notifies the employee of the denial before the employee begins taking the leave. If an employer provides paid leave to an eligible employee, the employer may require the eligible employee, or the eligible employee may elect, to substitute the paid leave for any part of or all of the period of parental leave. An employer must pay a commission-based employee on parental leave any commission that becomes due because of work the eligible employee performed before taking parental leave.

Upon returning from parental leave, an employee is to be restored to the same position or an equivalent position. The bill establishes that an employer may deny restoration of an employee's position if (1) the denial is necessary to prevent substantial and grievous economic injury to the operations of the employer; (2) the employer notifies the employee of its intent to deny restoration of the employee's position; and (3) in the case of parental leave that has already begun, the employee elects not to return to employment after receiving notice of the employer's intention to deny restoration of the employee's position. Additionally, under these circumstances, during the parental leave period, an employer may terminate employment of an eligible employee only for cause.

The Commissioner of Labor and Industry must adopt regulations to implement the bill's provisions and may conduct an investigation to determine whether the bill's provisions have been violated on receipt of a written complaint of an employee. If the commissioner determines a violation occurred, the commissioner must try to resolve the issue informally by mediation or ask the Attorney General to bring an action on behalf of the employee. The Attorney General may bring an action in the county where the violation allegedly occurred for injunctive relief, damages, or other relief.

An employee has a right of action against an employer for damages caused by an employer's noncompliance. If a court determines that an employee is entitled to judgment in an action, the court must award reasonable attorney's fees and other costs of the action to the employee. A supervisory employee of an employer may not be held personally liable for a parental leave violation.

An employer may not violate any provision relating to unpaid parental leave, nor may an employer hinder, delay, or interfere with the commissioner's enforcement of unpaid parental leave. An employer may not discharge or otherwise discriminate against an employee because the employee (1) has requested or taken parental leave; (2) makes a complaint; (3) brings an action under the bill; or (4) has testified or will testify in an action or proceeding under the bill. The commissioner may bring an action for injunctive relief and damages against an employer that violates certain provisions of the bill.

The bill does not diminish (1) an employer's obligation to comply with a collective bargaining agreement; (2) an employee's rights under a collective bargaining agreement; or (3) any employment benefit program or plan that provides greater rights to employees.

Current Law:

FMLA

The federal Family and Medical Leave Act (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 a private-sector employer that employs 50 or more employees. Public agencies and public or private elementary or secondary schools 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 and work at a location where the employer has at least 50 employees within 75 miles.

The Wage and Hour Division of the U.S. Department of Labor administers and enforces FMLA and investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. An employee may also bring a private civil action against an employer for violations. Generally, an allegation must be raised within two years from the date of violation.

Maryland Flexible Leave Act

Chapter 644 of 2008 requires a private-sector employer that 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. If the commissioner determines that Chapter 644 provisions have been violated, the commissioner must try to resolve the issue informally by mediation or ask the Attorney General to bring an action on behalf of the employee.

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.

Maryland Adoption Leave

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. If the commissioner determines that adoption leave provisions have been violated, the commissioner must try to resolve the issue informally by mediation or ask the Attorney General to bring an action on behalf of the employee.

Deployment Leave

Employers that employ 50 or more people, including the State and local governments, must allow an employee to take leave from work on the day that an immediate family member is leaving for or returning from active military duty outside the United States. To qualify for the leave, an employee must have worked for the employer on a full- or part-time basis for the last 12 months and worked at least 1,250 hours during that time. "Immediate family member" is defined as a spouse, parent, stepparent, child, stepchild, or sibling. Employers may not require an employee to use accrued compensatory, sick, or vacation leave for this purpose. Employers may require the employee to submit proof that the leave is being taken in accordance with the law.

Background: Sixteen states and the District of Columbia have set standards that are more expansive than the federal FMLA. In Minnesota, employers that employ at least 21 employees must grant six weeks of unpaid parental leave to eligible employees for the birth or adoption of a child. During the parental leave, the employer must continue to make insurance or health care coverage available to the employee, but the employer is not required to pay the costs of the insurance or health care while the employee is on leave.

State Expenditures: DLLR estimates there could be as many as 90 complaints each year on parental leave under the bill. However, DLLR advises it can investigate parental leave complaints with existing resources. The bill allows the commissioner to bring an action against a person who violates the parental leave policy, but to the extent that most actions are filed directly by affected employees, DLLR expenditures are not affected. DLLR can adopt regulations with existing resources.

Small Business Effect: The U.S. Bureau of Labor Statistics reports that, nationally, 8% of private-sector workers employed at establishments with fewer than 50 workers have access to *paid* family leave, while 76% of private-sector workers employed at establishments with fewer than 50 workers have access to *unpaid* family leave. DLLR estimates the bill will affect 18,500 Maryland employers. Assuming 76% of those employers currently provide unpaid parental leave, approximately 4,440 businesses are affected. To the extent that parental leave increases the cost to an employer of hiring an employee, employers may experience increased costs.

Additional Information

Prior Introductions: A similar bill, HB 1331 of 2013, received an unfavorable report from the House Economic Matters.

Cross File: SB 737 (Senator Pugh, *et al.*) – Finance.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; U.S. Department of Labor; U.S. Bureau of Labor Statistics; National Conference of State Legislatures; Minnesota Statutes; Department of Legislative Services

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