SENATE BILL 737

K3 4lr2953
CF 4lr1192

By: **Senators Pugh, Benson, Currie, Forehand, King, Manno, McFadden, Montgomery, Muse, Ramirez, and Raskin**
Introduced and read first time: January 31, 2014
Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Labor and Employment – Parental Leave – Birth or Adoption of a Child

FOR the purpose of providing certain employees a certain number of workweeks of unpaid parental leave in a certain period under certain circumstances; authorizing an employer to require an eligible employee to provide written notice of the eligible employee's intention to take parental leave under certain circumstances; requiring that an eligible employee returning to work after taking leave be restored to the position of employment held by the employee when the leave began under certain circumstances; requiring an employer to maintain certain health coverage for the duration of the eligible employee's leave under certain circumstances; requiring the Commissioner of Labor and Industry to adopt certain regulations; requiring the Commissioner to take certain actions regarding certain violations of certain provisions of law; authorizing the Attorney General to take a certain action under a certain provision of this Act; authorizing an employee to bring an action against an employer for certain damages under certain circumstances; prohibiting certain acts; providing for certain penalties; authorizing the Commissioner to conduct, under certain circumstances, an investigation regarding whether a certain provision of law has been violated; defining certain terms; providing for the construction of this Act; and generally relating to parental leave for the birth or adoption of a child.

BY adding to
Article – Labor and Employment
Section 3–103(i); and 3–1201 through 3–1211 to be under the new subtitle "Subtitle 12. Maryland Family and Medical Leave Act"
Annotated Code of Maryland
(2008 Replacement Volume and 2013 Supplement)

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

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

Article – Labor and Employment

3–103.

(I) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO DETERMINE WHETHER SUBTITLE 12 OF THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A WRITTEN COMPLAINT OF AN EMPLOYEE.

SUBTITLE 12. MARYLAND FAMILY AND MEDICAL LEAVE ACT.

3–1201.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION.

(C) (1) "ELIGIBLE EMPLOYEE" MEANS AN INDIVIDUAL WHO HAS REQUESTED THAT AN EMPLOYER PROVIDE PARENTAL LEAVE AND WHO, AS OF THE DATE THAT THE REQUESTED PARENTAL LEAVE BEGINS, WILL HAVE BEEN EMPLOYED BY THAT EMPLOYER FOR AT LEAST:

(I) A 12–MONTH PERIOD; AND

(II) 1,250 HOURS DURING THE PREVIOUS 12 MONTHS.

(2) "ELIGIBLE EMPLOYEE" DOES NOT INCLUDE 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.

(D) (1) "EMPLOYER" MEANS A PERSON WHO EMPLOYS AT LEAST 15 BUT NOT MORE THAN 49 INDIVIDUALS IN THE STATE FOR EACH WORKING DAY DURING EACH OF 20 OR MORE CALENDAR WORKWEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR.

(2) "EMPLOYER" INCLUDES:

(I) A PERSON WHO ACTS, DIRECTLY OR INDIRECTLY, IN THE INTEREST OF AN EMPLOYER WITH RESPECT TO AN EMPLOYEE OF THE EMPLOYER; AND

(II) A SUCCESSOR IN INTEREST OF AN EMPLOYER.

(E) (1) "EMPLOYMENT BENEFITS" MEANS BENEFITS PROVIDED OR MADE AVAILABLE TO AN EMPLOYEE BY AN EMPLOYER.

(2) "EMPLOYMENT BENEFITS" INCLUDES GROUP LIFE INSURANCE, HEALTH INSURANCE, DISABILITY INSURANCE, SICK LEAVE, ANNUAL LEAVE, EDUCATIONAL BENEFITS, AND PENSIONS.

(F) "PARENTAL LEAVE" MEANS LEAVE DESCRIBED IN § 3–1202 OF THIS SUBTITLE.

(G) "SECRETARY" MEANS THE SECRETARY OF LABOR, LICENSING, AND REGULATION.

3–1202.

AN ELIGIBLE EMPLOYEE IS ENTITLED TO A TOTAL OF 6 WORKWEEKS OF UNPAID PARENTAL LEAVE DURING ANY 12–MONTH PERIOD FOR ONE OR MORE OF THE FOLLOWING:

(1) THE BIRTH OF A CHILD OF THE EMPLOYEE FOR THE PURPOSE OF CARING FOR THE CHILD; OR

(2) THE PLACEMENT OF A CHILD WITH THE EMPLOYEE FOR ADOPTION OR FOSTER CARE.

3–1203.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AN EMPLOYER MAY REQUIRE AN ELIGIBLE EMPLOYEE TO GIVE THE EMPLOYER WRITTEN NOTICE OF THE EMPLOYEE'S INTENTION TO TAKE PARENTAL LEAVE AT LEAST 30 DAYS BEFORE COMMENCING PARENTAL LEAVE.

(B) AN ELIGIBLE EMPLOYEE MAY BEGIN TAKING PARENTAL LEAVE WITHOUT PRIOR NOTICE FOLLOWING A PREMATURE BIRTH, UNEXPECTED ADOPTION, OR UNEXPECTED FOSTER PLACEMENT.

3–1204.

(A) AN ELIGIBLE EMPLOYEE WHO RETURNS TO WORK AFTER TAKING PARENTAL LEAVE IS ENTITLED TO BE RESTORED BY AN EMPLOYER:

(1) TO THE POSITION OF EMPLOYMENT HELD BY THE EMPLOYEE WHEN THE PARENTAL LEAVE BEGAN; OR

(2) TO AN EQUIVALENT POSITION WITH EQUIVALENT EMPLOYMENT BENEFITS, PAY, AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

(B) AN EMPLOYER MAY DENY RESTORATION OF THE ELIGIBLE EMPLOYEE'S POSITION OF EMPLOYMENT UNDER SUBSECTION (A) OF THIS SECTION 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 THE INTENT OF THE EMPLOYER TO DENY RESTORATION OF THE EMPLOYEE'S POSITION OF EMPLOYMENT AT THE TIME THE EMPLOYER DETERMINES THAT ECONOMIC INJURY WOULD OCCUR; AND

(3) IN A 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 OF EMPLOYMENT.

3–1205.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, DURING ANY PERIOD THAT AN ELIGIBLE EMPLOYEE TAKES PARENTAL LEAVE, AN EMPLOYER SHALL MAINTAIN COVERAGE OF A GROUP HEALTH PLAN FOR THE DURATION OF THE PARENTAL LEAVE AND IN THE SAME MANNER THAT COVERAGE WOULD HAVE BEEN PROVIDED IF THE EMPLOYEE HAD CONTINUED IN EMPLOYMENT CONTINUOUSLY FOR THE DURATION OF THE PARENTAL LEAVE.

(B) (1) AN EMPLOYER MAY RECOVER THE PREMIUM THAT THE EMPLOYER PAID FOR MAINTAINING COVERAGE FOR AN ELIGIBLE EMPLOYEE UNDER A GROUP HEALTH PLAN DURING THE PERIOD OF PARENTAL LEAVE IF THE EMPLOYEE FAILS TO RETURN TO EMPLOYMENT WITH THE EMPLOYER AFTER THE PERIOD OF PARENTAL LEAVE TO WHICH THE EMPLOYEE IS ENTITLED HAS EXPIRED.

(2) THIS SUBSECTION DOES NOT APPLY IN THE CASE OF AN EMPLOYEE WHO FAILS TO RETURN TO WORK BECAUSE OF OTHER CIRCUMSTANCES BEYOND THE CONTROL OF THE EMPLOYEE.

3–1206.

THE COMMISSIONER SHALL ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SUBTITLE.

3–1207.

(A) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SUBTITLE HAS BEEN VIOLATED, THE COMMISSIONER SHALL:

(1) TRY TO RESOLVE ANY ISSUE INVOLVED IN THE VIOLATION INFORMALLY BY MEDIATION; OR

(2) ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON BEHALF OF THE APPLICANT OR EMPLOYEE.

(B) THE ATTORNEY GENERAL MAY BRING AN ACTION UNDER THIS SECTION IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY OCCURRED FOR INJUNCTIVE RELIEF, DAMAGES, OR OTHER RELIEF.

3–1208.

(A) IF AN EMPLOYER VIOLATES THIS SUBTITLE, AN AFFECTED EMPLOYEE MAY BRING AN ACTION AGAINST THE EMPLOYER TO RECOVER DAMAGES EQUAL TO THE AMOUNT OF ANY WAGES, SALARY, EMPLOYMENT BENEFITS, OR OTHER COMPENSATION DENIED OR LOST AND AN ADDITIONAL EQUAL AMOUNT AS LIQUIDATED DAMAGES.

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN ACTION UNDER THIS SECTION SHALL BE FILED WITHIN 2 YEARS AFTER THE ACT ON WHICH THE ACTION IS BASED.

(2) AN ACTION FOR A WILLFUL VIOLATION OF § 3–1209 OF THIS SUBTITLE SHALL BE FILED WITHIN 3 YEARS AFTER THE ACT ON WHICH THE ACTION IS BASED.

(C) IF A COURT DETERMINES THAT AN EMPLOYEE IS ENTITLED TO JUDGMENT IN AN ACTION UNDER THIS SECTION, THE COURT SHALL ALLOW

AGAINST THE EMPLOYER REASONABLE ATTORNEY'S FEES, REASONABLE EXPERT WITNESS FEES, AND OTHER COSTS OF THE ACTION.

(D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A SUPERVISORY EMPLOYEE OF AN EMPLOYER MAY NOT BE PERSONALLY LIABLE FOR A VIOLATION OF THIS SUBTITLE.

3–1209.

(A) AN EMPLOYER MAY NOT:

(1) VIOLATE ANY PROVISION OF THIS SUBTITLE;

(2) HINDER, DELAY, OR OTHERWISE INTERFERE WITH THE SECRETARY OR AN AUTHORIZED REPRESENTATIVE OF THE SECRETARY IN THE ENFORCEMENT OF THIS SUBTITLE; OR

(3) DISCHARGE OR OTHERWISE DISCRIMINATE AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE:

(I) HAS REQUESTED OR TAKEN PARENTAL LEAVE AUTHORIZED UNDER THIS SUBTITLE;

(II) MAKES A COMPLAINT TO THE EMPLOYER, THE SECRETARY, OR ANOTHER PERSON;

(III) BRINGS AN ACTION UNDER THIS SUBTITLE OR A PROCEEDING THAT RELATES TO THE SUBJECT OF THIS SUBTITLE OR CAUSES THE ACTION OR PROCEEDING TO BE BROUGHT; OR

(IV) HAS TESTIFIED OR WILL TESTIFY IN AN ACTION UNDER THIS SUBTITLE OR A PROCEEDING THAT RELATES TO THE SUBJECT OF THIS SUBTITLE.

(B) THE COMMISSIONER MAY BRING AN ACTION FOR INJUNCTIVE RELIEF AND DAMAGES AGAINST A PERSON WHO VIOLATES SUBSECTION (A)(1) OR (3) OF THIS SECTION.

(C) A PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $1,000 OR IMPRISONMENT NOT EXCEEDING 90 DAYS OR BOTH.

3–1210.

(A) THIS SUBTITLE MAY NOT BE CONSTRUED TO DIMINISH THE OBLIGATION OF AN EMPLOYER TO COMPLY WITH A COLLECTIVE BARGAINING AGREEMENT OR AN EMPLOYMENT BENEFIT PROGRAM OR PLAN THAT PROVIDES GREATER FAMILY OR MEDICAL LEAVE RIGHTS TO EMPLOYEES THAN THE RIGHTS ESTABLISHED UNDER THIS SUBTITLE.

(B) THE RIGHTS ESTABLISHED FOR EMPLOYEES UNDER THIS SUBTITLE MAY NOT BE DIMINISHED BY A COLLECTIVE BARGAINING AGREEMENT OR AN EMPLOYMENT BENEFIT PROGRAM OR PLAN.

3–1211.

THIS SUBTITLE MAY NOT BE CONSTRUED TO DISCOURAGE EMPLOYERS FROM ADOPTING OR RETAINING LEAVE POLICIES MORE GENEROUS THAN POLICIES THAT COMPLY WITH THIS SUBTITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.