

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 485

(Senator Pugh, *et al.*)

Finance

Economic Matters

Task Force to Study Family and Medical Leave Insurance

This bill establishes a Task Force to Study Family and Medical Leave Insurance (FAMLI), staffed by the Department of Legislative Services (DLS). The task force, in consultation with appropriate State and local agencies and community organizations, must study existing FAMLI programs in other states and the District of Columbia, review specified FAMLI implementation studies and a report, and receive public testimony from relevant stakeholders. The task force must make recommendations on (1) the development of a State social insurance program that provides short-term benefits to eligible employees who lose wages due to specified reasons and (2) the design of an employee-funded FAMLI pool. The Commission for Women must apply for any available federal funding that may be used by the task force to carry out its duties. The bill specifies the membership of the task force and requires it to report findings and recommendations to the General Assembly by December 1, 2017.

The bill takes effect June 1, 2016, and terminates June 30, 2018.

Fiscal Summary

State Effect: DLS can provide staff support to the task force with existing budgeted resources, and any expense reimbursements for members of the task force are presumed to be minimal and absorbable within existing budgeted resources. The Commission for Women (within the Department of Human Resources) can apply for any federal funding with existing resources; revenues are not otherwise affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Federal Family and Medical Leave Act of 1993

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 an entity engaged in commerce that employs at least 50 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.

Maryland Flexible Leave Act

A private-sector employer who provides paid leave to its employees 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 against an employee who files a complaint, testifies against, or assists in an action brought against the employer for a violation of these provisions.

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 Parental Leave Act

Firms with 15 to 49 employees are required to provide employees with unpaid parental leave benefits. 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. State and local governments are not included.

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.

Unemployment Insurance

Unemployment insurance provides temporary, partial wage replacement benefits to individuals who are unemployed through no fault of their own and who are willing to work, able to work, and actively seeking employment. Both the federal and state governments have responsibilities for unemployment insurance programs. Funding for the program is provided by employers through unemployment insurance taxes paid to both the federal government for administrative and other expenses and to the states for deposit in their unemployment insurance trust funds. Using federal tax revenues, the unemployment insurance program is administered pursuant to state law by state employees. Each state law prescribes the tax structure, qualifying requirements, benefit levels, and disqualification provisions. These laws must, however, conform to broad federal guidelines.

Background: Three states, California, New Jersey, and Rhode Island, provide paid family and medical leave to employees. The programs are funded through payroll taxes and are administered by their temporary disability insurance (TDI) programs. Hawaii and New York also have TDI programs, but they do not offer paid family leave. These plans provide

temporary income for a limited period to workers who are unable to work because of nonwork-related accidents or illnesses. California and Rhode Island TDI plans do not require employer contributions, while Hawaii, New Jersey, and New York require employer contributions.

The California, New Jersey, and Rhode Island TDI programs are administered by the same agency that administers unemployment insurance. Under those programs, the unemployment insurance administrative machinery is used to collect contributions, to maintain wage records, to determine eligibility, and to pay benefits to workers under the state-operated funds. By contrast, the New York program is administered by the state Workers' Compensation Board, and the Hawaii program is administered by a separate division of the Department of Labor and Industrial Relations.

The California Paid Family Leave Insurance Program provides up to six weeks of paid leave to care for a seriously ill child, spouse, parent, parent-in-law, grandparent, grandchild, sibling, or registered domestic partner, or to bond with a new child. The benefit amount is approximately 55% of an employee's weekly wage, ranging from a minimum of \$50 to a maximum of \$1,129. In 2015, 237,864 claims were filed and the program paid \$661.7 million in benefits. In addition, under its TDI program, it had 636,090 claims and paid \$4.8 billion in benefits.

The New Jersey Family Leave Insurance Program provides six weeks of benefits to bond with a new child or to care for a family member. For claims beginning January 1, 2016, the weekly benefit rate is two-thirds of an employee's weekly wage, up to \$615. As of January 1, 2016, the maximum yearly deduction for Family Leave Insurance is \$26.08 and is based on 0.08% tax rate of a taxable wage base of \$32,600. In 2015, 35,293 claims were filed and the program paid \$85.8 million in benefits. Under its TDI program, it had 93,889 claims and paid \$422.7 million in benefits in calendar 2014.

The Rhode Island Temporary Disability Insurance/Temporary Caregiver Insurance Program provides 4 weeks of paid leave for the birth, adoption or fostering of a new child or to care for a family member with a serious health condition and up to 30 weeks of paid leave for a worker's own disability. Benefits range from a minimum of \$84 and a maximum of \$795 per week, based on earnings. The current withholding rate as of January 1, 2016, is 1.2% of an employee's first \$66,300 in earnings. In 2015, Rhode Island paid out \$164.2 million in temporary disability benefits, of which \$9.2 million was in temporary caregiver benefits.

Additional Information

Prior Introductions: None.

Cross File: HB 740 (Delegate Kelly, *et al.*) - Economic Matters.

Information Source(s): Baltimore, Dorchester, Garrett, Howard, and Montgomery counties; Maryland Association of Counties; City of Laurel; Maryland Municipal League; Town of La Plata; Office of the Attorney General; Comptroller's Office; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Budget and Management; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; U.S. Department of Labor; U.S. Social Security Administration; California Employment Development Department; New Jersey Department of Labor; Rhode Island Department of Labor and Training; National Conference of State Legislatures; Department of Legislative Services

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