

**Department of Legislative Services**

Maryland General Assembly

2007 Session

**FISCAL AND POLICY NOTE**

House Bill 212

(Delegate Doory, *et al.*)

Economic Matters

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**Labor and Employment - Leave with Pay - Illness of Employee's Immediate Family**

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This bill requires a private-sector employer who provides paid leave to allow an employee to use earned paid leave to care for a child, spouse, or parent with an illness. An employer is prohibited from taking certain adverse actions against an employee who exercises the rights granted under the bill or an employee who takes a certain action against an employer for violating the bill. The bill does not affect leave granted under the federal Family Medical Leave Act of 1993 (FMLA).

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**Fiscal Summary**

**State Effect:** None.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Bill Summary:** An employee who earns more than one type of paid leave may elect the type and amount of leave to be used; however, an employee who uses leave under the bill must comply with the terms of the applicable collective bargaining agreement or employment policy.

As it pertains to the bill, “employer” means a person engaged in a business, industry, profession, trade, or other enterprise in the State. It also includes a person acting directly

or indirectly in the interest of another employer with an employee. It does not specifically include the State or a local government.

**Current Law:** Maryland statute has only one paid leave requirement for private-sector employers – an employer who 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 who employ individuals subject to State Personnel Management System (SPMS) leave policy).

### *Federal Family Medical Leave Act of 1993*

FMLA requires covered employers to provide eligible employees with up to 12 workweeks of unpaid leave during any 12-month period:

- for the birth and care of an employee’s newborn child;
- for the adoption of a son or daughter 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
- to take medical leave when the employee is unable to work because of 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 employees 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 things, the individual must have been employed for at least 1,250 hours of service during the 12-month period.

### *State Personnel Management System Leave Policy*

Statute generally mirrors FMLA provisions, authorizing each nontemporary SPMS employee to use sick leave with pay:

- for an illness or disability of an employee;
- for the death, illness, or disability of a member of an employee’s immediate family;

- following the birth of an employee's child;
- when a child is placed with an employee for adoption; or
- for a medical appointment for an employee or a member of an employee's immediate family.

SPMS is the personnel system governing the largest number of Executive Branch employees. Unless specified otherwise (*e.g.*, positions covered by independent salary setting authority such as the Maryland Department of Transportation or the State's higher education institutions), all regular positions in the Executive Branch are included in this personnel system.

## **Background:**

### *Laws in Other States*

The Department of Legislative Services (DLS) is aware of several other states with laws providing paid family medical leave. In California, an employer who provides sick leave for employees must allow employees to use accrued and available sick leave to attend to an illness of a child, parent, spouse, or domestic partner.

In Maine, a public or private employer (with more than 25 employees) who provides paid leave must allow an employee to use the paid leave to care for a child, spouse, or parent who is ill.

In Minnesota, an employee may use sick leave benefits provided by the employer for absences due to an illness of or injury to an employee's child.

In Washington, an employer must allow an employee to use accrued sick leave to care for his/her child with a health condition that requires treatment or supervision. In addition, an employer must allow an employee to use sick leave to care for his/her spouse, parent, parent-in-law, or grandparent who has a serious health condition or an emergency condition.

**Small Business Effect:** The bill would not impact those small businesses that do not offer paid leave benefits, nor would it impact those that offer paid leave and allow employees to use paid leave to care for a sick family member. However, to the extent that a small business offers paid leave to its employees and does not allow employees to use the leave to care for a sick family member, the bill could have a negative impact.

A small business (with fewer than 50 employees) is generally excluded from FMLA and is not required to provide unpaid leave for its employees to care for an immediate family

member with a serious illness. Under the bill, however, any private-sector employer in the State offering paid leave benefits would be required to allow an employee to use accrued paid leave to care for an ill child, spouse, or parent. In addition to paying the salary of the employee taking leave, a small business affected by the bill could experience a loss of productivity and might need to pay another employee overtime to compensate for the absence of an employee taking leave under the bill.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 260 (Senator Garagiola, *et al.*) – Finance.

**Information Source(s):** Department of Budget and Management; Department of Health and Mental Hygiene; Department of Labor, Licensing and Regulation; Maryland Department of Transportation; Department of Legislative Services

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