

Department of Legislative Services
 Maryland General Assembly
 2007 Session

FISCAL AND POLICY NOTE

Senate Bill 828 (Senator McFadden)
 Finance

Healthy Families and Healthy Workplaces Act

This bill requires employers to provide paid sick leave to all employees and allows legal recourse for employees who are not provided leave as required by law.

Fiscal Summary

State Effect: General fund expenditures could increase by \$68,800 in FY 2008 for additional personnel and operating costs for monitoring and enforcement of leave requirements. Out-years reflect annualization and inflation. Additional potential significant increase in expenditures from all fund sources for the State to provide paid leave to contractual employees. Revenues would not be affected.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	68,800	84,100	88,500	93,200	98,100
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(\$68,800)	(\$84,100)	(\$88,500)	(\$93,200)	(\$98,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential increase in circuit court expenditures due to bill's remediation provisions. Potential increase in expenditures for local governments as employers. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful impact on small business.

Analysis

Bill Summary: This bill requires employers – including State and local governments – that employ 10 or more people to provide one hour of paid sick leave for every 37 hours worked by an employee, equivalent to seven days per work year. Employers with fewer than 10 employees would be required to provide one hour of paid sick leave for every 80 hours worked by an employee, equivalent to 3.25 days per work year. Employers, regardless of size, must provide access to accrued sick leave starting on an employee’s ninetieth day of employment. Paid leave rights, printed in both English and Spanish, must be conspicuously posted by employers. Alternatively, each employee must be provided a copy of the paid leave rights established under the bill.

Employees are permitted to carry over up to 40 hours of unused paid sick leave to the next calendar year. Accrued sick leave in excess of 40 hours is forfeited by the employee at the end of a calendar year.

Under the bill, sick leave may be used for the following purposes: illness or disability of the employee; death, illness, or disability of a member of the employee’s immediate family; birth of an employee’s child; employee’s adoption of a child; medical appointments for the employee or immediate family; and medical treatment or other services related to domestic violence. An employer may require an employee to provide up to seven days notice of the need for anticipated sick leave.

An employee must submit documentation from a medical doctor or other specified health practitioner to use paid sick leave for three or more days. The documentation must include a prognosis about the employee’s ability to return to work. For absences due to domestic violence, documentation must be provided by a victims’ services representative, an attorney, a police officer, or anti-violence counselor. This information must be kept confidential by an employer.

An employer may not penalize an employee for requesting use of paid sick leave. Employees who are not provided with paid sick leave as required by law may bring an action in circuit court on behalf of themselves and others for the full amount of unpaid sick leave and any other appropriate remedies such as back pay or injunctive relief. The employee may also be awarded reasonable counsel fees. Any such action must be filed within five years. The Commissioner of Labor and Industry may conduct an investigation on his own initiative or on receipt of a written complaint. On written request, the Commissioner of Labor and Industry may pursue a claim on behalf of an employee or employees. An employer who violates the bill is guilty of a misdemeanor and subject to a fine of up to \$1,000.

This bill does not prevent an employer from providing paid sick leave in excess of the amount prescribed in the bill. The bill also does not diminish an employer's obligation under other agreements, contracts, or collective bargaining agreements.

Current Law: Neither federal nor State law guarantees paid sick days for all workers. The federal Family and Medical Leave Act requires employers who are engaged in commerce and generally employ 50 or more employees to provide unpaid leave. Public agencies are covered under the Act, regardless of the number of employees, as are public and private elementary and secondary schools.

Covered employers must provide up to a total of 12 workweeks of unpaid leave during any 12-month period to employees. However, those employees must have been employed by that employer for at least the 12 months prior, worked at least 1,250 hours in the last 12 months, and be employed at a worksite that meets geographic and size standards.

Covered employees are eligible for unpaid leave under the following circumstances: birth and care of a newborn child of the employee; placement with an employee of a child for adoption or foster care; care of an immediate family member with a serious health condition; or medical leave for an employee with a serious health condition. Where an employee has earned paid vacation, personal or family leave, the leave may be substituted for all or part of any unpaid family leave required under federal law.

Statutory Leave Requirements for State Employees

Employees in the State Personnel Management System, not including temporary employees, are entitled to sick leave with pay. Fifteen days, not to exceed 120 hours, accrue to an employee each year on a prorated basis. Sick leave may be used for illness or disability of the employee; for death, illness, or disability of a member of the employee's immediate family; following the birth of an employee's child; when a child is placed with the employee for adoption; or for a medical appointment of the employee or immediate family.

An employee must submit documentation from a medical doctor or other licensed health practitioner to use paid sick leave for five or more consecutive workdays. The documentation must include a prognosis about the employee's ability to return to work. An employee may accumulate unused sick leave and carry-over balances from one year to the next.

Background: Several measures have been recently proposed to require employers to provide paid sick leave to their employees. Senator Edward Kennedy proposed a federal

Healthy Families Act in 2005 that would have required businesses with 15 or more employees to provide a minimum of seven days paid sick leave each year for employees who work a minimum of 20 hours per week. The legislation failed in 2005 but may be reintroduced under new congressional leadership.

San Francisco voters approved Proposition F in 2006, which requires businesses with 10 or fewer employees to provide 40 hours of paid sick leave to employees and businesses with more than 10 employees to provide 72 hours of paid sick leave. Paid leave may be used by the employee for his or her medical needs or those of immediate family.

Seven states, including Maryland, are expected to propose legislation this year that requires employers to provide paid sick leave. The other states are Massachusetts, Wisconsin, Vermont, Maine, Montana, and Michigan.

State Expenditures: Most regular full-time equivalent positions in the Executive Branch are members of the State Personnel Management System and receive paid sick leave in excess of the amount required in the bill. Likewise, regular full-time equivalent positions within independent personnel systems, including those in the Judicial and Legislative branches, would not be affected, as current leave policies provide more paid sick leave than required in the bill.

The bill could have an impact on State contractual employees, who do not currently receive paid sick leave. Including higher education, there are a total of 9,387 contractual positions in the Governor's proposed fiscal 2008 budget. Contractual employees who work on a short-term basis would not be eligible for paid sick leave, as the bill does not allow an employee to use the leave until the ninetieth day of employment. However, the State would be required to provide up to seven days of paid leave for each of these employees who are employed for 90 days or more. Such costs cannot be reliably quantified at this time but could be significant.

In addition to increases in leave expenditures, general fund expenditures for the Department of Labor, Licensing, and Regulation could increase by an estimated \$68,765 in fiscal 2008, which accounts for the bill's October 1, 2007 effective date. Expenses reflect the cost of hiring one investigator and a half-time assistant Attorney General to monitor and investigate abuses of the law. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

Salaries and Fringe Benefits	\$58,435
Operating Expenses	<u>10,330</u>
Total FY 2008 State Expenditures	\$68,765
Positions	1.5

Future year expenditures reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Local Expenditures: Potential minimal increase in circuit court case volume, due to remediation provisions in the bill.

Local governments, as employers, could also realize costs for providing required leave benefits to employees; however, all local government units responding to requests for information for this fiscal note indicated that their current leave policies provide more paid sick leave than required by this bill. To the extent the bill expands the allowable uses of paid sick leave, local governments may experience increases in absences that may necessitate additional overtime or temporary staff support.

Small Business Effect: This bill could have a significant impact on small businesses that currently provide less than 26 hours of paid leave to employees. These employers could experience increases in salary expenditures, including overtime and temporary staff expenses, as a result of the bill.

Additional Information

Prior Introductions: None.

Cross File: HB 832 (Delegates Anderson and Glenn) – Economic Matters.

Information Source(s): Town of Bel Air; Town of Leonardtown; Montgomery County; Frederick County; St. Mary’s College; Department of Labor, Licensing, and Regulation; Judiciary (Administrative Office of the Courts); Department of Budget and Management; U.S. Department of Labor; Stateline.org; CNNMoney.com; Department of Legislative Services

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Analysis by: Suzanne O. Potts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510