**K**3 9lr1475

By: Senators Garagiola, Kittleman, and Middleton

Introduced and read first time: February 5, 2009

Assigned to: Finance

AN ACT concerning

1

## A BILL ENTITLED

**Labor and Employment - Flexible Leave**  $\mathbf{2}$ 

3 FOR the purpose of altering a certain provision so as to prohibit an employer from 4 discharging, demoting, suspending, disciplining, or otherwise discriminating or 5 threatening to take any of those actions against an employee solely because an 6 employee acts in a certain manner; establishing a certain purpose for certain 7 provisions of the Flexible Leave Act; clarifying the applicability of certain 8 provisions of the Flexible Leave Act to include certain employees and employers; 9 defining, altering, and clarifying certain terms; making certain stylistic 10 changes; and generally relating to an employee's use of leave with pay to care 11 for an immediate family member who is ill.

- 12 BY repealing and reenacting, with amendments,
- 13 Article – Labor and Employment
- 14 Section 3-802
- Annotated Code of Maryland 15
- (2008 Replacement Volume) 16
- 17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
- MARYLAND, That the Laws of Maryland read as follows: 18
- 19 **Article - Labor and Employment**
- 20 3 - 802.

24

- 21In this section the following words have the meanings indicated. (a) (1)
- 22 **(2)** "CHILD" MEANS AN ADOPTED, BIOLOGICAL, OR FOSTER 23
- CHILD, A STEPCHILD, OR A LEGAL WARD WHO IS:
  - (I)UNDER THE AGE OF 18 YEARS; OR



$\frac{1}{2}$	(II) DUE TO A MENTAL OR PI	AT LEAST 18 YEARS OLD AND INCAPABLE OF SELF-CARE HYSICAL DISABILITY.
3 4 5		(i) "Employer" means a person that [employs 15 or more aged in a business, industry, profession, trade, or other
6 7		"Employer" includes a person who acts directly or indirectly employer with an employee.
8 9	[(3)] <b>(4) OR</b> parent.	"Immediate family" [includes] MEANS a child, spouse, [and]
10 11 12	- ` / - ` /	(i) "Leave with pay" means <b>PAID</b> time away from work receives compensation] <b>THAT IS EARNED AND AVAILABLE</b>
13		1. BASED ON HOURS WORKED; OR
14 15		2. AS AN ANNUAL GRANT OF A FIXED NUMBER OF VE FOR PERFORMANCE OF SERVICE.
16 17	(ii) <b>TIME OFF,</b> and compensa	"Leave with pay" includes sick leave, vacation time, PAID tory time.
18	(III)	"LEAVE WITH PAY" DOES NOT INCLUDE:
19 20 21	WELFARE BENEFIT PLA INCOME SECURITY ACT	1. A BENEFIT PROVIDED UNDER AN EMPLOYEE IN SUBJECT TO THE FEDERAL EMPLOYEE RETIREMENT OF 1974;
22 23	FROM AN EMPLOYER'S S	2. AN INSURANCE BENEFIT, INCLUDING BENEFITS SELF-INSURED PLAN;
24		3. WORKERS' COMPENSATION;
25		4. UNEMPLOYMENT COMPENSATION;
26		5. A DISABILITY BENEFIT; OR
27		6. A SIMILAR BENEFIT.

1	(6)	PA	RENT" MEANS AN ADOPTIVE, BIOLOGICAL, OR FOSTER
<b>2</b>	PARENT, A STE	PPARE	NT, A LEGAL GUARDIAN, OR A PERSON STANDING IN LOCO
3	PARENTIS.		,
4	(b) <b>(1</b> )	THIS	S SECTION APPLIES TO AN EMPLOYEE WHO IS PRIMARILY
5	EMPLOYED IN		
0	EMI LOTED IN		112.
6	(2)	This	section applies to an employer that:
7		<b>(I)</b>	provides leave with pay under the terms of[:
8	(1)	l a col	lective bargaining agreement[;] or
		-	3 3 3 2/2
9	[(2	)] an e	mployment policy; AND
	L(Z	) <b>]</b> an c.	inprovincing policy, AND
10		(II)	EMPLOYS 15 OR MORE EMPLOYEES FOR EACH WORKING
	DAY DI DAGI	` '	
11	DAY IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR		
12	PRECEDING CA	LENDA	R YEAR.
13	$(\mathbf{C})$ TH	IE PURF	POSE OF THIS SECTION IS TO ALLOW AN EMPLOYEE OF AN
14	EMPLOYER TO USE LEAVE WITH PAY TO CARE FOR AN IMMEDIATE FAMILY		
15	MEMBER WHO IS ILL UNDER THE SAME CONDITIONS AND POLICY RULES THAT		
16	WOULD APPLY IF THE EMPLOYEE TOOK LEAVE FOR THE EMPLOYEE'S OWN		
17	ILLNESS.		
18	$[(a)](\mathbf{p})$	۸	
	[(c)] (D)		employee of an employer may use leave with pay for the illness
19	of the employee	s immed	liate family.
2.0	F		
20	[(d)] <b>(E)</b>	(1)	An employee of an employer:
21		(i)	may only use leave with pay under this section that has
22	been earned; an	.d	
23		(ii)	who earns more than one type of leave with pay may elect
24	the type and am	` '	leave with pay to be used under this section.
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<b>4</b> T	the type and an	iouiit oi	r
	• •		
25	(2)	Exce	ept as provided in paragraph (3) of this subsection, an
25 26	(2) employee of an	Exce	ept as provided in paragraph (3) of this subsection, an er who uses leave under this section shall comply with the
25	(2) employee of an	Exce	ept as provided in paragraph (3) of this subsection, an
25 26 27	(2) employee of an terms of a collect	Exce employ etive bar	ept as provided in paragraph (3) of this subsection, an er who uses leave under this section shall comply with the gaining agreement or employment policy.
25 26 27 28	(2) employee of an terms of a collection (3)	Exce employ tive bar	ept as provided in paragraph (3) of this subsection, and were who uses leave under this section shall comply with the gaining agreement or employment policy.  e terms of a collective bargaining agreement with an employer
25 26 27 28 29	(2) employee of an terms of a collect (3) or an employment	Exce employ tive bar If th ent policy	ept as provided in paragraph (3) of this subsection, an er who uses leave under this section shall comply with the gaining agreement or employment policy.  e terms of a collective bargaining agreement with an employer y of an employer provide a leave with pay benefit that is equal
25 26 27 28	(2) employee of an terms of a collection (3) or an employment to or greater the	Exce employ ctive bar If th ent policy an the	ept as provided in paragraph (3) of this subsection, and were who uses leave under this section shall comply with the gaining agreement or employment policy.  e terms of a collective bargaining agreement with an employer

1 2 3	[(e)] (F) An employer may not discharge, demote, suspend, discipline, or otherwise discriminate against an employee or threaten to take any of these actions against an employee SOLELY BECAUSE THE EMPLOYEE:
4 5	(1) [who exercises rights granted under] HAS TAKEN LEAVE AUTHORIZED UNDER this section; [or]
6 7	(2) HAS OPPOSED A PRACTICE MADE UNLAWFUL BY THIS SECTION; OR
8 9 10 11	[(2)] (3) [who files a complaint, testifies against, or assists in an action brought against the employer for a violation of this section] HAS MADE A CHARGE, TESTIFIED, ASSISTED, OR PARTICIPATED IN AN INVESTIGATION, PROCEEDING, OR HEARING UNDER THIS SECTION.
12	[(f)] (G) This section does not [affect leave granted]:
13 14	(1) EXTEND THE MAXIMUM PERIOD OF LEAVE AN EMPLOYEE HAS under the federal Family and Medical Leave Act of 1993; OR
15 16	(2) LIMIT THE PERIOD OF LEAVE TO WHICH AN EMPLOYEE IS ENTITLED UNDER THE FEDERAL FAMILY AND MEDICAL LEAVE ACT OF 1993.
17 18	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.