Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 902 (Delegate Mizeur, *et al.*)
Economic Matters

Maryland Family and Medical Leave Act

This bill expands the provisions of the Federal Medical Leave Act (FMLA) for eligible employees in the State. Employers subject to FMLA must allow eligible employees to use up to 12 work weeks of unpaid leave to care for a sibling, grandparent, grandchild, domestic partner, or the child of a domestic partner. Employees who take leave to care for a family member or domestic partner specified in the bill have the same FMLA protections established in current law, including protection from discrimination and interference, the right to reinstatement, and the right to continuation of health care benefits. The Commissioner of Labor and Industry must adopt regulations regarding the bill's provisions and is responsible for enforcement.

Fiscal Summary

State Effect: State expenditures (all funds) increase slightly to the extent that there is an increase in the number of State employees who take FMLA leave to care for additional eligible family members. No effect on revenues.

Local Effect: Local government expenditures may increase significantly due to a rise in the number of employees who take FMLA leave to care for the additional eligible family members. The impact on local governments may be more significant than the impact on the State because a higher percentage of local employees work as critical public safety personnel; thus, local governments experience significant increases in overtime expenditures. **This bill may impose a mandate on a unit of local government**

Small Business Effect: None. FMLA applies only to units of government and private-sector employers with more than 50 employees.

Analysis

Current Law:

Federal Family Medical Leave Act of 1993

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; or
- medical leave when the employee is unable to work due to 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 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.

Flexible Leave Act

Chapter 644 of 2008 requires a private-sector employer who provides paid leave to its employees to 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 Chapter 644.

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 specifically included.

An employee who earns more than one type of paid leave from an employer may elect the type and amount of paid leave to be used in caring for his or her immediate family.

Background: In 2005, California enacted the California Domestic Partner Rights and Responsibilities Act. The Act specifies that registered domestic partners in the state have the same rights, protections, and benefits and are subject to the same responsibilities and obligations as spouses. The Act defines domestic partners as two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring. However, to fall within the ambit of the Act, domestic partners must, among other prerequisites, file a Declaration of Domestic Partnership with the state's Secretary of State.

State Fiscal Effect: The Department of Budget and Management (DBM) is responsible for continuing the State's portion of the health benefits subsidy for State employees who take unpaid FMLA leave. According to DBM, the annual costs associated with continuing this subsidy while employees take such leave is approximately $110,000 per year, or about $2,244 per employee on leave. If employees may take such leave for the illness of family members other than those included already, it is assumed that the number of State employees who take FMLA leave increases. However, it is difficult to estimate how many employees use this leave, for how long they use it, or by how much health subsidy payments increase as a result. Nonetheless, *for illustrative purposes only*, if the number of employees taking the average FMLA leave rises by 25% due to the bill, State expenditures (all funds) increase by approximately $27,000 per year.

DBM advises that overtime expenditures also increase due to the bill, especially at State facilities, such as emergency facilities, that operate around the clock. The effect is difficult to determine, but may be significant.

The Department of Labor, Licensing, and Regulation advises that investigative and administrative activity related to the bill is minimal and can be handled with existing resources.

Local Fiscal Effect: The effect on local government expenditures varies depending on the extent to which employees use FMLA leave to care for the additional eligible family members and whether or not employees are currently eligible for these benefits. Montgomery County advises that its employees already may use FMLA leave to care for a domestic partner or the child of a domestic partner. The county estimates that extending FMLA leave to siblings, grandparents, and grandchildren does not significantly impact its finances.

Baltimore County advises that it has not extended FMLA benefits and that the bill may result in a significant increase in overtime expenses for critical public safety personnel who take FMLA leave to care for the additional eligible family members or domestic partners. The county advises that employees used about 27,000 hours of FMLA leave to care for sick family members over the previous 12 months. According to the county, about 46% of its work force is considered critical public safety personnel, meaning a county employee must be on duty regardless of the availability of other employees. To the extent that these employees take additional FMLA leave, the county may be understaffed in these areas and forced to pay available employees overtime to continue the essential services.

Additional Comments: The bill does not include a definition of what constitutes a domestic partnership for the purposes of being able to use FMLA leave.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): The Law Firm of Hatch and Parent; Baltimore, Dorchester, Garrett, and Montgomery counties; Department of Budget and Management; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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