

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 1272
Economic Matters

(Delegate Mizeur, *et al.*)

Maryland Family and Medical Leave Act

This bill expands the provisions of the federal Family and 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.

Fiscal Summary

State Effect: State expenditures (all funds) increase minimally 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

Bill Summary: 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.

A domestic partnership is a relationship between two individuals who are (1) at least age 18; (2) not related by blood or marriage; (3) not married or in a civil union or domestic partnership with another individual; and (4) agree to be in a relationship of mutual interdependence in which each individual contributes to the maintenance and support of the other individual and the relationship. An individual who asserts a domestic partnership may be required to provide (1) an affidavit signed under penalty of perjury by two individuals stating that they have established a domestic partnership; and (2) proof of any two of an enumerated list of documents.

Current Law:

Federal Family and 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.

Maryland 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 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 families.

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 their 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 State pays an average of \$2,400 for each employee on FMLA leave; in 2009, DBM estimated the State pays about \$110,000 per year to subsidize health benefits for employees taking FMLA 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. It is difficult to estimate (1) how many employees use this leave; (2) for how long employees may use it; or (3) 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 \$27,500 per year.

DBM advises that overtime expenditures likely 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.

However, counties or municipalities that have not extended FMLA benefits may experience 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. Baltimore County advises that employees used about 27,000 hours of FMLA leave to care for sick family members over a recent 12-month period. 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 Information

Prior Introductions: HB 902 of 2009, a similar bill, received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Baltimore, Charles, Frederick, Montgomery, and Somerset counties; Washington Suburban Sanitary Commission; Department of Budget and Management; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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