

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 1028

(Senators Zirkin and Peters)

Finance

Labor and Employment - Leave - Deployment of Family Members in the Armed Forces

This bill requires employers, including the State and local governments, to allow an employee to take leave from work on the day that an immediate family member is leaving for or returning from active military duty outside the United States. Immediate family members are defined as spouses, parents, stepparents, children, stepchildren, or siblings. Employers may not require an employee to use accrued annual, sick, or vacation leave for this purpose. An employer may require an employee to submit proof that the leave is being taken in accordance with the bill's requirements.

Fiscal Summary

State Effect: Most of the leave authorized by the bill is already allowed under the federal Family and Medical Leave Act (FMLA), and State employees accrue annual and personal leave that they may already use for the purposes outlined in the bill. Therefore, financial or operational effects that arise due to leave taken under the bill are expected to be minimal and absorbable within existing budgeted resources.

Local Effect: To the extent that the leave allowed by the bill exceeds FMLA requirements and paid leave allowed by local governments, any effect on local government operations and finances is expected to be minimal and absorbable under existing resources.

Small Business Effect: Potential meaningful.

Analysis

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;
- medical leave when the employee is unable to work due to a serious health condition; or
- any qualifying circumstance arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty."

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.

Under the Military Family Leave provisions adopted under the National Defense Authorization Acts of 2008 and 2010, eligible employees who are the spouse, son, daughter, or parent of a military member may take up to 12 weeks of FMLA leave during any 12-month period to address the most common issues that arise when a military member is deployed to a foreign country. These include attending military events and related activities, and issues related to short-notice deployments, child care, and making or updating financial and legal arrangements. FMLA leave may also be used for post-deployment activities such as attending arrival ceremonies, reintegration briefings, and related issues or events. Family members must give notice at least 30 days before taking any leave under these provisions or as soon as practical if 30 days notice is not possible.

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 family members.

State Fiscal Effect: There is minimal effect on the State because most of the leave allowed by the bill is already allowed under FMLA. However, the bill adds siblings, stepparents, and stepchildren to the list of qualified immediate family members, and it does not specify the need for advance notice to the employer, as normally required under FMLA. Furthermore, State employees already earn paid annual and personal leave that they may use for the purposes outlined in the bill, so it is anticipated that they will use unpaid leave only if they have exhausted all of their accrued paid leave.

To the extent that the bill requires supervisors to grant leave, without advance notice, to employees working in State functions that require constant 24/7 operation, and that neither FMLA nor paid leave is available to an employee, the bill may require additional overtime payments to ensure coverage in those functions. Legislative Services expects such effects to be minimal and absorbable within existing budgeted resources.

Small Business Effect: Small businesses with fewer than 50 employees are not covered by FMLA. Therefore, to the extent that leave taken under the bill disrupts small business operations, there may be meaningful financial effects on small businesses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Cecil, Harford, Montgomery, and St. Mary's counties; Department of Budget and Management; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; University System of Maryland; U.S. Department of Labor; Department of Legislative Services

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