

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL NOTE

House Bill 1331 (Delegate A. Kelly, *et al.*)  
Economic Matters

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**Labor and Employment - Parental Leave - Birth or Adoption of a Child**

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This bill requires firms with 15 to 49 employees to provide employees with parental leave benefits comparable to those available under the federal Family and Medical Leave Act (FMLA). The bill provides for regulation by the Department of Labor, Licensing, and Regulation (DLLR) and permits affected employees to bring an action for damages against an employer who violates the bill's provisions.

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**Fiscal Summary**

**State Effect:** DLLR can adopt regulations and otherwise implement the bill with existing resources. General fund revenues are not materially affected as a result of the bill's monetary penalty provision from cases heard in the District Court. The bill does not apply to the State as an employer.

**Local Effect:** Potential minimal increase in expenditures due to the bill's penalty provision. The bill does not apply to local governments as employers.

**Small Business Effect:** Meaningful. DLLR estimates 9,000 small businesses will be affected.

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**Analysis**

**Bill Summary:** An eligible employee may take parental leave up to a total of 6 weeks in a 12-month period for the birth, adoption, or foster placement of a child. During parental leave, the employer must maintain coverage for a group health plan and, in specified circumstances, may recover the premium if the employee fails to return to work. At the employer's discretion, the leave may be paid or unpaid leave, and the employer can

require the employee to utilize paid vacation, personal, or family leave for any part of the six-week parental leave.

To be eligible, an employee must have worked for the employer for at least one year and for 1,250 hours in the previous 12 months. An eligible employee has to provide the employer with 30-day prior notice of parental leave. Prior notice is not required if the employee takes leave because of a premature birth, unexpected adoption, or unexpected foster placement.

Upon returning from parental leave, an employee is to be restored to the same position or an equivalent position. The bill establishes that an employer may deny restoration of an employee's position if (1) the denial is necessary to prevent substantial and grievous economic injury to the operations of the employer; (2) the employer notifies the employee of its intent to deny restoration of the employee's position; and (3) in the case of parental leave that has already begun, the employee elects not to return to employment after receiving notice of the employer's intention to deny restoration of the employee's position.

Additional provisions require the Secretary of Labor, Licensing, and Regulation to adopt regulations. An employer is required to post a notice that advises employees of their rights. An employee has a right of action against an employer for damages caused by an employer's noncompliance.

An employer may not discharge or otherwise discriminate against an employee because the employee (1) makes a complaint; (2) brings an action under the bill; or (3) has testified or will testify in an action or proceeding under the bill. A person who violates any provision of the bill is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 or imprisonment for up to 90 days or both.

The bill does not diminish (1) an employer's obligation to comply with a collective bargaining agreement; (2) an employee's rights under a collective bargaining agreement; or (3) any employment benefit program or plan that provides greater rights to employees.

### **Current Law:**

#### *FMLA*

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 50 or more 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 (HB 40) 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.

**Background:** Seventeen states and the District of Columbia have set standards that are more expansive than the federal FMLA.

**State Expenditures:** DLLR estimates there will be 90 complaints each year on parental leave under the bill. However, the bill does not require or authorize DLLR to investigate and enforce the claims stemming from the bill. The bill allows DLLR to bring an action against a person who violates the parental leave policy, but to the extent that most actions

are filed directly by affected employees, DLLR expenditures are not affected. DLLR can adopt regulations with existing resources.

**Small Business Effect:** DLLR estimates the bill will impact 18,500 Maryland employers and that approximately half of these employers already provide parental leave. To the extent that parental leave increases the cost to an employer of hiring an employee, employers may experience increased costs.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Insurance Administration; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; National Conference of State Legislatures; Department of Legislative Services

**Fiscal Note History:** First Reader - March 3, 2013  
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