

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 12
Finance

(Senator Zirkin)

Economic Matters

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

This bill requires employers that employ 50 or more people, 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. To qualify for the leave, an employee must have worked for the employer on a full- or part-time basis for the last 12 months and worked at least 1,250 hours during that time. “Immediate family member” is defined as a spouse, parent, stepparent, child, stepchild, or sibling. Employers may not require an employee to use accrued compensatory, sick, or vacation leave for this purpose. Employers may require the employee to submit proof that the leave is being taken in accordance with the bill.

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: None.

Analysis

Current Law:

Federal Family and Medical Leave Act of 1993

FMLA requires covered employers to provide an eligible employee 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, FMLA-covered employers are entities engaged in commerce that employ 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.

Employers may require an eligible employee to use accrued paid leave to cover some or all of the FMLA leave taken. Employers may require the substitution of accrued paid vacation or personal leave for any situations covered by FMLA, but the substitution of accrued sick or family leave is limited by each employer's policies governing the use of such leave.

Under the Military Family Leave provisions adopted under the National Defense Authorization Acts of 2008 and 2010 (and the most recently adopted regulations that took effect March 8, 2013), an eligible employee who is the spouse, son, daughter, or parent of a military member in the National Guard, Reserves, or regular Armed Forces 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 as well as issues related to short-notice deployments, child care, and making or updating financial and legal arrangements. For

qualifying exigency leave, a “parent” means a biological, adoptive, step, or foster father or mother or any other individual who stood *in loco parentis*; likewise, a “son” or “daughter” means a biological, adopted, or foster child; a stepchild; a legal ward; or a child for whom the employee stood *in loco parentis*. FMLA leave may also be used for post-deployment activities such as attending arrival ceremonies, reintegration briefings, and related issues or events. A family member 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.

State Fiscal Effect: There is minimal effect on the State because most of the leave allowed by the bill is already allowed under FMLA. Thus, the bill adds siblings 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.

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, while they may choose to use unpaid leave, 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. The Department of Legislative Services expects such effects to be minimal and absorbable within existing budgeted resources.

Additional Information

Prior Introductions: A similar bill, SB 1028 of 2012, received a hearing in the Senate Finance Committee, but no further action was taken.

Cross File: None.

Information Source(s): Kent, Montgomery, Washington, and Worcester counties; Baltimore City; cities of Bowie and Takoma Park; Town of Elkton; Department of Budget and Management; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Maryland Municipal League; Maryland Department of Transportation; University System of Maryland; U.S. Department of Labor; Department of Legislative Services

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