

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 564
Appropriations

(Delegate Kelly, *et al.*)

Finance

**State Personnel - Limits on Use of Leave for Birth, Adoption, Foster Placement,
or Care of Child**

This bill raises the cap on the number of days of leave that a couple employed by the State Executive Branch, including units with independent personnel systems, can use to care for a child following the birth or adoption of the employees' child and for other specified reasons. All State units of the Executive Branch may not limit to less than 60 days the aggregate number of accrued sick leave days that two employees who are responsible for the care and nurturing of a child may use, without certification of illness or disability, to care for the child immediately following the birth or adoption of the employees' child. In addition, in implementing the federal Family and Medical Leave Act of 1993 (FMLA), all State units of the Executive Branch may not limit to less than 24 weeks the aggregate number of weeks of family and medical leave that two employees who are married to one another may use during a 12-month period to care for a child for specified reasons.

Fiscal Summary

State Effect: Expenditures likely minimally increase (all funds) due to specified State employees taking accrued sick leave or leave under FMLA. Revenues are not affected.

Local Effect: None. The bill applies only to State employees.

Small Business Effect: None.

Analysis

Bill Summary: If two employees within the State Personnel Management System (SPMS) care for a child, each employee may use, without certification of illness or disability, up to 30 days of accrued sick leave following the birth or adoption of the child, instead of both

employees combined being limited to 40 days. Additionally, the Secretary of Budget and Management must adopt regulations that do not limit to less than 24 weeks the aggregate number of weeks of family and medical leave that two married employees within SPMS may use during a 12-month period for the birth of the employees' child; the adoption or placement of a child with the employees for foster care; a serious health condition of the employees' minor child; or the care of the employees' adult child if the adult child is incapable of self-care.

Current Law: An employee within SPMS who is responsible for the care and nurturing of a child may use, without certification of illness or disability, up to 30 days of accrued sick leave to care for the child immediately following the birth or adoption of the employee's child. However, if two employees are responsible for the care and nurturing of a child, both employees combined may use up to 40 days (subject to the same 30-day limitation for any one employee) of accrued sick leave to care for the child.

The regulations that the Secretary of Budget and Management must adopt to implement FMLA may require an eligible employee to use other available accrued leave concurrently with family and medical leave.

Background: 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."

However, spouses employed by the same employer are limited in the aggregate to taking 12 work weeks of unpaid leave during any 12-month period for the care of a child or sick parent.

Generally, an FMLA-covered employer is an entity engaged in commerce that employs at least 50 employees. Public agencies and public or private elementary or secondary schools 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.

The U.S. Department of Labor reports 13% of all employees took leave for a qualifying FMLA reason in 2011. Of those employees, 21% took the leave for a pregnancy or to care for a new child, and 42% took 10 days or less of leave.

State Expenditures: Under the bill, two State employees within the Executive Branch who are responsible for the care and nurturing of a child may each use up to 30 days of accrued sick leave to care for the child for an aggregate of 60 days. The average wage of an employee within SPMS is \$26.73 per hour, so expenditures increase on average by \$4,277 for two SPMS employees in the aggregate using 20 additional days of accrued sick leave. The Department of Legislative Services (DLS) assumes a similar effect for other State agencies within the Executive Branch outside of SPMS. It is unknown how many employees care for the same child; however, DLS assumes there would only be a nominal number of cases in which two employees who are responsible for the care and nurturing of a child both work for the State Executive Branch and use up to 60 days of accrued sick leave to care for the child. To the extent this occurs, expenditures increase for State agencies.

Additionally, altering the limitations of using leave under FMLA for all State Executive Branch employees may increase expenditures (all funds) minimally. FMLA limits spouses who work for the same employer to 12 weeks of leave in the aggregate; under the bill, spouses are able to take 24 weeks of leave in the aggregate. The actual increase in expenditures depends on how many additional weeks of leave State employees take under the bill. The U.S. Department of Labor found that 40% of employees who took leave returned to work due to their inability to afford leave. The Department of Budget and Management (DBM) reports approximately 15% of employees within DBM and the Department of Information Technology took FMLA leave in 2014. Thus, DLS assumes there are only a nominal number of spouses who elect to take FMLA, and few of those spouses would be able to afford to take more than 12 weeks of leave. However, to the extent that spouses take more than 12 weeks of leave granted under FMLA, State Executive Branch agencies are affected. The impact is greater for agencies with 24/7 operations because the expanded leave opportunities may increase overtime costs. Agencies with 24/7 operations within SPMS include the Department of General Services, the Department of Health and Mental Hygiene, the Department of Juvenile Services, the Department of State Police, the Department of Natural Resources, and the Department of Public Safety and Correctional Services.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management, Maryland Department of Transportation, University System of Maryland, U.S. Department of Labor, Department of Legislative Services

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