

Chapter 574

(Senate Bill 473)

AN ACT concerning

Labor and Employment – Leave With Pay – Bereavement Leave

FOR the purpose of authorizing employees of certain employers to use certain leave with pay for bereavement leave; making a conforming change; defining the term “bereavement leave”; defining the term “child” for purposes of certain bereavement leave; and generally relating to an employee’s use of leave with pay for bereavement leave.

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 3–802
Annotated Code of Maryland
(2016 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Labor and Employment

3–802.

(a) (1) In this section the following words have the meanings indicated.

(2) “BEREAVEMENT LEAVE” MEANS LEAVE AN EMPLOYEE IS ALLOWED TO USE ON THE DEATH OF A MEMBER OF THE EMPLOYEE’S IMMEDIATE FAMILY.

[(2)] (3) “Child” means:

(1) FOR THE PURPOSES OF LEAVE PROVIDED UNDER SUBSECTION (D)(1)(I) OF THIS SECTION, an adopted, biological, or foster child, a stepchild, or a legal ward who is:

[(i)] 1. under the age of 18 years; or

[(ii)] 2. at least 18 years old and incapable of self-care due to a mental or physical disability; **OR**

(II) FOR THE PURPOSES OF BEREAVEMENT LEAVE UNDER SUBSECTION (D)(1)(II) OF THIS SECTION, AN ADOPTED, BIOLOGICAL, OR FOSTER CHILD, A STEPCHILD, OR A LEGAL WARD.

[(3)] (4) (i) “Employer” means a person that is engaged in a business, industry, profession, trade, or other enterprise in the State.

(ii) “Employer” includes a person who acts directly or indirectly in the interest of another employer with an employee.

[(4)] (5) “Immediate family” means a child, spouse, or parent.

[(5)] (6) (i) “Leave with pay” means paid time away from work that is earned and available to an employee:

1. based on hours worked; or
2. as an annual grant of a fixed number of hours or days of leave for performance of service.

(ii) “Leave with pay” includes sick leave, vacation time, paid time off, and compensatory time.

(iii) “Leave with pay” does not include:

1. a benefit provided under an employee welfare benefit plan subject to the federal Employee Retirement Income Security Act of 1974;
2. an insurance benefit, including benefits from an employer’s self-insured plan;
3. workers’ compensation;
4. unemployment compensation;
5. a disability benefit; or
6. a similar benefit.

[(6)] (7) “Parent” means an adoptive, biological, or foster parent, a stepparent, a legal guardian, or a person standing in loco parentis.

(b) (1) This section applies to an employee who is primarily employed in the State.

(2) This section applies to an employer that:

(i) provides leave with pay under the terms of a collective bargaining agreement or an employment policy; and

(ii) employs 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

(c) The purpose of [this section] **SUBSECTION (D)(1)(I)** is to allow an employee of an employer to use leave with pay to care for an immediate family member who is ill under the same conditions and policy rules that would apply if the employee took leave for the employee's own illness.

(d) (1) An employee of an employer may use leave with pay for:

(I) the illness of the employee's immediate family; OR

(II) BEREAVEMENT LEAVE.

(2) An agreement between an employer and employee to waive the provisions of this section is void.

(e) (1) An employee of an employer:

(i) may only use leave with pay under this section that has been earned; and

(ii) who earns more than one type of leave with pay may elect the type and amount of leave with pay to be used under this section.

(2) Except as provided in paragraph (3) of this subsection, an employee of an employer who uses leave under this section shall comply with the terms of a collective bargaining agreement or employment policy.

(3) If the terms of a collective bargaining agreement with an employer or an employment policy of an employer provide a leave with pay benefit that is equal to or greater than the benefit provided under this section, the collective bargaining agreement or employment policy prevails.

(f) An employer may not discharge, demote, suspend, discipline, or otherwise discriminate against an employee or threaten to take any of these actions against an employee because the employee:

(1) has requested leave authorized under this section;

(2) has taken leave authorized under this section;

(3) has opposed a practice made unlawful by this section; or

(4) has made a charge, testified, assisted, or participated in an investigation, proceeding, or hearing under this section.

(g) This section does not:

(1) extend the maximum period of leave an employee has under the federal Family and Medical Leave Act of 1993; or

(2) limit the period of leave to which an employee is entitled under the federal Family and Medical Leave Act of 1993.

(h) (1) Whenever the Commissioner determines that this section has been violated, the Commissioner shall:

(i) try to resolve any issue involved in the violation informally by mediation; or

(ii) ask the Attorney General to bring an action on behalf of the applicant or employee.

(2) The Attorney General may bring an action under this subsection in the county where the violation allegedly occurred for injunctive relief, damages, or other relief.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 30, 2021.