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FISCAL AND POLICY NOTE
First Reader

Senate Bill 809
Finance

(Senator A. Washington)

Education - Public School Employees - Parental Leave

This bill generally authorizes public school employees to request parental leave with pay for the birth or adoption of a child under the age of six; however, that leave may only be used if approved by the employee's public school employer. In the event that an employee has less than 60 days of accrued paid leave, the public school employer must provide the employee with additional paid leave to attain 60 days. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: Nonbudgeted expenditures under the Family and Medical Leave Insurance (FAMLI) program may decrease beginning in FY 2025, as discussed below. Revenues are not affected.

Local Effect: To the extent local school systems approve parental leave under the bill, local school system expenditures may increase significantly, likely by millions of dollars, as discussed below. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: A primary caregiver responsible for the care and nurturing of a child may use up to 60 days of parental leave to care for the child during the period immediately following (1) the birth of the employee's child or (2) the placement of a child under the age of six with the employee for adoption. A public school employee authorized to use leave may use accrue annual leave and personal leave available to the employee.

A public school employee who uses parental leave following the birth or adoption of the employee's child may not receive payment under the bill unless the employee gives the employee's public school employer the information or certificate required by guidelines issued by the appropriate local superintendent on the federal Family and Medical Leave Act of 1993.

Each public school employer must adopt policies and guidelines governing parental leave, including policies and guidelines that establish conditions and procedures for requesting and approving parental leave.

Current Law: A variety of federal and State laws require employers to provide a range of paid and unpaid leave benefits; some of the major programs are described below. Paid leave benefits are distinct from the FAMLI benefits made available under Chapter 48 of 2022. FAMLI benefits are structured similarly to unemployment insurance benefits – weekly cash payments based on an employees' earnings, as opposed to continued payment of existing wages.

Federal Family and Medical Leave Act of 1993

The Federal Family and Medical Leave Act (FMLA) of 1993 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 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.

Maryland Healthy Working Families Act

Generally, the Maryland Healthy Working Families Act requires an employer with 15 or more employees to have a sick and safe leave policy under which an employee earns at least 1 hour of paid sick and safe leave, at the same rate as the employee normally earns, for every 30 hours an employee works. An employer with 14 or fewer employees, based on the average monthly number of employees during the preceding year, must at least have a sick and safe leave policy that provides an employee with at least 1 hour of unpaid sick and safe leave for every 30 hours an employee works.

An employer is not required to allow an employee to earn or carry over more than 40 hours of earned sick and safe leave in a year, use more than 64 hours of earned leave in a year, accrue more than 64 hours at any time, or use earned sick and safe leave during the first 106 calendar days the employee works for the employer. An employer is not required to carry over unused earned sick and safe leave if the leave is awarded at the beginning of each year.

The Act does not apply to specified circumstances, such as employees who regularly work less than 12 hours a week, specified independent contractors, and individuals younger than age 18.

Maryland Flexible Leave Act

In Maryland, a private-sector employer who provides paid leave to its employees must allow an employee to use earned paid leave for bereavement leave or 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 these provisions.

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 for bereavement leave or in caring for their immediate family members.

Maryland Parental Leave Act

In Maryland, firms with 15 to 49 employees are required to provide employees with unpaid parental leave benefits. An eligible employee may take unpaid parental leave up to a total

of six weeks in a 12-month period for the birth, adoption, or foster placement of a child. During parental leave, the employer must maintain existing coverage for a group health plan and, in specified circumstances, may recover the premium if the employee fails to return to work. State and local governments are not included. To be eligible for the unpaid parental leave, an employee must have worked for the employer for at least one year and for 1,250 hours in the previous 12 months.

Family and Medical Leave Insurance Program

Chapter 48 established the FAMILI Program, to be administered by the Maryland Department of Labor (MDL). The program provides up to 12 weeks of benefits to a covered individual who is taking leave from employment due to caring for certain family members, the individual's own serious health condition, or a qualifying exigency arising out of a family member's military deployment. The weekly benefit is based on an individual's average weekly wage and is indexed to inflation. Required contributions to the program, which are shared between employers and employees, are also based on employee wages.

Generally, employers with 15 or more employees must contribute to and participate in the program – although employers may instead demonstrate to MDL that they maintain a private plan that meets or exceeds the rights, protections, and benefits under the State-administered program.

MDL must establish the new program using general funds until monies from required contributions become available. Contributions to the program begin October 1, 2023, and claims for benefits begin January 1, 2025.

Contributions: Beginning October 1, 2023, each employee, each employer with 15 or more employees, and each participating self-employed individual must pay to the Secretary of Labor a percentage contribution based on wages, which are established in regulation. The Act establishes a process for determining the initial contribution rates of employers with 15 or more employees, as well as a process for reassessing the contributions every two years. By June 1, 2023, the Secretary must set the total rate of contribution for employees and the percentage of the total contribution rate to be paid by employers with 15 or more employees.

Benefits Individuals may submit claims for benefits beginning January 1, 2025. A covered individual who is taking leave from employment may submit a claim for intermittent leave, or up to 12 weeks of benefits to (1) care for a newborn child or a child newly placed for adoption, foster care, or kinship care with the individual during the first year after the birth, adoption, or placement; (2) care for a family member with a serious health condition; (3) attend to a serious health condition that results in the individual being unable to perform the functions of the individual's position; (4) care for a next of kin service member; or

(5) attend to a qualifying exigency arising out of the individual's family member's deployment, as defined by the Act.

A covered individual may not receive more than 12 weeks of benefits in an application year, except under specified circumstances. A covered individual may take eligible leave on an intermittent leave schedule under specified conditions. If leave is taken on an intermittent leave schedule, an employer may not reduce the total amount of leave to which the covered individual is entitled beyond the amount of leave actually taken.

The weekly benefit payable to a covered individual ranges from a minimum of \$50 to a maximum of \$1,000 for the 12-month period beginning January 1, 2025. Beginning January 1, 2026, the maximum weekly benefit must be increased by the annual percentage growth in the Consumer Price Index, subject to a determination by the Board of Public Works based on expected economic conditions.

Public School Employee

“Public school employee” in Section 6-401 of the Education Article is defined as a certificated professional individual who is employed by a public school employer or an individual of equivalent status in Baltimore City, except for a county superintendent or an individual designated by the public school employer to act in a negotiating capacity. In certain counties, “public school employee” includes specified additional individuals including substitutes teachers and Junior Reserve Officer Training Corps instructors.

Public School Employer

“Public school employer” is defined as a local board of education or the Baltimore City Board of School Commissioners.

State Fiscal Effect: As described above, the FAMLII program provides up to 12 weeks of benefits to a covered individual who is taking leave from employment due to caring for certain family members, the individual's own serious health condition, or a qualifying exigency arising out of a family member's military deployment. Claims for benefits begin January 1, 2025. A covered individual must exhaust all employer-provided leave that is not required to be provided under law before receiving FAMLII benefits. It is unclear whether the leave that may be provided under this bill would be required to be exhausted prior to receipt of FAMLII benefits, but in either case, availability of additional paid leave (at full pay) likely reduces demand for FAMLII benefits, which are only a portion of full pay. Therefore, nonbudgeted expenditures for the FAMLII program may decrease beginning in fiscal 2025, depending largely on the amount of paid leave provided under the bill. The amount is unknown in absence of experience under the bill.

Local Expenditures: Under the bill, local school systems have the option to approve parental leave for public school employees for the birth or adoption of a child under the age of six but are not required to do so. If approved, the public school employer must provide additional paid leave to an employee with less than 60 days of accrued leave to attain the 60-day threshold. Thus, to the extent local school systems approve parental leave under the bill, local school system expenditures may increase.

The cost for a local school system to implement a parental leave program under the bill will depend on several factors, including the number of employees who request leave, the difference between their accrued leave and the 60-day threshold, whether employers approved leave requests, and the daily wage of approved employees with a leave gap. Although it is difficult to estimate costs accurately, the following can provide an idea of the program's scope: (1) approximately 500 Anne Arundel County Public School (AACPS) employees take FMLA leave for child birth each year; (2) a second-year teacher in Baltimore City will have accrued a maximum of 20 days of paid leave; and (3) the average *per diem* teacher rate in Anne Arundel County is \$400. *For illustrative purposes*, providing 500 individuals with 20 days of accrued paid leave who need an additional 40 days of paid leave at \$400 per day would cost \$8 million. This estimate is consistent with AACPS's estimate of \$12 million annually and Baltimore City Public Schools estimate \$2.5 million to \$5 million annually. Actual costs will depend on individual circumstances, and there may be additional costs associated with hiring additional substitute staff if more employees choose to go on leave due to birth or adoption.

Maryland State Department of Education advises that approving parental leave under the bill may cause confusion over the type of leave an employee may use. Currently, a person giving birth can use sick leave during the six-week postpartum recovery period as it is considered a medical disability. However, under the bill, a person may use personal or annual leave, which may cause confusion. Additionally, 10-month employees, which includes most teachers, typically do not receive annual leave.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland State Department of Education; Maryland Department of Labor; Baltimore City Public Schools; Anne Arundel County Public Schools; Montgomery Department of Legislative Services

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Analysis by: Caroline L. Boice

Direct Inquiries to:
(410) 946-5510
(301) 970-5510