



HB 375
Labor and Employment – Family and Medical Leave Insurance Program –
Establishment (Time to Care Act of 2021)
Economic Matters Committee
Position: Unfavorable

Maryland AGC, the Maryland Chapter of the Associated General Contractors of America, provides professional education, business development, and advocacy for commercial construction companies and vendors, both open shop and union. AGC of America is the nation’s largest and oldest trade association for the construction industry. AGC of America represents more than 26,000 firms, including over 6,500 of America’s leading general contractors, and over 9,000 specialty-contracting firms, all through a nationwide network of chapters. Maryland AGC respectfully urges HB 375 be given an unfavorable report.

HB 375 presents a range of issues that are detrimental to employers. The first, and most obvious, is the assessment on employers of 50% of the costs of the program without any guarantee that there will be a commensurate benefit. Moreover, the bill requires the assessments to cover the full costs of the program¹, and the benefits to be indexed to the CPI², so it is a certainty that the initial cap of 0.75% of employee wages will rise over time. This is an added cost at a time when businesses of every sort are suffering.

While some employees would have taken leave for one of the covered circumstances regardless of whether the leave was paid or unpaid, it is also certain that the availability of paid leave will cause and encourage more employees to take leave. The consequence to employers is greater uncertainty in their available workforce, with the attendant costs of covering for absent employees. This is especially true of employees critical to the employer’s operations.

Managing intermittent leave is problematic for employers. While an employee requesting intermittent leave has to make a “reasonable effort” not to “unduly” disrupt the employer’s operations,³ the employer is not authorized to deny that leave if it is unduly disruptive, since it appears that leave can be taken in whatever increment of time is deemed desirable by the employee. Equally certain is that the program will introduce other unrecoverable costs to employers for the internal administration of the program, payroll processing changes, required notices, and other bureaucracy. In other words, the costs to employers are definite, but the benefits to employers are speculative.

It also should be noted that an employee who makes a false claim for leave gets a slap on the wrist – ineligibility for paid leave for one year⁴ and the possibility that the Commissioner may seek recovery of the fraudulently used benefits⁵. Employers, on the other hand, face the certainty of a \$1,000 penalty for failure to report a material fact related to a claim for benefits⁶, and, if the employer fails to deduct and remit the required fees, reimbursement of the whole amount and a penalty of twice more the amount not remitted.⁷ In addition, employers face the burden of both an action by the Commissioner and a civil suit by disgruntled employees simultaneously⁸. In a civil suit, employers are subject to punitive damages (with no standard in the bill by which their propriety should be determined). Since employers will be required to pay a prevailing employee’s legal costs, there will be no lack of attorneys available for litigation.

Accordingly, for the reasons set forth above, Maryland AGC respectfully urges HB 375 be given an unfavorable report.

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¹ §8.3-601(B)(1)(ii)(4)

² §8.3-704(B)(3)

³ §8.3-701(B)

⁴ §8.3-901(A)

⁵ §8.3-902

⁶ §8.3-901(B)

⁷ §8.3-903

⁸ §8.3-905 & 906