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SENATE BILL NO. 824

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 3, 2017)

(Patron Prior to Substitute—Senator Wexton)

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 40.1 an article numbered 2.1, consisting of sections numbered 40.1-33.1 through 40.1-33.12, relating to the provision of paid medical leave to employees; civil penalties.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 40.1 an article numbered 2.1, consisting of sections numbered 40.1-33.1 through 40.1-33.12, as follows:

Article 2.1.

Paid Medical Leave.

§ 40.1-33.1. Definitions.

As used in this article, unless the context requires a different meaning:

"Employer" means any employer, as such term is defined in § 40.1-2, that employed an average of 25 or more full-time employee equivalents during the preceding year. "Employer" does not include any state, local, or regional governmental agency or institution.

"Family member" means any of the following:

1. A child, which for purposes of this article means a biological, adopted, or foster child; a stepchild; a ward; or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status;

2. A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or a person who stood in loco parentis when the employee was a minor child;

3. A spouse;

4. A grandparent;

5. A grandchild; or

6. A sibling.

"Full-time employee equivalent" means the sum of (i) the number of employees who, with respect to any month, are employed, on average during the month, not fewer than 40 hours per week and (ii) the number obtained by dividing the aggregate number of hours of service of employees who are not described in clause (i) for the month by 160.

"Health care provider" has the same meaning ascribed to the term in § 38.2-3438.

"Minimum work requirement" means the requirement that an employee work an average of 18 hours during each of the weeks comprising the employee's pay period.

"Paid medical leave" means time off from work that is provided by an employer to an employee pursuant to § 40.1-33.3.

"Pay period" means the regular pay period established by the employer in accordance with subsection A of § 40.1-29.

§ 40.1-33.2. Entitlement to paid medical leave.

Every employer shall provide to its employees paid medical leave as provided in this article. When an employee uses paid medical leave for a purpose set forth in § 40.1-33.6, the employer shall compensate the employee for such time used at the same rate as the wage and with the same benefits that the employee would have earned or accrued had the employee worked such time during regular work hours.

§ 40.1-33.3. Accrual and use of paid medical leave.

A. An employer shall provide paid medical leave to each employee who satisfies the minimum work requirement for a pay period. The duty to provide paid medical leave shall start with the first pay period during which an employee satisfied the minimum work requirement. Paid medical leave shall be provided to such employees at the following rates:

1. For each pay period starting in calendar year 2018 in which an employee satisfies the minimum work requirement, the employer shall provide to the employee one hour of paid medical leave, or proportionate share thereof, for each 50 hours worked; and

2. For each pay period starting in calendar year 2019 or thereafter in which an employee satisfies the minimum work requirement, the employer shall provide to the employee one hour of paid medical leave, or proportionate share thereof, for each 30 hours worked.

However, if an employer commences its business operations after January 1, 2018, the employer shall provide to each employee who satisfies the minimum work requirement paid medical leave at the rate specified in subdivision 1 during the first year of its operations and at the rate specified in

60 subdivision 2 for periods following its first year of operations.

61 If an employer's pay period is less than one month, the employer shall award paid medical leave for
62 each pay period in such amounts that in the aggregate for each month are equivalent to the monthly
63 paid medical leave required to be awarded pursuant to this subsection.

64 B. An employee shall not be eligible to use paid medical leave that he has accrued under this article
65 until he has been employed by his employer for 90 calendar days. If an employee satisfies this 90-day
66 qualification period with an employer, the employee shall not, following a break in continuous
67 employment with the employer, be required to satisfy another qualification period with the employer.
68 Following satisfaction of the qualification period requirement, an employee may use accrued paid
69 medical leave in any pay period subsequent to the pay period in which it has been earned. Any accrued
70 paid medical leave is forfeited upon the employee's termination of employment with the employer for any
71 reason, and the employee is not entitled to payment therefor. However, any employee who returns to
72 employment with a former employer for which the employee has satisfied the 90-day qualification
73 period, no matter how long the break in employment or the reasons therefor, is immediately eligible to
74 use any paid medical leave that accrues after his return to the employer's employment. An employee
75 who returns to employment with a former employer for which the employee has not satisfied the 90-day
76 qualification period shall not be eligible to use any paid medical leave until he has been employed by
77 his employer for 90 calendar days following his return to employment.

78 C. The amount of time an employer provides in any form of paid leave that is used for multiple
79 purposes including use as paid medical leave, such as paid time off or earned time off, shall satisfy the
80 requirements of this article, so long as the rate of accrual of such leave satisfies the requirements of
81 this article for the accrual of paid medical leave. That such leave balances may be reduced by an
82 employee utilizing such leave for other purposes, such as taking a vacation, shall not affect the fact that
83 providing such leave satisfies the requirements of this article regarding the provision of paid medical
84 leave.

85 **§ 40.1-33.4. Maximum accrual of paid medical leave and increment of use.**

86 An employee may accumulate up to a maximum of 72 hours of paid medical leave. An employee's
87 balance of paid medical leave shall be reduced on an hour-for-hour basis for each hour or portion
88 thereof that an employee uses paid medical leave for a purpose authorized pursuant to § 40.1-33.6.

89 **§ 40.1-33.5. Employee to provide notice of intent to use paid medical leave.**

90 Employees shall make reasonable efforts to schedule paid medical leave when possible with the
91 employer in a manner that does not unduly disrupt the employer's operations. Whenever such scheduling
92 is impossible or impracticable, employees shall provide their employers with reasonable written or
93 verbal advance notice of their need to use paid medical leave. Such requests shall include a reason for
94 the absence involved and the expected duration of the leave. Where the requirement for the leave is
95 foreseeable, the employee shall provide such notice at least seven days in advance of such leave or, if
96 giving seven days' advance notice is not possible, notice as soon as practicable after the employee
97 becomes aware of the need to take such leave. Where the requirement for the leave is unforeseeable, the
98 employee shall provide notice as soon as practicable after the employee becomes aware of the need to
99 take such leave.

100 **§ 40.1-33.6. Authorized use of paid medical leave.**

101 Employees may use paid medical leave for any of the following purposes or reasons:

102 1. To attend to the needs of the employee or a family member of the employee when such individual
103 is suffering from a physical or mental illness, injury, or medical condition or has a need for dental
104 care;

105 2. To obtain professional medical, mental health, or dental diagnosis or care, or preventative
106 medical, mental health, or dental care, for the employee or a family member of the employee; or

107 3. To participate in any civil or criminal legal proceeding related to or resulting from the employee
108 or a family member of the employee being the victim of domestic or sexual violence.

109 **§ 40.1-33.7. Employer may require documentation.**

110 An employer may require that a request to use paid medical leave that is either anticipated to last
111 more than three consecutive days or that actually lasts for more than three consecutive days be
112 supported by documentation, issued by a health care provider, certifying that the employee or the
113 employee's family member qualified for the use of paid medical leave pursuant to subdivision 1 or 2 of
114 § 40.1-33.6 or appropriate court records establishing the employee's eligibility to use paid medical leave
115 pursuant to subdivision 3 of § 40.1-33.6. The employee shall provide such documentation to the
116 employer in a timely manner, not later than 30 days after the first day of the paid medical leave. The
117 employer shall not delay the commencement of the leave or withhold payment of wages for such leave
118 period on the basis that the employer has not yet received such documentation. If an employer requires
119 such documentation and the employee is not covered by a policy of health insurance that would cover
120 the full medical and direct ancillary costs associated with obtaining such documentation, the employer
121 shall reimburse such employee for any out-of-pocket expenses incurred in obtaining such documentation.

An employer may require an employee to provide evidence documenting such unreimbursed medical and direct ancillary costs before reimbursing the employee for such expenses.

§ 40.1-33.8. Employer may offer rescheduled work hours in lieu of paid medical leave.

A. If an employee notifies his employer of intent to use accrued paid medical leave, the employer, at its option, may offer the employee the opportunity to reschedule the work hours for which the employee seeks to use the accrued paid medical leave. The employer shall make such rescheduled work hours available within either the same pay period or within two weeks of the hours for which the employee sought to use accrued paid medical leave. An employee may not unreasonably refuse such an offer of rescheduled work hours; an employee who unreasonably refuses such an offer of rescheduled work hours is not eligible to use accrued paid medical leave for those hours he originally notified his employer that he was requesting to use accrued paid medical leave.

B. In determining whether an employee unreasonably refused an offer of rescheduled hours, the Department shall consider the nature of the employment, whether the employer made a good faith effort to consider the nature of the employment, whether the employer made a good faith offer of the proposed rescheduled hours, whether the employee made a good faith effort to accommodate the employer's request that the employee work the rescheduled hours, and whether the rescheduled hours would have been an undue hardship upon the employee. A refusal to work is not unreasonable if working the hours offered by the employer would cause an undue hardship for the employee.

C. An undue hardship includes any situation where the proposed rescheduled hours would (i) cause the employee to work more than 40 hours per week; (ii) conflict with other previously scheduled employment or scheduled psychological, medical, or dental appointments of the employee or a family member of the employee; (iii) conflict with educational classes; (iv) conflict with court proceedings or appointments with legal counsel; (v) conflict with any court-ordered program, process, or event; (vi) present a hardship because of the employee's disability or medical condition; or (vii) cause child care coverage problems.

§ 40.1-33.9. Civil penalties; enforcement actions.

A. Any employer that knowingly fails to provide paid medical leave to its employees in accordance with this article shall be subject to a civil penalty not to exceed \$1,000 for each violation. The Commissioner shall notify by certified mail any employer that he alleges has violated any provision of this article. Such notice shall contain a description of the alleged violation. The decision of the Commissioner shall be final. Civil penalties owed under this section shall be paid to the Commissioner for deposit into the general fund by the State Treasurer. The Commissioner shall prescribe procedures for the payment of proposed assessments of penalties that are not contested by employers. Such procedures shall include provisions for an employer to consent to abatement of the alleged violation and pay a proposed penalty or a negotiated sum in lieu of such penalty without admission of any civil liability arising from such alleged violation.

B. The Commissioner may require a written complaint of the violation of this article and, with the written and signed consent of an employee, may institute proceedings on behalf of an employee to enforce compliance with this article and collect the value of any paid medical leave unlawfully withheld from such employee, which shall be awarded to the employee entitled thereto. Upon entry of a final order of the Commissioner, or upon entry of a judgment against the employer, the Commissioner or the court shall assess attorney fees of one-third of the amount set forth in the final order or judgment.

C. Final orders of the Commissioner, the general district courts, or the circuit courts may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner or the court, as appropriate.

§ 40.1-33.10. Waivers prohibited.

No employer shall require any employee, except executive personnel, to sign any contract or agreement that provides for the forfeiture of the employee's paid medical leave as a condition of employment or the continuance therein, except as otherwise provided by law.

§ 40.1-33.11. Paid medical leave statements.

An employer, upon request of his employee, shall furnish to the employee a written statement of the paid medical leave earned by the employee during any pay period, any amounts deducted therefrom during the pay period, and the balance of the employee's paid medical leave.

§ 40.1-33.12. Application of article.

A. Nothing in this article shall be construed to discourage or prohibit an employer from the adoption or retention of a paid medical leave policy more generous than the provisions required by this article.

B. Nothing in this article shall be construed to lessen the obligation of an employer to comply with a contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous paid medical leave to an employee than required by this article.

C. This article establishes minimum requirements pertaining to paid medical leave and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or

183 *standard that provides for greater accrual or use by employees of medical leave, whether paid or*
184 *unpaid, or that extends other protections to an employee.*