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HOUSE BILL NO. 1529

Offered January 19, 2018

A *BILL to amend and reenact §§ 51.1-1110 and 51.1-1155 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 12 of Title 2.2 sections numbered 2.2-1210 and 2.2-1211, relating to parental and supplemental family leave benefits.*

Patrons—Sickles, Toscano, Bagby, Hope, Levine, Mullin and Simon

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-1110 and 51.1-1155 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 12 of Title 2.2 sections numbered 2.2-1210 and 2.2-1211 as follows:

§ 2.2-1210. Parental leave benefits.

A. As used in this section, "eligible employee" means a full-time state employee (i) with one or more years of continuous employment with the Commonwealth, (ii) who gives reasonable prior notice to his agency head of his intent to claim parental leave benefits, and (iii) who takes leave because of the birth of a child of the eligible employee or placement of a child with the employee for adoption. Such employee shall be an eligible employee only if he claims parental leave benefits within one year of the birth or adoption of a child.

B. On and after July 1, 2018, the Department shall implement and administer parental leave benefits for eligible employees. The benefits shall consist of 12 weeks of paid leave and shall provide 100 percent income replacement of an eligible employee's creditable compensation, as defined in § 51.1-124.3.

C. Parental leave shall not be considered supplemental family leave for the purposes of § 2.2-1211 or sick leave, short-term disability, long-term disability, or family and personal leave for the purposes of Chapter 11 (§ 51.1-1100 et seq.) or 11.1 (§ 51.1-1150 et seq.) of Title 51.1. The amount of leave provided in this section shall expire at the end of each calendar year and shall not accumulate for any subsequent use.

D. If two state employees are eligible for parental leave for the same child, only one such employee shall claim parental leave. If a state employee is eligible for parental leave pursuant to this section and another state employee is eligible for maternity leave under Chapter 11 (§ 51.1-1100 et seq.) or 11.1 (§ 51.1-1150 et seq.) of Title 51.1 for the same child, only one such employee shall claim paid leave under such programs.

E. If a state employee is eligible for both parental leave pursuant to this section and maternity leave pursuant to Chapter 11 (§ 51.1-1100 et seq.) or 11.1 (§ 51.1-1150 et seq.) of Title 51.1 for the same child, the first 12 weeks of the employee's leave shall be covered by the provisions of this section. Upon the expiration of parental leave, if the employee provides a notification to her employer from her physician that she is unable to return to work, she shall receive income replacement under short-term disability pursuant to Chapter 11 (§ 51.1-1100 et seq.) or 11.1 (§ 51.1-1150 et seq.) of Title 51.1, as applicable.

§ 2.2-1211. Supplemental family leave benefits.

A. As used in this section:

"Eligible employee" means a full-time state employee (i) with one or more years of continuous employment with the Commonwealth, (ii) who gives reasonable prior notice to his agency head of his intent to claim supplemental family leave benefits, and (iii) who takes leave in order to care for his family member, if such family member has a serious health condition or because of a serious health condition that makes the eligible employee unable to perform the functions of the position of such employee.

"Family member" means an eligible employee's spouse, child, or parent.

"Health care provider" means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery in the state in which the doctor practices.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves (i) inpatient care in a hospital, hospice, or residential medical care facility or (ii) continuing treatment by a health care provider.

B. On and after July 1, 2018, the Department shall implement and administer supplemental family leave benefits for eligible employees. The benefits shall consist of 30 days of paid leave and shall provide 100 percent income replacement of an eligible employee's creditable compensation, as defined

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59 in § 51.1-124.3.

60 C. Supplemental family leave shall not be considered parental leave for the purposes of § 2.2-1210
61 or sick leave, short-term disability, long-term disability, or family and personal leave for the purposes of
62 Chapter 11 (§ 51.1-1100 et seq.) or 11.1 (§ 51.1-1150 et seq.) of Title 51.1. The amount of leave
63 provided in this section shall expire at the end of each calendar year and shall not accumulate for any
64 subsequent use.

65 D. An eligible employee may elect, or such employee's employer may require the employee, to
66 substitute any accrued sick leave or family and personal leave of such employee for leave provided
67 pursuant to this section.

68 E. 1. An employer may require that an eligible employee's request for supplemental family leave be
69 supported by a verification issued by the health care provider of the eligible employee or such
70 employee's family member if such employee takes leave to in order to care for his family member. The
71 eligible employee shall provide, in a timely manner, a copy of such verification to his employer.

72 2. Verification pursuant to this subsection shall be sufficient if it states:

73 a. The date on which the serious health condition commenced;

74 b. The probable duration of the condition;

75 c. The appropriate medical facts within the knowledge of the health care provider regarding the
76 condition; and

77 d. If the eligible employee takes leave (i) to care for his family member, a statement that such
78 employee is needed to care for such family member and an estimate of the amount of time such
79 employee is needed to care for such family member or (ii) because he is unable to perform the functions
80 of his position, a statement that such employee is unable to perform the functions of his position.

81 3. a. If the eligible employee's employer has reason to doubt the validity of the verification provided
82 pursuant to subdivision 1, the employer may require, at the expense of the employer, that the eligible
83 employee obtain the opinion of a second health care provider designated or approved by the employer
84 concerning any information required by subdivision 2. Such second health care provider shall not be
85 employed on a regular basis by the employer.

86 b. In any case in which the second opinion described in subdivision a differs from the opinion in the
87 original verification provided pursuant to subdivision 1, the employer may require, at the expense of the
88 employer, that the employee obtain the opinion of a third health care provider designated or jointly
89 approved by the employer and the employee concerning any information required by subdivision 2.

90 c. The opinion of the third health care provider concerning the information required by subdivision 2
91 shall be considered to be final and shall be binding on the employer and the employee.

92 4. The employer may require that the eligible employee obtain subsequent reverifications on a
93 reasonable basis.

94 **§ 51.1-1110. Short-term disability benefit.**

95 A. Except as provided in subsection D of § 51.1-1103, short-term disability benefits for participating
96 employees shall commence upon the expiration of a seven-calendar-day waiting period. The waiting
97 period shall commence the first day of a disability or of maternity leave. If an employee returns to work
98 for one day or less during the seven-calendar-day waiting period but cannot continue to work, the
99 periods worked shall not be considered to have interrupted the seven-calendar-day waiting period.
100 Additionally, the seven-calendar-day waiting period shall not be considered to be interrupted if the
101 employee works 20 hours or less during the waiting period. Short-term disability benefits payable as the
102 result of a catastrophic disability or major chronic condition shall not require a waiting period.

103 B. Except as provided in subsections C ~~and E of this section~~, and G and § 51.1-1131, short-term
104 disability coverage shall provide income replacement for a percentage of a participating employee's
105 creditable compensation during the period specified below that an employee is disabled, on maternity
106 leave, or takes periodic absences due to a major chronic condition, as determined by the Board or its
107 designee, based on the number of months of state service as an eligible employee, as follows:

108		Work days of 100%	Work days of 80%	Work days of 60%
109	Months of	replacement of	replacement of	replacement of
110	state service	creditable compensation	creditable compensation	creditable compensation
111	Less than 60	5	20	100
112	60 to 119	25	25	75
113	120 to 179	25	50	50
114	180 or more	25	75	25

115 C. For all eligible employees commencing employment or reemployment on or after July 1, 2009,
116 except as provided in subsections B, ~~and E, and G of this section~~ and § 51.1-1131, short-term disability
117 coverage shall provide income replacement for (i) 60 percent of a participating employee's creditable
118 compensation for the first 60 months of continuous state service after employment or reemployment and
119 (ii) thereafter, a percentage of a participating employee's creditable compensation during the periods that
120 he is disabled, on maternity leave, or takes periodic absences due to a major chronic condition, based on

the number of months of continuous state service, as determined by the Board or its designee, as follows:

Months of state service	Work days of 100% replacement of creditable compensation	Work days of 80% replacement of creditable compensation	Work days of 60% replacement of creditable compensation
60 to 119	25	25	75
120 to 179	25	50	50
180 or more	25	75	25

D. Creditable compensation during periods an employee receives short-term disability benefits shall include general salary increases awarded during the period of short-term disability coverage.

E. An employee's disability credits may be used, on a day for day basis, to extend the period an employee receives short-term disability benefits paid at 100 percent of replacement of creditable compensation.

F. Short-term disability benefits shall be payable only during periods of (i) total disability, (ii) partial disability, (iii) maternity leave *except as provided in subsection G*, or (iv) periodic absences due to a major chronic condition as defined by the Board or its designee.

G. If an employee is eligible for both parental leave pursuant to § 2.2-1210 and maternity leave pursuant to this section for the same child, the first 12 weeks of the employee's leave shall be covered by the provisions of § 2.2-1210. Upon the expiration of parental leave, if the employee provides a notification to her employer from her physician that she is unable to return to work, the employee shall receive income replacement under short-term disability pursuant to this section. Such income replacement shall commence upon the expiration of a seven-calendar-day waiting period as provided in subsection A.

§ 51.1-1155. Short-term disability benefit.

A. Except as provided in subsection B of § 51.1-1153, short-term disability benefits for participating employees shall commence upon the expiration of a seven-calendar-day waiting period. The waiting period shall commence the first day of a disability or of maternity leave. If an employee returns to work for one day or less during the seven-calendar-day waiting period but cannot continue to work, the periods worked shall not be considered to have interrupted the seven-calendar-day waiting period. Additionally, the seven-calendar-day waiting period shall not be considered to be interrupted if the employee works 20 hours or less during the waiting period. Short-term disability benefits payable as the result of a catastrophic disability or major chronic condition shall not require a waiting period.

B. Except as provided in *subsection E* and § 51.1-1171, short-term disability coverage shall provide income replacement for (i) 60 percent of a participating employee's creditable compensation for the first 60 months of continuous service and (ii) thereafter, a percentage of a participating employee's creditable compensation during the periods specified below, based on the number of months of continuous service attained by an employee who is disabled, on maternity leave, or takes periodic absences due to a major chronic condition, as determined by the Board or its designee, as follows:

Months of Continuous Service	Work Days of 100% Replacement of Creditable Compensation	Work Days of 80% Replacement of Creditable Compensation	Work Days of 60% Replacement of Creditable Compensation
60-119	25	25	75
120-179	25	50	50
180 or more	25	75	25

C. Creditable compensation during periods an employee receives short-term disability benefits shall include salary increases awarded during the period covered by short-term disability benefits.

D. Short-term disability benefits shall be payable only during periods of (i) total disability, (ii) partial disability, (iii) maternity leave *except as provided in subsection E*, or (iv) periodic absences due to a major chronic condition as defined by the Board or its designee.

E. If an employee is eligible for both parental leave pursuant to § 2.2-1210 and maternity leave pursuant to this section for the same child, the first 12 weeks of the employee's leave shall be covered by the provisions of § 2.2-1210. Upon the expiration of parental leave, if the employee provides a notification to her employer from her physician that she is unable to return to work, the employee shall receive income replacement under short-term disability pursuant to this section. Such income replacement shall commence upon the expiration of a seven-calendar-day waiting period as provided in subsection A.

2. That the provisions of this act providing parental leave benefits for the birth or adoption of a child pursuant to § 2.2-1210 of the Code of Virginia, as created by this act, shall apply only to an eligible state employee who takes custody of a child in the course of an adoption on or after January 1, 2018, or, for a biological parent, for a child born on or after January 1, 2018.