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HOUSE BILL NO. 973

Offered January 10, 2018

Prefiled January 9, 2018

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 40.1-33.11, relating to the provision of paid medical and family leave to employees; civil penalties.*

Patrons—Guzman, Boysko, Convirs-Fowler, Hope, Krizek, Rodman and Simon

Referred to Committee on Commerce and Labor

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 40.1-33.11, as follows:

*Article 2.1.**Paid Medical and Family 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 15 or more full-time employees 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, a stepparent, or a 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" means an employee for whom the median of the number of hours worked in full weeks during the preceding 12 months of the employee's employment with his current employer is not fewer than 40.

"Paid medical and family leave" means time off from work for which an employee is paid by his employer pursuant to § 40.1-33.3.

§ 40.1-33.2. Entitlement to paid medical and family leave.

Every employer shall provide to its employees paid medical and family leave as provided in this article. When an employee takes 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 and family leave.

A. An employer shall provide 40 hours of paid medical and family leave per year to each employee who has been employed by the employer as a full-time employee for the preceding 12 months. The duty to provide paid medical and family leave shall start with the first pay period commencing after the end of such 12-month period of employment as a full-time employee. The period in which a full-time employee is eligible to take the 40 hours of medical and family leave per year expires at the end of the pay period following the anniversary of the provision of such 40 hours of medical and family leave, and the employer shall thereupon provide 40 hours of medical and family leave per year to each full-time employee for the ensuing 12-month period.

B. Any paid medical and family leave provided under this article is forfeited upon the employee's termination of employment with the employer for any reason, and the employee is not entitled to payment therefor.

C. The amount of time an employer provides in any form of paid leave that is used for multiple purposes including use as paid medical and family leave, such as paid time off or earned time off, shall satisfy the requirements of this article, so long as the rate of accrual of such leave satisfies the requirements of this article for the accrual of paid medical and family leave. That such leave balances may be reduced by an employee utilizing such leave for other purposes, such as taking a vacation, shall

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59 not affect the fact that providing such leave satisfies the requirements of this article regarding the
60 provision of paid medical and family leave.

61 **§ 40.1-33.4. Increments of use.**

62 An employee's balance of paid medical and family leave shall be reduced on an hour-for-hour basis
63 for each hour or portion thereof that an employee takes leave for a purpose authorized pursuant to
64 § 40.1-33.6.

65 **§ 40.1-33.5. Employee to provide notice of intent to use paid medical and family leave.**

66 Employees shall make reasonable efforts to schedule paid medical and family leave when possible
67 with the employer in a manner that does not unduly disrupt the employer's operations. Whenever such
68 scheduling is impossible or impracticable, employees shall provide their employers with reasonable
69 written or verbal advance notice of their need to use paid medical and family leave. Such requests shall
70 include a reason for the absence involved and the expected duration of the leave. Where the requirement
71 for the leave is foreseeable, the employee shall provide such notice at least seven days in advance of
72 such leave or, if giving seven days advance notice is not possible, notice as soon as practicable after
73 the employee becomes aware of the need to take such leave. Where the requirement for the leave is
74 unforeseeable, the employee shall provide notice as soon as practicable after the employee becomes
75 aware of the need to take such leave.

76 **§ 40.1-33.6. Authorized use of paid medical and family leave.**

77 Employees may use paid medical and family leave for any purpose for which an employer subject to
78 the federal Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq., as amended, is required to
79 grant unpaid leave to its employees.

80 **§ 40.1-33.7. Employer may require documentation.**

81 An employer may require that a request to use paid medical and family leave that is either
82 anticipated to last more than three consecutive days or that actually lasts for more than three
83 consecutive days be supported by documentation that the employee or the employee's family member
84 qualified for the use of paid medical and family leave. The employee shall provide such documentation
85 to the employer in a timely manner, not later than 30 days after the first day of the paid medical and
86 family leave. The employer shall not delay the commencement of the leave or withhold payment of
87 wages for such leave period on the basis that the employer has not yet received such documentation.

88 **§ 40.1-33.8. Civil penalties; enforcement actions.**

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

99 B. The Commissioner may require a written complaint of the violation of this article and, with the
100 written and signed consent of an employee, may institute proceedings on behalf of an employee to
101 enforce compliance with this article and collect the value of any paid medical and family leave
102 unlawfully withheld from such employee, which shall be awarded to the employee entitled thereto.

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

106 **§ 40.1-33.9. Waivers prohibited.**

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

110 **§ 40.1-33.10. Paid medical and family leave statements.**

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

114 **§ 40.1-33.11. Application of article.**

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

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

121 C. This article establishes minimum requirements pertaining to paid medical and family leave and
122 does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement,
123 policy, or standard that provides for greater accrual or use by employees of medical and family leave,
124 whether paid or unpaid, or that extends other protections to an employee.