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HOUSE BILL NO. 2261

Offered January 9, 2019

Prefiled January 8, 2019

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, Levine, Hope, Kory, Rasoul and Simon; Senator: Howell

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 employees during the preceding year. "Employer" does not include any state, local, or regional governmental agency or institution.

"Existing employee" means an employee whose current period of employment with his employer commenced prior to July 1, 2019, and continued without interruption after July 1, 2019.

"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 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.

"New employee" means an employee whose current period of employment with his employer commenced on or after July 1, 2019.

"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 each employee paid medical and family leave as follows:

1. Paid medical and family leave shall be awarded at a rate of 0.46 hours per 40 hours worked, provided that the amount of paid medical and family leave that an employer is required to provide to an employee during any 12-month period shall not exceed 24 hours;

2. Each existing employee shall begin receiving paid medical and family leave for hours of work performed on and after July 1, 2019;

3. Each new employee shall begin receiving paid medical and family leave for hours of work performed on the 90th day following the date the new employee commenced working for the employer; and

4. Any paid medical and family leave awarded to an employee that is not used by an employee within one year following the date it was awarded shall expire and is forfeited. In no event shall an employee have accrued at any one time a balance of paid medical and family leave of more than 24 hours.

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

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59 payment therefor.

60 C. The amount of time an employer provides in any form of paid leave that is used for multiple
61 purposes, including use as paid medical and family leave, such as paid time off or earned time off, shall
62 satisfy the requirements of this article, so long as the rate of accrual of such leave satisfies the
63 requirements of this article for the provision of paid medical and family leave. That such leave balances
64 may be reduced by an employee utilizing such leave for other purposes, such as taking a vacation, shall
65 not affect the fact that providing such leave satisfies the requirements of this article regarding the
66 provision of paid medical and family leave.

67 **§ 40.1-33.4. Increments of use.**

68 An employee's balance of paid medical and family leave shall be reduced on an hour-for-hour basis
69 for each hour or portion thereof that an employee takes leave for a purpose authorized pursuant to
70 § 40.1-33.6.

71 **§ 40.1-33.5. Employee to provide notice of intent to use paid medical and family leave.**

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

82 **§ 40.1-33.6. Authorized use of paid medical and family leave.**

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

86 **§ 40.1-33.7. Employer may require documentation.**

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

94 **§ 40.1-33.8. Civil penalties; enforcement actions.**

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

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

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

112 **§ 40.1-33.9. Waivers prohibited.**

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

116 **§ 40.1-33.10. Paid medical and family leave statements.**

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

120 **§ 40.1-33.11. Application of article.**

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

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

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