

# 2019 SESSION

LEGISLATION NOT PREPARED BY DLS  
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## SENATE BILL NO. 1639

Offered January 9, 2019

Prefiled January 9, 2019

A *BILL to amend the Code of Virginia by adding in Title 60.2 a chapter numbered 8, consisting of sections numbered 60.2-800 through 60.2-820, relating to the establishment of Paid Family and Medical Leave Program; financing through payroll taxes.*

Patrons—Boysko, Favola and Surovell

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 Title 60.2 a chapter numbered 8, consisting of sections numbered 60.2-800 through 60.2-820, as follows:

#### CHAPTER 8.

#### PAID FAMILY AND MEDICAL LEAVE PROGRAM.

##### § 60.2-800. Definitions.

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

"Child" includes a biological, adopted, or foster child, a stepchild, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status.

"Domestic partner" means a person not less than 18 years of age who (i) is dependent upon the covered individual for support as shown by either unilateral dependence or mutual interdependence that is evidenced by a nexus of factors, including (a) common ownership of real or personal property, (b) common householding, (c) children in common, (d) signs of intent to marry, (e) shared budgeting, and (f) the length of the personal relationship with the covered individual, or (ii) has registered as the domestic partner of the covered individual with any registry of domestic partnerships maintained by the employer of either party or in any state, county, city, town, or village in the United States.

"Employee" means any person employed by an employer or, if the employer is a self-employed individual who elects to participate in the Program, such employer.

"Employee's average weekly wage" means the quotient derived by dividing the employee's total wages during the number of weeks of the employee's employment with the employer by the number of such weeks. If the result is not a multiple of \$1, the Commission shall round the result to the next lower multiple of \$1.

"Employer" means any employing unit or any self-employed individual who elects to participate in the Program as an employer as provided in § 60.2-804.

"Employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, except benefits that are provided by a practice or written policy of an employer.

"Family leave" means any leave taken by an employee from work:

1. To participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member;

2. To bond with the employee's child during the first 12 months after the child's birth or the first 12 months after the adoption or foster care placement of a child under the age of 18 with the employee; or

3. Because of any qualifying exigency arising out of the foreign deployment of an employee's spouse, son, daughter, or parent who is an active duty member of the armed services, including the National Guard or Reserves, to the extent that leave is permitted under the FMLA.

"Family member" means a child, grandchild, grandparent, parent, sibling, spouse, or domestic partner of an employee. "Family member" also includes a foster child that has been placed with the employee, an individual for whom the employee has been appointed guardian pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2, an individual for whom the employee is designated to make decisions under a medical power of attorney, or an individual over 65 years of age and mentally or physically impaired who is not related to the employee but for whom the employee is the individual's primary caregiver.

"FMLA" means the federal Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq., as amended.

"Fund" means the Paid Family and Medical Leave Program Fund established pursuant to § 60.2-818.

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59 "Grandchild" means a child of the employee's child.

60 "Grandparent" means a parent of the employee's parent.

61 "Health care provider" has the meaning ascribed to the term in § 8.01-581.1.

62 "Medical leave" means any leave taken by an employee from work made necessary by the employee's  
63 own serious health condition.

64 "Parent" means the biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of  
65 an employee or the employee's spouse or domestic partner, or an individual who stood in loco parentis  
66 to an employee when the employee was a child.

67 "Premium" or "premiums" means the payments required by § 60.2-803 and paid to the Commission  
68 for deposit in the Paid Family and Medical Leave Program Fund under § 60.2-818.

69 "Program" means the Paid Family and Medical Leave Program established by this chapter.

70 "Serious health condition" means an illness, injury, impairment, or physical or mental condition that  
71 involves:

72 1. Inpatient care in a hospital, hospice, or residential medical care facility; or

73 2. Continuing treatment by a health care provider.

74 "Typical workweek hours" means:

75 1. For an hourly employee, the average number of hours worked per week by the hourly employee;  
76 and

77 2. For a salaried employee, 40 hours, regardless of the number of hours the salaried employee  
78 typically works.

79 "Weekly benefit cap" means \$850 per week for 2021. In subsequent years, the weekly benefit cap  
80 means the weekly benefit cap in effect during the preceding calendar year as adjusted by the  
81 Commissioner by a factor equal to the annualized Consumer Price Index as published by the Bureau of  
82 Labor Statistics of the U.S. Department of Labor.

83 **§ 60.2-801. Benefit amounts and duration.**

84 A. Beginning January 1, 2021, paid family and medical leave benefits shall be payable when family  
85 or medical leave is required, subject to the weekly benefit amount, duration, and other conditions and  
86 limitations established in this chapter.

87 B. The weekly benefit shall be an amount equal to the lesser of (i) 70 percent of the employee's  
88 average weekly wage or (ii) the weekly benefit cap in effect at the time the employee takes the family or  
89 medical leave.

90 C. The maximum duration of paid family or medical leave shall not exceed (i) 26 times the  
91 employee's typical workweek hours during a period of 52 consecutive weeks if the family leave is for the  
92 purpose of caring for a covered servicemember with a serious health condition and the employee is the  
93 servicemember's spouse, son, daughter, parent, or next of kin, to the same extent that military caregivers  
94 leave may be taken under the FMLA, or (ii) 12 times the employee's typical workweek hours during a  
95 period of 52 consecutive calendar weeks if the family or medical leave is for any other permitted  
96 purpose.

97 **§ 60.2-802. Time of payment; contesting application.**

98 A. Benefits provided under this chapter shall be paid periodically and promptly, except when an  
99 employer contests a period of family or medical leave. The Commission shall send the first benefit  
100 payment to the employee within 14 calendar days after the first properly completed weekly application is  
101 received by the Commission. Subsequent payments shall be sent at least biweekly thereafter. If the  
102 employer contests an initial application for family or medical leave benefits, the employer shall notify  
103 the employee and the Commission in a manner prescribed by the Commissioner within 18 days of  
104 receipt of notice from the Commission of the employee's filing of an application for benefits. Failure to  
105 timely contest an initial application shall constitute a waiver of objection to the family or medical leave  
106 application. Any inquiry that requires the employee's response in order to continue benefits  
107 uninterrupted or unmodified shall provide a reasonable time period in which to respond and include a  
108 clear and prominent statement of the deadline for responding and consequences of failing to respond.

109 B. If an employee has received one or more benefit payments under this chapter and is in continued  
110 claim status, and his eligibility for benefits is questioned by the Commission or contested by the  
111 employer, the employee shall be conditionally paid benefits without delay for any periods for which the  
112 employee files a claim for benefits, until and unless the employee has been provided adequate notice  
113 and an opportunity to be heard. The employee's right to retain such payments is conditioned upon the  
114 Commission's finding the employee to be eligible for such payments.

115 C. At the employee's request, the Commission may hold conditional payments until the question of  
116 eligibility has been resolved. Payments shall be issued for any benefits withheld if the Commission  
117 determines the employee is eligible for benefits. If it is determined that the employee is ineligible for the  
118 weeks paid conditionally, the overpayment cannot be waived and shall be repaid. The Commission shall  
119 develop, in rule, a process by which an employer may contest an initial application for family or  
120 medical leave benefits.

**§ 60.2-803. Premiums.**

A. Beginning July 1, 2019, the Commission shall assess for each individual in employment with an employer an employer premium and for each covered employee an employee premium based on the amount of the individual's wages subject to subsection D. The premium rate for family leave benefits shall be equal to one-third of the total premium rate. The premium rate for medical leave benefits shall be equal to two-thirds of the total premium rate. The Commission shall establish premium rates that are adequate to provide sufficient moneys in the Fund to commence paying benefits to eligible employees on and after January 1, 2020.

B. The Commissioner shall annually set a maximum limit on the amount of wages that is subject to a premium assessment under this section that is equal to the maximum wages subject to taxation for social security as determined by the federal Social Security Administration.

C. Employers with fewer than 25 employees employed in the Commonwealth are not required to pay the employer portion of premiums for family and medical leave, and the Fund shall absorb resulting costs by increasing the premiums charged to other employers.

D. For calendar year 2021 and thereafter, the total premium rate shall be based on the family and medical leave insurance account balance ratio as of September 30 of the previous year. The Commissioner shall calculate the account balance ratio by dividing the balance of the Paid Family and Medical Leave Program Fund by total covered wages paid by employers.

E. The employer shall collect from the employees the premiums and any surcharges provided under this section through payroll deductions and remit the amounts collected to the Commission. In collecting employee premiums through payroll deductions, the employer shall act as the agent of the employees and shall remit the amounts to the Commission as required by this chapter. On September 30 of each year, the Commission shall average the number of employees reported by an employer over the last four completed calendar quarters to determine the size of the employer for the next calendar year for the purposes of this section.

F. Premiums shall be collected in the manner and at such intervals as provided in this chapter and directed by the Commission.

G. Premiums collected under this section shall be placed in trust for the employees and employers that the program is intended to assist.

H. A locality shall not enact a charter, ordinance, regulation, rule, or resolution:

1. Creating a paid family or medical leave insurance program that alters or amends the requirements of this chapter for any private employer;

2. Providing for local enforcement of the provisions of this chapter; or

3. Requiring private employers to supplement duration of leave or amount of wage replacement benefits provided under this chapter.

**§ 60.2-804. Elective coverage.**

A. For benefits payable beginning January 1, 2020, any self-employed person, including a sole proprietor, independent contractor, partner, or joint venturer, may elect coverage under this chapter for an initial period of not less than three years and subsequent periods of not less than one year immediately following a period of coverage. Those electing coverage under this section shall elect coverage for both family leave and medical leave and are responsible for payment of 100 percent of all premiums assessed to an employee under § 60.2-803. The self-employed person shall file a notice of election in writing with the Commission, in a manner as required by the Commission by regulation.

B. A self-employed person who has elected coverage may withdraw from coverage within 30 days after the end of each period of coverage, or at such other times as the Commissioner may adopt by regulation, by filing a notice of withdrawal in writing with the Commissioner, with such withdrawal to take effect not sooner than 30 days after filing the notice with the Commissioner.

C. The Commission may cancel elective coverage if the self-employed person fails to make required payments or file reports. The Commission may collect due and unpaid premiums and may levy an additional premium for the remainder of the period of coverage. The cancellation shall be effective no later than 30 days from the date of the notice in writing advising the self-employed person of the cancellation.

D. Those electing coverage are considered employers or employees where the context so dictates.

**§ 60.2-805. Application, certification, and verification.**

A. Family and medical leave benefits are payable to an employee during a period in which the employee is unable to perform his regular or customary work because he is on family and medical leave if the employee:

1. Files an application for benefits as required by regulations adopted by the Commissioner;

2. Has met the eligibility requirements of set forth in this chapter or the elective coverage requirements under § 60.2-804;

3. Consents to the disclosure of information or records deemed private and confidential under

applicable law. Initial disclosure of this information and these records by another agency to the Commission is solely for purposes related to the administration of this chapter;

4. Provides his social security number;

5. Provides a document authorizing the family member's or employee's health care provider, as applicable, to disclose the family member's or employee's health care information in the form of the certification of a serious health condition;

6. Provides the employer from whom family and medical leave is to be taken with written notice of the employee's intention to take family leave and, in the employee's initial application for benefits, attests that written notice has been provided; and

7. If requested by the employer, provides documentation of a military exigency.

B. An employee who is not in employment for an employer at the time of filing an application for benefits is exempt from subdivisions 6 and 7.

**§ 60.2-806. Voluntary plan.**

A. An employer may apply to the Commissioner for approval of a voluntary plan for the payment of either family leave benefits or medical leave benefits, or both. The application shall be submitted on a form and in the manner as prescribed by the Commissioner. The fee for the Commission's review of each application for approval of a voluntary plan is \$250.

B. The benefits payable as indemnification for loss of wages under any voluntary plan shall be separately stated and designated separately and distinctly in the plan from other benefits, if any.

C. Neither an employee nor his employer is liable for any premiums for benefits covered by an approved voluntary plan.

D. Except as provided in this section, an employee covered by an approved voluntary plan at the commencement of a period of family leave or a medical leave benefit period is not entitled to benefits from the Program. Benefits payable to that employee are the liability of the approved voluntary plan under which the employee was covered at the commencement of the family leave or medical leave benefit period, regardless of any subsequent serious health condition or family leave that may occur during the benefit period. The Commissioner shall adopt rules to allow benefits or prevent duplication of benefits to employees simultaneously covered by one or more approved voluntary plans and the Program.

E. The Commissioner shall approve any voluntary plan if the Commissioner finds that there is at least one employee in employment and all of the following exist:

1. The benefits afforded to the employees shall be at least equivalent to the benefits to which employees are entitled to as part of the Program, including the duration of leave. The employer may offer the same duration of leave and monetary benefits as offered under the Program.

2. Any sick leave for which an employee is entitled under his contract of employment is in addition to any family and medical leave benefits.

3. The plan is available to all of the eligible employees of the employer employed in the Commonwealth, including future employees.

4. The employer has agreed to make the payroll deductions required, if any, and transmit the proceeds to the Commission for any portions not collected for the voluntary plan.

5. The plan will be in effect for a period of not less than one year and, thereafter, continuously unless the Commissioner finds that the employer has given notice of withdrawal from the plan in a manner specified by the Commissioner by regulation. The plan may be withdrawn by the employer on the date of any law increasing the benefit amounts or the date of any change in the rate of employee premiums, if notice of the withdrawal from the plan is transmitted to the Commissioner not less than 30 days prior to the date of that law or change. If the plan is not withdrawn, it shall be amended to conform to provide the increased benefit amount or change in the rate of the employee's premium on the date of the increase or change.

6. The amount of payroll deductions from the wages of an employee in effect for any voluntary plan may not exceed the maximum payroll deduction for that employee as authorized under § 60.2-803. The deductions may not be increased on other than an anniversary of the effective date of the plan, except to the extent that any increase in the deductions from the wages of an employee does not exceed the maximum rate authorized under the Program.

7. The voluntary plan provides that an employee of an employer with a voluntary plan for either family leave or medical leave, or both, is eligible for the plan benefits if the employee has worked at least 340 hours for the employer during the 12 months immediately preceding the date that leave will commence.

8. The voluntary plan provides that an employee of an employer with a voluntary plan for either family leave or medical leave, or both, who takes leave under the voluntary plan is entitled to the employment protection provisions contained in § 60.2-817.

9. The voluntary plan provides that the employer maintains the employee's existing health benefits.

F. The Commission shall conduct a review of the expenses incurred in association with the

administration of the voluntary plans during the first three years after implementation. The review shall include an analysis of the adequacy of the fee in subsection A to cover the Commission's administrative expenses related to reviewing and approving or denying the applications and administering appeals related to voluntary plans. The review shall include an estimate of the next year's projected administrative costs related to the voluntary plans. If the current receipts from the fee in subsection A are inadequate to cover the Commission's administrative expenses related to the voluntary plans, the Commission may use funds from the Fund to pay for these expenses.

G. A voluntary plan in force and effect at the time a successor acquires the organization, trade, or business, or substantially all the assets thereof, or a distinct and severable portion of the organization, trade, or business, and continues its operation without substantial reduction of personnel resulting from the acquisition shall continue the voluntary plan and may not withdraw the plan without a specific request for withdrawal in a manner and at a time specified by the Commissioner. A successor may terminate a voluntary plan with notice to the Commissioner and without a request to withdraw the plan within 90 days from the date of the acquisition.

H. Any voluntary plan shall be subject to approval by the Commissioner annually for the first three years. After the first three years, such voluntary plan shall be subject to approval by the Commissioner only if the employer makes changes to the plan that were not mandated by changes to state law.

I. An employer may assume all or a greater part of the cost of the voluntary plan than required under the Program. An employer may deduct from the wages of an employee covered by the voluntary plan, for the purpose of providing the benefits specified in this chapter, an amount not in excess of that which would be required if the employee were not covered by the plan.

J. All deductions from the wages of an employee remaining in the possession of the employer upon the employer's withdrawal of the voluntary plan as a result of plan contributions being in excess of plan costs that are not disposed of in conformity with the Commission's rules shall be remitted to the Commission and deposited in the Fund.

K. Any employee contributions to and income arising from an approved voluntary plan received or retained by an employer under an approved voluntary plan are trust funds that are not considered to be part of an employer's assets. An employer shall maintain a separate, specifically identifiable account for voluntary plan trust funds in a financial institution.

L. The Commissioner may terminate any voluntary plan if the Commissioner finds that there is risk that the benefits accrued or that will accrue will not be paid or for other good cause shown. The Commissioner shall give notice of the Commissioner's intention to terminate a voluntary plan to the employer at least 10 days before taking any final action. The notice shall state the effective date and the reason for the termination. On the effective date of the termination of a voluntary plan by the Commissioner, all moneys in the plan, including moneys paid by the employer, moneys paid by the employees, moneys owed to the voluntary plan by the employer but not yet paid to the plan, and any interest accrued on all these moneys, shall be remitted to the Commission and deposited into the Fund. The employer may, within 10 days from mailing or personal service of the notice, file an appeal in the time, manner, method, and procedure provided in § 60.2-810. The payment of benefits and the transfer of moneys in the voluntary plan may not be delayed during an employer's appeal of the termination of a voluntary plan. If an employer's voluntary plan has been terminated by the Commissioner, the employer is not eligible to apply for approval of another voluntary plan for a period of three years.

M. An employee is no longer covered by an approved voluntary plan if family leave or the employee's medical leave occurred after the employment relationship with the voluntary plan employer ends or if the Commissioner terminates a voluntary plan. An employee who has ceased to be covered by an approved voluntary plan is, if otherwise eligible, immediately entitled to benefits from the Program to the same extent as though there had been no exemption as provided in this chapter.

N. An employer may appeal any adverse decision by the Commission regarding the voluntary plan, and an employee may appeal an employer's denial of liability upon the claim of an employee for family or medical leave benefits under an approved plan, in the manner specified under § 60.2-810.

O. An employer with a voluntary plan shall provide a notice prepared by or approved by the Commissioner regarding the voluntary plan.

P. Employers whose employees are participating in an approved voluntary plan shall maintain all reports, information, and records as relating to the voluntary plan and claims for six years and furnish such reports, information, and records for the Commissioner upon request.

Q. The Commissioner shall approve any amendment to a voluntary plan adjusting the provisions thereof, as to periods after the effective date of the amendment, when the Commissioner finds that:

1. The plan, as amended, will conform to the standards set forth in this chapter; and
2. The notice of the amendment has been delivered to the employees at least 10 days prior to the approval.

R. Nothing contained in this section is intended to deny or limit the right of the Commissioner to

305 adopt supplementary rules regarding voluntary plans.

306 **§ 60.2-807. Commission to administer; information and outreach.**

307 A. The Commission shall establish and administer the Program and pay family and medical leave  
308 benefits as specified in this chapter. The Commission shall establish procedures and forms for filing  
309 applications for benefits under this chapter. The Commission shall notify the employer within five  
310 business days of an application being filed. The Commission shall use information sharing and  
311 integration technology to facilitate the disclosure of relevant information or records by the Commission,  
312 so long as an employee consents to the disclosure. Information contained in the files and records  
313 pertaining to an employee under this chapter are confidential and not open to public inspection, other  
314 than to public employees in the performance of their official duties. However, the employee or an  
315 authorized representative of an employee may review the records or receive specific information from  
316 the records on the presentation of the signed authorization of the employee. An employer or the  
317 employer's duly authorized representative may review the records of an employee employed by the  
318 employer in connection with a pending application. At the Commission's discretion, other persons may  
319 review records when such persons are rendering assistance to the Commission at any stage of the  
320 proceedings on any matter pertaining to the administration of this chapter.

321 B. The Commission shall develop and implement an outreach program to ensure that employees who  
322 may be qualified to receive family and medical leave benefits under this chapter are made aware of  
323 these benefits. Outreach information shall explain, in an easy-to-understand format, eligibility  
324 requirements, the application process, weekly benefit amounts, maximum benefits payable, notice and  
325 certification requirements, reinstatement and nondiscrimination rights, confidentiality, voluntary plans,  
326 and the relationship between employment protection, leave from employment, and wage replacement  
327 benefits under this chapter and other laws, collective bargaining agreements, and employer policies.

328 C. The Commission is authorized to inspect and audit employer files and records relating to the  
329 Program, including employer voluntary plans.

330 **§ 60.2-808. Recovery of benefit payments.**

331 A. An individual who is paid any amount as benefits under this act to which he is not entitled shall,  
332 unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The  
333 Commission shall issue an overpayment assessment setting forth the reasons for and the amount of the  
334 overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits  
335 payable to the individual; however, in the absence of a back pay award, a settlement affecting the  
336 allowance of benefits, fraud, misrepresentation, or willful nondisclosure, every determination of liability  
337 shall be mailed or personally served not later than two years after the close of or final payment made  
338 on the individual's applicable eligibility period for which the purported overpayment was made,  
339 whichever is later, unless the merits of the claim are subjected to administrative or judicial review, in  
340 which event the period for serving the determination of liability shall be extended to allow service of the  
341 determination of liability during the six-month period following the final decision affecting the claim.

342 B. The Commissioner may waive an overpayment if the Commissioner finds that the overpayment  
343 was not the result of fraud, misrepresentation, willful nondisclosure, conditional payment, or fault  
344 attributable to the individual and that the recovery thereof would be against equity and good  
345 conscience. An overpayment waived under this subsection shall be charged against the individual's  
346 applicable entitlement for the eligibility period containing the weeks to which the overpayment was  
347 attributed as though such benefits had been properly paid.

348 C. Any assessment herein provided shall constitute a determination of liability from which an appeal  
349 may be had in the same manner and to the same extent as provided for appeals relating to  
350 determinations in respect to claims for benefits; however, an appeal from any determination covering  
351 overpayment only shall be deemed to be an appeal from the determination that was the basis for  
352 establishing the overpayment unless the merits involved in the issue set forth in such determination have  
353 already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal  
354 tribunal by the individual within 30 days of the delivery of the notice of determination of liability, or  
355 within 30 days of the mailing of the notice of determination, whichever is the earlier, the determination  
356 of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability  
357 becomes conclusive and final, the Commissioner shall be authorized to institute collection proceedings  
358 as provided in § 60.2-521.

359 **§ 60.2-809. Employer requirements.**

360 A. In the form and at the times specified in this chapter and by the Commissioner, an employer shall  
361 make reports, furnish information, and collect and remit premiums as required by this chapter to the  
362 Commission. If the employer is a temporary help company that provides employees on a temporary  
363 basis to its customers, the temporary help company is considered the employer for purposes of this  
364 section.

365 B. An employer shall keep at the employer's place of business a record of employment, for a period  
366 of six years, from which the information needed by the Commission for purposes of this chapter may be

obtained. This record shall at all times be open to the inspection of the Commissioner. Information obtained under this chapter from employer records is confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, an interested party shall be supplied with information from employer records to the extent necessary for the proper presentation of the case in question. An employer may authorize inspection of the employer's records by written consent. The requirements relating to the collection of family and medical leave premiums are as provided in this chapter.

**§ 60.2-810. Appeals.**

Any aggrieved person may file an appeal for judicial review of any determination by the Commissioner pursuant to the procedure set forth in subsections C and D of § 60.2-500. If no appeal is taken from any determination within the time allowed by the provisions of this section for appeal, the determination shall be conclusively deemed to be correct except as provided in respect to reconsideration by the Commissioner of any determination.

**§ 60.2-811. Authority to compromise.**

The Commissioner may compromise any claim for premiums, interest, or penalties due and owing from an employer, and any amount owed by an individual because of benefit overpayments existing or arising under this chapter in any case where collection of the full amount due and owing, whether reduced to judgment or otherwise, would be against equity and good conscience.

**§ 60.2-812. Interest on delinquent premiums.**

Premiums unpaid on the date on which they are due and payable shall bear interest at the rate of one and one-half percent per month from and after such date until payment plus accrued interest is received by the Commission. Interest collected pursuant to this article shall be paid into the Fund.

**§ 60.2-813. Collection of premiums, interest, and penalties.**

If, after notice, any person defaults in any payment of premiums or interest or any penalty assessed pursuant to this chapter, the amount due shall be collected by civil action in the name of the Commission in the manner provided in § 60.2-521.

**§ 60.2-814. Injunction.**

When an unsatisfied execution has been returned by an officer, and the employer against whom the judgment has been obtained on which the execution was issued continues in default of payment of premium or interest or any penalty assessed pursuant to this chapter, or any portion thereof, such employer may be enjoined from operating and doing business in the Commonwealth until such taxes have been paid. The Circuit Court of the City of Richmond shall have exclusive original jurisdiction to grant such injunction upon the complaint of the Commission. Notice of the time and place when the application for the injunction will be made shall be served on the employer, and a copy of the bill of complaint shall be served with the notice.

**§ 60.2-815. Other benefits.**

A. Leave from employment under this chapter is in addition to leave from employment during which benefits are paid or are payable under other applicable federal or state laws.

B. In any week in which an employee is eligible to receive benefits under Chapter 6 (§ 60.2-600 et seq.) or under Chapter 1 (§ 65.2-100 et seq.) of Title 65.2, the employee is disqualified from receiving family or medical leave benefits under this chapter.

**§ 60.2-816. Employee notice of rights.**

Whenever an employee of an employer who is qualified for benefits under this chapter is absent from work to provide family leave, or take medical leave for more than seven consecutive days, the employer shall provide the employee with a written statement of the employee's rights under this chapter in a form prescribed by the Commissioner. The statement shall be provided to the employee within five business days after the employee's seventh consecutive day of absence due to family or medical leave or within five business days after the employer has received notice that the employee's absence is due to family or medical leave, whichever is later.

**§ 60.2-817. Employment protection; discrimination prohibited.**

A. An eligible individual who was employed by an employer for 30 days or longer and who takes leave under this chapter for the intended purpose of the leave is entitled, on return from such leave:

1. To be restored by the employer to the position of employment held by the eligible individual when the leave commenced; or

2. To be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

B. An employer shall not discharge, demote, or otherwise discriminate or take an adverse employment action against an individual because he:

1. Filed for, applied for, or used benefits under this chapter;

2. Communicated to the employer an intent to file a claim for benefits, a complaint, or an appeal;

3. Testified, agreed to testify, or otherwise assisted in any proceeding under this chapter; or

4. Took, or attempted to take, leave under this chapter.

C. An employer shall not reduce an eligible individual's previously accrued benefits that have accrued prior to the date on which the leave commenced.

D. During any period of family and medical leave taken under this chapter, an employer shall maintain any existing health benefits of the eligible individual for the duration of such leave as if the eligible individual continued to work from the date the eligible individual commenced family and medical leave.

**§ 60.2-818. Paid Family and Medical Leave Program Fund established.**

There is hereby created in the state treasury a special nonreverting fund to be known as the Paid Family and Medical Leave Program Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All premiums, interest, and penalties collected by the Commissioner under this chapter, all funds appropriated for such purpose, and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of paying benefits under, and administering, the Program pursuant to this chapter.

**§ 60.2-819. Coordination of benefits.**

A. Leave taken under this chapter runs concurrently with any leave taken under the FMLA. If a period of family and medical leave insurance benefits received by an eligible employee under this chapter is concurrently designated as leave pursuant to the FMLA, the employer shall notify the eligible employee of such designation and shall also provide the employee with the notice required under 29 CFR Parts 825.301 and 825.305. An employer may require that payment made or leave taken under this chapter be made or taken concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy, as applicable. The employer shall give its employees written notice of this requirement.

B. Notwithstanding subsection A, an employer shall not require an employee to use time off under an employer policy, including but not limited to paid time off, vacation time, or sick time, prior to use of family and medical leave under this chapter. In addition, an employer shall not require an employee to charge all or part of the employee's family and medical leave under this chapter to unused accruals or other paid time off, including but not limited to vacation time and sick time, except where the employer maintains a separate bank of paid time solely for the purpose of paid family and medical leave under this chapter.

C. This chapter does not diminish an employer's obligation to comply with a collective bargaining agreement or employer policy, as applicable, that provides greater leave than FMLA leave.

D. After July 1, 2019, a collective bargaining agreement entered into or renewed or an employer policy adopted or retained shall not diminish an individual's right to benefits under this chapter. Any agreement by an individual to waive his rights under this chapter is void as against public policy.

**§ 60.2-820. Regulations.**

The Commissioner shall adopt such regulations as are necessary for the implementation and administration of this chapter.