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HOUSE BILL NO. 403

Offered January 8, 2020

Prefiled January 2, 2020

A *BILL to amend the Code of Virginia by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:7, relating to the duty of employers to provide employees with safe days.*

Patron—Keam

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:7 as follows:

§ 40.1-28.7:7. Employers to provide employees with safe days.

A. As used in this section, unless the context requires a different meaning:

"Domestic violence" means the occurrence of one or more of the following acts by a current or former family or household member as defined in § 16.1-228, person against whom the victim obtained a protective order, or caretaker:

1. Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

2. Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

3. Subjecting another person to false imprisonment; or

4. Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

"Family member" means:

1. A biological, adopted, or foster child or a stepchild;

2. A biological, foster, or adoptive parent, a stepparent, or a legal guardian of an employee or an employee's spouse;

3. An employee's spouse;

4. A grandparent or a spouse of a grandparent;

5. A grandchild; or

6. A biological, foster, or adopted sibling or a spouse of a biological, foster, or adopted sibling.

"Safe days" means leave from work provided to an employee who is (i) a victim of domestic violence, sexual assault, or stalking or (ii) a family member of a victim of domestic violence, sexual assault, or stalking, which leave is used to allow the employee to obtain for the employee or the employee's family member, as applicable:

1. Medical attention needed to recover from physical or psychological injury or disability caused by domestic violence or sexual assault;

2. Psychological or other counseling;

3. Relocation due to the domestic violence, sexual assault, or stalking; or

4. Legal services, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence, sexual assault, or stalking.

"Sexual assault" means an act prohibited pursuant to § 18.2-61, 18.2-67.1, 18.2-67.3, or 18.2-67.4.

"Stalking" means conduct that is prohibited under § 18.2-60.3.

B. On July 1, 2020, and thereafter on each July 1, every employer shall provide:

1. Four safe days to each of its employees who have been employed by the employer for fewer than 120 consecutive months; and

2. Five safe days to each of its employees who have been employed by the employer for 120 or more consecutive months.

Any partial calendar month during which an employee was employed shall constitute one month of employment for purposes of this section. Employees shall not be paid or otherwise compensated upon leaving employment for any balance of unused safe days provided to them under this section. Unused balances of safe days granted under this section shall not be carried forward beyond the 12-month period commencing the July 1 on which the safe days were granted.

C. Employers shall allow an employee to take one or more safe days or portions thereof, with pay, provided the employee has provided the employer, prior to taking a safe day, with a copy of a court order, summons, warrant, or writ that evidences that the employee, or a family member of the employee,

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59 *is a victim of domestic violence, sexual assault, or stalking. An employer shall not be required to allow*
60 *an employee to take a safe day if taking the safe day would exceed the balance of the employee's safe*
61 *days provided pursuant to subsection B for the then-current year.*

62 *D. An employer shall not discharge from employment, or discriminate in compensation or other*
63 *terms, conditions, or privileges of employment, because the employee exercises the right to safe days*
64 *pursuant to subsection C.*

65 *E. Any employee who is discharged or discriminated against in violation of this section may bring an*
66 *action in a court of competent jurisdiction against the employer who took such action. The court may,*
67 *in its discretion, reinstate the employee and award damages incurred as a result of the violation,*
68 *including back pay and lost work benefits with interest at the judgment rate as provided in § 6.2-302, or*
69 *injunctive relief. If the employee prevails in an action under this subsection, he also may be awarded*
70 *reasonable attorney fees and court costs.*