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SENATE BILL NO. 1159

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 25, 2021)

(Patron Prior to Substitute—Senator Favola)

A BILL to amend the Code of Virginia by adding a section numbered 40.1-28.6:1, relating to the ability of employees to use sick leave for the care of immediate family members.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 40.1-28.6:1 as follows:

§ 40.1-28.6:1. Use of sick leave for the care of immediate family members.

A. As used in this section:

"Employee" means any employee as defined in § 40.1-2 who engages in employment for an employer in the Commonwealth for at least 30 hours per week and who is not covered by a collective bargaining agreement.

"Employer" means any person, including the Commonwealth and any of its political subdivisions or instrumentalities, that employs 25 or more employees.

"Immediate family member" means an employee's biological, step, adopted, or foster child, spouse, grandchild, grandparent, or parent.

"Sick leave" means time away from work that is provided by an employer to its employee for the purpose of permitting the employee to be absent from work in the event of the employee's own incapacity, illness, or injury, for which the employee receives his regular salary, wages, or other remuneration. "Sick leave" does not include paid short-term or long-term disability leave.

B. An employer that provides sick leave shall allow an employee to use the employee's earned sick leave for the care of an immediate family member of the employee. An employee who uses sick leave for the care of an immediate family member of the employee shall be entitled to receive his regular salary, wages, or other remuneration for such time to the same extent as the employee would receive them for sick leave taken in the event of the employee's own incapacity, illness, or injury.

C. Nothing in this section shall be construed to require an employer to:

1. Offer or provide sick leave to any of its employees; or

2. Allow an employee to use more than five days of earned sick leave per calendar year for the care of immediate family members.

D. An employee shall not be entitled to use sick leave under this section for the care of an immediate family member of the employee until that leave has been earned by the employee.

E. Any employee who uses sick leave for the care of an immediate family member of the employee shall comply with the terms of the employer's policies regarding the accrual and use of sick leave.

F. Nothing in this section shall be construed to discourage or prohibit an employer from the adoption or retention of a sick leave policy more generous than required by this section.

G. Nothing in this section shall be construed as diminishing the obligation of an employer to comply with any contract, employment benefit plan, or other agreement providing a more generous sick leave policy to an employee than required by this section.

H. Nothing in this section shall be construed to create a new cause of action against an employer.

SENATE SUBSTITUTE

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