

Department of Planning and Budget

2021 Fiscal Impact Statement

1. Bill Number: HB2103

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Reid

3. Committee: Labor and Commerce

4. Title: Paid sick time.

5. Summary: Requires public and private employers with 35 or more full-time equivalent employees to provide eligible employees, defined in the bill, with earned paid sick time and paid sick time. The bill provides that the provisions will apply to employers with 25 or more full-time employees when the Virginia unemployment rate is four percent or less for two consecutive quarters.

The bill provides for an eligible employee to earn up to 40 hours of earned paid sick time depending on the amount of work hours the eligible employee has averaged over the previous year or, for a new employee, is projected to work. An eligible employee shall not earn or use more than 40 hours of earned paid sick time in a year, unless the employer selects a higher limit. The bill provides that earned paid sick time may be used: (i) for an eligible employee's mental or physical illness, injury, or health condition; an eligible employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an eligible employee's need for preventive medical care; or (ii) to provide care to an eligible employee's family member, defined in the bill, under similar circumstances.

The bill prohibits employers from taking certain retaliatory actions against employees related to earned paid sick leave and authorizes the Commissioner of Labor and Industry, in the case of a knowing violation, to subject an employer to a civil penalty not to exceed \$150 for the first violation, \$300 for the second violation, and \$500 for each successive violation, if the second or successive violation occurs within two years of the previous violation.

The Commissioner of Labor and Industry may institute proceedings on behalf of an employee to enforce compliance with this bill and to collect specified amounts from the employer, which shall be awarded to the employee. Alternatively, an aggrieved employee is authorized to bring a civil action against the employer in which he may recover double the amount of any unpaid earned sick time and the amount of any actual damages suffered as the result of the employer's violation. However, an aggrieved employee is required to seek redress through the employer's human resources department prior to filing an administrative complaint or civil action. The bill has a delayed effective date of January 1, 2023.

6. **Budget Amendment Necessary:** No.
7. **Fiscal Impact Estimates:** Indeterminate. See item 8.
8. **Fiscal Implications:** This fiscal impact estimate is preliminary and will be updated to reflect additional information as it becomes available.

It is anticipated that this bill will have an indeterminate expenditure impact on state agencies. Any revenue that may be collected as a result of the fees provided for in this bill is indeterminate. This bill establishes several civil penalties, including \$100 for failure to post a written notice describing the benefits offered under this program; and, \$150 for the offense of knowingly violating the provisions of the bill, \$300 for the second violation, and \$500 for each successive violation. Any revenue is deposited to the general fund. The amount of any such revenue is indeterminate.

Office of the Attorney General (OAG)

The OAG anticipates a potential expenditure impact from this bill. Aggrieved employees can file complaints with the Department of Labor and Industry (DOLI) or the OAG - and DOLI or the OAG may bring a cause of action. It is anticipated that the OAG will be able to absorb the impact for a year and evaluate the cumulative effect of complaints, to determine if more staff is needed in the future.

Department of Human Resource Management (DHRM)

According to the Department of Human Resource Management (DHRM), current leave benefits for salaried employees meet or exceed the bill's requirements and are not expected to be impacted by the bill. State wage employees do not currently receive sick leave benefits and are not expected to be covered by the bill's provisions. In order to be eligible, an employee is an individual who is or is expected to be employed on an ongoing annual basis, and working 30 hours or more per week or 130 hours per month. Most state wage employees work 29 hours a week or less. Therefore, the bill is not expected to impact existing state employee benefits. If wage employees were included, the Commonwealth would need to create a third leave program, the costs of which are indeterminate. It is anticipated that the costs for modifications to Cardinal and individual agency time, leave, and attendance systems would be significant.

Department of Labor and Industry (DOLI)

DOLI anticipates an expenditure impact from this bill, starting fiscal year 2023. According to the agency, its Labor Law division would need three additional compliance officer positions to conduct inspections and one labor law supervisor. With recent additions to the labor law staff impacting current supervisory resources, an additional supervisor would be needed for this new program. According to DOLI, there is currently no law requiring paid sick leave in Virginia. Based on the number of payment of wage claims DOLI receives annually (1250) and the number of minimum wage claims the federal Wage and Hour Division has been conducting (750), the agency estimates it will receive between 450 to 600 claims on paid sick leave from employers of 35 or more employees. If the language in the enactment clause

triggers an expansion to employers of 25 or more employees, the increase in claims is estimated at 500 to 625. At that point, DOLI would require another half time compliance officer or an additional assistant compliance officer at an annual cost of \$51,341 or \$92,215. DOLI also would require an upgrade in its labor law software to include this new enforcement responsibility, estimated to cost \$100,000 based on previous upgrades. It is anticipated that DOLI can absorb the costs associated with implementing this bill within resources contained in HB1800/SB1100 as introduced. However, additional resources may be required depending on the cumulative impact of the bills adopted this Session that impact labor law enforcement.

Department of Medical Assistance Services (DMAS)

Personal care attendants employed in Virginia's Medicaid consumer directed care program are considered to be the employee of the Medicaid member. As such, no individual member (employer) would employ enough attendants to meet this bill's criteria. Therefore, the Department of Medical Assistance Services (DMAS) does not expect any fiscal impact associated with the consumer directed care program. However, other Medicaid providers such as personal care agencies, hospitals, nursing homes, intermediate care facilities, intellectual and developmental disabled waiver providers, group homes, day support, community service boards and private clinics may be impacted by this proposal. DMAS does not have sufficient information on these providers to determine if the bill's provisions would apply. Moreover, any fiscal impact is indeterminate as DMAS is unable to calculate the magnitude of any potential costs or if those costs would necessitate a future rate increase. However, to the extent provider costs increase, future rate adjustments could be necessary to ensure the availability and continuation of mandated services.

Public School Divisions

Local school divisions also may be impacted to the extent that they employ any individuals who are not already covered by qualifying paid leave. To the extent that any new paid leave is created by this legislation resulting in additional prevailing costs funded through the Standards of Quality, state and local cost increases may result in future biennia as those costs are rebenchmarked. Any such costs increases are indeterminate at this time.

Other Impacts

At this time, any impact this bill may have on other state-supported local employees is unknown.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Labor and Industry; Department of Human Resource Management; Office of the Attorney General; Department of Medical Assistance Services; Courts; potentially local governments and local school divisions

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** None.