

24108279D

HOUSE BILL NO. 1098

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Commerce and Labor
 on February 26, 2024)

(Patron Prior to Substitute—Delegate Rasoul)

A *BILL* to amend the Code of Virginia by adding in Chapter 3 of Title 40.1 an article numbered 2.3, consisting of sections numbered 40.1-33.13 through 40.1-33.18, relating to unpaid family bereavement leave; required; civil penalty.

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 2.3, consisting of sections numbered 40.1-33.13 through 40.1-33.18, as follows:

Article 2.3.

Family Bereavement Leave.

§ 40.1-33.13. Definitions.

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

"Child" means an employee's biological child, adopted child, foster child, or stepchild.

"Covered family member" means an employee's child, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent.

"Domestic partner" means, for an unmarried employee, (i) the person recognized as the domestic partner of the employee under any domestic partnership or civil union law of any state or jurisdiction or (ii) an unmarried adult person who is in a committed, personal relationship with the employee and who is designated to the employee's employer as such employee's domestic partner.

"Eligible employee" means an individual who has requested that an employer provide family bereavement leave and who, as of the date that the requested family bereavement leave begins, will have been employed by that employer for at least (i) a 12-month period and (ii) 1,250 hours during the previous 12 months, or an employee covered by 29 C.F.R. § 825.801.

"Employer" means any employer as defined § 40.1-2 that employs 50 or more employees. Notwithstanding § 40.1-2.1, "employer" includes the Commonwealth and its agencies, institutions, and political subdivisions. "Employer" does not include any agency of the federal government.

"Family bereavement leave" means leave of an eligible employee as provided in this article.

"Religious employer" means a religious corporation, entity, association, educational institution, or society.

§ 40.1-33.14. Family bereavement leave.

A. An employer shall provide an eligible employee up to 10 days of unpaid family bereavement leave in any 12-month period to (i) attend the funeral or funeral equivalent of a covered family member; (ii) make arrangements necessitated by the death of a covered family member; (iii) grieve the death of a covered family member; or (iv) be absent from work due to (a) a miscarriage, (b) an unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure, (c) a failed adoption match or an adoption that is not finalized because it is contested by another party, (d) a failed surrogacy agreement, (e) a diagnosis that negatively impacts pregnancy or fertility, or (f) a stillbirth. No eligible employee shall take more than five days of such family bereavement leave at any one time, except as provided in subsection E.

B. Family bereavement leave shall be completed within 60 days after the date on which the employee receives notice of the death of the covered family member or the date on which an event listed under clause (iv) of subsection A occurs.

C. An eligible employee shall provide the employer with at least 48 hours' notice of the employee's intention to take family bereavement leave, unless providing such notice is not reasonable and practicable.

D. An employer may require reasonable documentation of the death or event. An eligible employee who provides any of the following shall be considered to have met any such documentation requirement: (i) a copy of a death certificate; (ii) a published obituary; (iii) written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or government agency; or (iv) for family bereavement leave resulting from an event listed under clause (iv) of subsection A, written verification that such an event has occurred from a health care provider, an adoption agency, or a surrogacy organization. No employer shall require an eligible employee to identify which event the family bereavement leave pertains to as a condition of exercising the employee's rights under this article.

E. Notwithstanding the provisions of subsection A, in the event of (i) the death of more than one covered family member in any 12-month period or (ii) the death of the employee's child due to homicide

60 or suicide, an eligible employee shall be entitled to up to a total of 30 days of family bereavement leave
61 during the 12-month period.

62 F. Nothing in this article shall be construed to:

63 1. Discourage an employer from adopting or retaining leave policies more generous than required by
64 this article;

65 2. Prohibit an employee from taking paid time off to which the employee is otherwise entitled in
66 addition to or in lieu of family bereavement leave;

67 3. Diminish the obligation of an employer to comply with a collective bargaining agreement or an
68 employment benefit program or plan that provides an amount of family bereavement leave sufficient to
69 meet the requirements of this article and that may be used for the same purposes and under the same
70 conditions as family bereavement leave under this article; or

71 4. Require a religious employer to provide family bereavement leave resulting from (i) the death of a
72 domestic partner or (ii) an event listed under clause (iv) of subsection A, if doing so would not conform
73 to the religious employer's religious tenets.

74 **§ 40.1-33.15. Employee's right to benefits; restoration of position.**

75 A. No employer shall consider any period of time during which an eligible employee takes family
76 bereavement leave to be a break in the eligible employee's continuous service for the purpose of the
77 eligible employee's right to salary adjustments, sick leave, vacation, paid time off, annual leave,
78 seniority, or other employee benefits.

79 B. An eligible employee who returns to work after taking family bereavement leave shall be entitled
80 to restoration by the employer of (i) the position of employment held by the eligible employee when the
81 family bereavement leave began or (ii) an equivalent position with equivalent employment benefits, pay,
82 and other terms and conditions of employment. An employer may deny restoration of the eligible
83 employee's position of employment under this subsection because of conditions unrelated to the exercise
84 of rights established under this article.

85 **§ 40.1-33.16. Health benefit plan; commission.**

86 A. During any period that an eligible employee takes family bereavement leave, an employer shall
87 maintain coverage of a health benefit plan for the duration of the family bereavement leave and in the
88 same manner that coverage would have been provided if the eligible employee had continued in
89 employment continuously for the duration of the family bereavement leave.

90 B. If an eligible employee works on a commission basis, an employer shall pay to the eligible
91 employee during any period of family bereavement leave any commission that becomes due because of
92 work the eligible employee performed before taking family bereavement leave.

93 **§ 40.1-33.17. Retaliatory action prohibited.**

94 No employer shall discharge, discipline, threaten, discriminate against, or penalize an employee or
95 take other retaliatory action regarding an employee's compensation, terms, conditions, location, or
96 privileges of employment because the employee (i) has requested or exercised the benefits provided for
97 in this article or (ii) has alleged a violation of this article.

98 **§ 40.1-33.18. Enforcement; civil penalty.**

99 A. The Commissioner shall enforce the provisions of this article and shall adopt appropriate
100 regulations for the implementation and enforcement of this article.

101 B. Any person alleging a violation of this article shall have the right to file a complaint with the
102 Commissioner within one year of the date the person knew or should have known of the alleged
103 violation. The Commissioner shall encourage reporting pursuant to this subsection by keeping
104 confidential, to the maximum extent permitted by applicable laws, the name and other identifying
105 information of the employee or other person reporting the violation, provided, however, that with the
106 authorization of such person, the Commissioner may disclose the person's name and identifying
107 information as necessary to enforce this article or for other appropriate purposes.

108 C. Upon receiving a complaint alleging a violation of this article, the Commissioner shall investigate
109 such complaint and attempt to resolve it through mediation between the complainant and the subject of
110 the complaint or other means. The Commissioner shall keep complainants notified regarding the status
111 of their complaint and any resultant investigation. If the Commissioner believes that a violation has
112 occurred, he shall issue to the offending person or employer a notice of violation and the relief required
113 of the offending person or entity. The Commissioner shall prescribe the form and wording of such
114 notices of violation, including any method of appealing a decision of the Commissioner.

115 D. The Commissioner shall notify any employer who he alleges has violated any provision of this
116 article by certified mail. Such notice shall contain a description of the alleged violation. Within 15 days
117 of receipt of notice of the alleged violation, the employer may request an informal conference with the
118 Commissioner regarding such violation.

119 E. Any such employer who knowingly violates this article shall be subject to a civil penalty not to
120 exceed \$1,000 for the first violation and, for subsequent violations that occur within two years of any
121 previous violation, not to exceed \$2,500 for the second violation and not to exceed \$5,000 for each

122 successive violation. In determining the amount of any civil penalty to be imposed, the Commissioner
123 shall consider the size of the business of the employer charged and the gravity of the violation. The
124 decision of the Commissioner shall be final.
125 F. Civil penalties owed under this article shall be paid to the Commissioner for deposit into the
126 general fund. The Commissioner shall prescribe procedures for the payment of proposed assessments of
127 civil penalties that are not contested by employers.