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SENATE BILL NO. 990

Offered January 14, 2015

Prefiled January 12, 2015

A *BILL to amend the Code of Virginia by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:5, relating to the duty of employers to provide employees with domestic violence leave.*

Patron—Lucas

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 Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:5 as follows:

§ 40.1-28.7:5. Domestic violence leave.

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

"Domestic violence" has the same meaning as is ascribed to such term in subdivision 7 of § 38.2-508.

"Domestic violence leave" means leave from work provided to an employee who is a victim of domestic violence, sexual assault, or stalking which leave is used for any of the purposes described in subdivisions B 1 through B 5.

"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 spouse of a biological, foster, or adopted sibling.

"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. An employee may take reasonable leave from work, intermittent leave, or leave on a reduced leave schedule, with or without pay, to:

1. Seek legal or law-enforcement assistance or remedies to ensure the health and safety of the employee or employee's family members, including, but not limited to, preparing for or participating in any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking;

2. Seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking or to attend to health care treatment for a victim who is the employee's family member;

3. Obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program for relief from domestic violence, sexual assault, or stalking;

4. Obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking in which the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking;

5. Participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future domestic violence, sexual assault, or stalking.

C. As a condition of taking any domestic violence leave, an employee shall give an employer advance notice of the employee's intention to take leave. The timing of the notice shall be consistent with the employer's stated policy for requesting such leave, if the employer has such a policy. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, the employee or his designee must give notice to the employer no later than the end of the first day that the employee takes such leave.

D. When an employee requests domestic violence leave, the employer may require that the request be supported by verification that:

1. The employee or employee's family member is a victim of domestic violence, sexual assault, or stalking; and

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2. The leave taken was for one of the purposes described in subdivisions B 1 through B 5.

E. If an employer requires verification, verification shall be provided in a timely manner. If advance notice of the leave cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, and the employer requires verification, verification shall be provided to the employer within a reasonable time period during or after the leave. An employee may satisfy the verification requirement of this subsection by providing the employer with one or more of the following:

1. A police report indicating that the employee or employee's family member was a victim of domestic violence, sexual assault, or stalking;

2. A court order protecting or separating the employee or employee's family member from the perpetrator of the act of domestic violence, sexual assault, or stalking or other evidence from the court or the prosecuting attorney that the employee or employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking;

3. Documentation that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault, or stalking:

a. An advocate for victims of domestic violence, sexual assault, or stalking;

b. An attorney;

c. A member of the clergy; or

d. A medical or other health care professional.

The provision of documentation under this subdivision does not waive or diminish the confidential or privileged nature of communications between a victim of domestic violence, sexual assault, or stalking with one or more of the individuals named in this subdivision pursuant to applicable law; or

4. An employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking and that the leave taken was for one of the purposes described in subdivisions B 1 through B 5.

F. If the victim of domestic violence, sexual assault, or stalking is the employee's family member, verification of the familial relationship between the employee and the victim may include, but is not limited to, a statement from the employee, a birth certificate, a court document, or other similar documentation.

G. An employee who is absent from work while on domestic violence leave may elect to use the employee's sick leave and other paid time off, compensatory time, or unpaid leave time.

H. An employee is required to provide only the information enumerated in subsections D, E, and F to establish that the employee's leave is protected under this section. An employee is not required to produce or discuss any information with the employer that is beyond the scope of subsections D, E, and F, or that would compromise the employee's safety or the safety of the employee's family member in any way, and an employer is prohibited from requiring any such disclosure.

I. An employer shall maintain the confidentiality of all information provided by the employee under this section, including the fact that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking, that the employee has requested or obtained leave under this chapter, and any written or oral statement, documentation, record, or corroborating evidence provided by the employee, except that information given by an employee may be disclosed by an employer only if (i) requested or consented to by the employee, (ii) ordered by a court or administrative agency, or (iii) otherwise required by applicable federal or state law.

J. The taking of domestic violence leave shall not result in the loss of any pay or benefits to the employee that accrued before the date on which the leave commenced. Upon an employee's return, an employer shall restore the employee to either the position of employment held by the employee when the leave commenced or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. This subsection does not apply if:

1. The employment from which the individual takes leave is with a staffing company and the individual is assigned on a temporary basis to perform work at or services for another organization to support or supplement the other organization's workforces, or to provide assistance in special work situations such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects, all under the direction and supervision of the organization to which the individual is assigned; or

2. An employee was hired for a specific term or only to perform work on a discrete project, the employment term or project is over, and the employer would not otherwise have continued to employ the employee.

K. To the extent allowed by law, an employer shall maintain, for the duration of the leave at the level and under the conditions coverage would have been provided if the employee had not taken the leave, coverage under any health insurance plan for an employee who takes domestic violence leave.

121 *L. Any employee who has taken domestic violence leave who is discharged, demoted, or suspended in*
122 *violation of this section is entitled to reinstatement and reimbursement for lost wages and work benefits*
123 *caused by such discharge, demotion, or suspension. If the employee prevails in a proceeding under this*
124 *subsection, the employee also may be awarded reasonable attorney fees and court costs.*