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SENATE BILL NO. 990

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 9, 2015)

(Patron Prior to Substitute—Senator Lucas)

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, sexual assault, and stalking leave.*

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, sexual assault, and stalking 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, sexual assault, and stalking 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.

"Eligible employee" means an employee who (i) has worked for the employer for at least 12 months; (ii) has worked on average at least 30 hours per week during the 12 months immediately preceding the start of leave; (iii) is not eligible for or has used, within the immediately preceding 12 months, all other federally authorized, military, or employer-provided personal, sick, or other leave; and (iv) works at a location where at least 50 employees are employed at the location or within 75 miles of the location.

"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 eligible employee may take up to 30 days of leave from work during a 12-month period, which period shall commence on the first day of eligible leave taken under this section, and which leave may be provided to the employee with or without pay, to:

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

2. Obtain treatment by a health care provider for physical injuries caused by domestic violence, sexual assault, or stalking or to attend to health care treatment;

3. Obtain services from a domestic violence shelter, sexual assault crisis center, or other social services program for relief from domestic violence, sexual assault, or stalking;

4. Obtain mental health treatment or counseling related to an incident of domestic violence, sexual assault, or stalking in which the employee was a victim of domestic violence, sexual assault, or stalking; or

5. Participate in safety planning, obtain temporary or permanent housing, or take other actions to increase the safety of the employee from future domestic violence, sexual assault, or stalking.

An eligible employee's entitlement to leave hereunder, whether related to a single incident or a series of incidents, shall expire at the end of the 12-month period following the employee's first day of leave.

C. Leave provided under this section may be taken by an employee intermittently.

D. As a condition of taking any leave, an employee shall give the 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 leave, if the employer has such a policy. When advance notice cannot be given because of an emergency or an unforeseen circumstance due to domestic violence, sexual assault, or stalking, the employee or his designee shall give notice to the employer no later 24 hours after the employee takes such leave. If an employee requests recurring intermittent leave or an extended amount of leave as determined by the employer, the employer may require the employee to transfer temporarily to an alternative position that will accommodate recurring periods of leave and for which the employee is qualified and shall receive equivalent pay and benefits.

E. When an employee requests leave under this section, the employer shall require that the request be supported by verification that:

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

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

F. Verification shall be provided within five business days. If advance notice of the leave cannot be given because of emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, verification shall be provided to the employer within five business days after the leave was

60 taken. An employee may satisfy the verification requirement of this subsection by providing the employer
61 with one or more of the following:

62 1. A police report indicating that the employee was a victim of domestic violence, sexual assault, or
63 stalking;

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

68 3. Documentation that the employee is a victim of domestic violence, sexual assault, or stalking from
69 any of the following persons from whom the employee sought assistance in addressing the domestic
70 violence, sexual assault, or stalking:

71 a. An advocate for victims of domestic violence, sexual assault, or stalking who is affiliated with a
72 recognized domestic violence or other related agency or organization;

73 b. An attorney;

74 c. A member of the clergy; or

75 d. A medical or other health care professional.

76 The provision of documentation under this subdivision 3 does not waive or diminish the confidential
77 or privileged nature of communications between a victim of domestic violence, sexual assault, or
78 stalking and one or more of the individuals named in this subdivision 3 a, b, c, or d pursuant to
79 applicable law; or

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

83 G. An employee shall exhaust all vacation leave, personal leave, sick leave paid time off, and
84 compensatory time prior to taking any domestic violence, sexual assault, or stalking leave hereunder.
85 Such leave may be provided by the employer with or without compensation.

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

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

99 J. The taking of leave as provided in this section shall not result in the loss of any pay or benefits to
100 the employee that accrued before the date on which the leave commenced. Upon an employee's return,
101 an employer shall restore the employee to either the position of employment held by the employee when
102 the leave commenced or an equivalent position with equivalent employment benefits, pay, and other
103 terms and conditions of employment. Nothing in this subsection shall be construed to prohibit the
104 employer from requiring an employee on leave to periodically confirm the employee's status or intention
105 of the employee to return to work. This subsection does not apply if:

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

112 2. The employee who took leave was hired for a specific term or only to perform work on a discrete
113 project, the employment term or project is over, and the employer would not otherwise have continued
114 to employ the employee.

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

119 L. An employer shall not refuse to employ, discharge, or in any manner discriminate or retaliate
120 against an employee because of the employee's status as a victim of domestic violence, sexual assault,
121 or stalking if the victim provides notice to the employer of the status or the employer has actual

122 knowledge of the status. Any employee who has taken domestic violence, sexual assault, or stalking
123 leave who is discharged, demoted, or suspended as a result of taking domestic violence, sexual assault,
124 or stalking leave in violation of this section shall be entitled to seek reinstatement and reimbursement
125 for lost wages and work benefits caused by such discharge, demotion, or suspension. If the employee
126 prevails in a proceeding under this subsection, the employee may be awarded reasonable attorney fees
127 and court costs.

128 M. Nothing in this section shall be construed to limit the availability of leave under the federal
129 Family and Medical Leave Act of 1993 (29 U.S.C. § 2601 et seq.), the federal Uniformed Services
130 Employment and Reemployment Rights Act of 1994 (38 U.S.C. § 4301 et seq.), any employer benefit
131 program or plan that provides greater domestic violence, sexual assault, and stalking leave rights than
132 the rights established under this section, or any other federal, state, local, or private program for which
133 the employee is eligible. Nothing in this section shall be construed to limit or discourage employers
134 from adopting or retaining domestic violence leave policies more generous than required by this section.