

20201111D

HOUSE BILL NO. 5116

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations)

(Patron Prior to Substitute—Delegate Guzman)

House Amendments in [] — September 9, 2020

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 40.1 an article numbered 2.1, consisting of sections numbered 40.1-33.3 through 40.1-33.7, relating to employees; paid quarantine leave.

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 2.1, consisting of sections numbered 40.1-33.3 through 40.1-33.7, as follows:

Article 2.1.

Paid Quarantine Leave.

§ 40.1-33.3. Definitions.

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

"Eligible employee" means an employee who works on average at least 20 hours per week [~~and is eligible for benefits~~]. "Eligible employee" does not include a provider of consumer-directed or agency-directed personal assistance services] .

"Employer" has the same meaning as provided in § 40.1-2, except that, 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 member" means:

1. Regardless of age, a biological child, adopted or foster child, stepchild, legal ward, child to whom the employee stands in loco parentis, or individual to whom an employee stood in loco parentis when the individual was a minor;

2. A biological parent, foster parent, stepparent, adoptive parent, legal guardian of an employee or an employee's spouse, or an individual who stood in loco parentis to an employee when the employee or employee's spouse was a minor child;

3. An individual to whom an employee is legally married under the laws of any state;

4. A grandparent, grandchild, or sibling, whether of a biological, foster, adoptive, or step relationship, of an employee or the employee's spouse;

5. An individual for whom an employee is responsible for providing or arranging care, including helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment; or

6. Any other individual related by blood or affinity whose close association with an employee is the equivalent of a family relationship.

"Paid quarantine leave" means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as an employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in § 40.1-33.4; however, such hourly rate shall not be less than the minimum wage amount set forth in § 40.1-28.10 without reduction for any tip credit that the employer would otherwise be permitted to claim.

§ 40.1-33.4. Paid quarantine leave.

A. Each employer shall provide all of its eligible employees paid quarantine leave. An employer shall provide a number of hours equal to the number of hours that such eligible employee works, on average, over a two-week period. Such paid quarantine leave shall be available for immediate use by the eligible employee for the purposes described in subsection B, regardless of how long the eligible employee has been employed by the employer.

B. Paid quarantine leave shall be provided to an eligible employee by an employer for:

1. An eligible employee's illness or health condition related to COVID-19; an eligible employee's need for medical diagnosis, care, or treatment of an illness or health condition related to COVID-19; or an eligible employee's need for preventive medical care related to COVID-19;

2. Care of a family member with an illness or health condition related to COVID-19; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness or health condition related to COVID-19; or care of a family member who needs preventive medical care related to COVID-19; or

3. Care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the eligible employee's or family member's presence in the community may jeopardize the health of others because of his exposure to COVID-19, whether or not the eligible employee or family member has actually contracted COVID-19.

C. Paid quarantine leave shall be provided upon the request of an eligible employee. Such request

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HB5116EH1

60 may be made orally, in writing, by electronic means, or by any other means acceptable to the employer.
61 D. No employer shall require, as a condition of providing paid quarantine leave, that the eligible
62 employee involved search for or find a replacement employee to cover the hours during which the
63 eligible employee is using paid quarantine leave or require an eligible employee to work an alternate
64 shift to make up for the use of paid quarantine leave.

65 E. An employer shall not be required to provide paid quarantine leave for an eligible employee who
66 is authorized by the employer to and is physically able to work through remote access or other similar
67 means. Such ability shall be determined by a health care provider after considering the severity of the
68 eligible employee's illness or health condition related to COVID-19 and the eligible employee's specific
69 job requirements.

70 F. An employer that provides an eligible employee with paid quarantine leave as required by any
71 other state or federal law, paid sick leave, or other paid leave shall be deemed to have satisfied its
72 obligations under the provisions of this section with respect to such eligible employee, provided that
73 such leave can be used for the purposes set forth in subsection B and the eligible employee is provided
74 an amount of paid leave that meets or exceeds the requirements of subsection A.

75 G. If any federal law requires an employer to provide an eligible employee paid quarantine leave
76 and such paid quarantine leave is less than is required by subsection A, then the employer shall provide
77 the eligible employee an amount of paid quarantine leave that meets or exceeds the difference between
78 the requirements of subsection A and the federal requirement.

79 **§ 40.1-33.5. Retaliatory action prohibited.**

80 No employer shall discharge, discipline, threaten, discriminate against, or penalize an employee, or
81 take other retaliatory action regarding an employee's compensation, terms, conditions, location, or
82 privileges of employment, because the employee (i) has requested or exercised the benefits provided for
83 in this article, (ii) has exhausted his paid quarantine leave or is not eligible for quarantine leave and is
84 absent from work without compensation for any purpose set forth in subsection B of § 40.1-33.4, or (iii)
85 has alleged a violation of this article.

86 **§ 40.1-33.6. Civil actions.**

87 A. Any person who alleges a violation of this article may seek redress through the employer's human
88 resources department. If the alleged violation is unable to be resolved through the employer's human
89 resources department, such person may bring a civil action in a court of competent jurisdiction. The
90 court may order as a remedy to the employee (i) compensation for lost wages, benefits, and other
91 remuneration, together with interest thereon, as well as reasonable attorney fees and costs; (ii) the
92 reinstatement of the employee to the same position held before any retaliatory action or to an equivalent
93 position; and (iii) an injunction to restrain continued violation of this article.

94 B. The statute of limitations for a civil action brought pursuant to this section shall be for a period
95 of two years from the date the alleged violation occurred or the date the person aggrieved by a
96 violation of this article knew or should have known of the violation.

97 **§ 40.1-33.7. Notice to employer; confidentiality and nondisclosure.**

98 A. An employer may require that an employee submit certification from a health care provider that
99 the employee is entitled to paid quarantine leave under this article pursuant to the criteria set forth in
100 subsection B of § 40.1-33.4.

101 B. No employer shall require disclosure of the details of an employee's or his family member's health
102 information other than the certification authorized in subsection A as a condition of providing paid
103 quarantine leave under this article. If an employer possesses health information about an employee,
104 such information shall be treated as confidential and not disclosed except to the affected employee or
105 with the permission of the affected employee.

106 **2. That the provisions of this act shall expire on the earlier of July 1, 2021, or upon the expiration**
107 **of the state of emergency declared by the Governor in Executive Order 51 (2020), as amended, in**
108 **response to the COVID-19 pandemic [, provided that such expiration shall not affect any paid**
109 **quarantine leave provided by an employer prior to the expiration or any rights relating thereto] .**

110 **3. That the provisions of this act shall not apply to employees of the Commonwealth unless federal**
111 **COVID-19 pandemic relief funds are available to fund the cost of providing paid quarantine leave,**
112 **as provided in this act, to employees of the Commonwealth.**

113 **4. That [, except for employers of employees in domestic service as that term is defined in**
114 **§ 40.1-28.9 of the Code of Virginia,] the provisions of this act shall not apply to employers in the**
115 **Commonwealth with [50 25] employees or [less fewer] unless a grant program dedicated to**
116 **assisting employers provide paid quarantine leave, funded by federal COVID-19 pandemic relief**
117 **funds, is available to such employers in the Commonwealth.**

118 **[5. Nothing in this act shall be construed to prohibit the use of federal funds to provide paid**
119 **quarantine benefits to providers of consumer-directed or agency-directed personal assistance**
120 **services.]**