

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act 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 40.1-33.17, relating to unpaid family bereavement leave; required; remedies.

[H 1098]

Approved

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 40.1-33.17, 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 a person not less than 18 years of age who (i) is dependent upon the eligible employee for support as shown by either unilateral dependence or mutual interdependence that is evidenced by a nexus of factors, including (a) common ownership of real or personal property, (b) common householding, (c) children in common, (d) signs of intent to marry, (e) shared budgeting, and (f) the length of the personal relationship with the eligible employee, or (ii) has registered as the domestic partner of the eligible employee with any registry of domestic partnerships maintained by the employer of either party, or in any state, county, city, town, or village in the United States.

"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 in § 40.1-2 that employs 50 or more employees. "Employer" does not include any agency of the federal government.

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

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

F. Nothing in this article shall be construed to:

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

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

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

§ 40.1-33.15. Employee restoration of position.

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

§ 40.1-33.16. Health benefit plan; commission.

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

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

§ 40.1-33.17. Retaliatory action prohibited; remedies.

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

B. If an employer fails to provide unpaid family bereavement leave in accordance with this chapter or engages in a prohibited retaliatory action, an employee may bring an action against the employer in a court of competent jurisdiction. An aggrieved employee may bring an action, individually, jointly with other aggrieved employees, or on behalf of similarly situated employees as a collective action against the employer in a court of competent jurisdiction within two years of when the employee was denied unpaid family bereavement leave or the prohibited retaliatory action occurred.