WEST virginia legislature

2023 regular session

Introduced

**FISCAL NOTE**

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Senate Bill 63

By Senator Nelson

[Introduced January 11, 2023; referred  
to the Committee on Finance]

A BILL to amend and reenact §21-5D-2 and §21-5D-4 of the Code of West Virginia, 1931, as amended, all relating to paid or unpaid family leave time; granting a total of 12 weeks under the Parental Leave Act based on at least 12 consecutive months of performing services for remuneration within this state for any department, division, board, bureau, agency, commission, or other unit of state government, or any county board of education; and specifying conditions for which the leave time is granted.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5D. THE PARENTAL LEAVE ACT.

§21-5D-2. Definitions.

As used in this article:

(a) "Commissioner" means the commissioner of the department of labor.

(b) "Dependent" means any person who is living with or dependent upon the income of any employee whether related by blood or not.

(c) Employee. --

(1) "Employee" means any individual, hired for permanent employment, who has worked for at least 12 consecutive weeks performing services for remuneration within this state for any department, division, board, bureau, agency, commission or other unit of state government, or any county board of education in the state.

(2) "Employee" does not include:

(A) Individuals employed by persons who are not "employers" as defined by this article;

(B) Elected public officials or the members of their immediate personal staffs;

(C) Principal administrative officers of any department, division, board, bureau, agency, commission or other unit of state government, or any county board of education in the state; or

(D) A person in a vocational rehabilitation facility certified under federal law who has been designated an evaluee, trainee or work activity client.

(d) Employer. -- "Employer" includes any department, division, board, bureau, agency, commission or other unit of state government and any county board of education in the state.

(e) "Employment benefits" means all benefits, other than salary or wages, provided or made available to employees by an employer, and includes group life insurance, health insurance, disability insurance, available sick leave, annual leave, educational benefits and pensions, regardless of whether such benefits are provided by a policy or practice of an employer or by an employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974.

(f) The term "health care" or "health care services" means clinically related preventive, diagnostic, treatment or rehabilitative services whether provided in the home, office, hospital, clinic or any other suitable place, provided or prescribed by any health care provider or providers. ~~Such~~ These services include, among others, drugs and medical supplies, appliances, laboratory, preventive, diagnostic, therapeutic, and rehabilitative services, hospital care, nursing home and convalescent care, medical physicians, osteopathic physicians, chiropractic physicians, and such other surgical, dental, nursing, pharmaceutical, and podiatric services and supplies as may be prescribed by such health care providers.

(g) "Health care provider" means a person, partnership, corporation, facility, or institution licensed, certified or authorized by law to provide professional health care services in this state to an individual during this individual's medical care, treatment or confinement.

(h) "Parent" means a biological, foster, or adoptive parent, a stepparent, or a legal guardian.

(i) "Serious health condition" means a physical or mental illness, injury or impairment which involves:

(1) Inpatient care in a hospital, hospice, or residential health care facility; or

(2) Continuing treatment, health care or continuing supervision by a health care provider.

(j) "Son" or "daughter" means an individual who is a biological, adopted, or foster child, a stepchild or a legal ward, and is (1) under 18 years of age; or (2) 18 years of age or older and incapable of self-care because of mental or physical disability.

(k) "Spouse" means any person legally married to an "employee" covered under this article.

§21-5D-4. Family leave.

(a) An employee ~~shall be~~ who has worked for at least 12 consecutive months performing services for remuneration within this state for any department, division, board, bureau, agency, commission, or other unit of state government, or any county board of education in the state is entitled to a total of 12 weeks of ~~unpaid~~ paid family leave, following the exhaustion of all his or her annual, available sick, and personal leave, during any 12-month period:

(1) Because of the birth of a son or daughter of the employee;

(2) Because of the placement of a son or daughter with the employee for adoption. ~~; or~~

~~(3) In order to care for the employee's son, daughter, spouse, parent or dependent who has a serious health condition~~

(b) An employee who has worked less than 12 consecutive months performing services for remuneration within this state for any department, division, board, bureau, agency, commission, or other unit of state government, or any county board of education in the state is entitled to a total of 12 weeks of unpaid family leave, following the exhaustion of all his or her annual, available sick, and personal leave, during any 12-month period:

(1) Because of the birth of a son or daughter of the employee; or

(2) Because of the placement of a son or daughter with the employee for adoption.

(c) If a leave under §21-5D-4(a) of this code is foreseeable, the employee shall provide the employer with two weeks written notice of the expected birth or adoption.

(d) An employee is entitled to a total of 12 weeks of unpaid family leave, following the exhaustion of all his or her annual, available sick, and personal leave, during any 12-month period in order to care for the employee’s son, daughter, spouse, parent, or dependent who has a serious health condition.

~~(b)~~ (1) In the case of a son, daughter, spouse, parent or dependent who has a serious health condition, such family leave under §21-5D-4(c) of this code may be taken intermittently when medically necessary.

~~(c)~~ (2) An employee may take family leave under §21-5D-4(c) of this code on a part-time basis and on a part-time leave schedule, but the period during which the number of work weeks of leave may be taken may not exceed 12 consecutive months, and such leave shall be scheduled so as not to disrupt unduly the operations of the employer.

~~(d) (1) If a leave because of birth or adoption is foreseeable, the employee shall provide the employer with two weeks written notice of such expected birth or adoption~~

~~(2)~~ (3) If a leave under ~~this section~~ §21-5D-4(c) of this code is foreseeable because of planned medical treatment or supervision, the employee:

(A) Shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee’s son, daughter, parent or dependent; and

(B) Shall provide the employer with two weeks written notice of the treatment or supervision.

(e) This article ~~shall not be construed as granting~~ does not grant an employee the family leave rights provided in this section if he or she is entitled to such family leave rights under any other provision of this code.

(f) An employee is not entitled to a combined total of more than 12 weeks of family leave under §21-5D-4(a), §21-5D-4(b) and §21-5D-4(d) of this code during any 12-month period.

(g) In any case in which an employee entitled to family leave under §21-5D-4(a) or §21-5D-4(b) of this code and his or her spouse are employed by the same employer, the combined number of weeks of family leave to which both the employee and his or her spouse may be entitled may be limited to 12 weeks during any 12-month period.

(h) The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to effectuate the provisions of this section.