

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 63

By Senator Nelson

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

1 A BILL to amend and reenact §21-5D-2 and §21-5D-4 of the Code of West Virginia, 1931, as
 2 amended, all relating to paid or unpaid family leave time; granting a total of 12 weeks under
 3 the Parental Leave Act based on at least 12 consecutive months of performing services for
 4 remuneration within this state for any department, division, board, bureau, agency,
 5 commission, or other unit of state government, or any county board of education; and
 6 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.

1 As used in this article:

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

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

5 (c) Employee. --

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

10 (2) "Employee" does not include:

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

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

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

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

17 (d) Employer. -- "Employer" includes any department, division, board, bureau, agency,

18 commission or other unit of state government and any county board of education in the state.

19 (e) "Employment benefits" means all benefits, other than salary or wages, provided or
20 made available to employees by an employer, and includes group life insurance, health insurance,
21 disability insurance, available sick leave, annual leave, educational benefits and pensions,
22 regardless of whether such benefits are provided by a policy or practice of an employer or by an
23 employee benefit plan as defined in the federal Employee Retirement Income Security Act of
24 1974.

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

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

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

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

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

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

42 (j) "Son" or "daughter" means an individual who is a biological, adopted, or foster child, a
43 stepchild or a legal ward, and is (1) under 18 years of age; or (2) 18 years of age or older and

44 incapable of self-care because of mental or physical disability.

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

§21-5D-4. Family leave.

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

- 6 (1) Because of the birth of a son or daughter of the employee;
- 7 (2) Because of the placement of a son or daughter with the employee for adoption; ~~or~~
- 8 (3) ~~In order to care for the employee's son, daughter, spouse, parent or dependent who has~~
9 ~~a serious health condition~~

10 (b) An employee who has worked less than 12 consecutive months performing services for
11 remuneration within this state for any department, division, board, bureau, agency, commission, or
12 other unit of state government, or any county board of education in the state is entitled to a total of
13 12 weeks of unpaid family leave, following the exhaustion of all his or her annual, available sick,
14 and personal leave, during any 12-month period:

- 15 (1) Because of the birth of a son or daughter of the employee; or
- 16 (2) Because of the placement of a son or daughter with the employee for adoption.

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

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

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

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

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

32 ~~(2) (3)~~ If a leave under ~~this section~~ §21-5D-4(c) of this code is foreseeable because of
33 planned medical treatment or supervision, the employee:

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

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

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

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

44 ~~(g) In any case in which an employee entitled to family leave under §21-5D-4(a) or §21-5D-~~
45 ~~4(b) of this code and his or her spouse are employed by the same employer, the combined number~~
46 ~~of weeks of family leave to which both the employee and his or her spouse may be entitled may be~~
47 ~~limited to 12 weeks during any 12-month period.~~

48 ~~(h) The commissioner shall propose rules for legislative approval in accordance with the~~

49 provisions of §29A-3-1 et seq. of this code to effectuate the provisions of this section.