

H. B. 2770

(By Delegates Caputo, Fragale, Hatfield,
Martin, Moye)

[Introduced January 24, 2011; referred to the
Committee on Energy, Industry and Labor, Economic
Development and Small Business then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §21-5G-1, §21-5G-2,
§21-5G-3, §21-5G-4, §21-5G-5, §21-5G-6 and §21-5G-7, all
relating to establishing the Flexible Leave Act; definitions;
application; use of leave with pay earned; prohibited acts;
and affect on leave granted under the Federal Family and
Medical Leave Act of 1993.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new article, designated §21-5G-1, §21-5G-2,
§21-5G-3, §21-5G-4, §21-5G-5, §21-5G-6 and §21-5G-7, all to read as
follows:

ARTICLE 5G. FLEXIBLE LEAVE ACT.

§21-5G-1. Short title.

This article shall be known as the "Flexible Leave Act."

§21-5G-2. Definitions.

1 As used in this article:

2 (1) "Employer" means a person engaged in a business, industry,
3 profession, trade or other enterprise in the state. Employer
4 includes a person who acts directly or indirectly in the interest
5 of another employer with an employee.

6 (2) "Employee" or "employees" means any person suffered or
7 permitted to work by an employer as defined in subdivision (1) of
8 this section.

9 (3) "Immediate family" includes a child, spouse and parent.

10 (4) "Leave with pay" means any time away from work for which
11 an employee receives compensation. Leave with pay includes sick
12 leave, vacation time and compensatory time.

13 **§21-5G-3. Application.**

14 This section applies to an employer that provides leave with
15 pay under the terms of: (1) A collective bargaining agreement; or
16 (2) an employment policy.

17 **§21-5G-4. Use of leave with pay.**

18 An employee of an employer may use leave with pay for his or
19 her illness or for an illness in the employee's immediate family.

20 **§21-5G-5. Leave with pay available for use.**

21 (a) An employee may only use leave with pay under this article
22 that has been earned.

23 (b) An employee who earns more than one type of leave with pay
24 may elect the type and amount of leave with pay to be used under

1 this article.

2 (c) Except as provided in subsection (d) of this section, an
3 employee who uses leave under this section shall comply with the
4 terms of a collective bargaining agreement or an employer's
5 employment policy.

6 (d) If the terms of a collective bargaining agreement with an
7 employer or an employment policy of an employer provide a leave
8 with pay benefit that is equal to or greater than the benefit
9 provided under this section, the collective bargaining agreement or
10 employment policy prevails.

11 **§21-5G-6. Prohibited acts.**

12 An employer may not discharge, demote, suspend, discipline,
13 take any adverse employment action or otherwise discriminate
14 against an employee or threaten to take any of these actions
15 against an employee:

16 (1) Who exercises rights granted under this article; or

17 (2) Who files a complaint, testifies against or assists in an
18 action brought against the employer for a violation of this
19 article.

20 **§21-5G-7. Article not to affect Federal Family and Medical Leave**

21 **Act.**

22 This article does not affect leave granted under the Federal
23 Family and Medical Leave Act of 1993.

NOTE: The purpose of this bill is to establish the Flexible Leave Act allowing for the use of earned leave with pay for an illness in an employee's immediate family.

This article is new; therefore, it has been completely underscored.