

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3123

**FISCAL
NOTE**

BY DELEGATES THOMPSON, WALKER, BARACH, GRIFFITH,

YOUNG AND ZUKOFF

[Introduced March 12, 2021; Referred to the
Committee on Workforce Development then the
Judiciary]

1 A BILL to amend and reenact §21-5D-2, §21-5D-4, and §21-5D-6 of the Code of West Virginia,
 2 1931, as amended, all relating to requiring employers to provide paid family leave to
 3 employees to attend and care for family members under certain circumstances; amending
 4 definitions to include all private and public employers and employees; setting minimum
 5 amounts of paid and unpaid family leave; and authorizing employers to require exhaustion
 6 of other leave before use of unpaid leave.

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
 4 any 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~~
 9 ~~any county board of education~~ employer, public or private, 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~~ means any private employer with two or more

18 employees and any department, division, board, bureau, agency, commission or other unit of
19 state government, ~~and~~ any county board of education, any office, bureau, division or other unit of
20 county or municipal government in the state.

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

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

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

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

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

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

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

43 (j) "Son" or "daughter" means an individual who is a biological, adopted, or foster child, a

44 stepchild or a legal ward, and is (1) Under 18 years of age; or (2) 18 years of age or older and
45 incapable of self-care because of mental or physical disability.

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

§21-5D-4. Family leave.

1 (a) An employee shall be entitled to four weeks of paid family leave and a total of 12 weeks
2 of unpaid family leave, ~~following the exhaustion of all his or her annual and personal leave~~ during
3 any 12-month period:

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

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

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

8 (b) In the case of a son, daughter, spouse, parent or dependent who has a serious health
9 condition, such family leave may be taken intermittently when medically necessary.

10 (c) An employee may take family leave on a part-time basis and on a part-time leave
11 schedule, but the period during which the number of work weeks of leave may be taken may not
12 exceed 12 consecutive months, and such leave shall be scheduled so as not to disrupt unduly
13 the operations of the employer.

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

16 (2) If a leave under this section is foreseeable because of planned medical treatment or
17 supervision, the employee:

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

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

22 supervision.

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

26 (f) The employer may require the employee to exhaust of all his or her annual and personal
27 leave prior to using the unpaid family leave provided under this section.

§21-5D-6. Position upon return from leave.

1 (a) The position held by the employee immediately before the leave is commenced shall
2 be held upon a period not to exceed ~~the twelve-week period of the parental~~ total period of family
3 medical leave authorized in this article and the employee shall be returned to that position:
4 *Provided,* That the employer may employ a temporary employee or temporary employees to fill
5 said position for the period of the parental leave.

6 (b) No employer may, because an employee received family leave or medical leave,
7 reduce or deny any employment benefit or seniority which accrued to the employee before his or
8 her leave commenced.

NOTE: The purpose of this bill is to provide paid and unpaid family leave for employees to leave work to care for a family member under certain conditions.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.