

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 322

BY SENATORS NELSON, LINDSAY, AND WOODRUM

[Introduced February 17, 2021; referred
to the Committee on Government Organization]

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 generally to the payment of salary or wages under the Parental
 3 Leave Act.

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 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, sick leave, annual leave, educational benefits, and pensions, regardless of
22 whether such benefits are provided by a policy or practice of an employer or by an employee
23 benefit plan as defined in the federal Employee Retirement Income Security Act of 1974.

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

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

35 (h) “Parent” means a biological, foster, or adoptive parent, a stepparent, or a legal
36 guardian.

37 (i) “Serious health condition” means a physical or mental illness, injury, or impairment
38 which involves:

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

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

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

44 (k) “Spouse” means any person legally married to an “employee” covered under this
45 article.

§21-5D-4. Family leave.

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

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to provide paid family leave under the Parental Leave

Act.

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