



House of Representatives

File No. 815

General Assembly

January Session, 2003

(Reprint of File Nos. 60 and 560)

Substitute House Bill No. 6151
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
May 31, 2003

AN ACT CONCERNING FAMILY AND MEDICAL LEAVE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-51pp of the general statutes is amended by
2 adding subsection (c) as follows (*Effective October 1, 2003*):

3 (NEW) (c) (1) It shall be a violation of sections 31-51kk to 31-51qq,
4 inclusive, for any employer to deny an employee the right to use up to
5 two weeks of accumulated sick leave or to discharge, threaten to
6 discharge, demote, suspend or in any manner discriminate against an
7 employee for using, or attempting to exercise the right to use, up to
8 two weeks of accumulated sick leave to attend to a serious health
9 condition of a son or daughter, spouse or parent of the employee, or
10 for the birth or adoption of a son or daughter of the employee. For
11 purposes of this subsection, "sick leave" means an absence from work
12 for which compensation is provided through an employer's bona fide
13 written policy providing compensation for loss of wages occasioned by
14 illness, but does not include absences from work for which
15 compensation is provided through an employer's plan, including, but

16 not limited to, a short or long-term disability plan, whether or not such
17 plan is self-insured.

18 (2) Any employee aggrieved by a violation of this subsection may
19 file a complaint with the Labor Commissioner alleging violation of the
20 provisions of this subsection. Upon receipt of any such complaint, the
21 commissioner shall hold a hearing. After the hearing, the
22 commissioner shall send each party a written copy of the
23 commissioner's decision. The commissioner may award the employee
24 all appropriate relief, including rehiring or reinstatement to the
25 employee's previous job, payment of back wages and reestablishment
26 of employee benefits to which the employee otherwise would have
27 been eligible if a violation of this subsection had not occurred. Any
28 party aggrieved by the decision of the commissioner may appeal the
29 decision to the Superior Court in accordance with the provisions of
30 chapter 54.

31 (3) The rights and remedies specified in this subsection are
32 cumulative and nonexclusive and are in addition to any other rights or
33 remedies afforded by contract or under other provisions of law.

34 Sec. 2. Subsection (a) of section 31-51ll of the general statutes is
35 repealed and the following is substituted in lieu thereof (*Effective*
36 *October 1, 2003*):

37 (a) Subject to section 31-51mm, an eligible employee shall be entitled
38 to a total of sixteen workweeks of leave during any twenty-four-month
39 period, such twenty-four-month period to [begin with the first day of
40 leave taken,] be determined utilizing any one of the following
41 methods: (1) Consecutive calendar years; (2) any fixed twenty-four-
42 month period, such as two consecutive fiscal years or a twenty-four-
43 month period measured forward from an employee's first date of
44 employment; (3) a twenty-four-month period measured forward from
45 an employee's first day of leave taken under sections 31-51kk to 31-
46 51qq, inclusive; or (4) a rolling twenty-four-month period measured
47 backward from an employee's first day of leave taken under sections

- 48 31-51kk to 31-51qq, inclusive, for one or more of the following:
- 49 (1) Upon the birth of a son or daughter of the employee;
- 50 (2) Upon the placement of a son or daughter with the employee for
51 adoption or foster care;
- 52 (3) In order to care for the spouse, or a son, daughter or parent of
53 the employee, if such spouse, son, daughter or parent has a serious
54 health condition; or
- 55 (4) Because of a serious health condition of the employee.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Department of Labor	GF - Cost	Potential Minimal	Potential Minimal
Judicial Department	GF - None	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill prohibits private employers from denying employees the right to use up to two weeks of accumulated sick leave (which is defined in the bill) while on leave under the state’s Family and Medical Leave Act (FMLA). The changes may result in a potential minimal fiscal impact to the Department of Labor (DOL). It is anticipated that a minimal number of additional cases may be reported to the department and result in an increase in the level of complaint and hearing activity. This may result in a cost of less than \$5,000 to the department, however, it is anticipated that additional resources will not be needed. Any increase to the Superior Court caseload as a result of appeals, is anticipated to be minimal and could be handled without additional resources. Currently, the Department of Labor investigates complaints made by an employee that alleges an employer has violated the state Family and Medical Leave Act (FMLA).

House “A” strikes the underlying bill and replaces it with similar language on allowing private employees to use accumulated sick time while on leave under the FMLA. However, the amendment restricts the use of accumulated sick time of up to two weeks (if the employer has a written policy that compensates employees for sick time). These

changes in the FMLA may result in a potential minimal cost to the department although not requiring additional resources (this fiscal impact is consistent with the underlying bill).

OLR Bill Analysis

sHB 6151 (as amended by House "A")*

AN ACT CONCERNING THE USE OF SICK TIME FOR FAMILY AND MEDICAL LEAVE**SUMMARY:**

This bill allows private-sector employees to use up to two weeks of accumulated sick time while on leave under the state's Family Medical Leave Act (FMLA). It prohibits employers from denying such use or firing, threatening to fire, demoting, suspending, or in any way discriminating against an employee for using or attempting to use sick leave for FMLA purposes. The new leave provision applies for any employee (1) to attend to the serious health condition of a child, spouse, or parent of the employee or (2) for the birth or adoption of a child.

Under current law, the employer may, but is not required to, allow the employee to use accumulated sick time to attend to the serious health condition of a child, spouse, or parent of the employee. The bill and current law apply to private-sector employers with more than 75 employees.

The bill specifies the sick leave use applies only to employers with written policies that compensate employees who miss work due to illness. The bill's definition of sick leave excludes compensation for missing work that is provided through an employer's plan, such as, short- or long-term disability insurance, whether self-insured or underwritten.

The bill also expands the method of determining the 24-month period during which employees are eligible for up to 16 weeks of leave under the state's current FMLA provisions. Under current law, the 24-month window begins on the first day the leave.

The bill also allows an employee aggrieved by a suspected violation of the bill to file a complaint with the labor commissioner, who must hold a hearing on the matter and provide each party with written

notification of his decision.

*House Amendment "A" adds the provisions (1) limiting paid sick leave used for family medical leave purposes to two weeks, (2) specifies the paid sick leave is only available through employers with written sick leave policies, (3) excludes employer short- and long-term disability plans from the definition of sick leave, and (4) expands the ways the 24-month window for leave is determined.

EFFECTIVE DATE: October 1, 2003

SICK LEAVE FOR FMLA PURPOSES

What Triggers a Leave

Under the bill, the "serious health condition" of a family member, as defined by the state's FMLA, triggers the sick leave option. The FMLA defines serious health condition as illness, injury, impairment, or physical or mental condition that involves (1) inpatient care in a hospital, hospice, nursing home, or residential medical care facility or (2) continuing treatment, including outpatient treatment, by a health care provider.

Relief and Appeals

Under the bill, the labor commissioner may award the employee all appropriate relief including rehiring or reinstatement to the employee's previous job, back wages, and reestablishment of benefits the employee would have received if not for the employer's violation. Any party aggrieved by the commissioner's decision may appeal to Superior Court.

24-MONTH WINDOW FOR FMLA LEAVE

Current law states that an eligible employee can take up to 16 weeks of leave during a 24-month period that begins on the first day of leave. Under the bill, this 24-month time frame can be determined in any of four ways:

1. a 24-month period starting on the first day of the leave (existing law);

2. consecutive calendar years;
3. any fixed 24-month period, such as two consecutive fiscal years or a 24-month period measured from the employee's first date of employment; or
4. a 24-month period measured backwards from the employee's first day of leave.

BACKGROUND

Existing State and Federal FMLA Provisions

The state private-sector FMLA law applies to employers with 75 or more employees, but not to the state, towns, boards of education, or private or parochial schools (state employees have such leave under a separate law). The law allows employees up to 16 weeks of unpaid leave as long as the employee has worked at least 1,000 hours during the 12-month before the leave begins.

The federal FMLA applies to employers with 50 or more employees and sets a higher hours-worked requirement (1,250 hours a year) before an employee qualifies. Because the federal law allows states to have more generous laws, private employers with 50 to 74 employees come under the federal law and private employers with 75 or more employees fall under the state provisions.

Legislative History

The House referred the original version of this bill (File 60) to the Judiciary Committee on April 1. On April 11, the Judiciary Committee reported out a substitute version that (1) allowed an employee to use sick time for FMLA leave upon the "serious health condition" of a family member rather than upon the "illness" of such member, (2) deleted a provision in the original bill for an aggrieved employee to take a complaint directly to Superior Court, and (3) removed provisions that required the labor commissioner or the court to award reasonable attorney's fees and costs.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Report

Yea 10 Nay 3

Judiciary Committee

Joint Favorable Substitute

Yea 21 Nay 15