WEST VIRGINIA CODE CHAPTER 21 ARTICLE 5D

WV Legislature

§21-5D-1. Legislative findings.

The Legislature hereby finds that there is a growing crisis in this country and state affecting the stability of our families, that the family unit is being torn apart due to the need for families to have two income producing parents. In order to address this situation and to provide for the love, nurturing and education of our children, the Legislature hereby enacts "The Parental Leave Act."

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§21-5D-2. Definitions.

As used in this article:

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

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

(c) Employee. --

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

(2) "Employee" does not include:

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

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

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

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

(d) Employer. -- "Employer" includes any department, division, board, bureau, agency, commission or other unit of state government and any county board of education in the state.

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

(f) The term "health care" or "health care services" means clinically related preventive, diagnostic, treatment or rehabilitative services whether provided in the home, office, hospital, clinic or any other suitable place, provided or prescribed by any health care provider or providers. Such services include, among others, drugs and medical supplies, appliances, laboratory, preventive, diagnostic, therapeutic and rehabilitative services, hospital care, nursing home and convalescent care, medical physicians, osteopathic

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physicians, chiropractic physicians, and such other surgical, dental, nursing, pharmaceutical, and podiatric services and supplies as may be prescribed by such health care providers.

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

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

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

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

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

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

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

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§21-5D-3. Scope.

Nothing in this article prohibits an employer from providing employees with rights to family leave which are more generous to the employee than the rights provided under this article.

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§21-5D-4. Family leave.

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

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

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

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

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

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

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

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

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

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

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

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§21-5D-5. Certification.

(a) If an employee requests family leave to care for a family member with a serious health condition as authorized in this article, the employer may require the employee to provide certification by a health care provider of the health condition.

(b) The certification shall be sufficient if it contains the following:

(1) That the child, dependent, parent or employee has a serious health condition;

(2) The date the serious health condition commenced and its probable duration; and

(3) The medical facts regarding the serious health condition.

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

(a) The position held by the employee immediately before the leave is commenced shall be held upon a period not to exceed the twelve-week period of the parental leave and the employee shall be returned to that position: Provided, That the employer may employ a temporary employee or temporary employees to fill said position for the period of the parental leave.

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

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§21-5D-7. Seniority and employment benefits.

(a) Nothing in this section entitles any returning employee to the accrual of any seniority or employment benefits during any period of family leave.

(b) During any family leave by an employee, the employer shall continue group health insurance coverage for such employee: Provided, That the employee shall pay the employer the premium costs of such group health insurance coverage.

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§21-5D-8. Prohibited acts.

No person may interfere with, restrain or deny the exercise of any right provided under this article.

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§21-5D-9. Posting notice.

Each employer shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth an employee's rights under this article.

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