

No. 251

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

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ENROLLED
Committee Substitute for
SENATE BILL NO. 251

(By Senator Pritt)

—•—
PASSED April 8, 1989
In Effect 90 days from Passage

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 251

(SENATOR PRITT, *original sponsor*)

[Passed April 8, 1989; in effect ninety days from passage.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-d, relating to parental leave generally; legislative findings; definitions; scope; position upon return from leave; seniority and employment benefits; and notice.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-d, to read as follows:

ARTICLE 5D. THE PARENTAL LEAVE ACT.

§21-5D-1. Legislative findings.

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

8 Parental Leave Act”.

§21-5D-2. Definitions.

1 As used in this article:

2 (a) “Commissioner” means the commissioner of the
3 department of labor.

4 (b) “Dependent” means any person whom is living
5 with or dependent upon the income of any employee
6 whether related by blood or not.

7 (c) *Employee.* —

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

15 (2) “Employee” does not include:

16 (A) Individuals employed by persons who are not
17 “employers” as defined by this article;

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

20 (C) Principal administrative officers of any depart-
21 ment, division, board, bureau, agency, commission or
22 other unit of state government, or any county board of
23 education in the state; or

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

27 (d) *Employer.* — “Employer” includes any depart-
28 ment, division, board, bureau, agency, commission or
29 other unit of state government and any county board
30 of education in the state.

31 (e) “Employment benefits” means all benefits, other
32 than salary or wages, provided or made available to
33 employees by an employer, and includes group life
34 insurance, health insurance, disability insurance, sick

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

40 (f) The term "health care" or "health care services"
41 means clinically related preventive, diagnostic, treat-
42 ment or rehabilitative services whether provided in
43 the home, office, hospital, clinic or any other suitable
44 place, provided or prescribed by any health care
45 provider or providers. Such services include, among
46 others, drugs and medical supplies, appliances, labora-
47 tory, preventive, diagnostic, therapeutic and rehabilit-
48 ative services, hospital care, nursing home and conva-
49 lescent care, medical physicians, osteopathic physician,
50 chiropractic physicians, and such other surgical,
51 dental, nursing, pharmaceutical, and podiatric services
52 and supplies as may be prescribed by such health care
53 providers.

54 (g) "Health care provider" means a person, partner-
55 ship, corporation, facility or institution licensed,
56 certified or authorized by law to provide professional
57 health care services in this state to an individual
58 during this individual's medical care, treatment or
59 confinement.

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

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

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

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

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

73 (k) "Spouse" means any person legally married to

74 an “employee” covered under this article.

§21-5D-3. Scope.

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

§21-5D-4. Family leave.

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

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

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

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

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

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

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

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

29 (A) Shall make a reasonable effort to schedule the

30 treatment or supervision so as not to disrupt unduly
31 the operations of the employer, subject to the approval
32 of the health care provider of the employee's son,
33 daughter, parent or dependent; and

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

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

§21-5D-5. Certification.

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

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

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

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

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

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

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

9 (b) No employer may, because an employee received
10 family leave or medical leave, reduce or deny any
11 employment benefit or seniority which accrued to the

12 employee before his or her leave commenced.

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

1 (a) Nothing in this section entitles any returning
2 employee to the accrual of any seniority or employ-
3 ment benefits during any period of family leave.

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

§21-5D-8. Prohibited acts.

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

§21-5D-9. Posting notice.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Rum
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Joseph A. Wheeler
.....
Clerk of the Senate

Donald L. Hoyle
.....
Clerk of the House of Delegates

Sam D. Tucker
.....
President of the Senate

Bob Cole
.....
Speaker House of Delegates

The within *is approved* this the *27th*
day of *April* 1989.

Yastou Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/20/89

Time 10:36