

The Employment Counselor

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Maryland Employers Should Prepare for Flexible Leave Act

The Maryland Flexible Leave Act (the “Act”), was signed into law on May 26, 2008, and will take effect October 1, 2008. The Act requires employers with 15 or more employees to allow employees to use earned ‘leave with pay’ days, such as vacation or sick days, to care for an ill member of the employee’s immediate family. While the Act does not create a new benefit for employees, it expands on an employee’s ability to use his or her existing ‘leave with pay.’

In addition to the limitation that the Act only applies to employers with 15 or more employees, an employee must have already earned ‘leave with pay’ under a collective bargaining agreement or employment policy in order to invoke the Act’s provisions. This means that if an employer does not offer ‘leave with pay,’ the Act is not applicable. Furthermore, “immediate family” is defined under the Act as a child, spouse, or parent, and does not apply to friends or other family members.

The Act also gives flexibility to employees in taking their earned ‘leave with pay,’ because it does not define the term ‘illness.’ Without such a definition, the employee gets greater deference in deciding when a member of his or her immediate family has an ‘illness’ and, thus, when to take ‘leave with pay.’ Furthermore, this deference is heightened because of the restrictions placed upon employers in conjunction with this Act.

The Act leaves undisturbed any collective bargaining agreements and employment policies with greater ‘leave with pay’ benefits than what are provided for in the Act. Leave granted under the Federal Family and Medical Leave Act also remains unaffected. Moreover, employees with more than one type of ‘leave with pay’ are allowed to choose the type and amount of the ‘leave with pay’ they wish to use. In effect, the Act creates minimum standards for use of ‘leave with pay’ without abrogating more generous regulations or plans.

Finally, under the Act, employers may not take or threaten any sort of discriminatory action (e.g. discharge, demotion, suspension, discipline, etc.) against an employee who exercises a right under the Act or takes part in an action against an employer for violating the Act. This provision, along with the lack of a definition for ‘illness,’ can put employers in a precarious position. For example, employers and employees may disagree on what exactly an ‘illness’ entails. The ambiguities in the Act will likely force employers to be more permissive in allowing employees to utilize ‘leave with pay’ under the Act, lest they risk incurring liability under the anti-discriminatory provision.

In sum, the Flexible Leave Act benefits employees who have earned ‘leave with pay’ by giving them slightly more flexibility in terms of when to take the time off. Employers should review and update their HR policies to incorporate the new regulations regarding usage of ‘leave with pay,’ and consult legal counsel before disciplining any employees for unauthorized use of leave under the Act.

Located in McLean, Virginia, General Counsel, P.C. provides full service legal representation to businesses and non-profit organizations in Virginia, Maryland and Washington, D.C. For assistance related to any of the legal matters discussed herein, please General Counsel, P.C.’s managing partner, Merritt Green, at (703) 556-0411, via email at mgreen@generalcounsel.com or visit www.generalcounsel.com.