CHAPTER 644

(House Bill 40)

AN ACT concerning

Flexible Leave Act

FOR the purpose of authorizing employees of certain employers to use leave with pay for the illness of the employee's immediate family; providing that an employee may only use leave with pay that has been earned; providing that an employee who earns more than one type of leave with pay may elect the type and amount of leave with pay to be used; requiring an employee who uses leave with pay under this Act to comply with the terms of a collective bargaining agreement or employment policy with a certain exception; providing that the terms of a collective bargaining agreement or employment policy shall prevail under certain circumstances; prohibiting an employer from taking certain actions against an employee who exercises certain rights, files a complaint, testifies against, or assists in a certain action; providing that this Act does not affect leave granted under the federal Family and Medical Leave Act; defining certain terms; and generally relating to the Flexible Leave Act.

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 3–801 and 3–802
Annotated Code of Maryland
(1999 Replacement Volume and 2007 Supplement)

BY adding to
Article – Labor and Employment
Section 3–802
Annotated Code of Maryland
(1999 Replacement Volume and 2007 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Labor and Employment

3–801.

(a) **(1)** In this **[**subtitle**]** **SECTION**, "employer" means a person engaged in a business, industry, profession, trade, or other enterprise in the State.

[(b)**]** **(2)** "Employer" includes:

[(1)**]** **(I)** a unit of State or local government that employs individuals who are not subject to the provisions of Title 9, Subtitle 5 of the State Personnel and Pensions Article; and

[(2)**]** **(II)** a person who acts directly or indirectly in the interest of another employer with an employee.

[3–802.**]**

[(a)**]** **(B)** This **[**subtitle**]** **SECTION** applies to an employer who provides leave with pay to an employee following the birth of the employee's child.

[(b)**]** **(C)** An employer who provides leave with pay to an employee following the birth of the employee's child shall provide the same leave with pay to an employee when a child is placed with the employee for adoption.

3–802.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "EMPLOYER" MEANS A PERSON *THAT EMPLOYS 15 OR MORE INDIVIDUALS AND IS* ENGAGED IN A BUSINESS, INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN THE STATE.

(II) "EMPLOYER" INCLUDES A PERSON WHO ACTS DIRECTLY OR INDIRECTLY IN THE INTEREST OF ANOTHER EMPLOYER WITH AN EMPLOYEE.

(3) "IMMEDIATE FAMILY" INCLUDES A CHILD, SPOUSE, AND PARENT.

(4) (I) "LEAVE WITH PAY" MEANS TIME AWAY FROM WORK FOR WHICH AN EMPLOYEE RECEIVES COMPENSATION.

(II) "LEAVE WITH PAY" INCLUDES SICK LEAVE, VACATION TIME, AND COMPENSATORY TIME.

(B) THIS SECTION APPLIES TO AN EMPLOYER THAT PROVIDES LEAVE WITH PAY UNDER THE TERMS OF:

(1) A COLLECTIVE BARGAINING AGREEMENT; OR

(2) AN EMPLOYMENT POLICY.

(C) AN EMPLOYEE OF AN EMPLOYER MAY USE LEAVE WITH PAY FOR THE ILLNESS OF THE EMPLOYEE'S IMMEDIATE FAMILY.

(D) (1) AN EMPLOYEE OF AN EMPLOYER:

(I) MAY ONLY USE LEAVE WITH PAY UNDER THIS SECTION THAT HAS BEEN EARNED; AND

(II) WHO EARNS MORE THAN ONE TYPE OF LEAVE WITH PAY MAY ELECT THE TYPE AND AMOUNT OF LEAVE WITH PAY TO BE USED UNDER THIS SECTION.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, AN EMPLOYEE OF AN EMPLOYER WHO USES LEAVE UNDER THIS SECTION SHALL COMPLY WITH THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT OR EMPLOYMENT POLICY.

(3) IF THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT WITH AN EMPLOYER OR AN EMPLOYMENT POLICY OF AN EMPLOYER PROVIDE A LEAVE WITH PAY BENEFIT THAT IS EQUAL TO OR GREATER THAN THE BENEFIT PROVIDED UNDER THIS SECTION, THE COLLECTIVE BARGAINING AGREEMENT OR EMPLOYMENT POLICY PREVAILS.

(E) AN EMPLOYER MAY NOT DISCHARGE, DEMOTE, SUSPEND, DISCIPLINE, OR OTHERWISE DISCRIMINATE AGAINST AN EMPLOYEE OR THREATEN TO TAKE ANY OF THESE ACTIONS AGAINST AN EMPLOYEE:

(1) WHO EXERCISES RIGHTS GRANTED UNDER THIS SECTION; OR

(2) WHO FILES A COMPLAINT, TESTIFIES AGAINST, OR ASSISTS IN AN ACTION BROUGHT AGAINST THE EMPLOYER FOR A VIOLATION OF THIS SECTION.

(F) THIS SECTION DOES NOT AFFECT LEAVE GRANTED UNDER THE FEDERAL FAMILY AND MEDICAL LEAVE ACT OF 1993.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.

Approved by the Governor, May 22, 2008.