

TITLE 26, CHAPTER 7
EMPLOYMENT PRACTICES
SUBCHAPTER 6-A
FAMILY MEDICAL LEAVE REQUIREMENTS

§843. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Employee. "Employee" means any person who may be permitted, required or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment but does not include an independent contractor.

2. Employee benefits. "Employee benefits" means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance and pensions, regardless of whether benefits are provided by a policy or practice of an employer.

3. Employer. "Employer" means:

- A. Any person, sole proprietorship, partnership, corporation, association or other business entity that employs 15 or more employees at one location in this State;
- B. The State, including the executive, legislative and judicial branches, and any state department or agency that employs any employees;
- C. Any city, town or municipal agency that employs 25 or more employees; and
- D. Any agent of an employer, the State or a political subdivision of the State.

4. Family medical leave. "Family medical leave" means leave requested by an employee for:

- A. Serious health condition of the employee;
- B. The birth of the employee's child or the employee's domestic partner's child;
- C. The placement of a child 16 years of age or less with the employee or with the employee's domestic partner in connection with the adoption of the child by the employee or the employee's domestic partner;
- D. A child, domestic partner's child, grandchild, domestic partner's grandchild, parent, domestic partner, sibling or spouse with a serious health condition;
- E. The donation of an organ of that employee for a human organ transplant; or
- F. The death or serious health condition of the employee's spouse, domestic partner, parent, sibling or child if the spouse, domestic partner, parent, sibling or child as a member of the state military forces, as defined in Title 37-B, section 102, or the United States Armed Forces, including the National Guard and Reserves, dies or incurs a serious health condition while on active duty.

4-A. Health care provider. "Health care provider" means:

- A. A doctor of medicine or osteopathy who is licensed to practice medicine or surgery in this State; or
- B. Any other person determined by the Secretary of Labor to be capable of providing health care services.

4-B. Reduced leave schedule. "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

5. Serious illness.

6. Serious health condition. "Serious health condition" means an illness, injury, impairment or physical or mental condition that involves:

- A. Inpatient care in a hospital, hospice or residential medical care facility; or
- B. Continuing treatment by a health care provider.

7. Domestic partner. "Domestic partner" means the partner of an employee who:

- A. Is a mentally competent adult as is the employee;
- B. Has been legally domiciled with the employee for at least 12 months;
- C. Is not legally married to or legally separated from another individual;
- D. Is the sole partner of the employee and expects to remain so;
- E. Is not a sibling of the employee; and
- F. Is jointly responsible with the employee for each other's common welfare as evidenced by joint living arrangements, joint financial arrangements or joint ownership of real or personal property.

8. Sibling. "Sibling" means a sibling of an employee who is jointly responsible with the employee for each other's common welfare as evidenced by joint living arrangements and joint financial arrangements.

§844. Family medical leave requirement

1. Family medical leave entitlement. Every employee who has been employed by the same employer for 12 consecutive months is entitled to up to 10 work weeks of family medical leave in any 2 years unless employed at a permanent work site with fewer than 15 employees. The following conditions apply to family medical leave granted under this subchapter:

- A. The employee must give at least 30 days' notice of the intended date upon which family medical leave will commence and terminate, unless prevented by medical emergency from giving that notice;
- B. The employer may require certification from a physician to verify the amount of leave requested by the employee, except that an employee who in good faith relies on treatment by prayer or spiritual means, in accordance with the tenets and practice of a recognized church or religious denomination, may submit certification from an accredited practitioner of those healing methods; and
- C. The employer and employee may negotiate for more or less leave, but both parties must agree.

2. Unpaid leave. Family medical leave granted under this subchapter may consist of unpaid leave. If an employer provides paid family medical leave for fewer than 10 weeks, the additional weeks of leave added to attain the total of 10 weeks required may be unpaid.

3. Leave taken intermittently or on reduced leave schedule. Intermittent or reduced leave schedule family medical leave may be taken subject to the following limitations:

- A. Leave for a reason described in section 843, subsection 4, paragraph B or C may not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer agree otherwise. Subject to subsection 1, paragraphs A and B, leave for a reason described in section 843, subsection 4, paragraph A, D or E may be taken intermittently or on a reduced leave schedule when medically necessary. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph may not result in a reduction in the total amount of leave to which the employee is entitled under subsection 1 beyond the amount of leave actually taken.

B. If an employee requests intermittent leave, or leave on a reduced leave schedule, for a reason described in section 843, subsection 4, paragraph A, D or E that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that:

- (1) Has equivalent pay and benefits; and
- (2) Better accommodates recurring periods of leave than the regular employment position of the employee.

§845. Employee benefits protection

1. Restoration. Any employee who exercises the right to family medical leave under this subchapter, upon expiration of the leave, is entitled to be restored by the employer to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay and other terms and conditions of employment. This subsection does not apply if the employer proves that the employee was not restored as provided in this subsection because of conditions unrelated to the employee's exercise of rights under this subchapter.

2. Maintenance of employee benefits. During any family medical leave taken under this subchapter, the employer shall make it possible for employees to continue their employee benefits at the employee's expense. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration of the leave.

§846. Effect on existing employee benefits

1. Benefit accrual. The taking of family medical leave under this subchapter shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.

2. Effect on collective bargaining. Nothing in this subchapter may be construed to affect an employer's obligation to comply with any collective bargaining agreement or employee benefit plan that provides greater family medical leave rights to employees than the rights provided under this subchapter.

3. Rights not diminished. The family medical leave rights mandated by this subchapter may not be diminished by any collective bargaining agreement or by any employee benefit plan.

4. Contract rights. Nothing in this subchapter may be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered by this subchapter.

§847. Prohibited acts

1. Unlawful interference or denial of rights. The employer may not interfere with, restrain or deny the exercise of or the attempt to exercise any right provided by this subchapter.

2. Unlawful discrimination against exercise of rights. The employer may not discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee for exercising any right provided by this subchapter.

3. Unlawful discrimination against opposition. The employer may not discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee for opposing any practice made unlawful by this subchapter.

§848. Judicial enforcement

1. Injunction and damages. A civil action may be brought in the appropriate court by an employee against any employer to enforce this subchapter. The court may enjoin any act or practice that violates or may violate this subchapter and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce this subchapter. The court also may:

A. Award damages equal to the wages, salary, employment benefits or other compensation denied or lost to the employee by reason of the violation; or

B. Order the employer to pay liquidated damages of \$100 to the employee for each day that the violation continued.

2. Additional damages. The court also may order the employer to pay an additional amount as liquidated damages equal to the amount awarded under subsection 1 if the employee proves to the satisfaction of the court that the employer's violation was willful.

3. Attorney's fees. In any action brought pursuant to this section, in addition to any judgment awarded to the employee, the court shall award reasonable attorney's fees and other costs of the action to be paid by the employer.

§849. Review; sunset

(REPEALED)

SUBCHAPTER 6-B

EMPLOYMENT LEAVE FOR VICTIMS OF VIOLENCE

§850. Employment leave for victims of violence

1. Required leave. An employer must grant reasonable and necessary leave from work, with or without pay, for an employee to:

A. Prepare for and attend court proceedings;

B. Receive medical treatment or attend to medical treatment for a victim who is the employee's daughter, son, parent or spouse; or

C. Obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking.

The leave must be needed because the employee or the employee's daughter, son, parent or spouse is a victim of violence, assault, sexual assaults under Title 17-A, chapter 11, stalking or any act that would support an order for protection under Title 19-A, chapter 101. An employer may not sanction an employee or deprive an employee of pay or benefits for exercising a right granted by this section.

1-A. Definitions. For purposes of this subchapter, the terms "daughter," "son," "parent" and "spouse" have the same meanings as those terms have under federal regulations adopted pursuant to 29 United States Code, Section 2654, as in effect on January 1, 2002. An employer may require an employee to provide reasonable documentation of the family relationship, which may include a statement from the employee, a birth certificate, a court document or similar documents.

2. Exceptions. Subsection 1 is not violated if:

A. The employer would sustain undue hardship from the employee's absence;

B. The request for leave is not communicated to the employer within a reasonable time under the circumstances; or

C. The requested leave is impractical, unreasonable or unnecessary based on the facts then made known to the employer.

3. Penalties. If notice of a violation of this section is given to the employer and the Department of Labor within 6 months of the occurrence, the Department of Labor may assess penalties as follows:

A. For denial of leave in violation of this section, a fine of up to \$1,000 for each violation of this section may be assessed. A fine assessed under this paragraph must be paid to the Treasurer of State. Additionally, the employer shall pay liquidated damages to the affected individual in an amount equal to 3 times the amount of total assessed fines; and

B. For termination in connection with an individual exercising a right granted by this section, the affected individual may elect to receive:

- (1) Liquidated damages pursuant to paragraph A; or
- (2) Reemployment with the employer with back wages.

4. Application. This subchapter applies to all public and private employers, including the State and its political subdivisions.

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SUBCHAPTER 2

WAGES AND MEDIUM OF PAYMENT

§637. Earned paid leave

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Employment" has the same meaning as in section 1043, subsection 11, but does not include employment in a seasonal industry as defined in section 1251.
- B. "Employer" has the same meaning as in section 1043, subsection 9.
- C. "Employee" means a person engaged in employment.

2. Earned paid leave. An employer that employs more than 10 employees in the usual and regular course of business for more than 120 days in any calendar year shall permit each employee to earn paid leave based on the employee's base pay as provided in this section.

3. Accrual. An employee is entitled to earn one hour of paid leave from a single employer for every 40 hours worked, up to 40 hours in one year of employment. Accrual of leave begins at the start of employment, but the employer is not required to permit use of the leave before the employee has been employed by that employer for 120 days during a one-year period.

4. Rate. An employee while taking earned leave must be paid at least the same base rate of pay that the employee received immediately prior to taking earned leave and must receive the same benefits as those provided under established policies of the employer pertaining to other types of paid leave.

5. Notice. Absent an emergency, illness or other sudden necessity for taking earned leave, an employee shall give reasonable notice to the employee's supervisor of the employee's intent to use earned leave. Use of leave must be scheduled to prevent undue hardship on the employer as reasonably determined by the employer.

6. Benefits. The taking of earned leave under this section may not result in the loss of any employee benefits accrued before the date on which the leave commenced and may not affect the employee's right to health insurance benefits on the same terms and conditions as applicable to similarly situated employees. Nothing in this section prevents an employer from providing a benefit greater than that provided by this section.

7. Enforcement. The bureau has the exclusive authority pursuant to section 42 to enforce this section.

8. Penalties. Penalties for violations of this section are the same as those provided in section 53.

9. Preemption. A municipality or other political subdivision may not enact an ordinance or other rule purporting to have the force of law under its home rule or other authority regulating earned paid leave.

10. Rules. The Department of Labor shall adopt rules to implement and enforce the provisions of this section, including rules regarding the receipt, investigation and prosecution of complaints brought under this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

11. Exception. This section does not apply to an employee covered by a collective bargaining agreement during the period between January 1, 2021 and the expiration of the agreement.

12. Reporting. Beginning January 1, 2022, and annually thereafter, the Department of Labor shall submit a report to the joint standing committee of the Legislature having jurisdiction over labor matters on progress made in the State to comply with this section.