

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1454  
Economic Matters

(Delegate Lam, *et al.*)

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Labor and Employment - Organ Donation Leave

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This bill entitles an eligible employee to paid organ donation leave for (1) up to 30 business days in any 12-month period to serve as an organ donor and (2) up to 7 business days in any 12-month period to donate bone marrow. An eligible employee is one who has requested leave from an employer and who has been employed by that employer for at least 90 days. The bill applies only to employers with at least 15 employees. The Commissioner of Labor and Industry must adopt regulations related to organ donation leave and is authorized to investigate possible violations on receiving a written complaint from an employee. The bill's provisions may not be construed to discourage employers from adopting leave policies that are more generous than the policies that comply with the bill.

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Fiscal Summary

**State Effect:** The Department of Labor, Licensing, and Regulation can implement and enforce the bill with existing resources. Any increase in caseloads for the Office of the Attorney General and the District Court is not expected to affect State expenditures. The bill does not apply to the State as an employer. Revenues are not affected.

**Local Effect:** None. The bill does not apply to local governments as employers.

**Small Business Effect:** Potential meaningful.

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## Analysis

### **Bill Summary:**

#### *Eligibility and Use of Leave*

In order to receive organ donation leave, an employee must provide to his or her employer written physician verification that (1) the employee is an organ donor or a bone marrow donor and (2) there is a medical necessity for the donation of the organ or bone marrow.

If an employer provides paid leave to an eligible employee, an employer may require an eligible employee to substitute up to 14 days of paid leave for any or all of approved organ donor leave and up to 5 days of paid leave for any approved bone marrow leave. Organ donation leave may not be taken concurrently with any leave taken under the federal Family and Medical Leave Act (FMLA).

#### *Role of Employer*

An employer may not consider an employee's approved organ donation leave when determining the employee's right to salary adjustments, sick leave, vacation, paid time off, annual leave, or seniority. Further, an employee who returns to work after taking organ donation leave is entitled to be restored by the employer (1) to the employee's same position or (2) to an equivalent position with equivalent employment benefits, pay, and other terms of employment. However, an employer may deny restoration of the employee's position of employment due to conditions unrelated to the employee's organ donation leave.

The employer is also required to maintain coverage of a group health plan for the duration of the employee's organ donation leave. Additionally, to the extent that an employee on organ donor leave earns commission, the employer must pay the eligible employee any commission that becomes due because of work the employee performed before leave.

An employer may not (1) violate any provisions of the organ donor leave program; (2) hinder, delay, or otherwise interfere with the enforcement of the program; or (3) discharge or otherwise discriminate against an employee for specified actions.

#### *Requirements of the Commissioner of Labor and Industry*

Whenever the commissioner determines that a violation of paid organ donation leave has occurred, the commissioner must try to resolve any issues informally by mediation or ask the Attorney General to bring an action on behalf of the eligible employee. Subsequently, the Attorney General may bring an action for injunctive relief, damages, or other relief.

The commissioner may also bring an action for injunctive relief and damages for violations.

### *Other Provisions*

The bill may not be construed to diminish the obligation of an employer to comply with a collective bargaining agreement or an employee benefit program that provides greater organ donation leave rights to employees than the rights established by the bill. Further, a collective bargaining agreement or employee benefit plan may not diminish the rights established by the bill.

**Current Law:** Maryland law does not require private-sector employers to provide employees with paid organ donation leave.

All State employees (including temporary employees, employees within all branches of State government, and those units with an independent personnel system) may request up to 7 days of paid organ donation leave in any 12-month period to serve as a bone marrow donor and up to 30 days of paid organ donation leave in any 12-month period to serve as an organ donor. An employee may use organ donation leave only after obtaining approval from the employee's appointing authority.

### *Federal Family and Medical Leave Act of 1993*

FMLA requires covered employers to provide eligible employees with up to 12 work weeks of unpaid leave during any 12-month period under the following conditions:

- the birth and care of an employee's newborn child;
- the adoption or placement of a child with an employee for foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;
- medical leave when the employee is unable to work due to a serious health condition; or
- any qualifying circumstance arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty."

Generally, an FMLA-covered employer is an entity engaged in commerce that employs at least 50 employees. Public agencies and public or private elementary or secondary schools are considered to be covered employers regardless of the number of individuals they employ.

An eligible employee is an individual employed by a covered employer who has been employed for at least 12 months; however, these may be nonconsecutive months. Among other criteria, the individual must have been employed for at least 1,250 hours of service during the 12-month period.

**Background:** Nationally, 29,532 individuals received organ transplants in 2014, of which 5,817 donations were from living donors. In Maryland, 189 individuals were living organ donors in 2014. Additionally, in 2012, there were 501 hematopoietic cell transplants performed in Maryland, of which 269 were related donors, 86 were unrelated donors, and the remaining 146 were autologous.

Several states, such as California, require private-sector employers to provide paid organ donation leave.

**Small Business Effect:** The bill has a potential significant impact on small businesses that employ at least 15 employees, especially those employers that do not already provide any type of paid leave to eligible employees.

If an employer offers paid leave, an employer may require eligible employees to substitute up to 14 days of accrued paid leave for an organ donation, and up to 5 days of such leave to serve as a bone marrow donor. Thus, the employer must provide eligible employees as much as an additional 16 days of paid time off to serve as organ donors and an additional 2 days of paid time off to serve as bone marrow donors. If the employer does not provide paid leave as a benefit, then the employer must provide eligible employees up to 30 business days of paid leave to serve as organ donors and up to 7 business days of paid leave to donate bone marrow.

Providing up to 30 business days of paid organ donation leave could have a significant operational and fiscal impact on small employers, but it is likely that only a small number of employees would be eligible for the paid donation leave. There were only 189 living organ donors in Maryland in 2014, so it is assumed that fewer than 200 individuals would be eligible for paid organ donation leave. Of those 200 individuals that donate an organ, it is likely that only a portion of them work for a private-sector employer with at least 15 employees and, thus, would be eligible for paid donation leave. Additionally, fewer than 400 individuals in Maryland donate bone marrow annually and may be eligible for up to 7 days of paid organ donation leave for doing so.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; U.S. Department of Health and Human Services; Society for Human Resource Management; Department of Legislative Services

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