



*Gregory J. Swain, County Attorney*

## MEMORANDUM

**To:** Members, Anne Arundel County Council

**From:** Lori L. Blair Klasmeier, Deputy County Attorney /s/

**Via:** Gregory J. Swain, County Attorney /s/

**Date:** September 3, 2019

**Subject:** Bill No. 70-19 – Personnel – Disability Leave

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### Legislative Summary

This summary was prepared by the Anne Arundel County Office of Law for use by members of the Anne Arundel County Council during consideration of Bill No. 70-19, which comports certain aspects of County’s disability leave benefit with provisions of State law.

**Purpose.** The purpose of Bill No. 70-19 is to make changes necessary to comport the County’s disability leave for employees to the Maryland Healthy Working Families Act, §§ 13-301, et seq., of the Labor and Employment Article of the State Code, commonly referred to as “sick and safe leave”. This includes expanding the definitions of “child” and “family member”; modifying provisions related to when disability leave can be used; adding definitions and provisions relating to use of disability leave for work absences due to domestic violence, sexual assault, and stalking; and modifying how disability leave is administered for exempt employees.

**Background.** The County provides disability leave to full-time employees and certain part-time employees in the classified service. Section 6-1-303 of the County Code sets forth the parameters of disability leave, including how leave is accumulated, how it is compensated, and when it can be used. Except for represented employees on the “F” pay schedule, full-time employees earn 1.25 work days for each full month of service, for a maximum of 15 days per year. Represented employees on the “F” pay schedule earn disability leave in accordance with the applicable memorandum of agreement negotiated between the County and the exclusive representative. Part-time employees who work at least 50% of a normal work week earn a pro-rated amount of disability leave.

Currently, disability leave for employees in the exempt service is “administered on a basis of reasonable need.” (§ 6-2-101(h)). As such, the leave is not accumulated but is granted on an as-needed basis.

In 2018, Maryland enacted the Healthy Working Families Act, codified as §§ 13-301, *et seq.*, of the Labor and Employment Article of the State Code (the “State Act”). This State Act requires that certain employers provide “earned sick and safe leave” to certain employees under specified conditions. The County is an employer that has to comply with the terms of the State Act. (§ 3-1301(f) of the State Act). The State Act provides that an employer’s provision of sick and safe leave can be more generous than that required by the State Act. (§ 3-1302(b)(4) of the State Act).

One significant requirement of the State Act is that an employer subject to the law must allow an employee to use earned sick and safe leave for an absence at work due to domestic violence, sexual assault, or stalking committed against the employee or the employee’s family member if the leave is being used to obtain certain specified services for the employee or the employee’s family member. *See* § 3-1305(a)(5) of the State Act.

The County’s disability leave provisions were reviewed to determine if they comport with the State law. It was determined that the County provisions for classified employees were at least as generous as those required by the State Act, except that: (1) “child” and “family member” should be defined to mirror the expanded definitions in the State Act; and (2) the permitted uses of disability should be modified to ensure that they mirror the uses under the State Act, including the use for an absence from work due to domestic violence, sexual assault, or stalking committed against the employee or the employee’s family member. Moreover, the County provisions for disability leave for exempt employees do not comport with State law.

### **Summary.**

**Section 1** of the Bill renumbers § 6-1-303(a) through (m) as § 6-1-303(b) through (n), which is necessitated by the addition of § 6-1-303(a)

**Section 2** modifies provisions of the County Code related to disability leave.

Definitions are added as a **new subsection § 6-1-303(a)**. “Child” is not currently defined, but birth and adoption of a child are referenced. The definition of “child” that is proposed is taken from the definition of “family member” in the State Act (§ 3-1301(f)) and includes a biological, adopted, foster, and stepchild, as well as a child for whom the employee otherwise stands *in loco parentis*.

Similarly, “family member” is not currently defined, but reference is made to an employee’s spouse, dependent child, dependent parent, non-dependent child, and non-dependent parent. The proposed definition is taken from the State Act (§ 3-1301(f)) and includes: biological, adoptive, foster, and step-parents; legal guardians; an individual who acted as a parent or stood *in loco parentis* to the employee; the spouse of an employee; and biological, adopted, foster, and step-grandparents, grandchildren, and siblings.

The other terms that are proposed to be defined, “domestic violence”, “sexual assault”, and “stalking”, are not currently defined. These proposed definitions are related to the later addition of these absences due to these incidences as a permissible use disability leave and are taken directly from the State Act (§ 3-1301(c), (j), and (k)).

**Subsection 6-1-303(f)** relates to the availability of accumulated disability leave. Modifications are proposed to comport this subsection to the State Act, § 3-1305, as follows:

- (f)(1)(i) is changed to match the language of § 3-1305(a)(1) of the State Act as to care or treatment of the employee;
- (f)(1)(ii) is moved and renumbered as to (f)(1)(iii) and is modified to match the language of § 3-1305(a)(3) of the State Act as to care or treatment of an employee’s dependent family members;
- (f)(1)(iii) is renumbered as (f)(1)(ii) and is modified to include foster placement of a child, as well as birth or adoption, and to remove unnecessary language ;
- (f)(1)(iv) is modified to match the language of § 3-1305(a)(3) of the State Act as to care or treatment of an employee’s non-dependent family members;
- (f)(1)(v) as to threat of contagion remains unchanged;
- (f)(1)(vi) is modified to match the language of § 3-1305(a)(2) of the State Act as to preventive care or an employee or an employee’s family member;
- (f)(1)(vii) as to leave donation is substantively unchanged;
- (f)(1)(viii) is new, comports with § 3-1305(a)(5) of the State Act, and will allow employees to use disability leave for absences due to domestic violence, sexual assault, or stalking committed against the employee or the employee’s family member if the leave is being used to obtain medical or mental health attention, services from a victim services organization, or legal services or proceedings.

The changes to newly renumbered **§ 6-1-303(h) and (k)(8)** are technical and are to correct internal references required by the renumbering.

The change to **§ 6-2-101(h)** provides that disability leave for exempt employees will be administered consistent with State law.

**Section 3** provides that the Bill will become effective 45 days from the date that it becomes law.

Please let me know if there are any questions.

cc:     Steuart Pittman, County Executive  
          Jennifer Purcell, Chief of Staff  
          Benjamin J. Birge, Chief Administrative Officer  
          Peter Baron, Legislative Liaison  
          Sherri Dickerson, Personnel Officer