



Analysis of HB 2120 and Impact on Virginia Employment Commission

Valerie Braxton-Williams, Confidential Assistant for Policy and Legislation

Conrad Buckler, Senior Economist

Virginia Employment Commission

Ellen Marie Hess, Commissioner

A background image showing a wooden desk with a blue book, a pair of glasses, and a pen. A white document with the text "Family Medical Leave Act (FMLA)" is visible in the foreground.

Family Medical Leave Act (FMLA)

Background

- HB 2120 was introduced at the 2019 Session and provides for the creation of a “Paid Family and Medical Leave Program”
- The subject matter of the Bill was referred to a joint subcommittee for study

Review of Key Points of the Legislation



Who is Eligible For the Benefit?

- A “covered individual” (Section 60.2-800)
 - Meets monetary eligibility requirements in Section 60.2-612 of the Virginia Unemployment Compensation Act
 - Is self-employed and meets the requirements of Section 60.2-812
 - Submits an application
- A “covered individual” who (Section 60.2-801)
 - Is “caring for a new child during the first year after birth, adoption, or placement...”
 - Is “caring for a family member with a serious health condition”
 - “has a serious health condition”
 - Is “caring for a covered service member”
 - Is “eligible for qualifying exigency leave...”

Amount of Benefit Defined in HB2120?

- Generally, an amount equal to 70% of the covered individual's average weekly wage (60.2-803A1), for a duration of up to 12 weeks (60.2-802).
- Minimum weekly benefit of \$100, but if actual wage is less than \$100, then the benefit is equal to actual wages (60.2-803B)
- Maximum weekly benefit is \$850 for period beginning January 1, 2022 then 80% of state average weekly wage effective September 30, 2022 and thereafter (60.2-803C)

Sample Benefit Calculation

- Currently, state average weekly wage is \$1,092.00.
 - Benefit amount at 70% is \$764.40.
 - Benefit amount at 80% is \$873.60.

How is the Benefit Funded?

- Payroll contributions by employers into a Fund
 - For calendar years 2021 and 2022, amount of contributions determined according to “sound actuarial principles” (60.2-804B1)
 - Then, “the contribution rate shall be adjusted to ensure that the Fund shall maintain or achieve an annualized amount of not less than 140 percent of the previous year’s expenditure...” (60.2-804B5)
- The employer may recoup a portion of the contribution for medical and family leave of up to 50% from the employee (60.2-804D and E)

Projected Contributions to Cover Costs

- 1.0% contribution rate on \$173.3 Billion in taxable wages

- = \$1.73 Billion in Revenue

\$1.63B 140% Funded at Max Duration

\$73.5M Startup costs

\$33.5M Administrative Costs

\$1.73B Costs through first year

Section 60.2-804B states that “[b]eginning on January 1, 2021, for each employee, an employer shall remit to the Fund contributions in the form and manner determined by the Commission.”

Who Administers the Benefit and From Where?

- Program administered and benefit paid by the Virginia Employment Commission pursuant to an amendment to Title 60.2 adding Chapter 8
- Paid from “The Family and Medical Leave Insurance Fund ...in the custody of the [Virginia Employment] Commission” (60.2-815)

How Are Administrative Costs Funded?

- Administrative costs are funded through the employer contribution provided in Section 60.2-804
- The Bill provides that the administrative costs and benefit payments are to come from the Fund established under Section 60.2-815

What are the Start-Up Administrative Costs?*

- \$70 Million
 - \$60M-Development & Implementation
 - \$5M-Pre-implementation Staffing
 - \$2.5M-Furniture and Equipment
 - \$2.5M-Training & Process Development
- \$3.5M-Other Operational Costs
- 250 FTEs

*From 2019 FIS SB1639

What are the Projected Annual Administrative Operating Costs?

- \$33.5 Million Annually
 - \$14M-Staff Costs
 - \$16M-Ongoing IT Costs
 - \$3.5M-Other Operational Costs

What Are the Projected Expenditures For Benefit Payments?

For 2022	
Employment Level	4,041,900
Av wkly wage	\$1,092
Replacement Rate	70%
Utilization Rate	2.73%
Average Duration	11.08 wks
Max Duration	12 wks
Max Benefit	\$850
Average Benefit	\$764.40
Cost	\$1,074,747,616.57
Cost/Max Dur	\$1,163,986,588.35
Cost/Max Dur/Ben	\$1,294,333,595.10

For 2023	
Employment Level	4,041,900
Av wkly wage	\$1,184
Replacement Rate	80%
Utilization Rate	2.73%
Average Duration	11.08 wks
Max Duration	12 wks
Max Benefit	N/A
Average Benefit	\$947.20
Cost	\$1,331,764,707.51
Cost/Max Dur	\$1,442,344,448.56
Cost/Max Dur/Ben	\$1,442,344,448.56

Considerations

- The Virginia Employment Commission is fully federally funded to administer the unemployment insurance program. USDOL guidance is clear that the agency could not use any of its existing grant funds to start up or maintain the program established by HB 2120
- In light of this guidance, if mandated to administer the HB 2120 program, a new division would have to be created in the agency and fully funded through sources that do not exist at the present time
- The Fund established in Section 60.2-815 does not appear to be a true Trust Fund. Administrative funds and benefit payment funds are commingled. Additionally, uncertainty in this regard is created by the authority of the State Treasurer under 60.2-815B

Considerations (continued)

- The statute does not define the proportion of contribution devoted to benefit payment versus administrative costs
- VEC will need to request a determination by the Internal Revenue Service whether the benefit payments are subject to federal income tax. If so, a mechanism will have to be established to do appropriate withholding See Section 60.2-814
- The Bill does not provide a clear mechanism for enforcement of the payment of contributions, nor does it define the mechanism for collecting the contributions for deposit into the Fund