



SPONSOR: Sen. S. McBride & Rep. Heffernan
Sen. Sokola; Reps. Baumbach, Neal, Osienski

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 248

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 37, Title 19 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows and by redesignating accordingly:

3 § 3701. Definitions.

4 (~~)~~ “Collective bargaining agreement” means an agreement negotiated between an employer and a labor
5 organization, as defined in § 710 of this title, which determines terms of employment for the members of the labor
6 organization with respect to grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of
7 employment, to the full extent allowed under the National Labor Relations Act, 29 U.S.C. § 151 et seq.”

8 (6) a. “Employee” means an individual employed by an employer. For the purposes of this chapter,
9 individuals primarily reporting for work at a worksite in this State are employees unless otherwise excluded.
10 Individuals primarily reporting for work at a worksite outside of this State are not considered employees under this
11 chapter unless the employer elects to classify them as such. Employers may reclassify an employee as primarily
12 reporting for work at a worksite in another state for the purposes of this chapter through the duration of that
13 individual’s tenure at the out-of-state worksite.

14 b. “Employee” does not include an individual covered under § 5903(17)a. of Title 29, an individual
15 employed by entities in Title 14 in a position that would be covered under § 5903(17)a. of Title 29, or an
16 individual in an equivalent position with an entity covered by State employee benefits.

17 c. “Employee” does not include an individual covered by a collective bargaining agreement as a member
18 of a labor organization, as defined in § 710 of this title, who receives employment benefits through the labor
19 organization, and due to the nature of the labor industry in which the individual works, may never qualify as a
20 covered individual, as defined in § 3701 of this title.

21 (7) a. “Employer” means all those who employ employees working anywhere in this State.

22 1. Employers with 10 to 24 employees during the previous 12 months shall be subject to only the
23 parental leave provisions of this chapter. For purposes of this paragraph (7)a.1., “employees” includes
24 those who meet the requirements of a covered individual under paragraphs (3)a. and (3)b. of this section
25 or are reasonably expected to meet the requirements of a covered individual under paragraphs (3)a. and
26 (3)b. of this section during the previous 12 months.

27 2. Employers with 25 or more employees during the previous 12 months shall be subject to all
28 parental, family caregiving, and medical leave provisions of this chapter. For purposes of this paragraph
29 (7)a.2., “employees” includes those who meet the requirements of a covered individual under paragraphs
30 (3)a. and (3)b. of this section or are reasonably expected to meet the requirements of a covered individual
31 under paragraphs (3)a. and (3)b. of this section during the previous 12 months.

32 3. For purposes of this chapter, “employer” means the employer client company who enters into
33 an agreement with a professional employer organization as defined by § 3302(8)(J) of this title. The
34 employer client company shall be treated as the employer for purposes of this chapter.

35 b. “Employer” does not include any of the following:

- 36 1. Anyone who employs less than 10 employees in this State during the previous 12 months.
- 37 2. The federal government.
- 38 3. Any business that is closed in its entirety for 30 consecutive days or more per year.

SYNOPSIS

This Act clarifies that for purposes of the Family and Medical Leave Insurance Program, where an employee is co-employed by an employee leasing company or a professional employment organization, "employer" refers to the employer client of the employee leasing company or professional employment organization, and not to the employee leasing company or professional employment organization. This Act also defines "collective bargaining agreement" for purposes of the Family and Medical Leave Insurance Program and excludes from the definition of "employee" individuals who are covered by a collective bargaining agreement as a member of a labor organization, who receive employment benefits through the labor organization, and who, due to the nature of the industry in which they work, may never qualify as a covered individual under the Family and Medical Leave Insurance Program.

Author: Senator S. McBride