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DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 20

AN ACT TO AMEND TITLE 14 AND TITLE 29 OF THE DELAWARE CODE AND CHAPTER 187 OF VOLUME 81
OF THE LAWS OF DELAWARE RELATING TO DONATED LEAVE.

1 WHEREAS, Christopher Chujoy worked as a paraprofessional at Anna P. Mote Elementary School, where he
2 worked closely with students with autism and was known for his generosity towards his students and colleagues; and

3 WHEREAS, in 2022, Christopher was named Red Clay Consolidated School District's Education Support
4 Professional of the Year, reflective of his skill and tireless dedication to serving and supporting Delaware students with
5 exceptional needs; and

6 WHEREAS, in August 2022, after having major abdominal surgery, Christopher was diagnosed with stage 4
7 colon, lung, and liver cancer; and

8 WHEREAS, after Christopher used all of his accrued sick days quickly due to his illness, his colleagues and
9 friends asked fellow educators to consider donating sick days to him; and

10 WHEREAS, because of Delaware state law, educators must donate 2 of their sick days in order to provide a
11 colleague in need with just 1 additional sick day despite having earned those days; and

12 WHEREAS, this limitation restricted Christopher from receiving half of the sick days that his co-workers donated
13 to him, with the other half of these hard-earned sick days being wasted and unable to be used by any school employee; and

14 WHEREAS the 2-to-1 donated time restriction puts educators in the position of potentially losing their own ability
15 to care for themselves and their families in difficult times in order to help a colleague in need; and

16 WHEREAS, recruiting and retaining quality educators in Delaware is dependent on enacting policies that address
17 issues central to educator working conditions like leave time; and

18 WHEREAS, ensuring that educator time, specifically accrued leave time, is treated fairly under the law, is a
19 reasonable improvement to educator working conditions that will help promote educator retention; and

WHEREAS, on January 12, 2024, Christopher Chujoy passed away after an inspirational battle against multiple cancers.

NOW, THEREFORE:

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

Section 1. Amend § 1318A, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1318A. Donated leave program [Effective until fulfillment of the contingency in 81 Del. Laws, c. 187, § 3]

(a) For purposes of this section:

(1) “Catastrophic illness” means any illness or injury to an employee or an employee’s family member which is diagnosed by a physician and certified by the physician as rendering the employee or employee’s family member unable to work, or, in the case of a family member who does not work, the medical equivalent of “unable to work”, for a period greater than 5 calendar weeks. Separate periods of disability lasting 7 consecutive work days or more each, and totaling more than 5 calendar weeks, resulting from the same or a related illness or injury and occurring within any 12-month consecutive period, are considered the same period of disability.

(2) “Child” means an immediate descendant by blood or adoption and of any age.

(3) “Donated leave program” means a ~~program~~; program that meets all of the following:

(4)a. ~~In Is one in~~ which 1 or more employees of a public school district may transfer accrued, unused sick leave days to 1 or more other employees of the same public school ~~district~~; district.

(2)b. Is established by the public school district as a local Board of Education policy ~~and/or~~ or pursuant to the terms of a collective bargaining agreement negotiated under the terms of Chapter 40 of ~~Title 14~~; and this title.

(3)c. Is consistent with the provisions set forth in subsection (b) of this section. ~~No donated leave program shall prohibit participation by employees based on inclusion in or exclusion from a certified bargaining unit.~~

(4) “Family member” means an employee’s spouse, child, or parent who resides with the employee and who requires the personal attendance of the employee during the spouse’s, child’s, or parent’s catastrophic illness.

(b) Any donated leave ~~shall be required to~~ program must comply with all of the following requirements:

(1) Employees wishing to donate accrued sick leave must donate in increments of whole days. ~~For every 2 days donated, 1 day will be made available to a recipient.~~

(2) Donated days ~~shall be made~~ are available only for recipients within the public school district for a catastrophic illness of a recipient or ~~of a member of a recipient’s family. For this section, “catastrophic illness” shall mean any illness or injury to an employee or to a member of an employee’s family which is diagnosed by a physician~~

and certified by the physician as rendering the employee or a member of the employee's family unable to work, or, in the case of a family member who does not work, the medical equivalent of "unable to work", to work for a period greater than 5 calendar weeks. Separate periods of disability lasting 7 consecutive work days or more each, and totaling more than 5 calendar weeks, resulting from the same or a related medical condition and occurring within any 12-month consecutive period, shall be considered the same period of disability. For this section, "family member" or "member of an employee's family" means an employee's spouse, son, daughter or parent who resides with the employee and who requires the personal attendance of the employee during the family member's catastrophic illness. a recipient's family member.

a. Donated leave may be used by the recipient for subsequent absence because of personal medical treatments or personal illness directly related to the ~~employee's "catastrophic illness"~~ recipient's catastrophic illness as certified by the physician.

b. ~~This provision Paragraph (b)(2)a. of this section~~ is limited to an absence that occurs because of ~~an employee's "catastrophic illness"~~ a recipient's catastrophic illness not a family member's "catastrophic illness." catastrophic illness.

(5)a. ~~The Except as provided in paragraph (b)(5)b. of this section, when the donated leave is for the catastrophic illness of a recipient, the recipient shall must have used all of that the recipient's own sick days and personal days and half of that the recipient's annual leave, where applicable. However, when~~ Except as provided in paragraph(b)(5)b. of this section, when the donated leave is for the catastrophic illness of a family member, the employee recipient must have used all of that employee's the recipient's own sick days, personal days days, and annual leave.

b. If a recipient is not eligible for annual leave, the recipient must have used all of the recipient's personal days and all but 3 of the recipient's sick days.

(11) Not prohibit participation by employees based on inclusion in or exclusion from a certified bargaining unit.

(d) Donated leave received by an employee of a public school district under this section is to run concurrently with any leave available under the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq.

Section 2. Amend § 5956, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5956. Donated leave program [Effective until fulfillment of the contingency in 81 Del. Laws, c. 187, § 3].

79 (k) Donated leave received by an officer or employee of this State under this section is to run concurrently with
80 any leave available under the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq.

81 Section 3. Amend Chapter 187 of Volume 81 of the Laws of Delaware by striking the Chapter in its entirety.

82 Section 4. This Act may be cited as the “Christopher Chujoy Act”.

SYNOPSIS

The primary purpose of this Act is to remove the requirement that a public school district employee who donates leave to another employee must donate 2 days of leave for the other employee to receive 1 day of leave.

Further, this Act repeals Chapter 187 of Volume 81 of the Laws of Delaware ("this law"). Adopted in 2017, this law was designed to provide full-time employees of the State, including employees of school districts, with the ability to donate leave to other employees for use in connection with the birth or adoption of a child under 6 years of age. This law has never taken effect as the law does not take effect until the Office of Management and Budget ("OMB") receives a letter from the Internal Revenue Service ("IRS") stating that the tax treatment of the expansion of the donated leave program contemplated by this law will receive the same tax treatment as Delaware's current donated leave program. OMB has not requested this letter from the IRS because, based on OMB's research, OMB does not believe this law would receive the same tax treatment by the IRS and because the General Assembly subsequently enacted Chapter 285 of Volume 81 of the Laws of Delaware, which provides 12 weeks of paid leave upon the birth or adoption of a child 6 years of age or younger for those continuously employed for at least 1 year as full-time employees of this State, including employees of school districts.

Sections 1 and 2 of this Act re-enact portions of Chapter 187 of Volume 81 of the Laws of Delaware that would have also applied to the existing donated leave program for catastrophic illness. Specifically these provisions are intended to do the following:

(1) Clarify how much leave employees of a public school district who do not accrue annual leave must use before being eligible for donated leave.

(2) Clarify the interaction between donated leave and leave available under the federal Family and Medical Leave Act.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual, including transferring existing definitions to a central definition section and transferring provisions that are substantive law out of defined terms.

This Act is named in honor of Christopher Chujoy, a special education instructional aide in the Red Clay Consolidated School District. Mr. Chujoy was diagnosed in August 2022 with stage IV cancer. Mr. Chujoy used up all of his available sick time before his passing and his situation raised the issue that is the primary purpose of this Act.

Author: Senator Townsend