SPONSOR: Rep. Heffernan & Rep. Longhurst & Rep. K. Williams & Sen. McDowell & Sen. Henry Rep. Spiegelman; Sens. Hansen, Marshall, Townsend

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 255
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 14 AND 29 OF THE DELAWARE CODE RELATING TO DONATED LEAVE.

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

Section 1. Amend Section 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.

(a) "Donated leave program" means a program:

(1) 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;

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

(3) 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.

(b) Any donated leave shall be required to comply with 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 available only for recipients within the school district for <u>use in connection with either of the following:</u>

<u>a. A</u> 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

HD : KL : TEH : 1031490233
LC : MJC : RAY : 4801490101
Released: 07/02/2017 01:06 PM

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. 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" as certified by the physician. This provision is limited to an absence that occurs because of an employee's "catastrophic illness" not a family member's "catastrophic illness."

b. Parental leave. An employee of a school district otherwise eligible under paragraphs (b) (4) and (5) of this section to receive donated leave shall become eligible to receive up to 12 weeks of such leave upon the birth of a child of the employee or the employee's spouse, or upon the adoption by the employee of a child who is 6 years of age or younger. Such eligibility shall expire at the end of the 6-month period beginning on the date of such birth or adoption. Subject to the 12-week maximum, donated leave may be used by the recipient for subsequent absence for a period of 1 year following the birth or adoption for maternal or pediatric medical care requiring hospitalization or extended care at home.

(3) The local school district shall convert the donated leave available for use by a recipient into cash value at the donor's rate of pay, shall re-convert the cash value to hours of leave at the recipient's rate of pay, and shall then credit the recipient's account.

(4) The recipient of the donated leave shall have been an employee with the local school district for at least 6 months before that employee is eligible for donated leave time.

(5) The recipient of donated leave in connection with parental leave or the recipient's own catastrophic illness shall have used all of that recipient's own sick days and personal days and half of that recipient's annual leave, where applicable. For those employees not eligible for annual leave the recipient shall have used all of that recipient's personal days and all but 3 sick days. ~~However, when~~ A recipient of donated leave ~~is~~ for the catastrophic illness of a family member~~, the employee~~ must have used all of that employee's sick days, personal days and annual leave.

(6) The recipient shall have established medical justification for such receipt, which must be renewed every 30 days during any absence.

(7) No potential donor nor any other person shall sell any accrued leave which might otherwise be donated under this section.

(8) The liability of the State under this program shall be limited to paying the state share of salary, benefits and other employment costs paid to employees for sick leave properly utilized pursuant to a donated leave program established pursuant to and in compliance with this section and § 4002 of this title, if applicable.

(9) Any recipient of this program is subject to a 1-work-year cap with the number of days equal to 188 days for a 10-month employee; 207 days for 11-month employees; and 222 days for a 12-month employee.

(10) If a long-term disability program is available to employees, a period of disability defined herein shall be limited to the waiting or elimination period defined in the policy.

(c) The Department of Education is authorized to operate a donated leave program. Such donated leave program shall conform, to the extent practicable, to the provisions of § 5956 of Title 29.

(d) The leave described in this section is intended to run concurrently with any leave available under the Family Medical Leave Act, 29 U.S.C. 2601, et seq.

Section 2. Amend Section 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.

(a) An officer or employee of this State, with the approval of his or her immediate supervisor or the Director of the Division in which he or she is employed, may donate accrued sick leave and annual leave in equal amounts to a Leave Bank established by the Director of the Office of Management and Budget for all officers or employees of this State or to another officer or employee of this State.

(b) A person wishing to donate leave time under this section may request the Director of the Office of Management and Budget to debit the donor's sick leave and annual leave accounts.

(c) Sick leave and annual leave accrued in the Leave Bank or directly donated to an employee may be used by a recipient ~~only~~ for either of the following:

(1) ~~a~~ A catastrophic illness of the recipient or of a family member of the recipient. For purposes of this section, the term "catastrophic illness" means an 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," for a period greater than 5 calendar weeks. Separate periods of disability lasting 7 calendar days or more each, resulting from the same or a related medical condition and occurring within any 12-consecutive-month period, shall be considered the same period of disability. For purposes of 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.

(2) Parental leave. An employee otherwise eligible to receive donated leave under subsection (e) of this section shall become eligible to receive up to 12 weeks of donated leave upon the birth of a child of the employee or the employee's spouse, or upon the adoption by the employee of a child who is 6 years of age or younger. Such eligibility shall expire at the end of the 6-month period beginning on the date of such birth or adoption. Subject to the 12-week maximum, donated leave may be used by the recipient for subsequent absence for a period of 1 year following the birth or adoption for maternal or pediatric medical care requiring hospitalization or extended care at home.

(d) The Director of the Office of Management and Budget shall convert the donated leave into cash value at the donor's rate of pay, shall re-convert the cash value to hours of leave at the recipient's rate of pay, and shall then credit the recipient's account.

(e) Before receiving donated leave time under this section, the recipient of the leave time shall:

(1) Have been an officer or employee of this State for at least 6 months before he or she is eligible for donated leave time;

(2) Have used all of his or her sick days and 1/2 of his or her annual leave; however, when the donated leave time is for the catastrophic illness of a family member, the employee must have used all of his or her sick days and annual leave; and

(3) Have established medical justification for such receipt, which must be renewed every 30 days for leave in connection with a catastrophic illness.

(f) An employee who is covered by a collective bargaining agreement may donate leave to, or receive donations of leave from, an employee or officer who is not covered by a collective bargaining agreement.

(g) The Director of the Office of Management and Budget shall have the authority to carry out the mandates of this section.

(h) The agency employing the recipient of a grant of donated leave shall pay all cost of the use of that donated leave. No funds shall be attached to any hours of donated leave.

(i) The State's liability under this program shall not exceed the number of hours donated by employees.

(j) The provisions of this section related to a direct donation of hours from one officer or employee of this State to another officer or employee shall become effective February 2, 1996. The provisions of this section related to donation of hours to the Leave Bank shall become effective upon the establishment of the Bank or May 2, 1996, whichever occurs first.

(k) The leave described in this section is intended to run concurrently with any leave available under the Family Medical Leave Act, 29 U.S.C. 2601, et seq.

Section 3. This Act shall take effect 90 days after publication in the Register of Regulations of a notice from the Office of Management and Budget that it has received a letter ruling or other decision from the IRS stating that the tax treatment of the expansion of the donated leave program contemplated by this Act will receive the same tax treatment as Delaware's current donated leave program.

Section 4. The Office of Management and Budget is hereby directed to proceed, in cooperation with the Department of Justice, in seeking the opinion referenced in Section 3 of this Act.