



# Ohio Legislative Service Commission

## Bill Analysis

Wendy H. Gridley

### Sub. H.B. 48

128th General Assembly  
(As Passed by the House)

**Reps.** Ujvagi, Phillips, Murray, Pryor, Harris, Dodd, Lundy, Book, Letson, Fende, Yuko, Skindell, Goyal, Pillich, S. Williams, Belcher, Boyd, Brown, Carney, Celeste, Chandler, Daniels, Driehaus, Dyer, Foley, Garland, Garrison, Hagan, Harwood, Heard, Koziura, Luckie, Mallory, Newcomb, Okey, Otterman, Patten, Sayre, Schneider, Stewart, Szollosi, Weddington, B. Williams, Winburn

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## BILL SUMMARY

- Provides two weeks of leave for any employee who is the spouse, parent, or a person who has or had legal custody of a member of the uniformed services who is called to active duty or is injured, wounded, or hospitalized while serving on active duty.

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## CONTENT AND OPERATION

### Leave for spouses and parents of a member of the uniformed services

(R.C. 5906.02)

The bill requires an employer<sup>1</sup> to allow an employee,<sup>2</sup> once per calendar year, to take leave up to ten days or 80 hours, whichever is less, if all of the following conditions are satisfied:

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<sup>1</sup> An "employer" is a person who employs 50 or more employees and includes the state or any agency or instrumentality of the state, and any municipal corporation, county, township, school district, or other political subdivision of the state (R.C. 5906.01(C)). It is questionable, however, whether a municipal corporation can be required to provide this benefit. See *Northern Ohio Patrolmen's Benevolent Assn. v. Parma* (1980), 61 Ohio St.2d 375 (compensation of municipal employees is a fundamental power of local self-government).

<sup>2</sup> An "employee" is any person who performs a service for wages or other remuneration for an employer (R.C. 5906.01(D)).

(1) The employer has employed the employee for at least 12 consecutive months and for at least 1,250 hours in the 12 months immediately preceding commencement of the leave;

(2) The employee is the parent, spouse, or a person who has or had legal custody of a person who is a member of the uniformed services<sup>3</sup> and who is called into active duty<sup>4</sup> in the uniformed services for a period longer than 30 days or is injured, wounded, or hospitalized while serving on active duty in the uniformed services;

(3) The employee gives notice to the employer that the employee intends to take leave pursuant to the bill at least 14 days before taking the leave if the leave is being taken because of a call to active duty or at least two days before taking leave if the leave is being taken because of an injury, wound, or hospitalization;

(4) The dates on which the employee takes leave occur no more than two weeks before or one week after the deployment date of the employee's spouse, child or ward or former ward; and

(5) The employee does not have any other leave available for the employee's use except sick leave or disability leave.

The bill specifies that an employer must continue to provide benefits<sup>5</sup> to the employee during the period of time the employee is on leave. The employee is responsible for the same proportion of the cost of the benefits as the employee regularly pays during periods of time when the employee is not on leave. The employer is not required to pay salary or wages to the employee during the period of time the employee is on leave. Additionally, upon the completion of the leave, the employer must restore the employee to the position the employee held before taking that leave or to a position with equivalent seniority, benefits, pay, and other terms and conditions of employment.

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<sup>3</sup> "Uniformed services" means the armed forces, the Ohio organized militia when engaged in full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency (R.C. 5906.01(E)).

<sup>4</sup> "Active duty" is full-time duty in the active military service of the United States or active duty pursuant to a Presidential order, a Congressional act, or a Governor's proclamation. "Active duty" does not include active duty for training, initial active duty for training, or the period of time for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any duty unless such period is contemporaneous with an active duty period (R.C. 5906.01(A)).

<sup>5</sup> "Benefits" are the employment benefits, other than salary or wages, that an employer regularly provides or makes available to employees, including, but not limited to, medical insurance, disability insurance, life insurance, pension plans, and retirement plans (R.C. 5906.01(B)).

The bill permits an employer to require an employee requesting leave to provide certification from the appropriate military authority to verify that the employee satisfies the conditions described above.

### **Interference with rights and benefits**

(R.C. 5906.03)

The bill prohibits an employer from interfering with, restraining, or denying the exercise or attempted exercise of a right established by the bill. In that regard, an employer must not discharge, fine, suspend, expel, discipline, or discriminate against an employee with respect to any term or condition of employment because of the employee's actual or potential exercise, or support for another employee's exercise, of any right established by the bill. However, the bill does not prevent an employer from taking an employment action that is independent of the exercise of those rights.

Additionally, an employer must not deprive an employee who takes leave of any benefit that accrued before the date that leave commences and must not require an employee to waive the rights to which the employee is entitled.

On and after the bill's effective date, an employer must not enter into a collective bargaining agreement or employee benefit plan that limits or requires an employee to waive the rights established by the bill. An employer must comply with any collective bargaining agreement or employee benefit plan that provides leave benefits similar to the type established under the bill that are greater than the leave benefits established under the bill. The bill specifies that an employer can provide leave benefits greater than those established under the bill.

### **Applicability of bill to public employee collective bargaining agreements**

(R.C. 4117.10)

Generally, the Public Employees' Collective Bargaining Act (R.C. Chapter 4117.) governs collective bargaining between public employers and public employees. Under that Act, an agreement entered into between a public employer and an exclusive representative<sup>6</sup> governs the wages, hours, terms, and conditions of employment, and apart from specified exceptions, prevails over conflicting state laws. However, the bill specifies that its provisions pertaining to leave for spouses, parents, and custodians of a member of the uniformed services prevail over any conflicting provision of an

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<sup>6</sup> An exclusive representative is an employee organization (union) certified by the State Employment Relations Board to represent employees in a bargaining unit (R.C. 4117.01, not in the bill).

agreement between an employee organization and public employer if the terms of the agreement contain benefits that are less than those contained in the bill.

### **Applicability of bill to existing employment agreements**

(Section 3)

The bill specifies that it does apply to employers and employees who have entered into a collective bargaining agreement or other contract of employment that is in effect before the bill's effective date and that conflicts with the bill, but must apply to such employers and employees immediately upon the expiration of the conflicting agreement or contract.

### **Penalties**

(R.C. 5906.99)

Whoever violates the provisions of the bill is subject to a civil action for injunctive relief or any other relief that a court finds necessary to secure a right provided by the bill.

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## **HISTORY**

ACTION	DATE
Introduced	02-24-09
Reported, H. Veterans Affairs	06-10-09
Passed House (87-8)	06-17-09

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