

# HOUSE BILL 1454

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By: **Delegates Lam, Moon, Ebersole, Morhaim, and Platt**

Introduced and read first time: February 12, 2016

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Organ Donation Leave**

3 FOR the purpose of providing that certain employees are entitled to a certain number of  
4 business days of paid organ donation leave in a certain period; requiring an eligible  
5 employee to provide certain written physician verification to the employer to receive  
6 organ donation leave; authorizing an employer to require an eligible employee to  
7 substitute a certain number of days of paid leave for any part or all of the period of  
8 organ donation leave under certain circumstances; prohibiting organ donation leave  
9 from being taken concurrently with any leave taken under the federal Family and  
10 Medical Leave Act; prohibiting an employer from considering any period of organ  
11 donation leave to be a break in the eligible employee’s continuous service for certain  
12 purposes; requiring, except under certain circumstances, that an eligible employee  
13 returning to work after taking organ donation leave be restored to a certain position  
14 of employment; requiring an employer to maintain in a certain manner certain  
15 health coverage for the duration of the eligible employee’s organ donation leave;  
16 requiring an employer to pay certain commissions to certain employees during any  
17 period of organ donation leave; requiring the Commissioner of Labor and Industry  
18 to adopt certain regulations; requiring the Commissioner to take certain actions  
19 regarding certain violations of certain provisions of law; authorizing the Attorney  
20 General to bring a certain action; prohibiting an employer from committing certain  
21 acts; authorizing the Commissioner to conduct, under certain circumstances, an  
22 investigation regarding whether a certain provision of law has been violated;  
23 providing for the construction of this Act; prohibiting certain rights for employees  
24 from being diminished by a collective bargaining agreement or an employment  
25 benefit program or plan; defining certain terms; and generally relating to organ  
26 donation leave.

27 BY adding to

28 Article – Labor and Employment

29 Section 3–103(k); and 3–1301 through 3–1309 to be under the new subtitle “Subtitle

30 13. Organ Donation Leave”

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2008 Replacement Volume and 2015 Supplement)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
4 That the Laws of Maryland read as follows:

5 **Article – Labor and Employment**

6 3–103.

7 **(K) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO DETERMINE**  
8 **WHETHER SUBTITLE 13 OF THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A**  
9 **WRITTEN COMPLAINT OF AN EMPLOYEE.**

10 **SUBTITLE 13. ORGAN DONATION LEAVE.**

11 **3–1301.**

12 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
13 **INDICATED.**

14 **(B) “ELIGIBLE EMPLOYEE” MEANS AN INDIVIDUAL WHO HAS REQUESTED**  
15 **THAT AN EMPLOYER PROVIDE ORGAN DONATION LEAVE AND WHO, AS OF THE DATE**  
16 **THAT THE REQUESTED ORGAN DONATION LEAVE BEGINS, WILL HAVE BEEN**  
17 **EMPLOYED BY THAT EMPLOYER FOR AT LEAST A 90–DAY PERIOD.**

18 **(C) “EMPLOYER” MEANS A PERSON THAT EMPLOYS AT LEAST 15**  
19 **INDIVIDUALS IN THE STATE.**

20 **(D) “ORGAN DONATION LEAVE” MEANS LEAVE DESCRIBED IN § 3–1302(A)**  
21 **OF THIS SUBTITLE.**

22 **3–1302.**

23 **(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, AN ELIGIBLE**  
24 **EMPLOYEE IS ENTITLED TO THE FOLLOWING PAID ORGAN DONATION LEAVE:**

25 **(1) UP TO 30 BUSINESS DAYS IN ANY 12–MONTH PERIOD TO SERVE AS**  
26 **AN ORGAN DONOR; AND**

27 **(2) UP TO 7 BUSINESS DAYS IN ANY 12–MONTH PERIOD TO SERVE AS**  
28 **A BONE MARROW DONOR.**

1           **(B) TO RECEIVE ORGAN DONATION LEAVE, THE ELIGIBLE EMPLOYEE SHALL**  
2 **PROVIDE WRITTEN PHYSICIAN VERIFICATION TO THE EMPLOYER THAT:**

3           **(1) THE ELIGIBLE EMPLOYEE IS AN ORGAN DONOR OR A BONE**  
4 **MARROW DONOR; AND**

5           **(2) THERE IS A MEDICAL NECESSITY FOR THE DONATION OF THE**  
6 **ORGAN OR BONE MARROW.**

7           **(C) IF AN EMPLOYER PROVIDES PAID LEAVE TO AN ELIGIBLE EMPLOYEE,**  
8 **THE EMPLOYER MAY REQUIRE THE ELIGIBLE EMPLOYEE TO SUBSTITUTE:**

9           **(1) UP TO 14 DAYS OF PAID LEAVE FOR ANY PART OR ALL OF THE**  
10 **ORGAN DONATION LEAVE PROVIDED UNDER SUBSECTION (A)(1) OF THIS SECTION;**  
11 **AND**

12           **(2) UP TO 5 DAYS OF PAID LEAVE FOR ANY PART OF OR ALL OF THE**  
13 **ORGAN DONATION LEAVE PROVIDED UNDER SUBSECTION (A)(2) OF THIS SECTION.**

14           **(D) ORGAN DONATION LEAVE MAY NOT BE TAKEN CONCURRENTLY WITH**  
15 **ANY LEAVE TAKEN UNDER THE FEDERAL FAMILY AND MEDICAL LEAVE ACT.**

16 **3-1303.**

17           **(A) AN EMPLOYER MAY NOT CONSIDER ANY PERIOD OF TIME DURING**  
18 **WHICH AN ELIGIBLE EMPLOYEE TAKES ORGAN DONATION LEAVE TO BE A BREAK IN**  
19 **THE ELIGIBLE EMPLOYEE'S CONTINUOUS SERVICE FOR THE PURPOSE OF THE**  
20 **ELIGIBLE EMPLOYEE'S RIGHT TO SALARY ADJUSTMENTS, SICK LEAVE, VACATION,**  
21 **PAID TIME OFF, ANNUAL LEAVE, OR SENIORITY.**

22           **(B) AN ELIGIBLE EMPLOYEE WHO RETURNS TO WORK AFTER TAKING**  
23 **ORGAN DONATION LEAVE IS ENTITLED TO BE RESTORED BY AN EMPLOYER:**

24           **(1) TO THE POSITION OF EMPLOYMENT HELD BY THE ELIGIBLE**  
25 **EMPLOYEE WHEN THE ORGAN DONATION LEAVE BEGAN; OR**

26           **(2) TO AN EQUIVALENT POSITION WITH EQUIVALENT EMPLOYMENT**  
27 **BENEFITS, PAY, AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT.**

28           **(C) AN EMPLOYER MAY DENY RESTORATION OF THE ELIGIBLE EMPLOYEE'S**  
29 **POSITION OF EMPLOYMENT UNDER SUBSECTION (B) OF THIS SECTION BECAUSE OF**  
30 **CONDITIONS UNRELATED TO THE EXERCISE OF RIGHTS ESTABLISHED UNDER THIS**  
31 **SUBTITLE.**

1 **3-1304.**

2 (A) DURING ANY PERIOD THAT AN ELIGIBLE EMPLOYEE TAKES ORGAN  
3 DONATION LEAVE, AN EMPLOYER SHALL MAINTAIN COVERAGE OF A GROUP HEALTH  
4 PLAN FOR THE DURATION OF THE ORGAN DONATION LEAVE AND IN THE SAME  
5 MANNER THAT COVERAGE WOULD HAVE BEEN PROVIDED IF THE ELIGIBLE  
6 EMPLOYEE HAD CONTINUED IN EMPLOYMENT CONTINUOUSLY FOR THE DURATION  
7 OF THE ORGAN DONATION LEAVE.

8 (B) IF AN ELIGIBLE EMPLOYEE WORKS ON A COMMISSION BASIS, AN  
9 EMPLOYER SHALL PAY TO THE ELIGIBLE EMPLOYEE DURING ANY PERIOD OF ORGAN  
10 DONATION LEAVE ANY COMMISSION THAT BECOMES DUE BECAUSE OF WORK THE  
11 ELIGIBLE EMPLOYEE PERFORMED BEFORE TAKING ORGAN DONATION LEAVE.

12 **3-1305.**

13 THE COMMISSIONER SHALL ADOPT REGULATIONS TO IMPLEMENT THE  
14 PROVISIONS OF THIS SUBTITLE.

15 **3-1306.**

16 (A) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SUBTITLE  
17 HAS BEEN VIOLATED, THE COMMISSIONER SHALL:

18 (1) TRY TO RESOLVE ANY ISSUE INVOLVED IN THE VIOLATION  
19 INFORMALLY BY MEDIATION; OR

20 (2) ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON BEHALF  
21 OF THE ELIGIBLE EMPLOYEE.

22 (B) THE ATTORNEY GENERAL MAY BRING AN ACTION UNDER THIS SECTION  
23 IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY OCCURRED FOR INJUNCTIVE  
24 RELIEF, DAMAGES, OR OTHER RELIEF.

25 **3-1307.**

26 (A) AN EMPLOYER MAY NOT:

27 (1) VIOLATE ANY PROVISION OF THIS SUBTITLE;

1           **(2) HINDER, DELAY, OR OTHERWISE INTERFERE WITH THE**  
2 **COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER IN**  
3 **THE ENFORCEMENT OF THIS SUBTITLE; OR**

4           **(3) DISCHARGE OR OTHERWISE DISCRIMINATE AGAINST AN**  
5 **EMPLOYEE BECAUSE THE EMPLOYEE HAS:**

6                   **(I) REQUESTED OR TAKEN ORGAN DONATION LEAVE**  
7 **AUTHORIZED UNDER THIS SUBTITLE;**

8                   **(II) MADE A COMPLAINT TO THE EMPLOYER, THE**  
9 **COMMISSIONER, OR ANOTHER PERSON; OR**

10                   **(III) TESTIFIED OR WILL TESTIFY IN AN ACTION UNDER THIS**  
11 **SUBTITLE OR A PROCEEDING THAT RELATES TO THE SUBJECT OF THIS SUBTITLE.**

12           **(B) THE COMMISSIONER MAY BRING AN ACTION FOR INJUNCTIVE RELIEF**  
13 **AND DAMAGES AGAINST A PERSON WHO VIOLATES SUBSECTION (A)(1) OR (3) OF**  
14 **THIS SECTION.**

15 **3-1308.**

16           **(A) THIS SUBTITLE MAY NOT BE CONSTRUED TO DIMINISH THE OBLIGATION**  
17 **OF AN EMPLOYER TO COMPLY WITH A COLLECTIVE BARGAINING AGREEMENT OR AN**  
18 **EMPLOYMENT BENEFIT PROGRAM OR PLAN THAT PROVIDES GREATER ORGAN**  
19 **DONATION LEAVE RIGHTS TO EMPLOYEES THAN THE RIGHTS ESTABLISHED UNDER**  
20 **THIS SUBTITLE.**

21           **(B) THE RIGHTS ESTABLISHED FOR EMPLOYEES UNDER THIS SUBTITLE MAY**  
22 **NOT BE DIMINISHED BY A COLLECTIVE BARGAINING AGREEMENT OR AN**  
23 **EMPLOYMENT BENEFIT PROGRAM OR PLAN.**

24 **3-1309.**

25           **THIS SUBTITLE MAY NOT BE CONSTRUED TO DISCOURAGE EMPLOYERS FROM**  
26 **ADOPTING OR RETAINING LEAVE POLICIES MORE GENEROUS THAN POLICIES THAT**  
27 **COMPLY WITH THIS SUBTITLE.**

28           **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**  
29 **October 1, 2016.**