Department of Planning and Budget
2021 Special Session 1 Fiscal Impact Statement

1. **Bill Number:** HB2137

House of Origin	☐	Introduced	☐	Substitute	☒	Engrossed
Second House	☒	In Committee	☐	Substitute	☐	Enrolled

2. **Patron:** Guzman

3. **Committee:** Commerce and Labor

4. **Title:** Paid sick leave.

5. **Summary:** Requires employers to provide certain employees paid sick leave. An employee is eligible for paid sick leave under the bill if the employee is an essential worker and works on average at least 20 hours per week or 90 hours per month. The bill provides for an employee to earn at least one hour of paid sick leave benefit for every 30 hours worked. An employee shall not use more than 40 hours of earned paid sick leave in a year, unless the employer selects a higher limit. The provisions of this bill do not apply to any retail business with fewer than 25 employees.

   The bill provides that earned paid sick leave may be used for (i) an employee's mental or physical illness, injury, or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care or (ii) care of a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care of a family member who needs preventive medical care. The bill prohibits employers from taking certain retaliatory actions against employees related to leave.

   The bill provides for a hardship waiver for employers that demonstrate that providing paid sick leave threatens the financial viability of the employer, jeopardizes the ability of the employer to sustain operations, significantly degrades the quality of the employer's business operations, or creates a significant negative financial impact on the employer. The bill requires the Commissioner of Labor and Industry to promulgate regulations that (a) identify workers as essential based on the categories listed in the bill; (b) include reasonable requirements for recordkeeping, confidentiality, and notifying employees of their rights under provisions of the bill; (c) establish complaint, investigation, and enforcement procedures that include fines, not to exceed $500, for violations of provisions of the bill; (d) establish requirements for compensation and accrual of paid sick leave for employees employed and compensated on a fee-for-service basis; and (e) include procedures and requirements for an employer to qualify for a hardship waiver.

6. **Budget Amendment Necessary**: Preliminary. See item 8, below.

7. **Fiscal Impact Estimates:** Preliminary. See item 8.

7a. Expenditure Impact: Department of Labor and Industry (Item 120)

Fiscal Year	*Dollars*	*Positions*	*Fund*
2021	N/A	N/A	N/A
2022	$419,055	3.0	GF
2023	$319,055	3.0	GF
2024	$319,055	3.0	GF
2025	$319,055	3.0	GF
2026	$319,055	3.0	GF
2027	$319,055	3.0	GF

8. Fiscal Implications: This fiscal impact estimate is preliminary and will be updated to reflect additional information as necessary.

This bill requires employers of employees identified by the Commissioner of Labor and Industry as essential to provide those employees paid sick leave. The categories of workers identified as essential in the bill include: first responders; workers at essential retail businesses as defined in Executive Order 72 (2020); health care, long-term care, and home care workers; home health care, at-home hospice, home dialysis, home infusion, domestic, food manufacturing and supplier, transportation, and some cleaning and security workers; educators and support staff; and, prison and jail personnel.

The bill states that any employer with a paid leave policy, such as a paid time off policy, that provides an employee an amount of paid leave sufficient to meet requirements and that may be used for the same purposes and under the same conditions as paid sick leave under this article is not required to provide additional paid sick leave to any employee who is eligible for paid leave under the policy.

According to the Department of Human Resource Management (DHRM), this bill does not apply to state agency employees based on the definition of employer contained in the bill.

The bill requires the Commissioner of Labor and Industry to promulgate regulations that identify essential workers, establish data management and public information requirements, and define enforcement and waiver mechanisms. To carry out the requirements of the bill, the Department of Labor and Industry (DOLI) anticipates a need of two compliance positions and one Labor Law supervisor. DOLI has received an average of 1358 payment of wage claims over the last three years. According to DOLI, this bill impacts 32 percent of essential employees in the Commonwealth. Based on this data, DOLI anticipates receiving 275 to 425 claims. A software upgrade estimated at $100,000 to include this new enforcement responsibility would be needed in fiscal year 2022. DOLI anticipates that costs incurred in administering the provisions of this bill can be absorbed within appropriations contained in HB1800/SB1100, as introduced. However, there are several pieces of legislation that impact the labor law division. The agency may require additional resources depending on the cumulative impact of the bills that pass. Revenues resulting from this measure include fines, not to exceed $500. Fines established under this Title in the Code of Virginia are deposited into the general fund. Any revenue that may be generated from this bill is indeterminate and will depend on the number of violations that occur and amount of the fine imposed by the Commissioner.

According to the Department of Medical Assistance Services (DMAS), this bill would impact Medicaid expenditures directly through consumer-directed attendant care and indirectly through other service areas. In the consumer-directed model of care, the Medicaid members select their personal care, respite or companion care attendants and the Medicaid program pays for the wages of the attendant plus appropriate employer taxes and benefits. The bill would require DMAS to provide paid sick leave to providers (attendants) of consumer-directed care who meet the criteria stated in the bill.

To estimate the amount of paid time off (PTO) that would be necessary under this proposal, DMAS identified all of the attendants that fit the stated requirements (either a weekly average of 20 hours or a monthly average of 90 hours) for the time period from July 2019 to December 2020. DMAS determined the hours of PTO these members would have earned if the proposal had been in place during this time using the provisions in the bill (i.e. one hour of PTO for every 30 hours worked with a maximum of 40 hours per year). Based on these assumptions, DMAS estimates that there would have been 933,569 hours of PTO earned in fiscal year 2020 and assumes 50 percent of those hours would be used. At an average cost of $11.61 (the average hourly cost for personal care services), the total yearly cost would be $5,419,365 which equates to approximately one percent increase to billable rates.

Assuming an annual five percent rate of growth, from FY 2020 to FY 2022, DMAS estimates that a one percent increase to billable rates in FY 2022 would cost $5,816,730 general fund. Out years reflect a continued five percent annual rate of inflation. The fiscal employer agent and managed care organizations would need funding to update their systems to accept, review, process payments, track and report all sick leave hours. DMAS estimates that such efforts would cost $1,071,000 general fund in FY 2022 and $630,000 general fund thereafter to maintain the system changes. Currently, it is not federally allowable to use Medicaid matching funds for this benefit, therefore it is assumed that all of the identified costs would need to be entirely supported with general fund dollars. Should this federal policy change or be waived, then matching dollars become available to support approximately 50 percent of the identified costs.

Many other providers such as personal care agencies, hospitals, nursing homes, intermediate care facilities, intellectual and developmental disabled waiver providers, group homes, day support, community service boards and private clinics also would be impacted by this proposal. While the bill does not explicitly authorize rate increases to cover these increased costs, it is expected that such costs would eventually impact future rates. DMAS is currently examining data associated with this issue and this statement will be revised should additional estimates become available.

Educators and support staff are listed as essential employees. Local school divisions also will be impacted to the extent that such essential employees are not already covered by qualifying paid leave. To the extent that any new paid leave is created by this legislation resulting in additional prevailing costs funded through the Standards of Quality, state and local cost increases may result in future biennia as those costs are rebenchmarked. Any such costs increases are indeterminate at this time.

To the extent that state supported local government employees are classified as essential, any fiscal impact to employees supported through agencies such as the State Compensation Board, and the Departments of Social Services, Behavioral Health, Health, and Juvenile Justice is unknown at this time.

9. **Specific Agency or Political Subdivisions Affected:** Department of Human Resource Management, Department of Labor and Industry; Department of Medical Assistance Services

10. **Technical Amendment Necessary:** No.

11. **Other Comments:** HB2016, as introduced, requires the Virginia Employment Commission (VEC) to establish and administer a paid family and medical leave program with benefits beginning January 1, 2024. Under the program, benefits are paid to eligible employees for family and medical leave. Funding for the program is provided through premiums assessed to employers and employees beginning in 2023. The amount of a benefit is 80 percent of the employee's average weekly wage, not to exceed 80 percent of the state weekly wage, which amount is required to be adjusted annually to reflect changes in the statewide average weekly wage. The bill caps the duration of paid leave at 12 weeks in any application year. The bill provides self-employed individuals the option of participating in the program. VEC estimates that in order to provide the benefits at the rates contemplated in the bill, a payroll tax of .065 percent of wages would be necessary with the tax split equally between employee and employer.

    Under the provisions of this bill, essential retail businesses are defined in the Governor's Executive Order 72 (2020), and include grocery stores, pharmacies and other food, beverage, and pharmacy product retailers; medical, laboratory, and vision supply retailers; electronic retailers that sell or service cell phones, computers, tablets, and other communications technology; automotive parts, accessories, and tire retailers as well as automotive repair facilities; home improvement, hardware, building material, and building supply retailers; lawn and garden equipment retailers; beer, wine, and liquor stores; retail functions of gas stations and convenience stores; retail located within healthcare facilities; banks and other financial institutions with retail functions; pet and feed stores; printing and office supply stores; and laundromats and dry cleaners.