
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2777 Session of
2020

INTRODUCED BY MEHAFFIE, HILL-EVANS, McNEILL, SCHWEYER, DRISCOLL,
HANBIDGE, ROZZI, DeLUCA, DONATUCCI, READSHAW, WEBSTER,
THOMAS, SCHLOSSBERG AND CIRESI, JULY 30, 2020

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JULY 30, 2020

AN ACT

1 Providing for mandatory public health emergency leave for
2 employees, for use of public health emergency leave, for
3 duties of Department of Labor and Industry and for exercise
4 of rights protected and retaliation prohibited; and
5 establishing the Public Health Emergency Leave Tax Credit
6 Program.

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22 The General Assembly of the Commonwealth of Pennsylvania
23 hereby enacts as follows:

24 CHAPTER 1

25 PRELIMINARY PROVISIONS

26 Section 101. Short title.

27 This act shall be known and may be cited as the Public Health
28 Emergency Leave Act.

29 Section 102. Definitions.

30 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Communicable disease." As defined in section 2(c) of the
4 act of the act of April 23, 1956 (1955 P.L.1510, No.500), known
5 as the Disease Prevention and Control Law of 1955.

6 "Department." The Department of Labor and Industry of the
7 Commonwealth.

8 "Employee." An individual who is employed by an employer
9 doing business in this Commonwealth.

10 "Employer." An employer as defined in section 3(g) of the
11 act of January 17, 1968 (P.L.11, No.5), known as The Minimum
12 Wage Act of 1968.

13 "Family member." Any of the following:

14 (1) A biological child, adopted or foster child,
15 stepchild or legal ward, a child of a domestic partner or a
16 child to whom the employee stands in loco parentis,
17 regardless of age.

18 (2) A biological parent, foster parent, stepparent or
19 adoptive parent or legal guardian of an employee or an
20 employee's spouse or domestic partner or a person who stood
21 in loco parentis when the employee or the employee's spouse
22 or domestic partner was a minor child.

23 (3) A person to whom the employee is legally married
24 under the laws of any state or a domestic partner of an
25 employee as registered under the laws of any state or
26 political subdivision.

27 (4) A grandparent, grandchild or sibling, whether of a
28 biological, foster, adoptive or step relationship, of the
29 employee or the employee's spouse or domestic partner.

30 (5) A person for whom the employee is responsible for

1 providing or arranging care, including helping that
2 individual obtain diagnostic, preventive, routine or
3 therapeutic health treatment.

4 (6) Any other individual related by blood or whose close
5 association with the employee is the equivalent of a family
6 relationship.

7 "Health care professional." Any of the following:

8 (1) A person, health care center, corporation, college,
9 university or other educational institution licensed or
10 approved by the Commonwealth to provide health care or
11 professional medical services, including medical services
12 provided by a physician, certified nurse midwife, podiatrist,
13 hospital, nursing home or birth center.

14 (2) Any other person licensed under Federal or State law
15 to provide medical or emergency services.

16 "Paid sick time." Time that is compensated at the same
17 hourly rate and with the same benefits, including health care
18 benefits, as the employee normally earns during hours worked,
19 and is not less than the hourly amount specified under The
20 Minimum Wage Act of 1968.

21 "Pass-through entity." Any of the following:

22 (1) A partnership, limited partnership, limited
23 liability company, business trust or other unincorporated
24 entity that for Federal income tax purposes is taxable as a
25 partnership.

26 (2) A Pennsylvania S corporation.

27 "Public health emergency." A public health emergency
28 declared by a Federal public official, the Governor in
29 accordance with 35 Pa.C.S. § 7301 (relating to general authority
30 of Governor) or a local public official as a result of a

1 communicable disease.

2 "Public health emergency leave." Paid sick time which is
3 required to be provided by an employer to an employee affected
4 by a public health emergency in accordance with this act.

5 "Qualified expenditures." Funds expended by an employer
6 during a taxable year for public health emergency leave.

7 "Qualified tax liability." Tax liability imposed on a
8 taxpayer under Article III, IV, VI, VII, VIII, IX, XI or XV of
9 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
10 Code of 1971, excluding any tax withheld by an employer under
11 Article III of the Tax Reform Code of 1971.

12 "Retaliatory personnel action." Any of the following:

13 (1) Denial of a right provided under this act.

14 (2) Any actual or threatened discharge, suspension,
15 demotion or reduction of hours of an employee.

16 (3) Any actual or threatened reporting of an employee's
17 suspected citizenship or immigration status or the
18 suspected citizenship or immigration status of a family
19 member of the employee to a Federal, State or local law
20 enforcement agency.

21 (4) Interference with or punishment for participating in
22 or assisting with an investigation, proceeding or hearing
23 under this act.

24 (5) Any other adverse action against an employee for the
25 exercise of any right provided under this act, including any
26 sanctions against an employee who is the recipient of public
27 health emergency leave.

28 CHAPTER 3

29 EMERGENCY LEAVE

30 Section 301. Mandatory public health emergency leave.

1 (a) Mandatory leave.--Each employer of this Commonwealth
2 shall provide public health emergency leave to employees whose
3 residence or employment is affected by a public health
4 emergency. An employer shall provide the public health emergency
5 leave in addition to any other leave benefits available to
6 employees by contract or policy. Public health emergency leave
7 shall be made available in accordance with the following:

8 (1) An employee who normally works 40 or more hours in a
9 week shall be provided with at least 80 hours of paid sick
10 time.

11 (2) An employee who works less than 40 hours in a week
12 shall be provided an amount of paid sick time equal to the
13 amount of time the employee is otherwise scheduled to work or
14 works on average in a 14-day period.

15 (b) Immediate provisions.--The public health emergency leave
16 required under subsection (a) shall be provided to an employee
17 immediately for the use by the employee as specified under
18 section 304(a), regardless of how long the employee has been
19 employed.

20 (c) Usage.--An employee may use public health emergency
21 leave beginning on the date the public health emergency is
22 declared until two weeks after the termination of the public
23 health emergency.

24 Section 302. Notice of eligibility.

25 Immediately after a declaration of a public health emergency
26 within this Commonwealth, an employer shall provide notice to
27 all employees of the eligibility to receive public health
28 emergency leave if the employee's residence or place of
29 employment is part of the area affected by the public health
30 emergency.

1 Section 303. Retroactive availability of leave.

2 If a public health emergency was declared before and remains
3 in effect on the effective date of this section, public health
4 emergency leave shall be:

5 (1) Provided to employees in accordance with section
6 301(a) on the effective date of this section.

7 (2) Made available retroactively to employees employed
8 on the effective date of this section.

9 Section 304. Use of leave.

10 (a) Uses.--Nothing in this act shall be construed to require
11 an employee to use public health emergency leave if the employee
12 is able to perform work remotely. An employee may elect to use
13 public health emergency leave for any of the following purposes
14 regardless of the ability to work remotely:

15 (1) To care for oneself because:

16 (i) the employee is diagnosed with a communicable
17 disease related to the public health emergency; or

18 (ii) the employee is experiencing symptoms of a
19 communicable disease related to the public health
20 emergency.

21 (2) To seek or obtain medical diagnosis, care or
22 treatment if experiencing symptoms of a communicable disease
23 related to the public health emergency.

24 (3) To seek preventive care concerning a communicable
25 disease related to the public health emergency.

26 (4) To care for a family member who:

27 (i) is self-isolating due to being diagnosed with a
28 communicable disease related to the public health
29 emergency;

30 (ii) is self-isolating due to experiencing symptoms

1 of a communicable disease related to the public health
2 emergency;

3 (iii) needs medical diagnosis, care or treatment if
4 experiencing symptoms of a communicable illness related
5 to the public health emergency; or

6 (iv) is seeking preventive care concerning a
7 communicable disease related to the public health
8 emergency.

9 (5) To adhere to a determination by a Federal, State or
10 local public official, a health authority having
11 jurisdiction, an employee's employer or a health care
12 provider that the employee's presence on the job or in the
13 community would jeopardize the health of others because of
14 the employee's exposure to a communicable disease related to
15 the public health emergency or the employee is exhibiting
16 symptoms of the communicable disease, regardless of whether
17 the employee has been diagnosed with the communicable
18 disease.

19 (6) To provide care to a family member due to a
20 determination by a Federal, State or local public official, a
21 health authority having jurisdiction, the family member's
22 employer or a health care provider that the family member's
23 presence on the job or in the community would jeopardize the
24 health of others because of the family member's exposure to a
25 communicable disease related to the public health emergency
26 or the family member is exhibiting symptoms of the
27 communicable disease, regardless of whether the family member
28 has been diagnosed with the communicable disease.

29 (7) To care for oneself due to the employee's inability
30 to work or telework while under an individual or general

1 Federal, State or local quarantine or isolation order,
2 including a shelter-in-place order, related to the public
3 health emergency.

4 (8) To care for a child or other family member when the
5 care provider of the child or other family member is
6 unavailable due to a public health emergency or if the
7 child's or family member's school or place of care has been
8 closed by a Federal, State or local public official or at the
9 discretion of the school or place of care due to the public
10 health emergency, including if a school or place of care is
11 physically closed but continuing to provide instruction
12 remotely.

13 (b) Employee notice.--The employee shall provide notice to
14 the employer of the need for public health emergency leave as
15 practicable only when the need for public health emergency leave
16 is foreseeable and the employer's place of business has not been
17 closed.

18 (c) Limitations.--An employer may not require, as a
19 condition of an employee's taking public health emergency leave,
20 that the employee search for or find a replacement worker to
21 cover the hours during which the employee is using the public
22 health emergency leave.

23 (d) Increments.--Public health emergency leave may be used
24 in the smaller of hourly increments or the smallest increment
25 that the employer's payroll system uses to account for absences
26 or use of other time.

27 (e) Documentation.--Documentation may not be required for
28 public health emergency leave under this act.

29 Section 305. Eligibility for leave.

30 During the period in which an employee is entitled to paid

1 sick time under the Families First Coronavirus Response Act
2 (Public Law 116-127, 29 U.S.C. §§ 2612(a)(1)(F) and 2620), the
3 employee shall not be entitled to take public health emergency
4 leave provided under this act.

5 Section 306. Subrogation prohibited.

6 An employer may not require an employee to use other paid
7 sick time provided by the employer to the employee before the
8 employee uses the public health emergency leave provided under
9 this act.

10 Section 307. Overtime requirements.

11 An employee who is exempt from overtime requirements under
12 section 213(a)(1) of the Fair Labor Standards Act of 1938 (52
13 Stat. 1060, 29 U.S.C. § 213(a)(1)) shall be assumed to work 40
14 hours in each work week for the purposes of receiving public
15 health emergency leave unless the employee's normal work week is
16 less than 40 hours, in which case the public health emergency
17 leave shall be based upon that normal work week.

18 Section 308. Separation from employment.

19 Nothing in this section shall be construed as requiring
20 financial or other reimbursement to an employee from an employer
21 upon the employee's termination, resignation, retirement or
22 other separation from employment for paid sick time that has not
23 been used.

24 CHAPTER 5

25 ENFORCEMENT

26 Section 501. Duties of department.

27 The department shall have the following duties:

28 (1) Enforce this act.

29 (2) Coordinate implementation and enforcement of this
30 act.

1 (3) Promulgate appropriate guidelines or regulations for
2 this act.

3 (4) Post the regulations and information about the
4 rights and duties of employees and employers under this act
5 on the department's publicly accessible Internet website.

6 Section 502. Enforcement.

7 This act shall be enforced in the same manner as section 9 of
8 the act of January 17, 1968 (P.L.11, No.5), known as The Minimum
9 Wage Act of 1968, and violations of this act shall be subject to
10 the same penalties prescribed under section 12 of The Minimum
11 Wage Act of 1968, full compensation, including wages and
12 benefits lost, and equitable relief, including reinstatement of
13 employment, as appropriate.

14 Section 503. Exercise of rights protected and retaliation
15 prohibited.

16 (a) Prohibited acts.--It shall be unlawful for an employer
17 to do any of the following:

18 (1) Interfere with, restrain or deny the exercise of or
19 the attempt to exercise any right protected under this act.

20 (2) Take retaliatory personnel action or discriminate
21 against an employee or former employee because the employee
22 or former employee has exercised rights protected under this
23 act. These rights include the following:

24 (i) The right to request or use public health
25 emergency leave.

26 (ii) The right to file a complaint with the
27 department or a court of competent jurisdiction or inform
28 any person about any employer's alleged violation of this
29 act.

30 (iii) The right to participate in an investigation,

1 hearing or proceeding or cooperate with or assist the
2 department in its investigations of alleged violations of
3 this act.

4 (iv) The right to inform any person of the person's
5 potential rights under this act.

6 (3) Count public health emergency leave as an absence
7 that may lead to or result in discipline, discharge,
8 demotion, suspension or any other adverse action.

9 (b) Protections.--The protections under this section shall
10 apply to any person who mistakenly, but in good faith, alleges
11 violations of this act.

12 (c) Rebuttable presumption.--There shall be a rebuttable
13 presumption of unlawful retaliatory personnel action prohibited
14 under subsection (a) (2) whenever an employer takes adverse
15 action against a person within 90 days of when that person:

16 (1) files a complaint with the department or a court of
17 competent jurisdiction alleging a violation of any provision
18 of this act;

19 (2) informs any person about an employer's alleged
20 violation of this act;

21 (3) cooperates with the department or other persons in
22 the investigation or prosecution of any alleged violation of
23 this act;

24 (4) opposes any policy, practice or act that is unlawful
25 under this act; or

26 (5) informs any person of the person's rights under this
27 act.

28 Section 504. Notice and posting of rights.

29 (a) Notice.--Unless an employer's place of business is
30 closed due to a public health emergency, an employer shall give

1 employees written notice of their rights under this act, at the
2 commencement of employment or by the effective date of this
3 section, whichever is later, and annually thereafter. The notice
4 shall contain the following information:

5 (1) Employees are entitled to public health emergency
6 leave.

7 (2) The amount of public health emergency leave required
8 under section 301(a).

9 (3) The terms of use of public health emergency leave
10 specified under section 304(a).

11 (4) Retaliatory personnel action against employees who
12 request or use public health emergency leave shall be
13 prohibited as provided under section 503(a)(2).

14 (5) The employees shall have the right to file a
15 complaint or bring a civil action if public health emergency
16 leave is denied by the employer or the employee is subjected
17 to retaliatory personnel action for requesting or taking
18 public health emergency leave in violation of this act.

19 (6) The contact information for the department where
20 questions about rights and responsibilities under this act
21 can be answered.

22 (b) Languages.--The notice required in subsection (a) shall
23 be in English, Spanish and any other language that is the first
24 language spoken by at least 20% of the employer's workforce if
25 the notice has been translated and provided by the department.

26 (c) Amount available.--The amount of public health emergency
27 leave available to an employee, the amount of public health
28 emergency leave taken by the employee to date in the applicable
29 year and the amount of pay the employee has received as public
30 health emergency leave shall be recorded in or on an attachment

1 to the employee's regular paycheck.

2 (d) Display.--Unless an employer's place of business is
3 closed due to a public health emergency, an employer shall
4 display a poster that contains the information in the notice
5 required under subsection (a) in a conspicuous and accessible
6 place in each establishment where the employees are employed. In
7 cases where the employer does not maintain a physical workplace,
8 or an employee telecommutes or performs work through a web-based
9 platform, the information in the notice required under
10 subsection (a) shall be sent via electronic communication or a
11 conspicuous posting on the web-based platform. The poster
12 displayed under this subsection shall be in English, Spanish and
13 any language that is deemed appropriate by the department if the
14 poster has been provided by the department.

15 (e) Templates.--The department shall create and make
16 available to employers model notices and posters that contain
17 the information required under subsection (a) for use by
18 employers in complying with subsections (a) and (d).

19 (f) Waiver.--If an employee's business is closed due to a
20 public health emergency, the notice and posting requirements
21 under subsections (a) and (d) shall be waived for the period in
22 which the place of business is closed.

23 (g) Violations.--An employer who willfully violates the
24 notice and posting requirements of this section shall be subject
25 to a civil fine in an amount not to exceed \$100 for each
26 separate offense.

27 CHAPTER 7

28 TAX CREDIT

29 Section 701. Public Health Emergency Tax Credit Program.

30 The Public Health Emergency Tax Credit Program is established

1 in the department to provide tax credit certificates to
2 employers that provide public health emergency leave to
3 employees in accordance with this act.

4 Section 702. Applications for tax credits.

5 (a) Applications.--

6 (1) An employer may apply to the department for a tax
7 credit certificate under the program.

8 (2) In order to qualify for a tax credit certificate, an
9 employer must submit an application to the department on a
10 form and in a manner as required by the department.

11 (b) Information.--An application to qualify for a tax credit
12 certificate shall include all of the following:

13 (1) Confirmation that the employer meets the
14 requirements under this act.

15 (2) Proof that the employer provided public health
16 emergency leave in accordance with section 301(a).

17 (3) Any other information required by the department to
18 determine whether the employer qualifies for a tax credit
19 certificate.

20 (c) Approval.--No later than 90 days after an employer has
21 submitted an application under this section, the department
22 shall review the application and notify the employer if the
23 employer qualifies for a tax credit certificate for the current
24 taxable year. If the employer qualifies for a tax credit
25 certificate, the department shall provide the employer with a
26 tax credit certificate.

27 Section 703. Use of tax credit.

28 Upon presenting a tax credit certificate to the Department of
29 Revenue, the Department of Revenue shall grant the employer a
30 tax credit and the employer may claim the tax credit against the

1 qualified tax liability of the employer.

2 Section 704. Carryover, carryback and assignment of credit.

3 (a) Carryover.--If the employer cannot use the entire amount
4 of a tax credit for the taxable year in which the tax credit is
5 first approved, the excess may be carried over to succeeding
6 taxable years and used as a credit against the qualified tax
7 liability of the employer for those taxable years. Each time the
8 tax credit is carried over to a succeeding taxable year, the tax
9 credit shall be reduced by the amount that was used as a credit
10 during the immediately preceding taxable year. The tax credit
11 may be carried over and applied to succeeding taxable years for
12 no more than three taxable years after the first taxable year
13 for which the employer was entitled to claim the credit.

14 (b) Application.--A tax credit granted by the Department of
15 Revenue in a taxable year first shall be applied against the
16 employer's qualified tax liability for the current taxable year
17 as of the date on which the credit was granted before the tax
18 credit can be applied against any tax liability under subsection
19 (a).

20 (c) No carryback or refund.--An employer shall not be
21 entitled to carry back or obtain a refund of all or any portion
22 of an unused tax credit granted to the employer.

23 (d) Sale or assignment of tax credits.--

24 (1) An employer, upon application to and approval by the
25 department, may sell or assign, in whole or in part, a tax
26 credit granted to the employer if no claim for allowance of
27 the credit is filed within one year from the date the tax
28 credit is granted by the Department of Revenue under section
29 703.

30 (2) The purchaser or assignee of a tax credit under

1 paragraph (1) shall immediately claim the tax credit in the
2 taxable year in which the purchase or assignment is made.

3 (3) The purchaser or assignee may not carry over, carry
4 back, obtain a refund of or sell or assign the tax credit.

5 (4) The purchaser or assignee shall notify the
6 Department of Revenue of the seller or assignor in compliance
7 with procedures specified by the Department of Revenue.

8 Section 705. Pass-through entity.

9 (a) Transfers.--If a pass-through entity has any unused tax
10 credit under section 704, the pass-through entity may elect, in
11 writing, according to procedures established by the Department
12 of Revenue, to transfer all or a portion of the tax credit to
13 the pass-through entity's shareholders, members or partners in
14 proportion to the share of the pass-through entity's
15 distributive income to which the shareholder, member or partner
16 is entitled.

17 (b) Limitation.--A pass-through entity and a shareholder,
18 member or partner of a pass-through entity shall not claim the
19 credit under subsection (a) for the same qualified expenditures.

20 (c) Application.--A shareholder, member or partner of a
21 pass-through entity to whom a credit is transferred under
22 subsection (a) shall immediately claim the tax credit in the
23 taxable year in which the transfer is made. The shareholder,
24 member or partner may not carry forward, carry back, obtain a
25 refund of or sell or assign the credit.

26 Section 706. Amount and availability of tax credits.

27 (a) Availability.--The Department of Revenue shall grant tax
28 credits to employers on a first-come, first-served basis.

29 (b) Amount.--An employer may claim a tax credit for up to
30 75% of the employer's qualified expenditures.

1 (c) Limitation.--The total amount of tax credits approved by
2 the Department of Revenue shall not exceed one-fifth of 75% of
3 average weekly wage in this Commonwealth as calculated by the
4 department.

5 CHAPTER 9

6 ADMINISTRATION

7 Section 901. Employer records.

8 (a) Records.--For a period of three years, an employer shall
9 retain adequate records documenting hours worked by employees
10 and paid sick time and public health emergency leave taken by
11 the employees. The employer shall allow the department access to
12 the records under this subsection, with appropriate notice and
13 at a mutually agreeable time, to monitor compliance with the
14 requirements of this act.

15 (b) Presumption.--If an issue arises as to an employee's
16 entitlement to public health emergency leave and the employer
17 does not retain adequate records documenting hours worked by the
18 employees and paid sick time and public health emergency leave
19 taken by the employees or does not allow the department access
20 to the records as required under subsection (a), it shall be
21 presumed that the employer has violated this act absent clear
22 and convincing evidence otherwise.

23 Section 902. Confidentiality and nondisclosure.

24 Any health or safety information possessed by an employer
25 regarding an employee or employee's family member shall:

26 (1) be maintained on a separate form and in a separate
27 file from other personnel information;

28 (2) be treated as confidential medical records; and

29 (3) not be disclosed except to the affected employee or
30 with the express permission of the affected employee.

1 Section 903. Construction of act.

2 Nothing in this act shall be construed as the following:

3 (1) Discouraging or prohibiting an employer from the
4 adoption or retention of a paid sick time policy more
5 generous than the public health emergency leave provided
6 under this act.

7 (2) Diminishing the obligation of an employer to comply
8 with a contract, collective bargaining agreement, employment
9 benefit plan or other agreement providing more generous paid
10 sick time to an employee than the public health emergency
11 leave provided under this act.

12 (3) Diminishing the rights of public employees regarding
13 paid sick time or use of paid sick time as provided in the
14 laws of this Commonwealth relating to public employees.

15 (4) Superseding any provision of a local law that
16 provides greater rights to paid sick time than the rights
17 established under this act.

18 Section 904. Other legal requirements.

19 This act provides minimum requirements pertaining to paid
20 sick time and may not be construed to preempt, limit or
21 otherwise affect the applicability of any other law, regulation,
22 requirement, policy or standard that provides for a greater
23 amount, accrual or use by employees of paid sick time or that
24 extends other protections to employees.

25 Section 905. Public education and outreach.

26 The department shall develop and implement a multilingual
27 outreach program to inform employees, employers, parents, elder
28 care providers and persons who are under the care of a health
29 care provider about the availability of public health emergency
30 leave under this act.

1 Section 906. Severability.

2 The provisions of this act are severable. If any provision of
3 this act or its application to any person or circumstance is
4 held invalid, the invalidity shall not affect other provisions
5 or applications of this act which can be given effect without
6 the invalid provision or application.

7 Section 907. Effective date.

8 This act shall take effect immediately.