AMENDMENTS TO HOUSE BILL NO. 2412

Sponsor: SENATOR COSTA

Printer's No. 3720

Amend Bill, page 1, line 21, by striking out the period after "provisions" and inserting , for COVID-19 hazardous duty work, for isolation or quarantine orders, for public health emergency leave and for employee protections.

Amend Bill, page 2, lines 2 and 3, by striking out "an article" and inserting articles

Amend Bill, page 6, by inserting between lines 22 and 23

ARTICLE I-B

COVID-19 HAZARDOUS DUTY WORK

Section 101-B. Work-related hazardous duty.

(a) Presumption of work-related hazardous duty.--

Notwithstanding any other provision of law or regulation to the contrary, an individual employed by a life-sustaining business or occupation who contracts, has symptoms of or is otherwise exposed to an infectious disease, including COVID-19 (coronavirus) or any other novel virus or infectious disease during the declaration of a disaster emergency under 35 Pa.C.S. § 7301 (relating to general authority of Governor), the declaration of an epidemic or a public health emergency in this Commonwealth by the Governor or a pandemic, which results in a period of hospitalization, quarantine, isolation or other control measures due to such infection or exposure, shall establish a presumption that the individual's medical condition or inability to work is work-related hazardous duty.

(b) Hazardous duty deemed on-duty time.--An individual with an established presumption of work-related hazardous duty under subsection (a) may not be required to use sick time, vacation time, personal time or any other accrued paid time off or contractual time off to cover the period of incapacitation or inability to work.

(c) Eligibility and qualification; unemployment and workers' compensation.--

(1) Notwithstanding any provision of the act of December
section shall apply to individuals who work for a non-life-sustaining business or occupation that receives a waiver from
the Department of Community and Economic Development authorizing
the non-life-sustaining business or occupation to continue
business operations during the period of time that a declaration
of a disaster or public health emergency is effective.

Section 102-B. Definitions.
The following words and phrases when used in this article
shall have the meanings given to them in this section unless the
context clearly indicates otherwise:
"Individual employed by a life-sustaining business or
occupation." Front-line employees and other individuals
employed by or under contract with a life-sustaining business or
entity who work during the declaration of a disaster emergency
or a public health emergency. The term shall include, but not
limited to:
(1) First responders, including law enforcement
officers, firefighters, emergency medical technicians and
other individuals who are considered to be first responders.
(2) Corrections officers.
(3) Emergency services dispatchers.
(4) Ambulance drivers.
(5) Retail workers, including restaurant, food services
and grocery store workers, cashiers and other support staff.
(6) Food and agriculture workers.
(7) Medical, health care and public health workers,
including doctors, nursing professionals, physician
assistants and paramedics, and other support staff.
(8) Pharmacists and any cashiers and other pharmacy
support staff.
(9) Home healthcare workers.
(10) Public utility workers, including workers engaged
in providing telecommunications, energy, water and wastewater
services and public works.
(11) Any employee of State or local government.
(12) Trash collectors.
(13) Warehouse workers.
(14) Any other individual employed by a life-sustaining business or occupation who is required to work during the declaration of a disaster emergency or public health emergency.

"Infectious disease." A disease which is caused by a microorganism, such as a bacterium, virus, or protozoan, which is not normally found in the human body, and which is capable of causing infection. Some, but not all, infectious diseases are contagious, meaning they can spread from person to person, including COVID-19 or the coronavirus. Other infectious diseases can spread from animals or insects to humans, but not from person to person.

"Life-sustaining business or occupation." A list of businesses or occupations, as designated by the Governor, which performs or conducts a range of vital operations, functions and services that are essential to assisting the Commonwealth and its political subdivisions in protecting people and their communities while ensuring continuity of functions critical and essential to public health and safety, as well as economic and homeland security, and which should continue normal operations, appropriately modified to account for the Centers for Disease Control and Prevention and the Department of Health workforce and customer protection guidance, during the declaration of a disaster or public health emergency.

"Public health emergency." An emergency declaration by the Governor of an occurrence or imminent threat of a disease or condition of critical public health importance with the following characteristics:

(1) Is believed to be caused by any of the following:
   (i) the emergence and spread of a novel or previously controlled or eradicated infectious disease;
   or
   (ii) an infectious disease epidemic in this Commonwealth or a pandemic.
(2) Poses a high probability of any of the following in the affected population:
   (i) Death.
   (ii) Serious or long-term disabilities.
   (iii) Widespread exposure to an infectious disease, which poses a significant risk of substantial present or future harm to the public health and safety.

ARTICLE I-C

ISOLATION OR QUARANTINE ORDERS

Section 101-C. Employees subject to isolation or quarantine.

(a) Prohibition.—Notwithstanding any other law to the contrary, an employer in this Commonwealth may not terminate or retaliate or discriminate against an employee who is complying with any isolation or quarantine order or an employee who is the primary caregiver of a family member who is complying with any isolation or quarantine order.
(b) Reinstatement.--
(1) An employee who meets the criteria specified under subsection (a), other than an employee in a temporary position, shall be reinstated to a position of like seniority, status and pay after being released from isolation or quarantine if the employee:
   (i) receives a certificate of completion of isolation or quarantine issued by a public official, the Department of Health or a local health facility;
   (ii) is still qualified to perform the duties of the position; and
   (iii) submits an application for reemployment to the employer within 90 days after being released from isolation or quarantine.
(2) Paragraph (1) shall not apply if an employer's circumstances have changed during the isolation or quarantine period to make it unreasonable for the employer to comply with paragraph (1).
(c) Penalties.--
(1) If an employer fails or refuses to comply with the provisions of this section, an individual may bring a civil action against the employer in a court of competent jurisdiction to compel the employer to:
   (i) comply with the provisions of this section; or
   (ii) compensate the individual for any loss of wages or benefits suffered by reason of the employer's failure or refusal to comply with the provisions of this section.
(2) An individual who brings a civil action under paragraph (1) may be represented by counsel, or upon submitting an application to the Office of Attorney General, request that the Office of Attorney General represent the individual in accordance with section 204 of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act. If the Office of Attorney General is reasonably satisfied that the individual has been aggrieved by the employer in violation of this section, the Attorney General may represent the individual.
(3) No fees or court costs shall be assessed against an individual who brings a civil action under paragraph (1). Attorney fees shall be awarded to the counsel of the individual awarded damages in a civil action under paragraph (1) or the Office of Attorney General if the Office of Attorney General represents the individual.
"Department." The Department of Labor and Industry of the Commonwealth.

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


"Family member." Any of the following:

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

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

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

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

(5) A person for whom the employee is responsible for providing or arranging care, including helping that individual obtain diagnostic, preventive, routine or therapeutic health treatment.

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

"Health care professional." A health care center or person, including a corporation, university or other educational institution licensed or approved by the Commonwealth to provide health care or professional medical services as a physician, certified nurse midwife, podiatrist, hospital, nursing home or birth center or any other person licensed under Federal or State law to provide medical or emergency services.

"Paid sick time." Time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee for the purposes of section 110-D, but in no case shall this hourly amount be less than the hourly amount under The Minimum Wage Act of 1968.

"Public health emergency." A threat to public health or sufficient threat to be the subject of an emergency or disaster declaration made by a Federal, State or local official with the authority to declare the emergency.

"Public health emergency leave." Paid sick leave which must be provided by an employer to an employee affected by a public health emergency.

"Retaliatory personnel action." Denial of a right guaranteed under this article or any actual or threatened discharge,
suspension, demotion, reduction of hours, reporting an
employee's suspected citizenship or immigration status, or the
suspected citizenship or immigration status of a family member
of the employee to a Federal, State or local department, or any
other adverse action against an employee for the exercise of any
right guaranteed herein, including any sanctions against an
employee who is the recipient of public benefits for rights
guaranteed under this article. Retaliation includes interference
with or punishment for in any manner participating in or
assisting an investigation, proceeding or hearing under this
article.

SUBARTICLE B

EMERGENCY LEAVE

Section 110-D. Establishment of public health emergency leave.

(a) Requirement.--Each employer of the Commonwealth shall
provide paid sick time to employees whose residence or
employment is affected by a public health emergency. An employer
shall provide the paid sick time in addition to any other leave
benefits available to employees by contract or policy. Public
health emergency leave shall be made available in accordance
with the following:

(1) An employee who normally works 40 or more hours in a
week shall be provided at least 112 hours of paid sick time.

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

(b) Immediate provisions.--The public health emergency leave
required under subsection (a) shall be provided to employees
immediately for the use of employees under section 113-D,
regardless of how long the employee has been employed.

(c) Usage.--An employee may use public health emergency
leave from the first date of the emergency or disaster
declaration until two weeks following the termination of the
declaration.

Section 111-D Notice.

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

Section 112-D. Ongoing threat.

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

(1) provided to employees under section 110-D on the
effective date of this section; and

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

Section 113-D. Use of public health emergency leave.

(a) Uses.--Nothing in this article shall be construed to
require an employee to use public health emergency leave if the
employee is able to perform work remotely. An employee may elect
to use public health emergency leave for any of the following
purposes regardless of the ability to work remotely:
(1) To care for oneself because:
   (i) The employee is diagnosed with a communicable
       illness related to a public health emergency.
   (ii) The employee is experiencing symptoms of a
        communicable illness related to a public health
        emergency.
   (iii) To seek or obtain medical diagnosis, care or
        treatment if experiencing symptoms of a communicable
        illness related to a public health emergency.
   (iv) To seek preventive care concerning a
        communicable illness related to a public health
        emergency.
(2) To care for a family member who:
   (i) Is self-isolating due to being diagnosed with a
       communicable illness related to a public health
       emergency.
   (ii) Is self-isolating due to experiencing symptoms
       of a communicable illness related to a public health
       emergency.
   (iii) Needs medical diagnosis, care or treatment if
        experiencing symptoms of a communicable illness related
        to a public health emergency.
   (iv) Is seeking preventive care concerning a
        communicable illness related to a public health
        emergency.
(3) To adhere to a determination by a Federal, State or
    local public official, a health authority having jurisdiction
    or a health care provider that the employee's presence on the
    job or in the community would jeopardize the health of others
    because of the employee's exposure to a communicable illness
    or exhibiting of symptoms, regardless of whether the employee
    has been diagnosed with a communicable illness.
(4) To provide care to a family member due to a
    determination by a Federal, State or local public official, a
    health authority having jurisdiction or a health care
    provider that the family member's presence on the job or in
    the community would jeopardize the health of others because
    of the family member's exposure to a communicable illness or
    exhibiting of symptoms, regardless of whether the family
    member has been diagnosed with a communicable illness.
(5) Closure of the employee's place of business by order
    of a Federal, State or local public official or health
    authority or at the discretion of the employer due to a
    public health emergency.
(6) An employee's inability to work or telework while
    under an individual or general Federal, State or local
    quarantine or isolation order, including a shelter-in-place
order, related to the public health emergency.

(7) Care of a child or other family member when the care
provider of the individual is unavailable due to a public
health emergency or if the child's or family member's school
or place of care has been closed by a Federal, State or local
public official or at the discretion of the school or place
of care due to a public health emergency, including if a
school or place of care is physically closed but providing
instruction remotely.

(b) Notice.--The employee shall provide notice to the
employer of the need for paid sick time as practicable only when
the need for paid sick time is foreseeable and the employer's
place of business has not been closed.

(c) Limitations.--An employer may not require, as a
condition of an employee's taking paid sick time, that the
employee search for or find a replacement worker to cover the
hours during which the employee is using paid sick time.

(d) Increments.--Paid sick time may be used in the smaller
of hourly increments or the smallest increment that the
employer's payroll system uses to account for absences or use of
other time.

(e) Documentation.--Documentation may not be required for
paid sick time under this article.

Section 114-D. Additional leave.

If an employee is entitled to paid sick time under Federal
law for any of the purposes under this article, paid sick time
under this article shall be in addition to that paid sick leave
to the extent permitted by Federal law.

Section 115-D. Subrogation.

An employer may not require an employee to use other paid
leave provided by the employer to the employee before the
employee uses the public health emergency leave under this
article.

Section 116-D. Overtime.

Employees who are exempt from overtime requirements under 29
U.S.C. § 213(a)(1) (relating to exemptions) of the Fair Labor
will be assumed to work 40 hours in each work week for purposes
of paid sick time under this article unless their normal work
week is less than 40 hours, in which case paid sick time under
this article is based upon that normal work week.

Section 117-D. Termination.

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

SUBARTICLE C
ENFORCEMENT

Section 121-D. Duties of department.

The department shall:
(1) Have authority to enforce this article.
(2) Be authorized to coordinate implementation and enforcement of this article.
(3) Promulgate appropriate guidelines or regulations for this article.
(4) Post the regulations and information about the rights and duties of employees and employers under this article on the department's publicly accessible Internet website.

Section 122-D. Enforcement.
This article shall be enforced under section 9 of the act of January 17, 1968 (P.L.11, No.5), known as The Minimum Wage Act of 1968.

Section 123-D. Exercise of rights protected and retaliation prohibited.
(1) It shall be unlawful for an employer or any other person to interfere with, restrain or deny the exercise of or the attempt to exercise any right protected under this article.
(2) An employer may not take retaliatory personnel action or discriminate against an employee or former employee because the person has exercised rights protected under this article. These rights include the following:
   (i) The right to request or use paid sick time under this article.
   (ii) The right to file a complaint with the department or courts or inform any person about any employer's alleged violation of this article.
   (iii) The right to participate in an investigation, hearing or proceeding or cooperate with or assist the department in its investigations of alleged violations of this article.
   (iv) The right to inform any person of his or her potential rights under this article.
(3) It shall be unlawful for an employer's absence control policy to count paid sick time taken under this article as an absence that may lead to or result in discipline, discharge, demotion, suspension or any other adverse action.
(4) Protections of this section shall apply to any person who mistakenly, but in good faith, alleges violations of this article.
(5) There shall be a rebuttable presumption of unlawful retaliatory personnel action under this section whenever an employer takes adverse action against a person within 90 days of when that person:
   (i) files a complaint with the department or a court alleging a violation of any provision of this article;
   (ii) informs any person about an employer's alleged violation of this article;
   (iii) cooperates with the department or other
persons in the investigation or prosecution of any
alleged violation of this article;
(iv) opposes any policy, practice or chapter that is
unlawful under this article; or
(v) informs any person of his or her rights under
this article.
Section 124-D. Notice and posting.
(a) Notice.--Unless an employer's place of business is
closed due to a public health emergency, an employer shall give
employees written notice of their rights under this article, at
the commencement of employment or by the effective date of this
section, whichever is later, and annually thereafter. The notice
shall contain the following information:
(1) That employees are entitled to public health
emergency leave.
(2) The amount of public health emergency leave
guaranteed under this article.
(3) The terms of use of public health emergency leave
guaranteed under this article.
(4) That retaliatory personnel action against employees
who request or use public health emergency leave is
prohibited.
(5) That each employee has the right to file a complaint
or bring a civil action if public health emergency leave as
required by this article is denied by the employer or the
employee is subjected to retaliatory personnel action for
requesting or taking public health emergency leave.
(6) The contact information for the department where
questions about rights and responsibilities under this
article can be answered.
(b) Languages.--The notice required in subsection (a) shall
be in English, Spanish and any other language that is the first
language spoken by at least 20% of the employer's workforce, if
the notice has been translated and provided by the department.
(c) Amount available.--The amount of paid sick time
available to the employee, the amount of paid sick time taken by
the employee to date in the year and the amount of pay the
employee has received as paid sick time shall be recorded in or
on an attachment to the employee's regular paycheck.
(d) Display.--Unless an employer's place of business is
closed due to a public health emergency, an employer shall
display a poster that contains the information required in
subsection (a) in a conspicuous and accessible place in each
establishment where the employees are employed. In cases where
the employer does not maintain a physical workplace, or an
employee telecommutes or performs work through a web-based
platform, notification shall be sent via electronic
communication or a conspicuous posting on the web-based
platform. The poster displayed shall be in English, Spanish and
any language that is deemed appropriate by the department, if
the poster has been provided by the department.
(e) Templates.--The department shall create and make available to employers model notices and posters that contain the information required under subsection (a) for employers' use in complying with subsections (a) and (d).

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

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

SUBARTICLE D
ADMINISTRATION

Section 131-D. Employer records.

(a) Records.--For a period of three years, an employer shall retain records documenting hours worked by employees, paid sick time and public health emergency leave taken by employees and allow the department access to these records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this article.

(b) Presumption.--If an issue arises as to an employee's entitlement to public health emergency leave under this section, if the employer does not maintain or retain adequate records documenting hours worked by the employee, paid sick time and public health emergency leave taken by the employee or does not allow the department reasonable access to such records, it shall be presumed that the employer has violated this article, absent clear and convincing evidence otherwise.

Section 132-D. Confidentiality and nondisclosure.

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

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

(2) be treated as confidential medical records; and

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

Section 133-D. No effect on more generous policies or laws.

Nothing in this article shall be construed as:

(1) Discouraging or prohibiting an employer from the adoption or retention of a paid sick time policy more generous than the one required in this article.

(2) Diminishing the obligation of an employer to comply with a contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous paid sick time to an employee than required under this article.

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

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

Section 134-D. Other legal requirements.

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

Section 135-D. Public education and outreach.

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

ARTICLE I-E

EMPLOYEE PROTECTIONS

Section 101-E. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:


"Employee." An individual who is not able to work remotely during employment for an employer.

"Employer." Any business industry or trade operating with a physical location in this Commonwealth, regardless of whether that physical location is open to the public.

"Infectious disease." A disease which is caused by a microorganism, such as a bacterium, virus, or protozoan, which is not normally found in the human body, and which is capable of causing infection. Some, but not all, infectious diseases are contagious, meaning they can spread from person to person, including COVID-19 or the coronavirus. Other infectious diseases can spread from animals or insects to humans, but not from person to person.

"Public health emergency." An emergency declaration by the Governor of an occurrence or imminent threat of a disease or condition of critical public health importance with the following characteristics:

(1) Is believed to be caused by any of the following:
   (i) the emergence and spread of a novel or previously controlled or eradicated infectious disease; or
   (ii) an infectious disease epidemic in this Commonwealth or a pandemic.

(2) Poses a high probability of any of the following in the affected population:
   (i) Death.
   (ii) Serious or long-term disabilities.
   (iii) Widespread exposure to an infectious disease, which poses a significant risk of substantial present or
future harm to the public health and safety.

Section 102-E. Employee personal protective equipment.

Notwithstanding any other provision of law, during a public health emergency, an employer shall provide employees with appropriate personal protective equipment, including the provision of face masks to and use by employees, that complies with guidance issued by the Centers for Disease Control and Prevention for businesses to plan and respond to COVID-19 or any other infectious disease, and the guidance on business practices issued by the Department of Health to address COVID-19 or any other infectious disease.

Section 103-E. Protection from retaliation.

(a) General rule.--It shall be unlawful for an employer to discharge, threaten or otherwise retaliate against an employee regarding compensation or other terms or conditions of employment because the employee:

(1) makes a complaint regarding noncompliance with section 102-E to the employer or a governmental entity; or

(2) participates in an investigation regarding noncompliance with section 102-E.

(b) Action.--An employee who suffers retaliation or discrimination in violation of this article may bring an action in a court of common pleas in accordance with established civil procedures of this Commonwealth. The action must be brought within three years from the date the employee knew of the retaliation or discrimination.

(c) Relief.--If the employee prevails in an action commenced under this article, the employee shall be entitled to the following relief:

(1) Reinstatement of the employee, if applicable.

(2) Restitution equal to three times the amount of the employee's wages and fringe benefits calculated from the date of the retaliation or discrimination.

(3) Reasonable attorney fees and the cost of the action.

(4) Any other legal and equitable relief as the court deems appropriate.

Section 104-E. Penalties.

An employer operating in this Commonwealth that fails to comply with the requirements of section 102-E shall be:

(1) Subject to a civil penalty of $1,000 for each finding of noncompliance.

(2) Immediately closed and may not be permitted to reopen until the employer is in compliance.