

AMENDMENTS TO SENATE BILL NO. 333

Sponsor: SENATOR HUGHES

Printer's No. 568

1 Amend Bill, page 1, line 3, by inserting after "mandates"
2 ; and providing for paid sick leave

3 Amend Bill, page 1, line 9, by striking out "A" and inserting
4 Except as provided in subsection (a.1), a

5 Amend Bill, page 1, by inserting between lines 16 and 17

6 (a.1) Paid sick leave.--A municipality may enact an
7 ordinance requiring an employer to provide paid sick leave to an
8 employee if the ordinance meets the requirements of Chapter 92
9 (relating to paid sick leave ordinances).

10 Amend Bill, page 2, line 2, by striking out "JANUARY" and
11 inserting

12 May

13 Amend Bill, page 2, line 4, by striking out "JANUARY" and
14 inserting

15 May

16 Amend Bill, page 2, lines 25 and 26, by striking out all of
17 said lines and inserting

18 Section 2. Title 53 is amended by adding a chapter to read:

19 CHAPTER 92
20 PAID SICK LEAVE ORDINANCES

21 Sec.

22 9201. Scope.

23 9202. Definitions.

24 9203. Paid sick leave ordinance.

25 9204. Construction.

26 § 9201. Scope.

27 This chapter relates to promoting healthy families and
28 workplaces by establishing parameters on employee paid sick
29 leave ordinances adopted by municipalities.

30 § 9202. Definitions.

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

4 "Employee." As defined in section 3 of the Minimum Wage Act.
5 The term does not include an employee covered by a collective
6 bargaining agreement if the agreement expressly provides for:

7 (1) The wages, hours of work and working conditions of
8 employees.

9 (2) Paid sick leave or a paid leave or paid time off
10 policy that permits the use of sick leave for employees.

11 (3) Final and binding arbitration of disputes concerning
12 the application of the paid sick leave provisions of the
13 collective bargaining agreement.

14 "Employer." As defined in section 3 of the Minimum Wage Act.

15 "Family member." Any of the following:

16 (1) A child, stepchild or legal ward or a child to whom
17 the employee stands in loco parentis, notwithstanding the age
18 or dependency status of the child.

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

23 (3) A spouse or domestic partner.

24 (4) A grandparent.

25 (5) A grandchild.

26 (6) A sibling.

27 "Minimum Wage Act." The act of January 17, 1968 (P.L.11,
28 No.5), known as The Minimum Wage Act of 1968.

29 "Municipality." A city, borough, incorporated town or
30 township. The term includes a municipality operating under Part
31 III Subpt. E (relating to home rule and optional plan
32 government).

33 "Paid sick leave." Time that is compensated at the rate
34 provided under section 9203(b) (3) (relating to paid sick leave
35 ordinance) and is provided by an employer to an employee under
36 this chapter.

37 "Secretary." The Secretary of Labor and Industry of the
38 Commonwealth.

39 § 9203. Paid sick leave ordinance.

40 (a) Authorization.--The governing body of a municipality may
41 enact a paid sick leave ordinance applicable to all employers
42 within the territorial limits of the municipality in accordance
43 with this chapter.

44 (b) Content.--An ordinance adopted pursuant to this chapter
45 shall:

46 (1) Require an employer to provide paid sick leave to an
47 employee for the following purposes:

48 (i) Diagnosis, care or treatment of an existing
49 health condition of, or preventive care for, an employee
50 or employee's family member.

51 (ii) Diagnosis, treatment, care, counseling or other

1 assistance for a physical, mental or emotional injury
2 suffered by the employee or the employee's family member
3 due to an act of abuse as defined in 23 Pa.C.S. § 6102(a)
4 (relating to definitions) or sexual violence as defined
5 in 42 Pa.C.S. § 62A03 (relating to definitions).

6 (iii) A public health or public safety emergency
7 involving the employee or the employee's family member.

8 (2) Not require an employer to provide paid sick leave
9 to an employee until the day after the date the employee has
10 worked for the employer for at least 30 days within a year
11 from the commencement of employment.

12 (3) Permit an employee to accrue paid sick leave at the
13 rate of one hour per every 30 hours worked, beginning at the
14 commencement of employment. An employee who is exempt from
15 overtime requirements of section 5 of the Minimum Wage Act as
16 an administrative, executive or professional employee shall
17 be deemed to work 40 hours per workweek for the purposes of
18 this paragraph, unless the employee's normal workweek is less
19 than 40 hours, in which case the employee shall accrue paid
20 sick leave based upon the normal workweek.

21 (4) Limit an employee's use of paid sick leave to 56
22 hours or seven days in each year of employment.

23 (5) Prohibit an employee from using accrued paid sick
24 leave prior to 91 days of employment unless otherwise
25 approved by the employer, after which day the employee may
26 use paid sick leave as the paid sick leave is accrued.

27 (6) Provide that accrued paid sick leave shall carry
28 over to the following year of employment, except that an
29 employer may limit an employee's total accrual of paid sick
30 leave to 80 hours or 10 days annually.

31 (7) Authorize an employer to, at the employer's
32 discretion:

33 (i) Provide the full amount of paid sick leave to
34 the employee at the beginning of each year.

35 (ii) Lend paid sick leave to an employee in advance
36 of accrual with proper documentation.

37 (8) Provide that an employee:

38 (i) May determine the amount of paid sick leave the
39 employee needs to use, except that an employer may set a
40 reasonable minimum increment, not to exceed two hours,
41 for the use of paid sick leave.

42 (ii) Must provide reasonable advance written or
43 verbal notification to the employer if the need to use
44 paid sick leave is foreseeable. If the need to use paid
45 sick leave is unforeseeable, the employee must provide
46 written or verbal notice of the need for the leave to the
47 employer as soon as practicable.

48 (9) Provide that an employer:

49 (i) May not require, as a condition of using paid
50 sick leave, an employee to search for or find a
51 replacement worker to cover the hours or days during

1 which the employee uses paid sick leave.

2 (ii) May require an employee to provide
3 documentation from the individual providing treatment or
4 care under paragraph (1) if the employee is absent for
5 three or more consecutive days.

6 (iii) Shall not be required to provide additional
7 paid sick leave under this section if the following
8 conditions are met:

9 (A) On the effective date of this section the
10 employer has a paid leave policy or paid time off
11 policy.

12 (B) The employer makes available an amount of
13 leave that may be used for the same purposes and
14 under the same conditions as specified in this
15 section.

16 (C) The policy does either of the following:

17 (I) Satisfies the accrual, carryover and use
18 requirements of this section.

19 (II) At the beginning of each calendar year,
20 provides an employee with no less than 56 hours
21 or seven days of paid sick leave, or equivalent
22 paid leave or paid time off. An employer may
23 prorate the amount of paid sick leave or
24 equivalent paid leave or paid time off provided
25 to an employee in the employee's first year of
26 employment based on the employee's date of hire.

27 (iv) Must provide each employee with written notice
28 that sets forth the amount of paid sick leave available
29 or paid time off leave an employer provides in lieu of
30 sick leave in the manner prescribed under this chapter.
31 The municipality may impose penalties on the employer for
32 failure to provide notice in accordance with this
33 subsection.

34 (v) Must display a poster, developed by the
35 municipality, in a conspicuous place within each
36 workplace of the employer, that states all of the
37 following:

38 (A) An employee is entitled to accrue, request
39 and use paid sick leave.

40 (B) The amount of sick leave provided for by the
41 ordinance.

42 (C) The terms of use of paid sick leave.

43 (D) That retaliation or discrimination against
44 an employee who requests paid sick leave or uses paid
45 sick leave, or both, is prohibited and that an
46 employee has the right under law to file a complaint
47 with the municipality against an employer who
48 retaliates or discriminates against the employee.

49 (10) Establish that the rate of pay for paid sick leave
50 shall be the greater of the minimum wage as set forth in
51 section 4 of the Minimum Wage Act or the employee's hourly

1 wage. If the employee in the 90 days of employment before
2 using accrued sick leave had different hourly pay rates, was
3 paid by commission or piece rate or was a nonexempt salaried
4 employee, the rate of pay shall be calculated by dividing the
5 employee's total wages, not including overtime premium pay,
6 by the employee's total hours worked in the full pay periods
7 of the prior 90 days of employment.

8 (11) Provide that an employer must provide payment for
9 sick leave used by an employee no later than the payday for
10 the next regular payroll period after the sick leave was
11 used.

12 (12) Provide that an employer is not required to provide
13 compensation to an employee for accrued, unused paid sick
14 leave upon termination, resignation, retirement or other
15 separation from employment, except that, if an employee
16 separates from an employer and is rehired by the employer
17 within one year from the date of separation, previously
18 accrued and unused paid sick leave must be reinstated. The
19 employee may use previously accrued and unused paid sick
20 leave and shall accrue additional paid sick leave upon being
21 rehired.

22 (13) Provide that an employer may not:

23 (i) Deny an employee the right to use accrued sick
24 leave.

25 (ii) Discharge, threaten to discharge, demote,
26 suspend, reduce the wages of or in any manner
27 discriminate against an employee for doing any of the
28 following:

29 (A) Using accrued sick leave or attempting to
30 exercise the right to use accrued sick leave.

31 (B) Filing a complaint or alleging a violation
32 of the ordinance.

33 (C) Cooperating in an investigation or
34 prosecution of an alleged violation of the ordinance.

35 (D) Opposing a policy or practice that is
36 prohibited under the ordinance.

37 (14) Establish a complaint procedure where an employee
38 may file with a designated agency or department of the
39 municipality a complaint against an employer for an alleged
40 violation of the ordinance. The designated agency or
41 department shall establish a process for investigating and
42 resolving a complaint.

43 (15) Prescribe penalties for an employer who willfully
44 violates the posting provisions of paragraph (9) (v) not to
45 exceed \$250 for each offense, to be imposed by the
46 municipality.

47 (16) Provide that the municipality may order an employer
48 who is found to be in violation of this section to do all of
49 the following:

50 (i) Reinstatement the employee with or without back pay.

51 (ii) Pay the employee the amount of sick leave

1 unlawfully withheld.

2 (iii) Pay the employee an additional sum in the form
3 of an administrative penalty. If paid sick leave was
4 unlawfully withheld, the administrative penalty shall be
5 an amount equal to the dollar amount of paid sick leave
6 unlawfully withheld multiplied by three, or \$250,
7 whichever is greater, not to exceed \$5,000. If the
8 violation of this section resulted in additional harm to
9 an employee, such as discharge from employment, or
10 otherwise results in a violation of the rights of the
11 employee, the administrative penalty shall include an
12 additional sum of \$500 for each day or portion of a day
13 that the violation occurred or continued, not to exceed
14 \$10,000.

15 (iv) Comply with any other additional relief deemed
16 appropriate.

17 (17) Authorize the employee to bring a civil action in a
18 court of competent jurisdiction against the employer or other
19 person violating this section and, upon prevailing, shall be
20 entitled to collect legal or equitable relief as may be
21 appropriate to remedy the violation, including:

22 (i) Reinstatement of the employee, with or without
23 back pay.

24 (ii) Payment of sick leave unlawfully withheld.

25 (iii) The payment of an additional sum, not to
26 exceed an aggregate penalty of \$5,000, as liquidated
27 damages in the amount of \$50 to each employee or person
28 whose rights under this section were violated for each
29 day or portion of a day that the violation occurred or
30 continued. In addition, if the employer has unlawfully
31 withheld paid sick days to an employee, the employer must
32 pay the dollar amount of paid sick days withheld from the
33 employee multiplied by three or \$250, whichever amount is
34 greater.

35 (iv) Injunctive relief.

36 (v) Reasonable attorney fees and costs.

37 (18) Provide that an employer may not be assessed a
38 penalty or liquidated damages due to an isolated and
39 unintentional payroll error or written notice error that is a
40 clerical or an inadvertent mistake regarding the accrual or
41 available use of paid sick leave. In a review under this
42 subsection, consideration may be given to whether the
43 employer, prior to an alleged violation, has adopted and is
44 in compliance with a set of policies, procedures and
45 practices that fully comply with the ordinance.

46 (19) Provide that an employer or employee may appeal an
47 adverse decision under the ordinance to the court of common
48 pleas of the county in which the municipality is located.

49 § 9204. Construction.

50 This chapter:

51 (1) May not be construed to invalidate an ordinance or

1 other mandate enacted by a municipality prior to the
2 effective date of this section.

3 (2) May not be construed to discourage or prohibit an
4 employer from the adoption or retention of a paid sick leave
5 policy more generous than that contained in any ordinance
6 adopted by a municipality.

7 (3) Shall not preempt or otherwise apply to an ordinance
8 or mandate enacted by a municipality affecting vacation or
9 other forms of leave offered by employers within the
10 municipality.

11 (4) Shall not be construed to mandate a municipality to
12 adopt an ordinance applicable to employers within the
13 municipality relating to compensation, vacation or other
14 forms of leave from employment.

15 (5) Shall not limit or affect any Federal, State or
16 local law guaranteeing privacy of health information or
17 information related to domestic violence or sexual assault,
18 regarding an employee or employee's family member. The
19 information must be treated as confidential and may not be
20 disclosed to a person except the affected employee or as
21 required by law.

22 (6) Shall not relieve or lessen the obligation of an
23 employer to comply with an existing contract, collective
24 bargaining agreement, employment benefit plan or other
25 agreement providing more generous paid sick leave to an
26 employee than that required by an ordinance adopted by a
27 municipality.

28 (7) Shall not be construed to remove the subject matter
29 of this chapter from the scope of collective bargaining under
30 the act of June 1, 1937 (P.L.1168, No.294), known as the
31 Pennsylvania Labor Relations Act, the act of March 10, 1949
32 (P.L.30, No.14), known as the Public School Code of 1949, or
33 the act of July 23, 1970 (P.L.563, No.195), known as the
34 Public Employe Relations Act, or any other act related to
35 collective bargaining.

36 (8) Shall not preempt, limit or affect the applicability
37 of any other law, regulation, requirement, policy or standard
38 that provides for greater accrual or use of paid or unpaid
39 sick leave or that extends other protections to an employee.

40 (9) Shall be in addition to and independent of any other
41 right, remedy or procedure available under any other law and
42 shall not diminish, alter or negate any other legal right,
43 remedy or procedure available to an aggrieved person.