AN ACT

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

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

CHAPTER 1
PRELIMINARY PROVISIONS
Section 101. Short title.
This act shall be known and may be cited as the Public Health Emergency Leave Act.
Section 102. Definitions.
The following words and phrases when used in this act shall
have the meanings given to them in this section unless the
class clearly indicates otherwise:

"Communicable disease." As defined in section 2(c) of the
act of April 23, 1956 (1955 P.L.1510, No.500), known as

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

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

"Employer." As defined in section 3(g) of the act of January

"Family member." Any of the following:

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

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

(3) An individual 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) An individual for whom the employee is responsible
for providing or arranging care, including helping that
individual obtain diagnostic, preventive, routine or	herapeutic health treatment.

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

"Health care provider." Any of the following:

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

(2) 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 an employee normally earns during hours worked, and
is not less than the hourly amount specified under The Minimum
Wage Act of 1968.

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

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

(2) A Pennsylvania S corporation.

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

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

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


"Retaliatory personnel action." Any of the following:

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

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

(3) Any actual or threatened reporting of 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 law enforcement agency.

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

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

CHAPTER 3

EMERGENCY LEAVE

Section 301. Mandatory public health emergency leave.

(a) Mandatory leave.---Each employer in this Commonwealth
shall provide public health emergency leave to employees whose residence or employment is affected by a public health emergency. An employer shall provide the public health emergency leave 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 with at least 80 hours of paid sick time.

(2) An employee who works less 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 an employee immediately for the use by the employee as specified under section 304(a), regardless of how long the employee has been employed.

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

Section 302. Notice of eligibility.

Immediately after a declaration of a public health emergency within this 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 303. Retroactive availability of leave.
If a public health emergency was declared before and remains in effect on the effective date of this section, public health emergency leave shall be:

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

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

Section 304. Use of leave.

(a) Uses.--Nothing in this act 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 disease related to the public health emergency; or

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

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

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

(4) To care for a family member who:

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

   (ii) is self-isolating due to experiencing symptoms of a communicable disease related to the public health emergency.
emergency;

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

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

(5) To adhere to a determination by a Federal, State or local public official, a health authority having jurisdiction, an employee's employer 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 disease related to the public health emergency or the employee is exhibiting symptoms of the communicable disease, regardless of whether the employee has been diagnosed with the communicable disease.

(6) To provide care to a family member due to a determination by a Federal, State or local public official, a health authority having jurisdiction, the family member's employer 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 disease related to the public health emergency or the family member is exhibiting symptoms of the communicable disease, regardless of whether the family member has been diagnosed with the communicable disease.

(7) To care for oneself due to the 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.

To care for a child or other family member when the care provider of the child or other family member 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 the public health emergency, including if a school or place of care is physically closed but continuing to provide instruction remotely.

(b) Employee notice.--The employee shall provide notice to the employer of the need for public health emergency leave as practicable only when the need for public health emergency leave 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 public health emergency leave, that the employee search for or find a replacement worker to cover the hours during which the employee is using the public health emergency leave.

(d) Increments.--Public health emergency leave 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 public health emergency leave under this act.

Section 305. Eligibility for leave.

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

Section 306. Subrogation prohibited.

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

Section 307. Overtime requirements.

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

Section 308. Separation from employment.

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.

CHAPTER 5

ENFORCEMENT

Section 501. Duties of department.

The department shall have the following duties:

(1) Enforce this act.

(2) Coordinate implementation and enforcement of this act.

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

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

Section 502. Enforcement.

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

Section 503. Exercise of rights protected and retaliation prohibited.

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

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

(2) Take retaliatory personnel action or discriminate against an employee or former employee because the employee or former employee has exercised rights protected under this act, which include the following:

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

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

(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 act.

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

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

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

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

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

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

(3) cooperates with the department or other persons in the investigation or prosecution of an alleged violation of this act;

(4) opposes a policy, practice or act that is unlawful under this act; or

(5) informs a person of the person's rights under this act.

Section 504.  Notice and posting of rights.

(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 act, 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) Employees are entitled to public health emergency
leave.

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

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

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

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

(6) The contact information for the department where
questions about rights and responsibilities under this act
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 public health emergency
leave available to an employee, the amount of public health
emergency leave taken by the employee to date in the applicable
year and the amount of pay the employee has received as public
health emergency leave 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 in the notice required under 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 an Internet-based platform, the information in the notice required under subsection (a) shall be sent via electronic communication or a conspicuous posting on the Internet-based platform. The poster displayed under this subsection 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 use by employers 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.

CHAPTER 7

TAX CREDIT

Section 701. Public Health Emergency Tax Credit Program.

The Public Health Emergency Tax Credit Program is established
in the department to provide tax credit certificates to
employers that provide public health emergency leave to
employees in accordance with this act.

Section 702. Applications for tax credits.

(a) Applications.--The following shall apply:

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

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

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

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

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

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

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

Section 703. Use of tax credit.

Upon presenting a tax credit certificate to the Department of
Revenue, the Department of Revenue shall grant the employer a
tax credit and the employer may claim the tax credit against the
qualified tax liability of the employer.

Section 704. Carryover, carryback and assignment of credit.

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

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

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

(d) Sale or assignment of tax credits.--The following shall apply:

(1) An employer, upon application to and approval by the department, may sell or assign, in whole or in part, a tax credit granted to the employer if no claim for allowance of the credit is filed within one year from the date the tax credit is granted by the Department of Revenue under section 703.
The purchaser or assignee of a tax credit under paragraph (1) shall immediately claim the tax credit in the taxable year in which the purchase or assignment is made.

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

The purchaser or assignee shall notify the Department of Revenue of the seller or assignor in compliance with procedures specified by the Department of Revenue.

Section 705. Pass-through entity.

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

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

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

Section 706. Amount and availability of tax credits.

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

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

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

CHAPTER 9
ADMINISTRATION

Section 901. Employer records.
(a) Records.--For a period of three years, an employer shall retain adequate records documenting hours worked by employees and paid sick time and public health emergency leave taken by the employees. The employer shall allow the department access to the records under this subsection, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this act.

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

Section 902. Confidentiality and nondisclosure.
Any health or safety information possessed by an employer regarding an employee or employee's family member shall:
(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 903. Construction of act.

Nothing in this act shall be construed as the following:

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

(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 the public health emergency leave provided under this act.

(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 act.

Section 904. Other legal requirements.

This act 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 905. 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 act.

Section 906. Severability.

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

Section 907. Effective date.

This act shall take effect immediately.