INTRODUCED BY A. DAVIS, SCHLOSSBERG, MADDEN, Hohenstein,
Galloway, DeLoso, Kinsey, McNeill, Caltagirone, Hill-Evans,
DeLuca, McClinton, Lee, Schweyer, Green, Driscoll, Howard,
Daley, Rozzi, Sanchez, Williams, Burgos, Kenyatta and Deasy,
July 14, 2020

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JULY 14, 2020

AN ACT

Imposing duties on employers for the health and safety of
employees relating to limiting exposure to COVID-19; and
providing for right to bring own personal protective
equipment, for notification of illness in the workplace, for
whistleblower protection and for enforcement.

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

Section 1. Short title.

This act shall be known and may be cited as the COVID-19
Pandemic Front Line Employee Health and Safety Protection Act.

Section 2. Definitions.

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

"COVID-19." The coronavirus disease 2019, an infectious
disease caused by severe acute respiratory syndrome coronavirus
2 that was first identified during December 2019 in Wuhan,
China.
"Employee." As follows:
(1) An individual employed by an employer.
(2) The term includes any of the following:
   (i) An independent contractor.
   (ii) An individual who performs work for an employer
        through a temporary services or staffing agency.

"Employer." As follows:
(1) An individual or entity that acts directly or
    indirectly in the interest of a person in relation to
    employing an individual, including contracting for the
    services of an employee.
(2) More than one entity may be the employer of an
    employee, including in circumstances where:
       (i) one entity controls, is controlled by or is
           under common control with another employer; or
       (ii) one entity exerts control over the operations
           of another employer.
(3) The term includes any of the following:
   (i) An operator of a county assistance office.
   (ii) A health care facility, as defined in section
        103 of the act of July 19, 1979 (P.L.130, No.48), known
        as the Health Care Facilities Act.
   (iii) A health care or emergency responder employer.
   (iv) An employer in another sector.

"Employer in another sector." An employer that is not a
health care or emergency responder employer.

"Health care or emergency responder employer." An employer,
whether public or private, of any of the following:
(1) A health care or long-term care sector employee.
(2) A skilled nursing employee.
(3) A home health care employee.
(4) A paramedic or emergency medical services employee.
(5) A medical transport employee.
(6) An employee who provides services as a firefighter or other emergency responder.
(7) A corrections or detention officer or a secure treatment facility employee.
(8) A mortuary or laboratory employee.

"Personal protective equipment." Gloves, respirators, face masks, gowns, face shields and other protective equipment designed to be worn by individuals to prevent or contain contact with, or prevent the transmission of, a communicable illness or the pathogens that cause a communicable illness.

Section 3. Protecting workers from COVID-19 exposure.
(a) Health care or emergency responder employer.--
(1) A health care or emergency responder employer shall:
   (i) Comply with the precautions mandated by the Department of Health and all relevant health alerts, advisories and updates issued by the health alert network of the Department of Health.
   (ii) Incorporate, as appropriate, guidelines issued by the Centers for Disease Control and Prevention and the National Institute for Occupational Safety and Health designed to prevent the transmission of COVID-19 in health care settings.
(2) A health care or emergency responder employer shall afford to each employee, during each shift worked, appropriate levels of personal protective equipment.
(3) A health care or emergency responder employer shall maintain on file, and make available to an employee upon
request, a written plan developed by the employer to provide sufficient personal protective equipment to all employees.

(4) Employees of a health care or emergency responder employer shall be afforded confidential access to employer supported mental health benefit coverage, including, but not limited to:

(i) Mental health hotline information.

(ii) Trained mental health counselors.

(iii) Psychologists.

(iv) Psychiatrists.

(5) To the greatest extent possible, a health care or emergency responder employer shall suspend or limit in-person services by shifting to virtual assistance working standards.

(6) A health care or emergency responder employer shall test its employees for COVID-19 at least one time for every 40 hours worked per week. The results of a test shall be shared first with the employee to whom the test was administered.

(7) An employee of a health care or emergency responder employer shall notify the employer and either the Department of Health or the department of health of the county in which the employer is located of any positive test results relating to the employee and shall comply with any applicable quarantine, isolation or other health-related order concerning positive COVID-19 results as issued by the Department of Health or county department of health.

(b) Employer in another sector.--

(1) An employer in another sector shall adhere to guidance issued by the Department of Health entitled "Order of the Secretary of the Pennsylvania Department of Health
Directing Public Health Safety Measures for Businesses
Permitted to Maintain In-person Operations” issued April 15, 2020, or any subsequent order from the Department of Health relating to safe working conditions during the time period covered by the proclamation of disaster emergency issued by the Governor on March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), and any renewal of the state of disaster emergency.

(2) Notwithstanding paragraph (1), an employer in another sector shall comply with the following:

(i) To the greatest extent possible, an employer in another sector shall suspend or limit in-person services by shifting to virtual assistance working standards.

(ii) An employer in another sector shall maintain six feet between employees and between employees and customers, by using one or more of the following measures:

(A) Implementing flexible worksites, such as telework.

(B) Implementing flexible work hours, such as staggered shifts.

(C) Increasing physical space between employees at the worksite.

(D) Increasing physical space between employees and customers, such as drive-through ordering and delivery of goods or services, or partitions.

(E) Implementing flexible meeting and travel options, such as postponement of nonessential meetings or events.

(F) Downsizing operations.
(G) Delivering services remotely, such as by telephone, video or Internet.

(H) Delivering products through curbside pick-up or delivery.

(3) An employer in another sector shall provide hand sanitizer in fixed work stations at multiple locations and shall provide employees in fixed locations with opportunities to wash hands with soap and water.

(4) An employer in another sector shall provide employees with face masks made of cotton or other material approved by the Department of Health.

(5) An employer in another sector shall clean and disinfect all frequently touched surfaces in the workplace, such as workstations, keyboards, telephones, handrails and doorknobs.

(6) If an employee of an employer in another sector is confirmed to be infected with COVID-19, the employer in another sector shall inform fellow employees of their possible exposure to COVID-19 in the workplace and shall maintain confidentiality as required by the Americans with Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327).

(7) If an employee of an employer in another sector is sick and suspected or confirmed to have COVID-19, the employer in another sector shall follow the Centers for Disease Control and Prevention cleaning and disinfection recommendations.

Section 4. Right to bring own personal protective equipment.

(a) General rule.--Employees shall have the right to bring and wear their own personal protective equipment on the job on a voluntary basis if personal protective equipment is not provided
by their employer.

(b) Construction.--Nothing in this section shall be construed to relieve an employer of the duty to provide personal protective equipment under section 3.

Section 5. Notification of illness in workplace.

(a) Duty of employers.--Consistent with guidelines issued by the Centers for Disease Control and Prevention for COVID-19, an employer shall promptly notify employees when the employer learns that an employee or other individual who has been present in the workplace is diagnosed with COVID-19 or shows symptoms of COVID-19 infection.

(b) Duty of Department of Health.--If the Department of Health or the department of health of a county learns that an individual who has been present in a workplace of an employer, such as a customer, passenger, guest or employee, has been diagnosed with COVID-19 or shows symptoms of COVID-19 infection, the Department of Health or county department of health shall notify the employer and require the employer to notify the employees.

Section 6. Whistleblower protection.

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

(1) makes a complaint to the Department of Labor and Industry regarding the employer's failure to comply with section 3; or

(2) participates in an investigation conducted by the Department of Labor and Industry regarding the employer's failure to comply with section 3.
(b) Actions.--An employee who suffers retaliation or discrimination prohibited under this section 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 an employee prevails in an action commenced under this section, 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 7. Enforcement.

(a) Civil penalties.--The Department of Labor and Industry may impose the following civil penalties for a violation of section 3:

(1) For a first violation, no more than $2,500.

(2) For a second violation, no more than $3,500.

(3) For a third or subsequent violation, no more than $5,000.

(b) Payment.--A civil penalty under this section shall be paid to the Department of Labor and Industry.

Section 8. Effective date.

This act shall take effect immediately.