
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 221 Session of
2015

INTRODUCED BY HUGHES, FONTANA, TARTAGLIONE, SCHWANK, LEACH AND
FARNESE, APRIL 20, 2015

REFERRED TO LABOR AND INDUSTRY, APRIL 20, 2015

AN ACT

1 Providing for mandatory Statewide employer-paid sick leave for
2 employees and for civil penalties and remedies.

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

5 Section 1. Short title.

6 This act shall be known and may be cited as the Healthy
7 Employee and Healthy Workplace Act.

8 Section 2. Scope of act.

9 This act relates to promoting healthy families and workplaces
10 by establishing a mandatory employer-paid sick leave policy in
11 this Commonwealth.

12 Section 3. Definitions.

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

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

18 "Employee." As defined in section 3 of the Minimum Wage Act.

1 The term does not include an employee covered by a collective
2 bargaining agreement if the agreement expressly provides for:

3 (1) The wages, hours of work and working conditions of
4 employees.

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

7 (3) Final and binding arbitration of disputes concerning
8 the application of the paid sick leave provisions of the
9 collective bargaining agreement.

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

11 "Family member." Any of the following:

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

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

19 (3) A spouse or domestic partner.

20 (4) A grandparent.

21 (5) A grandchild.

22 (6) A sibling.

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

25 "Municipality." A city, borough, incorporated town or
26 township. The term includes a municipality operating under 53
27 Pa.C.S. Pt. III Subpt. E (relating to home rule and optional
28 plan government).

29 "Paid sick leave." Time that is compensated at the rate
30 provided under section 5 and is provided by an employer to an

1 employee under this act.

2 "Secretary." The Secretary of Labor and Industry of the
3 Commonwealth.

4 Section 4. Paid sick leave.

5 (a) Requirement.--Each employer in this Commonwealth must
6 provide paid sick leave to an employee for, at a minimum, the
7 following purposes:

8 (1) Diagnosis, care or treatment of an existing health
9 condition of, or preventive care for, an employee or
10 employee's family member.

11 (2) Diagnosis, treatment, care, counseling or other
12 assistance for a physical, mental or emotional injury
13 suffered by the employee or the employee's family member due
14 to an act of abuse as defined in 23 Pa.C.S. § 6102(a)
15 (relating to definitions) or sexual violence as defined in 42
16 Pa.C.S. § 62A03 (relating to definitions).

17 (3) A public health or public safety emergency involving
18 the employee or the employee's family member.

19 (b) Availability.--An employer must provide paid sick leave
20 to an employee beginning on the day after the date the employee
21 has worked for the employer for at least 30 days within a year
22 from the commencement of employment.

23 (c) Accrual and use.--

24 (1) Paid sick leave shall accrue to an employee at the
25 rate of one hour per every 30 hours worked, beginning at the
26 commencement of employment. An employee who is exempt from
27 overtime requirements of section 5 of the Minimum Wage Act as
28 an administrative, executive or professional employee shall
29 be deemed to work 40 hours per workweek for the purposes of
30 this act, unless the employee's normal workweek is less than

1 40 hours, in which case the employee shall accrue paid sick
2 leave based upon the normal workweek.

3 (2) An employer may limit an employee's use of paid sick
4 leave to 56 hours or seven days in each year of employment.

5 (3) Unless otherwise approved by the employer, an
6 employee may not use accrued paid sick leave prior to 91 days
7 of employment, after which day the employee may use paid sick
8 leave as the paid sick leave is accrued.

9 (4) Accrued paid sick leave shall carry over to the
10 following year of employment, except that an employer may
11 limit an employee's total accrual of paid sick leave to 80
12 hours or 10 days annually.

13 (5) An employer may, at the employer's discretion:

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

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

18 (6) An employee may determine the amount of paid sick
19 leave the employee needs to use, except that an employer may
20 set a reasonable minimum increment, not to exceed two hours,
21 for the use of paid sick leave.

22 (7) An employee must provide reasonable advance written
23 or verbal notification to the employer if the need to use
24 paid sick leave is foreseeable. If the need to use paid sick
25 leave is unforeseeable, the employee must provide written or
26 verbal notice of the need for the leave to the employer as
27 soon as practicable.

28 (8) An employer may not require, as a condition of using
29 paid sick leave, an employee to search for or find a
30 replacement worker to cover the hours or days during which

1 the employee uses paid sick leave.

2 (9) An employer may require an employee to provide
3 documentation from the individual providing treatment or care
4 under subsection (a) if the employee is absent for three or
5 more consecutive days.

6 (d) Exemption.--An employer shall not be required to provide
7 additional paid sick leave under this act if the following
8 conditions are met:

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

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

14 (3) The policy does either of the following:

15 (i) Satisfies the accrual, carryover and use
16 requirements of this section.

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

24 (e) Notice.--

25 (1) An employer must provide each employee with written
26 notice that sets forth the amount of paid sick leave
27 available or paid time off leave an employer provides in lieu
28 of sick leave in the manner prescribed under this act. The
29 department may impose penalties on the employer for failure
30 to provide notice in accordance with this subsection.

1 (2) Each employer must display a poster, developed by
2 the department, in a conspicuous place within each workplace
3 of the employer, that states all of the following:

4 (i) An employee is entitled to accrue, request and
5 use paid sick leave.

6 (ii) The amount of sick leave provided for by this
7 act.

8 (iii) The terms of use of paid sick leave.

9 (iv) That retaliation or discrimination against an
10 employee who requests paid sick leave or uses paid sick
11 leave, or both, is prohibited and that an employee has
12 the right under law to file a complaint with the
13 department against an employer who retaliates or
14 discriminates against the employee.

15 Section 5. Rate of pay.

16 The rate of pay for paid sick leave shall be the greater of
17 the minimum wage as set forth in section 4 of the Minimum Wage
18 Act or the employee's hourly wage. If the employee in the 90
19 days of employment before using accrued sick leave had different
20 hourly pay rates, was paid by commission or piece rate or was a
21 nonexempt salaried employee, the rate of pay shall be calculated
22 by dividing the employee's total wages, not including overtime
23 premium pay, by the employee's total hours worked in the full
24 pay periods of the prior 90 days of employment.

25 Section 6. Payment of sick leave.

26 (a) Time.--An employer must provide payment for sick leave
27 used by an employee no later than the payday for the next
28 regular payroll period after the sick leave was used.

29 (b) Compensation.--An employer is not required to provide
30 compensation to an employee for accrued, unused paid sick leave

1 upon termination, resignation, retirement or other separation
2 from employment, except that, if an employee separates from an
3 employer and is rehired by the employer within one year from the
4 date of separation, previously accrued and unused paid sick
5 leave must be reinstated. The employee may use previously
6 accrued and unused paid sick leave and shall accrue additional
7 paid sick leave upon being rehired.

8 Section 7. Prohibitions.

9 An employer may not:

10 (1) Deny an employee the right to use accrued sick
11 leave.

12 (2) Discharge, threaten to discharge, demote, suspend,
13 reduce the wages of or in any manner discriminate against an
14 employee for doing any of the following:

15 (i) Using accrued sick leave or attempting to
16 exercise the right to use accrued sick leave.

17 (ii) Filing a complaint or alleging a violation of
18 this act.

19 (iii) Cooperating in an investigation or prosecution
20 of an alleged violation of this act.

21 (iv) Opposing a policy or practice that is
22 prohibited under this act.

23 Section 8. Complaint procedure.

24 An employee may file with the department a complaint against
25 an employer for an alleged violation of this act. The department
26 shall establish a process for investigating and resolving a
27 complaint.

28 Section 9. Employer penalties.

29 An employer who willfully violates the posting provisions of
30 section 4(e)(2) shall be subject to a penalty, not to exceed

1 \$250 for each offense, to be imposed by the department.

2 Section 10. Remedies.

3 (a) Department.--The department may order an employer who is
4 found to be in violation of this act to do all of the following:

5 (1) Reinstate the employee with or without back pay.

6 (2) Pay the employee the amount of sick leave unlawfully
7 withheld.

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

19 (4) Comply with any other additional relief the
20 department deems appropriate.

21 (b) Civil action.--The secretary, the Attorney General or
22 the employee may bring a civil action in a court of competent
23 jurisdiction against the employer or other person violating this
24 act and, upon prevailing and except as provided under subsection
25 (c) or (d), shall be entitled to collect legal or equitable
26 relief on behalf of the aggrieved as may be appropriate to
27 remedy the violation including:

28 (1) Reinstatement of the employee, with or without back
29 pay.

30 (2) Payment of sick leave unlawfully withheld.

1 (3) The payment of an additional sum, not to exceed an
2 aggregate penalty of \$5,000, as liquidated damages in the
3 amount of \$50 to each employee or person whose rights under
4 this act were violated for each day or portion of a day that
5 the violation occurred or continued. In addition, if the
6 employer has unlawfully withheld paid sick days to an
7 employee, the employer must pay the dollar amount of paid
8 sick days withheld from the employee multiplied by three or
9 \$250, whichever amount is greater.

10 (4) Injunctive relief.

11 (5) Reasonable attorney fees and costs.

12 (c) Limitation on damages.--The secretary, the Attorney
13 General or an employee enforcing this act on behalf of the
14 public as provided for under law shall, upon prevailing, be
15 entitled only to equitable, injunctive or restitutionary relief
16 and reasonable attorney fees and costs.

17 (d) Error.--An employer may not be assessed a penalty or
18 liquidated damages under this section due to an isolated and
19 unintentional payroll error or written notice error that is a
20 clerical or an inadvertent mistake regarding the accrual or
21 available use of paid sick leave. In a review under this
22 subsection consideration may be given to whether the employer,
23 prior to an alleged violation, has adopted and is in compliance
24 with a set of policies, procedures and practices that fully
25 comply with this act.

26 (e) Interest.--In an administrative or civil action brought
27 under this section, the secretary or a court shall award
28 interest on each amount due and unpaid calculated in accordance
29 with law.

30 (f) Penalties cumulative.--The remedies, penalties and

1 procedures provided under this section shall be cumulative.

2 Section 11. Construction.

3 This act:

4 (1) May not be construed to invalidate an ordinance or
5 other mandate enacted by a municipality prior to the
6 effective date of this section that requires employers within
7 the municipality to provide paid sick leave benefits more
8 generous than that contained under this act.

9 (2) May not be construed to prohibit a municipality from
10 enacting an ordinance or mandate that requires employers
11 within the municipality to provide paid sick leave benefits
12 more generous than that contained under this act.

13 (3) May not be construed to discourage or prohibit an
14 employer from the adoption or retention of a paid sick leave
15 policy more generous than that contained in this act or any
16 ordinance adopted by a municipality under paragraph (1) or
17 (2).

18 (4) Shall not preempt or otherwise apply to an ordinance
19 or mandate enacted by a municipality affecting vacation or
20 other forms of leave offered by employers within the
21 municipality.

22 (5) Shall not be construed to mandate a municipality to
23 adopt an ordinance applicable to employers within the
24 municipality relating to compensation, vacation or other
25 forms of leave from employment.

26 (6) Shall not limit or affect any Federal, State or
27 local law guaranteeing privacy of health information or
28 information related to domestic violence or sexual assault,
29 regarding an employee or employee's family member. The
30 information must be treated as confidential and may not be

1 disclosed to a person except the affected employee or as
2 required by law.

3 (7) Shall not relieve or lessen the obligation of an
4 employer to comply with an existing contract, collective
5 bargaining agreement, employment benefit plan or other
6 agreement providing more generous paid sick leave to an
7 employee than that required by this act or an ordinance
8 adopted by a municipality under paragraph (1) or (2).

9 (8) Shall not be construed to remove the contents of
10 this act from the scope of collective bargaining under the
11 the act of June 1, 1937 (P.L.1168, No.294), known as the
12 Pennsylvania Labor Relations Act, the act of March 10, 1949
13 (P.L.30, No.14), known as the Public School Code of 1949, or
14 the act of July 23, 1970 (P.L.563, No.195), known as the
15 Public Employe Relations Act.

16 (9) Shall not preempt, limit or affect the applicability
17 of any other law, regulation, requirement, policy or standard
18 that provides for greater accrual or use of paid or unpaid
19 sick leave or that extends other protections to an employee.

20 (10) Shall be in addition to and independent of any
21 other right, remedy or procedure available under any other
22 law and shall not diminish, alter or negate any other legal
23 right, remedy or procedure available to an aggrieved person.

24 Section 12. Effective date.

25 This act shall take effect January 1, 2016, or immediately,
26 whichever is later.