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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 368 Session of  
2021

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GALLOWAY AND WARREN, FEBRUARY 3, 2021

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, FEBRUARY 3, 2021

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AN ACT

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

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

8 Section 1. Short title.

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

11 Section 2. Definitions.

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

15 "COVID-19." The coronavirus disease 2019, an infectious  
16 disease caused by severe acute respiratory syndrome coronavirus  
17 2 that was first identified during December 2019 in Wuhan,  
18 China.

1 "Employee." As follows:

2 (1) An individual employed by an employer.

3 (2) The term includes any of the following:

4 (i) An independent contractor.

5 (ii) An individual who performs work for an employer  
6 through a temporary services or staffing agency.

7 "Employer." As follows:

8 (1) An individual or entity that acts directly or  
9 indirectly in the interest of a person in relation to  
10 employing an individual, including contracting for the  
11 services of an employee.

12 (2) More than one entity may be the employer of an  
13 employee, including in circumstances where:

14 (i) one entity controls, is controlled by or is  
15 under common control with another employer; or

16 (ii) one entity exerts control over the operations  
17 of another employer.

18 (3) The term includes any of the following:

19 (i) An operator of a county assistance office.

20 (ii) A health care facility, as defined in section  
21 103 of the act of July 19, 1979 (P.L.130, No.48), known  
22 as the Health Care Facilities Act.

23 (iii) A health care or emergency responder employer.

24 (iv) An employer in another sector.

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

27 "Health care or emergency responder employer." An employer,  
28 whether public or private, of any of the following:

29 (1) A health care or long-term care sector employee.

30 (2) A skilled nursing employee.

- 1 (3) A home health care employee.
- 2 (4) A paramedic or emergency medical services employee.
- 3 (5) A medical transport employee.
- 4 (6) An employee who provides services as a firefighter  
5 or other emergency responder.
- 6 (7) A corrections or detention officer or a secure  
7 treatment facility employee.
- 8 (8) A mortuary or laboratory employee.

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

14 Section 3. Protecting workers from COVID-19 exposure.

15 (a) Health care or emergency responder employer.--

16 (1) A health care or emergency responder employer shall:

17 (i) Comply with the precautions mandated by the  
18 Department of Health and all relevant health alerts,  
19 advisories and updates issued by the health alert network  
20 of the Department of Health.

21 (ii) Incorporate, as appropriate, guidelines issued  
22 by the Centers for Disease Control and Prevention and the  
23 National Institute for Occupational Safety and Health  
24 designed to prevent the transmission of COVID-19 in  
25 health care settings.

26 (2) A health care or emergency responder employer shall  
27 afford to each employee, during each shift worked,  
28 appropriate levels of personal protective equipment.

29 (3) A health care or emergency responder employer shall  
30 maintain on file, and make available to an employee upon

1 request, a written plan developed by the employer to provide  
2 sufficient personal protective equipment to all employees.

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

7 (i) Mental health hotline information.

8 (ii) Trained mental health counselors.

9 (iii) Psychologists.

10 (iv) Psychiatrists.

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

14 (6) A health care or emergency responder employer shall  
15 test its employees for COVID-19 at least one time for every  
16 40 hours worked per week. The results of a test shall be  
17 shared first with the employee to whom the test was  
18 administered.

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

27 (b) Employer in another sector.--

28 (1) An employer in another sector shall adhere to  
29 guidance issued by the Department of Health entitled "Order  
30 of the Secretary of the Pennsylvania Department of Health

1 Directing Public Health Safety Measures for Businesses  
2 Permitted to Maintain In-person Operations" issued April 15,  
3 2020, or any subsequent order from the Department of Health  
4 relating to safe working conditions during the time period  
5 covered by the proclamation of disaster emergency issued by  
6 the Governor on March 6, 2020, published at 50 Pa.B. 1644  
7 (March 21, 2020), and any renewal of the state of disaster  
8 emergency.

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

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

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

18 (A) Implementing flexible worksites, such as  
19 telework.

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

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

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

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

30 (F) Downsizing operations.

1 (G) Delivering services remotely, such as by  
2 telephone, video or Internet.

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

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

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

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

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

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

27 Section 4. Right to bring own personal protective equipment.

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

1 by their employer.

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

5 Section 5. Notification of illness in workplace.

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

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

20 Section 6. Whistleblower protection.

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

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

28 (2) participates in an investigation conducted by the  
29 Department of Labor and Industry regarding the employer's  
30 failure to comply with section 3.

1 (b) Actions.--An employee who suffers retaliation or  
2 discrimination prohibited under this section may bring an action  
3 in a court of common pleas in accordance with established civil  
4 procedures of this Commonwealth. The action must be brought  
5 within three years from the date the employee knew of the  
6 retaliation or discrimination.

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

10 (1) Reinstatement of the employee, if applicable.

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

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

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

17 Section 7. Enforcement.

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

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

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

23 (3) For a third or subsequent violation, no more than  
24 \$5,000.

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

27 Section 8. Effective date.

28 This act shall take effect immediately.