

Senate Bill No. 913

Public Act No. 11-52

AN ACT MANDATING EMPLOYERS PROVIDE PAID SICK LEAVE TO EMPLOYEES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective January 1, 2012*) As used in this section and sections 2 to 6, inclusive, of this act:

(1) "Child" means a biological, adopted or foster child, stepchild, legal ward of a service worker, or a child of a service worker standing in loco parentis, who is (A) under eighteen years of age; or (B) eighteen years of age or older and incapable of self-care because of a mental or physical disability;

(2) "Day or temporary worker" means an individual who performs work for another on (A) a per diem basis, or (B) an occasional or irregular basis for only the time required to complete such work, whether such individual is paid by the person for whom such work is performed or by an employment agency or temporary help service, as defined in section 31-129 of the general statutes;

(3) "Employee" means an individual engaged in service to an employer in the business of the employer;

(4) "Employer" means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company or other entity that employs fifty or more individuals in the state in any one quarter in the previous year, which shall be determined on January first, annually. Such determination shall be made based upon the wage information submitted to the Labor Commissioner by the employer pursuant to subsection (j) of section 31-225a of the general statutes. "Employer" does not include: (A) Any business establishment classified in sector 31, 32 or 33 in the North American Industrial Classification System, or (B) any nationally chartered organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, that provides all of the following services: Recreation, child care and education;

(5) "Family violence" has the same meaning as provided in section 46b-38a of the general statutes;

(6) "Retaliatory personnel action" means any termination, suspension, constructive discharge, demotion, unfavorable reassignment, refusal to promote, disciplinary action

or other adverse employment action taken by an employer against an employee or a service worker;

(7) "Service worker" means an employee primarily engaged in an occupation with one of the following broad or detailed occupation code numbers and titles, as defined by the federal Bureau of Labor Statistics Standard Occupational Classification system or any successor system:

- (A) 11-9050 Food Service Managers;
- (B) 11-9110 Medical and Health Services Managers;
- (C) 21-1020 Social Workers;
- (D) 21-1093 Social and Human Service Assistants;
- (E) 21-1094 Community Health Workers;
- (F) 21-1099 Community and Social Service Specialists, All Other;
- (G) 25-4020 Librarians;
- (H) 29-1050 Pharmacists;
- (I) 29-1070 Physician Assistants;
- (J) 29-1120 Therapists;
- (K) 29-1140 Registered Nurses;
- (L) 29-1150 Nurse Anesthetists;
- (M) 29-1160 Nurse Midwives;
- (N) 29-1170 Nurse Practitioners;
- (O) 29-2020 Dental Hygienists;
- (P) 29-2040 Emergency Medical Technicians and Paramedics;
- (Q) 29-2050 Health Practitioner Support Technologists and Technicians;
- (R) 29-2060 Licensed Practical and Licensed Vocational Nurses;
- (S) 31-1011 Home Health Aides;
- (T) 31-1012 Nursing Aides, Orderlies and Attendants;
- (U) 31-1013 Psychiatric Aides;
- (V) 31-9091 Dental Assistants;
- (W) 31-9092 Medical Assistants;
- (X) 33-9032 Security Guards;
- (Y) 33-9091 Crossing Guards;
- (Z) 35-1010 Supervisors of Food Preparation and Serving Workers;
- (AA) 35-2010 Cooks;
- (BB) 35-2020 Food Preparation Workers;
- (CC) 35-3010 Bartenders;
- (DD) 35-3020 Fast Food and Counter Workers;
- (EE) 35-3030 Waiters and Waitresses;
- (FF) 35-3040 Food Servers, Nonrestaurant;
- (GG) 35-9010 Dining Room and Cafeteria Attendants and Bartender Helpers;
- (HH) 35-9020 Dishwashers;
- (II) 35-9030 Hosts and Hostesses, Restaurant, Lounge and Coffee Shop;

(JJ) 35-9090 Miscellaneous Food Preparation and Serving Related Workers;
 (KK) 37-2011 Janitors and Cleaners, Except Maids and Housekeeping Cleaners;
 (LL) 37-2019 Building Cleaning Workers, All Other;
 (MM) 39-3030 Ushers, Lobby Attendants and Ticket Takers;
 (NN) 39-5010 Barbers, Hairdressers, Hairstylists and Cosmetologists;
 (OO) 39-6010 Baggage Porters, Bellhops and Concierges;
 (PP) 39-9010 Child Care Workers;
 (QQ) 39-9021 Personal Care Aides;
 (RR) 41-1010 First-Line Supervisors of Sales Workers;
 (SS) 41-2011 Cashiers;
 (TT) 41-2021 Counter and Rental Clerks;
 (UU) 41-2030 Retail Salespersons;
 (VV) 43-3070 Tellers;
 (WW) 43-4080 Hotel, Motel and Resort Desk Clerks;
 (XX) 43-4170 Receptionists and Information Clerks;
 (YY) 43-5020 Couriers and Messengers;
 (ZZ) 43-6010 Secretaries and Administrative Assistants;
 (AAA) 43-9010 Computer Operators;
 (BBB) 43-9020 Data Entry and Information Processing Workers;
 (CCC) 43-9030 Desktop Publishers;
 (DDD) 43-9040 Insurance Claims and Policy Processing Clerks;
 (EEE) 43-9050 Mail Clerks and Mail Machine Operators, Except Postal Service;
 (FFF) 43-9060 Office Clerks, General;
 (GGG) 43-9070 Office Machine Operators, Except Computer;
 (HHH) 43-9080 Proofreaders and Copy Markers;
 (III) 43-9110 Statistical Assistants;
 (JJJ) 43-9190 Miscellaneous Office and Administrative Support Workers;
 (KKK) 51-3010 Bakers;
 (LLL) 51-3020 Butchers and Other Meat, Poultry and Fish Processing Workers;
 (MMM) 51-3090 Miscellaneous Food Processing Workers;
 (NNN) 53-3010 Ambulance Drivers and Attendants, Except Emergency Medical Technicians;
 (OOO) 53-3020 Bus Drivers; or
 (PPP) 53-3040 Taxi Drivers and Chauffeurs, and is

- (i) paid on an hourly basis, or
- (ii) not exempt from the minimum wage and overtime compensation requirements of the Fair Labor Standards Act of 1938 and the regulations promulgated thereunder, as amended from time to time. "Service worker" does not include day or temporary workers;

(8) "Sexual assault" means any act that constitutes a violation of section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b or 53a-73a of the general statutes; and

(9) "Spouse" means a husband or wife, as the case may be.

Sec. 2. (NEW) (*Effective January 1, 2012*) (a) Each employer shall provide paid sick leave annually to each of such employer's service workers in the state. Such paid sick leave shall accrue (1) beginning January 1, 2012, or for a service worker hired after said date, beginning on the service worker's date of employment, (2) at a rate of one hour of paid sick leave for each forty hours worked by a service worker, and (3) in one-hour increments up to a maximum of forty hours per calendar year. Each service worker shall be entitled to carry over up to forty unused accrued hours of paid sick leave from the current calendar year to the following calendar year, but no service worker shall be entitled to use more than the maximum number of accrued hours, as described in subdivision (3) of this subsection, in any year.

(b) A service worker shall be entitled to the use of accrued paid sick leave upon the completion of the service worker's six-hundred-eightieth hour of employment from January 1, 2012, if the service worker was hired prior to January 1, 2012, or if hired after January 1, 2012, upon the completion of the service worker's six-hundred-eightieth hour of employment from the date of hire, unless the employer agrees to an earlier date. A service worker shall not be entitled to the use of accrued paid sick leave if such service worker did not work an average of ten or more hours a week for the employer in the most recent complete calendar quarter.

(c) An employer shall be deemed to be in compliance with this section if the employer offers any other paid leave, or combination of other paid leave that (1) may be used for the purposes of section 3 of this act, and (2) is accrued in total at a rate equal to or greater than the rate described in subsections (a) and (b) of this section. For the purposes of this subsection, "other paid leave" may include, but not be limited to, paid vacation, personal days or paid time off.

(d) Each employer shall pay each service worker for paid sick leave at a pay rate equal to the greater of either (1) the normal hourly wage for that service worker, or (2) the minimum fair wage rate under section 31-58 of the general statutes in effect for the pay period during which the employee used paid sick leave. For any service worker whose hourly wage varies depending on the work performed by the service worker, the "normal hourly wage" shall mean the average hourly wage of the service worker in the pay period prior to the one in which the service worker used paid sick leave.

(e) Notwithstanding the provisions of this section and sections 3 to 6, inclusive, of this act and upon the mutual consent of the service worker and employer, a service worker who chooses to work additional hours or shifts during the same or following pay period, in lieu of hours or shifts missed, shall not use accrued paid sick leave.

Sec. 3. (NEW) (*Effective January 1, 2012*) (a) An employer shall permit a service worker to use the paid sick leave accrued pursuant to section 2 of this act:

(1) For (A) a service worker's illness, injury or health condition, (B) the medical diagnosis, care or treatment of a service worker's mental illness or physical illness, injury or health condition, or (C) preventative medical care for a service worker;

(2) For (A) a service worker's child's or spouse's illness, injury or health condition, (B) the medical diagnosis, care or treatment of a service worker's child's or spouse's mental or physical illness, injury or health condition, or (C) preventative medical care for a child or spouse of a service worker; and

(3) Where a service worker is a victim of family violence or sexual assault (A) for medical care or psychological or other counseling for physical or psychological injury or disability, (B) to obtain services from a victim services organization, (C) to relocate due to such family violence or sexual assault, or (D) to participate in any civil or criminal proceedings related to or resulting from such family violence or sexual assault.

(b) If a service worker's need to use paid sick leave is foreseeable, an employer may require advance notice, not to exceed seven days prior to the date such leave is to begin, of the intention to use such leave. If a service worker's need for such leave is not foreseeable, an employer may require a service worker to give notice of such intention as soon as practicable. For paid sick leave of three or more consecutive days, an employer may require reasonable documentation that such leave is being taken for the purpose permitted under subsection (a) of this section. If such leave is permitted under subdivision (1) or (2) of subsection (a) of this section, documentation signed by a health care provider who is treating the service worker or the service worker's child or spouse indicating the need for the number of days of such leave shall be considered reasonable documentation. If such leave is permitted under subdivision (3) of subsection (a) of this section, a court record or documentation signed by a service worker or volunteer working for a victim services organization, an attorney, a police officer or other counselor involved with the service worker shall be considered reasonable documentation.

(c) Nothing in sections 2 to 6, inclusive, of this act shall be deemed to require any employer to provide paid sick leave for a service worker's leave for any purpose other than those described in this section.

(d) Unless an employee policy or collective bargaining agreement provides for the payment of accrued fringe benefits upon termination, no service worker shall be entitled to payment of unused accrued sick leave under this section upon termination of employment.

(e) Nothing in sections 2 to 6, inclusive, of this act shall be construed to prohibit an employer from taking disciplinary action against a service worker who uses paid sick leave provided under sections 2 to 6, inclusive, of this act for purposes other than those described in this section.

Sec. 4. (NEW) (*Effective January 1, 2012*) (a) Nothing in sections 2 to 6, inclusive, of this act shall be construed to (1) prevent employers from providing more paid sick leave than is required under sections 2 to 6, inclusive, of this act, (2) diminish any rights provided to any employee or service worker under a collective bargaining agreement, or (3) preempt or override the terms of any collective bargaining agreement effective prior to January 1, 2012.

(b) Nothing in sections 2 to 6, inclusive, of this act shall be construed to prohibit an employer (1) from establishing a policy whereby a service worker may donate unused accrued paid sick leave to another service worker, and (2) who provides more paid sick leave than is required under sections 2 to 6, inclusive, of this act for the purposes described in subdivision (1) of subsection (a) of section 3 of this act from limiting the amount of such leave a service worker may use for other purposes.

(c) Any termination of a service worker's employment by an employer, whether voluntary or involuntary, shall be construed as a break in service. Should any service worker subsequently be rehired by the employer following a break in service, the service worker shall (1) begin to accrue sick leave in accordance with section 2 of this act, and (2) shall not be entitled to any unused hours of paid sick leave that had been accrued prior to the service worker's break in service unless agreed to by the employer.

Sec. 5. (NEW) (*Effective January 1, 2012*) (a) No employer shall take retaliatory personnel action or discriminate against an employee because the employee (1) requests or uses paid sick leave either in accordance with sections 2 and 3 of this act or in accordance with the employer's own paid sick leave policy, as the case may be, or (2) files a complaint with the Labor Commissioner alleging the employer's violation of sections 2 to 6, inclusive, of this act.

(b) The Labor Commissioner shall advise any employee who (1) is covered by a collective bargaining agreement that provides for paid sick days, and (2) files a complaint pursuant to subsection (a) of this section, of his or her right to pursue a grievance with his or her collective bargaining agent.

(c) Any employee aggrieved by a violation of the provisions of sections 2 to 6, inclusive, of this act may file a complaint with the Labor Commissioner. Upon receipt of any such complaint, said commissioner may hold a hearing. After the hearing, any employer who is found by the Labor Commissioner, by a preponderance of the evidence, to have violated the provisions of subsection (a) of this section shall be liable to the Labor

Department for a civil penalty of five hundred dollars for each violation. Any employer who is found by the Labor Commissioner, by a preponderance of the evidence, to have violated the provisions of sections 2 to 4, inclusive, or section 6 of this act shall be liable to the Labor Department for a civil penalty of up to one hundred dollars for each violation. The Labor Commissioner may award the employee all appropriate relief, including the payment for used paid sick leave, rehiring or reinstatement to the employee's previous job, payment of back wages and reestablishment of employee benefits to which the employee otherwise would have been eligible if the employee had not been subject to such retaliatory personnel action or discriminated against. Any party aggrieved by the decision of the commissioner may appeal the decision to the Superior Court in accordance with the provisions of chapter 54 of the general statutes.

(d) The Labor Commissioner shall administer this section within available appropriations.

Sec. 6. (NEW) (*Effective January 1, 2012*) Each employer subject to the provisions of section 2 of this act shall, at the time of hiring, provide notice to each service worker (1) of the entitlement to sick leave for service workers, the amount of sick leave provided to service workers and the terms under which sick leave may be used, (2) that retaliation by the employer against the service worker for requesting or using sick leave for which the service worker is eligible is prohibited, and (3) that the service worker has a right to file a complaint with the Labor Commissioner for any violation of this section and of sections 2 to 5, inclusive, of this act. Employers may comply with the provisions of this section by displaying a poster in a conspicuous place, accessible to service workers, at the employer's place of business that contains the information required by this section in both English and Spanish. The Labor Commissioner may adopt regulations, in accordance with chapter 54 of the general statutes, to establish additional requirements concerning the means by which employers shall provide such notice. The Labor Commissioner shall administer this section within available appropriations.