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HOUSE OF REPRESENTATIVES  
151st GENERAL ASSEMBLY

HOUSE BILL NO. 409

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO EARNED SICK TIME AND SAFETY LEAVE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend Title 19 of the Delaware Code by adding a new Chapter 12 by making insertions as shown by  
2 underline as follows:

3           CHAPTER 12. Earned Sick Time and Safety Leave

4           § 1211. Definitions.

5           As used in this chapter:

6           (1) "Department" means the Department of Labor or its authorized representatives.

7           (2) "Domestic violence" means as defined in § 710 of Title 19.

8           (3) "Employ" means to suffer or permit to work.

9           (4) "Employee" means an individual employed by an employer, but does not include any of the following:

10           a. Any individual employed by the United States.

11           b. An "employee" as defined by 45 U.S.C. § 351(d) who is subject to the federal Railroad Unemployment  
12 Insurance Act, 45 U.S.C. § 351 et seq.

13           (5) "Employer" means any individual, partnership, association, corporation, statutory trust, business trust,  
14 entity, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an  
15 employee.

16           (6) "Family member" means all of the following:

17           a. An individual to whom an employee stands as parent, whether through biology, adoption, domestic  
18 partnership, marriage, foster care, or court order, or an individual to whom an employee stands in loco parentis or  
19 to whom the employee stood in loco parentis when the individual was a minor.

b. A biological parent, adoptive or foster parent, stepparent 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 domestic partner was a minor.

c. A spouse or domestic partner of an employee, regardless of whether the domestic partnership is legally recognized.

d. A grandparent or grandchild of an employee or the employee's spouse or domestic partner.

e. A biological, foster, adoptive, or step sibling of an employee or the employee's spouse or domestic partner.

(7) "Earned sick time and safety leave" means time that is provided by an employer to an employee under § 1212 of this title for the purposes described in § 1213 or § 1215 of this title.

(8) "Retaliation" includes, but is not limited to, any threat, discharge, discipline, suspension, demotion, non-promotion, less favorable scheduling, reduction of hours or application of absence control policies that count an employee's use of earned sick time and safety leave as an absence that may lead to adverse action, a report or threat to report 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 agency, or other adverse action against employees for the exercise of a right guaranteed pursuant to this chapter, including sanctions against an employee who is a recipient of public benefits for rights pursuant to this chapter. "Retaliation" includes interference with or punishment for participating in an investigation, proceeding or hearing pursuant to this chapter.

(9) "Small business" means an employer that employs 9 or fewer employees.

(10) "Stalking" means as defined in § 710 of this title.

(11) "Sexual offense" means as defined in § 710 of this title.

(12) "Wage" means compensation due to an employee by reason of the employee's employment, payable in legal tender of the United States or check or bank convertible into cash on demand at full face value, subject to such deductions, charges or allowances as may be permitted by the regulations of the Department under this title.

(13) "Year" means, unless the context requires otherwise, a regular and consecutive 12-month period as determined by the employer.

§ 1212. Accrual of earned sick time and safety leave.

(a)(1) All employees employed by an employer in this State shall accrue a minimum of 1 hour of earned sick time and safety leave for every 30 hours worked, including overtime hours.

(2) An employer may cap the number of earned sick time and safety leave hours that may be accrued in a year, but the cap may not be set at less than 40 hours per year. If an employer chooses to cap the number of earned sick time and safety leave hours that may be accrued in a year, they must notify employees in writing of that policy, including the number of hours to which the employees are capped.

(3) Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the Federal Fair Labor Standards Act will be assumed to work 40 hours in each work week for purposes of earned sick time and safety leave accrual unless their normal work week is less than 40 hours, in which case earned sick time and safety leave accrues based upon that normal work week.

(b) Earned sick time and safety leave shall begin to accrue on an employee's first day of work or upon the effective date of this chapter, whichever is later, but employees are not entitled to use accrued earned sick time and safety leave until the 90<sup>th</sup> calendar day following the employee's first day of work. On and after this 90-day period, employees may use earned sick time and safety leave as it is accrued.

(c) Earned sick time and safety leave shall be compensated at the same hourly wage, or the full state minimum wage, if higher, and with the same benefits, including healthcare benefits, as the employee normally earns during hours worked; provided, however, that employees of a small business shall only be entitled to unpaid earned sick time and safety leave under this chapter with the same benefits, including healthcare benefits, as the employee normally earns during hours worked.

(d)(1) Unused earned sick time and safety leave shall be carried over to the year following the year in which it is earned.

(2) An employer may cap the number of earned sick time and safety leave hours that may be carried over to the following year, but the cap may not be set at less than 40 hours per year. If an employer chooses to cap the number of earned sick time and safety leave hours that may be carried over to the following year, they must notify employees in writing of that policy, including the number of hours to which employees are capped.

(3) An employer may cap the total number of unused earned sick time and safety leave hours that an employee has access to at one time, including hours carried over pursuant to this section and hours accrued by a single employee, at no less than 80 hours. If an employer chooses to cap the total number of unused earned sick time and safety leave hours that an employee has access to at one time, they must notify employees in writing of that policy, including the number of hours to which employees are capped.

(4) As an employee uses earned sick time and safety leave to bring the accrued time below any cap established by the employer under paragraph (d)(3) of this section, earned sick time and safety leave will again begin to accrue 1 hour for every 30 hours worked up to the cap.

(e) Earned sick time and safety leave under this chapter must be provided in addition to any other paid leave an employer provides employees for purposes other than sick and safety leave. After [the effective date of this Act], an employer may not reduce any paid leave allowed to employees to offset against the obligation to provide earned sick time and safety leave in compliance with this chapter; provided, however, that (i) an employer who makes available an amount of dedicated paid or unpaid sick leave sufficient to meet all requirements of this chapter, including the rate of accrual and use for the same purposes and under the same conditions as earned sick time and safety leave under this chapter, is not required to provide additional earned sick time and safety leave under this chapter; or (ii) an employer with a general paid leave policy, such as a paid time off policy that allows time off for various purposes, who makes available at least 120 hours of paid leave which includes time that is sufficient to meet all requirements of this chapter, including the rate of accrual and use for the same purposes and under the same conditions as earned sick time and safety leave under this chapter is not required to provide additional earned sick time and safety leave under this chapter.

(f) An employer shall not require an employee to exhaust any other paid leave before the employee uses earned sick time and safety leave pursuant to this chapter.

(g) If an employee is transferred to a separate division, entity or location within this State, but remains employed by the same employer, the employee is entitled to all earned sick time and safety leave accrued prior to transfer.

(h) If an employer is succeeded by a new employer through change of ownership or otherwise, all employees of the original employer who remain employed in this State by the successor employer are entitled to all earned sick time and safety leave accrued under the original employer.

(i) An employer's failure to provide earned sick time and safety leave based on the employer's misclassification of the employee as an independent contractor is a violation of this chapter.

(j) Substitute teachers employed by school districts shall be entitled to accrue earned sick time and safety leave pursuant to subsection (a)(1) for hours worked within each school district in which they work subject to each school district's cap pursuant to subsection (a)(2); provided, however, that substitute teachers employed by school districts are only entitled to use and carry over accrued earned sick time and safety leave within the specific school district in which the time was earned, even if the substitute teacher works in multiple school districts. The Department, in consultation with the Department of Education, shall adopt regulations regarding communication and coordination between the State and school

districts to implement this chapter and ensure earned sick time and safety leave is tracked and paid to substitute teachers pursuant to this chapter.

§ 1213. Use of earned sick time and safety leave.

(a) An employer must allow an employee to use earned sick time and safety leave for any of the following purposes:

(1) Care or treatment for the employee's mental or physical illness, injury, or condition, including those caused by substance abuse.

(2) Care or treatment for a family member with a mental or physical illness, injury, or condition, including those caused by substance abuse.

(3) Preventative medical care for the employee or the employee's family member.

(4) Because of a birth, adoption, or placement through foster care of a child, is caring for the child during the first year after the birth, adoption, or placement of the child.

(5) Closure of a family member's school, childcare center, group home, or other facility due to a public health, safety, or weather emergency which requires the employee to provide transportation or care for the family member affected by the closure.

(6) Time needed by the employee in connection with a child of the employee to attend a school-related conference, meeting, function or other event requested or required by a school administrator, teacher, or other professional staff member responsible for the child's education, or to attend a meeting regarding care provided to the child in connection with the child's health conditions or disability.

(7) To address circumstances arising as a result of domestic violence, sexual offense, or stalking committed against the employee or an employee's family member including all of the following:

a. Obtaining medical or mental health services.

b. Obtaining services from a domestic violence shelter, rape crisis center or other types of services.

c. Participation in safety planning.

d. Engagement with law enforcement personnel, attorneys, social service providers or related providers in order to obtain advice and counsel or to prepare for civil or criminal proceedings.

e. Temporary relocation or attendant activities such as changing a family member's enrollment in any institution, including schools and any school-related activities.

f. Any other action necessary to maintain, improve, or restore the physical, psychological, or economic health or safety of the employee or the employee's family member, or to protect those who associate or work with the employee.

(8) To comply with an order or determination by a local, state, or federal public official, a health care professional, a health authority having jurisdiction, or the employee's employer to self-isolate, on the basis that the employee's physical presence on the job or in the community would jeopardize the employee's health, the health of other employees, or the health of an individual in the employee's household because of: (i) possible exposure to a communicable illness related to a public health emergency; or (ii) exhibiting of symptoms of a communicable illness related to a public health emergency, regardless of whether the employee has been diagnosed with such illness.

(b) An employee who anticipates a need to use earned sick time and safety leave must provide the employer with as much advanced notice as reasonably possible and make a reasonable effort to schedule the use of earned sick time and safety leave in a manner that will not unduly disrupt the employer's operations. An employer must not penalize an employee who takes accrued earned sick time and safety leave prior to giving the employer advanced notice when the need for leave arises unexpectedly.

(c) An employer may not require documentation or other proof of the reason for which an employee uses earned sick time and safety leave unless the employee is absent from work for three or more consecutive work days and must not require the employee to reveal specific facts justifying the need for leave. If an employee chooses to relate the facts underlying a need for earned sick time and safety leave, the employer must keep those facts confidential unless otherwise required by law.

(d) Reasonable documentation for earned sick time includes documentation from a medical professional, mental health professional, substance abuse professional, counselor, social worker school administrator, or the administrator of a group home or similar facility.

(e) Reasonable documentation for earned safety leave includes: medical documentation; a law enforcement agency record or report; a court order; documentation substantiating that the perpetrator of the domestic or sexual violence has been convicted of a domestic or sexual violence offense; certification from advocates or a representative of a designated domestic violence agency or other victim services organization; or other documentation or certification provided by a counselor, social worker, member of the clergy, shelter worker, health care professional, attorney, school administrator, or other professional who has assisted the employee or family member in dealing with the domestic violence, sexual offense, or stalking.

163 (f) An employer must not require, as a condition of providing earned sick time and safety leave, the employee  
164 either search for or find a person to cover the hours during which the employee is using earned sick time and safety leave.

165 (g) Employees shall determine how much earned sick time and safety leave they need to use for an absent shift,  
166 provided that employers may set a reasonable minimum increment for use of earned sick time and safety leave not to  
167 exceed one half the number of hours the employee was scheduled to work during that shift.

168 § 1214. Employer obligations.

169 (a) An employer must provide employees with written notice of the entitlement to accrue earned sick time and  
170 safety leave as required by this chapter, at the commencement of employment or within one month of [the effective date of  
171 this Act], whichever is later. The notice must include an explanation for how earned sick time and safety leave is accrued,  
172 the purpose for which it may be used, and the rules set forth in § 1213(b), (c), (d), (e), (f) and (g) of this title.

173 (b) An employer must display and maintain a poster in a conspicuous place accessible to employees at the  
174 employer's place of business that contains the information required under subsection (a) of this section in English, Spanish,  
175 and any language that is the primary language spoken by at least 5% of the employer's workforce, if the poster has been  
176 provided by the Department.

177 An employer may develop reasonable rules governing the method and manner by which an employee must give  
178 the employer notice of the intent to use earned sick time and safety leave. Rules may include requirements for notice prior  
179 to taking leave if the need for leave is known in advance and for notice after leave is taken if the need for leave arises  
180 unexpectedly. Unless the employer develops rules governing notice of the intent to use earned sick time and safety leave  
181 and provides the rules to an employee in writing, the employer may not deny an employee the right to use earned sick time  
182 and safety leave for failure to comply with notice requirements.

183 (c) Employer retaliation against employees exercising their rights under this chapter is prohibited. An employer  
184 may not take any retaliatory action against an employee for any of the following reasons:

185 (1) The employee has exercised or attempted to exercise the employee's rights under this chapter.

186 (2) The employee has reasonably alleged a violation of this chapter.

187 (3) The employee has raised a concern about violations of this chapter to the employer, the employer's agent,  
188 other employees, a government agency, or the public through print, online, social, or any other media.

189 (d) Except as provided in § 1217(e) of this title, an employer may not require an employee to sign a contract or  
190 other agreement that would limit or prevent the employee from asserting rights provided for in this chapter or to otherwise  
191 establish a workplace policy that would limit or prevent the exercise of such rights. An employer's attempt to impose such a  
192 contract, agreement or policy shall constitute an adverse action enforceable pursuant to this chapter.

(e) An employer shall not count use of earned sick time or safety leave in a way that will lead to discipline, discharge, demotion, non-promotion, less favorable scheduling, reduction of hours, suspension or any other adverse action.

§ 1215. Enforcement.

(a) The Department shall take all appropriate action to administer and enforce this chapter, including all of the following:

(1) Establishing a system to receive complaints, in writing, by telephone, and online, regarding alleged violations of this chapter.

(2) Establishing a process for investigating and resolving complaints in a timely manner and keeping complainants notified regarding the status of the investigation of their complaint.

(3) Ensuring employer compliance with this chapter through the use of audits, investigations, record keeping requirements or other measures.

(4) Establishing a system for reviewing complaints.

(5) Developing and implementing a multilingual outreach program to inform employees, parents, caregivers, and persons who are under the care of a health care professional about the availability of earned sick time and safety leave under this chapter. This program shall include the distribution of notices and other written materials in English, Spanish, and other languages spoken by more than 5% of the state's population to childcare and elder care providers, domestic violence shelters, schools, hospitals, community health centers and other health care providers.

(6) Hold hearings, administer oaths, and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits in any proceeding before the Department. If a person fails to comply with a subpoena lawfully issued or a witness refuses to testify to a matter that the witness may be lawfully interrogated, the Superior Court, on application by the Department, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued from the Court or a refusal to testify to the Court.

(b)(1) Following an investigation in which the Department makes an initial determination that an employer has violated 1 or more provisions of this chapter, the Department shall notify the employer of the initial determination and of any amounts owed and shall provide the employer with an opportunity to appeal the Department's determination to the Director of Industrial Affairs, or the Director's delegate. If the Department finds a violation of this chapter, the Department may issue civil penalties under § 1216 of this title.

(2) An initial determination that is not appealed within 15 days of the date of the notice is deemed a final determination, and the employer or covered individual shall pay any payments or penalties assessed.



(3) If the initial determination is appealed within 15 days from the date of the notice, the Director of Industrial Affairs, or the Director's delegate, shall hear the appeal within a reasonable time.

(4) The Director of Industrial Affairs, or the Director's delegate, shall conduct a hearing on appeal under the Administrative Procedures Act, Chapter 101 of Title 29, and the regulations adopted by the Board. The decision of the Board is final unless appealed to the Superior Court within 30 days.

(c) The Department shall keep confidential the identity of complainants unless disclosure is necessary for the investigation or where required by law. This provision does not apply to disclosures made to the parties, their counsel, or witnesses where disclosure is deemed necessary or appropriate. Investigations under this Chapter are not public information under Chapter 100 of Title 29. Where practicable, the Department shall notify a complainant that the division will be disclosing the complainant's identity prior to such disclosure.

(d) A civil action may be filed in a court of competent jurisdiction for a violation of this chapter within three years from the date of the last event constituting the alleged violation for which the action is brought. The lack of an investigation by the Department is not a bar to a civil action brought by a complainant pursuant to this chapter.

(1) The Department, the office of the attorney general or a person or entity that has a member who has been affected by a violation of this chapter may bring a civil action for a violation of this chapter.

(2) A civil action to enforce any provision of this chapter may be filed without first filing an administrative complaint with the Department and may be pursued by an employee on behalf of the employee or be pursued by an employee on behalf of other employees similarly situated.

(3) It is not a defense to any action brought pursuant to this section that the complaint was brought by or in regard to an employee who does not have evidence of having a legal presence in the United States.

(4) The parties in a civil action regarding retaliation by an employer shall be subject to the following burdens of proof:

a. When an employee presents a prima facie showing of retaliation, the employer shall then have the burden to establish a legitimate, non-retaliatory reason for the adverse employment action.

b. When an employer meets the burden of proof required by paragraph (c)(4)a. of this section, the employee shall then have the burden to establish that the reason cited by the employer was pretextual.

(5) A plaintiff prevailing in a legal action brought pursuant to this chapter shall recover all appropriate legal or equitable relief, the costs and expenses of suit and reasonable attorney fees. In an action brought by the Department or the attorney general, any damages recovered, other than penalties assessed by the Department pursuant to § 1216 of this chapter, shall be payable to the individual employees who experienced the violation.

(e) The Department may make and revise or rescind regulations it deems necessary or appropriate to administer or enforce this chapter.

§ 1216. Penalties.

(a) Any employer who violates or fails to comply with any requirement of this chapter is subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation. In addition, such employer is liable to the affected employee in an amount equal to actual damages, including back pay, wages and benefits lost, and equitable relief, such as reinstatement.

(b) Any employer who discharges or in any manner discriminates against an employee because the employee has made a complaint or has given information to the Department related to requirements of this chapter is subject to a civil penalty of not less than \$1,000 nor more than \$5000. In addition, such employer is liable to the affected employee in an amount equal to actual damages, including back pay, wages and benefits lost, and equitable relief, such as reinstatement.

§ 1217. Application.

(a) This chapter provides minimum requirements pertaining to earned sick time and safety leave and shall 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 earned sick time and safety leave or that extends other protections to employees.

(b) Nothing in this chapter is intended to discourage or prohibit an employer from the adoption or retention of an earned sick time and safety leave policy more generous than the one required herein, including but not limited to allowing accrual of earned sick time and safety leave at a faster rate or the use of earned sick time and safety leave at an earlier date than this Chapter requires.

(c) Nothing in this chapter is intended to diminish the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous earned sick time and safety leave to an employee than required herein. Nothing in this Act shall be construed as diminishing the rights of public employees regarding earned sick time and safety leave or use of earned sick time and safety leave as provided in other laws or regulations under State law.

(d) Nothing in this chapter requires financial or other reimbursement to an employee upon the employee's termination, resignation, retirement, or other separation from employment for earned sick time and safety leave that has been accrued but not used, unless such financial or other reimbursement is required under another law.

281           (e) All or any portion of the requirements of this chapter do not apply to employees covered by a valid collective  
282 bargaining agreement, to the extent that such requirements are expressly waived in the collective bargaining agreement in  
283 clear and unambiguous terms.

284           Section 2. This Act takes effect on January 1, 2024.

285           Section 3. If any provision of this Act or the application of this Act to any person or circumstance is held invalid,  
286 the provisions of this Act are severable if the invalidity does not affect the other provisions of this Act that can be given  
287 effect without the invalid provision or the application of this Act that can be given effect without the invalid application.

#### SYNOPSIS

This Act requires all employers in the State to provide employees with a minimum of 1 hour of earned sick time and safety leave for every 30 hours worked. For employers with fewer than 10 employees, the time may be unpaid, job-protected time instead of paid time. Accrued earned sick time and safety leave may be used by the employee for time off with pay at the employee's regular wage and benefit rate to deal with the mental and physical health needs of either the employee or an employee's family member and other specified purposes. Earned sick time and safety leave may also be used to address the consequences of domestic violence for such things as meeting with lawyers, obtaining services from victim service organizations, temporary relocation and the like.

Employers may cap the number of hours earned per year at 40, the carryover from one year to the next at 40 hours, and the maximum earned sick and safety leave at 80 hours. Employers may require employees to have been employed at least 90 days before they may take earned sick leave and safety time. Employers whose benefits packages already meet the minimum requirements of this Act are not required to offer anything additional.

The Department of Labor will promulgate regulations governing operation of the Act and will enforce the provisions of the Act. Employers who violate the Act are subject to civil penalty of no less than \$1,000 nor more than \$5,000. Employers are prohibited from discriminating against an employee who complains to the Department that an employer has violated the Act.