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Sens. Gay, Hansen, Lockman, Sokola, Townsend

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 17

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

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

Section 1. Amend Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 12. Earned Sick Time and Safety Leave

§ 1201. Definitions.

As used in this chapter:

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

(2) "Domestic violence" means as defined in § 710 of this title.

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

a. Any individual employed by the United States.

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

c. A substitute education employee.

(4) "Employer" means all those who employ employees working anywhere in this State, as well as any person or group of persons acting, directly or indirectly, in the interest of an employer in relation to an employee. Employer also includes any successor in interest of the employer as defined by 29 CFR 825.107, an integrated employer as defined by 29 CFR 825.104(c)(2), and a joint employer where 2 or more businesses exercise some control over the work or working conditions of the employee. Joint employers may be separate and distinct entities with separate owners, managers, and facilities. For purposes of earned sick time and safety leave, the employer who actually pays the employee will be considered that individual's employer.

(5) "Extra Pay for Extra Responsibility education time" means all of the following activities that are beyond the standard contract for teachers and education support personnel:

23 a. Supervision or coaching of extracurricular activities, co-curricular activities, or sports.

24 b. Chaperoning of school-affiliated events.

25 c. Ticket taking for school-affiliated events.

26 d. Lunch-room supervision.

27 e. Any other similar and related activities, as detailed in regulations of the Department, that are beyond
28 the standard contract for teachers and education support personnel.

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

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

33 b. A biological parent, adoptive or foster parent, stepparent or legal guardian of an employee or an
34 employee's spouse or domestic partner, or an individual who stood in loco parentis when the employee or the
35 employee's spouse or domestic partner was a minor.

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

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

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

41 (7) "Earned sick time and safety leave" means time that is provided by an employer to an employee under §
42 1202 of this title for the purposes described in § 1203 of this title.

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

51 (9) "Secretary" means the Secretary of the Department of Labor or the Secretary's authorized designee.

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

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

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

(13) "Substitute education employee" means an individual employed by a school district who:

a. Is employed on a temporary basis or without a defined schedule or assignment.

b. Provides temporary coverage when a regular employee is unavailable due to vacancy, illness, leave, or other reasons.

(14) "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.

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

§ 1202. Accrual of earned sick time and safety leave.

(a) (1) All employees shall accrue a minimum of 1 hour of earned sick time and safety leave for every 30 hours worked, including overtime hours. However, an employee of a school district shall not accrue earned sick time and safety leave for Extra Pay for Extra Responsibility education time.

(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 90th 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.

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

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

88 (2) An employer may cap the number of earned sick time and safety leave hours that may be carried over to
89 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
90 of earned sick time and safety leave hours that may be carried over to the following year, they must notify employees
91 in writing of that policy, including the number of hours to which employees are capped.

92 (3) An employer may cap the total number of unused earned sick time and safety leave hours that an
93 employee has access to at one time, including hours carried over pursuant to this section and hours accrued by a single
94 employee, at no less than 40 hours. If an employer chooses to cap the total number of unused earned sick time and
95 safety leave hours that an employee has access to at one time, they must notify employees in writing of that policy,
96 including the number of hours to which employees are capped.

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

100 (e) Earned sick time and safety leave under this chapter must be provided in addition to any other paid leave an
101 employer provides employees for purposes other than sick time and safety leave, except as provided in subsection (g).

102 (f) For a period of two years following [the effective date of this Act], an employer may not reduce any paid leave
103 allowed to employees to offset the employer's obligation to provide earned sick time and safety leave in compliance with
104 this chapter.

105 (g) Notwithstanding subsections (e) and (f) of this section, an employer with a paid leave policy, such as a paid
106 time off policy, who makes available an amount of paid leave sufficient to meet all requirements of this chapter, including
107 the rate of accrual and use for the same purposes and under the same conditions as earned sick time and safety leave under
108 this chapter, is not required to provide additional earned sick time and safety leave under this chapter.

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

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

113 (j) When an employer is a successor in interest, all employees of the original employer who remain employed in
114 this State by the successor in interest are entitled to all earned sick time and safety leave accrued under the original
115 employer.

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

118 § 1203. Use of earned sick time and safety leave.

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

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

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

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

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

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

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

135 a. Obtaining medical or mental health services.

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

137 c. Participation in safety planning.

138 d. Engagement with law enforcement personnel, attorneys, social service providers or related providers in
139 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.

(7) 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 may 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. An employer may 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 pursuant to paragraph (a)(6) of this section 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.

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

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

§ 1204. Employer obligations.

(a) An employer must provide employees with written notice of the entitlement to accrue earned sick time and safety leave as required by this chapter, at the commencement of employment or within one month of [the effective date of this Act], whichever is later. The notice must include an explanation for how earned sick time and safety leave is accrued, the purpose for which it may be used, the rules set forth in § 1203 of this title, that retaliation against employees exercising their rights under this chapter is prohibited, and the employee's right to submit a complaint pursuant to § 1205 of this title.”

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

(c) An employer may develop reasonable rules governing the method and manner by which an employee must give the employer notice of the intent to use earned sick time and safety leave. Rules may include requirements for notice prior 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 unexpectedly. Unless the employer develops rules governing notice of the intent to use earned sick time and safety leave and provides the rules to an employee in writing, the employer may not deny an employee the right to use earned sick time and safety leave for failure to comply with notice requirements.

(d) An employer may not take any retaliatory action against an employee for any of the following reasons:

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

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

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

(e) Except as provided in § 1207(e) of this title, an employer may not require an employee to sign a contract or other agreement that would limit or prevent the employee from asserting rights provided for in this chapter or to otherwise establish a workplace policy that would limit or prevent the exercise of such rights. An employer's attempt to impose such a contract, agreement, or policy shall constitute an adverse action enforceable pursuant to this chapter.

(f) An employer may 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.

(g) The Department shall create and provide model notices and posters that contain the information required under subsection (a) and (b) of this section for employers' use in complying with this section. The Department may, in its discretion, combine the model poster required under subsection (b) of this section with other posters required under this title.

§ 1205. 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 and procedures for reviewing complaints and holding hearings.

(5) Developing and implementing an outreach and education program to inform employees, parents, caregivers, schools, social service and care providers, 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. Outreach information provided under this section must be available in English, Spanish, and other languages spoken by more than 5% of the state's population.

(b) The Department shall investigate, and the Secretary shall adjudicate, alleged violations of this chapter.

(c) The Department may exercise all powers granted to it by law to conduct its investigations.

(d)(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, in writing, of the initial determination, of the action to be taken, of the grounds upon which the determination was made to take the action, of the

instructions to request a hearing, of the deadline for requesting a hearing, and of any amounts owed or equitable relief required.

(2) The Department shall give the employer at least 20 business days from the date of receipt of notice to request a hearing. If the employer does not request a hearing within the time provided in the notice, the Secretary shall issue a final order adopting the Department's initial determination and awarding appropriate relief.

(3) The Department may promulgate regulations to further govern the investigations and adjudicative procedures described in this chapter.

(e) 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 Department will be disclosing the complainant's identity prior to such disclosure.

(f) A civil action may be filed in a court of competent jurisdiction for a violation of this chapter within 3 years from the date of the last event constituting the alleged violation for which the action is brought. Such action may be filed by an employee aggrieved by such violation, by a person or entity that has a member who has been affected by a violation of this chapter, or by an employee on behalf of the employee or on behalf of other employees similarly situated. Such action may only be filed after exhausting all administrative remedies provided by this chapter; provided, however, that if the Department has not acted on a filed complaint for a period of 180 days, the complainant may file a civil action after the 180-day period has expired. 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 or the office of the attorney general may bring a civil action for a violation of this chapter.

(2) 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.

(3) 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 (f)(3)a. of this section, the employee shall then have the burden to establish that the reason cited by the employer was pretextual.

(4) 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 subsections (g) or (h) of this section, shall be payable to the individual employees who experienced the violation.

(g) Any employer who violates or fails to comply with any requirement of this chapter is subject to a civil penalty of not less than \$2,000 nor more than \$20,000 for each violation.

(h) An employer is subject to a civil penalty of not less than \$20,000 and not more than \$50,000 for each violation if the employer discharges or in any manner retaliates or discriminates against an individual because that individual does any of the following under this section:

a. Makes a complaint or provides information to the Department.

b. Causes, or is going to cause, an investigation to be instituted.

c. Testifies, or is going to testify, in a hearing.

(i) In addition to penalties under this section, an employer is liable to the affected employee in an amount equal to actual damages, including back pay, wages and benefits lost, and equitable relief as appropriate, such as reinstatement.

§ 1206. Regulations.

The Department may adopt regulations and revise or rescind regulations it deems necessary or appropriate to administer or enforce this chapter. Except as may be otherwise provided by the Department, a regulation adopted under this section takes effect on publication.

§ 1207. 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 chapter 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 of this State.

(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.

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

Section 2. Amend § 1108, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1108. Duty of employer regarding notification, posting and records.

It shall be the duty of every employer of over 3 employees to:

(4) a. ~~Furnish~~ to each employee at the time of payment a statement, either on the check, or by a separate slip, or electronically, so long as the electronic statement is in a form capable of being retained by the employee, showing all of the following:

1. The amount of earned sick time and safety leave available to the employee, the amount of earned sick time and safety leave taken by the employee to date in the year, and the amount of pay the employee has received as earned sick time and safety leave.

2. ~~the~~ The wages due, the pay period for which the wages are due and the total amount of deductions, separately specified, which have been made from the wages due, provided such statement shall, for an employee who is paid at an hourly rate, show the total number of hours for the said pay period.

b. Where the statement provided pursuant to this paragraph is furnished electronically, an employee may request that the statement be provided in written form on a separate slip.

Section 3. This Act takes effect on January 1, 2025.

Section 4. If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the provisions of this Act are severable if the invalidity does not affect the other provisions of this Act that can be given 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 9 or fewer 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 same 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 an employee has access to at any one time at 40 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 \$2,000 nor more than \$20,000. Employers are prohibited from discriminating against an employee who complains to the Department that an employer has violated the Act. Where discrimination or retaliation is found to have occurred a penalty between \$20,000 and \$50,000 may be applied.