## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2019

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## **SENATE BILL 234\***

	Short Title:	Healthy Families & Workplaces/Paid Sick Days.	(Public)			
	Sponsors: Senators Robinson, Foushee, and Garrett (Primary Sponsors).					
	Referred to:	Rules and Operations of the Senate				
		March 13, 2019				
1		A BILL TO BE ENTITLED				
2	AN ACT PR	OVIDING FOR HEALTHY FAMILIES AND HEALTHY WORKPL	ACES BY			
3		ENSURING THAT ALL WORKERS HAVE EARNED PAID SICK DAYS TO ADDRESS				
4 5		THEIR OWN HEALTH NEEDS AND THE HEALTH NEEDS OF THEIR FAMILIES.				
6		Whereas, nearly every worker in North Carolina is likely to need, during any given year, time off to attend to his or her own illness or that of an immediate family member or for				
7	-	routine medical care; and				
8	Whereas, when parents are available to care for their children who become sick, the		e sick, the			
9		children's recovery is faster, more serious illnesses are prevented, and the children's overall health				
10	1 ,	is improved; and				
11		Whereas, parents who cannot afford to miss work must send children with a				
12 13	-	contagious illness to child care or school, contributing to the high rate of infections in child care centers and schools; and				
13 14		/hereas, over 62,967 North Carolinians reported physical abuse or sexu	ual assault			
15		2017 and June 2018, and there were 1,036 domestic violence-related ho				
16		na between 2004 and 2018; and				
17		hereas, victims of domestic violence and sexual assault need time off				
18		r to seek solutions, such as a restraining order or housing, to avoid or prev	ent abuse,			
19 20		d to lose days of paid employment; and	no ono not			
20		Thereas, 39% or over 1.3 million private-sector workers in North Caroling earned paid sick days to care for their own health needs or the health				
21		heir families; and	I needs of			
23		hereas, low-income workers are significantly less likely to have earned	l paid sick			
24		0% of those earning less than \$20,000 per year lacking access to earned	-			
25	days; Now, tl					
26		Assembly of North Carolina enacts:				
27		<b>ECTION 1.</b> Chapter 95 of the General Statutes is amended by adding a n	ew Article			
28 29	to read:	"Article 3A.				
29 30		"Healthy Families and Healthy Workplaces Act.				
31	"§ 95-31.1. §	Short title and legislative purpose.				
32		his Article shall be known and may be cited as the "Healthy Families ar	nd Healthy			
33	Workplaces A					
34		he public policy of this State is declared as follows: The health and safet				
35 26		nd their families and the protection of employees from losing their job				
36	while they se	eek medical care for themselves and their family members are subjects of	<u>or concern</u>			



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## **General Assembly Of North Carolina** Session 2019 1 requiring legislation to promote the general welfare of the people of the State without 2 jeopardizing the competitive position of North Carolina business and industry. The General 3 Assembly declares that the general welfare of the State requires the enactment of this law under 4 the police power of the State. 5 "§ 95-31.2. Definitions. The following definitions apply in this Article: 6 (a) 7 Child. - A biological, adopted, or foster child, stepchild, legal ward, or child (1) 8 of a parent standing in loco parentis, who is under 18 years of age or 18 years 9 of age or older but incapable of earning wages because of a mental or physical 10 incapacity. 11 (2)Domestic violence. – As defined in G.S. 50B-1. Employ. - As defined by G.S. 95-25.2(3). 12 (3) Employee. – As defined by G.S. 95-25.2(4). 13 (4)Employer. – As defined by G.S. 95-25.2(5). 14 (5) Federal Act. - The Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 15 (6)to 2654 inclusive, as it may be amended. 16 17 Health care provider. – (7)18 A doctor of medicine or osteopathy licensed to practice medicine in <u>a.</u> 19 the State. 20 A physician assistant licensed in this State. b. 21 A family nurse practitioner licensed in this State. c. Immediate family member. – A child, grandchild, sibling, spouse, domestic 22 (8) 23 partner, civil union partner, parent, or grandparent of an employee, or a 24 spouse, domestic partner, or civil union partner of a parent or grandparent of 25 the employee, or a sibling of a spouse, domestic partner, or civil union partner 26 of the employee, or any other individual related by blood to the employee or 27 whose close association with the employee is the equivalent of a family 28 relationship. 29 Paid sick time or paid sick days. – Time that is (i) compensated at the same (9) 30 hourly rate and with the same benefits, including health care benefits, as the 31 employee normally earns during hours worked and (ii) provided by an 32 employer to an employee for the purposes described in G.S. 95-31.4(b) of this 33 Article. 34 (10)Parent. – A biological, foster, step, or adoptive parent of an employee or an 35 employee's spouse, or other person who stood in loco parentis during the 36 childhood of an employee or employee's spouse. Sexual assault. - As defined in Chapter 14 of the General Statutes. 37 (11)38 Stalking. - As defined in Chapter 14 of the General Statutes. (12)39 Small business. – An employer who employs 10 or fewer employees during (13)40 20 or more calendar workweeks in the current or preceding calendar year. 41 "§ 95-31.3. Exemptions. 42 The provisions of this section do not apply to any bona fide volunteers in any (a) organization where an employer-employee relationship does not exist. 43 44 The provisions of this section do not apply to any person exempted from the Wage (b) 45 and Hour Act under G.S. 95-25.14(a)(2) through (8), G.S. 95-25.14(b), 95-25.14(b1), 46 95-25.14(c), and 95-25.14(e), except that domestic workers are exempted only if they are 47 employed in the place of residence of their employer. 48 "§ 95-31.4. Accrual of paid sick time. 49 Except as provided by G.S. 95-31.3, any employee who works in this State and who (a) 50 must be absent from work for the reasons set forth in G.S. 95-31.5(a) shall be entitled to paid

51 sick time.

## **General Assembly Of North Carolina** Session 2019 1 Paid sick time as provided in this section shall begin to accrue at the commencement (b) 2 of employment. Paid sick time shall accrue at the rate of one hour of pay for every 30 hours 3 worked. Paid sick time may be used as accrued or be loaned by the employer at its discretion to 4 the employee in advance of accrual. Unless the employer and employee agree to designate 5 otherwise, for periods of paid sick time that are less than a normal workday, the time shall be 6 counted on an hourly basis or the smallest increment that the employer's payroll system uses to 7 account for absences or use of leave. 8 For employees of small businesses, there shall be a limit of 32 hours of accrued paid (c) 9 sick time in a calendar year. For employees of other employers, there shall be a limit of 56 hours 10 of accrued paid sick time in a calendar year. Accrued paid sick time for employees carries over 11 from year to year but is limited to the aforementioned limits. When there is separation from employment and the employee is rehired within 90 12 (d) days of separation by the same employer, previously accrued paid sick time that had not been 13 14 used shall be reinstated. The employee shall be entitled to use accrued paid sick time and accrue 15 additional sick time at the recommencement of employment. 16 "§ 95-31.5. Use of paid sick time. 17 Paid sick time shall be provided to an employee by an employer for any of the (a) 18 following reasons: 19 To care for the employee's immediate family member who is suffering from a (1) 20 physical or mental illness, injury, or medical condition that requires home 21 care, professional medical diagnosis or care, preventative medical care, or a 22 routine medical appointment, unless the care is covered under federal law. 23 To care for the employee's own physical or mental illness, injury, or medical <u>(2)</u> 24 condition that requires home care, professional medical diagnosis or care, 25 preventative medical care, or a routine medical appointment, unless the care 26 is covered under federal law. 27 Absence necessary due to circumstances resulting from the employee, or a (3) 28 family member of the employee, being a victim of stalking or domestic or 29 sexual violence, if the leave is to allow the employee to obtain for the 30 employee or the family member: medical attention needed to recover from 31 physical or psychological injury or disability caused by stalking or domestic 32 or sexual violence; services from a designated domestic violence agency or 33 other victim services organization; psychological or other counseling; 34 relocation; or legal services, including obtaining a restraining order or 35 preparing for, or participating in, any civil or criminal legal proceeding related 36 to the stalking or domestic or sexual violence. An employer may require certification of the qualifying illness, injury, health 37 (b) 38 condition, or violence when a paid sick time period covers more than three consecutive workdays. 39 Any reasonable documentation signed by a health care provider involved in following or treating 40 the illness, injury, or health condition and indicating the need for the amount of sick days taken 41 shall be deemed acceptable certification. Acceptable certification of domestic violence, sexual 42 assault, or stalking may include (i) law enforcement, court, or federal agency records or files; (ii) 43 documentation from a domestic violence or sexual assault program; or (iii) documentation from 44 a religious, medical, or other professional from whom assistance was sought in dealing with the 45 alleged domestic violence, sexual offense, or stalking. 46 (1) The employer shall not require certification from a health care provider 47 employed by the employer. The employer shall not delay the commencement 48 of time taken for purposes of subsection (a) of this section or pay for this period on the basis that the employer has not yet received the certification. 49 50 Nothing in this section shall be construed to require an employee to provide 51 as certification any information from a health care provider that would be in

<ul> <li>violation of section 1177 of the Social Security Act or the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act, 42 U.S.C. 813206-2.</li> <li>(2) An employer may not reguire disclosure of details relating to domestic violence, sexual assault, or stalking or the details of an employee's medical condition as a condition of providing paid sick time under this Article. If an employer possesses health information or information pertaining to domestic violence, sexual assault, or stalking about an employee or employee's medical and not disclosed except to the affected employee or with the permission of the affected employee.</li> <li>(c) When the use of paid sick time is foreseeable, the employee number in advance of the use of the sick time and shall make a reasonable effort to schedule the use of paid sick time in a manner that does not unduly disrupt the operations of the employer.</li> <li>(d) An employee may not require, as a condition of providing paid sick time under this act, that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick time.</li> <li>(e) Nothing in this section shall be construed as requiring financial or other reimbursement to an employee from an employee upon the employeers from adopting or retaining paid sick time policies more generous than policies hat comply with the requirements of the segnation from employee the advance accound of a section of a corrude paid sick time and shall not be construed to discurate acrued row any employeers and reading and the polyces of any employees of the section shall be construed to diminish the obligation of a employee to comply with any contract, collective bargating agreement, or any employees than the rights established under this section.</li> <li>(f) Nothing in this section shall be construed to discurate acrual or use by employees of this section, and nothing in this section.</li> <li>(g) This act</li></ul>		General Assemb	ly Of North Carolina	Session 2019
3       Accountability Act, 42 U.S.C. § 1320d-2.         4       (2)       An employer may not require disclosure of details relating to domestic violence, sexual assault, or stalking or the details of an employee's medical condition as a condition of providing paid sick time under this Anticle. If an employer possesses health information or information pertaining to domestic violence, sexual assault, or stalking about an employee or employee's immediate family member, such information pretaining to domestic violence, sexual assault, or stalking about an employee or employee's immediate family member, such information pretaining to domestic violence, sexual assault, or stalking about an employee or employee's in advance of the use of paid sick time and not disclosed except to the affected employee or with the permission of the affected employee.         10       When the use of paid sick time is foresecable, the employee shall make a good-faith effort to provide notice of the need for such time to the employer.         11       (c) When the use of paid sick time.         12       (c) An employer may not require, as a condition of providing paid sick time under this act, that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick time.         13       (d) An employee from an employee upon the employee's termination, resignation, resignation, indiverse to the separation from employment for accrued paid sick days that have not been used.         14       (f) Nothing in this section shall be construed to discurage employers from adopting or retaining paid sick time policies more generous than policies that comply with the requirements of this section, and onothing in this section shall be construed to	1		violation of section 1177 of the Social Secu	rity Act or the regulations
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<ul> <li>effort to provide notice of the need for such time to the employer in advance of the use of the sick time and shall make a reasonable effort to schedule the use of paid sick time in a manner that does not unduly disrupt the operations of the employer.</li> <li>(d) An employer may not require, as a condition of providing paid sick time under this act, that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick time.</li> <li>(e) Nothing in this section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employent for accrued paid sick days that have not been used.</li> <li>(f) Nothing in this section shall be construed to discourage employers from adopting or retaining paid sick time policies more generous than policies that comply with the requirements of this section, and nothing in this section shall be construed to diminish the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan that provides greater paid sick time leave rights to employees than the rights established under this section.</li> <li>(g) This act provides minimum requirements pertaining to paid sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, agreement, or standard that provides for greater accrual or use by employees of sick time, whether paid or unpaid, or that extends other protections to employees.</li> <li>(h) Employers who have a paid time-off leave policy shall not be required to modify that policy, offers an employee the option, at the employee's discretion, to take paid sick time against employees shall give notice (i) that employees are entitled to paid sick time, (ii) of the amount of paid sick time as required by this Article is denied by the empl</li></ul>	11		the affected employee.	
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	50		* *	ered to hold hearings and to

51 institute civil proceedings hereunder.

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1	(b) The Commissioner or the Commissioner's authorized representative s	shall have power
2	to administer oaths and examine witnesses, issue subpoenas, compel the attenda	
3	and the production of papers, books, accounts, records, payrolls, and docu	
4	depositions and affidavits in any proceeding hereunder.	<i>i</i>
5	(c) Any employer who violates the provisions of this Article shall	be liable to the
6	employee or employees affected in the amount of their unpaid sick time as the c	
7	interest at the legal rate set forth in G.S. 24-1 from the date each amount first ca	
8	(d) In addition to the amounts awarded pursuant to subsection (c) of this s	
9	shall award liquidated damages in an amount equal to the amount found to be du	
10	subsection (c) of this section, provided that if the employer shows to the satisfact	tion of the court
11	that the act or omission constituting the violation was in good faith and that the	
12	reasonable grounds for believing that the act or omission was not a violation of	
13	court may, in its discretion, award no liquidated damages or may award any amo	
14	damages not exceeding the amount found due as provided in subsection (c) of the	_
15	(e) Action to recover such liability may be maintained in the General Co	ourt of Justice by
16	any one or more employees.	
17	(f) The court, in any action brought under this Article, may, in addition	to any judgment
18	awarded to the plaintiff, order costs and fees of the action and reasonable attor	rneys' fees to be
19	paid by the defendant. The court may order costs and fees of the action and reason	onable attorneys'
20	fees to be paid by the plaintiff if the court determines that the action was frivolo	ous.
21	(g) The Commissioner may determine and supervise the payment of t	he amounts due
22	under this section, including interest at the legal rate set forth in G.S. 24-1 from	m the date each
23	amount first came due, and the agreement to accept such amounts by the	
24	constitute a waiver of the employee's right to bring an action under subsection (e	
25	(h) Actions under this Article must be brought within two years pursuan	
26	(i) The rights and remedies created by this Article are supplementary	y to all existing
27	common law and statutory rights and remedies.	
28	" <u>§ 95-31.8. Rules.</u>	
29	The Commissioner of Labor shall adopt rules to implement this Article.	
30	" <u>§ 95-31.9. Severability.</u>	
31	The provisions of this Article shall be severable, and if any phrase, clau	
32	provision is declared to be invalid or is preempted by federal law or regulation	n, the validity of
33	the remainder of this Article shall not be affected thereby."	
34 25	<b>SECTION 2.</b> G.S. 95-241(a) reads as rewritten:	
35	"(a) No person shall discriminate or take any retaliatory action again	1 1
36 37	because the employee in good faith does or threatens to do any of the following	
38	(1) File a claim or complaint, initiate any inquiry, investigat proceeding or other action, or testify or provide informatio	-
30 39	with respect to any of the following:	in to any person
39 40		
40	<ul> <li>a. Chapter 97 of the General Statutes.</li> <li>b. Article 2A Article 2A, Article 3A, or Article 16 of this</li> </ul>	is Chapter
42	c. Article 2A of Chapter 74 of the General Statutes.	is Chapter.
43	d. G.S. 95-28.1.	
44	e. Article 16 of Chapter 127A of the General Statutes.	
45	f. G.S. 95-28.1A.	
46	g. Article 52 of Chapter 143 of the General Statutes.	
47	h. Article 5F of Chapter 90 of the General Statutes.	
48	(2) Cause any of the activities listed in subdivision (1) of this	subsection to be
49	initiated on an employee's behalf.	
50	(3) Exercise any right on behalf of the employee or any other em	ployee afforded
51	by Article 2A. Article 2A, Article 3A, or Article 16 of this Ch	

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1		2A of Chapter 74 of the General Statutes, or by Article 52 of	Chapter 143 of
2		the General Statutes.	
3	(4)	Comply with the provisions of Article 27 of Chapter 7B	of the General
4		Statutes.	
5	(5)	Exercise rights under Chapter 50B. Actions brought under the	this subdivision
6		shall be in accordance with the provisions of G.S. 50B-5.5."	
7	SEC	<b>TION 3.</b> This act becomes effective July 1, 2019, applies of	only to covered
8	employment on or after that date, and does not apply to any collective bargaining agreement		
9	entered into befor	ore July 1, 2019, that is still in effect on that date.	