
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. **1109** Session of
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INTRODUCED BY FARNESE, MUTH, SCHWANK, A. WILLIAMS, FONTANA,
KEARNEY, TARTAGLIONE, COSTA, COLLETT, LEACH, BOSCOLA, STREET,
HUGHES, BREWSTER, L. WILLIAMS AND DINNIMAN, APRIL 13, 2020

REFERRED TO LABOR AND INDUSTRY, APRIL 13, 2020

AN ACT

1 Establishing public health emergency leave.

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12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 CHAPTER 1

15 PRELIMINARY PROVISIONS

16 Section 101. Short title.

17 This act shall be known and may be cited as the Public Health
18 Emergency Leave Act.

19 Section 102. Definitions.

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

23 "Department." The Department of Labor and Industry of the
24 Commonwealth.

25 "Employee." An individual who is employed by an employer
26 doing business in this Commonwealth.

27 "Employer." As defined in the act of January 17, 1968
28 (P.L.11, No.5), known as The Minimum Wage Act of 1968.

29 "Family member." Any of the following:

30 (1) A biological, adopted or foster child, stepchild or

1 legal ward, a child of a domestic partner or a child to whom
2 the employee stands in loco parentis, regardless of age.

3 (2) A biological, foster, stepparent or adoptive parent
4 or legal guardian of an employee or an employee's spouse or
5 domestic partner or a person who stood in loco parentis when
6 the employee or the employee's spouse or domestic partner was
7 a minor child.

8 (3) A person to whom the employee is legally married
9 under the laws of any state or a domestic partner of an
10 employee as registered under the laws of any state or
11 political subdivision.

12 (4) A grandparent, grandchild or sibling, whether of a
13 biological, foster, adoptive or step relationship, of the
14 employee or the employee's spouse or domestic partner.

15 (5) A person for whom the employee is responsible for
16 providing or arranging care, including helping that
17 individual obtain diagnostic, preventive, routine or
18 therapeutic health treatment.

19 (6) Any other individual related by blood or whose close
20 association with the employee is the equivalent of a family
21 relationship.

22 "Health care professional." A health care center or person,
23 including a corporation, university or other educational
24 institution licensed or approved by the Commonwealth to provide
25 health care or professional medical services as a physician,
26 certified nurse midwife, podiatrist, hospital, nursing home or
27 birth center or any other person licensed under Federal or State
28 law to provide medical or emergency services.

29 "Paid sick time." Time that is compensated at the same
30 hourly rate and with the same benefits, including health care

1 benefits, as the employee normally earns during hours worked and
2 is provided by an employer to an employee for the purposes of
3 section 301, but in no case shall this hourly amount be less
4 than the hourly amount under The Minimum Wage Act of 1968.

5 "Public health emergency." A threat to public health or
6 sufficient threat to be the subject of an emergency or disaster
7 declaration made by a Federal, State or local official with the
8 authority to declare the emergency.

9 "Public health emergency leave." Paid sick leave which must
10 be provided by an employer to an employee affected by a public
11 health emergency.

12 "Retaliatory personnel action." Denial of a right guaranteed
13 under this act or any actual or threatened discharge,
14 suspension, demotion, reduction of hours, reporting an
15 employee's suspected citizenship or immigration status, or the
16 suspected citizenship or immigration status of a family member
17 of the employee to a Federal, State or local department, or any
18 other adverse action against an employee for the exercise of any
19 right guaranteed herein, including any sanctions against an
20 employee who is the recipient of public benefits for rights
21 guaranteed under this act. Retaliation includes interference
22 with or punishment for in any manner participating in or
23 assisting an investigation, proceeding or hearing under this
24 act.

25 CHAPTER 3

26 EMERGENCY LEAVE

27 Section 301. Establishment of public health emergency leave.

28 (a) Requirement.--Each employer of the Commonwealth shall
29 provide paid sick time to employees whose residence or
30 employment is affected by a public health emergency. An employer

1 shall provide the paid sick time in addition to any other leave
2 benefits available to employees by contract or policy. Public
3 health emergency leave shall be made available in accordance
4 with the following:

5 (1) An employee who normally works 40 or more hours in a
6 week shall be provided at least 112 hours of paid sick time.

7 (2) An employee who works fewer than 40 hours in a week
8 shall be provided an amount of paid sick time equal to the
9 amount of time the employee is otherwise scheduled to work or
10 works on average in a 14-day period.

11 (b) Immediate provisions.--The public health emergency leave
12 required in subsection (a) shall be provided to employees
13 immediately for the use of employees under section 304,
14 regardless of how long the employee has been employed.

15 (c) Usage.--An employee may use public health emergency
16 leave from the first date of the emergency or disaster
17 declaration until two weeks following the termination of the
18 declaration.

19 Section 302. Notice.

20 Immediately after a declaration of a public health emergency
21 within the Commonwealth, an employer shall provide notice to all
22 employees of the eligibility to receive public health emergency
23 leave if the employee's residence or place of employment is part
24 of the area affected by the public health emergency.

25 Section 303. Ongoing threat.

26 If a public health emergency was declared before and remains
27 in effect on the effective date of this act, public health
28 emergency leave under this act shall be:

29 (1) provided to employees under section 301 on the
30 effective date of this section; and

1 (2) made available retroactively to employees employed
2 on the effective date of this section.

3 Section 304. Use of public health emergency leave.

4 (a) Uses.--Nothing in this act shall be construed to require
5 an employee to use public health emergency leave if the employee
6 is able to perform work remotely. An employee may elect to use
7 public health emergency leave for any of the following purposes
8 regardless of the ability to work remotely:

9 (1) To care for oneself because:

10 (i) The employee is diagnosed with a communicable
11 illness related to a public health emergency.

12 (ii) The employee is experiencing symptoms of a
13 communicable illness related to a public health
14 emergency.

15 (iii) To seek or obtain medical diagnosis, care or
16 treatment if experiencing symptoms of a communicable
17 illness related to a public health emergency.

18 (iv) To seek preventive care concerning a
19 communicable illness related to a public health
20 emergency.

21 (2) To care for a family member who:

22 (i) Is self-isolating due to being diagnosed with a
23 communicable illness related to a public health
24 emergency.

25 (ii) Is self-isolating due to experiencing symptoms
26 of a communicable illness related to a public health
27 emergency.

28 (iii) Needs medical diagnosis, care or treatment if
29 experiencing symptoms of a communicable illness related
30 to a public health emergency.

1 (iv) Is seeking preventive care concerning a
2 communicable illness related to a public health
3 emergency.

4 (3) To adhere to a determination by a Federal, State or
5 local public official, a health authority having jurisdiction
6 or a health care provider that the employee's presence on the
7 job or in the community would jeopardize the health of others
8 because of the employee's exposure to a communicable illness
9 or exhibiting of symptoms, regardless of whether the employee
10 has been diagnosed with a communicable illness.

11 (4) To provide care to a family member due to a
12 determination by a Federal, State or local public official, a
13 health authority having jurisdiction or a health care
14 provider that the family member's presence on the job or in
15 the community would jeopardize the health of others because
16 of the family member's exposure to a communicable illness or
17 exhibiting of symptoms, regardless of whether the family
18 member has been diagnosed with a communicable illness.

19 (5) Closure of the employee's place of business by order
20 of a Federal, State or local public official or health
21 authority or at the discretion of the employer due to a
22 public health emergency.

23 (6) An employee's inability to work or telework while
24 under an individual or general Federal, State or local
25 quarantine or isolation order, including a shelter-in-place
26 order, related to the public health emergency.

27 (7) Care of a child or other family member when the care
28 provider of the individual is unavailable due to a public
29 health emergency or if the child's or family member's school
30 or place of care has been closed by a Federal, State or local

1 public official or at the discretion of the school or place
2 of care due to a public health emergency, including if a
3 school or place of care is physically closed but providing
4 instruction remotely.

5 (b) Notice.--The employee shall provide notice to the
6 employer of the need for paid sick time as practicable only when
7 the need for paid sick time is foreseeable and the employer's
8 place of business has not been closed.

9 (c) Limitations.--An employer may not require, as a
10 condition of an employee's taking paid sick time, that the
11 employee search for or find a replacement worker to cover the
12 hours during which the employee is using paid sick time.

13 (d) Increments.--Paid sick time may be used in the smaller
14 of hourly increments or the smallest increment that the
15 employer's payroll system uses to account for absences or use of
16 other time.

17 (e) Documentation.--Documentation may not be required for
18 paid sick time under this act.

19 Section 305. Additional leave.

20 If an employee is entitled to paid sick time under Federal
21 law for any of the purposes under this act, paid sick time under
22 this act shall be in addition to that paid sick leave to the
23 extent permitted by Federal law.

24 Section 306. Subrogation.

25 An employer may not require an employee to use other paid
26 leave provided by the employer to the employee before the
27 employee uses the public health emergency leave under this act.

28 Section 307. Overtime.

29 Employees who are exempt from overtime requirements under 29
30 U.S.C. § 213(a)(1) (relating to exemptions) of the Fair Labor

1 Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. § 201 et seq.)
2 will be assumed to work 40 hours in each work week for purposes
3 of paid sick time under this act unless their normal work week
4 is less than 40 hours, in which case paid sick time under this
5 act is based upon that normal work week.

6 Section 308. Termination.

7 Nothing in this section shall be construed as requiring
8 financial or other reimbursement to an employee from an employer
9 upon the employee's termination, resignation, retirement or
10 other separation from employment for paid sick time that has not
11 been used.

12 CHAPTER 5

13 ENFORCEMENT

14 Section 501. Duties of department.

15 The department shall:

16 (1) Have authority to enforce this act.

17 (2) Be authorized to coordinate implementation and
18 enforcement of this act.

19 (3) Promulgate appropriate guidelines or regulations for
20 this act.

21 (4) Post the regulations and information about the
22 rights and duties of employees and employers under this act
23 on the department's publicly accessible Internet website.

24 Section 502. Enforcement.

25 This act shall be enforced under section 9 of the act of
26 January 17, 1968 (P.L.11, No.5), known as The Minimum Wage Act
27 of 1968.

28 Section 503. Exercise of rights protected and retaliation
29 prohibited.

30 (1) It shall be unlawful for an employer or any other

1 person to interfere with, restrain or deny the exercise of or
2 the attempt to exercise any right protected under this act.

3 (2) An employer may not take retaliatory personnel
4 action or discriminate against an employee or former employee
5 because the person has exercised rights protected under this
6 act. These rights include the following:

7 (i) The right to request or use paid sick time under
8 this act.

9 (ii) The right to file a complaint with the
10 department or courts or inform any person about any
11 employer's alleged violation of this act.

12 (iii) The right to participate in an investigation,
13 hearing or proceeding or cooperate with or assist the
14 department in its investigations of alleged violations of
15 this act.

16 (iv) The right to inform any person of his or her
17 potential rights under this act.

18 (3) It shall be unlawful for an employer's absence
19 control policy to count paid sick time taken under this act
20 as an absence that may lead to or result in discipline,
21 discharge, demotion, suspension or any other adverse action.

22 (4) Protections of this section shall apply to any
23 person who mistakenly, but in good faith, alleges violations
24 of this act.

25 (5) There shall be a rebuttable presumption of unlawful
26 retaliatory personnel action under this section whenever an
27 employer takes adverse action against a person within 90 days
28 of when that person:

29 (i) files a complaint with the department or a court
30 alleging a violation of any provision of this act;

1 (ii) informs any person about an employer's alleged
2 violation of this act;

3 (iii) cooperates with the department or other
4 persons in the investigation or prosecution of any
5 alleged violation of this act;

6 (iv) opposes any policy, practice or act that is
7 unlawful under this act; or

8 (v) informs any person of his or her rights under
9 this act.

10 Section 504. Notice and posting.

11 (a) Notice.--Unless an employer's place of business is
12 closed due to a public health emergency, an employer shall give
13 employees written notice of their rights under this act, at the
14 commencement of employment or by the effective date of this
15 section, whichever is later, and annually thereafter. The notice
16 shall contain the following information:

17 (1) That employees are entitled to public health
18 emergency leave.

19 (2) The amount of public health emergency leave
20 guaranteed under this act.

21 (3) The terms of use of public health emergency leave
22 guaranteed under this act.

23 (4) That retaliatory personnel action against employees
24 who request or use public health emergency leave is
25 prohibited.

26 (5) That each employee has the right to file a complaint
27 or bring a civil action if public health emergency leave as
28 required by this act is denied by the employer or the
29 employee is subjected to retaliatory personnel action for
30 requesting or taking public health emergency leave.

1 (6) The contact information for the department where
2 questions about rights and responsibilities under this act
3 can be answered.

4 (b) Languages.--The notice required in subsection (a) shall
5 be in English, Spanish and any other language that is the first
6 language spoken by at least 20% of the employer's workforce, if
7 the notice has been translated and provided by the department.

8 (c) Amount available.--The amount of paid sick time
9 available to the employee, the amount of paid sick time taken by
10 the employee to date in the year and the amount of pay the
11 employee has received as paid sick time shall be recorded in or
12 on an attachment to the employee's regular paycheck.

13 (d) Display.--Unless an employer's place of business is
14 closed due to a public health emergency, an employer shall
15 display a poster that contains the information required in
16 subsection (a) in a conspicuous and accessible place in each
17 establishment where the employees are employed. In cases where
18 the employer does not maintain a physical workplace, or an
19 employee telecommutes or performs work through a web-based
20 platform, notification shall be sent via electronic
21 communication or a conspicuous posting on the web-based
22 platform. The poster displayed shall be in English, Spanish and
23 any language that is deemed appropriate by the department, if
24 the poster has been provided by the department.

25 (e) Templates.--The department shall create and make
26 available to employers model notices and posters that contain
27 the information required under subsection (a) for employers' use
28 in complying with subsections (a) and (d).

29 (f) Waiver.--If an employee's business is closed due to a
30 public health emergency, the notice and posting requirements

1 under subsections (a) and (d) shall be waived for the period in
2 which the place of business is closed.

3 (g) Violations.--An employer who willfully violates the
4 notice and posting requirements of this section shall be subject
5 to a civil fine in an amount not to exceed \$100 for each
6 separate offense.

7 CHAPTER 7

8 ADMINISTRATION

9 Section 701. Employer records.

10 (a) Records.--For a period of three years, an employer shall
11 retain records documenting hours worked by employees, paid sick
12 time and public health emergency leave taken by employees and
13 allow the department access to these records, with appropriate
14 notice and at a mutually agreeable time, to monitor compliance
15 with the requirements of this act.

16 (b) Presumption.--If an issue arises as to an employee's
17 entitlement to public health emergency leave under this section,
18 if the employer does not maintain or retain adequate records
19 documenting hours worked by the employee, paid sick time and
20 public health emergency leave taken by the employee or does not
21 allow the department reasonable access to such records, it shall
22 be presumed that the employer has violated the act, absent clear
23 and convincing evidence otherwise.

24 Section 702. Confidentiality and nondisclosure.

25 Any health or safety information possessed by an employer
26 regarding an employee or employee's family member must:

27 (1) be maintained on a separate form and in a separate
28 file from other personnel information;

29 (2) be treated as confidential medical records; and

30 (3) not be disclosed except to the affected employee or

1 with the express permission of the affected employee.

2 Section 703. No effect on more generous policies or laws.

3 Nothing in this act shall be construed as:

4 (1) Discouraging or prohibiting an employer from the
5 adoption or retention of a paid sick time policy more
6 generous than the one required in this act.

7 (2) Diminishing the obligation of an employer to comply
8 with a contract, collective bargaining agreement, employment
9 benefit plan or other agreement providing more generous paid
10 sick time to an employee than required under this act.

11 (3) Diminishing the rights of public employees regarding
12 paid sick time or use of paid sick time as provided in the
13 laws of this Commonwealth relating to public employees.

14 (4) Superseding any provision of a local law that
15 provides greater rights to paid sick time than the rights
16 established under this act.

17 Section 704. Other legal requirements.

18 This act provides minimum requirements pertaining to paid
19 sick time and may not be construed to preempt, limit or
20 otherwise affect the applicability of any other law, regulation,
21 requirement, policy or standard that provides for a greater
22 amount, accrual or use by employees of paid sick time or that
23 extends other protections to employees.

24 Section 705. Public education and outreach.

25 The department shall develop and implement a multilingual
26 outreach program to inform employees, employers, parents, elder
27 care providers and persons who are under the care of a health
28 care provider about the availability of public health emergency
29 leave under this act.

30 Section 706. Severability.

1 If any provision of this act or application thereof to any
2 person or circumstance is judged invalid, the invalidity shall
3 not affect other provisions or applications of the act which can
4 be given effect without the invalid provision or application,
5 and to this end the provisions of this act are declared
6 severable.

7 Section 707. Effective date.

8 This act shall take effect immediately.