



House of Representatives

General Assembly

File No. 67

January Session, 2009

Substitute House Bill No. 6187

House of Representatives, March 16, 2009

The Committee on Labor and Public Employees reported through REP. RYAN of the 139th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT MANDATING EMPLOYERS PROVIDE PAID SICK LEAVE TO EMPLOYEES.

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

1 Section 1. (NEW) (*Effective January 1, 2010*) As used in this section
2 and sections 2 to 5, inclusive, of this act:

3 (1) "Child" means a biological, adopted or foster child, stepchild or
4 legal ward of an employee;

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

11 (3) "Employee" means any person, other than a day or temporary
12 worker, engaged in service to an employer in the business of the

13 employer who is (A) paid on an hourly basis, or (B) not exempt from
14 the minimum wage and overtime compensation requirements of the
15 Fair Labor Standards Act of 1938 and the regulations promulgated
16 thereunder, as from time to time amended;

17 (4) "Employer" means any person, firm, business, educational
18 institution, nonprofit agency, corporation, limited liability company or
19 other entity that employs fifty or more persons in the state;

20 (5) "Family violence" has the same meaning as provided in section
21 46b-38a of the general statutes;

22 (6) "Retaliatory personnel action" means any termination,
23 suspension, constructive discharge, demotion, unfavorable
24 reassignment, refusal to promote, disciplinary action or other adverse
25 employment action taken by an employer against an employee; and

26 (7) "Sexual assault" means any act that constitutes a violation of
27 section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b or 53c-73c of
28 the general statutes.

29 Sec. 2. (NEW) (*Effective January 1, 2010*) (a) Each employer shall
30 provide paid sick leave annually to each of such employer's employees
31 in the state. Such paid sick leave shall accrue (1) from the
32 commencement of an employee's employment, (2) at a rate of one hour
33 of paid sick leave for each forty hours worked by an employee, and (3)
34 in one-hour increments up to a maximum of fifty-two hours per year.

35 (b) An employee shall be entitled to the use of accrued paid sick
36 leave beginning on the one-hundred-twentieth day after the
37 employee's first day of employment, unless the employer agrees to an
38 earlier date. Each employee shall be entitled to carry over a maximum
39 of fifty-two hours of unused accrued paid sick leave from the current
40 year, whether calendar or fiscal, to the following year. Each employee
41 shall be entitled to use a maximum of fifty-two hours of accrued paid
42 sick leave per year.

43 (c) Any employer that offers employees paid leave that may be used

44 for the same purpose as paid sick leave under this section and section 3
45 of this act shall be deemed to be in compliance with this section.

46 (d) Each employer shall pay each employee for paid sick leave at a
47 pay rate equal to the greater of either (1) the normal hourly wage for
48 that employee, or (2) the minimum fair wage rate under section 31-58
49 of the general statutes in effect for the pay period during which the
50 employee used paid sick leave.

51 (e) Nothing in sections 1 to 5, inclusive, of this act shall be construed
52 to (1) prevent employers from providing more paid sick leave than is
53 required under this section and section 3 of this act, (2) diminish any
54 rights provided to any employee under a collective bargaining
55 agreement, or (3) preempt or override the terms of any collective
56 bargaining agreement effective prior to January 1, 2010.

57 (f) Notwithstanding the provisions of sections 1 to 5, inclusive, of
58 this act and upon the mutual consent of the employee and employer,
59 an employee that chooses to work additional hours or shifts during the
60 same or following pay period, in lieu of hours or shifts missed, shall
61 not use paid sick leave, provided the employer does not require the
62 employee to work such additional hours or shifts.

63 Sec. 3. (NEW) (*Effective January 1, 2010*) (a) An employer shall permit
64 an employee to use paid sick leave:

65 (1) For (A) an employee's illness, injury or health condition, (B) the
66 medical diagnosis, care or treatment of an employee's mental or
67 physical illness, injury or health condition, or (C) preventative medical
68 care for an employee;

69 (2) For care of a child with a mental or physical illness, injury or
70 health condition that needs medical diagnosis, care, treatment of an
71 illness or condition or needs preventative medical care; or

72 (3) Where an employee is a victim of family violence or sexual
73 assault (A) for medical care or psychological or other counseling for
74 physical or psychological injury or disability, (B) to obtain services

75 from a victim services organization, (C) to relocate due to such family
76 violence or sexual assault, or (D) to participate in any civil or criminal
77 proceedings related to or resulting from such family violence or sexual
78 assault.

79 (b) If an employee's need to use paid sick leave is foreseeable, an
80 employer may require advance notice, not to exceed seven days prior
81 to the date such leave is to begin, of the intention to use such leave. If
82 an employee's need for such leave is not foreseeable, an employer may
83 require an employee to give notice of such intention as soon as
84 practicable. For paid sick leave of three or more consecutive days, an
85 employer may require reasonable documentation that such leave is
86 being taken for the purpose permitted under subsection (a) of this
87 section. If such leave is permitted under subdivisions (1) and (2) of said
88 subsection (a), documentation signed by a health care provider who is
89 treating the employee or the employee's child indicating the need for
90 the number of days of such leave shall be considered reasonable
91 documentation. If such leave is permitted under subdivision (3) of said
92 subsection (a), a court record or documentation signed by an employee
93 or volunteer working for a victim services organization, an attorney, a
94 police officer or other counselor involved with the employee shall be
95 considered reasonable documentation.

96 (c) Nothing in sections 1 to 5, inclusive, of this act shall be deemed
97 to require any employer to provide paid sick leave for an employee's
98 leave for any purpose other than those described in this section.

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

103 Sec. 4. (NEW) (*Effective January 1, 2010*) (a) No employer shall take
104 retaliatory personnel action or discriminate against an employee
105 because the employee (1) requests or uses paid sick leave in
106 accordance with sections 2 and 3 of this act, or (2) files a complaint
107 with the Labor Commissioner alleging the employer's violation of

108 sections 2 to 5, inclusive, of this act. The Labor Commissioner shall
109 administer this section within available appropriations.

110 (b) Any employer who is found by the Labor Commissioner, by a
111 preponderance of the evidence, to have violated the provisions of
112 sections 2 to 5, inclusive, of this act shall be liable to the Labor
113 Department for a civil penalty of six hundred dollars for each
114 violation. The Labor Commissioner may award the employee all
115 appropriate relief, including rehiring or reinstatement to the
116 employee's previous job, payment of back wages and reestablishment
117 of employee benefits to which the employee otherwise would have
118 been eligible if the employee had not been subject to such retaliatory
119 personnel action or discriminated against. Any party aggrieved by the
120 decision of the commissioner may appeal the decision to the Superior
121 Court in accordance with the provisions of chapter 54 of the general
122 statutes.

123 Sec. 5. (NEW) (*Effective January 1, 2010*) Each employer subject to the
124 provisions of section 2 of this act shall, at the time of hiring, provide
125 notice to each employee (1) of the employee's entitlement to sick leave,
126 the amount of sick leave provided and the terms under which sick
127 leave may be used, (2) that retaliation by the employer against the
128 employee for requesting or using sick leave is prohibited, and (3) that
129 the employee has a right to file a complaint with the Labor
130 Commissioner for any violation of sections 2 to 5, inclusive, of this act.
131 Employers may comply with the provisions of this section by
132 displaying a poster in a conspicuous place, accessible to employees, at
133 the employer's place of business that contains the information required
134 by this section in both English and Spanish. The Labor Commissioner
135 may adopt regulations, in accordance with chapter 54 of the general
136 statutes, to establish additional requirements concerning the means by
137 which employers shall provide such notice. The Labor Commissioner
138 shall administer this section within available appropriations.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>January 1, 2010</i>	New section
Sec. 2	<i>January 1, 2010</i>	New section
Sec. 3	<i>January 1, 2010</i>	New section
Sec. 4	<i>January 1, 2010</i>	New section
Sec. 5	<i>January 1, 2010</i>	New section

LAB *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Regional Comm.-Tech. Colleges; CT State University System	GF - Cost	500,000	500,000
Labor Dept.	GF - Potential Cost	116,900	116,900
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Potential Cost	29,700	29,700
Various State Agencies	Various - Cost	See Below	See Below
Labor Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 10 \$	FY 11 \$
Various Municipalities	STATE MANDATE - Cost	See Below	See Below

Explanation

The bill will result in a cost to the state. The bill requires employers with 50 or more employees to provide their employees, with certain exemptions, with paid sick leave. Day and temporary workers are not covered under the bill.

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller on an actual cost basis. The following is provided for estimated costs associated with additional personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 25.43%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/08 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 10 and FY 11. Therefore, new positions will not impact the state's pension contribution until FY 12 after the next scheduled certification on 6/30/2010.

The bill results in a cost to the Regional Community Technical Colleges and the Connecticut State University System of approximately \$500,000 per year by extending sick leave coverage to part-time personnel.

It is not known how many other various state and municipal employees would be impacted by this bill; however, full-time and certain part-time employees (typically those working 20 or more hours per week) currently receive paid sick leave. The fiscal impact to various state agencies and municipalities is the cost of the paid sick leave benefit. For example, if a part-time employee earning \$15 per hour accrues, and uses, 20 hours of paid sick leave in a year, the cost to the state or municipality for this one employee's benefit is \$300.²

Employees may file a complaint with the Department of Labor if their employer violates any of the provisions of Sections 2 to 5 of the bill. This is expected to increase the number of complaints regarding wage and hour information and may require an additional wage investigator (annual salary of approximately \$49,500 and fringe benefits of \$12,600) in the Wage and Workplace Standards Division.

Currently, the department reviews approximately 100 cases annually for probable cause hearings regarding the Family Medical Leave Act, resulting in approximately 20 hearings per year. The number of probable cause hearings is expected to increase with the passage of the bill and may require an additional staff attorney (annual average salary of approximately \$67,400 and fringe benefits of \$17,100).

The bill specifies that the Labor Commissioner implement the provisions of the bill within available appropriations. With passage of the bill, the Department of Labor would either (1) re-allocate existing funding for this purpose from another program; (2) incur additional costs; or (3) delay or not implement this program due to lack of funding.

² \$15 hourly wage x 20 paid sick leave hours earned = \$300.

The Labor Commissioner's decision to reward appropriate relief for a complaint may be appealed in Superior Court. Any administrative appeals under Section 4 of the bill could be accommodated by the Judicial Department and the Office of the Attorney General without requiring additional resources.

The bill could also result in a minimal revenue gain. Employers who violate Sections 2 to 5 of the bill will be liable to the Department of Labor for a civil penalty of \$600 for each violation.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 6187*****AN ACT MANDATING EMPLOYERS PROVIDE PAID SICK LEAVE TO EMPLOYEES.*****SUMMARY:**

This bill requires all employers with 50 or more employees in the state to provide their employees with paid sick leave accruing at a rate of one hour for each 40 hours worked. Once employed for 120 days, employees are eligible to use the time and may use up to 52 hours of accrued sick leave a year. The leave can be used for an employee's or the employee's child's illness or injury, treatment of an illness or injury, diagnosis, and preventive medical care. It can also be used for reasons related to the employee being a victim of family violence or sexual assault. Current law does not require employers to provide sick leave, whether paid or unpaid.

The bill bans employers from taking retaliatory or discriminatory action against an employee because the employee requests or uses paid sick leave as the bill provides.

It allows complaints to be filed with the labor commissioner, who must administer the law within available appropriations. Employers who violate the bill are liable to the Labor Department for a civil penalty of \$600 for each violation. The commissioner may award appropriate relief, including rehiring or payment of back wages. Parties may appeal the commissioner's decision to Superior Court.

The bill specifies that it does not preempt the terms of any union contract that is effective before January 1, 2010 or diminish any rights provided to any employee under a union contract.

It requires employers to provide notice to covered employees of the

bill's provisions and all rights due to the employees. The commissioner may develop related regulations requiring employers to provide additional means of notifying employees.

EFFECTIVE DATE: January 1, 2010

PAID SICK LEAVE (§ 2)

The bill requires employers to provide their employees with paid sick leave accruing, from the date of employment, at a rate of one hour for every 40 hours worked. It defines "employer" as any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, or any other entity, including public sector employers, that employs 50 or more workers in Connecticut.

Once employed for 120 days, employees are entitled to use the time and can use up to 52 hours of accrued sick leave per year. (Employers may allow them to use the sick leave sooner.) Each employee (1) can accrue up to 52 hours per year and (2) is entitled to carry over up to 52 hours of accrued paid sick leave from one year, whether calendar or fiscal, to the next year.

Any employer that offers employees paid leave that can be used for the same purposes and under the same conditions as sick leave under the bill is deemed to be compliant. It appears that in this case, the number of hours does not have to be the same as required by the bill.

The bill specifies that it does not prevent employers from providing a more generous paid leave policy than the bill requires.

Hourly Pay Rate for Sick Leave

The bill requires each employer to pay an employee for sick leave at a pay rate that is the greater of (1) the normal hourly wage for that employee or (2) the minimum hourly wage in effect for the period when the employee used paid sick leave.

Working "Catch up" Hours in Lieu of Sick Leave

The bill allows an employer and employee, by mutual agreement, to

have the employee work additional hours or shifts to catch up on time missed for sick leave in lieu of using accrued paid sick leave. The catch-up time must be in the same or following pay period, and the employer is prohibited from requiring the employee to work extra time instead of using paid sick leave.

COVERED EMPLOYEES (§ 1)

Under the bill, “employee” means anyone engaged in service to an employer in the employer’s business who is (1) paid at an hourly rate or (2) subject to the minimum wage and overtime compensation requirements of the 1938 federal Fair Labor Standards Act, as amended. Generally, managers who have authority to hire and fire staff, professional occupations (such as lawyers and physicians), and salespeople are exempt from overtime requirements.

The bill specifically exempts day and temporary workers from its provisions. Such a worker is defined as one who performs work for another on (1) a per diem basis or (2) an occasional or irregular basis for only the time required to complete the work, whether such individual is paid by the person for whom such work is performed or by an employment agency or temporary help service, as defined in statute.

PERMITTED USES (§ 3(A))

Under the bill, an employer must permit an employee to use paid sick leave for the following reasons:

1. an employee’s or the employee’s child’s illness, injury, or health condition;
2. the medical diagnosis, care, or treatment of such a condition; or
3. preventive medical care for an employee or the employee’s child.

“Child” is defined as a biological, adopted, or foster child, stepchild, or legal ward of the employee.

An employer must also allow an employee to use paid sick time when the employee is the victim of family violence or sexual assault:

1. for medical care or psychological or other counseling for physical or psychological injury or disability,
2. to obtain services from a victim services organization,
3. to relocate, or
4. to participate in any related civil or criminal legal proceedings.

The bill uses the existing statutory definitions for “family violence” and “sexual assault.”

It specifies that its provisions cannot be deemed to require an employer to provide paid sick leave for any other purpose than those stated in the bill.

PERMITTED EMPLOYEE REQUIREMENTS (§ 3(B))

The bill permits employers to place certain requirements on employees seeking to use paid sick leave under various circumstances. If the need to use paid sick leave is foreseeable, an employer can require advance notice of the intention to take leave not more than seven days before the date the leave is to begin. If the leave is not foreseeable, an employer can require an employee to give notice as soon as feasible.

For leave of three or more consecutive days, an employer can require reasonable documentation that the leave is being taken for the purposes permitted by the bill. Table 1 shows how the bill defines reasonable documentation.

Table 1: Documentation Needed for Sick Leave

<i>Type of leave</i>	<i>Documentation</i>
Mental or physical illness, treatment of an illness or injury, mental or physical diagnosis, or	Documentation signed by the health care provider treating the employee or the employee’s child

preventive medical care for the employee or the employee's child	and indicating the need for the number of days of such leave
Related to the employee being a victim of family violence or sexual assault	A court record or documentation signed by an employee or volunteer working for a victim services organization, an attorney, police officer, or other counselor involved with the employee

TERMINATION OF EMPLOYMENT (§ 3(D))

The bill does not provide for an employee to receive a payout of accrued but unused sick time upon the employee's termination from employment unless such a payment of accrued benefits is called for in the employment policy or the union contract.

RETALIATION PROHIBITED (§ 4(A))

The bill bans any employer from taking "retaliatory personnel action" or discriminating against an employee because the employee (1) requests or uses paid sick leave as provided in the bill or (2) files a complaint with the labor commissioner alleging an employer's violation of the bill.

The bill defines retaliatory personnel action as a termination, suspension, constructive discharge, demotion, unfavorable reassignment, refusal to promote, disciplinary action, or any other adverse employment action taken by an employer against an employee.

PENALTIES (§ 4(B))

Violators are liable to the Labor Department for a civil penalty of \$600 for each violation. The labor commissioner must find, by a preponderance of the evidence, that the employer violated the bill. The commissioner also may award appropriate relief, including rehiring or reinstating the person, back wages, and reestablishing employee benefits for which the employee would have been eligible if not for the retaliatory action or discrimination.

Aggrieved parties may appeal the commissioner's decision to Superior Court.

EMPLOYEE NOTICE (§ 5)

Each employer subject to the bill must provide notice to each employee at the time of hiring that:

1. the employee is entitled to sick leave, the amount of sick leave provided, and the terms under which sick leave may be used;
2. retaliation by the employer against the employee for requesting or using sick leave is prohibited; and
3. the employee has a right to file a complaint with the labor commissioner for any violation of the bill.

An employer can comply with this requirement by displaying a poster in a conspicuous place, accessible to employees, at the employer's place of business that contains the required information in English and Spanish. The bill authorizes the commissioner to adopt regulations to establish additional notice requirements.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 8 Nay 3 (03/03/2009)