



House of Representatives

General Assembly

File No. 981

January Session, 2009

Substitute House Bill No. 6187

House of Representatives, May 19, 2009

The Committee on Appropriations reported through REP. GERAGOSIAN of the 25th 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 engaged in service to an employer
12 in the business of the employer who is (A) paid on an hourly basis, or

13 (B) not exempt from the minimum wage and overtime compensation
14 requirements of the Fair Labor Standards Act of 1938 and the
15 regulations promulgated thereunder, as amended from time to time,
16 but shall not include day or temporary workers and employees of any
17 constituent unit of the state system of higher education, as defined in
18 section 10a-1 of the general statutes, who are part-time or adjunct
19 faculty members, university assistants working less than twenty hours
20 per week, educational assistants or other part-time professional
21 employees;

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

25 (5) "Family violence" has the same meaning as provided in section
26 46b-38a of the general statutes;

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

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

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

40 (b) An employee shall be entitled to the use of accrued paid sick
41 leave upon the completion of the employee's one thousand fortieth
42 hour of employment from the date of hire, unless the employer agrees
43 to an earlier date. Each employee shall be entitled to carry over a

44 maximum of fifty-two hours of unused accrued paid sick leave from
45 the current year, whether calendar or fiscal, to the following year. Each
46 employee shall be entitled to use a maximum of fifty-two hours of
47 accrued paid sick leave per year.

48 (c) An employer shall be deemed to be in compliance with this
49 section if the employer offers any other paid leave, or combination of
50 other paid leave that (1) may be used for the purposes of section 3 of
51 this act, and (2) is accrued in total at a rate equal to or greater than the
52 rate described in subsections (a) and (b) of this section. For the
53 purposes of this subsection, "other paid leave" may include, but is not
54 limited to, flextime, compensatory time, paid vacation, personal days
55 or paid time off.

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

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

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

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

75 (1) For (A) an employee's illness, injury or health condition, (B) the
76 medical diagnosis, care or treatment of an employee's mental or
77 physical illness, injury or health condition, or (C) preventative medical
78 care for an employee;

79 (2) For (A) a child's illness, injury or health condition, (B) the
80 medical diagnosis, care or treatment of a child's mental or physical
81 illness, injury or health condition, or (C) preventative medical care for
82 a child;

83 (3) Where an employee is a victim of family violence or sexual
84 assault (A) for medical care or psychological or other counseling for
85 physical or psychological injury or disability, (B) to obtain services
86 from a victim services organization, (C) to relocate due to such family
87 violence or sexual assault, or (D) to participate in any civil or criminal
88 proceedings related to or resulting from such family violence or sexual
89 assault.

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

107 (c) Nothing in sections 1 to 5, inclusive, of this act shall be deemed

108 to require any employer to provide paid sick leave for an employee's
109 leave for any purpose other than those described in this section.

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

114 Sec. 4. (NEW) (*Effective January 1, 2010*) (a) No employer shall take
115 retaliatory personnel action or discriminate against an employee
116 because the employee (1) requests or uses paid sick leave in
117 accordance with sections 2 and 3 of this act, or (2) files a complaint
118 with the Labor Commissioner alleging the employer's violation of
119 sections 2 to 5, inclusive, of this act. The Labor Commissioner shall
120 administer this section within available appropriations.

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

134 Sec. 5. (NEW) (*Effective January 1, 2010*) Each employer subject to the
135 provisions of section 2 of this act shall, at the time of hiring, provide
136 notice to each employee (1) of the employee's entitlement to sick leave,
137 the amount of sick leave provided and the terms under which sick
138 leave may be used, (2) that retaliation by the employer against the
139 employee for requesting or using sick leave is prohibited, and (3) that
140 the employee has a right to file a complaint with the Labor

141 Commissioner for any violation of sections 2 to 5, inclusive, of this act.
142 Employers may comply with the provisions of this section by
143 displaying a poster in a conspicuous place, accessible to employees, at
144 the employer's place of business that contains the information required
145 by this section in both English and Spanish. The Labor Commissioner
146 may adopt regulations, in accordance with chapter 54 of the general
147 statutes, to establish additional requirements concerning the means by
148 which employers shall provide such notice. The Labor Commissioner
149 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

APP *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 \$
Labor Dept.	GF - Potential Cost	58,450	116,900
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Potential Cost	14,850	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. The bill does not cover 1) day and temporary workers, and 2) certain state college and university employees, including part-time or adjunct faculty members and educational assistants.

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.

It is not known how many 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.

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

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

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. Current law does not require employers to provide sick leave, whether paid or unpaid. Employees are eligible for the benefit once they work 1,040 hours for an employer and accrue sick leave from the first day of work. They 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 an employee who is a victim of family violence or sexual assault.

Exempted from the bill are (1) day or temporary workers and (2) certain state college or university employees, including part-time or adjunct faculty members.

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

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 the employees. The commissioner may develop related regulations requiring employers to provide additional means of notifying employees.

EFFECTIVE DATE: January 1, 2010

§ 2 — PAID SICK LEAVE

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 1040 hours (40 hours a week for 26 weeks), employees are entitled to use accrued sick time. They can use up to 52 hours of accrued sick leave per year. 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.

Other Complying Leave

Any employer that offers employees other 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 in compliance. To be a complying plan the paid leave must be accrued at a rate equal to or greater than the rate the bill requires. Under the bill, "other paid leave" may include, but is not limited to, flextime, compensatory time, paid vacation, personal days, or paid time off.

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 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.

§ 1 — COVERED AND EXEMPT EMPLOYEES

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 exempts (1) day or temporary workers and (2) certain state college or university employees including part-time or adjunct faculty members.

It defines a “day or temporary worker” 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 by law.

The bill exempts the following employees of state colleges and universities: (1) part-time or adjunct faculty members, (2) university assistants who work less than 20 hours a week, and (3) educational

assistants or other part-time professional employees.

§ 3(A) — PERMITTED USES

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 proceeding.

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.

§ 3(B) — PERMITTED EMPLOYEE REQUIREMENTS

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 preventive medical care for the employee or the employee's child	Documentation signed by the health care provider treating 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

§ 4(A) — RETALIATION PROHIBITED

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 violated 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.

§ 4(B) — PENALTIES

Violators are liable to the Labor Department for a civil penalty of \$600 for each violation. Before imposing a penalty, 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.

§ 5 — EMPLOYEE NOTICE

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 that contains the required information in English and Spanish in a conspicuous place, accessible to employees, at the employer's place of business. The bill authorizes the commissioner to adopt regulations to establish additional notice requirements.

BACKGROUND***Legislative History***

The House referred the bill (File 67) to the Appropriations Committee on May 5. The committee reported out a substitute that added the exemption of certain higher education employees, changed

the qualifying work period to 1,040 hours added specified what constitutes other complying leave provided by an employer.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 8 Nay 3 (03/03/2009)

Judiciary Committee

Joint Favorable

Yea 26 Nay 16 (04/27/2009)

Appropriations Committee

Joint Favorable Substitute

Yea 34 Nay 19 (05/11/2009)