



# Senate

General Assembly

**File No. 80**

February Session, 2010

Substitute Senate Bill No. 63

*Senate, March 23, 2010*

The Committee on Labor and Public Employees reported through SEN. PRAGUE of the 19th Dist., Chairperson of the Committee on the part of the Senate, 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, 2011*) 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  
12 employer in the business of the employer, who has worked a

13 minimum of five hundred twenty hours for an employer within the  
14 past twelve months and is (A) paid on an hourly basis, or (B) not  
15 exempt from the minimum wage and overtime compensation  
16 requirements of the Fair Labor Standards Act of 1938 and the  
17 regulations promulgated thereunder, as amended from time to time.  
18 Employee does not include (i) day or temporary workers, and (ii)  
19 employees of any constituent unit of the state system of higher  
20 education, as defined in section 10a-1 of the general statutes, who are  
21 part-time or adjunct faculty members, university assistants working  
22 less than twenty hours per week, educational assistants or other part-  
23 time professional employees;

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

27 (5) "Family violence" has the same meaning as provided in section  
28 46b-38a of the general statutes;

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

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

36 Sec. 2. (NEW) (*Effective January 1, 2011*) (a) Each employer shall  
37 provide paid sick leave annually to each of such employer's employees  
38 in the state. Such paid sick leave shall accrue (1) beginning January 1,  
39 2011, or for an employee hired after said date, beginning on the  
40 employee's date of employment, (2) at a rate of one hour of paid sick  
41 leave for each forty hours worked by an employee, and (3) in one-hour  
42 increments up to a maximum of forty hours per calendar year. Each  
43 employee shall be entitled to carry over up to forty unused accrued  
44 hours of paid sick leave from the current calendar year to the following

45 calendar year, but no employee shall be entitled to use more than the  
46 maximum number of accrued hours, as described in subdivision (3) of  
47 this subsection, in any year.

48 (b) An employee shall be entitled to the use of accrued paid sick  
49 leave upon the completion of the employee's five-hundred-twentieth  
50 hour of employment from January 1, 2011, if the employee was hired  
51 prior to January 1, 2011, or, if hired after January 1, 2011, upon the  
52 completion of the employee's five-hundred-twentieth hour of  
53 employment from the date of hire, unless the employer agrees to an  
54 earlier date.

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

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

68 (e) Nothing in sections 1 to 5, inclusive, of this act shall be construed  
69 to (1) prevent employers from providing more paid sick leave than is  
70 required under this section, (2) diminish any rights provided to any  
71 employee under a collective bargaining agreement, or (3) preempt or  
72 override the terms of any collective bargaining agreement effective  
73 prior to January 1, 2011, while such agreement remains in effect.

74 (f) Nothing in sections 1 to 5, inclusive, of this act shall be construed  
75 to prohibit (1) an employer from establishing a policy whereby an  
76 employee may donate unused accrued paid sick leave to another

77 employee, and (2) an employer who provides more paid sick leave  
78 than is required under this section for the purposes described in  
79 subdivision (1) of subsection (a) of section 3 of this act, from limiting  
80 the amount of such leave an employee may use for other purposes.

81 (g) Notwithstanding the provisions of sections 1 to 5, inclusive, of  
82 this act and upon the mutual consent of the employee and employer,  
83 an employee that chooses to work additional hours or shifts during the  
84 same or following pay period, in lieu of hours or shifts missed, shall  
85 not use paid sick leave, provided the employer does not require the  
86 employee to work such additional hours or shifts.

87 Sec. 3. (NEW) (*Effective January 1, 2011*) (a) An employer shall permit  
88 an employee to use the paid sick leave accrued pursuant to section 2 of  
89 this act:

90 (1) For (A) an employee's illness, injury or health condition, (B) the  
91 medical diagnosis, care or treatment of an employee's mental or  
92 physical illness, injury or health condition, or (C) preventative medical  
93 care for an employee;

94 (2) For (A) a child's illness, injury or health condition, (B) the  
95 medical diagnosis, care or treatment of a child's mental or physical  
96 illness, injury or health condition, or (C) preventative medical care for  
97 a child;

98 (3) Where an employee is a victim of family violence or sexual  
99 assault (A) for medical care or psychological or other counseling for  
100 physical or psychological injury or disability, (B) to obtain services  
101 from a victim services organization, (C) to relocate due to such family  
102 violence or sexual assault, or (D) to participate in any civil or criminal  
103 proceedings related to, or resulting from, such family violence or  
104 sexual assault.

105 (b) If an employee's need to use paid sick leave is foreseeable, an  
106 employer may require advance notice, not to exceed seven days prior  
107 to the date such leave is to begin, of the intention to use such leave. If

108 an employee's need for such leave is not foreseeable, an employer may  
109 require an employee to give notice of such intention as soon as  
110 practicable. For paid sick leave of three or more consecutive days, an  
111 employer may require reasonable documentation that such leave is  
112 being taken for the purpose permitted under subsection (a) of this  
113 section. If such leave is permitted under subdivision (1) or (2) of  
114 subsection (a) of this section, documentation signed by a health care  
115 provider, who is treating the employee or the employee's child  
116 indicating the need for the number of days of such leave, shall be  
117 considered reasonable documentation. If such leave is permitted under  
118 subdivision (3) of subsection (a) of this section, a court record or  
119 documentation signed by an employee or volunteer working for a  
120 victim services organization, an attorney, a police officer or other  
121 counselor involved with the employee shall be considered reasonable  
122 documentation.

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

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

130 Sec. 4. (NEW) (*Effective January 1, 2011*) (a) No employer shall take  
131 retaliatory personnel action or discriminate against an employee  
132 because the employee (1) requests or uses paid sick leave in  
133 accordance with sections 2 and 3 of this act, or (2) files a complaint  
134 with the Labor Commissioner alleging the employer's violation of  
135 sections 2 to 5, inclusive, of this act. The Labor Commissioner shall  
136 administer this section within available appropriations.

137 (b) Any employer who is found by the Labor Commissioner, by a  
138 preponderance of the evidence, to have violated the provisions of  
139 sections 2 to 5, inclusive, of this act shall be liable to the Labor  
140 Department for a civil penalty of six hundred dollars for each

141 violation. The Labor Commissioner may award the employee all  
 142 appropriate relief, including rehiring or reinstatement to the  
 143 employee's previous job, payment of back wages and reestablishment  
 144 of employee benefits to which the employee otherwise would have  
 145 been eligible if the employee had not been subject to such retaliatory  
 146 personnel action or discriminated against. Any party aggrieved by the  
 147 decision of the commissioner may appeal the decision to the Superior  
 148 Court in accordance with the provisions of chapter 54 of the general  
 149 statutes.

150 Sec. 5. (NEW) (*Effective January 1, 2011*) Each employer subject to the  
 151 provisions of section 2 of this act shall, at the time of hiring, provide  
 152 notice to each employee (1) of the employee's entitlement to sick leave,  
 153 the amount of sick leave provided and the terms under which sick  
 154 leave may be used, (2) that retaliation by the employer against the  
 155 employee for requesting or using sick leave is prohibited, and (3) that  
 156 the employee has a right to file a complaint with the Labor  
 157 Commissioner for any violation of sections 2 to 5, inclusive, of this act.  
 158 Employers may comply with the provisions of this section by  
 159 displaying a poster in a conspicuous place, accessible to employees, at  
 160 the employer's place of business that contains the information required  
 161 by this section in both English and Spanish. The Labor Commissioner  
 162 may adopt regulations, in accordance with chapter 54 of the general  
 163 statutes, to establish additional requirements concerning the means by  
 164 which employers shall provide such notice. The Labor Commissioner  
 165 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, 2011</i>	New section
Sec. 2	<i>January 1, 2011</i>	New section
Sec. 3	<i>January 1, 2011</i>	New section
Sec. 4	<i>January 1, 2011</i>	New section
Sec. 5	<i>January 1, 2011</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 11 \$	FY 12 \$
Labor Dept.	GF - Potential Cost	58,450	116,900
Comptroller Misc. Accounts (Fringe Benefits) <sup>1</sup>	GF - Potential Cost	15,580	77,750
Various State Agencies	Various - See Below	See Below	See Below
Labor Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal

Note: GF=General Fund

**Municipal Impact:**

Municipalities	Effect	FY 11 \$	FY 12 \$
Various Municipalities	STATE MANDATE - Cost	See Below	See Below

**Explanation**

The bill requires employers with 50 or more employees to provide paid sick leave under certain circumstances to be utilized for various enumerated purposes. The bill does not apply to 1) day or temporary workers, and 2) certain state college or university employees.

Full-time and permanent part-time state employees currently receive paid sick leave. As this bill excludes day and temporary workers and employees of any constituent unit of the state system of higher education it is not clear how many, if any, state or municipal

<sup>1</sup> The estimated non-pension fringe benefit rate as a percentage of payroll is 26.66% which includes health insurance, social security, Medicare, life insurance, and unemployment compensation. Fringe benefit costs for new positions do not include pension costs as new positions will not impact the state's pension contribution until FY 12 after the next scheduled actuarial valuation.

employees this bill would potentially impact. Any fiscal impact to the state or municipality would be equal to the cost of the absent employee's wages and associated overtime costs, if applicable, and is expected to be minimal.

**Section 4** allows complaints to be filed with the Department of Labor (DOL) if an employer violates any of the provisions of Sections 2 to 5 of the bill. This is anticipated to increase the number of complaints received by the Department and may require an additional Wage Investigator (annual salary of \$49,500 and full fringe benefits of \$32,922) in the Division of Wage and Workplace Standards.

This is also anticipated to result in an increase in the number of probable cause hearings conducted by DOL. Currently, two Staff Attorneys review approximately 100 cases annually for probable cause hearings regarding the Family and Medical Leave Act, resulting in approximately 20 hearings per year. It is anticipated that the number of probable cause hearings would increase with the passage of the bill, potentially requiring an additional Staff Attorney (annual salary of \$67,400 and full fringe benefits of \$44,828).

The bill specifies that DOL implement the provisions of the bill within available appropriations. With passage of the bill, DOL 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 requiring additional resources.

Section 4 also provides a \$600 civil penalty for each violation of Sections 2 to 5 of the bill. This results in a potential minimal revenue gain to DOL.

**Section 5** requires DOL to develop regulations regarding the means by which employers must provide notice to covered employees of the provisions of the bill. The development of such regulations could be accommodated by DOL without requiring additional resources.

***The Out Years***

The annualized ongoing cost impact identified above would continue into the future subject to inflation; the ongoing revenue impact identified above would remain constant into the future as civil penalty amounts are set by statute.

**OLR Bill Analysis****sSB 63*****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 that accrues 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 520 hours for an employer and accrue sick leave from the first day of work. The bill limits the use of accrued sick leave to 40 hours a year. The leave can be used for an employee's or the employee's child's illness or injury, treatment of a physical or mental illness or injury, diagnosis, and preventive medical care. An employee can also use it for reasons related to family violence or sexual assault.

Exempted from the bill's provisions 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, 2011 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 employees' rights. The commissioner may develop related regulations requiring employers to provide additional means of notifying employees.

EFFECTIVE DATE: January 1, 2011

## **§ 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 520 hours (40 hours a week for 13 weeks), employees are entitled to use accrued sick time. They can use up to 40 hours of accrued sick leave per year. Each employee (1) can accrue up to 40 hours per year and (2) is entitled to carry over up to 40 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 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. Furthermore,

if an employer has a more generous plan than the bill requires, the employer may limit how an employees uses sick time for his or her own illness to just that purpose.

### ***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***

Under the bill, by mutual agreement between the employer and employee, the employee may 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 may not require the employee to work extra time instead of using paid sick leave.

### ***Donating Unused Sick Leave***

The bill specifies that it does not prohibit an employer from establishing a policy allowing employees to donate accrued sick leave to another employee.

## **§ 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 “day or temporary workers” and defines them as those who perform 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 individuals are paid by the person for whom such

work is performed or by an employment agency or temporary help service, as defined by law.

It also 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 mental or physical 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."

### **§ 3(C) — LIMITS ON USES**

The bill 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
Employee who is 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's provisions.

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's provisions. 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 covered employer 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.

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**

### ***Fair Labor Standards Act (FLSA)***

The federal FLSA establishes a federal minimum wage, requires employers to provide overtime pay, restricts child labor, and prohibits pay based on gender. Certain occupations are exempt from its provisions, mainly managerial, professional, and commission-based sales jobs.

The FLSA sets the floor for certain workplace standards and Connecticut law often mirrors it (in the case of most child labor protections) or provides a greater benefit for the employee (in the case of a higher minimum wage).

## **COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 6 Nay 4 (03/09/2010)