



Senate

General Assembly

File No. 126

February Session, 2010

Substitute Senate Bill No. 172

Senate, March 25, 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 HOME HEALTH AGENCIES 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) "Employee" means any person, engaged in service to an
6 employer in the business of the employer, who has worked a
7 minimum of five hundred twenty hours for an employer within the
8 past twelve months and is (A) paid on an hourly basis, or (B) not
9 exempt from the minimum wage and overtime compensation
10 requirements of the Fair Labor Standards Act of 1938 and the
11 regulations promulgated thereunder, as amended from time to time;

12 (3) "Employer" means any home health agency, as defined in section

13 19a-490 of the general statutes, that (A) receives payment for rendering
14 care to persons receiving medical assistance from the state or
15 assistance from the Connecticut home-care program for the elderly,
16 pursuant to section 17b-342 of the general statutes, and (B) employs
17 fifty or more persons in the state;

18 (4) "Family violence" has the same meaning as provided in section
19 46b-38a of the general statutes;

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

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

27 Sec. 2. (NEW) (*Effective January 1, 2011*) (a) Each employer shall
28 provide paid sick leave annually to each of such employer's employees
29 in the state. Such paid sick leave shall accrue (1) beginning January 1,
30 2011, or for an employee hired after said date, beginning on the
31 employee's date of employment, (2) at a rate of one hour of paid sick
32 leave for each forty hours worked by an employee, and (3) in one-hour
33 increments up to a maximum of forty hours per calendar year. Each
34 employee shall be entitled to carry over up to forty unused accrued
35 hours of paid sick leave from the current calendar year to the following
36 calendar year, but no employee shall be entitled to use more than the
37 maximum number of accrued hours, as described in subdivision (3) of
38 this subsection, in any year.

39 (b) An employee shall be entitled to the use of accrued paid sick
40 leave upon the completion of the employee's five-hundred-twentieth
41 hour of employment from January 1, 2011, if the employee was hired
42 prior to January 1, 2011, or, if hired after January 1, 2011, upon the
43 completion of the employee's five-hundred-twentieth hour of
44 employment from the date of hire, unless the employer agrees to an

45 earlier date.

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

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

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

65 (f) Nothing in sections 1 to 5, inclusive, of this act shall be construed
66 to prohibit (1) an employer from establishing a policy whereby an
67 employee may donate unused accrued paid sick leave to another
68 employee, and (2) an employer who provides more paid sick leave
69 than is required under this section for the purposes described in
70 subdivision (1) of subsection (a) of section 3 of this act, from limiting
71 the amount of such leave an employee may use for other purposes.

72 (g) Notwithstanding the provisions of sections 1 to 5, inclusive, of
73 this act and upon the mutual consent of the employee and employer,
74 an employee that chooses to work additional hours or shifts during the
75 same or following pay period, in lieu of hours or shifts missed, shall
76 not use paid sick leave, provided the employer does not require the

77 employee to work such additional hours or shifts.

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

81 (1) For (A) an employee's illness, injury or health condition, (B) the
82 medical diagnosis, care or treatment of an employee's mental or
83 physical illness, injury or health condition, or (C) preventative medical
84 care for an employee;

85 (2) For (A) a child's illness, injury or health condition, (B) the
86 medical diagnosis, care or treatment of a child's mental or physical
87 illness, injury or health condition, or (C) preventative medical care for
88 a child;

89 (3) Where an employee is a victim of family violence or sexual
90 assault (A) for medical care or psychological or other counseling for
91 physical or psychological injury or disability, (B) to obtain services
92 from a victim services organization, (C) to relocate due to such family
93 violence or sexual assault, or (D) to participate in any civil or criminal
94 proceedings related to, or resulting from, such family violence or
95 sexual assault.

96 (b) If an employee's need to use paid sick leave is foreseeable, an
97 employer may require advance notice, not to exceed seven days prior
98 to the date such leave is to begin, of the intention to use such leave. If
99 an employee's need for such leave is not foreseeable, an employer may
100 require an employee to give notice of such intention as soon as
101 practicable. For paid sick leave of three or more consecutive days, an
102 employer may require reasonable documentation that such leave is
103 being taken for the purpose permitted under subsection (a) of this
104 section. If such leave is permitted under subdivision (1) or (2) of
105 subsection (a) of this section, documentation signed by a health care
106 provider, who is treating the employee or the employee's child
107 indicating the need for the number of days of such leave, shall be
108 considered reasonable documentation. If such leave is permitted under

109 subdivision (3) of subsection (a) of this section, a court record or
110 documentation signed by an employee or volunteer working for a
111 victim services organization, an attorney, a police officer or other
112 counselor involved with the employee shall be considered reasonable
113 documentation.

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

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

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

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

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 \$
Social Services, Dept.	GF - Cost	Potential	Potential
Labor Dept.	GF - Potential Cost	58,450	116,900
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Potential Cost	15,580	77,750
Labor Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in various costs to the state associated with requiring certain home health agencies to provide paid sick leave to their employees in the state.

Currently, the Department of Social Services (DSS) spends approximately \$270.0 million annually on the Connecticut Home Care program, with another approximately \$200.0 million spent on other home health and community based services. To the extent that the costs incurred by the home health agencies are passed on to state programs through future rate adjustments, the state may incur additional costs. The amount of these costs would be dependent upon the number of impacted home health agencies that contract with the state as well as the amount of any rate adjustment that is negotiated,

¹ 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.

which cannot be known at this time.

Section 4 allows complaints to be filed with the Department of Labor (DOL) if a home health agency 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 home health agencies 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 172*****AN ACT MANDATING HOME HEALTH AGENCIES PROVIDE PAID SICK LEAVE TO EMPLOYEES.*****SUMMARY:**

This bill requires certain home health agencies to provide their employees with up to 40 hours of paid sick leave a year. Current law does not require any employer to provide sick leave, whether paid or unpaid. Under the bill, paid leave accrues at a rate of one hour for each 40 hours worked and may be used once an employee has worked 520 hours. Employees may carry over up to 40 hours of paid leave a year into the following year. They can use leave to care for or treat their own or their child's physical or mental illness or injury, diagnosis, and preventive medical care and when they are victims of family violence or sexual assault.

An employer can comply with the bill's requirements by offering other paid leave that can be used for the same purposes and under the same conditions. The bill bans employers from retaliating or taking discriminatory action against an employee because the employee requests or uses paid sick leave as the bill provides.

The bill allows complaints to be filed with the labor commissioner, who must administer its provisions 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 (1) 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 or (2) prohibit an employer from establishing (a) a policy allowing employees to donate accrued sick leave to each other or (b) paid sick leave plans that are more generous than the bill requires. It permits employers who establish more generous plans to limit the amount of leave an employee may use for other purposes.

It requires employers to notify covered employees of its provisions and all rights due the employees and permits the commissioner to develop regulations requiring employers to provide additional means of notifying employees.

EFFECTIVE DATE: January 1, 2011

PAID SICK LEAVE

The bill requires home health agencies with 50 or more employees that serve people in the Connecticut Home Care Program for Elders and other state “medical assistance programs” (the bill does not define this term) to provide their employees with paid sick leave. Under the bill, an “employee” is anyone engaged in service to an employer in the employer’s business who has worked at least 520 hours for the employer in the past 12 months and is (1) paid at an hourly rate or (2) subject to the minimum wage and overtime compensation requirements of the Fair Labor Standards Act (see BACKGROUND).

For current employees, the leave begins to accrue on January 1, 2011; for new hires it begins on the date of employment (see COMMENT). It accrues at a rate of one hour for every 40 hours worked. An existing employee can start to use the accrued leave once he or she works 520 hours in 2011; a new employee can start after he or she works 520 hours. Employers can agree to let their employees begin to use paid leave at an earlier date. Employees may carry over up to 40 hours of leave a year to the following year, but they can use only 40 hours of leave a year.

Other Complying Leave

An employer that offers employees other paid leave that (1) can be

used for the same purposes and under the same conditions as sick leave under the bill and (2) accrues at a rate equal to or greater than the rate the bill requires is deemed to be in compliance. This “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. An employer that does this may limit how an employee 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 rate that is the greater of (1) the employee’s normal hourly wage or (2) the minimum hourly wage in effect when the employee used the 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 cannot require the employee to work extra time instead of using paid sick leave.

No Pay for Accrued Time at Termination

Under the bill, an employee who leaves an job is not entitled to payment for unused accrued sick leave unless an employee policy or union contract provides for payment for accrued fringe benefits.

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 an employee's biological, adopted, or foster child, stepchild, or legal ward.

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 purpose other than those stated in the bill.

§ 3(B) & (D) — 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 the employee to give advance notice of his or her 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 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.

§ 5 — EMPLOYEE NOTICE

Each home health agency 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 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

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).

Related Bill

sSB 63, favorably reported by the Labor Committee, establishes essentially the same paid sick leave requirements as this bill for all employers with 50 or more employees in the state.

COMMENT**Accruing Sick Time**

It is not clear when some employees begin accruing paid leave. Under the bill, an employee is someone who has worked for a home health agency for at least 520 hours in the previous 12 months. Consequently, a person hired after January 1, 2011 would not become an employee until he or she worked 520 hours. Under the bill, paid leave begins to accrue on the "employee's date of employment." It is not clear, though, whether a person would be an employee, as the bill defines the term, on the date he or she begins work.

COMMITTEE ACTION

Select Committee on Aging

Joint Favorable Substitute Change of Reference
Yea 8 Nay 3 (03/11/2010)

Labor and Public Employees Committee

Joint Favorable
Yea 7 Nay 4 (03/16/2010)