



Senate

General Assembly

File No. 76

January Session, 2011

Senate Bill No. 913

Senate, March 17, 2011

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 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, 2012*) 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,
4 legal ward of an employee, or a child of an employee standing in loco
5 parentis, who is (A) under eighteen years of age; or (B) eighteen years
6 of age or older and incapable of self-care because of a mental or
7 physical disability;

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

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

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

30 (5) "Family violence" has the same meaning as provided in section
31 46b-38a of the general statutes;

32 (6) "Parent" means a biological parent, foster parent, adoptive
33 parent, stepparent or legal guardian of an employee or an employee's
34 spouse, or an individual who stood in loco parentis to an employee
35 when the employee was a child;

36 (7) "Retaliatory personnel action" means any termination,
37 suspension, constructive discharge, demotion, unfavorable
38 reassignment, refusal to promote, disciplinary action or other adverse
39 employment action taken by an employer against an employee;

40 (8) "Sexual assault" means any act that constitutes a violation of
41 section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b or 53a-73a of
42 the general statutes; and

43 (9) "Spouse" means a husband or wife, as the case may be.

44 Sec. 2. (NEW) (*Effective January 1, 2012*) (a) Each employer shall

45 provide paid sick leave annually to each of such employer's employees
46 in the state. Such paid sick leave shall accrue (1) beginning January 1,
47 2012, or for an employee hired after said date, beginning on the
48 employee's date of employment, (2) at a rate of one hour of paid sick
49 leave for each forty hours worked by an employee, and (3) in one-hour
50 increments up to a maximum of forty hours per calendar year. Each
51 employee shall be entitled to carry over up to forty unused accrued
52 hours of paid sick leave from the current calendar year to the following
53 calendar year, but no employee shall be entitled to use more than the
54 maximum number of accrued hours, as described in subdivision (3) of
55 this subsection, in any year.

56 (b) An employee shall be entitled to the use of accrued paid sick
57 leave upon the completion of the employee's six-hundred-eightieth
58 hour of employment from January 1, 2012, if the employee was hired
59 prior to January 1, 2012, or if hired after January 1, 2012, upon the
60 completion of the employee's six-hundred-eightieth hour of
61 employment from the date of hire, unless the employer agrees to an
62 earlier date.

63 (c) An employer shall be deemed to be in compliance with this
64 section if the employer offers any other paid leave, or combination of
65 other paid leave that (1) may be used for the purposes of section 3 of
66 this act, and (2) is accrued in total at a rate equal to or greater than the
67 rate described in subsections (a) and (b) of this section. For the
68 purposes of this subsection, "other paid leave" may include, but is not
69 limited to, paid vacation, personal days or paid time off.

70 (d) Each employer shall pay each employee for paid sick leave at a
71 pay rate equal to the greater of either (1) the normal hourly wage for
72 that employee, or (2) the minimum fair wage rate under section 31-58
73 of the general statutes in effect for the pay period during which the
74 employee used paid sick leave. For any employee whose hourly wage
75 varies depending on the work performed by the employee, the
76 "normal hourly wage" shall mean the average hourly wage of the
77 employee in the pay period prior to the one in which the employee

78 used paid sick leave.

79 (e) Nothing in sections 1 to 5, inclusive, of this act shall be construed
80 to (1) prevent employers from providing more paid sick leave than is
81 required under this section, (2) diminish any rights provided to any
82 employee under a collective bargaining agreement, or (3) preempt or
83 override the terms of any collective bargaining agreement effective
84 prior to January 1, 2012.

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

92 (g) Notwithstanding the provisions of sections 1 to 5, inclusive, of
93 this act and upon the mutual consent of the employee and employer,
94 an employee that chooses to work additional hours or shifts during the
95 same or following pay period, in lieu of hours or shifts missed, shall
96 not use accrued paid sick leave, provided the employer does not
97 require the employee to work such additional hours or shifts.

98 Sec. 3. (NEW) (*Effective January 1, 2012*) (a) An employer shall permit
99 an employee to use the paid sick leave accrued pursuant to section 2 of
100 this act:

101 (1) For (A) an employee's illness, injury or health condition, (B) the
102 medical diagnosis, care or treatment of an employee's mental or
103 physical illness, injury or health condition, or (C) preventative medical
104 care for an employee;

105 (2) For (A) a child's, parent's or spouse's illness, injury or health
106 condition, (B) the medical diagnosis, care or treatment of a child's,
107 parent's or spouse's mental or physical illness, injury or health
108 condition, or (C) preventative medical care for a child, parent or

109 spouse;

110 (3) Where an employee is a victim of family violence or sexual
111 assault (A) for medical care or psychological or other counseling for
112 physical or psychological injury or disability, (B) to obtain services
113 from a victim services organization, (C) to relocate due to such family
114 violence or sexual assault, or (D) to participate in any civil or criminal
115 proceedings related to or resulting from such family violence or sexual
116 assault.

117 (b) If an employee's need to use paid sick leave is foreseeable, an
118 employer may require advance notice, not to exceed seven days prior
119 to the date such leave is to begin, of the intention to use such leave. If
120 an employee's need for such leave is not foreseeable, an employer may
121 require an employee to give notice of such intention as soon as
122 practicable. For paid sick leave of three or more consecutive days, an
123 employer may require reasonable documentation that such leave is
124 being taken for the purpose permitted under subsection (a) of this
125 section. If such leave is permitted under subdivision (1) or (2) of
126 subsection (a) of this section, documentation signed by a health care
127 provider who is treating the employee or the employee's child or
128 parent indicating the need for the number of days of such leave shall
129 be considered reasonable documentation. If such leave is permitted
130 under subdivision (3) of subsection (a) of this section, a court record or
131 documentation signed by an employee or volunteer working for a
132 victim services organization, an attorney, a police officer or other
133 counselor involved with the employee shall be considered reasonable
134 documentation.

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

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

142 Sec. 4. (NEW) (*Effective January 1, 2012*) (a) No employer shall take
143 retaliatory personnel action or discriminate against an employee
144 because the employee (1) requests or uses paid sick leave in
145 accordance with sections 2 and 3 of this act, or (2) files a complaint
146 with the Labor Commissioner alleging the employer's violation of
147 sections 2 to 5, inclusive, of this act. The Labor Commissioner shall
148 administer this section within available appropriations.

149 (b) Any employer who is found by the Labor Commissioner, by a
150 preponderance of the evidence, to have violated the provisions of
151 sections 2 to 5, inclusive, of this act shall be liable to the Labor
152 Department for a civil penalty of six hundred dollars for each
153 violation. The Labor Commissioner may award the employee all
154 appropriate relief, including rehiring or reinstatement to the
155 employee's previous job, payment of back wages and reestablishment
156 of employee benefits to which the employee otherwise would have
157 been eligible if the employee had not been subject to such retaliatory
158 personnel action or discriminated against. Any party aggrieved by the
159 decision of the commissioner may appeal the decision to the Superior
160 Court in accordance with the provisions of chapter 54 of the general
161 statutes.

162 Sec. 5. (NEW) (*Effective January 1, 2012*) Each employer subject to the
163 provisions of section 2 of this act shall, at the time of hiring, provide
164 notice to each employee (1) of the employee's entitlement to sick leave,
165 the amount of sick leave provided and the terms under which sick
166 leave may be used, (2) that retaliation by the employer against the
167 employee for requesting or using sick leave is prohibited, and (3) that
168 the employee has a right to file a complaint with the Labor
169 Commissioner for any violation of sections 2 to 5, inclusive, of this act.
170 Employers may comply with the provisions of this section by
171 displaying a poster in a conspicuous place, accessible to employees, at
172 the employer's place of business that contains the information required
173 by this section in both English and Spanish. The Labor Commissioner
174 may adopt regulations, in accordance with chapter 54 of the general
175 statutes, to establish additional requirements concerning the means by

176 which employers shall provide such notice. The Labor Commissioner
177 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, 2012</i>	New section
Sec. 2	<i>January 1, 2012</i>	New section
Sec. 3	<i>January 1, 2012</i>	New section
Sec. 4	<i>January 1, 2012</i>	New section
Sec. 5	<i>January 1, 2012</i>	New section

LAB *Joint Favorable*

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 12 \$	FY 13 \$
Labor Dept.	GF - Cost	None	169,720
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	None	40,325
Various State Agencies	GF - See Below	See Below	See Below
Labor Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 12 \$	FY 13 \$
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

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 changes in personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 23.76%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/10 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 12 and FY 13. Therefore, new positions will not impact the state's pension contribution until FY 14 after the next scheduled certification on 6/30/2012.

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 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 \$71,108 and full fringe benefits of \$16,895) in the Division of Wage and Workplace Standards beginning in FY 13².

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, requiring an additional Staff Attorney II (annual salary of \$98,612 and full fringe benefits of \$23,430) beginning in FY 13.

The bill specifies that DOL implement the provisions of the bill within available appropriations. However, if the bill were to be implemented the FY 13 costs to DOL would be \$169,720 and fringe benefit costs of \$ 40,325 (these costs are described in detail above).

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

² The earliest an employee can begin accruing sick leave is January 1, 2012. Employees must work at least 680 hours after the leave begins accruing before they can use it. Assuming a 40 hour work week, the earliest an employee could use such leave would be May 2012. It is assumed that any complaints, investigations and probable cause hearings would not commence until July 2012, which is FY 13.

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 the bill.

OLR Bill Analysis**SB 913*****AN ACT MANDATING EMPLOYERS PROVIDE PAID SICK LEAVE TO EMPLOYEES.*****SUMMARY:**

This bill requires employers that employ 50 or more people in the state to provide certain employees with paid sick leave accruing at a rate of one hour per 40 hours worked. The earliest employees can begin accruing sick leave is January 1, 2012, and they must work at least 680 hours after the leave begins accruing before they can begin to use it. An employee can use the leave for illness or injury and any related treatment for the employee or the employee's child, spouse, or parent. An employee can also use it for reasons related to family violence or sexual assault. Employers that offer other types of paid leave that can be used for the same purposes and accrues at least as quickly are deemed to comply.

The bill does not require employers to provide paid sick leave to (1) day or temporary workers, (2) non-hourly employees such as salaried professionals, or (3) certain part-time or adjunct faculty in the state higher education system.

The bill bans employers from retaliating or discriminating against employees who request or use the leave and allows complaints to be filed with the labor commissioner. It establishes a \$600 civil penalty for each violation and allows the commissioner to award other appropriate relief such as rehiring or payment of back wages. Parties can appeal the commissioner's decision to the Superior Court.

The bill requires employers to provide employees with notice of the rights and protections it provides and allows the labor commissioner to develop regulations for additional notice requirements.

The bill also specifies that it does not preempt the terms of any union contract in effect before January 1, 2012, or diminish any right provided to any employee under a union contract.

EFFECTIVE DATE: January 1, 2012

§ 2 & 3(D) — PAID SICK LEAVE

The bill requires employers to provide certain employees with paid sick leave accruing 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 employ 50 or more workers in Connecticut.

Benefit Accrual

Employees cannot start accruing leave time until January 1, 2012. Employees hired before then will start accruing on that date and employees hired after that date will start accruing on their date of employment. Employees cannot use the benefit until they have worked at least 680 hours after the benefit starts accruing. At that point, they will have accrued 17 benefit hours. Employees cannot accrue more than 40 hours of sick leave in a calendar year. They can carry up to 40 hours of sick leave into the next calendar year, but cannot use more than 40 hours of leave in any year.

Sick Leave Pay

The bill requires the employee’s compensation while on sick leave to be the greater of (1) the employee’s normal hourly wage or (2) the statutory minimum wage required while the employee is on leave. If the employee’s hourly wage varies, the “normal hourly wage” is the average hourly wage paid to the employee in the pay period prior to the employee’s leave.

An employer does not have to pay an employee for unused sick leave upon termination, unless otherwise provided by an employer policy or collective bargaining agreement.

Other Complying Leave

Employers are deemed to be in compliance if they provide other paid leave that (1) accrues at least as quickly as the sick leave and (2) can be used for the same purposes. Under the bill, “other paid leave” includes paid vacation, personal days, or time off.

The bill does not prevent employers from providing a more generous paid leave policy than the bill requires and it allows them to limit the use of any benefits they provide that exceed the bill’s requirements.

Hour, Shift, and Benefit Flexibility

The bill permits employers to allow, but not require, employees to switch shifts or work extra hours in lieu of using sick leave. The different shifts or extra hours must be (1) upon the mutual consent of the employer and employee and (2) during the same or following pay period as the sick leave. Employers can also allow employees to donate any unused sick leave to their co-workers.

§ 1 — COVERED AND EXEMPT EMPLOYEES

Under the bill, “employee” means anyone engaged in service to an employer in the employer’s business who has worked at least 520 hours within the last 12 months for the employer. An “employee” must also be (1) paid on an hourly basis or (2) subject to the 1938 federal Fair Labor Standards Act’s minimum wage and overtime compensation requirements. These requirements generally exclude managers who have authority to hire and fire staff, professional occupations (such as lawyers and physicians), salespeople, and certain skilled computer professionals.

The bill excludes “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 they are 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 also excludes certain employees of the state higher education system, including (1) part-time or adjunct faculty, (2) university assistants who work fewer than 20 hours a week, and (3) educational assistants or other part-time employees.

§ 3 (A) & (C) — PERMITTED USES

The bill requires an employer to allow an employee to use paid sick leave for his or her, or a parents', spouse's or child's (1) illness, injury, or health condition; (2) medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or (3) preventive medical care.

The bill defines a "child" as an employee's biological, adopted, or foster child, stepchild, legal ward of an employee, or a child of an employee acting instead of a parent, when the child is either under 18 years old or over 18 but incapable of self-care due to mental or physical disability. A "spouse" means a husband or wife. It defines a "parent" as a biological parent, foster parent, adoptive parent, stepparent or legal guardian of an employee or an employee's spouse, or an individual acting instead of a parent to an employee when the employee was a child.

The bill also requires employers to provide paid sick leave when the employee is a victim of family violence or sexual assault for (1) medical care or psychological or other counseling for physical injury or disability, (2) services from a victim services organization, (3) to relocate, or (4) participation in any civil or criminal legal proceedings. Family violence is any physical harm or threatened act of violence that constitutes fear of such harm between family or household members. Sexual assault includes all penal code crimes of unlawful conduct with the intimate parts of another person's body, except Aggravated Sexual Assault of a Minor (CGS § 53a-70c).

Under the bill, an employer does not have to provide paid sick leave for any reasons not specified in the bill.

§ 3 (B) — PERMITTED EMPLOYEE REQUIREMENTS

The bill allows employers to require that employees provide notice (1) up to seven days before taking the leave if it is foreseeable or (2) as soon as practicable if it is not foreseeable.

If the leave is for three or more consecutive days, the employer can require reasonable documentation verifying the leave’s purpose. Table 1 shows the bill’s definitions of reasonable documentation.

Table 1: Documentation Needed for Sick Leave

<i>Type of Leave</i>	<i>Documentation</i>
For 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, spouse, or parent	Documentation signed by the health care provider treating the employee or the employee’s child, spouse, or parent and indicating the need for the number of days of the leave
For 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 — ENFORCEMENT

Retaliation Prohibited

The bill bans employers from terminating, suspending, constructively discharging, demoting, unfavorably assigning, refusing to promote, disciplining, or taking any other adverse employment action against an employee because the employee (1) requested or used paid sick leave as provided by the bill or (2) filed a complaint with the labor commissioner alleging an employer violated the bill’s provisions.

Penalties

The bill requires the labor commissioner to impose a \$600 civil penalty for each violation he finds by a preponderance of the evidence. The commissioner can also award other appropriate relief including rehiring or reinstating the employee, back wages, and reestablishing any benefits for which the employee otherwise would have been

eligible. The bill requires the labor commissioner to administer the bill's enforcement provisions within available appropriations.

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

§ 5 — EMPLOYEE NOTICE

The bill requires each covered employer to provide notice to each employee at the time of hiring that:

1. the employee is entitled to sick leave, the amount provided, and the terms under which it can be used;
2. the employer cannot retaliate against the employee for requesting or using sick leave; and
3. the employee can file a complaint with the labor commissioner for any violation.

An employer can comply with this requirement by displaying a poster with 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 labor commissioner to adopt regulations establishing additional notice requirements.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 6 Nay 5 (03/03/2011)