



General Assembly

January Session, 2011

Amendment

LCO No. 6691

SB0091306691SD0

Offered by:

SEN. PRAGUE, 19th Dist.

REP. ZALASKI, 81st Dist.

SEN. BYE, 5th Dist.

SEN. MEYER, 12th Dist.

To: Senate Bill No. 913

File No. 76

Cal. No. 97

"AN ACT MANDATING EMPLOYERS PROVIDE PAID SICK LEAVE TO EMPLOYEES."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective January 1, 2012*) As used in this section
4 and sections 2 to 6, inclusive, of this act:

5 (1) "Child" means a biological, adopted or foster child, stepchild,
6 legal ward of a service worker, or a child of a service worker standing
7 in loco parentis, who is (A) under eighteen years of age; or (B) eighteen
8 years of age or older and incapable of self-care because of a mental or
9 physical disability;

10 (2) "Day or temporary worker" means an individual who performs
11 work for another on (A) a per diem basis, or (B) an occasional or
12 irregular basis for only the time required to complete such work,

13 whether such individual is paid by the person for whom such work is
14 performed or by an employment agency or temporary help service, as
15 defined in section 31-129 of the general statutes;

16 (3) "Employee" means an individual engaged in service to an
17 employer in the business of the employer;

18 (4) "Employer" means any person, firm, business, educational
19 institution, nonprofit agency, corporation, limited liability company or
20 other entity that employs fifty or more individuals in the state in any
21 one quarter in the previous year, which shall be determined on
22 January first, annually. Such determination shall be made based upon
23 the wage information submitted to the Labor Commissioner by the
24 employer pursuant to subsection (j) of section 31-225 of the general
25 statutes. "Employer" does not include any nationally chartered
26 organization exempt from taxation under Section 501(c)(3) of the
27 Internal Revenue Code of 1986, or any subsequent corresponding
28 internal revenue code of the United States, as from time to time
29 amended, that provides all of the following services: Recreation, child
30 care and education;

31 (5) "Family violence" has the same meaning as provided in section
32 46b-38a of the general statutes;

33 (6) "Retaliatory personnel action" means any termination,
34 suspension, constructive discharge, demotion, unfavorable
35 reassignment, refusal to promote, disciplinary action or other adverse
36 employment action taken by an employer against an employee or a
37 service worker;

38 (7) "Service worker" means an employee primarily engaged in an
39 occupation with one of the following broad or detailed occupation
40 code numbers and titles, as defined by the federal Bureau of Labor
41 Statistics Standard Occupational Classification system or any successor
42 system: (A) 11-9050 Food Service Managers; (B) 11-9110 Medical and
43 Health Services Managers; (C) 21-1020 Social Workers; (D) 21-1093
44 Social and Human Service Assistants; (E) 21-1094 Community Health

45 Workers; (F) 21-1099 Community and Social Service Specialists, All
46 Other; (G) 25-4020 Librarians; (H) 29-1050 Pharmacists; (I) 29-1070
47 Physician Assistants; (J) 29-1120 Therapists; (K) 29-1140 Registered
48 Nurses; (L) 29-1150 Nurse Anesthetists; (M) 29-1160 Nurse Midwives;
49 (N) 29-1170 Nurse Practitioners; (O) 29-2020 Dental Hygienists; (P) 29-
50 2040 Emergency Medical Technicians and Paramedics; (Q) 29-2050
51 Health Practitioner Support Technologists and Technicians; (R) 29-2060
52 Licensed Practical and Licensed Vocational Nurses; (S) 31-1011 Home
53 Health Aides; (T) 31-1012 Nursing Aides, Orderlies and Attendants;
54 (U) 31-1013 Psychiatric Aides; (V) 31-9091 Dental Assistants; (W) 31-
55 9092 Medical Assistants; (X) 33-9032 Security Guards; (Y) 33-9091
56 Crossing Guards; (Z) 35-1010 Supervisors of Food Preparation and
57 Serving Workers; (AA) 35-2010 Cooks; (BB) 35-2020 Food Preparation
58 Workers; (CC) 35-3010 Bartenders; (DD) 35-3020 Fast Food and
59 Counter Workers; (EE) 35-3030 Waiters and Waitresses; (FF) 35-3040
60 Food Servers, Nonrestaurant; (GG) 35-9010 Dining Room and Cafeteria
61 Attendants and Bartender Helpers; (HH) 35-9020 Dishwashers; (II) 35-
62 9030 Hosts and Hostesses, Restaurant, Lounge and Coffee Shop; (JJ)
63 35-9090 Miscellaneous Food Preparation and Serving Related Workers;
64 (KK) 37-2011 Janitors and Cleaners, Except Maids and Housekeeping
65 Cleaners; (LL) 37-2019 Building Cleaning Workers, All Other; (MM)
66 39-3030 Ushers, Lobby Attendants and Ticket Takers; (NN) 39-5010
67 Barbers, Hairdressers, Hairstylists and Cosmetologists; (OO) 39-6010
68 Baggage Porters, Bellhops and Concierges; (PP) 39-9010 Child Care
69 Workers; (QQ) 39-9021 Personal Care Aides; (RR) 41-1010 First-Line
70 Supervisors of Sales Workers; (SS) 41-2011 Cashiers; (TT) 41-2021
71 Counter and Rental Clerks; (UU) 41-2030 Retail Salespersons; (VV) 43-
72 3070 Tellers; (WW) 43-4080 Hotel, Motel and Resort Desk Clerks; (XX)
73 43-4170 Receptionists and Information Clerks; (YY) 43-5020 Couriers
74 and Messengers; (ZZ) 43-6010 Secretaries and Administrative
75 Assistants; (AAA) 43-9010 Computer Operators; (BBB) 43-9020 Data
76 Entry and Information Processing Workers; (CCC) 43-9030 Desktop
77 Publishers; (DDD) 43-9040 Insurance Claims and Policy Processing
78 Clerks; (EEE) 43-9050 Mail Clerks and Mail Machine Operators, Except
79 Postal Service; (FFF) 43-9060 Office Clerks, General; (GGG) 43-9070

80 Office Machine Operators, Except Computer; (HHH) 43-9080
81 Proofreaders and Copy Markers; (III) 43-9110 Statistical Assistants; (JJJ)
82 43-9190 Miscellaneous Office and Administrative Support Workers;
83 (KKK) 51-3010 Bakers; (LLL) 51-3020 Butchers and Other Meat, Poultry
84 and Fish Processing Workers; (MMM) 51-3090 Miscellaneous Food
85 Processing Workers; (NNN) 53-3010 Ambulance Drivers and
86 Attendants, Except Emergency Medical Technicians; (OOO) 53-3020
87 Bus Drivers; or (PPP) 53-3040 Taxi Drivers and Chauffeurs, and is (i)
88 paid on an hourly basis, or (ii) not exempt from the minimum wage
89 and overtime compensation requirements of the Fair Labor Standards
90 Act of 1938 and the regulations promulgated thereunder, as amended
91 from time to time. "Service worker" does not include day or temporary
92 workers, and any employee of a constituent unit of the state system of
93 higher education, as defined in section 10a-1 of the general statutes,
94 who is a part-time or adjunct faculty member, university assistant
95 working less than forty hours per week, educational assistant or other
96 part-time professional employee;

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

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

101 Sec. 2. (NEW) (*Effective January 1, 2012*) (a) Each employer shall
102 provide paid sick leave annually to each of such employer's service
103 workers in the state. Such paid sick leave shall accrue (1) beginning
104 January 1, 2012, or for a service worker hired after said date, beginning
105 on the service worker's date of employment, (2) at a rate of one hour of
106 paid sick leave for each forty hours worked by a service worker, and
107 (3) in one-hour increments up to a maximum of forty hours per
108 calendar year. Each service worker shall be entitled to carry over up to
109 forty unused accrued hours of paid sick leave from the current
110 calendar year to the following calendar year, but no service worker
111 shall be entitled to use more than the maximum number of accrued
112 hours, as described in subdivision (3) of this subsection, in any year.

113 (b) A service worker shall be entitled to the use of accrued paid sick
114 leave upon the completion of the service worker's six-hundred-
115 eightyeth hour of employment from January 1, 2012, if the service
116 worker was hired prior to January 1, 2012, or if hired after January 1,
117 2012, upon the completion of the service worker's six-hundred-
118 eightyeth hour of employment from the date of hire, unless the
119 employer agrees to an earlier date. A service worker shall not be
120 entitled to the use of accrued paid sick leave if such service worker did
121 not work an average of ten or more hours a week for the employer in
122 the most recent complete calendar quarter.

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

130 (d) Each employer shall pay each service worker for paid sick leave
131 at a pay rate equal to the greater of either (1) the normal hourly wage
132 for that service worker, or (2) the minimum fair wage rate under
133 section 31-58 of the general statutes in effect for the pay period during
134 which the employee used paid sick leave. For any service worker
135 whose hourly wage varies depending on the work performed by the
136 service worker, the "normal hourly wage" shall mean the average
137 hourly wage of the service worker in the pay period prior to the one in
138 which the service worker used paid sick leave.

139 (e) Notwithstanding the provisions of this section and sections 3 to
140 6, inclusive, of this act and upon the mutual consent of the service
141 worker and employer, a service worker who chooses to work
142 additional hours or shifts during the same or following pay period, in
143 lieu of hours or shifts missed, shall not use accrued paid sick leave.

144 Sec. 3. (NEW) (*Effective January 1, 2012*) (a) An employer shall permit

145 a service worker to use the paid sick leave accrued pursuant to section
146 2 of this act:

147 (1) For (A) a service worker's illness, injury or health condition, (B)
148 the medical diagnosis, care or treatment of a service worker's mental
149 illness or physical illness, injury or health condition, or (C)
150 preventative medical care for a service worker;

151 (2) For (A) a service worker's child's or spouse's illness, injury or
152 health condition, (B) the medical diagnosis, care or treatment of a
153 service worker's child's or spouse's mental or physical illness, injury or
154 health condition, or (C) preventative medical care for a child or spouse
155 of a service worker; and

156 (3) Where a service worker is a victim of family violence or sexual
157 assault (A) for medical care or psychological or other counseling for
158 physical or psychological injury or disability, (B) to obtain services
159 from a victim services organization, (C) to relocate due to such family
160 violence or sexual assault, or (D) to participate in any civil or criminal
161 proceedings related to or resulting from such family violence or sexual
162 assault.

163 (b) If a service worker's need to use paid sick leave is foreseeable, an
164 employer may require advance notice, not to exceed seven days prior
165 to the date such leave is to begin, of the intention to use such leave. If a
166 service worker's need for such leave is not foreseeable, an employer
167 may require a service worker to give notice of such intention as soon as
168 practicable. For paid sick leave of three or more consecutive days, an
169 employer may require reasonable documentation that such leave is
170 being taken for the purpose permitted under subsection (a) of this
171 section. If such leave is permitted under subdivision (1) or (2) of
172 subsection (a) of this section, documentation signed by a health care
173 provider who is treating the service worker or the service worker's
174 child or spouse indicating the need for the number of days of such
175 leave shall be considered reasonable documentation. If such leave is
176 permitted under subdivision (3) of subsection (a) of this section, a

177 court record or documentation signed by a service worker or volunteer
178 working for a victim services organization, an attorney, a police officer
179 or other counselor involved with the service worker shall be
180 considered reasonable documentation.

181 (c) Nothing in sections 2 to 6, inclusive, of this act shall be deemed
182 to require any employer to provide paid sick leave for a service
183 worker's leave for any purpose other than those described in this
184 section.

185 (d) Unless an employee policy or collective bargaining agreement
186 provides for the payment of accrued fringe benefits upon termination,
187 no service worker shall be entitled to payment of unused accrued sick
188 leave under this section upon termination of employment.

189 (e) Nothing in sections 2 to 6, inclusive, of this act shall be construed
190 to prohibit an employer from taking disciplinary action against a
191 service worker who uses paid sick leave provided under sections 2 to
192 6, inclusive, of this act for purposes other than those described in this
193 section.

194 Sec. 4. (NEW) (*Effective January 1, 2012*) (a) Nothing in sections 2 to 6,
195 inclusive, of this act shall be construed to (1) prevent employers from
196 providing more paid sick leave than is required under sections 2 to 6,
197 inclusive, of this act, (2) diminish any rights provided to any employee
198 or service worker under a collective bargaining agreement, or (3)
199 preempt or override the terms of any collective bargaining agreement
200 effective prior to January 1, 2012.

201 (b) Nothing in sections 2 to 6, inclusive, of this act shall be construed
202 to prohibit an employer (1) from establishing a policy whereby a
203 service worker may donate unused accrued paid sick leave to another
204 service worker, and (2) who provides more paid sick leave than is
205 required under sections 2 to 6, inclusive, of this act for the purposes
206 described in subdivision (1) of subsection (a) of section 3 of this act
207 from limiting the amount of such leave a service worker may use for
208 other purposes.

209 (c) Any termination of a service worker's employment by an
210 employer, whether voluntary or involuntary, shall be construed as a
211 break in service. Should any service worker subsequently be rehired
212 by the employer following a break in service, the service worker shall
213 (1) begin to accrue sick leave in accordance with section 2 of this act,
214 and (2) shall not be entitled to any unused hours of paid sick leave that
215 had been accrued prior to the service worker's break in service unless
216 agreed to by the employer.

217 Sec. 5. (NEW) (*Effective January 1, 2012*) (a) No employer shall take
218 retaliatory personnel action or discriminate against an employee
219 because the employee (1) requests or uses paid sick leave either in
220 accordance with sections 2 and 3 of this act or in accordance with the
221 employer's own paid sick leave policy, as the case may be, or (2) files a
222 complaint with the Labor Commissioner alleging the employer's
223 violation of sections 2 to 6, inclusive, of this act.

224 (b) The Labor Commissioner shall advise any employee who (1) is
225 covered by a collective bargaining agreement that provides for paid
226 sick days, and (2) files a complaint pursuant to subsection (a) of this
227 section, of his or her right to pursue a grievance with his or her
228 collective bargaining agent.

229 (c) Any employee aggrieved by a violation of the provisions of
230 sections 2 to 6, inclusive, of this act may file a complaint with the Labor
231 Commissioner. Upon receipt of any such complaint, said
232 commissioner may hold a hearing. After the hearing, any employer
233 who is found by the Labor Commissioner, by a preponderance of the
234 evidence, to have violated the provisions of subsection (a) of this
235 section shall be liable to the Labor Department for a civil penalty of
236 five hundred dollars for each violation. Any employer who is found by
237 the Labor Commissioner, by a preponderance of the evidence, to have
238 violated the provisions of sections 2 to 4, inclusive, or section 6 of this
239 act shall be liable to the Labor Department for a civil penalty of up to
240 one hundred dollars for each violation. The Labor Commissioner may
241 award the employee all appropriate relief, including the payment for

242 used paid sick leave, rehiring or reinstatement to the employee's
 243 previous job, payment of back wages and reestablishment of employee
 244 benefits to which the employee otherwise would have been eligible if
 245 the employee had not been subject to such retaliatory personnel action
 246 or discriminated against. Any party aggrieved by the decision of the
 247 commissioner may appeal the decision to the Superior Court in
 248 accordance with the provisions of chapter 54 of the general statutes.

249 (d) The Labor Commissioner shall administer this section within
 250 available appropriations.

251 Sec. 6. (NEW) (*Effective January 1, 2012*) Each employer subject to the
 252 provisions of section 2 of this act shall, at the time of hiring, provide
 253 notice to each service worker (1) of the entitlement to sick leave for
 254 service workers, the amount of sick leave provided to service workers
 255 and the terms under which sick leave may be used, (2) that retaliation
 256 by the employer against the service worker for requesting or using sick
 257 leave for which the service worker is eligible is prohibited, and (3) that
 258 the service worker has a right to file a complaint with the Labor
 259 Commissioner for any violation of this section and of sections 2 to 5,
 260 inclusive, of this act. Employers may comply with the provisions of
 261 this section by displaying a poster in a conspicuous place, accessible to
 262 service workers, at the employer's place of business that contains the
 263 information required by this section in both English and Spanish. The
 264 Labor Commissioner may adopt regulations, in accordance with
 265 chapter 54 of the general statutes, to establish additional requirements
 266 concerning the means by which employers shall provide such notice.
 267 The Labor Commissioner shall administer this section within available
 268 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
Sec. 6	<i>January 1, 2012</i>	New section