

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 11-52—SB 913

Labor and Public Employees Committee

Judiciary Committee

Appropriations Committee

AN ACT MANDATING EMPLOYERS PROVIDE PAID SICK LEAVE TO EMPLOYEES

SUMMARY: This act requires most employers of 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. It provides paid sick leave to service workers who work one of 68 federal Standard Occupational Classification System titles named in the act and are paid by the hour.

The earliest service workers can begin accruing sick leave is January 1, 2012. Before they can begin using accrued sick leave they must: (1) have worked for the employer for at least 680 hours and (2) have worked an average of at least 10 hours a week for the employer in the most recently completed calendar quarter.

Under the act, the leave can be used for the service worker's illness, injury, and related treatment or for the service worker's child or spouse. The leave time can also be used 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 act does not require manufacturers and certain tax-exempt organizations to provide paid sick leave. Also, it does not require covered employers to provide paid sick leave to day or temporary workers or non-hourly employees such as salaried professionals.

Anyone aggrieved by an alleged violation of the act may file a complaint with the labor commissioner. The commissioner can impose a civil penalty of up to \$100 on employers found in violation. The act bans employers from retaliating or discriminating against employees who request or use the leave the act provides or that the employer voluntarily provides. The labor commissioner can impose a fine of up to \$500 on employers found in violation of the retaliation ban. The commissioner can also order other appropriate relief such as rehiring or payment of back wages. Parties can appeal the commissioner's decision to Superior Court.

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

The act 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

§ 1 — DEFINITIONS

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Employer

The act defines “employer” as any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, or other entity, including the state and its municipalities, that employs 50 or more individuals in Connecticut in any quarter in the previous year, which must be determined annually on January 1. The 50-person threshold is satisfied if the employer employs that many Connecticut workers regardless of how many of them are service workers entitled to sick leave under the new law.

The employee count must be made based upon the quarterly wage reports that employers must, by law, submit to the commissioner (CGS § 31-225a (j)).

“Employer” does not include (1) any manufacturing business as classified in sectors 31, 32, and 33 of the North American Industrial Classification System (NAICS) or (2) any nationally chartered, nonprofit, tax-exempt organization that provides recreation, child care, and education services. The NAICS codes cover all forms of manufacturing including the following products: food, textiles, wood, petroleum, chemical, plastics, metal, machinery, motor vehicles, aerospace, computer, electronic, and miscellaneous products.

Service Worker and Employee

In the act, “service worker” means an employee primarily engaged in an occupation with one of the following occupation code numbers and titles, as defined by the federal Bureau of Labor Statistics Standard Occupational Classification system or any successor system:

Title	Code	Title	Code
Food Service Managers	11-9050	Medical and Health Services Managers	11-9110
Social Workers	21-1020	Social and Human Service Assistants	21-1093
Community Health Workers	21-1094	Community and Social Service Specialists, All Other	21-1099
Librarians	25-4020	Pharmacists	29-1050
Physician Assistants	29-1070	Therapists	29-1120
Registered Nurses	29-1140	Nurse Anesthetists	29-1150
Nurse Midwives	29-1160	Nurse Practitioners	29-1170
Dental Hygienists	29-2020	Emergency Medical Technicians and Paramedics	29-2040
Health Practitioner Support Technologists and Technicians	29-2050	Licensed Practical and Licensed Vocational Nurses	29-2060
Home Health Aides	31-1011	Nursing Aides, Orderlies, and Attendants	31-1012
Psychiatric Aides	31-1013	Dental Assistants	31-9091
Medical Assistants	31-9092	Security Guards	33-9032
Crossing Guards	33-9091	Supervisors of Food Preparation and Serving Workers	35-1010

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Cooks	35-2010	Food Preparation Workers	35 -2020
Bartenders	35-3010	Fast Food and Counter Workers	35-3020
Waiters and Waitresses	35-3030	Food Servers, Nonrestaurant	35-3040
Dining Room and Cafeteria Attendants and Bartender Helpers	35-9010	Dishwashers	35-9020
Hosts and Hostesses, Restaurant, Lounge, and Coffee Shop	35-9030	Miscellaneous Food Preparation and Serving Related Workers	35-9090
Janitors and Cleaners, Except Maids and Housekeeping Cleaners	37-2011	Building Cleaning Workers, All Other	37-2019
Ushers, Lobby Attendants, and Ticket Takers	39-3030	Barbers, Hairdressers, Hairstylists, and Cosmetologists	39-5010
Baggage Porters, Bellhops, and Concierges	39-6010	Child Care Workers	39-9010
Personal Care Aides	39-9021	First-Line Supervisors of Sales Workers	41-1010
Cashiers	41-2011	Counter and Rental Clerks	41-2021
Retail Salespersons	41-2030	Tellers	43-3070
Hotel, Motel, and Resort Desk Clerks	43-4080	Receptionists and Information Clerks	43-4170
Couriers and Messengers	43-5020	Secretaries and Administrative Assistants	43-6010
Computer Operators	43-9010	Data Entry and Information Processing Workers	43-9020
Desktop Publishers	43-9030	Insurance Claims and Policy Processing Clerks	43-9040
Mail Clerks and Mail Machine Operators, Except Postal Service	43-9050	Office Clerks, General	43-9060
Office Machine Operators, Except Computer	43-9070	Proofreaders and Copy Markers	43-9080
Statistical Assistants	43-9110	Miscellaneous Office and Administrative Support Workers	43-9190
Bakers	51-3010	Butchers and Other Meat, Poultry, and Fish Processing Workers	51-3020

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Miscellaneous Food Processing Workers	51-3090	Ambulance Drivers and Attendants, Except Emergency Medical Technicians	53-3010
Bus Drivers	53-3020	Taxi Drivers and Chauffeurs	53-3040

Under the act, service workers must 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 to be eligible for paid sick leave. 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.

Furthermore, service worker excludes day or temporary workers, which the act defines 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.

§§ 2-4 — PAID SICK LEAVE

Benefit Accrual

Under the act, service workers start accruing leave time on January 1, 2012. Those hired before then will start accruing on that date and service workers hired after that date will start accruing on their date of employment. Service workers cannot use the benefit until they have worked at least 680 hours after the benefit starts accruing and they must have worked an average of at least 10 hours a week for the employer during the most recently completed calendar quarter. The act does not prevent an employer from allowing service workers to begin accruing time before January 1, 2012.

Service workers accrue one hour of sick leave for every 40 hours of work and they 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 act requires the service worker's compensation while on sick leave to be the greater of (1) the worker's normal hourly wage or (2) the statutory minimum wage while the worker is on leave. If the service worker's hourly wage varies, the "normal hourly wage" is the average hourly wage paid to him or her in the pay period prior to the leave.

An employer does not have to pay a service worker 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

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that (1) accrues at least as quickly as the act's sick leave and (2) can be used for the same purposes. Under the act, "other paid leave" includes paid vacation, personal days, or other time off.

The act does not prevent employers from providing a more generous paid leave policy than it requires, and employers may limit the use of benefits they provide that exceed the act's requirements.

Hour, Shift, and Benefit Flexibility

The act permits employers to allow, but not require, service workers 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 service worker and (2) during the same or following pay period as the sick leave. Employers can also allow service workers to donate any unused sick leave to their co-workers.

Job Termination and Accrued Sick Leave

Under the act, any termination of a service worker's employment, whether voluntary or not, is construed as a break in service with that employer. If a service worker is rehired after such a break in service, he or she is not entitled to use any sick leave that was accrued before the break unless agreed to by the employer. The service worker begins accruing sick leave time anew when rehired.

Sick Leave Abuse

The act specifies that it does not prohibit an employer from disciplining an employee for using paid sick leave for unauthorized purposes.

§ 3 — PERMITTED USES

The act requires an employer to allow a service worker to use paid sick leave for his or her, or a 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 act defines a "child" as an employee's biological, adopted, or foster child, stepchild, legal ward, 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.

The act also requires employers to provide paid sick leave when the service worker is a victim of family violence or sexual assault for:

1. medical care or psychological or other counseling for physical or psychological injury or disability,
2. services from a victim services organization,
3. relocating, or
4. participation in a related civil or criminal legal proceeding.

Family violence is any physical harm or threatened act of violence that constitutes fear of such harm between family or household members. Sexual

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assault includes all penal code crimes of unlawful contact with the intimate parts of another person's body, except aggravated sexual assault of a minor (CGS § 53a-70c).

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

§ 3 — PERMITTED REQUIREMENTS OF THE SERVICE WORKERS

The act allows employers to require that service workers 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 details reasonable documentation.

Table 1: Documentation Needed for Sick Leave

Type of Leave	Documentation
For mental or physical illness, treatment of an illness or injury, mental or physical diagnosis, or preventive medical care for the service worker or the employee's child or spouse	Documentation signed by the health care provider treating the service worker or the service worker's child or spouse 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 service worker

§ 5 — ENFORCEMENT

Retaliation Prohibited

The act bans most employers from terminating, suspending, constructively discharging, demoting, unfavorably reassigning, 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 act or in accordance with the employer's own paid sick leave policy or (2) filed a complaint with the labor commissioner alleging an employer violated the act's provisions.

Since this part of the act uses the term "employee" rather than "service worker," it applies to a larger number of workers than the rest of the law, which focuses on job classification codes. Thus the retaliation ban covers all employers with 50 or more employees, excluding manufacturers and the tax-exempt organizations described in the act, that provide their own paid sick leave. This means employers fall into one of three groups: (1) covered by all the act's

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provisions, (2) covered by only the retaliation ban, and (3) exempt from the act.

Complaints, Hearings & Penalties

Employees aggrieved by an alleged violation may file a complaint with the labor commissioner. The commissioner may hold a hearing on the complaint and, after the hearing, any employer who is found by a preponderance of the evidence, to have violated the act's:

1. general provisions will be liable to the Labor Department for a civil penalty of up to \$100 for each violation or
2. retaliation provision will be liable to the department for a civil penalty of \$500 for each violation.

The commissioner can award the employee all appropriate relief, including the payment for used paid sick leave, rehiring or reinstatement to the employee's previous job, payment of back wages, and reestablishment of benefits for which the employee was otherwise eligible if not for the retaliatory personnel action or being discriminated against. Aggrieved parties can appeal the commissioner's decision to Superior Court.

The act requires the labor commissioner to enforce its provisions within available appropriations.

§§ 4 & 5 — EMPLOYEES UNDER UNION CONTRACTS

The act 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.

It requires the labor commissioner to advise any employee who is covered by a collective bargaining agreement that provides paid sick days and files a complaint under the new law of his or her right to file a grievance with his or her union.

§ 6 — SERVICE WORKER NOTICE

The act requires each covered employer to provide notice to each service worker at the time of hiring that the:

1. service worker is entitled to paid sick leave, the amount provided, and the terms under which it can be used;
2. employer cannot retaliate against the worker for requesting or using sick leave; and
3. worker 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 service workers, at the employer's place of business. The act authorizes the labor commissioner to adopt regulations establishing additional notice requirements. It requires him to administer the notice provision within available appropriations.

OLR Tracking: JM:JKL:SNE:ts