

Testimony of President William Henderson

Communications Workers of America
Local 1298

Raised Bill No. SB1007 – AN ACT CONCERNING REVISIONS TO THE PAID SICK
LEAVE STATUTES

COMMERCE COMMITTEE

February 2013

Senator Labeau, Representative Perone, members of the committee: my name is William Henderson, I am proud to serve as the President of Communications Workers of America Local 1298, representing almost 4,000 telecommunications workers across New England.

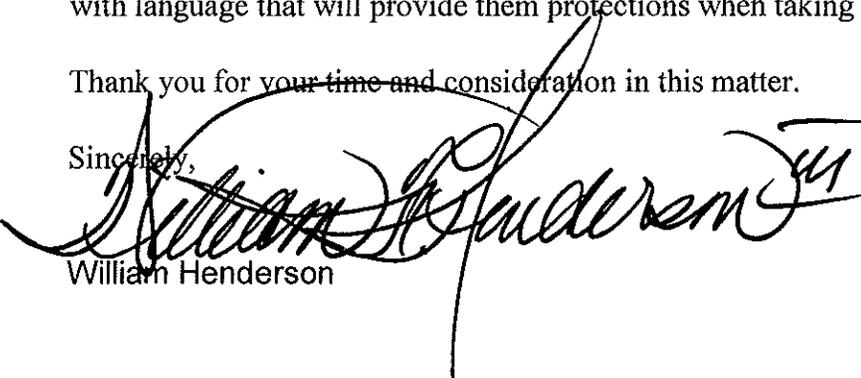
I am here to speak in support of Raised Bill no. 1007. Last year at this time, CWA Local 1298 was very supportive of the Act Mandating Employers Provide Paid Sick Leave to Employees. We are still in support of the need for paid sick leave, but want to reaffirm the need for revisions in order to protect our members. Presently, Sec. 5 (a) states that **“no employer shall take retaliatory personnel action or discriminate against an employee who request or uses paid sick leave”** in accordance with the law as presented. It goes on to explain that **“Retaliatory personnel action means any termination , suspension, constructive discharge, demotion, unfavorable reassignment, refusal to promote, disciplinary action or other worker adverse employment action taken by an employer against an employee or a service worker.”**

I have provided a copy of my testimony along with a copy of the document entitled *“Sick Leave Guidance”* which I located on the State of Connecticut website. On page 9 of this document, under the section marked **Retaliation**, it states that although only service workers are entitled to paid sick leave pursuant to this act, certain provisions of the discrimination and retaliation section apply to all employees engaged in service to the employer. It goes on to explain that employers are prohibited from discrimination or retaliating against an employee because the employee requests or uses paid sick leave in accordance with the employer’s own paid sick leave policy.

When we supported this legislation, we assumed it would protect our members from retaliation for using their paid sick time. As it turns out, it did not, as AT&T is engaging in actions that include termination, suspension, wage reductions, and other disciplinary actions towards employees who use their paid sick days. In essence, the language on retaliation does not apply to our members. On behalf of our members, I would appreciate your support in revising the statutes with language that will provide them protections when taking their paid sick days.

Thank you for your time and consideration in this matter.

Sincerely,


William Henderson

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**Guidance from the Connecticut Department of Labor Regarding
Public Act 11-52: An Act Mandating Employers Provide Paid Sick Leave to Employees**

The following document is intended to serve as guidance for employers and employees in answering questions concerning public act 11-52 – an act mandating employers provide paid sick leave to employees. The Connecticut Department of Labor is providing this guidance in order to assist human resources professionals in Connecticut in their efforts to comply with this new law.

This guidance is subject to change as questions arise and interpretations develop. If this guidance is updated at any point, the Connecticut Department of Labor will indicate the substance and date of any change.

STATUTE/LAW	GUIDANCE
<p><i>Sec. 1(1) "Child" means a biological, adopted or foster child, stepchild, legal ward of a service worker, or a child of a service worker standing in loco parentis, who is</i></p> <p><i>(A) under eighteen years of age; or</i></p> <p><i>(B) eighteen years of age or older and incapable of self-care because of a mental or physical disability</i></p>	<p><u>Same as the FMLA definition.</u> If the child is 18 years of age or older, the child must have a disability within the meaning of the American with Disabilities Act that prevents him or her from performing activities of daily living.</p>
<p><i>Sec. 1(2) "Day or temporary worker" means an individual who performs work for another on</i></p> <p><i>(A) a per diem basis, or</i></p> <p><i>(B) an occasional or irregular basis for only the time required to complete such work, whether such individual is paid by the person for whom such work is performed or by an employment agency or temporary help service</i></p>	<p><u>Per diem</u> - The statute does not provide any definition of "per diem," nor does any other statute that DOL administers have such a definition. As a result, DOL would be looking at how businesses have traditionally defined per diem employees. Questions to ask: is the individual being treated and acting like a per diem, can s/he accept or refuse work at will, what is the structure of the assignment, what is the employee's relationship to the employer? We recognize that per diem assignments may be more than one day and in fact be longer term; however, if the employment has the characteristics of traditional per diem relationship, then DOL would find that the employee is per diem and thus exempt.</p> <p><u>Temporary worker</u> – Because this term is defined in the law, DOL has more guidance in making this determination. DOL will analyze employment based on the exact language provided in accordance with the facts and circumstances of each case. Questions to ask: what is the assignment, length, duties, etc?</p>

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	<p>manufacturing, then all of the campus will be exempt from this law.</p> <p>Non-profits – In order to qualify under this exemption, the employer must meet all of the criteria provided for in the statute. Specifically, it must be (1) nationally chartered, AND (2) provide: (i) recreation, (ii) child care, AND (iii) education If the employer does not meet ALL of these qualifications, it is not exempt from this law.</p>
<p><i>Sec. 1(7) "Service worker" means an employee primarily engaged in an occupation with one of the broad or detailed occupation code numbers and titles, listed in the law, as defined by the federal Bureau of Labor Statistics Standard Occupational Classification system or any successor system . . . and is paid on an hourly basis, or not exempt from minimum wage and overtime requirements of the Fair Labor Standards Act of 1938 and the regulations promulgated thereunder, as amended from time to time. "Service worker" does not include day or temporary workers.</i></p>	<p>Service worker – The statute provides a complete list of classifications that qualify as service workers. If a job title is not listed specifically, it does not mean that the job is not included in one of the prescribed classifications. The employer must read the broad and detailed occupations and descriptions provided on the Bureau of Labor Statistics website: www.bls.gov/soc. (SEE ATTACHMENT)</p> <p>In addition, if an employee performs more than one job, the employer must use the classification in which the employee is primarily engaged to determine his/her status as a service worker.</p>
<p><i>Sec. 2(a) Each employer shall provide paid sick leave annually to each of such employer's service workers in the state. Such paid sick leave shall accrue</i></p> <ul style="list-style-type: none"> <i>(1) beginning January 1, 2012, or for a service worker hired after said date, beginning on the service worker's date of employment,</i> <i>(2) at a rate of one hour of paid sick leave for each forty hours worked by a service worker, and</i> <i>(3) in one-hour increments up to a maximum of 40 hours per calendar year</i> <p><i>Each service worker shall be entitled to</i></p>	<p>Accrual – Employers shall provide the accrual of paid sick leave on a calendar year basis (<i>i.e.</i>, January through December). The act sets forth two dates for service workers to begin to accrue paid sick leave hours. Service workers that are currently employed, begin to accrue paid sick leave hours on January 1, 2012. Service workers hired after that date, begin to accrue paid sick leave hours upon their date of hire.</p> <p>Employers must provide accrual at a rate of 1 hour per every 40 hours worked. The 40 hours worked means hours <u>actually</u> worked and does not include any time off (<i>e.g.</i>, vacation, paid time off...) taken by the service worker. The accrual is not based on full-time status; rather, any service worker employed by an employer subject to the act must be allowed to</p>

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<p><i>in the most recent complete calendar quarter.</i></p>	<p>hours, they never have to meet it again for the same employer.</p> <p>After the service workers meet the 680 hours requirement and seek to use accrued paid seek leave, they can use accrued time only if the service workers have worked an <u>AVERAGE of 10 hours per week</u> in the most recent completed calendar quarter.</p>
<p><i>Sec. 2(c) An employer shall be deemed to be in compliance with this section if the employer offers any other paid leave, or combination of other paid leave that:</i></p> <p><i>(1) may be used for the purposes of section 3 of this act, and</i></p> <p><i>(2) is accrued in total at a rate equal to or greater than the rate described in subsections (a) and (b) of this section.</i></p> <p><i>For the purposes of this subsection, "other paid leave" may include, but not be limited to, paid vacation, personal days or paid time off.</i></p>	<p><u>Deemed to be in compliance</u> - Employers will be deemed to be in compliance with this law if they offer paid time off that either meets or exceeds the requirements of the act, meaning accrual and use rates, and reasons for the need for leave, etc.</p>
<p><i>Sec. 2(d) Each employer shall pay each service worker for paid sick leave at a pay rate equal to the greater of either (1) the normal hourly wage for that service worker, or (2) the minimum fair wage rate under section 31-58 of the general statutes in effect for the pay period during which the employee used paid sick leave.</i></p> <p><i>For any service worker whose hourly wage varies depending on the work performed by the service worker, the "normal hourly wage" shall mean the average hourly wage of the service worker in the pay period prior to the one in which the service worker used paid sick leave.</i></p>	<p><u>Pay rate</u> – For service workers whose normal hourly wage is lower than minimum wage, such as service workers who earn a tip credit, they should be paid minimum wage for any paid sick leave hours that they use. In addition, overtime and commissions are not to be calculated and included in the determination of a service workers "normal hourly wage."</p>
<p><i>Sec. 2(e) Notwithstanding the provisions</i></p>	<p><u>Shift change</u> – any decision to allow service workers</p>

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<p><i>paid sick leave is foreseeable, an employer may require advance notice, not to exceed 7 days prior to the date such leave is to begin, of the intention to use such leave.</i></p> <p><i>If a service worker's need for such leave is not foreseeable, an employer may require a service worker to give notice of such intention as soon as practicable.</i></p> <p><i>For paid sick leave of 3 or more consecutive days, an employer may require reasonable documentation that such leave is being taken for the purpose permitted under subsection (a) of this section.</i></p> <p><i>If such leave is permitted under subdivision (1) or (2) of subsection (a) of this section, documentation signed by a health care provider who is treating the service worker or the service worker's child or spouse indicating the need for the number of days of such leave shall be considered reasonable documentation.</i></p> <p><i>If such leave is permitted under subdivision (3) of subsection (a) of this section, a court record or documentation signed by a service worker or volunteer working for a victim services organization, an attorney, a police officer or other counselor involved with the service worker shall be considered reasonable documentation.</i></p>	<p>days notice if the service worker's need to use paid sick leave is foreseeable. Otherwise, service workers must notify their employers of the need to use paid sick leave as soon as practicable. Employers may deny the use of paid sick leave to service workers who could have complied with required notice provisions but fail to do so.</p> <p>Documentation -- Employers may only request reasonable documentation if the employee uses paid sick leave for 3 or more consecutive <u>work</u> day absences. The absences do not need to be full days, but rather may consist of any time taken off from work, during the day, as paid sick leave. In addition, the days are required to be consecutive work days rather than consecutive calendar days. For example, a service worker who is scheduled to work Monday, Wednesday and Friday, who uses paid sick leave for any portion of those three days in a row, could be required by his/her employer to obtain reasonable documentation from his/her health care provider. Unlike the FMLA, however, there is no provision for an employer to seek clarification of the health care provider's note or a second opinion if the employer questions the documentation.</p> <p>Documentation for paid sick leave must be obtained from the service worker's health care provider, or if the leave is for the service worker's child or spouse, then from the child's or spouse's health care provider. For a service worker that uses paid sick leave due to either family violence or sexual assault, the service worker need only provide documentation of the need for leave from the appropriate person involved in or assisting the service worker as provided in the act.</p>
<p><i>Sec. 3(c) Nothing in sections 2 to 6, inclusive, of this act shall be deemed to require any employer to provide paid sick leave for a service worker's leave for any purpose other than those described in this section.</i></p> <p><i>3(d) Unless an employee policy or</i></p>	<p>Miscellaneous - Employers do not have to provide any paid sick leave unless the reasons of the need for leave fall within those provided by the act in section 3(a). If a service worker uses paid sick leave for reasons not covered by section 3(a), the employer may discipline the service worker.</p> <p>An employer does not have to pay out any unused</p>

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<p><i>construed as a break in service. Should any service worker subsequently be rehired by the employer following a break in service, the service worker shall (1) begin to accrue sick leave in accordance with section 2 of this act, and (2) shall not be entitled to any unused hours of paid sick leave that had been accrued prior to the service worker's break in service unless agreed to by the employer.</i></p>	<p>worker loses any unused accrued paid sick leave hours; however, the service worker does not lose any of the hours worked toward the 680 hours of employment requirement. If the service worker returns to work at that same employer, then the service worker begins to accrue paid sick leave hours anew, but picks up where s/he left off regarding the 680 hours of employment requirement.</p> <p>For example, a service worker who worked part time for 7 months prior to a break in service, accrued 12 hours of paid sick leave and worked for the employer for 500 hours would return to work after the break in service with no accrued paid sick leave and 500 hours of work towards the 680 hour requirement.</p> <p>In addition, the requirement of section 2(b) still applies, whereby a service worker who seeks to use accrued paid sick leave must have worked an average of 10 hours per week in the most recent completed calendar quarter. As a result, the service worker who returns to employment would not be able to use any paid sick leave until s/he meets that requirement.</p>
<p><i>Sec. 5(a) No employer shall take retaliatory personnel action or discriminate against an employee because the employee (1) requests or uses paid sick leave either in accordance with sections 2 and 3 of this act or in accordance with the employer's own paid sick leave policy, as the case may be, or (2) files a complaint with the Labor Commissioner alleging the employer's violation of sections 2 to 6, inclusive, of this act.</i></p> <p><i>Sec. 1(6) "Retaliatory personnel action" means any termination, suspension, constructive discharge, demotion, unfavorable reassignment, refusal to promote, disciplinary action or other</i></p>	<p>Retaliation - Although only service workers are entitled to paid sick leave pursuant to this act, certain provisions of the discrimination and retaliation section apply to all employees engaged in service to the employer. The discrimination and retaliation prohibitions can be broken down into three categories:</p> <ul style="list-style-type: none"> (1) Employers are prohibited from discriminating or retaliating against a service worker because the service worker requested or used paid sick leave. (2) Employers are prohibited from discriminating or retaliating against an employee because the employee requests or uses paid sick leave in accordance with the employer's own paid sick leave policy. <p>As noted, this applies to ANY EMPLOYEE (not</p>



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<p><i>this act shall be liable to the Labor Department for a civil penalty of up to \$100 for each violation.</i></p> <p><i>The Labor Commissioner may 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 employee benefits to which the employee otherwise would have been eligible if the employee had not been subject to such retaliatory personnel action or discriminated against.</i></p> <p><i>Any party aggrieved by the decision of the commissioner may appeal the decision to the Superior Court in accordance with the provisions of chapter 54 of the general statutes.</i></p>	<p>Parties may appeal the Labor Commissioner's final decision to Superior Court. There is no private right of action otherwise.</p>
<p><i>Sec. 6 Each employer subject to the provisions of section 2 of this act shall, at the time of hiring, provide notice to each service worker</i></p> <p><i>(1) of the entitlement to sick leave for service workers, the amount of sick leave provided to service workers and the terms under which sick leave may be used,</i></p> <p><i>(2) that retaliation by the employer against the service worker for requesting or using sick leave for which the service worker is eligible is prohibited, and</i></p> <p><i>(3) that the service worker has a right to file a complaint with the Labor Commissioner for any violation of this section and of sections 2 to 5, inclusive, of this act.</i></p> <p><i>Employers may comply with the provisions of this section by displaying a poster in a conspicuous place, accessible to service workers, at the employer's place of business that contains the information required by this section in</i></p>	<p>Poster - Employers subject to the provisions of this act must provide appropriate notice to service workers of the laws entitlements. DOL will issue posters that employers may use to satisfy this notice requirement.</p>

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Assistants			
Crossing Guards	33-9091	Supervisors of Food Preparation and Serving Workers	35-1010
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	41-2030	Tellers	43-3070

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Workers		Except Emergency Medical Technicians	
Bus Drivers	53-3020	Taxi Drivers and Chauffeurs	53-3040