
OLR Bill Analysis

HB 5044

AN ACT CONCERNING FAIR TREATMENT OF SICK WORKERS.

SUMMARY

This bill expands the state's paid sick leave law in a number of ways and requires employers with less than 20 employees to provide unpaid sick leave. Among other things, it:

1. expands the requirement to provide paid sick days to cover employers with at least 20, rather than 50, employees;
2. eliminates exemptions for manufacturers and certain non-profit employers, thus placing these employers under the bill's sick leave requirements;
3. prohibits employers from requiring employees using paid or unpaid sick leave to search for or find a replacement employee to cover the period that they are out on leave;
4. extends eligibility for sick leave (both paid and unpaid) to any employees paid on an hourly basis or covered by federal minimum wage and overtime pay requirements, rather than limiting it to "service workers" in certain specified job categories;
5. establishes ways to determine how integrated employers and successor-in-interest employers must comply with the sick leave requirements; and
6. expands the allowed uses of sick leave so that eligible employees may use it for, among other things, their parents' health issues; to bond with a newborn or newly adopted child; and when a child's school is closed due to a public health emergency.

The bill applies the paid sick leave law's provisions, as amended by

the bill, to the additional employees and employers it covers. For example, (1) newly covered employees must receive paid sick leave at their normal hourly wage, or the minimum wage, whichever is greater; (2) newly covered employers must notify employees about the law's provisions; and (3) newly covered employees may file complaints with the Labor Department, which enforces the law.

The bill also makes numerous technical and conforming changes.

EFFECTIVE DATE: October 1, 2018

COVERED EMPLOYERS

Current law requires certain employers with at least 50 employees to provide up to 40 hours of paid sick leave to certain "service workers" annually. The bill expands the paid sick leave requirement to cover employers with at least 20 employees. It also removes current exemptions for employers who are either (1) tax exempt nationally chartered organizations that provide recreation, child care, and education services (e.g., the YMCA) or (2) businesses classified in sectors 31, 32, or 33 in the North American Industrial Classification System (i.e., manufacturers).

Under current law and the bill, covered employers' employees accrue one hour of sick leave for every 40 hours worked.

Unpaid Sick Leave

The bill also requires employers with less than 20 employees to provide their covered employees with up to 40 hours of unpaid sick leave. The unpaid leave (1) accrues at the same rate as paid leave, (2) may be used for the same purposes (including those expanded by the bill), and (3) is subject to the same requirements and limitations as paid leave. Among other things, these (1) require employers to allow employees to carry over up to 40 hours of unused accrued leave from one year to the next, (2) limit an employee's entitlement to leave to no more than 40 hours in any year, and (3) prohibit an employee from using leave unless he or she worked an average of at least 10 hours per week for his or her employer in the most recent complete quarter.

For unpaid sick leave purposes, (1) “employers” are any person, firm, business, education institution, nonprofit agency, corporation, or LLC, including successors-in-interest and integrated employers, as determined under the bill, and (2) an employer’s number of employees must be annually determined based on the employer’s payroll for the week containing October first.

COVERED EMPLOYEES

The bill also extends eligibility for sick leave (either paid or unpaid, depending on the employer’s size) to any employees who are (1) paid on an hourly basis or (2) not exempt from the federal Fair Labor Standards Act’s minimum wage and overtime compensation requirements (i.e., must be paid minimum wage and overtime when applicable). Current law limits paid sick leave to “service workers” in 69 specified job categories in the food service, health, transportations, retail, and other industries. (The bill does not make a conforming change regarding a “service worker’s” rate of sick leave pay.)

As under current law, the bill excludes day or temporary workers from sick leave eligibility.

Leave Accrual

As under the current paid sick leave law, the bill requires any newly covered employees to begin accruing either paid or unpaid sick leave (depending on the size of their employer) on January 1, 2012 or, for those hired after that date, their date of employment.

Current law allows eligible employees to use their accrued paid sick leave after completing their 680th work-hour after January 1, 2012 or, for those hired after that date, their date of employment. The bill instead allows them to use their accrued paid or unpaid sick leave after completing their 90th calendar day of employment after whichever of the above dates is applicable.

INTEGRATED EMPLOYERS AND SUCCESSOR-IN-INTEREST EMPLOYERS

The bill extends the paid and unpaid sick leave requirements to

integrated employers (i.e., certain franchises) and successor-in-interest employers (i.e., companies that buy other companies and retain their employees) and establishes ways to determine how each must comply with the requirements. (The bill does not specify, but presumably an employer must initially decide whether it is an integrated employer or successor-in-interest, with the Department of Labor subsequently determining whether the employer's decision was correct if an employee files a complaint.)

Integrated Employers

The bill requires integrated employers to provide their covered employees with either paid or unpaid sick leave, as appropriate, in the same manner required of other employers. To determine whether separate entities are an integrated employer (i.e., deemed parts of a single employer for purposes of counting employees), the bill requires the following factors, viewed in their totality, to be considered:

1. common management,
2. interrelation between operations,
3. centralized control of labor relations, and
4. degree of common ownership or degree of financial control.

Under the bill, if separate entities are determined to be an integrated employer, the employees of all entities making up the integrated employer must be counted to determine employer and employee coverage (e.g., an individual franchise location with 10 employees would be required to provide paid sick leave if it was found to be part of an integrated employer with other franchise locations totaling more than 20 employees in the aggregate).

Successor-in-Interest Employers

The bill also requires successor-in-interest employers to provide their covered employees with either paid or unpaid sick leave, as appropriate, in the same manner required of other employers. To determine whether an employer is a successor-in-interest, the bill

requires the following factors, in their totality, to be considered:

1. substantial continuity of the same business operations;
2. use of the same business site;
3. workforce continuity;
4. similarity of jobs and working conditions; supervisory personnel; machinery, equipment, and production methods; and products and services; and
5. the predecessor's ability to provide relief.

Under the bill, if an employer is deemed a successor-in-interest, any entitlements due to its employees must be the same as if the employment by the predecessor and successor was continuous employment by a single employer (e.g., an employee must carry over any of the bill's sick leave accrued with the predecessor employer).

EMPLOYEE USE OF SICK LEAVE

Current law generally allows an eligible employee to use paid sick leave for (1) his or her illness, injury, and related treatment; (2) for those of the employee's child or spouse; and (3) certain reasons related to when an employee is a victim of family violence. The bill expands the allowed uses of sick leave (both paid and unpaid) to allow a covered employee to use it for the following reasons:

1. a parent's illness, injury, or health condition;
2. the medical diagnosis, care, or treatment of a parent's mental or physical illness, injury, or health condition;
3. a parent's preventative medical care;
4. certain reasons related to when an employee's child, spouse, or parent is a victim of family violence;
5. bonding with a newborn, newly adopted, or newly placed foster child under age 18, within one year of the birth, adoption, or

placement; and

6. when the employee's place of employment or the employee's child's school or place of care is closed by order of municipal, state, or federal public health officials due to a public health emergency.

Under the bill, a "parent" is a biological, adoptive, step, or foster parent of a covered employee or a covered employee's spouse, or any other person who stood in the place of a parent to the employee or spouse when they were children.

The bill also increases the maximum age of a child for which an employee may use sick leave from 18 to 26.

EXTENDED PROVISIONS

The bill extends the current paid sick leave law's provisions to the additional employers and employees it covers for paid and unpaid sick leave. Among other things, these:

1. prohibit retaliatory action against an employee for requesting or using paid or unpaid sick leave;
2. require employers to provide notice of the sick leave law, including the amount of leave provided, the terms under which it can be used, that employer retaliation is prohibited, and the employee's right to file a complaint with the Department of Labor (the requirement may be met by displaying a poster); and
3. allow an employer to require notice up to seven days in advance when the leave is foreseeable or as soon as practicable when leave is not foreseeable.

As under current law, employees aggrieved by a violation may file a complaint with the labor commissioner and upon receiving it, the commissioner may hold a hearing. Employers may be fined up to \$100 for each violation of the bill's general provisions and up to \$500 for each violation of the bill's anti-retaliation provision. The commissioner

can also award the employee all appropriate relief, including the payment for used paid sick leave, rehiring or reinstatement to the employee's previous job, and payment of back wages.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 7 Nay 6 (03/20/2018)