



House of Representatives

General Assembly

File No. 167

February Session, 2018

House Bill No. 5044

House of Representatives, April 4, 2018

The Committee on Labor and Public Employees reported through REP. PORTER of the 94th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING FAIR TREATMENT OF SICK WORKERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-57r of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2018*):

3 As used in this section and sections 31-57s to 31-57w, inclusive, as
4 amended by this act:

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

11 (2) "Covered employee" means an employee who is (A) paid on an
12 hourly basis; or (B) not exempt from the minimum wage and overtime
13 compensation requirements of the Fair Labor Standards Act of 1938

14 and the regulations promulgated thereunder, as amended from time to
15 time, but does not include day or temporary workers;

16 [(2)] (3) "Day or temporary worker" means an individual who
17 performs work for another on (A) a per diem basis, or (B) an occasional
18 or irregular basis for only the time required to complete such work,
19 whether such individual is paid by the person for whom such work is
20 performed or by an employment agency or temporary help service, as
21 defined in section 31-129;

22 [(3)] (4) "Employee" means an individual engaged in service to an
23 employer in the business of the employer;

24 [(4)] (5) "Employer" means: (A) For purposes of paid sick leave, any
25 person, firm, business, educational institution, nonprofit agency,
26 corporation, limited liability company, successor-in-interest,
27 determined in accordance with section 2 of this act, integrated
28 employer, determined in accordance with section 2 of this act, or other
29 entity that employs [fifty] twenty or more individuals in the state,
30 which shall be determined based on such person's, firm's, business',
31 educational institution's, nonprofit agency's, corporation's, limited
32 liability company's, successor-in-interest's, integrated employer's or
33 other entity's payroll for the week containing October first, annually; [.
34 "Employer" does not include: (A) Any business establishment
35 classified in sector 31, 32 or 33 in the North American Industrial
36 Classification System, or (B) any nationally chartered organization
37 exempt from taxation under Section 501(c)(3) of the Internal Revenue
38 Code of 1986, or any subsequent corresponding internal revenue code
39 of the United States, as from time to time amended, that provides all of
40 the following services: Recreation, child care and education] (B) for
41 purposes of unpaid sick leave, any person, firm, business, educational
42 institution, nonprofit agency, corporation, limited liability company,
43 successor-in-interest, determined in accordance with section 2 of this
44 act, integrated employer, determined in accordance with section 2 of
45 this act, or other entity that employs less than twenty individuals in
46 the state, which shall be determined based on such person's, firm's,

47 business's, educational institution's, nonprofit agency's, corporation's,
48 limited liability company's, successor-in-interest's, integrated
49 employer's or other entity's payroll for the week containing October
50 first, annually;

51 [(5)] (6) "Family violence" has the same meaning as provided in
52 section 46b-38a;

53 (7) "Parent" means a biological, adoptive, step or foster parent of a
54 covered employee or covered employee's spouse, or any other
55 individual who stood in loco parentis to the covered employee or
56 covered employee's spouse when the covered employee or covered
57 employee's spouse was a child;

58 [(6)] (8) "Retaliatory personnel action" means any termination,
59 suspension, constructive discharge, demotion, unfavorable
60 reassignment, refusal to promote, disciplinary action or other adverse
61 employment action taken by an employer against an employee; [or a
62 service worker;]

63 [(7) "Service worker" means an employee primarily engaged in an
64 occupation with one of the following broad or detailed occupation
65 code numbers and titles, as defined by the federal Bureau of Labor
66 Statistics Standard Occupational Classification system or any successor
67 system: (A) 11-9050 Food Service Managers; (B) 11-9110 Medical and
68 Health Services Managers; (C) 21-1020 Social Workers; (D) 21-1093
69 Social and Human Service Assistants; (E) 21-1094 Community Health
70 Workers; (F) 21-1099 Community and Social Service Specialists, All
71 Other; (G) 25-4020 Librarians; (H) 29-1050 Pharmacists; (I) 29-1070
72 Physician Assistants; (J) 29-1120 Therapists; (K) 29-1140 Registered
73 Nurses; (L) 29-1150 Nurse Anesthetists; (M) 29-1160 Nurse Midwives;
74 (N) 29-1170 Nurse Practitioners; (O) 29-2020 Dental Hygienists; (P) 29-
75 2040 Emergency Medical Technicians and Paramedics; (Q) 29-2050
76 Health Practitioner Support Technologists and Technicians; (R) 29-2060
77 Licensed Practical and Licensed Vocational Nurses; (S) 31-1011 Home
78 Health Aides; (T) 31-1012 Nursing Aides, Orderlies and Attendants;
79 (U) 31-1013 Psychiatric Aides; (V) 31-9091 Dental Assistants; (W) 31-

80 9092 Medical Assistants; (X) 33-9032 Security Guards; (Y) 33-9091
81 Crossing Guards; (Z) 35-1010 Supervisors of Food Preparation and
82 Serving Workers; (AA) 35-2010 Cooks; (BB) 35-2020 Food Preparation
83 Workers; (CC) 35-3010 Bartenders; (DD) 35-3020 Fast Food and
84 Counter Workers; (EE) 35-3030 Waiters and Waitresses; (FF) 35-3040
85 Food Servers, Nonrestaurant; (GG) 35-9010 Dining Room and Cafeteria
86 Attendants and Bartender Helpers; (HH) 35-9020 Dishwashers; (II) 35-
87 9030 Hosts and Hostesses, Restaurant, Lounge and Coffee Shop; (JJ)
88 35-9090 Miscellaneous Food Preparation and Serving Related Workers;
89 (KK) 37-2011 Janitors and Cleaners, Except Maids and Housekeeping
90 Cleaners; (LL) 37-2019 Building Cleaning Workers, All Other; (MM)
91 39-3030 Ushers, Lobby Attendants and Ticket Takers; (NN) 39-5010
92 Barbers, Hairdressers, Hairstylists and Cosmetologists; (OO) 39-6010
93 Baggage Porters, Bellhops and Concierges; (PP) 39-9010 Child Care
94 Workers; (QQ) 39-9021 Personal Care Aides; (RR) 41-1010 First-Line
95 Supervisors of Sales Workers; (SS) 41-2011 Cashiers; (TT) 41-2021
96 Counter and Rental Clerks; (UU) 41-2030 Retail Salespersons; (VV) 43-
97 3070 Tellers; (WW) 43-4080 Hotel, Motel and Resort Desk Clerks; (XX)
98 43-4170 Receptionists and Information Clerks; (YY) 43-5020 Couriers
99 and Messengers; (ZZ) 43-6010 Secretaries and Administrative
100 Assistants; (AAA) 43-9010 Computer Operators; (BBB) 43-9020 Data
101 Entry and Information Processing Workers; (CCC) 43-9030 Desktop
102 Publishers; (DDD) 43-9040 Insurance Claims and Policy Processing
103 Clerks; (EEE) 43-9050 Mail Clerks and Mail Machine Operators, Except
104 Postal Service; (FFF) 43-9060 Office Clerks, General; (GGG) 43-9070
105 Office Machine Operators, Except Computer; (HHH) 43-9080
106 Proofreaders and Copy Markers; (III) 43-9110 Statistical Assistants; (JJJ)
107 43-9190 Miscellaneous Office and Administrative Support Workers;
108 (KKK) 51-3010 Bakers; (LLL) 51-3020 Butchers and Other Meat, Poultry
109 and Fish Processing Workers; (MMM) 51-3090 Miscellaneous Food
110 Processing Workers; (NNN) 53-3010 Ambulance Drivers and
111 Attendants, Except Emergency Medical Technicians; (OOO) 53-3020
112 Bus Drivers; (PPP) 53-3040 Taxi Drivers and Chauffeurs; or (QQQ) 29-
113 2034 Radiologic Technologists, and is (i) paid on an hourly basis, or (ii)
114 not exempt from the minimum wage and overtime compensation

115 requirements of the Fair Labor Standards Act of 1938 and the
116 regulations promulgated thereunder, as amended from time to time.
117 "Service worker" does not include day or temporary workers;]

118 [(8)] (9) "Sexual assault" means any act that constitutes a violation of
119 section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b or 53a-73a;

120 [(9)] (10) "Spouse" means a husband or wife, as the case may be; and

121 [(10)] (11) "Year" means any three-hundred-sixty-five-day period
122 used by an employer to calculate employee benefits.

123 Sec. 2. (NEW) (*Effective October 1, 2018*) (a) In determining whether
124 an employer is a successor-in-interest to an employer for purposes of
125 section 31-57r of the general statutes, as amended by this act, the
126 following factors, viewed in their totality, shall be considered: (1)
127 Substantial continuity of the same business operations; (2) use of the
128 same business site; (3) continuity of the workforce; (4) similarity of jobs
129 and working conditions; (5) similarity of supervisory personnel; (6)
130 similarity in machinery, equipment and production methods; (7)
131 similarity of products and services; and (8) the ability of the
132 predecessor to provide relief. If an employer is determined to be a
133 successor-in-interest, any entitlements due the employees of such
134 employer shall be the same as if the employment by the predecessor
135 and successor were continuous employment by a single employer.

136 (b) In determining whether separate entities are an integrated
137 employer, such that they are deemed to be parts of a single employer
138 for purposes of section 31-57r of the general statutes, as amended by
139 this act, the following factors, viewed in their totality, shall be
140 considered: (1) Common management; (2) interrelation between
141 operations; (3) centralized control of labor relations; and (4) degree of
142 common ownership or degree of financial control. If separate entities
143 are determined to be an integrated employer, the employees of all
144 entities making up the integrated employer shall be counted in
145 determining employer and employee coverage.

146 Sec. 3. Section 31-57s of the general statutes is repealed and the
147 following is substituted in lieu thereof (*Effective October 1, 2018*):

148 (a) [Each] An employer that employs twenty or more employees in
149 the state shall provide paid sick leave annually. [to each of such
150 employer's service workers in the state.] An employer that employs
151 fewer than twenty employees in the state shall provide unpaid sick
152 leave annually. Such paid or unpaid sick leave shall accrue (1)
153 beginning January 1, 2012, or for a [service worker] covered employee
154 hired after said date, beginning on the [service worker's] covered
155 employee's date of employment, (2) at a rate of one hour of paid or
156 unpaid sick leave for each forty hours worked by a [service worker]
157 covered employee, and (3) in one-hour increments up to a maximum
158 of forty hours per year. Each [service worker] covered employee shall
159 be entitled to carry over up to forty unused accrued hours of paid or
160 unpaid sick leave from the current year to the following year, but no
161 [service worker] covered employee shall be entitled to use more than
162 the maximum number of accrued hours, as described in subdivision
163 (3) of this subsection, in any year.

164 (b) A [service worker] covered employee shall be entitled to the use
165 of accrued paid or unpaid sick leave upon the completion of the
166 [service worker's six-hundred-eightieth hour] covered employee's
167 ninetieth calendar day of employment from January 1, 2012, if the
168 [service worker] covered employee was hired prior to January 1, 2012,
169 or if hired after January 1, 2012, upon the completion of the [service
170 worker's six-hundred-eightieth hour] covered employee's ninetieth
171 calendar day of employment from the date of hire, unless the employer
172 agrees to an earlier date. A [service worker] covered employee shall
173 not be entitled to the use of accrued paid or unpaid sick leave if such
174 [service worker] covered employee did not work an average of ten or
175 more hours per week for the employer in the most recent complete
176 quarter.

177 (c) An employer shall be deemed to be in compliance with this
178 section if the employer offers any other paid leave, or combination of

179 other paid leave that (1) may be used for the purposes of section 31-57t,
180 as amended by this act, and (2) is accrued in total at a rate equal to or
181 greater than the rate described in subsections (a) and (b) of this section.
182 For the purposes of this subsection, "other paid leave" may include, but
183 not be limited to, paid vacation, personal days or paid time off.

184 (d) Each employer shall pay each [service worker] covered
185 employee for paid sick leave at a pay rate equal to the greater of either
186 (1) the normal hourly wage for that service worker, or (2) the
187 minimum fair wage rate under section 31-58 in effect for the pay
188 period during which the employee used paid sick leave. For any
189 [service worker] covered employee whose hourly wage varies
190 depending on the work performed by the [service worker] covered
191 employee, "normal hourly wage" means the average hourly wage of
192 the [service worker] covered employee in the pay period prior to the
193 one in which the [service worker] covered employee used paid sick
194 leave.

195 (e) Notwithstanding the provisions of this section and sections 31-
196 57t to 31-57w, inclusive, as amended by this act, and upon the mutual
197 consent of the [service worker] covered employee and employer, a
198 [service worker] covered employee who chooses to work additional
199 hours or shifts during the same or following pay period, in lieu of
200 hours or shifts missed, shall not use accrued paid or unpaid sick leave.

201 (f) No employer shall require a covered employee who uses paid or
202 unpaid sick leave to search for or find a replacement employee to
203 cover the hours during which the covered employee is utilizing paid or
204 unpaid sick leave.

205 ~~[(f)]~~ (g) No employer shall (1) terminate any employee, (2) dismiss
206 any employee, or (3) transfer any employee from one worksite to
207 another solely in order to not qualify as an employer, as defined in
208 section 31-57r, as amended by this act.

209 Sec. 4. Section 31-57t of the general statutes is repealed and the
210 following is substituted in lieu thereof (*Effective October 1, 2018*):

211 (a) An employer shall permit a [service worker] covered employee
212 to use the paid or unpaid sick leave accrued pursuant to section 31-57s,
213 as amended by this act:

214 (1) For (A) a [service worker's] covered employee's illness, injury or
215 health condition, (B) the medical diagnosis, care or treatment of a
216 [service worker's] covered employee's mental illness or physical
217 illness, injury or health condition, or (C) preventative medical care for
218 a [service worker] covered employee;

219 (2) For (A) a [service worker's] covered employee's child's, [or]
220 spouse's or parent's illness, injury or health condition, (B) the medical
221 diagnosis, care or treatment of a [service worker's] covered employee's
222 child's, [or] spouse's or parent's mental or physical illness, injury or
223 health condition, or (C) preventative medical care for a [child or
224 spouse of a service worker; and] child, spouse or parent of a covered
225 employee;

226 (3) For bonding with a newborn, newly adopted or newly placed
227 foster child under the age of eighteen within one year of such birth,
228 adoption or placement;

229 [(3)] (4) Where a [service worker] covered employee or covered
230 employee's child, spouse or parent is a victim of family violence or
231 sexual assault (A) for medical care or psychological or other counseling
232 for physical or psychological injury or disability, (B) to obtain services
233 from a victim services organization, (C) to relocate due to such family
234 violence or sexual assault, or (D) to participate in any civil or criminal
235 proceedings related to or resulting from such family violence or sexual
236 assault; [.] and

237 (5) Where a covered employee's place of employment or a covered
238 employee's child's school or place of care is closed by order of
239 municipal, state or federal public health officials due to a public health
240 emergency.

241 (b) If a [service worker's] covered employee's need to use paid or

242 unpaid sick leave is foreseeable, an employer may require advance
243 notice, not to exceed seven days prior to the date such leave is to begin,
244 of the intention to use such leave. If a [service worker's] covered
245 employee's need for such leave is not foreseeable, an employer may
246 require a [service worker] covered employee to give notice of such
247 intention as soon as practicable. For paid or unpaid sick leave of three
248 or more consecutive days, an employer may require reasonable
249 documentation that such leave is being taken for one of the purposes
250 permitted under subsection (a) of this section. If such leave is
251 permitted under subdivision (1) or (2) of subsection (a) of this section,
252 documentation signed by a health care provider who is treating the
253 [service worker] covered employee or the [service worker's] covered
254 employee's child, [or] spouse or parent indicating the need for the
255 number of days of such leave shall be considered reasonable
256 documentation. If such leave is permitted under subdivision [(3)] (4) of
257 subsection (a) of this section, a court record or documentation signed
258 by a service worker or volunteer working for a victim services
259 organization, an attorney, a police officer or other counselor involved
260 with the service worker shall be considered reasonable documentation.

261 (c) Nothing in sections 31-57s to 31-57w, inclusive, as amended by
262 this act, shall be deemed to require any employer to provide paid or
263 unpaid sick leave for a [service worker's] covered employee's leave for
264 any purpose other than those described in this section.

265 (d) Unless an employee policy or collective bargaining agreement
266 provides for the payment of accrued fringe benefits upon termination,
267 no [service worker] covered employee shall be entitled to payment of
268 unused accrued sick leave under this section upon termination of
269 employment.

270 (e) Nothing in sections 31-57s to 31-57w, inclusive, as amended by
271 this act, shall be construed to prohibit an employer from taking
272 disciplinary action against a [service worker] covered employee who
273 uses paid or unpaid sick leave provided under sections 31-57s to 31-
274 57w, inclusive, as amended by this act, for purposes other than those

275 described in this section.

276 Sec. 5. Section 31-57u of the general statutes is repealed and the
277 following is substituted in lieu thereof (*Effective October 1, 2018*):

278 (a) Nothing in sections 31-57s to 31-57w, inclusive, as amended by
279 this act, shall be construed to (1) prevent employers from providing
280 more paid or unpaid sick leave than is required under sections 31-57s
281 to 31-57w, inclusive, as amended by this act, (2) diminish any rights
282 provided to any employee or [service worker] covered employee
283 under a collective bargaining agreement, or (3) preempt or override
284 the terms of any collective bargaining agreement effective prior to
285 January 1, 2012.

286 (b) Nothing in sections 31-57s to 31-57w, inclusive, as amended by
287 this act, shall be construed to prohibit an employer (1) from
288 establishing a policy whereby a [service worker] covered employee
289 may donate unused accrued paid sick leave to another service worker,
290 and (2) who provides more paid or unpaid sick leave than is required
291 under sections 31-57s to 31-57w, inclusive, as amended by this act, for
292 the purposes described in subdivision (1) of subsection (a) of section
293 31-57t, as amended by this act, from limiting the amount of such leave
294 a [service worker] covered employee may use for other purposes.

295 (c) Any termination of a [service worker's] covered employee's
296 employment by an employer, whether voluntary or involuntary, shall
297 be construed as a break in service. Should any [service worker]
298 covered employee subsequently be rehired by the employer following
299 a break in service, the [service worker] covered employee shall (1)
300 begin to accrue sick leave in accordance with section 31-57s, as
301 amended by this act, and (2) shall not be entitled to any unused hours
302 of paid or unpaid sick leave that had been accrued prior to the [service
303 worker's] covered employee's break in service unless agreed to by the
304 employer.

305 Sec. 6. Section 31-57v of the general statutes is repealed and the
306 following is substituted in lieu thereof (*Effective October 1, 2018*):

307 (a) No employer shall take retaliatory personnel action or
308 discriminate against an employee because the employee (1) requests or
309 uses paid or unpaid sick leave either in accordance with sections 31-
310 57s and 31-57t, as amended by this act, or in accordance with the
311 employer's own paid sick leave policy, as the case may be, or (2) files a
312 complaint with the Labor Commissioner alleging the employer's
313 violation of sections 31-57s to 31-57w, inclusive, as amended by this
314 act.

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

320 (c) Any employee aggrieved by a violation of the provisions of
321 sections 31-57s to 31-57w, inclusive, as amended by this act, may file a
322 complaint with the Labor Commissioner. Upon receipt of any such
323 complaint, said commissioner may hold a hearing. After the hearing,
324 any employer who is found by the Labor Commissioner, by a
325 preponderance of the evidence, to have violated the provisions of
326 subsection (a) of this section shall be liable to the Labor Department for
327 a civil penalty of five hundred dollars for each violation. Any
328 employer who is found by the Labor Commissioner, by a
329 preponderance of the evidence, to have violated the provisions of
330 sections 31-57s to 31-57u, inclusive, as amended by this act, or section
331 31-57w, as amended by this act, shall be liable to the Labor Department
332 for a civil penalty of up to one hundred dollars for each violation. The
333 Labor Commissioner may award the employee all appropriate relief,
334 including the payment for used paid sick leave, rehiring or
335 reinstatement to the employee's previous job, payment of back wages
336 and reestablishment of employee benefits to which the employee
337 otherwise would have been eligible if the employee had not been
338 subject to such retaliatory personnel action or discriminated against.
339 Any party aggrieved by the decision of the commissioner may appeal
340 the decision to the Superior Court in accordance with the provisions of

341 chapter 54.

342 (d) The Labor Commissioner shall administer this section within
 343 available appropriations.

344 Sec. 7. Section 31-57w of the general statutes is repealed and the
 345 following is substituted in lieu thereof (*Effective October 1, 2018*):

346 Each employer subject to the provisions of section 31-57s, as
 347 amended by this act, shall, at the time of hiring, provide notice to each
 348 [service worker] covered employee (1) of the entitlement to sick leave
 349 for [service workers] covered employees, the amount of sick leave
 350 provided to [service workers] covered employees and the terms under
 351 which sick leave may be used, (2) that retaliation by the employer
 352 against the [service worker] covered employee for requesting or using
 353 sick leave for which the [service worker] covered employee is eligible
 354 is prohibited, and (3) that the [service worker] covered employee has a
 355 right to file a complaint with the Labor Commissioner for any violation
 356 of this section and of sections 31-57s to 31-57v, inclusive, as amended
 357 by this act. Employers may comply with the provisions of this section
 358 by displaying a poster in a conspicuous place, accessible to [service
 359 workers] employees, at the employer's place of business that contains
 360 the information required by this section in both English and Spanish.
 361 The Labor Commissioner may adopt regulations, in accordance with
 362 chapter 54, to establish additional requirements concerning the means
 363 by which employers shall provide such notice. The Labor
 364 Commissioner shall administer this section within available
 365 appropriations.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2018</i>	31-57r
Sec. 2	<i>October 1, 2018</i>	New section
Sec. 3	<i>October 1, 2018</i>	31-57s
Sec. 4	<i>October 1, 2018</i>	31-57t
Sec. 5	<i>October 1, 2018</i>	31-57u
Sec. 6	<i>October 1, 2018</i>	31-57v

Sec. 7	October 1, 2018	31-57w
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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: None

Municipal Impact: None

Explanation

The bill expands the existing paid sick leave law and requires that employers with less than 20 employees provide unpaid sick leave. This does not result in any cost to the state or municipalities.

Although the expansion of paid and unpaid sick leave may result in additional complaints of violation to the Department of Labor, it is not anticipated that additional agency resources will be necessary as investigation requirements are uniform and streamlined across all jobs throughout the state under the bill.¹

The DOL's Wage and Workplace Standards Division, which currently administers the state paid sick leave law, received 20 complaints of violation related to paid sick leave in 2017. Of that total, only one complaint required a full investigation and no civil penalties were assessed.

The Out Years

State Impact: None

¹ Under current law, investigations involve analyzing whether employers are covered by paid sick leave requirements and whether employees fall into one of 69 job classification or service worker definitions in the Standard Occupational Classification System (including reviewing actual job duties and comparing them to employees' job descriptions). Under the bill, such analysis would not be necessary as all hourly employees would be covered.

Municipal Impact: None

Sources: Department of Labor Wage and Workplace Standards Division statistics

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)