

By Senator Wilson

33-497A-07

1 A bill to be entitled
2 An act relating to mandatory employee paid sick
3 leave; amending s. 448.101, F.S.; applying
4 definitions to s. 448.111, F.S.; creating s.
5 448.111, F.S., the "Healthy Workers, Healthy
6 Families Act"; providing definitions; requiring
7 a minimum level of sick leave accrual for an
8 employee; providing direction to an employer on
9 the methodology for sick leave accrual
10 determination; delineating guaranteed uses of
11 sick leave and reasonable determination of such
12 leave; requiring the employer to provide notice
13 to employees of sick leave accrual and
14 guaranteed uses and employee rights; providing
15 methods for such notice; requiring the Agency
16 for Workforce Innovation to make posters
17 available to any employer; prohibiting
18 retaliatory personnel action or discrimination
19 against an employee regarding paid sick leave
20 requests, guaranteed use, or filing of an
21 action or complaint to enforce sick leave
22 rights; providing remedies for failure to
23 provide paid sick leave and for retaliatory
24 personnel actions; providing for civil
25 penalties and other relief; providing for
26 action by the Attorney General under certain
27 circumstances; providing for limitation of
28 civil action; providing for class action suits;
29 requiring confidentiality and nondisclosure of
30 certain information by an employer; encouraging
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1 more generous leave policies; providing for
2 severability; providing an effective date.

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4 WHEREAS, almost all workers in the State of Florida
5 will at some time during the year need short-term time off
6 from work to take care of their own health needs or the health
7 needs of members of their families or to deal with safety
8 issues arising from domestic or sexual violence, and

9 WHEREAS, there are many workers in Florida who are not
10 entitled to any paid sick leave to care for their own health
11 needs or the health needs of members of their families, and

12 WHEREAS, low-income workers are significantly less
13 likely to have paid sick leave than other members of the
14 workforce, and

15 WHEREAS, providing workers time off to attend to their
16 own health care and the health care of family members will
17 ensure a healthier and more productive workforce in the State
18 of Florida, and

19 WHEREAS, paid sick leave will have positive effects on
20 the health of Florida workers by helping to ensure that
21 workers will take advantage of preventive and routine medical
22 care that, in turn, will prevent illnesses and, through early
23 detection, shorten the duration of illnesses, and

24 WHEREAS, paid sick leave will have a positive effect on
25 public health in Florida by allowing sick workers to stay at
26 home to care for themselves when ill, thus lessening their
27 recovery time and reducing the likelihood of spreading illness
28 to other members of the workforce, and

29 WHEREAS, paid sick leave will allow parents to provide
30 personal care for their sick children, which will lessen their
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1 recovery time, prevent more serious illnesses, and improve the
2 children's overall mental and physical health, and

3 WHEREAS, parents who cannot afford to miss work must
4 often send their sick children to child care or school,
5 increasing the likelihood of spreading contagious diseases to
6 other children, child care workers, and teachers, and

7 WHEREAS, providing paid sick leave will encourage
8 routine medical care, which will improve early detection and
9 treatment of illness, decreasing the need for emergency and
10 long-term care and thus resulting in savings for both private
11 and public payers of health insurance, including private
12 businesses, and

13 WHEREAS, the majority of care of older members of the
14 family is performed by working family members, and

15 WHEREAS, providing minimal paid sick leave is
16 affordable for employers and is good for business, and

17 WHEREAS, employers who provide paid sick leave have
18 greater retention of their employees and avoid the problem of
19 workers coming to work sick, and studies have shown that costs
20 from on-the-job productivity losses resulting from sick
21 workers on the job exceed the cost of absenteeism among
22 employees, and

23 WHEREAS, nearly one in three American women report
24 physical or sexual abuse by a husband or boyfriend at some
25 point in their lives, and

26 WHEREAS, employment security is essential for women who
27 are victims of domestic and sexual violence, and

28 WHEREAS, the need to take time off to attend to the
29 physical, psychological, and legal ramifications of violence
30 against women can interfere with the ability to retain
31 employment if paid leave is not available, NOW, THEREFORE,

1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Section 448.101, Florida Statutes, is
4 amended to read:

5 448.101 Definitions.--As used in ss. 448.101-448.105
6 and 448.111, the term:

7 (1) "Appropriate governmental agency" means any agency
8 of government charged with the enforcement of laws, rules, or
9 regulations governing an activity, policy, or practice of an
10 employer.

11 (2) "Employee" means a person who performs services
12 for and under the control and direction of an employer for
13 wages or other remuneration. The term does not include an
14 independent contractor.

15 (3) "Employer" means any private individual, firm,
16 partnership, institution, corporation, or association that
17 employs ten or more persons.

18 (4) "Law, rule, or regulation" includes any statute or
19 ordinance or any rule or regulation adopted pursuant to any
20 federal, state, or local statute or ordinance applicable to
21 the employer and pertaining to the business.

22 (5) "Retaliatory personnel action" means the
23 discharge, suspension, or demotion by an employer of an
24 employee or any other adverse employment action taken by an
25 employer against an employee in the terms and conditions of
26 employment.

27 (6) "Supervisor" means any individual within an
28 employer's organization who has the authority to direct and
29 control the work performance of the affected employee or who
30 has managerial authority to take corrective action regarding
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1 the violation of law, rule, or regulation of which the
2 employee complains.

3 Section 2. Section 448.111, Florida Statutes, is
4 created to read:

5 448.111 Mandatory employee paid sick leave; short
6 title; definitions; accrual and use of paid sick leave; notice
7 and posting; retaliation prohibited; remedies for aggrieved
8 person; confidentiality and nondisclosure; encouragement of
9 generous leave policies; severability.--

10 (1) SHORT TITLE.--This section may be cited as the
11 "Healthy Workers, Healthy Families Act."

12 (2) DEFINITIONS.--For purposes of this section the
13 term:

14 (a) "Child" means a biological child, adopted or
15 foster child, stepchild or legal ward, or extended family
16 member of the employee or a child to whom the employee stands
17 in loco parentis who is under the age of 18 years or who is 18
18 years of age or older but incapable of self care or earning a
19 living due to a physical or mental disability or incapacity.

20 (b) "Domestic violence" is as defined in s. 741.28.

21 (c) "Extended family member" is as defined in s.
22 751.011.

23 (d) "Grandparent" is as defined in s. 752.001.

24 (e) "Health care professional" means any person
25 licensed under Florida law to provide medical or emergency
26 services, including, but not limited to, doctors, nurses,
27 emergency room personnel, and persons licensed under chapter
28 456.

29 (f) "Paid sick leave" means leave that is compensated
30 at the same rate the employee earns from his or her employment
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1 and is paid by an employer or small employer to an employee
2 for use as provided in subsection (4).

3 (g) "Parent" means a biological parent, foster parent,
4 stepparent or adoptive parent, or legal guardian of an
5 employee or an employee's spouse or a person who stood in loco
6 parentis when the employee was a minor child.

7 (h) "Small employer" means any private individual,
8 firm, partnership, institution, corporation, or association
9 that employs fewer than 10 persons.

10 (i) "Spouse" means a person to whom the employee is
11 legally married under the laws of this state.

12 (3) ACCRUAL OF PAID SICK LEAVE.--

13 (a) All employees have the right to paid sick leave as
14 provided in this section.

15 (b) An employer, other than a small employer, shall
16 provide 1 hour of paid sick leave for every 40 hours worked by
17 an employee. A small employer shall provide 1 hour of paid
18 sick leave for every 80 hours worked by an employee. Paid sick
19 leave shall accrue in hourly increments.

20 (c) Paid sick leave as provided in this section begins
21 to accrue at the commencement of employment.

22 (d) An employee is entitled to use accrued paid sick
23 leave beginning on the 90th day following commencement of his
24 or her employment.

25 (e) An employee is entitled to carry forward a maximum
26 of 72 hours of paid sick leave from one calendar year to the
27 next.

28 (f) Any employer with a paid leave policy that makes
29 available an amount of paid leave that may be used for the
30 same purposes and under the same conditions as paid sick leave
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1 under this section shall be deemed to be in compliance with
2 this section.

3 (g) This section may not be construed to prevent
4 employers from adopting or retaining leave policies that are
5 more generous than the policies required under this section.

6 (4) USE OF PAID SICK LEAVE.--

7 (a) Paid sick leave shall be provided to an employee
8 by an employer or small employer for:

9 1. An employee's mental or physical illness, injury,
10 or health condition; need for medical diagnosis, care, or
11 treatment of a mental or physical illness, injury, or health
12 condition; or need for preventive medical care;

13 2. Care of a spouse, child, parent, grandparent,
14 extended family member, or any other individual related by
15 blood or affinity whose close relationship with the employee
16 is the equivalent of a family relationship and who has a
17 mental or physical illness, injury, or health condition; who
18 needs medical diagnosis, care, or treatment of a mental or
19 physical illness, injury, or health condition; or who needs
20 preventive medical care; and

21 3. Absence necessary due to domestic violence,
22 provided the leave is to:

23 a. Seek medical attention for the employee or
24 employee's child, spouse, parent, grandparent, or extended
25 family member to recover from physical or psychological injury
26 or disability caused by domestic violence;

27 b. Obtain services from a victim services
28 organization;

29 c. Obtain psychological or other counseling;

30 d. Seek relocation due to the domestic violence; or
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1 e. Take legal action, including preparing for or
2 participating in any civil or criminal legal proceeding
3 related to or resulting from the domestic violence.

4 (b) An employer or small employer may require
5 reasonable notice of the need for paid sick leave. When the
6 need for the leave is foreseeable, an employer may require
7 advance notice of the intention to take such leave but in no
8 case may require more than 7 days' advance notice. When the
9 need is not foreseeable, an employer may require an employee
10 to give notice of the need for leave as soon as is
11 practicable.

12 (c) For leave of more than 3 consecutive days, an
13 employer may require reasonable documentation that the paid
14 leave is covered by this subsection. Under subparagraph (a)1.
15 or subparagraph (a)2., documentation signed by a health care
16 professional indicating the need for the number of paid sick
17 leave days shall be considered reasonable documentation. Under
18 subparagraph (a)3., a court record or documentation signed by
19 an employee or volunteer working for a victim services
20 organization, an attorney, a police officer, or any other
21 anti-violence counselor shall be considered reasonable
22 documentation.

23 (5) NOTICE AND POSTING.--

24 (a) An employer shall give notice that an employee is
25 entitled to paid sick leave, the amount of paid sick leave,
26 and the terms of its use guaranteed under this section; that
27 retaliation against an employee who requests or uses paid sick
28 leave is prohibited; and that an employee has the right to
29 file a complaint or bring a civil action if sick leave as
30 required by this section is denied by the employer or the
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1 employee is retaliated against for requesting or taking paid
2 sick leave.

3 (b) An employer may comply with the requirements of
4 paragraph (a) by:

5 1. Supplying each of his or her employees with a
6 notice in English and Spanish that contains the required
7 information; or

8 2. Displaying a poster in a conspicuous and accessible
9 place in each establishment where his or her employees are
10 employed that contains in English and Spanish the required
11 information.

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13 The Agency for Workforce Innovation shall make available
14 posters containing the information required by this subsection
15 to an employer for his or her use in complying with the notice
16 and posting requirements of this subsection.

17 (6) RETALIATION PROHIBITED.--An employer may not take
18 retaliatory personnel action or discriminate against an
19 employee because the employee has requested paid sick leave,
20 taken guaranteed paid sick leave, or made a complaint or filed
21 an action to enforce his or her right to paid sick leave under
22 this section.

23 (7) REMEDIES FOR FAILURE TO PROVIDE PAID SICK LEAVE
24 AND FOR RETALIATION.--

25 (a) An employee subjected to retaliatory personnel
26 action in violation of subsection (6) may institute a civil
27 action in a court of competent jurisdiction under the terms
28 set out in s. 448.103(1)(b) and is entitled to relief as
29 provided in s. 448.103(2) and attorney's fees as provided in
30 s. 448.104.

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1 (b)1. Any person aggrieved by failure to provide paid
2 sick leave as required by this section may bring a civil
3 action in a court of competent jurisdiction against an
4 employer violating this section.

5 2. Upon prevailing in an action brought pursuant to
6 this section, an aggrieved person shall recover the full
7 amount of any unpaid sick leave plus any actual damages
8 suffered as the result of the employer's failure to provide
9 paid sick leave.

10 3. Upon prevailing in an action brought pursuant to
11 this section, an aggrieved person shall be entitled to such
12 legal or equitable relief as is appropriate to remedy the
13 violation, including, without limitation, reinstatement in
14 employment and injunctive relief.

15 4. Upon prevailing in an action brought pursuant to
16 this section, aggrieved persons are entitled to reasonable
17 attorney's fees.

18 5. Any civil action brought under this section is
19 subject to s. 768.79.

20 (c) Any person aggrieved by either a retaliatory
21 personnel action in violation of subsection (6) or by an
22 employer's failure to provide paid sick leave as required by
23 this section may file a complaint with the Attorney General.

24 (d) The Attorney General may bring a civil action to
25 enforce this section. The Attorney General may seek injunctive
26 relief. In addition to injunctive relief, or in lieu thereof,
27 for any employer or other person found to have willfully
28 violated this section, the Attorney General may seek to impose
29 a fine of \$1,000 per violation, payable to the state.

30 (e) The statute of limitations for a civil action
31 brought pursuant to this section shall be for the period of

1 time specified in s. 95.11, beginning on the date the alleged
2 violation occurred.

3 (f) Actions brought pursuant to this section may be
4 brought as a class action pursuant to Rule 1.220, Florida
5 Rules of Civil Procedure. In any class action brought pursuant
6 to this section, the plaintiffs shall prove, by a
7 preponderance of the evidence, the individual identity of each
8 class member and the individual damages of each class member.

9 (8) CONFIDENTIALITY AND NONDISCLOSURE.--If an employer
10 possesses health information or information pertaining to
11 domestic violence about an employee or an employee's child,
12 parent, spouse, grandparent, or extended family member, such
13 information shall be treated as confidential and not disclosed
14 except to the affected employee or with the permission of the
15 affected employee.

16 (9) ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES; NO
17 EFFECT ON MORE GENEROUS POLICIES.--

18 (a) This section may not be construed to discourage or
19 prohibit an employer from the adoption or retention of a paid
20 leave policy more generous than the one required under this
21 section.

22 (b) This section may not be construed as diminishing
23 the obligation of an employer to comply with any contract,
24 collective bargaining agreement, employment benefit plan, or
25 other agreement providing more generous leave to an employee
26 than that required under this section.

27 (c) This section may not be construed as diminishing
28 the rights of a public employee regarding paid sick leave or
29 use of sick leave as provided in chapters 110-112 and rules
30 adopted thereunder.

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