

By Senator Thompson

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1 A bill to be entitled
2 An act relating to labor regulations; creating s.
3 448.111, F.S.; providing powers and duties of the
4 executive director of the Department of Economic
5 Opportunity; providing definitions; providing
6 applicability; requiring certain employers to provide
7 employees with earned sick and safe leave under
8 certain conditions; providing employer and employee
9 requirements; authorizing an employee to file a civil
10 action under certain conditions; providing penalties;
11 providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. Section 448.111, Florida Statutes, is created to
16 read:

17 448.111 Healthy Working Families Act.-

18 (1) (a) The executive director of the Department of Economic
19 Opportunity may conduct an investigation to determine whether
20 this section has been violated upon the receipt of a written
21 complaint by an employee.

22 (b) To the extent practicable, the executive director of
23 the department shall keep confidential the identity of an
24 employee who has filed a written complaint alleging a violation
25 of this section unless the employee waives confidentiality.

26 (2) As used in this section, the term:

27 (a) "Abuse" means:

28 1. An act that causes serious bodily harm;

29 2. An act that places a person in fear of imminent serious

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30 bodily harm;

31 3. Assault;

32 4. Domestic violence;

33 5. False imprisonment; or

34 6. Stalking.

35 (b) "Department" means the Department of Economic
36 Opportunity.

37 (c) "Domestic violence" has the same meaning as in s.
38 741.28.

39 (d) "Earned sick and safe leave" means paid leave away from
40 work that is provided by an employer under this section.

41 (e) "Employee" does not include a person who:

42 1. Does not have a regular work schedule with the employer;

43 2. Contacts the employer for work assignments and is
44 scheduled to work the assignments within 4 hours after
45 contacting the employer;

46 3. Has no obligation to work for the employer if the
47 individual does not contact the employer for work assignments;
48 and

49 4. Is not employed by a temporary placement agency.

50 (f) "Employer" means:

51 1. A state or local government agency; and

52 2. A person who acts directly or indirectly in the interest
53 of another employer with an employee.

54 (g) "Executive director" means the executive director of
55 the Department of Economic Opportunity.

56 (h) "Family member" means:

57 1. A biological child, an adopted child, a foster child, or
58 a stepchild of the employee;

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- 59 2. A child for whom the employee has legal or physical
60 custody or guardianship;
- 61 3. A child for whom the employee is the primary caregiver;
- 62 4. A biological parent, an adoptive parent, a foster
63 parent, or a stepparent of the employee or of the employee's
64 spouse;
- 65 5. The legal guardian of the employee;
- 66 6. A person who served as the primary caregiver of the
67 employee when the employee was a minor;
- 68 7. The spouse of the employee;
- 69 8. A grandparent of the employee;
- 70 9. The spouse of a grandparent of the employee;
- 71 10. A grandchild of the employee;
- 72 11. A biological sibling, an adopted sibling, or a foster
73 sibling of the employee; or
- 74 12. The spouse of a biological sibling, a foster sibling,
75 or an adopted sibling of the employee.
- 76 (i) "Health care provider" means a physician licensed under
77 chapter 458.
- 78 (j) "Sexual assault" means:
- 79 1. Rape or a sexual offense;
- 80 2. Sexual abuse of a minor; or
- 81 3. Sexual abuse of a vulnerable adult.
- 82 (k) "Stalking" has the same meaning as described in s.
83 784.048.
- 84 (l) "Year," unless the context requires otherwise, means:
- 85 1. If the employer uses a calendar year for his or her
86 regular business, a calendar year; or
- 87 2. If the employer uses a fiscal year for his or her

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88 regular business, a fiscal year.

89 (3) This section does not:

90 (a) Require an employer to compensate an employee for
91 unused earned sick and safe leave when the employee leaves the
92 employer's employment;

93 (b) Prohibit an employer from establishing a policy under
94 which employees may voluntarily exchange assigned work hours;

95 (c) Prohibit an employer from adopting or retaining a
96 general paid leave policy that meets the minimum requirements of
97 this section;

98 (d) Affect a provision of a contract, a collective
99 bargaining agreement, an employee benefit plan, or any other
100 agreement that requires the employer to provide general paid
101 leave benefits that meet the minimum requirements of this
102 section;

103 (e) Preempt, limit, or otherwise affect any other law that
104 provides for sick and safe leave benefits that exceed those
105 required under this section; or

106 (f) Preempt, limit, or otherwise affect any workers'
107 compensation benefits.

108 (4) This section does not apply to an employee who
109 regularly works less than 8 hours a week for an employer.

110 (5) (a) The executive director shall develop and implement a
111 multilingual outreach program to inform employees and other
112 affected persons about the availability of earned sick and safe
113 leave under this section.

114 (b) The program established under paragraph (a) includes
115 the distribution of notices and other written material in
116 English, Spanish, and other languages to:

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117 1. Child and elder care providers.

118 2. Domestic violence shelters.

119 3. Schools.

120 4. Hospitals.

121 5. Community health centers.

122 6. Health care providers.

123 (6) (a) 1. An employer who employs more than nine employees
124 shall provide an employee with earned sick and safe leave that
125 is paid at the same rate and with the same benefits as the
126 employee normally earns.

127 2. An employer who employs nine employees or fewer shall
128 provide an employee with unpaid earned sick and safe leave.

129 3.a. For the purpose of determining whether an employer is
130 required to provide paid or unpaid earned sick and safe leave
131 under this subsection, the number of employees of an employer
132 shall be determined by calculating the average number of
133 employees employed by the employer per month during the
134 preceding year.

135 b. Each employee shall be included in the calculation made
136 under sub-subparagraph a. without regard to whether the employee
137 would be eligible for earned sick and safe leave under this
138 subsection.

139 (b) The earned sick and safe leave provided under paragraph
140 (a) shall accrue at a rate of at least 1 hour for every 30 hours
141 an employee works.

142 (c) An employer is not required to allow an employee to:

143 1. Earn more than 56 hours of earned sick and safe leave in
144 a year;

145 2. Use more than 80 hours of earned sick and safe leave in

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146 a year; or

147 3. Use earned sick and safe leave during the first 3 months
148 the employee is employed.

149 (d) At the beginning of a year, an employer may award to an
150 employee the full amount of earned sick and safe leave that an
151 employee would earn over the course of the year rather than
152 awarding the leave as the leave accrues during the year.

153 (e)1. Except as provided in subparagraph 2., for the
154 purpose of calculating the accrual of earned sick and safe
155 leave, an employee who is exempt from overtime wage requirements
156 under the federal Fair Labor Standards Act is assumed to work 40
157 hours each workweek.

158 2. If the employee's normal workweek is less than 40 hours,
159 the number of hours in the normal workweek shall be used.

160 (f)1. Earned sick and safe leave shall begin to accrue:

161 a. October 1, 2015; or

162 b. If the employee is hired after October 1, 2015, the date
163 on which the employee begins employment with the employer.

164 2. An employee may not accrue earned sick and safe leave
165 based on hours worked before October 1, 2015.

166 (g)1. Subject to subparagraph 2., if an employee has unused
167 earned sick and safe leave at the end of a year, the employee
168 may carry the balance of the earned sick and safe leave over to
169 the following year.

170 2. An employer may not be required to allow an employee to
171 carry over more than 56 hours of earned sick and safe leave
172 under subparagraph 1.

173 (h) If an employee begins working in a separate division or
174 location but remains employed by the employer, the employee is

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175 entitled to the earned sick and safe leave that accrued before
176 the employee moved to the separate division or location.

177 (i)1. If an employee is rehired by the employer within 12
178 months after leaving the employment of the employer, the
179 employer shall reinstate any unused earned sick and safe leave
180 that the employee had when the employee left the employment of
181 the employer.

182 2. If an employee is rehired by the employer more than 12
183 months after leaving the employment of the employer, the
184 employer may not be required to reinstate any unused earned sick
185 and safe leave that the employee had when the employee left the
186 employment of the employer.

187 (j)1. An employer may allow an employee to use earned sick
188 and safe leave before the employee accrues the amount he or she
189 wishes to use.

190 2. If an employee is authorized under subparagraph 1. to
191 use earned sick and safe leave before it has accrued, the
192 employer may deduct the amount paid for the earned sick and safe
193 leave from the wages paid to the employee on the termination of
194 employment if:

195 a. The employer and employee mutually consented to the
196 deduction as evidenced by a document signed by the employee; and

197 b. The employee leaves the employment of the employer
198 before the employee has accrued the amount of earned sick and
199 safe leave that was used.

200 (7) (a) An employer must allow an employee to use earned
201 sick and safe leave:

202 1. To care for or treat the employee's mental or physical
203 illness, injury, or condition;

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204 2. To obtain preventive medical care for the employee or
205 employee's family member;

206 3. To care for a family member with a mental or physical
207 illness, injury, or condition;

208 4. If the employer's place of business has closed by order
209 of a public official due to a public health emergency;

210 5. If the school of, or child care provider for, the
211 employee's family member has closed by order of a public
212 official due to a public health emergency;

213 6. To care for a family member if a health official or
214 health care provider has determined that the family member's
215 presence in the community would jeopardize the health of others
216 because of the family member's exposure to a communicable
217 disease; or

218 7.a. If the absence from work is necessary due to domestic
219 violence, sexual assault, or stalking committed against the
220 employee or the employee's family member; and

221 b. The leave is being used:

222 (I) By the employee, on behalf of the employee or the
223 employee's family member, to obtain:

224 (A) Medical attention that is needed to recover from
225 physical or psychological injury or disability that is caused by
226 the domestic violence, sexual assault, or stalking;

227 (B) Services from a victim services organization related to
228 the domestic violence, sexual assault, or stalking;

229 (C) Psychological or other counseling related to the
230 domestic violence, sexual assault, or stalking; or

231 (D) Legal services, including preparing for or
232 participating in a civil or criminal proceeding related to or

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233 resulting from the domestic violence, sexual assault, or
234 stalking; or

235 (II) During the time that the employee has temporarily
236 relocated due to the domestic violence, sexual assault, or
237 stalking.

238 (b) In order to use earned sick and safe leave, an employee
239 must:

240 1. Request the leave from the employer as soon as
241 practicable after the employee determines that he or she needs
242 to use the leave;

243 2. Notify the employer of the anticipated duration of the
244 leave; and

245 3. Comply with any reasonable procedures established by the
246 employer under paragraph (c).

247 (c)1. Subject to subparagraphs 2. and 3., an employer may
248 establish reasonable procedures for an employee to follow when
249 requesting and using earned sick and safe leave.

250 2. An employer may not require that an employee who is
251 requesting earned sick and safe leave search for or find a
252 person to work in the employee's stead during the time the
253 employee is using the leave.

254 3. An employer may not require an employee to:

255 a. Disclose details of:

256 (I) The domestic violence, sexual assault, or stalking that
257 was committed against the employee or the employee's family
258 member; or

259 (II) The mental or physical illness, injury, or condition
260 of the employee or the employee's family member; or

261 b. Provide as certification any information that would

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262 violate the federal Social Security Act or the federal Health
263 Insurance Portability and Accountability Act.

264 (d)1. Instead of using earned sick and safe leave under
265 this section, by mutual consent of the employer and employee, an
266 employee may work additional hours or trade shifts with another
267 employee during a pay period to make up work hours that the
268 employee took off for which the employee could have taken earned
269 sick and safe leave.

270 2. An employee is not required to offer or to accept an
271 offer of additional work hours or a trade in shifts.

272 (e)1. An employee may use earned sick and safe leave in the
273 smallest increment that the employer's payroll system uses to
274 account for absences or use of the employee's work time.

275 2. An employee may not be required to use earned sick and
276 safe leave in an increment of more than 1 hour.

277 (f) When wages are paid to an employee, the employer shall
278 provide a statement in writing regarding the amount of earned
279 sick and safe leave that is available for use by the employee.

280 (g)1. Subject to subparagraph 3., an employer may require
281 an employee who uses earned sick and safe leave for more than
282 two consecutive scheduled shifts to provide reasonable
283 documentation to verify that the leave was used appropriately
284 under paragraph (a).

285 2. Reasonable documentation that may be required under
286 subparagraph 1. includes:

287 a. For leave used under subparagraph (a)5., the notice of
288 the closure order by a public official in the form in which the
289 employee received the notice.

290 b. For leave used under subparagraph (a)1., subparagraph

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291 (a)3., or subparagraph (a)6., documentation from the health
292 official or health care provider that the use of earned sick and
293 safe leave is necessary.

294 c. For leave used under subparagraph (a)7.:

295 (I) A report by a law enforcement officer indicating that
296 the employee or the employee's family member was a victim of
297 domestic violence, sexual assault, or stalking;

298 (II) Documentation of an indictment for domestic violence,
299 sexual assault, or stalking committed against the employee or
300 the employee's family member;

301 (III) Certification by a state's attorney's office, child
302 protective services, law enforcement, the victim's attorney, or
303 the victim's advocate that the employee or the employee's family
304 member is a party to or witness in a legal action related to the
305 domestic violence, sexual assault, or stalking committed against
306 the employee or the employee's family member;

307 (IV) A court order protecting the employee or the
308 employee's family member from the perpetrator of the domestic
309 violence, sexual assault, or stalking committed against the
310 employee or the employee's family member; or

311 (V) A notice from a court, the victim's attorney, or the
312 state attorney's office that the employee or the employee's
313 family member appeared or is scheduled to appear in court in
314 connection with the domestic violence, sexual assault, or
315 stalking committed against the employee or the employee's family
316 member.

317 3. An employer may not require that:

318 a. The documentation used for verifying the use of the
319 earned sick and safe leave under subparagraph (a)1.,

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320 subparagraph (a)3., or subparagraph (a)6. explain the nature of
321 the mental or physical illness, injury, or condition; or

322 b. The documentation used for verifying the use of the
323 earned sick and safe leave under subparagraph (a)7. include
324 details regarding the domestic violence, sexual assault, or
325 stalking.

326 4.a. If documentation required under subparagraph 1.
327 relates to the mental or physical health of an employee or the
328 employee's family member or relates to domestic violence, sexual
329 assault, or stalking committed against an employee or the
330 employee's family member, the employer shall maintain the
331 documentation in a confidential file that is separate from the
332 employee's personnel file.

333 b. An employer may not disclose the documentation
334 maintained under sub-subparagraph 2.b. unless the disclosure is
335 made to the employee or with the permission of the employee.

336 (8) (a) An employer shall notify his or her employees that
337 the employees are entitled to earned sick and safe leave under
338 this section.

339 (b) The notice provided under paragraph (a) shall include:

340 1. A statement of how earned sick and safe leave is accrued
341 under subsection (6);

342 2. The purposes for which the employer is required to allow
343 an employee to use earned sick and safe leave under subsection
344 (7);

345 3. A statement regarding the prohibition in subsection (11)
346 of the employer's taking adverse action against an employee who
347 exercises a right under this section; and

348 4. Information regarding the right of an employee to report

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349 an alleged violation of this section by the employer to the
350 executive director or to bring a civil action under paragraph
351 (10) (b) .

352 (c)1. The executive director shall create and make
353 available a poster and a model notice that may be used by an
354 employer to comply with paragraph (a) .

355 2. The model notice created under subparagraph 1. shall be
356 printed in English, Spanish, and any other language that the
357 executive director determines is necessary to notify employees
358 of the employees' rights under this section.

359 (d) An employer may comply with paragraph (a) by:

360 1. Displaying the poster created by the executive director
361 under paragraph (c) in a conspicuous and accessible area at the
362 location at which the employees work;

363 2. Including the notice created by the executive director
364 under paragraph (c) in an employee handbook or other written
365 guide to employees concerning employee benefits or leave
366 provided by the employer; or

367 3. Distributing the notice created by the executive
368 director under paragraph (c) to each employee when the employee
369 is hired.

370 (e) If an employer decides not to use the model notice
371 created by the executive director under paragraph (c), the
372 notice provided by the employer shall contain the same
373 information that is included in the model notice.

374 (f) The notice may be distributed electronically by the
375 employer to the employees.

376 (g) An employer who violates this subsection is subject to
377 a civil penalty of not more than \$125 for the first violation

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378 and not more than \$250 for each subsequent violation.

379 (9) (a) An employer shall keep for at least 3 years a record
380 of earned sick and safe leave accrued and used by each employee.
381 The employer may keep the record in the same manner that the
382 employer keeps other records required to be kept under this
383 section.

384 (b) After giving the employer notice and determining a
385 mutually agreeable time for the inspection, the executive
386 director may inspect a record kept under paragraph (a) for the
387 purpose of determining whether the employer is complying with
388 this section.

389 (c) 1. There is a rebuttable presumption that an employer
390 has violated this section if:

391 a. There is an allegation that the employer has failed to
392 accurately provide the amount of earned sick and safe leave
393 available to an employee; and

394 b. The employer fails to:

395 (I) Keep a record as required under paragraph (a); or

396 (II) Allow the executive director to inspect a record kept
397 under paragraph (a).

398 2. The rebuttable presumption in subparagraph 1. may be
399 overcome only by clear and convincing evidence.

400 (10) (a) When the executive director determines that this
401 section has been violated, the executive director may:

402 1. Attempt to resolve informally by mediation any issue
403 involved in the violation;

404 2. With the written consent of the employee, request that
405 the attorney general bring an action in accordance with this
406 section on behalf of the employee; and

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407 3. Bring an action on behalf of an employee in the county
408 where the violation allegedly occurred.

409 (b) An employee may bring a civil action in a court of
410 competent jurisdiction against the employer for a violation of
411 this section regardless of whether the employee first filed a
412 complaint with the executive director.

413 (c) An action brought under paragraph (a) or paragraph (b)
414 must be filed within 3 years after the occurrence of the act on
415 which the action is based.

416 (d)1. If, in an action under paragraph (a) or paragraph
417 (b), a court finds that an employer violated this section, the
418 court may award the employee:

419 a. The full monetary value of any unpaid earned sick and
420 safe leave;

421 b. Actual economic damages suffered by the employee as a
422 result of the employer's violation of this section;

423 c. An additional amount not exceeding three times the
424 damages awarded under sub-subparagraph b.;

425 d. Reasonable attorney fees and other costs; and

426 e. Any other relief that the court deems appropriate,
427 including reinstatement of employment, back pay, and injunctive
428 relief.

429 2. If benefits of an employee are recovered under this
430 subsection, they shall be paid to the employee without cost to
431 the employee.

432 3. If the action was brought by the attorney general under
433 subparagraph (a)2., the court may order the employer to pay
434 \$1,000 per violation to the state.

435 (11) (a) As used in this subsection, the term "adverse

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436 action" includes:

437 1. Discharge.

438 2. Demotion.

439 3. Threatening the employee with discharge or demotion.

440 4. Any other retaliatory action that results in a change to

441 the terms or conditions of employment that would dissuade a

442 reasonable employee from exercising a right under this section.

443 (b) A person may not interfere with the exercise of, or the

444 attempt to exercise, any right given under this section.

445 (c)1. An employer may not:

446 a. Take adverse action or discriminate against an employee

447 because the employee exercises in good faith the rights

448 protected under this section; or

449 b. Count earned sick and safe leave that an employee used

450 in accordance with this section as an absence that may lead to

451 or result in any adverse action taken against the employee.

452 2. There is a rebuttable presumption that an employer has

453 violated this subsection if the employer takes adverse action

454 against an employee within 90 days after the employee:

455 a. Files a complaint with the executive director alleging a

456 violation of this section or brings a civil action under

457 paragraph (10) (b);

458 b. Informs a person about an alleged violation of this

459 subsection by the employer;

460 c. Cooperates with the executive director or another person

461 in the investigation or prosecution of an alleged violation of

462 this subsection by the employer; or

463 d. Opposes a policy or practice of the employer or an act

464 committed by the employer that is unlawful under this

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465 subsection.

466 (d) The protections afforded under this subsection apply to
467 an employee who mistakenly, but in good faith, alleges a
468 violation of this subsection.

469 (12) (a) An employee, in bad faith, may not:

470 1. File a complaint with the executive director alleging a
471 violation of this section;

472 2. Bring an action under paragraph (10) (b); or

473 3. Testify in an action under paragraph (10) (b).

474 (b) An employee who violates this subsection commits a
475 misdemeanor of the first degree, punishable as provided in s.
476 775.082 or s. 775.083.

477 Section 2. This act shall take effect July 1, 2015.