

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

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

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

18 448.111 Florida Healthy Working Families Act.—

19 (1) This section may be cited as the "Florida Healthy
 20 Working Families Act."

21 (2) (a) The executive director of the Department of
 22 Economic Opportunity may conduct an investigation to determine
 23 whether this section has been violated upon the receipt of a
 24 written complaint by an employee.

25 (b) To the extent practicable, the executive director of
 26 the Department of Economic Opportunity shall keep confidential

27 the identity of an employee who has filed a written complaint
 28 alleging a violation of section unless the employee waives
 29 confidentiality.

30 (3) As used in this section, the term:

31 (a) "Abuse" means:

32 1. An act that causes serious bodily harm;

33 2. An act that places a person in fear of imminent serious
 34 bodily harm;

35 3. Assault;

36 4. Domestic violence;

37 5. False imprisonment; or

38 6. Stalking.

39 (b) "Department" means the Department of Economic
 40 Opportunity.

41 (c) "Domestic violence" has the same meaning as in s.
 42 741.28.

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

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

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

48 2. Contacts the employer for work assignments and is
 49 scheduled to work the assignments within 4 hours after
 50 contacting the employer;

51 3. Has no obligation to work for the employer if the
 52 individual does not contact the employer for work assignments;

53 and

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

55 (f) "Employer" means:

56 1. A state or local government agency; and

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

59 (g) "Executive director" means the executive director of
 60 the Department of Economic Opportunity.

61 (h) "Family member" means:

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

64 2. A child for whom the employee has legal or physical
 65 custody or guardianship;

66 3. A child for whom the employee is the primary caregiver;

67 4. A biological parent, an adoptive parent, a foster
 68 parent, or a stepparent of the employee or of the employee's
 69 spouse;

70 5. The legal guardian of the employee;

71 6. A person who served as the primary caregiver of the
 72 employee when the employee was a minor;

73 7. The spouse of the employee;

74 8. A grandparent of the employee;

75 9. The spouse of a grandparent of the employee;

76 10. A grandchild of the employee;

77 11. A biological sibling, an adopted sibling, or a foster
 78 sibling of the employee; or

79 12. The spouse of a biological sibling, a foster sibling,
 80 or an adopted sibling of the employee.

81 (i) "Health care provider" means a physician licensed
 82 under chapter 458.

83 (j) "Sexual assault" means:

84 1. Rape or a sexual offense;

85 2. Sexual abuse of a minor; or

86 3. Sexual abuse of a vulnerable adult.

87 (k) "Stalking" has the same meaning as described in s.
 88 784.048.

89 (l) "Year," unless the context requires otherwise, means:

90 1. If the employer uses a calendar year for his or her
 91 regular business, a calendar year; or

92 2. If the employer uses a fiscal year for his or her
 93 regular business, a fiscal year.

94 (4) This section does not:

95 (a) Require an employer to compensate an employee for
 96 unused earned sick and safe leave when the employee leaves the
 97 employer's employment;

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

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

103 (d) Affect a provision of a contract, a collective
 104 bargaining agreement, an employee benefit plan, or any other

105 agreement that requires the employer to provide general paid
 106 leave benefits that meet the minimum requirements of this
 107 section;

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

111 (f) Preempt, limit, or otherwise affect any workers'
 112 compensation benefits.

113 (5) This section does not apply to an employee who
 114 regularly works less than 8 hours a week for an employer.

115 (6) (a) The executive director shall develop and implement
 116 a multilingual outreach program to inform employees and other
 117 affected persons about the availability of earned sick and safe
 118 leave under this section.

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

- 122 1. Child and elder care providers.
- 123 2. Domestic violence shelters.
- 124 3. Schools.
- 125 4. Hospitals.
- 126 5. Community health centers.
- 127 6. Health care providers.

128 (7) (a) 1. An employer who employs more than nine employees
 129 shall provide an employee with earned sick and safe leave that
 130 is paid at the same rate and with the same benefits as the

131 employee normally earns.

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

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

140 b. Each employee shall be included in the calculation made
141 under sub-subparagraph a. without regard to whether the employee
142 would be eligible for earned sick and safe leave under this
143 subsection.

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

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

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

150 2. Use more than 80 hours of earned sick and safe leave in
151 a year; or

152 3. Use earned sick and safe leave during the first 3
153 months the employee is employed.

154 (d) At the beginning of a year, an employer may award to
155 an employee the full amount of earned sick and safe leave that
156 an employee would earn over the course of the year rather than

157 awarding the leave as the leave accrues during the year.

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

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

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

166 a. October 1, 2016; or

167 b. If the employee is hired after October 1, 2016, the
168 date on which the employee begins employment with the employer.

169 2. An employee may not accrue earned sick and safe leave
170 based on hours worked before October 1, 2016.

171 (g)1. Subject to subparagraph 2., if an employee has
172 unused earned sick and safe leave at the end of a year, the
173 employee may carry the balance of the earned sick and safe leave
174 over to the following year.

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

178 (h) If an employee begins working in a separate division
179 or location but remains employed by the employer, the employee
180 is entitled to the earned sick and safe leave that accrued
181 before the employee moved to the separate division or location.

182 (i)1. If an employee is rehired by the employer within 12

183 months after leaving the employment of the employer, the
 184 employer shall reinstate any unused earned sick and safe leave
 185 that the employee had when the employee left the employment of
 186 the employer.

187 2. If an employee is rehired by the employer more than 12
 188 months after leaving the employment of the employer, the
 189 employer may not be required to reinstate any unused earned sick
 190 and safe leave that the employee had when the employee left the
 191 employment of the employer.

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

195 2. If an employee is authorized under subparagraph 1. to
 196 use earned sick and safe leave before it has accrued, the
 197 employer may deduct the amount paid for the earned sick and safe
 198 leave from the wages paid to the employee on the termination of
 199 employment if:

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

202 b. The employee leaves the employment of the employer
 203 before the employee has accrued the amount of earned sick and
 204 safe leave that was used.

205 (8) (a) An employer must allow an employee to use earned
 206 sick and safe leave:

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

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

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

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

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

218 6. To care for a family member if a health official or
 219 health care provider has determined that the family member's
 220 presence in the community would jeopardize the health of others
 221 because of the family member's exposure to a communicable
 222 disease; or

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

226 b. The leave is being used:

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

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

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

234 (C) Psychological or other counseling related to the

235 domestic violence, sexual assault, or stalking; or

236 (D) Legal services, including preparing for or
237 participating in a civil or criminal proceeding related to or
238 resulting from the domestic violence, sexual assault, or
239 stalking; or

240 (II) During the time that the employee has temporarily
241 relocated due to the domestic violence, sexual assault, or
242 stalking.

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

245 1. Request the leave from the employer as soon as
246 practicable after the employee determines that he or she needs
247 to use the leave;

248 2. Notify the employer of the anticipated duration of the
249 leave; and

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

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

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

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

260 a. Disclose details of:

261 (I) The domestic violence, sexual assault, or stalking
 262 that was committed against the employee or the employee's family
 263 member; or

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

266 b. Provide as certification any information that would
 267 violate the federal Social Security Act or the federal Health
 268 Insurance Portability and Accountability Act.

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

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

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

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

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

285 (g)1. Subject to subparagraph 3., an employer may require
 286 an employee who uses earned sick and safe leave for more than

287 two consecutive scheduled shifts to provide reasonable
288 documentation to verify that the leave was used appropriately
289 under paragraph (a).

290 2. Reasonable documentation that may be required under
291 subparagraph 1. includes:

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

295 b. For leave used under subparagraph (a)1., subparagraph
296 (a)3., or subparagraph (a)6., documentation from the health
297 official or health care provider that the use of earned sick and
298 safe leave is necessary.

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

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

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

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

312 (IV) A court order protecting the employee or the

313 employee's family member from the perpetrator of the domestic
314 violence, sexual assault, or stalking committed against the
315 employee or the employee's family member; or

316 (V) A notice from a court, the victim's attorney, or the
317 state attorney's office that the employee or the employee's
318 family member appeared or is scheduled to appear in court in
319 connection with the domestic violence, sexual assault, or
320 stalking committed against the employee or the employee's family
321 member.

322 3. An employer may not require that:

323 a. The documentation used for verifying the use of the
324 earned sick and safe leave under subparagraph (a)1.,
325 subparagraph (a)3., or subparagraph (a)6. explain the nature of
326 the mental or physical illness, injury, or condition; or

327 b. The documentation used for verifying the use of the
328 earned sick and safe leave under subparagraph (a)7. include
329 details regarding the domestic violence, sexual assault, or
330 stalking.

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

338 b. An employer may not disclose the documentation

339 maintained under sub-subparagraph 2.b. unless the disclosure is
340 made to the employee or with the permission of the employee.

341 (9) (a) An employer shall notify his or her employees that
342 the employees are entitled to earned sick and safe leave under
343 this section.

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

345 1. A statement of how earned sick and safe leave is
346 accrued under subsection (7);

347 2. The purposes for which the employer is required to
348 allow an employee to use earned sick and safe leave under
349 subsection (8);

350 3. A statement regarding the prohibition in subsection
351 (12) of the employer's taking adverse action against an employee
352 who exercises a right under this section; and

353 4. Information regarding the right of an employee to
354 report an alleged violation of this section by the employer to
355 the executive director or to bring a civil action under
356 paragraph (11) (b) .

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

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

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

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

368 2. Including the notice created by the executive director
369 under paragraph (c) in an employee handbook or other written
370 guide to employees concerning employee benefits or leave
371 provided by the employer; or

372 3. Distributing the notice created by the executive
373 director under paragraph (c) to each employee when the employee
374 is hired.

375 (e) If an employer decides not to use the model notice
376 created by the executive director under paragraph (c), the
377 notice provided by the employer shall contain the same
378 information that is included in the model notice.

379 (f) The notice may be distributed electronically by the
380 employer to the employees.

381 (g) An employer who violates this subsection is subject to
382 a civil penalty of not more than \$125 for the first violation
383 and not more than \$250 for each subsequent violation.

384 (10) (a) An employer shall keep for at least 3 years a
385 record of earned sick and safe leave accrued and used by each
386 employee. The employer may keep the record in the same manner
387 that the employer keeps other records required to be kept under
388 this section.

389 (b) After giving the employer notice and determining a
390 mutually agreeable time for the inspection, the executive

391 director may inspect a record kept under paragraph (a) for the
 392 purpose of determining whether the employer is complying with
 393 this section.

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

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

399 b. The employer fails to:

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

401 (II) Allow the executive director to inspect a record kept
 402 under paragraph (a).

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

405 (11) (a) When the executive director determines that this
 406 section has been violated, the executive director may:

407 1. Attempt to resolve informally by mediation any issue
 408 involved in the violation;

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

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

414 (b) An employee may bring a civil action in a court of
 415 competent jurisdiction against the employer for a violation of
 416 this section regardless of whether the employee first filed a

417 complaint with the executive director.

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

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

424 a. The full monetary value of any unpaid earned sick and
425 safe leave;

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

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

430 d. Reasonable attorney fees and other costs; and

431 e. Any other relief that the court deems appropriate,
432 including reinstatement of employment, back pay, and injunctive
433 relief.

434 2. If benefits of an employee are recovered under this
435 subsection, they shall be paid to the employee without cost to
436 the employee.

437 3. If the action was brought by the attorney general under
438 subparagraph (a)2., the court may order the employer to pay
439 \$1,000 per violation to the state.

440 (12) (a) As used in this subsection, the term "adverse
441 action" includes:

442 1. Discharge.

443 2. Demotion.

444 3. Threatening the employee with discharge or demotion.

445 4. Any other retaliatory action that results in a change
 446 to the terms or conditions of employment that would dissuade a
 447 reasonable employee from exercising a right under this section.

448 (b) A person may not interfere with the exercise of, or
 449 the attempt to exercise, any right given under this section.

450 (c)1. An employer may not:

451 a. Take adverse action or discriminate against an employee
 452 because the employee exercises in good faith the rights
 453 protected under this section; or

454 b. Count earned sick and safe leave that an employee used
 455 in accordance with this section as an absence that may lead to
 456 or result in any adverse action taken against the employee.

457 2. There is a rebuttable presumption that an employer has
 458 violated this subsection if the employer takes adverse action
 459 against an employee within 90 days after the employee:

460 a. Files a complaint with the executive director alleging
 461 a violation of this section or brings a civil action under
 462 paragraph (11) (b);

463 b. Informs a person about an alleged violation of this
 464 subsection by the employer;

465 c. Cooperates with the executive director or another
 466 person in the investigation or prosecution of an alleged
 467 violation of this subsection by the employer; or

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

469 committed by the employer that is unlawful under this
470 subsection.

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

474 (13) (a) An employee, in bad faith, may not:

475 1. File a complaint with the executive director alleging a
476 violation of this section;

477 2. Bring an action under paragraph (11) (b); or

478 3. Testify in an action under paragraph (11) (b).

479 (b) An employee who violates this subsection commits a
480 misdemeanor of the first degree, punishable as provided in s.
481 775.082 or s. 775.083.

482 Section 2. This act shall take effect July 1, 2016.