

HOUSE BILL No. 4706

May 8, 2013, Introduced by Reps. Hobbs, Tlaib, Ananich and Roberts and referred to the Committee on Commerce.

A bill to require employers to provide paid sick leave to certain employees; to specify the conditions for accruing and using paid sick leave; to prohibit retaliation against an employee for requesting, exercising, or enforcing rights granted in this act; to prescribe powers and duties of certain state departments, agencies, and officers; to provide for promulgation of rules; and to provide remedies and sanctions.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "paid
2 sick leave act".

3 Sec. 2. As used in this act:

4 (a) "Department" means the department of licensing and
5 regulatory affairs.

6 (b) "Director" means the director of the department of

1 licensing and regulatory affairs or his or her designee.

2 (c) "Domestic violence" has the same meaning as provided in
3 section 1 of 1978 PA 389, MCL 400.1501.

4 (d) "Employee" means an individual engaged in service to an
5 employer in the business of the employer.

6 (e) "Employer" means any person, firm, business, educational
7 institution, nonprofit agency, corporation, limited liability
8 company, or other entity that employs 1 or more individuals.

9 (f) "Family member" includes all of the following:

10 (i) A biological, adopted or foster child, stepchild or legal
11 ward, a child of a domestic partner, or a child to whom the
12 employee stands in loco parentis.

13 (ii) A biological parent, foster parent, stepparent, or
14 adoptive parent or a legal guardian of an employee or an employee's
15 spouse or domestic partner or a person who stood in loco parentis
16 when the employee was a minor child.

17 (iii) A person to whom the employee is legally married under the
18 laws of this state.

19 (iv) A grandparent or spouse or domestic partner of a
20 grandparent.

21 (v) A grandchild.

22 (vi) A biological, foster, or adopted sibling or spouse or
23 domestic partner of a biological, foster, or adopted sibling.

24 (vii) Any other individual related by blood or affinity whose
25 close association with the employee is the equivalent of a family
26 relationship.

27 (g) "Retaliatory personnel action" means any of the following:

1 (i) Denial of any right guaranteed under this act.

2 (ii) A threat, discharge, suspension, demotion, or other
3 adverse action against an employee for exercise of a right
4 guaranteed under this act.

5 (iii) Sanctions against an employee who is a recipient of public
6 benefits for exercise of a right guaranteed under this act.

7 (iv) Interference with, or punishment for, an employee's
8 participation in any manner in an investigation, proceeding, or
9 hearing under this act.

10 (h) "Sexual assault" means any act that constitutes a
11 violation of section 520b, 520c, 520d, 520e, 520f, or 520g of the
12 Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d,
13 750.520e, 750.520f, and 750.520g.

14 (i) "Small business" means a private employer that is an
15 individual, firm, partnership, institution, corporation, or
16 association for which fewer than 10 individuals work for
17 compensation during a given week. In determining the number of
18 individuals performing work for compensation during a given week,
19 all individuals performing work for compensation on a full-time,
20 part-time, or temporary basis shall be counted, including
21 individuals made available to work through the services of a
22 temporary services or staffing agency or similar entity. An
23 employer is not a small business if it maintained 10 or more
24 employees on its payroll during any 20 or more calendar workweeks
25 in either the current or the preceding calendar year.

26 Sec. 3. (1) Each employer shall provide paid sick leave
27 annually to each of the employer's employees in this state. Paid

1 sick leave shall accrue beginning January 1, 2014, at a rate of 1
2 hour of paid sick leave for each 30 hours worked. Paid sick leave
3 shall accrue in 1-hour increments up to a minimum of 40 hours per
4 calendar year for employees of a small business and 72 hours for
5 all other employees. However, a small business is not required to
6 permit an employee to use more than 40 hours, and other employers
7 are not required to permit an employee to use more than 72 hours,
8 of accrued paid sick leave in a single year.

9 (2) An employee may use accrued paid sick leave as accrued,
10 except that an employer may require an employee hired after January
11 1, 2014 to complete 90 days of service before using accrued paid
12 sick leave.

13 (3) For purposes of paid sick leave accrual under this act, an
14 employee who is exempt from overtime requirements under section
15 13(a)(1) of the fair labor standards act, 29 USC 213(a)(1), is
16 assumed to work 40 hours in each workweek unless the employee's
17 normal work week is less than 40 hours, in which case paid sick
18 leave accrues based upon that normal workweek.

19 (4) An employer is in compliance with this section if the
20 employer provides any paid leave, or combination of paid leave,
21 that may be used for the same purposes and under the same
22 conditions provided in sections 4 and 5 and that is accrued in
23 total at a rate equal to or greater than the rate described in
24 subsection (1). For the purposes of this subsection, "paid leave"
25 includes, but is not limited to, paid vacation, personal days, and
26 paid time off.

27 (5) An employer shall pay each employee using paid sick leave

1 at a pay rate equal to the greater of either the normal hourly wage
2 for that employee or the minimum wage established under the minimum
3 wage law of 1964, 1964 PA 154, MCL 408.381 to 408.398, but not less
4 than the minimum wage rate established in section 4 of the minimum
5 wage law of 1964, 1964 PA 154, MCL 408.384. For any employee whose
6 hourly wage varies depending on the work performed, the "normal
7 hourly wage" means the average hourly wage of the employee in the
8 pay period immediately prior to the pay period in which the
9 employee used paid sick leave.

10 (6) An employer shall not require an employee to search for or
11 secure a replacement worker as a condition for using paid sick
12 leave.

13 Sec. 4. (1) An employer shall permit an employee to use the
14 paid sick leave accrued under section 3 for any of the following:

15 (a) The employee's mental or physical illness, injury, or
16 health condition; medical diagnosis, care, or treatment of the
17 employee's mental or physical illness, injury, or health condition;
18 or preventative medical care for the employee.

19 (b) For the employee's family member's mental or physical
20 illness, injury, or health condition; medical diagnosis, care, or
21 treatment of the employee's family member's mental or physical
22 illness, injury, or health condition; or preventative medical care
23 for a family member of the employee.

24 (c) If the employee or the employee's family member is a
25 victim of domestic violence or sexual assault, for medical care or
26 psychological or other counseling for physical or psychological
27 injury or disability; to obtain services from a victim services

1 organization; to relocate due to domestic violence or sexual
2 assault; or to participate in any civil or criminal proceedings
3 related to or resulting from the domestic violence or sexual
4 assault.

5 (2) If the employee's need to use paid sick leave is
6 foreseeable, an employer may require advance notice, not to exceed
7 7 days prior to the date the leave is to begin, of the intention to
8 use the leave. If the employee's need for the leave is not
9 foreseeable, an employer may require the employee to give notice of
10 the intention as soon as practicable.

11 (3) For paid sick leave of more than 3 consecutive days, an
12 employer may require reasonable documentation that the sick leave
13 has been used for a purpose described in subsection (1).
14 Documentation signed by a health care professional indicating that
15 sick leave is necessary shall be considered reasonable
16 documentation. A police report indicating that the employee or the
17 employee's family member was a victim of domestic violence or
18 sexual assault or a signed statement from a victim and witness
19 advocate or a court order affirming that the employee is involved
20 in legal action related to domestic violence or sexual assault
21 shall be considered reasonable documentation. An employer shall not
22 require that the documentation explain the nature of the illness or
23 the details of the violence. If an employer chooses to require
24 documentation for sick leave, the employer is responsible for
25 paying all out-of-pocket expenses the employee incurs in obtaining
26 the documentation.

27 (4) An employer shall not require disclosure of details

1 relating to domestic violence or sexual assault or the details of
2 an employee's or an employee's family member's medical condition as
3 a condition of providing paid sick leave under this act. If an
4 employer possesses health information or information pertaining to
5 domestic violence or sexual assault about an employee or employee's
6 family member, that information shall be treated as confidential
7 and shall not be disclosed except to the affected employee or with
8 the permission of the affected employee.

9 (5) This act does not require an employer to provide paid sick
10 leave for any purposes other than as described in this section.

11 Sec. 5. (1) If an employee is transferred to a separate
12 division, entity, or location, but remains employed by the same
13 employer, the employee shall retain all paid sick leave that was
14 accrued at the prior division, entity, or location and may use all
15 accrued paid sick leave as provided in section 4. If an employee
16 separates from employment and is rehired by the same employer
17 within 6 months of the separation, the employer shall reinstate
18 previously accrued, unused paid sick leave and shall permit the
19 reinstated employee to use that sick leave and accrue additional
20 paid sick leave upon reinstatement.

21 (2) This act does not require an employer to provide financial
22 or other reimbursement to an employee for accrued paid sick leave
23 that was not used upon the employee's termination, resignation,
24 retirement, or other separation from employment.

25 Sec. 6. (1) An employer or any other person shall not
26 interfere with, restrain, or deny the exercise of, or the attempt
27 to exercise, any right protected under this act.

1 (2) An employer shall not take retaliatory personnel action or
2 discriminate against an employee because the employee has exercised
3 a right protected under this act. Rights protected by this act
4 include, but are not limited to, the right to use paid sick leave
5 pursuant to this act, the right to file a complaint or inform any
6 person about any employer's alleged violation of this act, the
7 right to cooperate with the department in its investigations of
8 alleged violations of this act, and the right to inform any person
9 of his or her rights under this act.

10 (3) An employer's absence control policy shall not treat paid
11 sick leave taken under this act as an absence that may lead to or
12 result in discipline, discharge, demotion, suspension, or any other
13 adverse action.

14 (4) The protections in this section apply to any person who
15 mistakenly but in good faith alleges a violation of this section.

16 (5) There is a rebuttable presumption of a violation of this
17 section if an employer takes adverse personnel action against a
18 person within 90 days after that person does any of the following:

19 (a) Files a complaint with the department or a court alleging
20 a violation of this act.

21 (b) Informs any person about an employer's alleged violation
22 of this act.

23 (c) Cooperates with the department or another person in the
24 investigation or prosecution of any alleged violation of this act.

25 (d) Opposes any policy, practice, or act that is prohibited
26 under this act.

27 (e) Informs any person of his or her rights under this act.

1 Sec. 7. (1) If an employer violates this act, the employee
2 affected by the violation, at any time within 3 years after the
3 violation, may do any of the following:

4 (a) Bring a civil action for appropriate relief, including
5 payment for used sick leave; rehiring or reinstatement to the
6 employee's previous job; payment of back wages; reestablishment of
7 employee benefits to which the employee otherwise would have been
8 eligible if the employee had not been subjected to retaliatory
9 personnel action or discrimination; and an equal additional amount
10 as liquidated damages together with costs and reasonable attorney
11 fees as the court allows.

12 (b) File a claim with the department, which shall investigate
13 the claim.

14 (2) If the director determines that there is reasonable cause
15 to believe that an employer violated this act and the department is
16 subsequently unable to obtain voluntary compliance by the employer
17 within a reasonable time, the department shall bring a civil action
18 as provided in subsection (1)(a) on behalf of the employee. The
19 department may investigate and file a civil action under subsection
20 (1)(a) on behalf of all employees of that employer who are
21 similarly situated at the same work site and who have not brought a
22 civil action under subsection (1)(a). A contract or agreement
23 between the employer and the employee or any acceptance by the
24 employee of a paid leave policy that provides fewer rights or
25 benefits is not a bar to the action.

26 (3) In addition to liability for civil remedies described in
27 this section, an employer who fails to provide paid sick leave in

1 violation of this act is subject to a civil fine of not more than
2 \$1,000.00.

3 Sec. 8. (1) An employer subject to the provisions of this act
4 shall provide notice to each employee at the time of hiring of all
5 of the following:

6 (a) The amount of sick leave required to be provided to an
7 employee under this act.

8 (b) The terms under which sick leave may be used.

9 (c) That retaliation by the employer against an employee for
10 requesting or using sick leave for which the employee is eligible
11 is prohibited.

12 (d) The employee's right to file a complaint with the
13 department for any violation of this act.

14 (2) An employer shall display a poster at the employer's place
15 of business, in a conspicuous place that is accessible to
16 employees, that contains the information in subsection (1) in both
17 English and Spanish.

18 (3) The department shall create and make available to
19 employers posters that contain the information required under
20 subsection (1) for employers' use in complying with this section.
21 Posters shall be provided in both English and Spanish

22 Sec. 9. The department shall develop and implement a
23 multilingual outreach program to inform employees, parents, and
24 persons who are under the care of a health care provider about the
25 availability of paid sick leave under this act. This program shall
26 include distribution of notices and other written materials in
27 English and in other languages to child care and elder care

1 providers, domestic violence shelters, schools, hospitals,
2 community health centers, and other health care providers.

3 Sec. 10. An employer shall retain for 5 years records
4 documenting the hours worked and paid sick leave taken by
5 employees. To monitor compliance with the requirements of this act,
6 an employer shall allow the department access to those records,
7 with appropriate notice and at a mutually agreeable time. If a
8 question arises as to whether an employer has violated an
9 employee's right to paid sick leave under this act and the employer
10 does not maintain or retain adequate records documenting the hours
11 worked and paid sick leave taken by the employee or does not allow
12 the department reasonable access to those records, there is a
13 presumption that the employer has violated the act, which can be
14 rebutted only by clear and convincing evidence.

15 Sec. 11. (1) This act provides minimum requirements pertaining
16 to paid sick leave and shall not be construed to preempt, limit, or
17 otherwise affect the applicability of any other law, regulation,
18 requirement, policy, or standard that provides for greater accrual
19 or use of time off, whether paid or unpaid, or that extends other
20 protections to employees.

21 (2) This act does not do any of the following:

22 (a) Prohibit an employer from providing more paid sick leave
23 than is required under this act.

24 (b) Diminish any rights provided to any employee under a
25 collective bargaining agreement.

26 (c) Preempt or override the terms of any collective bargaining
27 agreement in effect prior to January 1, 2014.

1 (d) Prohibit an employer from establishing a policy that
2 permits an employee to donate unused accrued paid sick leave to
3 another employee.

4 Sec. 12. The director may promulgate rules in accordance with
5 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
6 to 24.328, as necessary to administer this act.

7 Enacting section 1. This act takes effect January 1, 2014.