

Local Government – January 25, 2017

A00029 to Senate Bill 128, Printer's Number 90

NO Wagner

YES Blake

NO Martin

YES Brewster

NO Scarnati

YES Hughes

NO Brooks

YES Schwank

NO Eichelberger

NO Hutchinson

NO Langerholc

NO McGarrigle

The amendment failed by a vote of 4 – 8

AMENDMENTS TO SENATE BILL NO. 128

Sponsor:

Printer's No. 90

1 Amend Bill, page 1, lines 9 through 17; page 2, lines 1
2 through 27; by striking out all of said lines on said pages and
3 inserting

4 (a) Requirement.--Each employer in this Commonwealth must
5 provide paid sick leave to an employee as set forth in this
6 section. At a minimum, paid sick leave must be available for the
7 following purposes:

8 (1) Diagnosis, care or treatment of an existing health
9 condition of, or preventive care for, an employee or
10 employee's family member.

11 (2) Diagnosis, treatment, care, counseling or other
12 assistance for a physical, mental or emotional injury
13 suffered by the employee or the employee's family member due
14 to an act of abuse as defined in 23 Pa.C.S. § 6102(a)
15 (relating to definitions) or sexual violence as defined in 42
16 Pa.C.S. § 62A03 (relating to definitions).

17 (3) A public health or public safety emergency involving
18 the employee or the employee's family member.

19 (b) Availability.--An employer must provide paid sick leave
20 to an employee beginning on the day after the date the employee
21 has worked for the employer for at least 30 days within a year
22 from the commencement of employment.

23 (c) Accrual and use.--

24 (1) Paid sick leave shall accrue to an employee at the
25 rate of one hour per every 30 hours worked, beginning at the
26 commencement of employment. An employee who is exempt from
27 overtime requirements of section 5 of the Minimum Wage Act as
28 an administrative, executive or professional employee shall
29 be deemed to work 40 hours per workweek for the purposes of
30 this section, unless the employee's normal workweek is less
31 than 40 hours, in which case the employee shall accrue paid
32 sick leave based upon the normal workweek.

33 (2) An employer may limit an employee's use of paid sick
34 leave to 56 hours or seven days in each year of employment.

35 (3) Unless otherwise approved by the employer, an
36 employee may not use accrued paid sick leave prior to 91 days
37 of employment, after which day the employee may use paid sick

1 leave as the paid sick leave is accrued.

2 (4) Accrued paid sick leave shall carry over to the
3 following year of employment, except that an employer may
4 limit an employee's total accrual of paid sick leave to 80
5 hours or 10 days annually.

6 (5) An employer may, at the employer's discretion:

7 (i) Provide the full amount of paid sick leave to
8 the employee at the beginning of each year.

9 (ii) Lend paid sick leave to an employee in advance
10 of accrual with proper documentation.

11 (6) An employee may determine the amount of paid sick
12 leave the employee needs to use, except that an employer may
13 set a reasonable minimum increment, not to exceed two hours,
14 for the use of paid sick leave.

15 (7) An employee must provide reasonable advance written
16 or verbal notification to the employer if the need to use
17 paid sick leave is foreseeable. If the need to use paid sick
18 leave is unforeseeable, the employee must provide written or
19 verbal notice of the need for the leave to the employer as
20 soon as practicable.

21 (8) An employer may not require, as a condition of using
22 paid sick leave, an employee to search for or find a
23 replacement worker to cover the hours or days during which
24 the employee uses paid sick leave.

25 (9) An employer may require an employee to provide
26 documentation from the individual providing treatment or care
27 under subsection (a) if the employee is absent for three or
28 more consecutive days.

29 (d) Exemption.--An employer shall not be required to provide
30 additional paid sick leave under this section if the following
31 conditions are met:

32 (1) On the effective date of this section the employer
33 has a paid leave policy or paid time off policy.

34 (2) The employer makes available an amount of leave that
35 may be used for the same purposes and under the same
36 conditions as specified in this section.

37 (3) The policy does either of the following:

38 (i) Satisfies the accrual, carryover and use
39 requirements of this section.

40 (ii) At the beginning of each calendar year,
41 provides an employee with no less than 56 hours or seven
42 days of paid sick leave, or equivalent paid leave or paid
43 time off. An employer may prorate the amount of paid sick
44 leave or equivalent paid leave or paid time off provided
45 to an employee in the employee's first year of employment
46 based on the employee's date of hire.

47 (e) Notice.--

48 (1) An employer must provide each employee with written
49 notice that sets forth the amount of paid sick leave
50 available or paid time off leave an employer provides in lieu
51 of sick leave in the manner prescribed under this section.

1 The department may impose penalties on the employer for
2 failure to provide notice in accordance with this subsection.

3 (2) Each employer must display a poster, developed by
4 the department, in a conspicuous place within each workplace
5 of the employer, that states all of the following:

6 (i) An employee is entitled to accrue, request and
7 use paid sick leave.

8 (ii) The amount of sick leave provided for by this
9 section.

10 (iii) The terms of use of paid sick leave.

11 (iv) That retaliation or discrimination against an
12 employee who requests paid sick leave or uses paid sick
13 leave, or both, is prohibited and that an employee has
14 the right under law to file a complaint with the
15 department against an employer who retaliates or
16 discriminates against the employee.

17 (f) Rate of pay.--The rate of pay for paid sick leave shall
18 be the greater of the minimum wage as set forth in section 4 of
19 the Minimum Wage Act or the employee's hourly wage. If the
20 employee in the 90 days of employment before using accrued sick
21 leave had different hourly pay rates, was paid by commission or
22 piece rate or was a nonexempt salaried employee, the rate of pay
23 shall be calculated by dividing the employee's total wages, not
24 including overtime premium pay, by the employee's total hours
25 worked in the full pay periods of the prior 90 days of
26 employment.

27 (g) Payment of sick leave.--

28 (1) An employer must provide payment for sick leave used
29 by an employee no later than the payday for the next regular
30 payroll period after the sick leave was used.

31 (2) An employer is not required to provide compensation
32 to an employee for accrued, unused paid sick leave upon
33 termination, resignation, retirement or other separation from
34 employment, except that, if an employee separates from an
35 employer and is rehired by the employer within one year from
36 the date of separation, previously accrued and unused paid
37 sick leave must be reinstated. The employee may use
38 previously accrued and unused paid sick leave and shall
39 accrue additional paid sick leave upon being rehired.

40 (h) Prohibitions.--An employer may not:

41 (1) Deny an employee the right to use accrued sick
42 leave.

43 (2) Discharge, threaten to discharge, demote, suspend,
44 reduce the wages of or in any manner discriminate against an
45 employee for doing any of the following:

46 (i) Using accrued sick leave or attempting to
47 exercise the right to use accrued sick leave.

48 (ii) Filing a complaint or alleging a violation of
49 this section.

50 (iii) Cooperating in an investigation or prosecution
51 of an alleged violation of this section.

1 (iv) Opposing a policy or practice that is
2 prohibited under this section.

3 (i) Complaint procedure.--An employee may file with the
4 department a complaint against an employer for an alleged
5 violation of this section. The department shall establish a
6 process for investigating and resolving a complaint.

7 (j) Penalties.--An employer who willfully violates the
8 posting provisions of subsection (e) (2) shall be subject to a
9 penalty, not to exceed \$250 for each offense, to be imposed by
10 the department.

11 (k) Remedies.--The department may order an employer who is
12 found to be in violation of this section to do all of the
13 following:

14 (1) Reinstate the employee with or without back pay.

15 (2) Pay the employee the amount of sick leave unlawfully
16 withheld.

17 (3) Pay the employee an additional sum in the form of an
18 administrative penalty. If paid sick leave was unlawfully
19 withheld, the administrative penalty shall be an amount equal
20 to the dollar amount of paid sick leave unlawfully withheld
21 multiplied by three, or \$250, whichever is greater, not to
22 exceed \$5,000. If the violation of this section resulted in
23 additional harm to an employee, such as discharge from
24 employment, or otherwise results in a violation of the rights
25 of the employee, the administrative penalty shall include an
26 additional sum of \$500 for each day or portion of a day that
27 the violation occurred or continued, not to exceed \$10,000.

28 (4) Comply with any other additional relief the
29 department deems appropriate.

30 (l) Civil action.--The secretary, the Attorney General or
31 the employee may bring a civil action in a court of competent
32 jurisdiction against the employer or other person violating this
33 section and, upon prevailing and except as provided under
34 subsection (m) or (n), shall be entitled to collect legal or
35 equitable relief on behalf of the aggrieved as may be
36 appropriate to remedy the violation, including:

37 (1) Reinstatement of the employee, with or without back
38 pay.

39 (2) Payment of sick leave unlawfully withheld.

40 (3) The payment of an additional sum, not to exceed an
41 aggregate penalty of \$5,000, as liquidated damages in the
42 amount of \$50 to each employee or person whose rights under
43 this section were violated for each day or portion of a day
44 that the violation occurred or continued. In addition, if the
45 employer has unlawfully withheld paid sick days to an
46 employee, the employer must pay the dollar amount of paid
47 sick days withheld from the employee multiplied by three or
48 \$250, whichever amount is greater.

49 (4) Injunctive relief.

50 (5) Reasonable attorney fees and costs.

51 (m) Limitation on damages.--The secretary, the Attorney

1 General or an employee enforcing this section on behalf of the
2 public as provided for under law shall, upon prevailing, be
3 entitled only to equitable, injunctive or restitutionary relief
4 and reasonable attorney fees and costs.

5 (n) Error.--An employer may not be assessed a penalty or
6 liquidated damages under this section due to an isolated and
7 unintentional payroll error or written notice error that is a
8 clerical or an inadvertent mistake regarding the accrual or
9 available use of paid sick leave. In a review under this
10 subsection, consideration may be given to whether the employer,
11 prior to an alleged violation, has adopted and is in compliance
12 with a set of policies, procedures and practices that fully
13 comply with this section.

14 (o) Interest.--In an administrative or civil action brought
15 under this section, the secretary or a court shall award
16 interest on each amount due and unpaid calculated in accordance
17 with law.

18 (p) Penalties cumulative.--The remedies, penalties and
19 procedures provided under this section shall be cumulative.

20 (q) Construction.--This section:

21 (1) May not be construed to invalidate an ordinance or
22 other mandate enacted by a municipality prior to the
23 effective date of this section that requires employers within
24 the municipality to provide paid sick leave benefits more
25 generous than that contained under this section.

26 (2) May not be construed to prohibit a municipality from
27 enacting an ordinance or mandate that requires employers
28 within the municipality to provide paid sick leave benefits
29 more generous than that contained under this section.

30 (3) May not be construed to discourage or prohibit an
31 employer from the adoption or retention of a paid sick leave
32 policy more generous than that contained in this section or
33 any ordinance adopted by a municipality under paragraph (1)
34 or (2).

35 (4) Shall not preempt or otherwise apply to an ordinance
36 or mandate enacted by a municipality affecting vacation or
37 other forms of leave offered by employers within the
38 municipality.

39 (5) Shall not be construed to mandate a municipality to
40 adopt an ordinance applicable to employers within the
41 municipality relating to compensation, vacation or other
42 forms of leave from employment.

43 (6) Shall not limit or affect any Federal, State or
44 local law guaranteeing privacy of health information or
45 information related to domestic violence or sexual assault,
46 regarding an employee or employee's family member. The
47 information must be treated as confidential and may not be
48 disclosed to a person except the affected employee or as
49 required by law.

50 (7) Shall not relieve or lessen the obligation of an
51 employer to comply with an existing contract, collective

1 bargaining agreement, employment benefit plan or other
2 agreement providing more generous paid sick leave to an
3 employee than that required by this section or an ordinance
4 adopted by a municipality under paragraph (1) or (2).

5 (8) Shall not be construed to remove the contents of
6 this section from the scope of collective bargaining under
7 the act of June 1, 1937 (P.L.1168, No.294), known as the
8 Pennsylvania Labor Relations Act, the act of March 10, 1949
9 (P.L.30, No.14), known as the Public School Code of 1949, or
10 the act of July 23, 1970 (P.L.563, No.195), known as the
11 Public Employe Relations Act.

12 (9) Shall not preempt, limit or affect the applicability
13 of any other law, regulation, requirement, policy or standard
14 that provides for greater accrual or use of paid or unpaid
15 sick leave or that extends other protections to an employee.

16 (10) Shall be in addition to and independent of any
17 other right, remedy or procedure available under any other
18 law and shall not diminish, alter or negate any other legal
19 right, remedy or procedure available to an aggrieved person.

20 (r) Definitions.--As used in this section, the following
21 words and phrases shall have the meanings given to them in this
22 subsection unless the context clearly indicates otherwise:

23 "Department." The Department of Labor and Industry of the
24 Commonwealth.

25 "Employee." As defined in section 3 of the Minimum Wage Act.
26 The term does not include an employee covered by a collective
27 bargaining agreement if the agreement expressly provides for:

28 (1) The wages, hours of work and working conditions of
29 employees.

30 (2) Paid sick leave or a paid leave or paid time off
31 policy that permits the use of sick leave for employees.

32 (3) Final and binding arbitration of disputes concerning
33 the application of the paid sick leave provisions of the
34 collective bargaining agreement.

35 "Employer." As defined in section 3 of the Minimum Wage Act.

36 "Family member." Any of the following:

37 (1) A child, stepchild or legal ward or a child to whom
38 the employee stands in loco parentis, notwithstanding the age
39 or dependency status of the child.

40 (2) A biological, adoptive or foster parent, stepparent
41 or legal guardian of an employee or the employee's spouse or
42 a person who stood in loco parentis when the employee was a
43 minor.

44 (3) A spouse or domestic partner.

45 (4) A grandparent.

46 (5) A grandchild.

47 (6) A sibling.

48 "Minimum Wage Act." The act of January 17, 1968 (P.L.11,
49 No.5), known as The Minimum Wage Act of 1968.

50 "Municipality." A city, borough, incorporated town or
51 township. The term includes a municipality operating under Part

1 III Subpt. E (relating to home rule and optional plan
2 government).

3 "Paid sick leave." Time that is compensated at the rate
4 provided under subsection (f) and is provided by an employer to
5 an employee under this section.

6 "Secretary." The Secretary of Labor and Industry of the
7 Commonwealth.

8 Section 2. This act shall take effect immediately.