

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS35296-LR-116 (03/13)

Short Title: Provide Unpaid Sick Days. (Public)

Sponsors: Senator Cowell.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH UNPAID SICK DAYS TO ENSURE ALL EMPLOYEES
IN NORTH CAROLINA CAN ADDRESS THEIR OWN HEALTH NEEDS AND
THE HEALTH NEEDS OF THEIR FAMILIES.

Whereas, nearly every worker in North Carolina is likely to need, during any given year, time off to attend to their own illness or that of an immediate family member, or for routine medical care;

Whereas, when parents are available to care for their children who become sick, the children's recovery is faster, more serious illnesses are prevented, and the children's overall health is improved;

Whereas, parents who cannot afford to miss work must send children with a contagious illness to child care or school, contributing to the high rate of infections in child care centers and schools;

Whereas, providing employees time off to attend to their own health care needs ensures that they will be healthier and more efficient employees in the long run;

Whereas, there are many workers in North Carolina who are not entitled to any sick leave to care for their own health needs or the health needs of members of their families;

Whereas, low-income workers are significantly less likely to have sick leave than other members of the workforce; and

Whereas, providing minimal sick leave is affordable for employers and good for business; Now, therefore,
The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 95 of the General Statutes is amended by adding a new section to read:

"§ 95-28.4. Unpaid sick days.

(a) The following definitions apply in this section:

- 1 (1) Child. – A biological, adopted, or foster child, stepchild, legal ward, or
2 child of a parent standing in loco parentis who is under 18 years of
3 age, or 18 years of age or older but incapable of earning wages
4 because of a mental or physical incapacity.
- 5 (2) Employee. – Any person who performs services for an employer for
6 wage, remuneration, or other compensation.
- 7 (3) Employer. – Any individual, corporation, partnership, or other entity,
8 including any agent thereof, who engages the services of an employee
9 or employees for wages, remuneration, or other compensation.
- 10 (4) Federal act. – The Family and Medical Leave Act of 1993, 29 U.S.C.
11 §§ 2601 to 2654 inclusive, as it may be amended.
- 12 (5) Health care provider. – A provider who is not employed by an
13 employer to whom the provider issues certification and who is:
- 14 a. A doctor of medicine or osteopathy licensed to practice
15 medicine in the State;
- 16 b. A physician assistant licensed in this State; or
- 17 c. A family nurse practitioner licensed in this State.
- 18 (6) Parent. – A biological, foster, stepparent, or adoptive parent of an
19 employee or an employee's spouse, or other person who stood in loco
20 parentis during the childhood of an employee or employee's spouse.
- 21 (7) Seven unpaid sick days. – The total number of sick hours computed by
22 determining the number of hours in a regular workday and multiplying
23 this number by seven.
- 24 (8) Sick day. – A portion of, or a regular workday when an employee is
25 unable to report to work because of the reasons described in subsection
26 (c) if this section.
- 27 (b) All employees who work in North Carolina who must be absent from work
28 for the reasons set forth in subsection (c) of this section shall be entitled to not less than
29 seven sick days without pay during a 12-month period, or to a pro rata number of paid
30 days or hours under the provisions of subsection (d) of this section. The 12-month
31 period for each employee shall be calculated from the date-of-hire or subsequent
32 anniversary date.
- 33 (c) Unpaid sick days shall be provided to an employee by an employer for any of
34 the following reasons:
- 35 (1) To care for the employee's child, spouse, parent, or parent of spouse
36 who is suffering from a physical or mental illness, injury, or medical
37 condition that requires home care, professional medical diagnosis or
38 care, or preventative medical care, or that is covered under the federal
39 act.
- 40 (2) To care for the employee's own physical or mental illness, injury, or
41 medical condition that requires home care, professional medical
42 diagnosis or care, or preventative medical care, or that is covered
43 under the federal act.

1 (3) To allow an employee to attend a routine medical appointment for
2 himself or herself or for a child, or, in the case of a spouse, parent, or
3 parent of spouse otherwise in need of care.

4 (4) To allow an employee to address the psychological, physical, or legal
5 effects of domestic violence as defined in G.S. 50B-1.

6 (d) Unpaid sick days leave shall accrue at the rate of one hour of pay for every 30
7 hours worked up to the maximum of seven unpaid sick days. Unpaid sick days may be
8 used as accrued, or be loaned by the employer, at its discretion, to the employee in
9 advance of accrual. An employer may not require an employee to reimburse it for any
10 unearned sick days. Unless the employer and employee agree to designate otherwise, for
11 periods of unpaid sick day leave that are less than a normal workday, the leave shall be
12 counted on an hourly basis, or the smallest increment that the employer's payroll system
13 uses to account for absences or use of leave.

14 (e) Subject to the provisions of subsection (o) of this section, an employer may
15 require certification of the qualifying illness, injury, or health condition when an unpaid
16 sick day leave period covers more than three consecutive workdays. Any reasonable
17 documentation signed by a health care provider involved in following or treating the
18 illness, injury, or health condition, and indicating the need for the amount of sick days
19 taken, shall be deemed acceptable certification. The certification shall be issued at such
20 time and in such manner the Commissioner of Labor requires. The employer shall not
21 delay the commencement of leave taken for purposes of subsection (c) of this section or
22 pay for this period on the basis that the employer has not yet received the certification.
23 Nothing in this section shall be construed to require an employee to provide as
24 certification any information from a health care provider that would be in violation of
25 section 1177 of the Social Security Act or the regulations promulgated pursuant to
26 section 264(c) of the Health Insurance Portability and Accountability Act, 42 U.S.C. §
27 1320d-2 note.

28 (f) If the necessity for unpaid sick days leave under this section is foreseeable,
29 the employee shall provide the employer with not less than seven days' notice before the
30 date the leave is to begin. If the necessity for leave is not foreseeable, the employee
31 shall provide such notice as soon as is practicable after the employee is aware of the
32 necessity of such leave.

33 (g) Unpaid sick days shall not carry over annually to the extent not used by the
34 employee, provided that nothing in this section shall be construed to require an
35 employer to allow accumulation of more than seven unpaid sick days leave for an
36 employee unless an employer agrees to do so.

37 (h) It shall be unlawful for any employer to interfere with, restrain, or deny the
38 exercise of, or the attempt to exercise, any right provided under, or in connection with,
39 this section, including, but not limited to, using the taking of unpaid sick days under this
40 section as a negative factor in an employment action such as hiring, evaluation,
41 promotion, or a disciplinary action, or counting the unpaid sick days under a no-fault
42 attendance policy.

43 (i) It shall be unlawful for any employer to take any adverse action against an
44 employee because the employee:

- 1 (1) Exercises rights or attempts to exercise rights under this section.
2 (2) Opposes practices which the employee believes to be in violation of
3 this section.
4 (3) Supports the exercise of rights of another under this section.
5 Exercising rights under this section includes filing an action, or
6 instituting or causing to be instituted any proceeding under or related
7 to this section.
8 (4) Provides or is about to provide any information in connection with any
9 inquiry or proceeding relating to any right provided under this section;
10 or testifies in or is about to testify in any inquiry or proceeding relating
11 to any right provided under this section.

12 (j) The Commissioner of Labor shall adopt rules to implement and administer
13 this section and shall enforce the provisions of this section according to Article 21 of
14 Chapter 95 of the General Statutes in the manner prescribed regarding retaliatory
15 employment discrimination.

16 (k) Nothing in this section shall be construed to discourage employers from
17 adopting or retaining unpaid sick day policies more generous than policies that comply
18 with the requirements of this section, and nothing in this section shall be construed to
19 diminish the obligation of an employer to comply with any contract, collective
20 bargaining agreement, or any employment benefit program or plan that provides greater
21 sick day leave rights to employees than the rights established under this section.

22 (l) Employers who have a paid time off leave policy providing paid leave in
23 excess of 20 days per year shall not be required to modify such policy, if such policy
24 offers an employee the option, at the employee's discretion, to take unpaid sick days that
25 are at least equivalent to the unpaid sick days described in subsections (b), (c), and (f) of
26 this section or if the policy offers unpaid sick days leave in amounts equivalent to the
27 amounts described in those subsections for the purposes that include the reasons
28 described in subsection (b) of this section.

29 (m) Employers shall give notice that employees are entitled to unpaid sick leave,
30 the amount of unpaid sick leave, and the terms of its use guaranteed under this section,
31 that retaliation against employees who request or use unpaid sick leave is prohibited,
32 and that each employee has the right to file a complaint if sick leave as required by this
33 section is denied by the employer or the employee is retaliated against for requesting or
34 taking unpaid sick leave. Employers may comply with this section by supplying each of
35 their employees with a notice in English and Spanish that contains the information
36 required herein or by displaying a poster in a conspicuous and accessible place in each
37 establishment where such employees are employed which contains in English and in
38 Spanish all information required by this section."

39 **SECTION 2.** G.S. 95-241(a)(1) is amended by adding a new
40 sub-subdivision to read:

41 "(a) No person shall discriminate or take any retaliatory action against an
42 employee because the employee in good faith does or threatens to do any of the
43 following:

- 1 (1) File a claim or complaint, initiate any inquiry, investigation,
2 inspection, proceeding or other action, or testify or provide
3 information to any person with respect to any of the following:
4 a. Chapter 97 of the General Statutes.
5 b. Article 2A or Article 16 of this Chapter.
6 c. Article 2A of Chapter 74 of the General Statutes.
7 d. G.S. 95-28.1.
8 e. Article 16 of Chapter 127A of the General Statutes.
9 f. G.S. 95-28.1A.
10 g. G.S. 95-28.4.
- 11 (2) Cause any of the activities listed in subdivision (1) of this subsection
12 to be initiated on an employee's behalf.
- 13 (3) Exercise any right on behalf of the employee or any other employee
14 afforded by Article 2A or Article 16 of this Chapter or by Article 2A
15 of Chapter 74 of the General Statutes.
- 16 (4) Comply with the provisions of Article 27 of Chapter 7B of the General
17 Statutes.
- 18 (5) Exercise rights under Chapter 50B. Actions brought under this
19 subdivision shall be in accordance with the provisions of
20 G.S. 50B-5.5."

21 **SECTION 3.** This act becomes effective on the 90th day after it becomes
22 law. In the case of a collective bargaining agreement in effect on that effective date, this
23 act shall take effect on the earlier of the date of the termination of that agreement or the
24 date that occurs 12 months after the adoption of implementing rules adopted by the
25 Commissioner of Labor.