

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 534*

Short Title: Healthy Families and Healthy Workplaces Act. (Public)

Sponsors: Senators Dorsett; Atwater, Berger of Franklin, Bingham, Dannelly, Davis, Goss, Kinnaird, Malone, McKissick, Nesbitt, Purcell, Rand, and Snow.

Referred to: Commerce.

March 12, 2009

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR HEALTHY FAMILIES AND HEALTHY WORKPLACES BY ENSURING THAT ALL WORKERS HAVE PAID SICK DAYS TO 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 his or her own illness or that of an immediate family member, or for routine medical care; and

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; and

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; and

Whereas, over 100,000 North Carolina women reported physical abuse by a husband or boyfriend, and there were 75 domestic violence-related homicides in 2007; and

Whereas, victims of domestic violence need time off to care for their health or to find solutions, such as a restraining order or housing, to avoid or prevent abuse and are forced to lose days of paid employment; and

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; and

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

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

Whereas, providing minimal paid sick time is affordable for employers and good for business; Now, therefore,

The General Assembly of North Carolina enacts:

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

"Article 3A.

"Healthy Families and Healthy Workplaces Act.

"§ 95-31.1. Short title and legislative purpose.

(a) This Article shall be known and may be cited as the "Healthy Families and Healthy Workplaces Act."



1 **(b)** The public policy of this State is declared as follows: The health and safety needs
2 of employees and their families and the protection of employees from losing their jobs and pay
3 while they seek medical care for themselves and their family members are subjects of concern
4 requiring legislation to promote the general welfare of the people of the State without
5 jeopardizing the competitive position of North Carolina business and industry. The General
6 Assembly declares that the general welfare of the State requires the enactment of this law under
7 the police power of the State.

8 **"§ 95-31.2. Definitions.**

9 **(a)** The following definitions apply in this Article:

- 10 **(1)** Child. – A biological, adopted, or foster child, stepchild, legal ward, or child
11 of a parent standing in loco parentis who is under 18 years of age, or 18
12 years of age or older but incapable of earning wages because of a mental or
13 physical incapacity.
- 14 **(2)** Domestic violence. – As defined in G.S. 50B-1.
- 15 **(3)** Employee. – As defined by G.S. 95-25.2(4).
- 16 **(4)** Employ. – As defined by G.S. 95-25.2(3).
- 17 **(5)** Employer. – As defined by G.S. 95-25.2(5).
- 18 **(6)** Federal act. – The Family and Medical Leave Act of 1993, 29 U.S.C. §§
19 2601 to 2654 inclusive, as it may be amended.
- 20 **(7)** Health care provider. –
21 **a.** A doctor of medicine or osteopathy licensed to practice medicine in
22 the State.
23 **b.** A physician assistant licensed in this State.
24 **c.** A family nurse practitioner licensed in this State.
- 25 **(8)** Immediate family member. – An employee's spouse, mother, father, brother,
26 sister, son, daughter, grandmother, grandfather, grandson, granddaughter,
27 whether the relationship is a biological, foster, adoptive, step-, half-, or
28 in-law relationship.
- 29 **(9)** Parent. – A biological, foster, stepparent, or adoptive parent of an employee
30 or an employee's spouse, or other person who stood in loco parentis during
31 the childhood of an employee or employee's spouse.
- 32 **(10)** Paid sick time or paid sick days. – Time that is (i) compensated at the same
33 hourly rate and with the same benefits, including health care benefits, as the
34 employee normally earns during hours worked and (ii) provided by an
35 employer to an employee for the purposes described in G.S. 95-31.4(b) of
36 this Article.
- 37 **(11)** Sexual assault. – As defined in Chapter 14 of the General Statutes.
- 38 **(12)** Stalking. – As defined in Chapter 14 of the General Statutes.
- 39 **(13)** Small business. – An employer who employs 10 or fewer employees during
40 20 or more calendar workweeks in the current or preceding calendar year.

41 **"§ 95-31.3. Exemptions.**

42 **(a)** The provisions of this section do not apply to any bona fide volunteers in any
43 organization where an employer-employee relationship does not exist.

44 **(b)** The provisions of this section do not apply to any person exempted from the Wage
45 and Hour Act under G.S. 95-25.14(a)(2) through (8), G.S. 95-25.14(b), G.S. 95-25.14 (b1),
46 G.S. 95-25.14(c), and G.S. 95-25.14(e), except that domestic workers are exempted only if they
47 are employed in the place of residence of their employer.

48 **"§ 95-31.4. Accrual of paid sick time.**

49 **(a)** Except as provided by G.S. 95-31.3, any employee who works in this State and who
50 must be absent from work for the reasons set forth in G.S.95-31.5(a) shall be entitled to paid
51 sick time.

1 **(b)** Paid sick time as provided in this section shall begin to accrue at the commencement
2 of employment. Paid sick time shall accrue at the rate of one hour of pay for every 30 hours
3 worked. Paid sick time may be used as accrued, or be loaned by the employer, at its discretion,
4 to the employee in advance of accrual. Unless the employer and employee agree to designate
5 otherwise, for periods of paid sick time that are less than a normal workday, the time shall be
6 counted on an hourly basis or the smallest increment that the employer's payroll system uses to
7 account for absences or use of leave.

8 **(c)** For employees of small businesses, there shall be a limit of 32 hours of accrued paid
9 time in a calendar year. For employees of other employers, there shall be a limit of 56 hours of
10 accrued paid sick time in a calendar year. Accrued paid sick time for employees carries over
11 from year to year but is limited to the aforementioned limits.

12 **(d)** When there is separation from employment and the employee is rehired within 90
13 days of separation by the same employer, previously accrued paid sick time that had not been
14 used shall be reinstated. The employee shall be entitled to use accrued paid sick time and
15 accrue additional sick time at the recommencement of employment.

16 **"§ 95-31.5. Use of paid sick time.**

17 **(a)** Paid sick time shall be provided to an employee by an employer for any of the
18 following reasons:

19 **(1)** To care for the employee's immediate family member who is suffering from
20 a physical or mental illness, injury, or medical condition that requires home
21 care, professional medical diagnosis or care, preventative medical care, or a
22 routine medical appointment, unless the care is covered under federal law.

23 **(2)** To care for the employee's own physical or mental illness, injury, or medical
24 condition that requires home care, professional medical diagnosis or care,
25 preventative medical care, or a routine medical appointment, unless the care
26 is covered under federal law.

27 **(3)** To allow an employee to address the psychological, physical, or legal effects
28 on himself or herself, or an immediate family member, of domestic violence,
29 sexual assault, or stalking.

30 **(b)** An employer may require certification of the qualifying illness, injury, health
31 condition, or violence when a paid sick time period covers more than three consecutive
32 workdays. Any reasonable documentation signed by a health care provider involved in
33 following or treating the illness, injury, or health condition, and indicating the need for the
34 amount of sick days taken, shall be deemed acceptable certification. Acceptable certification of
35 domestic violence, sexual assault, or stalking may include: (i) law enforcement, court or federal
36 agency records or files; (ii) documentation from a domestic violence or sexual assault program;
37 or (iii) documentation from a religious, medical, or other professional from whom assistance
38 was sought in dealing with the alleged domestic violence, sexual offense, or stalking.

39 **(1)** The employer shall not require certification from a health care provider
40 employed by the employer. The employer shall not delay the
41 commencement of time taken for purposes of subsection (a) of this section
42 or pay for this period on the basis that the employer has not yet received the
43 certification. Nothing in this section shall be construed to require an
44 employee to provide as certification any information from a health care
45 provider that would be in violation of section 1177 of the Social Security
46 Act or the regulations promulgated pursuant to section 264(c) of the Health
47 Insurance Portability and Accountability Act, 42 U.S.C. § 1320d-2.

48 **(2)** An employer may not require disclosure of details relating to domestic
49 violence, sexual assault, or stalking or the details of an employee's medical
50 condition as a condition of providing paid sick time under this Article. If an
51 employer possesses health information or information pertaining to domestic

1 violence, sexual assault, or stalking about an employee or employee's
2 immediate family member, such information shall be treated as confidential
3 and not disclosed except to affected employee or with the permission of
4 affected employee.

5 (c) When the use of sick time is foreseeable, the employee shall make a good faith
6 effort to provide notice of the need for such time to the employer in advance of the use of the
7 sick time and shall make a reasonable effort to schedule the use of sick time in a manner that
8 does not unduly disrupt the operations of the employer.

9 (d) An employer may not require, as a condition of providing sick time under this Act,
10 that the employee search for or find a replacement worker to cover the hours during which the
11 employee is on paid sick time.

12 (e) Nothing in this section shall be construed as requiring financial or other
13 reimbursement to an employee from an employer upon the employee's termination, resignation,
14 retirement, or other separation from employment for accrued paid sick days that have not been
15 used.

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

22 (g) This Act provides minimum requirements pertaining to paid sick time and shall not
23 be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation,
24 requirement, policy, agreement, or standard that provides for greater accrual or use by
25 employees of sick time, whether paid or unpaid, or that extends other protections to employees.

26 (h) Employers who have a paid time off leave policy shall not be required to modify
27 that policy, if that policy offers an employee the option, at the employee's discretion, to take
28 paid sick time that is at least equivalent to the amounts and for the same purposes and under the
29 same conditions as provided under this section.

30 **"§ 95-31.6. Notification, posting, and records.**

31 Employers shall give notice that employees are entitled to paid sick time, the amount of
32 paid sick time, and the terms of its use guaranteed under this section, that retaliation against
33 employees who request or use paid sick time is prohibited, and that each employee has the right
34 to file a complaint with the Commissioner of Labor or in the General Court of Justice if sick
35 time as required by this Article is denied by the employer or the employee is retaliated against
36 for requesting or taking paid sick time. Employers may comply with this section by supplying
37 each of their employees with a notice in English and Spanish that contains the information
38 required by this section or by displaying a poster in a conspicuous and accessible place in each
39 establishment where the employees are employed which contains in English and in Spanish all
40 information required by this section.

41 **"§ 95-31.7. Enforcement.**

42 (a) The Commissioner shall enforce and administer the provisions of this Article, and
43 the Commissioner or his or her authorized representative is empowered to hold hearings and to
44 institute civil proceedings hereunder.

45 (b) The Commissioner or his or her authorized representative shall have power to
46 administer oaths and examine witnesses, issue subpoenas, compel the attendance of witnesses
47 and the production of papers, books, accounts, records, payrolls, and documents, and take
48 depositions and affidavits in any proceeding hereunder.

49 (c) Any employer who violates the provisions of this Article shall be liable to the
50 employee or employees affected in the amount of their unpaid sick time as the case may be,
51 plus interest at the legal rate set forth in G.S. 24-1 from the date each amount first came due.

1 (d) In addition to the amounts awarded pursuant to subsection (c) of this section, the
2 court shall award liquidated damages in an amount equal to the amount found to be due as
3 provided in subsection (c) of this section, provided that if the employer shows to the
4 satisfaction of the court that the act or omission constituting the violation was in good faith and
5 that the employer had reasonable grounds for believing that the act or omission was not a
6 violation of this Article, the court may, in its discretion, award no liquidated damages or may
7 award any amount of liquidated damages not exceeding the amount found due as provided in
8 subsection (c) of this section.

9 (e) Action to recover such liability may be maintained in the General Court of Justice
10 by any one or more employees.

11 (f) The court, in any action brought under this Article, may, in addition to any
12 judgment awarded plaintiff, order costs and fees of the action and reasonable attorneys' fees to
13 be paid by the defendant. The court may order costs and fees of the action and reasonable
14 attorneys' fees to be paid by the plaintiff if the court determines that the action was frivolous.

15 (g) The Commissioner is authorized to determine and supervise the payment of the
16 amounts due under this section, including interest at the legal rate set forth in G.S. 24-1 from
17 the date each amount first came due, and the agreement to accept such amounts by the
18 employee shall constitute a waiver of the employee's right to bring an action under subsection
19 (e) of this section.

20 (h) Actions under this Article must be brought within two years pursuant to G.S. 1-53.

21 (i) The rights and remedies created by this Article are supplementary to all existing
22 common law and statutory rights and remedies.

23 **"§ 95-31.8. Rules.**

24 The Commissioner of Labor shall adopt rules to implement this Article.

25 **"§ 95-31.9. Severability.**

26 The provisions of this Article shall be severable, and if any phrase, clause, sentence, or
27 provision is declared to be invalid or is preempted by federal law or regulation, the validity of
28 the remainder of this section shall not be affected thereby."

29 **SECTION 2.** G.S. 95-241(a) reads as rewritten:

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

- 32 (1) File a claim or complaint, initiate any inquiry, investigation, inspection,
33 proceeding or other action, or testify or provide information to any person
34 with respect to any of the following:
- 35 a. Chapter 97 of the General Statutes.
 - 36 b. ~~Article 2A~~ Article 2A, Article 3A, or Article 16 of this Chapter.
 - 37 c. Article 2A of Chapter 74 of the General Statutes.
 - 38 d. G.S. 95-28.1.
 - 39 e. Article 16 of Chapter 127A of the General Statutes.
 - 40 f. G.S. 95-28.1A.
 - 41 g. Article 52 of Chapter 143 of the General Statutes.
- 42 (2) Cause any of the activities listed in subdivision (1) of this subsection to be
43 initiated on an employee's behalf.
- 44 (3) Exercise any right on behalf of the employee or any other employee afforded
45 by ~~Article 2A~~ Article 2A, Article 3A, or Article 16 of this Chapter or by
46 Article 2A of Chapter 74 of the General Statutes.
- 47 (4) Comply with the provisions of Article 27 of Chapter 7B of the General
48 Statutes.
- 49 (5) Exercise rights under Chapter 50B. Actions brought under this subdivision
50 shall be in accordance with the provisions of G.S. 50B-5.5."

1 **SECTION 3.** Section 1 and Section 2 of this act become effective January 1, 2010,
2 apply only to covered employment on or after that date and do not apply to any collective
3 bargaining agreement entered into before January 1, 2010, that is still in effect on that date. The
4 remainder of this act is effective when it becomes law.