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SENATE DRS15109-LR-75A* (03/04)

Short Title: Healthy Families & Workplaces/Paid Sick Days. (Public)

Sponsors: Senators Bryant, Woodard, and Foushee (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT PROVIDING FOR HEALTHY FAMILIES AND HEALTHY WORKPLACES BY
3 ENSURING THAT ALL WORKERS HAVE EARNED PAID SICK DAYS TO
4 ADDRESS THEIR OWN HEALTH NEEDS AND THE HEALTH NEEDS OF THEIR
5 FAMILIES.

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

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

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

15 Whereas, over 116,000 North Carolina women reported physical abuse by a
16 husband or boyfriend in 2013-2014, and there were 955 domestic violence-related homicides
17 between 2002 and 2014; and

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

21 Whereas, thirty-nine percent (39%) or over 1.2 million private-sector workers in
22 North Carolina are not entitled to any earned paid sick days to care for their own health needs
23 or the health needs of members of their families; and

24 Whereas, low-income workers are significantly less likely to have earned paid sick
25 days with sixty percent (60%) of those earning less than twenty thousand dollars (\$20,000) per
26 year lacking access to earned paid sick days; Now, therefore,
27 The General Assembly of North Carolina enacts:

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

30 "Article 3A.

31 "Healthy Families and Healthy Workplaces Act.

32 **"§ 95-31.1. Short title and legislative purpose.**

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

35 (b) The public policy of this State is declared as follows: The health and safety needs of
36 employees and their families and the protection of employees from losing their jobs and pay



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1 while they seek medical care for themselves and their family members are subjects of concern
2 requiring legislation to promote the general welfare of the people of the State without
3 jeopardizing the competitive position of North Carolina business and industry. The General
4 Assembly declares that the general welfare of the State requires the enactment of this law under
5 the police power of the State.

6 **"§ 95-31.2. Definitions.**

7 (a) The following definitions apply in this Article:

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

39 **"§ 95-31.3. Exemptions.**

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

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

46 **"§ 95-31.4. Accrual of paid sick time.**

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

50 (b) Paid sick time as provided in this section shall begin to accrue at the commencement
51 of employment. Paid sick time shall accrue at the rate of one hour of pay for every 30 hours

1 worked. Paid sick time may be used as accrued, or be loaned by the employer at its discretion,
2 to the employee in advance of accrual. Unless the employer and employee agree to designate
3 otherwise, for periods of paid sick time that are less than a normal workday, the time shall be
4 counted on an hourly basis or the smallest increment that the employer's payroll system uses to
5 account for absences or use of leave.

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

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

14 **"§ 95-31.5. Use of paid sick time.**

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

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

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

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

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

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

46 (2) An employer may not require disclosure of details relating to domestic
47 violence, sexual assault, or stalking or the details of an employee's medical
48 condition as a condition of providing paid sick time under this Article. If an
49 employer possesses health information or information pertaining to domestic
50 violence, sexual assault, or stalking about an employee or employee's
51 immediate family member, such information shall be treated as confidential

1 and not disclosed except to the affected employee or with the permission of
2 the affected employee.

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

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

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

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

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

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

28 **"§ 95-31.6. Notification, posting, and records.**

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

39 **"§ 95-31.7. Enforcement.**

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

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

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

50 (d) In addition to the amounts awarded pursuant to subsection (c) of this section, the
51 court shall award liquidated damages in an amount equal to the amount found to be due as

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

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

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

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

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

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

21 **"§ 95-31.8. Rules.**

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

23 **"§ 95-31.9. Severability.**

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

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

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

- 30 (1) File a claim or complaint, initiate any inquiry, investigation, inspection,
31 proceeding or other action, or testify or provide information to any person
32 with respect to any of the following:
33 a. Chapter 97 of the General Statutes.
34 b. ~~Article 2A~~ Article 2A, Article 3A, or Article 16 of this Chapter.
35 c. Article 2A of Chapter 74 of the General Statutes.
36 d. G.S. 95-28.1.
37 e. Article 16 of Chapter 127A of the General Statutes.
38 f. G.S. 95-28.1A.
39 g. Article 52 of Chapter 143 of the General Statutes.
40 h. Article 5F of Chapter 90 of the General Statutes.
- 41 (2) Cause any of the activities listed in subdivision (1) of this subsection to be
42 initiated on an employee's behalf.
- 43 (3) Exercise any right on behalf of the employee or any other employee afforded
44 by ~~Article 2A~~ Article 2A, Article 3A, or Article 16 of this Chapter, by
45 Article 2A of Chapter 74 of the General Statutes, or by Article 52 of Chapter
46 143 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.** This act becomes effective July 1, 2015, applies only to covered
2 employment on or after that date, and does not apply to any collective bargaining agreement
3 entered into before July 1, 2015, that is still in effect on that date.