

HOUSE BILL No. 4167

February 10, 2015, Introduced by Reps. Chang, Driskell, Geiss, Plawecki, Wittenberg, Moss, Hoadley, Irwin, Faris, Pagan, Brinks, Sarah Roberts, Darany, Gay-Dagnogo, Callton, Guerra, Love, Dianda, Garrett, Greig and Byrd and referred to the Committee on Commerce and Trade.

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) "Committed relationship" means one in which the employee
5 and another individual share responsibility for a significant
6 measure of each other's common welfare, such as any relationship

1 between individuals of the same or different sex that is granted
2 legal recognition by a state, political subdivision, or the
3 District of Columbia as a marriage or analogous relationship,
4 including, but not limited to, a civil union.

5 (b) "Department" means the department of licensing and
6 regulatory affairs.

7 (c) "Director" means the director of the department of
8 licensing and regulatory affairs or his or her designee.

9 (d) "Domestic partner" means an adult in a committed
10 relationship with another adult, including both same-sex and
11 different-sex relationships.

12 (e) "Domestic violence" has the same meaning as provided in
13 section 1 of 1978 PA 389, MCL 400.1501.

14 (f) "Employee", subject to section 12, means an individual
15 engaged in service to an employer in the business of the employer,
16 except that employee does not include an individual employed by the
17 United States government.

18 (g) "Employer" means any person, firm, business, educational
19 institution, nonprofit agency, corporation, limited liability
20 company, government entity, or other entity that employs 1 or more
21 individuals, except that employer does not include the United
22 States government.

23 (h) "Family member" includes all of the following:

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

27 (ii) A biological parent, foster parent, stepparent, or

1 adoptive parent or a legal guardian of an employee or an employee's
2 spouse or domestic partner or a person who stood in loco parentis
3 when the employee was a minor child.

4 (iii) A person to whom the employee is legally married under the
5 laws of any state or a domestic partner.

6 (iv) A grandparent or spouse or domestic partner of a
7 grandparent.

8 (v) A grandchild.

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

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

14 (i) "Health care professional" means any of the following:

15 (i) Any person licensed under federal law or the law of this
16 state to provide health care services, including, but not limited
17 to, nurses, doctors, and emergency room personnel.

18 (ii) A certified midwife.

19 (j) "Retaliatory personnel action" means any of the following:

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

21 (ii) A threat, discharge, suspension, demotion, reduction of
22 hours, or other adverse action against an employee or former
23 employee for exercise of a right guaranteed under this act.

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

26 (iv) Interference with, or punishment for, an individual's
27 participation in any manner in an investigation, proceeding, or

1 hearing under this act.

2 (k) "Sexual assault" means any act that constitutes a
3 violation of section 520b, 520c, 520d, 520e, 520f, or 520g of the
4 Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d,
5 750.520e, 750.520f, and 750.520g.

6 (l) "Small business" means an employer for which fewer than 10
7 individuals work for compensation during a given week. In
8 determining the number of individuals performing work for
9 compensation during a given week, all individuals performing work
10 for compensation on a full-time, part-time, or temporary basis
11 shall be counted, including individuals made available to work
12 through the services of a temporary services or staffing agency or
13 similar entity. An employer is not a small business if it
14 maintained 10 or more employees on its payroll during any 20 or
15 more calendar workweeks in either the current or the preceding
16 calendar year.

17 Sec. 3. (1) Each employer shall provide paid sick leave
18 annually to each of the employer's employees in this state. Paid
19 sick leave accrues beginning January 1, 2016, at a rate of 1 hour
20 of paid sick leave for each 30 hours worked. Paid sick leave
21 accrues in 1-hour increments up to 40 hours per calendar year for
22 employees of a small business and 72 hours for all other employees.
23 Paid sick leave shall carry over from year to year, but a small
24 business is not required to permit an employee to use more than 40
25 hours, and other employers are not required to permit an employee
26 to use more than 72 hours, of accrued paid sick leave in a single
27 year.

1 (2) An employee may use accrued paid sick leave as accrued,
2 except that an employer may require an employee hired after January
3 1, 2016, to wait until the ninetieth calendar day after beginning
4 employment before using accrued paid sick leave.

5 (3) For purposes of paid sick leave accrual under this act, an
6 employee who is exempt from overtime requirements under section
7 13(a)(1) of the fair labor standards act, 29 USC 213(a)(1), is
8 assumed to work 40 hours in each workweek unless the employee's
9 normal work week is less than 40 hours, in which case paid sick
10 leave accrues based upon that normal workweek.

11 (4) An employer is in compliance with this section if the
12 employer provides any paid leave, or combination of paid leave,
13 that may be used for the same purposes and under the same
14 conditions provided in this act and that is accrued in total at a
15 rate equal to or greater than the rate described in subsection (1).
16 For the purposes of this subsection, "paid leave" includes, but is
17 not limited to, paid vacation, personal days, and paid time off.

18 (5) An employer shall pay each employee using paid sick leave
19 at a pay rate equal to the greater of either the normal hourly wage
20 for that employee or the minimum wage established under the
21 workforce opportunity wage act, 2014 PA 138, MCL 408.411 to
22 408.424, but not less than the minimum wage rate established in
23 section 4 of the workforce opportunity wage act, 2014 PA 138, MCL
24 408.414. For any employee whose hourly wage varies depending on the
25 work performed, the "normal hourly wage" means the average hourly
26 wage of the employee in the pay period immediately prior to the pay
27 period in which the employee used paid sick leave.

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

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

6 (a) The employee's mental or physical illness, injury, or
7 health condition; medical diagnosis, care, or treatment of the
8 employee's mental or physical illness, injury, or health condition;
9 or preventative medical care for the employee.

10 (b) For the employee's family member's mental or physical
11 illness, injury, or health condition; medical diagnosis, care, or
12 treatment of the employee's family member's mental or physical
13 illness, injury, or health condition; or preventative medical care
14 for a family member of the employee.

15 (c) If the employee or the employee's family member is a
16 victim of domestic violence or sexual assault, for medical care or
17 psychological or other counseling for physical or psychological
18 injury or disability; to obtain services from a victim services
19 organization; to relocate due to domestic violence or sexual
20 assault; to obtain legal services; or to participate in any civil
21 or criminal proceedings related to or resulting from the domestic
22 violence or sexual assault.

23 (d) For closure of the employee's place of business by order
24 of a public official due to a public health emergency; for an
25 employee's need to care for a child whose school or place of care
26 has been closed by order of a public official due to a public
27 health emergency; or when it has been determined by the health

1 authorities having jurisdiction or by a health care provider that
2 the employee's or employee's family member's presence in the
3 community would jeopardize the health of others because of the
4 employee's or family member's exposure to a communicable disease,
5 whether or not the employee or family member has actually
6 contracted the communicable disease.

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

13 (3) For paid sick leave of more than 3 consecutive days, an
14 employer may require reasonable documentation that the sick leave
15 has been used for a purpose described in subsection (1). Upon the
16 employer's request, the employee must provide the documentation to
17 the employer in a timely manner. The employer shall not delay the
18 commencement of paid sick leave on the basis that the employer has
19 not yet received documentation. Documentation signed by a health
20 care professional indicating that sick leave is necessary is
21 reasonable documentation. A police report indicating that the
22 employee or the employee's family member was a victim of domestic
23 violence or sexual assault, a signed statement from a victim and
24 witness advocate affirming that the employee or employee's family
25 member is receiving services from a victim services organization,
26 or a court document indicating that the employee or employee's
27 family member is involved in legal action related to domestic

1 violence or sexual assault is reasonable documentation. An employer
2 shall not require that the documentation explain the nature of the
3 illness or the details of the violence. If an employer chooses to
4 require documentation for sick leave, the employer is responsible
5 for paying all out-of-pocket expenses the employee incurs in
6 obtaining the documentation.

7 (4) An employer shall not require disclosure of details
8 relating to domestic violence or sexual assault or the details of
9 an employee's or an employee's family member's medical condition as
10 a condition of providing paid sick leave under this act. If an
11 employer possesses health information or information pertaining to
12 domestic violence or sexual assault about an employee or employee's
13 family member, the employer shall treat that information as
14 confidential and shall not disclose that information except to the
15 affected employee or with the permission of the affected employee.

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

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

1 (2) If a different employer succeeds or takes the place of an
2 existing employer, the successor employer assumes the
3 responsibility for the sick leave rights that employees who remain
4 employed by the successor employer accrued under the original
5 employer. Those employees are entitled to use paid sick leave
6 previously accrued on the terms provided in this act.

7 (3) This act does not require an employer to provide financial
8 or other reimbursement to an employee for accrued paid sick leave
9 that was not used upon the employee's termination, resignation,
10 retirement, or other separation from employment.

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

14 (2) An employer shall not take retaliatory personnel action or
15 discriminate against an employee because the employee has exercised
16 a right protected under this act. Rights protected by this act
17 include, but are not limited to, the right to use paid sick leave
18 pursuant to this act, the right to file a complaint or inform any
19 person about any employer's alleged violation of this act, the
20 right to cooperate with the department in its investigations of
21 alleged violations of this act, and the right to inform any person
22 of his or her rights under this act.

23 (3) An employer's absence control policy shall not treat paid
24 sick leave taken under this act as an absence that may lead to or
25 result in retaliatory personnel action.

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

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

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

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

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

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

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

13 Sec. 7. (1) If an employer violates this act, the employee
14 affected by the violation, at any time within 3 years after the
15 violation or the date when the employee knew of the violation,
16 whichever is later, may do any of the following:

17 (a) Bring a civil action for appropriate relief, including,
18 but not limited to, payment for used sick leave; rehiring or
19 reinstatement to the employee's previous job; payment of back
20 wages; reestablishment of employee benefits to which the employee
21 otherwise would have been eligible if the employee had not been
22 subjected to retaliatory personnel action or discrimination; and an
23 equal additional amount as liquidated damages together with costs
24 and reasonable attorney fees as the court allows.

25 (b) File a claim with the department, which shall investigate
26 the claim. Filing a claim with the department is neither a
27 prerequisite nor a bar to bringing a civil action.

1 (2) If the director determines that there is reasonable cause
2 to believe that an employer violated this act and the department is
3 subsequently unable to obtain voluntary compliance by the employer
4 within a reasonable time, the department shall bring a civil action
5 as provided in subsection (1)(a) on behalf of the employee. The
6 department may investigate and file a civil action under subsection
7 (1)(a) on behalf of all employees of that employer who are
8 similarly situated at the same work site and who have not brought a
9 civil action under subsection (1)(a). A contract or agreement
10 between the employer and the employee or any acceptance by the
11 employee of a paid leave policy that provides fewer rights or
12 benefits than provided by this act is void and unenforceable.

13 (3) In addition to liability for civil remedies described in
14 this section, an employer who fails to provide paid sick leave in
15 violation of this act is subject to a civil fine of not more than
16 \$1,000.00.

17 (4) An employer that willfully violates a notice or posting
18 requirement of section 8 is subject to a civil fine of not more
19 than \$100.00 for each separate violation.

20 Sec. 8. (1) An employer subject to this act shall provide
21 written notice to each employee at the time of hiring or by January
22 1, 2016, whichever is later, of all of the following:

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

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

26 (c) That retaliatory personnel action by the employer against
27 an employee for requesting or using sick leave for which the

1 employee is eligible is prohibited.

2 (d) The employee's right to bring a civil action or file a
3 complaint with the department for any violation of this act.

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

8 (3) The department shall create and make available to
9 employers posters that contain the information required under
10 subsection (1) for employers' use in complying with this section.
11 The department shall provide posters in both English and Spanish.

12 Sec. 9. The department shall develop and implement a
13 multilingual outreach program to inform employees, parents, and
14 persons who are under the care of a health care provider about the
15 availability of paid sick leave under this act. This program must
16 include distribution of notices and other written materials in
17 English and in other languages to child care and elder care
18 providers, domestic violence shelters, schools, hospitals,
19 community health centers, and other health care providers.

20 Sec. 10. An employer shall retain for 5 years records
21 documenting the hours worked and paid sick leave taken by
22 employees. To monitor compliance with the requirements of this act,
23 an employer shall allow the department access to those records,
24 with appropriate notice and at a mutually agreeable time. If a
25 question arises as to whether an employer has violated an
26 employee's right to paid sick leave under this act and the employer
27 does not maintain or retain adequate records documenting the hours

1 worked and paid sick leave taken by the employee or does not allow
2 the department reasonable access to those records, there is a
3 presumption that the employer has violated the act, which can be
4 rebutted only by clear and convincing evidence.

5 Sec. 11. (1) This act provides minimum requirements pertaining
6 to paid sick leave and shall not be construed to preempt, limit, or
7 otherwise affect the applicability of any other law, regulation,
8 requirement, policy, or standard, including a collective bargaining
9 agreement, that provides for greater accrual or use of time off,
10 whether paid or unpaid, or that extends other protections to
11 employees.

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

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

15 (b) Diminish any rights provided to any employee under a
16 collective bargaining agreement.

17 (c) Subject to section 12, preempt or override the terms of
18 any collective bargaining agreement in effect prior to the
19 effective date of this act.

20 (d) Prohibit an employer from establishing a policy that
21 permits an employee to donate unused accrued paid sick leave to
22 another employee.

23 Sec. 12. If an employer's employees are covered by a
24 collective bargaining agreement in effect on January 1, 2016, this
25 act applies beginning on the date that agreement expires,
26 notwithstanding any statement in the agreement that it continues in
27 force until a future date or event or the execution of a new

1 collective bargaining agreement.

2 Sec. 13. The director may promulgate rules in accordance with
3 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
4 to 24.328, as necessary to administer this act.

5 Enacting section 1. This act takes effect January 1, 2016.