

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 422*

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

Sponsors: Representatives Fisher, Harrison, Insko, and K. Smith (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Health, if favorable, Regulatory Reform, if favorable, Rules, Calendar, and Operations of the House

March 25, 2019

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR HEALTHY FAMILIES AND HEALTHY WORKPLACES BY ENSURING THAT ALL WORKERS HAVE EARNED 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 62,967 North Carolinians reported physical abuse or sexual assault between July 2017 and June 2018, and there were 1,036 domestic violence-related homicides in North Carolina between 2004 and 2018; and

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

Whereas, 39% or over 1.3 million private-sector workers in North Carolina are not entitled to any earned paid sick days 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 earned paid sick days, with 60% of those earning less than \$20,000 per year lacking access to earned paid sick days; 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."



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1 **(b)** The public policy of this State is declared as follows: The health and safety needs of
2 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 years
12 of age or older but incapable of earning wages because of a mental or physical
13 incapacity.
- 14 **(2)** Domestic violence. – As defined in G.S. 50B-1.
- 15 **(3)** Employ. – As defined by G.S. 95-25.2(3).
- 16 **(4)** Employee. – As defined by G.S. 95-25.2(4).
- 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. §§ 2601
19 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. – A child, grandchild, sibling, spouse, domestic
26 partner, civil union partner, parent, or grandparent of an employee, or a
27 spouse, domestic partner, or civil union partner of a parent or grandparent of
28 the employee, or a sibling of a spouse, domestic partner, or civil union partner
29 of the employee, or any other individual related by blood to the employee or
30 whose close association with the employee is the equivalent of a family
31 relationship.
- 32 **(9)** 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 this
36 Article.
- 37 **(10)** Parent. – A biological, foster, step, or adoptive parent of an employee or an
38 employee's spouse, or other person who stood in loco parentis during the
39 childhood of an employee or employee's spouse.
- 40 **(11)** Sexual assault. – As defined in Chapter 14 of the General Statutes.
- 41 **(12)** Stalking. – As defined in Chapter 14 of the General Statutes.
- 42 **(13)** Small business. – An employer who employs 10 or fewer employees during
43 20 or more calendar workweeks in the current or preceding calendar year.

44 **"§ 95-31.3. Exemptions.**

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

47 **(b)** The provisions of this section do not apply to any person exempted from the Wage
48 and Hour Act under G.S. 95-25.14(a)(2) through (8), G.S. 95-25.14(b), 95-25.14(b1),
49 95-25.14(c), and 95-25.14(e), except that domestic workers are exempted only if they are
50 employed in the place of residence of their employer.

51 **"§ 95-31.4. Accrual of paid sick time.**

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

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

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

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

19 **"§ 95-31.5. Use of paid sick time.**

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

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

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

30 (3) Absence necessary due to circumstances resulting from the employee, or a
31 family member of the employee, being a victim of stalking or domestic or
32 sexual violence, if the leave is to allow the employee to obtain for the
33 employee or the family member: medical attention needed to recover from
34 physical or psychological injury or disability caused by stalking or domestic
35 or sexual violence; services from a designated domestic violence agency or
36 other victim services organization; psychological or other counseling;
37 relocation; or legal services, including obtaining a restraining order or
38 preparing for, or participating in, any civil or criminal legal proceeding related
39 to the stalking or domestic or sexual violence.

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

49 (1) The employer shall not require certification from a health care provider
50 employed by the employer. The employer shall not delay the commencement
51 of time taken for purposes of subsection (a) of this section or pay for this

1 period on the basis that the employer has not yet received the certification.
2 Nothing in this section shall be construed to require an employee to provide
3 as certification any information from a health care provider that would be in
4 violation of section 1177 of the Social Security Act or the regulations
5 promulgated pursuant to section 264(c) of the Health Insurance Portability and
6 Accountability Act, 42 U.S.C. § 1320d-2.

7 (2) An employer may not require disclosure of details relating to domestic
8 violence, sexual assault, or stalking or the details of an employee's medical
9 condition as a condition of providing paid sick time under this Article. If an
10 employer possesses health information or information pertaining to domestic
11 violence, sexual assault, or stalking about an employee or employee's
12 immediate family member, such information shall be treated as confidential
13 and not disclosed except to the affected employee or with the permission of
14 the affected employee.

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

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

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

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

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

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

40 **"§ 95-31.6. Notification, posting, and records.**

41 Employers shall give notice (i) that employees are entitled to paid sick time, (ii) of the amount
42 of paid sick time and the terms of its use guaranteed under this section, (iii) that retaliation against
43 employees who request or use paid sick time is prohibited, and (iv) that each employee has the
44 right to file a complaint with the Commissioner of Labor or in the General Court of Justice if
45 paid sick time as required by this Article is denied by the employer or the employee is retaliated
46 against for requesting or taking paid sick time. Employers may comply with this section by
47 supplying each of their employees with a notice in English and Spanish that contains the
48 information required by this section or by displaying a poster in a conspicuous and accessible
49 place in each establishment where the employees are employed that contains in English and
50 Spanish all information required by this section.

51 **"§ 95-31.7. Enforcement.**

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

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

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

11 (d) In addition to the amounts awarded pursuant to subsection (c) of this section, the court
12 shall award liquidated damages in an amount equal to the amount found to be due as provided in
13 subsection (c) of this section, provided that if the employer shows to the satisfaction of the court
14 that the act or omission constituting the violation was in good faith and that the employer had
15 reasonable grounds for believing that the act or omission was not a violation of this Article, the
16 court may, in its discretion, award no liquidated damages or may award any amount of liquidated
17 damages not exceeding the amount found due as provided in subsection (c) of this section.

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

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

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

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

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

31 **"§ 95-31.8. Rules.**

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

33 **"§ 95-31.9. Severability.**

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

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

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

- 40 (1) File a claim or complaint, initiate any inquiry, investigation, inspection,
41 proceeding or other action, or testify or provide information to any person
42 with respect to any of the following:
- 43 a. Chapter 97 of the General Statutes.
 - 44 b. ~~Article 2A~~ Article 2A, Article 3A, or Article 16 of this Chapter.
 - 45 c. Article 2A of Chapter 74 of the General Statutes.
 - 46 d. G.S. 95-28.1.
 - 47 e. Article 16 of Chapter 127A of the General Statutes.
 - 48 f. G.S. 95-28.1A.
 - 49 g. Article 52 of Chapter 143 of the General Statutes.
 - 50 h. Article 5F of Chapter 90 of the General Statutes.

- 1 (2) Cause any of the activities listed in subdivision (1) of this subsection to be
2 initiated on an employee's behalf.
- 3 (3) Exercise any right on behalf of the employee or any other employee afforded
4 by ~~Article 2A~~ Article 2A, Article 3A, or Article 16 of this Chapter, by Article
5 2A of Chapter 74 of the General Statutes, or by Article 52 of Chapter 143 of
6 the General Statutes.
- 7 (4) Comply with the provisions of Article 27 of Chapter 7B of the General
8 Statutes.
- 9 (5) Exercise rights under Chapter 50B. Actions brought under this subdivision
10 shall be in accordance with the provisions of G.S. 50B-5.5."

11 **SECTION 3.** This act becomes effective July 1, 2019, applies only to covered
12 employment on or after that date, and does not apply to any collective bargaining agreement
13 entered into before July 1, 2019, that is still in effect on that date.