

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 493

Introduced by Nordquist, 7; Crawford, 45; Haar, 21; Hansen, 26; Howard,
9; Kolowski, 31; Morfeld, 46; Pansing Brooks, 28.

Read first time January 20, 2015

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to labor; to adopt the Healthy and Safe
- 2 Families and Workplaces Act; and to provide severability.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known and may be
2 cited as the Healthy and Safe Families and Workplaces Act.

3 Sec. 2. For purposes of the Healthy and Safe Families and
4 Workplaces Act:

5 (1) Commissioner means the Commissioner of Labor;

6 (2) Department means the Department of Labor;

7 (3) Domestic assault means domestic assault in the first, second, or
8 third degree under section 28-323 or any similar crime from another
9 state;

10 (4) Employee means any individual employed by an employer who
11 receives compensation from such employer and includes recipients of
12 public benefits who are engaged in work activity as a condition of
13 receiving public assistance. Employee does not include:

14 (a) A minor child employed by his or her parent; or

15 (b) Any individual employed in agricultural labor as described in
16 subdivision (6)(a) of section 48-604;

17 (5) Employer includes any individual, partnership, limited liability
18 company, association, corporation, business trust, legal representative,
19 or organized group of persons employing four or more employees at any one
20 time, excluding any employees who work not more than twenty weeks in any
21 calendar year, but does not include the United States, the state, or any
22 political subdivision thereof;

23 (6) Family member means:

24 (a) A biological, foster, or adopted child, a stepchild, a legal
25 ward, or a child to whom the employee stands in loco parentis;

26 (b) A biological, foster, or adoptive parent, a stepparent, or a
27 legal guardian of an employee or an employee's spouse or a person who
28 stood in loco parentis to an employee or an employee's spouse when the
29 employee or the employee's spouse was a child; or

30 (c) A person to whom the employee is legally married;

31 (7) Health care professional means any person licensed under federal

1 or state law to provide medical or emergency services, including, but not
2 limited to, doctors, nurses, and emergency room personnel;

3 (8) Paid sick and safe time means time that is compensated at the
4 same hourly rate and with the same benefits, including health care
5 benefits, as the employee normally earns during hours worked and is
6 provided by an employer to an employee for the purposes described in
7 section 4 of this act, but in no case shall the hourly wage be less than
8 that provided under the Wage and Hour Act;

9 (9) Sexual assault means sexual assault under section 28-319 or
10 28-320, sexual assault of a child under section 28-319.01 or 28-320.01,
11 or sexual assault by use of an electronic communication device under
12 section 28-320.02 or any similar crime from another state; and

13 (10) Stalking means stalking under section 28-311.03 or any similar
14 crime from another state.

15 Sec. 3. (1) Employees shall accrue a minimum of one hour of paid
16 sick and safe time for every thirty hours worked. Such employees will not
17 accrue more than forty hours of paid sick and safe time in a calendar
18 year, unless the employer selects a higher limit.

19 (2) Employees who are exempt from overtime requirements under 29
20 U.S.C. 213(a)(1) of the federal Fair Labor Standards Act of 1938 will be
21 assumed to work forty hours in each work week for purposes of paid sick
22 and safe time accrual unless their normal work week is less than forty
23 hours, in which case paid sick and safe time accrues based upon that
24 normal work week.

25 (3) Paid sick and safe time accrual shall begin at the commencement
26 of employment.

27 (4) Employees shall be entitled to use accrued paid sick and safe
28 time beginning on the sixtieth calendar day following commencement of
29 employment. After the sixtieth calendar day, employees may use paid sick
30 and safe time as it is accrued.

31 (5) Paid sick and safe time shall be carried over to the following

1 calendar year, except that an employee's use of paid sick and safe time
2 in each calendar year shall not exceed forty hours.

3 (6) Any employer with a paid leave policy, such as a paid time off
4 policy, who makes available an amount of paid leave sufficient to meet
5 the accrual requirements for paid sick and safe time under this section
6 which may be used for the same purposes and under the same conditions as
7 paid sick and safe time under the Healthy and Safe Families and
8 Workplaces Act is not required to provide additional paid sick and safe
9 time.

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

14 (8) If an employee is transferred to a separate division, entity, or
15 location, but remains employed by the same employer, the employee is
16 entitled to all paid sick and safe time accrued at the prior division,
17 entity, or location and is entitled to use all paid sick and safe time as
18 provided in this section. When there is a separation from employment and
19 the employee is rehired within six months after separation by the same
20 employer, previously accrued paid sick and safe time that had not been
21 used shall be reinstated, and the employee shall be entitled to use
22 accrued paid sick and safe time and accrue additional paid sick and safe
23 time at the recommencement of employment.

24 (9) At its discretion, the employer may loan paid sick and safe time
25 to the employee in advance of accrual by such employee.

26 Sec. 4. (1) Paid sick and safe time shall be provided to an
27 employee by an employer for:

28 (a) An employee's mental or physical illness, injury, or health
29 condition; an employee's need for medical diagnosis, care, or treatment
30 of a mental or physical illness, injury, or health condition; or an
31 employee's need for preventive medical care;

1 (b) Care of a family member with a mental or physical illness,
2 injury, or health condition; care of a family member who needs medical
3 diagnosis, care, or treatment of a mental or physical illness, injury, or
4 health condition; or care of a family member who needs preventive medical
5 care; or

6 (c) Absence necessary due to domestic assault, sexual assault, or
7 stalking if the leave is to allow the employee to obtain for the employee
8 or the employee's family member:

9 (i) Medical attention needed to recover from physical or
10 psychological injury or disability caused by domestic assault, sexual
11 assault, or stalking;

12 (ii) Services from a victim services organization;

13 (iii) Psychological or other counseling;

14 (iv) Relocation due to the domestic assault, sexual assault, or
15 stalking; or

16 (v) Legal services, including preparing for or participating in any
17 civil or criminal legal proceeding relating to or resulting from the
18 domestic assault, sexual assault, or stalking.

19 (2) Paid sick and safe time shall be provided upon the oral request
20 of an employee as soon as practicable after the employee is aware of the
21 need for such paid sick and safe time. The request shall include the
22 expected duration of the absence, if possible.

23 (3) When the use of paid sick and safe time is foreseeable, the
24 employee shall make a good faith effort to provide notice of the need for
25 such time to the employer in advance of the use of the paid sick and safe
26 time and shall make a reasonable effort to schedule the use of paid sick
27 and safe time in a manner that does not unduly disrupt the operations of
28 the employer.

29 (4) An employer cannot require, as a condition of an employee's
30 taking paid sick and safe time, that the employee search for or find a
31 replacement worker to cover the hours during which the employee is on

1 paid sick and safe time.

2 (5) Accrued paid sick and safe time may be used in the smaller of
3 hourly increments or the smallest increment that the employer's payroll
4 system uses to account for absences or use of other time.

5 (6)(a) If the use of paid sick and safe time exceeds more than three
6 consecutive workdays, an employer may require reasonable documentation
7 that the paid sick and safe time has been used for a purpose described in
8 subsection (1) of this section.

9 (b) Documentation signed by a health care professional indicating
10 that sick time is necessary shall be considered reasonable documentation.

11 (c) The following documentation shall be considered reasonable
12 documentation for absences due to domestic assault, sexual assault, or
13 stalking:

14 (i) A police report indicating that the employee or a member of the
15 employee's family was a victim of domestic assault, sexual assault, or
16 stalking;

17 (ii) A court order protecting or separating the employee or a member
18 of the employee's family from the perpetrator of an act of domestic
19 assault, sexual assault, or stalking or other evidence from the court or
20 prosecuting attorney that the employee or a member of the employee's
21 family has appeared in court or is scheduled to appear in court in a
22 proceeding related to domestic assault, sexual assault, or stalking; and

23 (iii) Other documentation signed by an advocate as defined in
24 section 29-4302, an attorney, a police officer, a medical professional, a
25 social worker, an antiviolence counselor, or a member of the clergy
26 affirming that the employee or a member of the employee's family is a
27 victim of domestic assault, sexual assault, or stalking.

28 (d) An employer shall not require that the documentation explain the
29 nature of the illness or the details of the violence.

30 (e) The employee shall provide such reasonable documentation to the
31 employer no later than thirty days after the first day of the period of

1 time for which the employee is requesting paid sick and safe time. The
2 employer shall not delay the commencement of paid sick and safe time on
3 the basis that the employer has not yet received the documentation.

4 (7) Any information provided to an employer regarding paid sick and
5 safe time shall be confidential except to the extent that any disclosure
6 of such information is:

7 (a) Requested or consented to in writing by the employee;

8 (b) Otherwise required by federal or state law; or

9 (c) Necessary to prevent a clear and definite danger to other
10 employees.

11 Sec. 5. (1) It is unlawful for an employer or any other person to
12 interfere with, restrain, or deny the exercise of, or the attempt to
13 exercise, any right protected under the Healthy and Safe Families and
14 Workplaces Act.

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

23 (3) It is unlawful for an employer's absence control policy to count
24 paid sick and safe time taken under the act as an absence that may lead
25 to or result in discipline, discharge, demotion, suspension, or any other
26 adverse action.

27 (4) Protections under this section shall apply to any person who
28 mistakenly but in good faith alleges violations of this section.

29 Sec. 6. Employers shall give notice at the time of hire that
30 employees are entitled to paid sick and safe time, the amount of paid
31 sick and safe time, the terms of use for paid sick and safe time

1 guaranteed under the Healthy and Safe Families and Workplaces Act, that
2 retaliation against employees who request or use paid sick and safe time
3 is prohibited, and that each employee has the right to file a complaint
4 or bring a civil action if paid sick and safe time is denied by the
5 employer or the employee is retaliated against for requesting or taking
6 paid sick and safe time.

7 Sec. 7. (1) An employee or other person may report to the
8 commissioner any suspected violation of the Healthy and Safe Families and
9 Workplaces Act. The commissioner shall encourage reporting pursuant to
10 this subsection by keeping confidential, to the maximum extent permitted
11 by applicable law, the name and other identifying information of the
12 employee or person reporting the suspected violation, except that, with
13 the authorization of such person, the commissioner may disclose the
14 person's name and identifying information as necessary to enforce the act
15 or for other appropriate purposes. The commissioner may summon witnesses
16 and require the production of records, books, and documents for
17 examination in any investigation conducted by the department pursuant to
18 this section. The commissioner shall assess an administrative penalty
19 against an employer when an investigation reveals that the employer
20 violated the act. The administrative penalty shall be not more than five
21 hundred dollars in the case of a first violation and not more than five
22 thousand dollars in the case of a second or subsequent violation. The
23 commissioner shall notify the employer of the proposed administrative
24 penalty by certified mail or any other manner of delivery by which the
25 United States Postal Service can verify delivery. The employer has
26 fifteen working days after the date the commissioner sends notification
27 of the penalty to contest such penalty. Notice of contest shall be sent
28 to the commissioner who shall provide a hearing in accordance with the
29 Administrative Procedure Act.

30 (2) Any person aggrieved by a violation of the act or any entity a
31 member of which is aggrieved by a violation of the act may bring a civil

1 action in a court of competent jurisdiction against an employer who
2 violates the act. The action may be brought without first filing an
3 administrative complaint. Upon prevailing in an action brought pursuant
4 to this subsection, an aggrieved person shall recover:

5 (a) The full amount of any unpaid sick and safe time; and

6 (b) Attorney's fees and costs associated with the action.

7 Sec. 8. (1) Nothing in the Healthy and Safe Families and Workplaces
8 Act shall be construed to discourage or prohibit an employer from the
9 adoption or retention of a paid sick and safe time policy that is more
10 generous than the one required by the act.

11 (2) The act provides minimum requirements pertaining to paid sick
12 and safe time and shall not be construed to preempt, limit, or otherwise
13 affect the applicability of any other law, regulation, requirement,
14 policy, contract, or standard that provides for greater accrual or use by
15 employees of sick and safe time, whether paid or unpaid, or that extends
16 other protections to employees.

17 Sec. 9. The department shall administer and enforce the Healthy and
18 Safe Families and Workplaces Act and may adopt and promulgate rules and
19 regulations for such purposes.

20 Sec. 10. If any section in this act or any part of any section is
21 declared invalid or unconstitutional, the declaration shall not affect
22 the validity or constitutionality of the remaining portions.