

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1090

Introduced by Conrad, 46.

Read first time January 22, 2014

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor; to adopt the Healthy Families and

2 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
2 may be cited as the Healthy Families and Workplaces Act.

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

5 (1) Commissioner means the Commissioner of Labor;

6 (2) Department means the Department of Labor;

7 (3) Employee means any individual employed full time by
8 an employer who receives compensation from such employer and includes
9 recipients of public benefits who are engaged in work activity as a
10 condition of receiving public assistance, but does not include:

11 (a) Any individual employed in domestic service as
12 defined by subdivision (6)(b) of section 48-604;

13 (b) A minor child employed by his or her parent; or

14 (c) Any individual employed in agricultural labor as
15 defined by subdivision (6)(a) of section 48-604;

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

22 (5) Family member means:

23 (a) A biological, adopted, or foster child, stepchild, or
24 legal ward;

25 (b) A biological, foster, stepparent, or adoptive parent

1 or legal guardian of an employee or an employee's spouse; or

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

3 (6) Health care professional means any person licensed
4 under federal or state law to provide medical or emergency services,
5 including, but not limited to, doctors, nurses, and emergency room
6 personnel; and

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

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

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

23 (3) Paid sick time accrual shall begin at the
24 commencement of employment.

25 (4) Employees shall be entitled to use accrued paid sick

1 time beginning on the ninetieth calendar day following commencement
2 of employment. After the ninetieth calendar day, employees may use
3 paid sick time as it is accrued.

4 (5) Paid sick time shall be carried over to the following
5 calendar year, except that an employee's use of paid sick time in
6 each calendar year shall not exceed forty hours.

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

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

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

1 entitled to use accrued paid sick time and accrue additional sick
2 time at the recommencement of employment.

3 (9) At its discretion, the employer may loan paid sick
4 time to the employee in advance of accrual by such employee.

5 Sec. 4. (1) Paid sick time shall be provided to an
6 employee by an employer for:

7 (a) An employee's mental or physical illness, injury, or
8 health condition; an employee's need for medical diagnosis, care, or
9 treatment of a mental or physical illness, injury, or health
10 condition; or an employee's need for preventive medical care; or

11 (b) Care of a family member with a mental or physical
12 illness, injury, or health condition; care of a family member who
13 needs medical diagnosis, care, or treatment of a mental or physical
14 illness, injury, or health condition; or care of a family member who
15 needs preventive medical care.

16 (2) Paid sick time shall be provided upon the oral
17 request of an employee. The request shall include the expected
18 duration of the absence.

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

25 (4) An employer cannot require, as a condition of an

1 employee's taking paid sick time, that the employee search for or
2 find a replacement worker to cover the hours during which the
3 employee is on paid sick time.

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

7 (6) An employer may require reasonable documentation that
8 the sick time has been used for a purpose covered by subsection (1)
9 of this section. Documentation signed by a health care professional
10 indicating that sick time is necessary shall be considered reasonable
11 documentation. An employer may not require that the documentation
12 explain the nature of the illness.

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

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

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

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

8 Sec. 6. Employers shall give notice at the time of hire
9 that employees are entitled to paid sick time, the amount of paid
10 sick time, the terms of paid sick time use guaranteed under the
11 Healthy Families and Workplaces Act, that retaliation against
12 employees who request or use paid sick time is prohibited, and that
13 each employee has the right to file a complaint or bring a civil
14 action if paid sick time is denied by the employer or the employee is
15 retaliated against for requesting or taking paid sick time.

16 Sec. 7. (1) An employee or other person may report to the
17 commissioner any suspected violation of the Healthy Families and
18 Workplaces Act. The commissioner shall encourage reporting pursuant
19 to this subsection by keeping confidential, to the maximum extent
20 permitted by applicable law, the name and other identifying
21 information of the employee or person reporting the suspected
22 violation, except that, with the authorization of the person, the
23 commissioner may disclose the person's name and identifying
24 information as necessary to enforce the act or for other appropriate
25 purposes. The commissioner may summon witnesses and require the

1 production of records, books, and documents for examination at any
2 investigation conducted by the department.

3 (2) Any person aggrieved by a violation of the act or any
4 entity a member of which is aggrieved by a violation of the act may
5 bring a civil action in a court of competent jurisdiction against an
6 employer who violates the act. The action may be brought without
7 first filing an administrative complaint.

8 (3) Upon prevailing in an action brought pursuant to this
9 section, an aggrieved person shall recover:

10 (a) The full amount of any unpaid sick leave; and

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

12 Sec. 8. (1) Nothing in the Healthy Families and
13 Workplaces Act shall be construed to discourage or prohibit an
14 employer from the adoption or retention of a paid sick time policy
15 more generous than the one required by the act.

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

22 Sec. 9. The department shall administer and enforce the
23 Healthy Families and Workplaces Act and may adopt and promulgate
24 rules and regulations for such purposes.

25 Sec. 10. If any section in this act or any part of any

1 section is declared invalid or unconstitutional, the declaration
2 shall not affect the validity or constitutionality of the remaining
3 portions.