LEGISLATIVE BILL 305

Introduced by Crawford, 45; Cavanaugh, 6; Quick, 35.

Read first time January 15, 2019

Committee: Business and Labor

1 A BILL FOR AN ACT relating to labor; to adopt the Healthy and Safe Families and Workplaces Act; and to provide severability.

2 Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 9 of this act shall be known and may be cited as the Healthy and Safe Families and Workplaces Act.

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

(1) Commissioner means the Commissioner of Labor;

(2) Department means the Department of Labor;

(3) Domestic abuse means any behavior within an intimate relationship that causes physical, psychological, or emotional harm to those in the relationship, including behavior that causes the employee fear or concern for his or her own safety or the safety of someone close to the employee or behavior done with the intent to harm or exert control over the employee;

(4) Domestic assault means domestic assault in the first, second, or third degree under section 28-323 or any similar crime committed in another state;

(5) Employee means any individual employed by an employer who receives compensation from such employer and includes recipients of public benefits who are engaged in work activity as a condition of receiving public assistance. Employee includes both full-time and part-time employees. Employee does not include a minor child employed by his or her parent.

(6) Employer includes any individual, partnership, limited liability company, association, corporation, business trust, legal representative, or any organized group of persons employing four or more employees at any one time, excluding any employees who work no more than twenty weeks in any calendar year, but does not include the United States, the State of Nebraska, or any political subdivision thereof;

(7) Family member means:

(a) A biological, adopted, or foster child, a stepchild, or a legal ward of an employee or the employee's spouse or domestic partner or a person to whom the employee or the employee's spouse or domestic partner
stood in loco parentis when such person was a minor child, regardless of the age or dependency status of such child, stepchild, legal ward, or person;

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

(c) An employee's spouse or domestic partner; or

(d) A grandparent, grandchild, or sibling, whether of a biological, foster, adoptive, or step relationship, of the employee or the employee's spouse;

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

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

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

(11) Stalking means stalking under section 28-311.03 or any similar crime committed in another state.

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

(2) Employees who are exempt from overtime requirements under 29
U.S.C. 213(a)(1) shall be assumed to work forty hours in each work week for purposes of paid sick and safe time accrual unless their normal work week is less than forty hours, in which case paid sick and safe time accrues based upon that normal work week.

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

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

(5) Paid sick and safe time shall be carried over to subsequent calendar years, except that an employee's use of paid sick and safe time in each calendar year shall not exceed forty hours unless the employer selects a higher limit.

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

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

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

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

Sec. 4. (1) An employer shall allow an employee to use paid sick
and safe time for:

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

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

(c) Absence necessary due to domestic abuse, domestic assault,
sexual assault, or stalking, regardless of whether a charge has been
filed or a conviction has been obtained, if the leave is to allow the
employee to obtain any of the following for the employee or the
employee's family member:

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

(ii) Services from a victim services organization;

(iii) Psychological or other counseling;

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

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

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

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

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

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

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

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

(i) A police report indicating that the employee or his or her family member was a victim of domestic abuse, domestic assault, sexual assault, or stalking;

(ii) A court order protecting or separating the employee or his or her family member from the perpetrator of an act of domestic abuse, domestic assault, sexual assault, or stalking or other evidence from the court or prosecuting attorney that the employee or his or her family member has appeared in court or is scheduled to appear in court in a proceeding related to the domestic abuse, domestic assault, sexual assault, or stalking; or
(iii) Other documentation signed by an advocate as defined in section 29-4302, an attorney, a police officer, a licensed mental health professional, a medical professional, a social worker, an antiviolence counselor, or a member of the clergy affirming that the employee or his or her family member is a victim of domestic abuse, domestic assault, sexual assault, or stalking.

(d) The employee may choose the type of applicable documentation to submit and the employer shall not require more than one type of reasonable documentation for the same incident.

(e) An employer shall not require that the documentation explain the nature of the illness or the details of the domestic abuse, domestic assault, sexual assault, or stalking.

(f) If required by the employer, the employee shall provide such reasonable documentation to the employer no later than thirty days after the first day of the period of time for which the employee is requesting paid sick and safe time. The employer shall not delay the commencement of paid sick and safe time on the basis that the employer has not yet received the documentation.

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

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

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

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

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

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

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

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

Sec. 6. Employers shall give notice at the time of hire that
employees are entitled to paid sick and safe time, the amount of paid
sick and safe time, the terms of use for paid sick and safe time
guaranteed under the Healthy and Safe Families andWorkplaces Act, that
retaliation against employees who request or use paid sick and safe time
is prohibited, and that each employee has the right to file a complaint
or bring a civil action if paid sick and safe time is denied by the
employer or the employee is retaliated against for exercising his or her
rights under the act.

Sec. 7. (1) An employee or other person may report to the
commissioner any suspected violation of the Healthy and Safe Families and
Workplaces Act. The commissioner shall encourage reporting pursuant to
this subsection by keeping confidential, to the maximum extent permitted
by applicable law, the name and other identifying information of the
employee or person reporting the suspected violation, except that with
the authorization of such person, the commissioner may disclose the
person's name and identifying information as necessary to enforce the act
or for other appropriate purposes. The commissioner may summon witnesses
and require the production of records, books, and documents for

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examination in any investigation conducted by the department pursuant to
this section. The commissioner shall assess an administrative penalty
against an employer when an investigation reveals that the employer
violated the act. The administrative penalty shall be not more than five
hundred dollars in the case of a first violation and not more than five
thousand dollars in the case of a second or subsequent violation. The
commissioner shall notify the employer of the proposed administrative
penalty by certified mail or any other manner of delivery by which the
United States Postal Service can verify delivery. The employer shall have
fifteen working days after the date the commissioner sends notification
of the penalty to contest such penalty. Notice of contest shall be sent
to the commissioner who shall provide a hearing in accordance with the
Administrative Procedure Act.

(2) Any person aggrieved by a violation of the Health and Safe
Families and Workplaces Act or any entity, a member of which is aggrieved
by a violation of the act, may bring a civil action in a court of
competent jurisdiction against an employer who violates the act. The
action may be brought without first filing an administrative complaint.
Upon prevailing in an action brought pursuant to this subsection, an
aggrieved person shall recover:

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

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

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

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

Sec. 9. The department shall administer and enforce the Healthy and Safe Families and Workplaces Act and may adopt and promulgate rules and regulations to carry out the purposes of the act.

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