

HOUSE BILL NO. 579

INTRODUCED BY M. CAFERRO

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PRIVATE EMPLOYERS WITH 10 OR MORE
5 EMPLOYEES TO PROVIDE PAID SICK LEAVE TO EMPLOYEES, INCLUDING LEAVE FOR PURPOSES OF
6 DEALING WITH DOMESTIC ABUSE, A SEXUAL OFFENSE, OR STALKING; PROVIDING DEFINITIONS;
7 PROVIDING FOR ACCRUAL OF PAID SICK LEAVE; REQUIRING EMPLOYERS TO MAINTAIN RECORDS;
8 PROVIDING CIVIL REMEDIES AND PENALTIES FOR EMPLOYERS VIOLATING PAID SICK LEAVE
9 REQUIREMENTS; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF LABOR AND
10 INDUSTRY; AND PROVIDING A DELAYED EFFECTIVE DATE."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 through 9] is:
15 (1) to ensure that all workers in Montana can address their own health needs and the health needs of
16 their families, including employees or the employees' children who qualify as victims of domestic violence, a
17 sexual offense, or stalking, by requiring employers to provide a minimum level of paid sick days including time
18 for family care and in response to domestic abuse, a sexual offense, or stalking;
19 (2) to diminish public and private health care costs by enabling workers to seek early and routine medical
20 care for themselves and their family members;
21 (3) to protect employees from losing their jobs while they use sick days to care for themselves or their
22 families;
23 (4) to safeguard the public welfare, health, safety, and prosperity of the people of Montana; and
24 (5) to accomplish the purposes described in subsections (1) through (4) in a manner that is feasible for
25 employers.

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27 NEW SECTION. **Section 2. Definitions.** For purposes of [sections 1 through 9], the following definitions
28 apply:
29 (1) "Child" includes a biological child, adopted child, foster child, stepchild, legal ward, or a child for
30 whom the employee stands in the position of a parent.

- 1 (2) "Department" means the department of labor and industry provided for in 2-15-1701.
- 2 (3) "Domestic partner" means a person other than a spouse with whom one cohabitates.
- 3 (4) "Domestic violence" means the physical, mental, or emotional abuse of an individual or the
4 individual's child by a person with whom that individual or the individual's child lives or has recently lived.
- 5 (5) (a) "Employee" means a person who works for another for hire.
- 6 (b) The term does not include a person who is an independent contractor.
- 7 (6) "Employer" means a private employer with 10 or more employees.
- 8 (7) "Family member" means with respect to an employee:
- 9 (a) the employee's:
- 10 (i) child;
- 11 (ii) biological parent, foster parent, stepparent, adoptive parent, or legal guardian;
- 12 (iii) spouse;
- 13 (iv) grandparent or spouse of the grandparent;
- 14 (v) grandchild;
- 15 (vi) biological sibling, foster sibling, or adopted sibling or the spouse of the biological, foster, or adopted
16 sibling; or
- 17 (vii) a domestic partner; or
- 18 (b) any other individual related by blood or affinity whose close association with the employee is the
19 equivalent of a family relationship.
- 20 (8) "Health care professional" means any person licensed under Montana law to provide medical or
21 emergency services, including but not limited to doctors, nurses, and emergency room personnel.
- 22 (9) "Paid sick leave" means compensated leave provided by an employer to an employee as a benefit
23 of employment for use by the employee for an absence from employment due to an illness of the employee or
24 an illness of a family member of the employee or due to domestic abuse, a sexual offense, or stalking with respect
25 to an employee or an employee's child.
- 26 (10) "Sexual offense" means sexual assault as described in 45-5-502, sexual intercourse without consent
27 as described in 45-5-503, incest as described in 45-5-507, or sexual abuse of children as described in 45-5-625.
- 28 (11) "Stalking" has the meaning provided in 45-5-220.
- 29 (12) "Victim of domestic violence, a sexual offense, or stalking" means an individual or the child of the
30 individual who must be treated as being a victim of domestic violence, a sexual offense, or stalking if the individual

1 provides on behalf of the individual or the individual's child one or more of the following:

2 (a) an order of protection or other documentation of equitable relief issued by a court of competent
3 jurisdiction;

4 (b) a police record documenting the domestic violence, a sexual offense, or stalking;

5 (c) medical documentation of domestic violence or a sexual offense; or

6 (d) other documentation or certification of domestic violence, a sexual offense, or stalking provided by
7 a social worker, clergy member, shelter worker, or professional person, as defined in 53-21-102, who has
8 assisted the individual in dealing with domestic violence, a sexual offense, or stalking.

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10 **NEW SECTION. Section 3. Accrual of sick leave.** An employer with 10 or more employees shall
11 provide each employee a minimum of 1 hour paid sick leave for every 30 hours worked by the employee. An
12 employer is not required to provide an employee with paid sick leave in excess of 72 hours or 9 days annually.
13 Unused paid sick leave must carry over to the next year, but the total paid sick leave that an employee is entitled
14 to may not exceed a total of 9 days for any calendar year unless the employer provides otherwise.

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16 **NEW SECTION. Section 4. Use of paid sick leave.** (1) An employee may use paid sick leave for:

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

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

23 (c) the protection of the employee or the employee's child from domestic abuse, a sexual offense, or
24 stalking, for medical treatment or psychological or other counseling, or to participate in any civil or criminal
25 proceeding relating to the domestic abuse, a sexual offense, or stalking.

26 (2) Paid sick leave must be provided upon the oral request of an employee. When possible, the request
27 must include the expected duration of the absence.

28 (3) When the use of paid sick leave is foreseeable, the employee shall make a good faith effort to provide
29 notice to the employer in advance and shall make a reasonable effort to schedule the use of paid sick leave in
30 a manner that does not unduly disrupt the operations of the employer.

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

3 (5) (a) For sick leave of more than 3 consecutive days, an employer may require reasonable
4 documentation that the sick leave is covered by subsection (1). Documentation signed by a health care
5 professional or documentation provided for in [section 2(12)(a) through (12)(d)] indicating that sick leave is
6 necessary must be considered reasonable documentation. An employer may not require that the documentation
7 explain the nature of the illness.

8 (b) If an employer chooses to require documentation, the employer is responsible for paying all
9 unreimbursed or out-of-pocket expenses the employee incurs in obtaining the documentation.

10 (6) An employer may not require, as a condition of providing paid sick leave, that the employee search
11 for or find a replacement worker to cover the hours during which the employee is on paid sick leave.

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13 **NEW SECTION. Section 5. Exercise of rights -- retaliation prohibited.** (1) It is unlawful for an
14 employer or any other person to interfere with, restrain, or deny the exercise of or the attempt to exercise any right
15 protected under [sections 1 through 9].

16 (2) An employer may not take retaliatory personnel action or discriminate against an employee because
17 the employee has exercised rights protected under [sections 1 through 9]. These rights include but are not limited
18 to the right to use paid sick leave, the right to file a complaint or inform any person about any employer's alleged
19 violation of [sections 1 through 9], the right to cooperate with the department in its investigations of alleged
20 violations of [sections 1 through 9], and the right to inform any person of the person's potential rights under
21 [sections 1 through 9].

22 (3) It is unlawful for an employer's absence control policy to count paid sick leave as an absence that
23 may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

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

26 (5) There is a rebuttable presumption of unlawful retaliation under this section whenever an employer
27 takes adverse action against a person within 90 days of when that person:

28 (a) files a complaint with the department or a court alleging a violation of any provision of this section;

29 (b) informs any person about an employer's alleged violation of this section;

30 (c) cooperates with the department or other persons in the investigation or prosecution of any alleged

1 violation of this section;

2 (d) opposes any policy, practice, or act that is unlawful under this section; or

3 (e) informs any person of the person's rights under this section.

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5 **NEW SECTION. Section 6. Notice and posting.** (1) Employers are required to give notice to all
6 employees that the employees are entitled to paid sick leave, the amount of paid sick leave and the terms of its
7 use guaranteed under [sections 1 through 9], that retaliation against employees who request or use paid sick
8 leave is prohibited, and that each employee has the right to file a complaint or bring a civil action if paid sick leave
9 is denied by the employer or the employee is retaliated against for requesting or taking paid sick leave.

10 (2) Employers may comply with this section by:

11 (a) supplying each of their employees with a written notice that contains the information required in
12 subsection (1); or

13 (b) displaying a poster in a conspicuous and accessible place in each establishment where employees
14 are employed that contains the information required in subsection (1).

15 (3) The department shall create and make available to employers posters that contain the information
16 required in subsection (1) for their use in complying with this section.

17 (4) An employer who willfully violates the notice or posting requirements of this section is subject to a
18 civil fine in an amount not to exceed \$100 for each separate offense.

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20 **NEW SECTION. Section 7. Employer records -- confidentiality.** (1) Employers shall retain for a
21 period of 3 years records documenting hours worked by employees and paid sick leave taken by employees and
22 shall allow the department access to the records to monitor compliance with the requirements of [sections 1
23 through 9]. When an issue arises as to an employee's entitlement to paid sick leave, if the employer does not
24 maintain or retain adequate records documenting hours worked by the employee and paid sick leave taken by
25 the employee or does not allow the department reasonable access to the records, it must be presumed that the
26 employer has violated [sections 1 through 9], absent clear and convincing evidence otherwise.

27 (2) If an employer gathers or possesses health information about an employee or an employee's family
28 member through the implementation of [sections 1 through 9], the information must be treated as confidential and
29 may not be disclosed except to the affected employee or with the permission of the affected employee.

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1 **NEW SECTION. Section 8. Enforcement -- rulemaking.** (1) An employee or other person may report
2 to the department any suspected violation of [sections 1 through 9]. The department shall encourage reporting
3 by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying
4 information of the employee or person reporting the violation. However, with the authorization of the reporting
5 employee or person, the department may disclose any identifying information necessary to enforce this section
6 or for any other appropriate purpose.

7 (2) The department, the attorney general, or any person aggrieved by a violation of [sections 1 through
8 9] may bring a civil action in a court of competent jurisdiction against an employer violating the provisions of
9 [sections 1 through 9]. The action may be brought by a person aggrieved by a violation of [sections 1 through 9]
10 without first filing an administrative complaint.

11 (3) An aggrieved person who prevails in an action brought pursuant to this section is entitled to:

12 (a) recover the full amount of any unpaid sick leave plus any actual damages suffered as the result of
13 the employer's violation as well as reasonable attorney fees; and

14 (b) any other legal or equitable relief that may be appropriate to remedy the violation, including, without
15 limitation, reinstatement in employment, back pay, and injunctive relief.

16 (4) Any person aggrieved by a violation of [sections 1 through 9] may file a complaint with the department
17 or the attorney general, which does not preclude the person's filing of a civil action.

18 (5) The department or the attorney general may bring a civil action to enforce the provisions of [sections
19 1 through 9] and may seek injunctive relief. In addition to or in lieu of injunctive relief, the department or the
20 attorney general may seek to impose a fine of \$1,000 per violation, payable to the state's general fund.

21 (6) The statute of limitations for a civil action brought pursuant to this section is 2 years from the date
22 the alleged violation occurred.

23 (7) The department shall adopt rules to implement the provisions of [sections 1 through 9], including but
24 not limited to employer reporting requirements, procedures for ensuring confidentiality of employee medical
25 information, content of notices, and posting requirements for notices required by [section 6].

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27 **NEW SECTION. Section 9. Encouragement of paid sick leave.** (1) [Sections 1 through 9] may not
28 be construed to discourage or prohibit an employer from the adoption or retention of a paid sick leave policy more
29 generous than the one required by [sections 1 through 9].

30 (2) [Sections 1 through 9] may not be construed as diminishing the obligation of an employer to comply

1 with any contract, collective bargaining agreement, employment benefit plan, or other agreement providing more
2 generous sick leave to an employee than required by [sections 1 through 9].

3 (3) [Sections 1 through 9] provide minimum requirements pertaining to paid sick leave and may not be
4 construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy,
5 or standard that provides for greater accrual or use by employees of sick leave, whether paid or unpaid, or that
6 extends other protections to employees.

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8 **NEW SECTION. Section 10. Codification instruction.** [Sections 1 through 9] are intended to be
9 codified as an integral part of Title 39, chapter 2, and the provisions of Title 39, chapter 2, apply to [sections 1
10 through 9].

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12 **NEW SECTION. Section 11. Saving clause.** [This act] does not affect rights and duties that matured,
13 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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15 **NEW SECTION. Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are
16 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
17 the part remains in effect in all valid applications that are severable from the invalid applications.

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19 **NEW SECTION. Section 13. Effective date.** [This act] is effective January 1, 2010.

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