

HOUSE BILL NO. 386

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PAID SICK LEAVE; CREATING THE HEALTHY FAMILIES AND WORKPLACES ACT; PROVIDING A PURPOSE; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; REQUIRING EMPLOYERS OF A CERTAIN SIZE TO PROVIDE A PAID SICK LEAVE POLICY FOR EMPLOYEES; ESTABLISHING AN ACCRUAL AND CARRY FORWARD POLICY; ESTABLISHING AUTHORIZED USES FOR PAID SICK LEAVE; REQUIRING EMPLOYERS TO KEEP RECORDS; REQUIRING CONFIDENTIALITY OF EMPLOYEE INFORMATION REGARDING PAID SICK LEAVE REQUESTS; PROVIDING FOR PROTECTION OF EMPLOYEE RIGHTS; PROHIBITING RETALIATION BY EMPLOYERS; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO ENFORCE THE HEALTHY FAMILIES AND WORKPLACES ACT; PROVIDING FOR EXCEPTIONS FOR EMPLOYERS AND COLLECTIVE BARGAINING AGREEMENTS WHO OFFER SIMILAR POLICIES; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 16] may be cited as the "Healthy Families and Workplaces Act".

NEW SECTION. Section 2. Purpose. The legislature declares that it is the purpose of the Healthy Families and Workplaces Act to:

- (1) safeguard the public health, safety, and welfare; and
- (2) establish minimum paid sick leave standards for employees at levels consistent with their health, efficiency, and general well-being.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 16], unless the context

1 clearly indicates otherwise, the following definitions apply:

2 (1) "Commissioner" means the commissioner of the department of labor and industry as provided
3 in 2-15-1701.

4 (2) "Department" means the department of labor and industry as provided in 2-15-1701.

5 (3) "Domestic violence" has the same meaning as provided in 39-51-2111.

6 (4) "Employee" has the same meaning as provided in 39-3-201.

7 (5) "Employer" has the same meaning as provided in 39-3-201.

8 (6) "Family member" means:

9 (a) an individual related to the employee by blood, marriage, civil union, affinity, or adoption;

10 (b) a child to whom the employee stands in loco parentis or a person who stood in loco parentis to
11 the employee when the employee was a minor; or

12 (c) an individual for whom the employee is responsible for providing or arranging health or safety-
13 related care.

14 (7) (a) (i) "Paid sick leave" means time off from work that is:

15 (A) compensated at the same hourly rate or salary and with the same benefits, including health
16 care benefits, as the employee normally earns during hours worked; and

17 (B) provided by an employer to an employee for one or more of the purposes described in [section
18 6].

19 (ii) As used in subsection (7)(a)(i)(A) of this section:

20 (A) "same hourly rate or salary" does not include overtime, bonuses, or holiday pay;

21 (B) for employees paid on a commission basis only, "same hourly rate or salary" means a rate of
22 no less than the applicable minimum wage;

23 (C) for employees paid an hourly, weekly, or monthly wage who are also paid on a commission
24 basis, "same hourly rate or salary" means the rate of pay equivalent to the employee's hourly, weekly, or
25 monthly wage or the applicable minimum wage, whichever is greater.

26 (b) "Paid sick leave" is "wages" as defined in 39-3-201.

27 (8) "Retaliatory personnel action" means:

28 (a) the denial of any right guaranteed under [sections 1 through 16]; or

1 (b) any adverse action against an employee for exercising any right guaranteed in [sections 1
2 through 16], including:

3 (i) any threat, discipline, discharge, suspension, demotion, reduction of hours, or report or threat
4 to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration
5 status of a family member of the employee to a federal, state, or local agency;

6 (ii) any sanctions against an employee who is the recipient of public benefits for rights guaranteed
7 under [sections 1 through 16]; or

8 (iii) interference with or punishment for participating in or assisting, in any manner, an investigation,
9 proceeding, or hearing under [sections 1 through 16].

10 (9) "Sexual assault" has the same meaning as provided in 39-51-2111.

11 (10) "Year" means a regular and consecutive 12-month period as determined by an employer.

12

13 **NEW SECTION. Section 4. Authority of department -- rulemaking.** The commissioner of labor is
14 authorized to issue, amend, and enforce rules for the purpose of carrying out the provisions of [sections 1
15 through 16].

16

17 **NEW SECTION. Section 5. Paid sick leave -- accrual -- carry forward -- comparable leave**
18 **provided by employer -- no payment for unused leave -- rulemaking.** (1) An employer with 10 or more
19 employees shall provide each employee paid sick leave as provided in this section.

20 (2) (a) Each employee earns at least 1 hour of paid sick leave for every 40 hours worked by the
21 employee, except that an employee is not entitled under this section to earn or use more than 80 hours of paid
22 sick leave each year unless the employer selects a higher limit. An employer may satisfy the accrual
23 requirements of this section by providing the employee with an amount of paid sick leave that meets or exceeds
24 the requirements of this section at the beginning of the year. Nothing in this section discourages or prohibits an
25 employer from providing paid sick leave that accrues at a faster or more generous rate than required by this
26 section.

27 (b) Nothing in [sections 1 through 16] precludes an employer from providing employees more paid
28 sick leave than the amounts specified in this section.

1 (c) An employee who is exempt from overtime required in 39-3-405 accrues paid sick leave based
2 on the assumption that the employee works 40 hours a week. If the employee's normal workweek consists of
3 fewer than 40 hours, the employee accrues paid sick leave based on the number of hours that comprise the
4 employee's normal workweek.

5 (3) (a) An employee begins to accrue paid sick leave when employment with the employer begins
6 and may use accrued paid sick leave as it is accrued.

7 (b) Up to 40 hours of paid sick leave that an employee accrues in a year but does not use carries
8 forward to, and may be used in, a subsequent year, except that an employer is not required to allow the
9 employee to use more than 80 hours of paid sick leave in a year. The maximum number of hours an employee
10 may accrue and carry forward under this section is 80 hours.

11 (4) An employer that has a paid leave policy for its employees may satisfy the requirements of this
12 section and is not required to provide additional paid sick leave to its employees if the employer:

13 (a) makes available to its employees, through its paid leave policy, an amount of paid leave
14 sufficient to meet the accrual requirements of subsection (2)(a); and

15 (b) allows its employees to use the paid leave for the same purposes and under the same
16 conditions as those applicable to paid sick leave under [sections 1 through 16].

17 (5) Nothing in this section requires an employer to provide financial or other reimbursement of
18 unused paid sick leave to an employee on termination, resignation, retirement, or other separation from
19 employment, except that an individual may recover paid sick leave as a remedy for a retaliatory personnel
20 action that prevented the individual from using paid sick leave.

21 (6) The department shall adopt rules regarding compensation and accrual of paid sick leave for
22 employees who are employed and compensated on a fee-for-service basis.

23
24 **NEW SECTION. Section 6. Use of paid sick leave -- purposes -- time increments.** (1) An
25 employer shall allow an employee to use the employee's accrued paid sick leave to be absent from work when:

26 (a) the employee:

27 (i) has a mental or physical illness, injury, or health condition that prevents the employee from
28 working;

1 (ii) needs to obtain a medical diagnosis, care, or treatment for a mental or physical illness, injury,
2 or health condition; or

3 (iii) needs to obtain preventive medical care;

4 (b) the employee needs to care for a family member who:

5 (i) has a mental or physical illness, injury, or health condition;

6 (ii) needs to obtain a medical diagnosis, care, or treatment for a mental or physical illness, injury,
7 or health condition; or

8 (iii) needs to obtain preventive medical care;

9 (c) the employee or the employee's family member has been the victim of domestic violence,
10 sexual assault, or harassment, and the use of leave is to:

11 (i) seek medical attention for the employee or the employee's family member to recover from a
12 mental or physical illness, injury, or health condition caused by the domestic violence, sexual assault, or
13 harassment;

14 (ii) obtain services from a victim services organization;

15 (iii) obtain mental health counseling or other counseling;

16 (iv) seek relocation due to the domestic violence, sexual assault, or harassment; or

17 (v) seek legal services, including preparation for or participation in a civil or criminal proceeding
18 relating to or resulting from the domestic violence, sexual assault, or harassment.

19 (2) Paid sick leave must be used in 1-hour time increments.

20 (3) For paid sick leave of four or more consecutive workdays, an employer may require reasonable
21 documentation that the paid sick leave is for a purpose authorized by this section.

22

23 NEW SECTION. Section 7. Notice to employees. (1) Each employer shall notify its employees that
24 they are entitled to paid sick leave pursuant to rules adopted by the department. The rules must require the
25 notice to:

26 (a) specify the amount of paid sick leave to which employees are entitled and the terms of its use
27 under [sections 5 and 6]; and

28 (b) inform employees that employers cannot retaliate against an employee for requesting or using

1 paid sick leave and that an employee has the right to file a complaint or bring a civil action if paid sick leave is
2 denied by the employer or the employer retaliates against the employee for exercising the employee's rights
3 under [section 10].

4 (2) If an employer does not maintain a physical workplace, or an employee teleworks or performs
5 work through a web-based platform, the employer shall provide the notice required in this section through
6 electronic communication or a conspicuous posting in the web-based platform.

7
8 **NEW SECTION. Section 8. Employer records.** (1) An employer shall retain records for each
9 employee for a 2-year period, documenting hours worked, paid sick leave accrued, and paid sick leave used.
10 On appropriate notice and at a mutually agreeable time, the employer shall allow the department access to the
11 records for the purposes of monitoring compliance with [sections 1 through 16].

12 (2) If an issue arises as to an employee's right to paid sick leave and the employer has not
13 maintained or retained adequate records for that employee or does not allow the department reasonable
14 access to the records, the employer must be presumed to have violated [sections 1 through 16] unless the
15 employer demonstrates compliance by a preponderance of the evidence.

16
17 **NEW SECTION. Section 9. Confidentiality of employee information -- definition.** (1) An employer
18 may not require the disclosure of details relating to domestic violence, sexual assault, or harassment or the
19 details of an employee's or an employee's family member's health information as a condition of providing paid
20 sick leave under [sections 1 through 16].

21 (2) Any health or safety information possessed by an employer regarding an employee or an
22 employee's family member:

23 (a) must be maintained on a separate form and in a file separate from other personnel information;

24 (b) must be treated as confidential medical records; and

25 (c) may not be disclosed except to the affected employee or with the express permission of the
26 affected employee.

27 (3) For the purposes of this section, "affected employee" means the employee:

28 (a) about whom the health information pertains or who is the victim of the domestic violence,

1 sexual assault, or harassment; or

2 (b) whose family member is the subject of the health information or is the victim of the domestic
3 violence, sexual assault, or harassment.

4
5 **NEW SECTION. Section 10. Employee rights protected -- retaliation prohibited.** (1) An employee
6 is entitled to:

7 (a) use paid sick leave consistent with [section 6];

8 (b) file a complaint or inform any person about an employer's alleged violation of [sections 1
9 through 16];

10 (c) cooperate with the department in its investigation of an alleged violation of [sections 1 through
11 16]; and

12 (d) inform any person of the person's potential rights under [sections 1 through 16].

13 (2) (a) An employer may not take retaliatory personnel action or discriminate against an employee
14 or former employee because the employee or former employee has exercised, attempted to exercise, or
15 supported the exercise of rights protected under [sections 1 through 16], including the right to request or use
16 paid sick leave pursuant to [sections 1 through 16], the right to file a complaint with the division or court or
17 inform any person about any employer's alleged violation of [sections 1 through 16], the right to participate in an
18 investigation, hearing, or proceeding or cooperate with or assist the department in its investigations of alleged
19 violations of [sections 1 through 16], and the right to inform any person of the person's potential rights under
20 [sections 1 through 16].

21 (b) It is unlawful for an employer to count paid sick leave taken by an employee pursuant to
22 [section 6] as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other
23 retaliatory personnel action against the employee.

24 (3) The protections of this section apply to any person acting in good faith who alleges a violation
25 of [sections 1 through 16], even if the allegation is determined to be mistaken.

26
27 **NEW SECTION. Section 11. Enforcement.** Enforcement of [sections 1 through 16] must be treated
28 as a wage claim action and must be pursued in accordance with [sections 6 and 7].

1

2 NEW SECTION. Section 12. Investigative powers of commissioner of labor. (1) The department
3 shall investigate each claim of denial of paid sick leave in violation of [section 6]. The department may
4 investigate claims of retaliation in violation of [section 10].

5 (2) The commissioner of labor or the commissioner of labor's authorized representatives are
6 empowered to enter and inspect places, question employees, and investigate facts, conditions, or matters that
7 they may consider appropriate to:

8 (a) determine whether any person has violated any provision of [sections 1 through 16] or any rule
9 adopted under [sections 1 through 16]; or

10 (b) aid in the enforcement of the provisions of [sections 1 through 16].

11 (3) In any proceeding before the commissioner of labor, the commissioner of labor or the
12 commissioner of labor's authorized representatives may:

13 (a) administer oaths and examine witnesses under oath;

14 (b) issue subpoenas;

15 (c) compel the attendance of witnesses and the production of papers, books, accounts, records,
16 payrolls, documents, and testimony; and

17 (d) take depositions and affidavits.

18

19 NEW SECTION. Section 13. Administrative decision -- court enforcement of administrative

20 **decision.** (1) (a) If an investigation of employer retaliation or interference with employee rights yields an
21 administrative decision that the rights of multiple employees have been violated, the violation as it relates to
22 each employee is a separate violation for the purposes of fines, penalties, or other remedies.

23 (b) If an investigation of employer retaliation or interference with employee rights yields an
24 administrative decision that a violation cost an employee the employee's job or pay, the administrative decision
25 may include an order to reinstate the employee, to pay the employee's lost pay until reinstatement or for a
26 reasonable period if reinstatement is determined not to be feasible, or both.

27 (2) A department default order or a decision of the hearings officer, if judicial review is not sought,
28 may be enforced by application by the commissioner of labor to a district court for an order or judgment

1 enforcing the decision. The commissioner of labor shall apply to the district court where the employer has its
2 principal place of business or in the first judicial district of the state. A proceeding under this section is not a
3 review of the validity of the administrative decision.

4 (3) If judicial review is sought, the district court may issue an order or a judgment enforcing the
5 decision of the department or the hearings officer in a wage claim proceeding. In a case involving failure to pay
6 the standard prevailing rate of wages provided for in Title 18, chapter 2, part 4, the district court may issue an
7 order or a judgment enforcing the decision of the hearings officer.

8

9 NEW SECTION. Section 14. Other legal requirements applicable. (1) [Section 5] provides
10 minimum requirements pertaining to paid sick leave and does not preempt, limit, or otherwise affect the
11 applicability of any other law, regulation, requirement, policy, or standard that provides for a greater amount,
12 accrual, or use by employees of paid sick leave or that extends other protections to employees.

13 (2) To the extent allowable and not in conflict with federal law, any paid sick leave provided to an
14 employee of a federal contractor as required by Executive Order No. 13706 September 7, 2015, is considered
15 paid sick leave provided under [section 5].

16

17 NEW SECTION. Section 15. Collective bargaining agreements. (1) (a) With agreement of the fund
18 trustees, an employer signatory to a multiemployer collective bargaining agreement may fulfill its obligations
19 under [sections 1 through 16] by making contributions to a multiemployer paid sick leave fund, plan, or program
20 based on the hours each of its employees accrues pursuant to [sections 1 through 16] while working under the
21 multiemployer collective bargaining agreement, if the fund, plan, or program enables employees to collect paid
22 sick leave from the fund, plan, or program based on hours they have worked under the multiemployer collective
23 bargaining agreement and for the purposes specified under [sections 1 through 16].

24 (b) Employees who work under a multiemployer collective bargaining agreement into which their
25 employers make contributions as provided in subsection (1)(a) of this section may collect from the paid sick
26 leave fund, plan, or program based on hours they have worked under the multiemployer collective bargaining
27 agreement and for the purposes specified under [sections 1 through 16].

28 (2) [Sections 1 through 16] do not apply to employees covered by a bona fide collective bargaining

1 agreement in effect as of October 1, 2023, if the collective bargaining agreement provides for equivalent or
2 more generous paid sick leave for the employees covered by the collective bargaining agreement.

3 (3) For employees covered by a bona fide collective bargaining agreement that is initially
4 negotiated or negotiated for the next collective bargaining agreement after October 1, 2023, [sections 1 through
5 16] do not apply to these employees if the requirements of [sections 1 through 16] are expressly waived in the
6 collective bargaining agreement and the collective bargaining agreement provides for equivalent or more
7 generous paid sick leave for the employees covered by the collective bargaining agreement.

8
9 **NEW SECTION. Section 16. Employer authorized to take disciplinary action.** Nothing in [sections
10 1 through 16] prohibits an employer from taking disciplinary action against an employee who uses paid sick
11 leave provided under [section 5] for purposes other than those described in [section 6].

12
13 **NEW SECTION. Section 17. Codification instruction.** [Sections 1 through 16] are intended to be
14 codified as an integral part of Title 39, and the provisions of Title 39 apply to [sections 1 through 16].

15
16 **NEW SECTION. Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are
17 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
18 the part remains in effect in all valid applications that are severable from the invalid applications.

19
20 **NEW SECTION. Section 19. Applicability.** [This act] applies to conduct occurring on or after [the
21 effective date of this act].

22 - END -