

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

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SENATE BILL 457

Short Title: Healthy Families & Workplaces/Paid Sick Days.

(Public)

Sponsors: Senator Robinson (Primary Sponsor).

Referred to: Rules and Operations of the Senate

April 5, 2021

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR HEALTHY FAMILIES AND HEALTHY WORKPLACES BY ENSURING THAT ALL WORKERS HAVE EARNED PAID SICK DAYS TO ADDRESS THEIR OWN HEALTH NEEDS AND THE HEALTH NEEDS OF THEIR FAMILIES.

Whereas, nearly every worker in North Carolina is likely to need, during any given year, time off to attend to his or her own illness or that of an immediate family member or for routine medical care; and

Whereas, paid sick days have been shown to slow the spread of COVID-19, saving lives and reducing the strain on North Carolina's medical system; and

Whereas, paid sick days are a first line of defense in any contagious disease outbreak; and

Whereas, many high-contact industries where contagious illnesses are most likely to spread are also those with the lowest paid sick days access rates in North Carolina, including the child care, home- and facility-based senior care, and food and drink sectors; and

Whereas, North Carolinians working in low-wage industries are both least likely to have access to paid sick days and least able to afford to take time off for illness without pay; and

Whereas, working North Carolinians who are Black and Latino are less likely to have access to employer-provided paid sick days; and

Whereas, the lack of paid sick days contributes to workforce attrition and detachment for women; and

Whereas, when parents are available to care for their children who become sick, the children's recovery is faster, more serious illnesses are prevented, and the children's overall health is improved; and

Whereas, parents who cannot afford to miss work must send children with a contagious illness to child care or school, contributing to the high rate of infections in child care centers and schools; and

Whereas, over 62,967 North Carolinians reported physical abuse or sexual assault between July 2017 and June 2018, and there were 1,036 domestic violence–related homicides in North Carolina between 2004 and 2018; and

Whereas, victims of domestic violence and sexual assault need time off to care for their health or to seek solutions, such as a restraining order or housing, to avoid or prevent abuse, and are forced to lose days of paid employment; and

Whereas, 39% or over 1.3 million private-sector workers in North Carolina are not entitled to any earned paid sick days to care for their own health needs or the health needs of members of their families; and



1 Whereas, low-income workers are significantly less likely to have earned paid sick
 2 days, with 60% of those earning less than \$20,000 per year lacking access to earned paid sick
 3 days; Now, therefore,

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 95 of the General Statutes is amended by adding a new Article
 6 to read:

7 "Article 3A.

8 "Healthy Families and Healthy Workplaces Act.

9 **"§ 95-31.1. Short title and legislative purpose.**

10 (a) This Article shall be known and may be cited as the "Healthy Families and Healthy
 11 Workplaces Act."

12 (b) The public policy of this State is declared as follows: The health and safety needs of
 13 employees and their families and the protection of employees from losing their jobs and pay
 14 while they seek medical care for themselves and their family members are subjects of concern
 15 requiring legislation to promote the general welfare of the people of the State without
 16 jeopardizing the competitive position of North Carolina business and industry. The General
 17 Assembly declares that the general welfare of the State requires the enactment of this law under
 18 the police power of the State.

19 **"§ 95-31.2. Definitions.**

20 (a) The following definitions apply in this Article:

- 21 (1) Child. – A biological, adopted, or foster child, stepchild, legal ward, or child
 22 of a parent standing in loco parentis, who is under 18 years of age or 18 years
 23 of age or older but incapable of earning wages because of a mental or physical
 24 incapacity.
- 25 (2) Domestic violence. – As defined in G.S. 50B-1.
- 26 (3) Employ. – As defined by G.S. 95-25.2(3).
- 27 (4) Employee. – As defined by G.S. 95-25.2(4).
- 28 (5) Employer. – As defined by G.S. 95-25.2(5).
- 29 (6) Federal Act. – The Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601
 30 to 2654 inclusive, as it may be amended.
- 31 (7) Health care provider. –
 32 a. A doctor of medicine or osteopathy licensed to practice medicine in
 33 this State.
 34 b. A physician assistant licensed in this State.
 35 c. A family nurse practitioner licensed in this State.
- 36 (8) Immediate family member. – A child, grandchild, sibling, spouse, domestic
 37 partner, civil union partner, parent, or grandparent of an employee, or a
 38 spouse, domestic partner, or civil union partner of a parent or grandparent of
 39 the employee, or a sibling of a spouse, domestic partner, or civil union partner
 40 of the employee, or any other individual related by blood to the employee or
 41 whose close association with the employee is the equivalent of a family
 42 relationship.
- 43 (9) Paid sick time or paid sick days. – Time that is (i) compensated at the same
 44 hourly rate and with the same benefits, including health care benefits, as the
 45 employee normally earns during hours worked and (ii) provided by an
 46 employer to an employee for the purposes described in G.S. 95-31.4(b) of this
 47 Article.
- 48 (10) Parent. – A biological, foster, step, or adoptive parent of an employee or an
 49 employee's spouse, or other person who stood in loco parentis during the
 50 childhood of an employee or employee's spouse.
- 51 (11) Sexual assault. – As defined in Chapter 14 of the General Statutes.

1 (12) Small business. – An employer who employs 10 or fewer employees during
2 20 or more calendar workweeks in the current or preceding calendar year.

3 (13) Stalking. – As defined in Chapter 14 of the General Statutes.

4 **"§ 95-31.3. Exemptions.**

5 (a) The provisions of this section do not apply to any bona fide volunteers in any
6 organization where an employer-employee relationship does not exist.

7 (b) The provisions of this section do not apply to any person exempted from the Wage
8 and Hour Act under G.S. 95-25.14(a)(2) through (8), 95-25.14(b), 95-25.14(b1), 95-25.14(c),
9 and 95-25.14(e), except that domestic workers are exempted only if they are employed in the
10 place of residence of their employer.

11 **"§ 95-31.4. Accrual of paid sick time.**

12 (a) Except as provided by G.S. 95-31.3, any employee who works in this State and who
13 must be absent from work for the reasons set forth in G.S. 95-31.5(a) shall be entitled to paid
14 sick time.

15 (b) Paid sick time as provided in this section shall begin to accrue at the commencement
16 of employment. Paid sick time shall accrue at the rate of one hour of pay for every 30 hours
17 worked. Paid sick time may be used as accrued or be loaned by the employer at its discretion to
18 the employee in advance of accrual. Unless the employer and employee agree to designate
19 otherwise, for periods of paid sick time that are less than a normal workday, the time shall be
20 counted on an hourly basis or the smallest increment that the employer's payroll system uses to
21 account for absences or use of leave.

22 (c) For employees of small businesses, there shall be a limit of 32 hours of accrued paid
23 sick time in a calendar year. For employees of other employers, there shall be a limit of 56 hours
24 of accrued paid sick time in a calendar year. Accrued paid sick time for employees carries over
25 from year to year but is limited to the aforementioned limits.

26 (d) When there is separation from employment and the employee is rehired within 90
27 days of separation by the same employer, previously accrued paid sick time that had not been
28 used shall be reinstated. The employee shall be entitled to use accrued paid sick time and accrue
29 additional sick time at the recommencement of employment.

30 **"§ 95-31.5. Use of paid sick time.**

31 (a) Paid sick time shall be provided to an employee by an employer for any of the
32 following reasons:

33 (1) To care for the employee's immediate family member who is suffering from a
34 physical or mental illness, injury, or medical condition that requires home
35 care, professional medical diagnosis or care, preventive medical care, or a
36 routine medical appointment, unless the care is covered under federal law.

37 (2) To care for the employee's own physical or mental illness, injury, or medical
38 condition that requires home care, professional medical diagnosis or care,
39 preventive medical care, or a routine medical appointment, unless the care is
40 covered under federal law.

41 (3) Absence necessary due to circumstances resulting from the employee, or a
42 family member of the employee, being a victim of stalking or domestic or
43 sexual violence, if the leave is to allow the employee to obtain for the
44 employee or the family member (i) medical attention needed to recover from
45 physical or psychological injury or disability caused by stalking or domestic
46 or sexual violence, (ii) services from a designated domestic violence agency
47 or other victim services organization, (iii) psychological or other counseling,
48 (iv) relocation, or (v) legal services, including obtaining a restraining order or
49 preparing for, or participating in, any civil or criminal legal proceeding related
50 to the stalking or domestic or sexual violence.

1 **(b) An employer may require certification of the qualifying illness, injury, health**
2 **condition, or violence when a paid sick time period covers more than three consecutive workdays.**
3 **Any reasonable documentation signed by a health care provider involved in following or treating**
4 **the illness, injury, or health condition and indicating the need for the amount of sick days taken**
5 **shall be deemed acceptable certification. Acceptable certification of domestic violence, sexual**
6 **assault, or stalking may include (i) law enforcement, court, or federal agency records or files, (ii)**
7 **documentation from a domestic violence or sexual assault program, or (iii) documentation from**
8 **a religious, medical, or other professional from whom assistance was sought in dealing with the**
9 **alleged domestic violence, sexual offense, or stalking.**

10 **(1) The employer shall not require certification from a health care provider**
11 **employed by the employer. The employer shall not delay the commencement**
12 **of time taken for purposes of subsection (a) of this section or pay for this**
13 **period on the basis that the employer has not yet received the certification.**
14 **Nothing in this section shall be construed to require an employee to provide**
15 **as certification any information from a health care provider that would be in**
16 **violation of section 1177 of the Social Security Act or the regulations**
17 **promulgated pursuant to section 264(c) of the Health Insurance Portability and**
18 **Accountability Act, 42 U.S.C. § 1320d-2.**

19 **(2) An employer may not require disclosure of details relating to domestic**
20 **violence, sexual assault, or stalking or the details of an employee's medical**
21 **condition as a condition of providing paid sick time under this Article. If an**
22 **employer possesses health information or information pertaining to domestic**
23 **violence, sexual assault, or stalking about an employee or employee's**
24 **immediate family member, such information shall be treated as confidential**
25 **and not disclosed except to the affected employee or with the permission of**
26 **the affected employee.**

27 **(c) When the use of paid sick time is foreseeable, the employee shall make a good-faith**
28 **effort to provide notice of the need for such time to the employer in advance of the use of the**
29 **sick time and shall make a reasonable effort to schedule the use of paid sick time in a manner**
30 **that does not unduly disrupt the operations of the employer.**

31 **(d) An employer may not require, as a condition of providing paid sick time under this**
32 **act, that the employee search for or find a replacement worker to cover the hours during which**
33 **the employee is on paid sick time.**

34 **(e) Nothing in this section shall be construed as requiring financial or other**
35 **reimbursement to an employee from an employer upon the employee's termination, resignation,**
36 **retirement, or other separation from employment for accrued paid sick days that have not been**
37 **used.**

38 **(f) Nothing in this section shall be construed to discourage employers from adopting or**
39 **retaining paid sick time policies more generous than policies that comply with the requirements**
40 **of this section, and nothing in this section shall be construed to diminish the obligation of an**
41 **employer to comply with any contract, collective bargaining agreement, or any employment**
42 **benefit program or plan that provides greater paid sick time leave rights to employees than the**
43 **rights established under this section.**

44 **(g) This act provides minimum requirements pertaining to paid sick time and shall not be**
45 **construed to preempt, limit, or otherwise affect the applicability of any other law, regulation,**
46 **requirement, policy, agreement, or standard that provides for greater accrual or use by employees**
47 **of sick time, whether paid or unpaid, or that extends other protections to employees.**

48 **(h) Employers who have a paid time-off leave policy shall not be required to modify that**
49 **policy, if that policy offers an employee the option, at the employee's discretion, to take paid sick**
50 **time that is at least equivalent to the amounts and for the same purposes and under the same**
51 **conditions as provided under this section.**

"§ 95-31.6. Notification, posting, and records.

Employers shall give notice (i) that employees are entitled to paid sick time, (ii) of the amount of paid sick time and the terms of its use guaranteed under this section, (iii) that retaliation against employees who request or use paid sick time is prohibited, and (iv) that each employee has the right to file a complaint with the Commissioner of Labor or in the General Court of Justice if paid sick time as required by this Article is denied by the employer or the employee is retaliated against for requesting or taking paid sick time. Employers may comply with this section by supplying each of their employees with a notice in English and in Spanish that contains the information required by this section or by displaying a poster in a conspicuous and accessible place in each establishment where the employees are employed that contains in English and in Spanish all information required by this section.

"§ 95-31.7. Enforcement.

(a) The Commissioner shall enforce and administer the provisions of this Article, and the Commissioner or his or her authorized representative is empowered to hold hearings and to institute civil proceedings hereunder.

(b) The Commissioner or the Commissioner's authorized representative shall have power to administer oaths and examine witnesses, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, and documents, and take depositions and affidavits in any proceeding hereunder.

(c) Any employer who violates the provisions of this Article shall be liable to the employee or employees affected in the amount of their unpaid sick time as the case may be, plus interest at the legal rate set forth in G.S. 24-1 from the date each amount first came due.

(d) In addition to the amounts awarded pursuant to subsection (c) of this section, the court shall award liquidated damages in an amount equal to the amount found to be due as provided in subsection (c) of this section, provided that if the employer shows to the satisfaction of the court that the act or omission constituting the violation was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this Article, the court may, in its discretion, award no liquidated damages or may award any amount of liquidated damages not exceeding the amount found due as provided in subsection (c) of this section.

(e) Action to recover such liability may be maintained in the General Court of Justice by any one or more employees.

(f) The court, in any action brought under this Article, may, in addition to any judgment awarded to the plaintiff, order costs and fees of the action and reasonable attorneys' fees to be paid by the defendant. The court may order costs and fees of the action and reasonable attorneys' fees to be paid by the plaintiff if the court determines that the action was frivolous.

(g) The Commissioner may determine and supervise the payment of the amounts due under this section, including interest at the legal rate set forth in G.S. 24-1 from the date each amount first came due, and the agreement to accept such amounts by the employee shall constitute a waiver of the employee's right to bring an action under subsection (e) of this section.

(h) Actions under this Article must be brought within two years pursuant to G.S. 1-53.

(i) The rights and remedies created by this Article are supplementary to all existing common-law and statutory rights and remedies.

"§ 95-31.8. Rules.

The Commissioner of Labor shall adopt rules to implement this Article.

"§ 95-31.9. Severability.

The provisions of this Article shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Article shall not be affected thereby."

SECTION 2. G.S. 95-241(a) reads as rewritten:

"(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

- 1 (1) File a claim or complaint, initiate any inquiry, investigation, inspection,
2 proceeding or other action, or testify or provide information to any person
3 with respect to any of the following:
4 a. Chapter 97 of the General Statutes.
5 b. ~~Article 2A~~ Article 2A, Article 3A, or Article 16 of this Chapter.
6 c. Article 2A of Chapter 74 of the General Statutes.
7 d. G.S. 95-28.1.
8 e. Article 16 of Chapter 127A of the General Statutes.
9 f. G.S. 95-28.1A.
10 g. Article 52 of Chapter 143 of the General Statutes.
11 h. Article 5F of Chapter 90 of the General Statutes.
- 12 (2) Cause any of the activities listed in subdivision (1) of this subsection to be
13 initiated on an employee's behalf.
- 14 (3) Exercise any right on behalf of the employee or any other employee afforded
15 by ~~Article 2A~~ Article 2A, Article 3A, or Article 16 of this Chapter, by Article
16 2A of Chapter 74 of the General Statutes, or by Article 52 of Chapter 143 of
17 the General Statutes.
- 18 (4) Comply with the provisions of Article 27 of Chapter 7B of the General
19 Statutes.
- 20 (5) Exercise rights under Chapter 50B. Actions brought under this subdivision
21 shall be in accordance with the provisions of G.S. 50B-5.5."

22 **SECTION 3.** This act becomes effective July 1, 2021, applies only to covered
23 employment on or after that date, and does not apply to any collective bargaining agreement
24 entered into before July 1, 2021, that is still in effect on that date.