

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 558*

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

Sponsors: Senators McKissick; and Kinnaird.

Referred to: Rules and Operations of the Senate.

April 12, 2011

1 A BILL TO BE ENTITLED
2 AN ACT PROVIDING FOR HEALTHY FAMILIES AND HEALTHY WORKPLACES BY
3 ENSURING THAT ALL WORKERS HAVE PAID SICK DAYS TO ADDRESS THEIR
4 OWN HEALTH NEEDS AND THE HEALTH NEEDS OF THEIR FAMILIES.

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

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

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

14 Whereas, over 100,000 North Carolina women reported physical abuse by a
15 husband or boyfriend, and there were 75 domestic violence-related homicides in 2007; and

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

19 Whereas, providing employees time off to attend to their own health care needs
20 ensures that they will be healthier and more efficient employees in the long run; and

21 Whereas, there are many workers in North Carolina who are not entitled to any paid
22 sick time to care for their own health needs or the health needs of members of their families;
23 and

24 Whereas, low-income workers are significantly less likely to have paid sick time
25 than other members of the workforce; and

26 Whereas, providing minimal paid sick time is affordable for employers and good for
27 business; Now, therefore,

28 The General Assembly of North Carolina enacts:

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

31 "Article 3A.

32 "Healthy Families and Healthy Workplaces Act.

33 **"§ 95-31.1. Short title and legislative purpose.**

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

36 (b) The public policy of this State is declared as follows: The health and safety needs
37 of employees and their families and the protection of employees from losing their jobs and pay



1 while they seek medical care for themselves and their family members are subjects of concern
2 requiring legislation to promote the general welfare of the people of the State without
3 jeopardizing the competitive position of North Carolina business and industry. The General
4 Assembly declares that the general welfare of the State requires the enactment of this law under
5 the police power of the State.

6 **"§ 95-31.2. Definitions.**

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

- 8 (1) Child. – A biological, adopted, or foster child, stepchild, legal ward, or child
9 of a parent standing in loco parentis who is under 18 years of age, or 18
10 years of age or older but incapable of earning wages because of a mental or
11 physical incapacity.
- 12 (2) Domestic violence. – As defined in G.S. 50B-1.
- 13 (3) Employ. – As defined in G.S. 95-25.2(3).
- 14 (4) Employee. – As defined in G.S. 95-25.2(4).
- 15 (5) Employer. – As defined in G.S. 95-25.2(5).
- 16 (6) Federal act. – The Family and Medical Leave Act of 1993, 29 U.S.C. §§
17 2601 to 2654 inclusive, as it may be amended.
- 18 (7) Health care provider. –
19 a. A doctor of medicine or osteopathy licensed to practice medicine in
20 this State.
21 b. A physician assistant licensed in this State.
22 c. A family nurse practitioner licensed in this State.
- 23 (8) Immediate family member. – An employee's spouse, mother, father, brother,
24 sister, son, daughter, grandmother, grandfather, grandson, granddaughter,
25 whether the relationship is a biological, foster, adoptive, step-, half-, or
26 in-law relationship.
- 27 (9) Paid sick time or paid sick days. – Time that is (i) compensated at the same
28 hourly rate and with the same benefits, including health care benefits, as the
29 employee normally earns during hours worked and (ii) provided by an
30 employer to an employee for the purposes described in G.S. 95-31.4(b) of
31 this Article.
- 32 (10) Parent. – A biological, foster, stepparent, or adoptive parent of an employee
33 or an employee's spouse, or other person who stood in loco parentis during
34 the childhood of an employee or employee's spouse.
- 35 (9) Paid sick time or paid sick days. – Time that is (i) compensated at the same
36 hourly rate and with the same benefits, including health care benefits, as the
37 employee normally earns during hours worked and (ii) provided by an
38 employer to an employee for the purposes described in G.S. 95-31.4(b) of
39 this Article.
- 40 (11) Sexual assault. – As defined in Chapter 14 of the General Statutes.
- 41 (12) Small business. – An employer who employs 10 or fewer employees during
42 20 or more calendar workweeks in the current or preceding calendar year.
- 43 (13) Stalking. – As defined in Chapter 14 of the General Statutes.

44 **"§ 95-31.3. Exemptions.**

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

47 (b) The provisions of this section do not apply to any person exempted from the Wage
48 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),
49 and 95-25.14(e), except that domestic workers are exempted only if they are employed in the
50 place of residence of their employer.

51 **"§ 95-31.4. Accrual of paid sick time.**

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

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

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

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

19 **"§ 95-31.5. Use of paid sick time.**

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

22 (1) To care for the employee's immediate family member who is suffering from
23 a physical or mental illness, injury, or medical condition that requires home
24 care, professional medical diagnosis or care, preventative medical care, or a
25 routine medical appointment, or that is covered under the federal Family and
26 Medical Leave Act of 1993, as amended.

27 (2) To care for the employee's own physical or mental illness, injury, or medical
28 condition that requires home care, professional medical diagnosis or care,
29 preventative medical care, or a routine medical appointment, or that is
30 covered under the federal Family and Medical Leave Act of 1993, as
31 amended.

32 (3) To allow an employee to address the psychological, physical, or legal effects
33 on himself or herself, or an immediate family member, of domestic violence,
34 sexual assault, or stalking.

35 (b) An employer may require certification of the qualifying illness, injury, health
36 condition, or violence when a paid sick time period covers more than three consecutive
37 workdays. Any reasonable documentation signed by a health care provider involved in
38 following or treating the illness, injury, or health condition, and indicating the need for the
39 amount of sick days taken, shall be deemed acceptable certification. Acceptable certification of
40 domestic violence, sexual assault, or stalking may include (i) law enforcement, court or federal
41 agency records or files; (ii) documentation from a domestic violence or sexual assault program;
42 or (iii) documentation from a religious, medical, or other professional from whom assistance
43 was sought in dealing with the alleged domestic violence, sexual assault, or stalking.

44 (1) The employer shall not require certification from a health care provider
45 employed by the employer. The employer shall not delay the
46 commencement of time taken for purposes of subsection (a) of this section
47 or pay for this period on the basis that the employer has not yet received the
48 certification. Nothing in this section shall be construed to require an
49 employee to provide as certification any information from a health care
50 provider that would be in violation of section 1177 of the Social Security

1 Act or the regulations promulgated pursuant to section 264(c) of the Health
2 Insurance Portability and Accountability Act, 42 U.S.C. § 1320d-2.

3 (2) An employer may not require disclosure of details relating to domestic
4 violence, sexual assault, or stalking or the details of an employee's medical
5 condition as a condition of providing paid sick time under this Article. If an
6 employer possesses health information or information pertaining to domestic
7 violence, sexual assault, or stalking about an employee or employee's
8 immediate family member, such information shall be treated as confidential
9 and not disclosed except to affected employee or with the permission of
10 affected employee.

11 (c) When the use of sick time is foreseeable, the employee shall make a good faith
12 effort to provide notice of the need for such time to the employer in advance of the use of the
13 sick time and shall make a reasonable effort to schedule the use of sick time in a manner that
14 does not unduly disrupt the operations of the employer.

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

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

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

28 (g) This Article provides minimum requirements pertaining to paid sick time and shall
29 not be construed to preempt, limit, or otherwise affect the applicability of any other law,
30 regulation, requirement, policy, agreement, or standard that provides for greater accrual or use
31 by employees of sick time, whether paid or unpaid, or that extends other protections to
32 employees.

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

37 **"§ 95-31.6. Notification, posting, and records.**

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

48 **"§ 95-31.7. Enforcement.**

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

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

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

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

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

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

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

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

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

30 **"§ 95-31.8. Rules.**

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

32 **"§ 95-31.9. Severability.**

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

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

37 **"§ 95-241. Discrimination prohibited.**

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

- 40 (1) File a claim or complaint, initiate any inquiry, investigation, inspection,
41 proceeding or other action, or testify or provide information to any person
42 with respect to any of the following:
- 43 a. Chapter 97 of the General Statutes.
 - 44 b. ~~Article 2A~~ Article 2A, Article 3A, or Article 16 of this Chapter.
 - 45 c. Article 2A of Chapter 74 of the General Statutes.
 - 46 d. G.S. 95-28.1.
 - 47 e. Article 16 of Chapter 127A of the General Statutes.
 - 48 f. G.S. 95-28.1A.
 - 49 g. Article 52 of Chapter 143 of the General Statutes.
 - 50 h. Article 5F of Chapter 90 of the General Statutes.

- 1 (2) Cause any of the activities listed in subdivision (1) of this subsection to be
2 initiated on an employee's behalf.
- 3 (3) Exercise any right on behalf of the employee or any other employee afforded
4 by ~~Article 2A~~ Article 2A, Article 3A, or Article 16 of this Chapter, by
5 Article 2A of Chapter 74 of the General Statutes, or by Article 52 of Chapter
6 143 of the General Statutes.
- 7 (4) Comply with the provisions of Article 27 of Chapter 7B of the General
8 Statutes.
- 9 (5) Exercise rights under Chapter 50B. Actions brought under this subdivision
10 shall be in accordance with the provisions of G.S. 50B-5.5."

11 **SECTION 3.** Section 1 and Section 2 of this act become effective January 1, 2012,
12 apply only to covered employment on or after that date, and do not apply to any collective
13 bargaining agreement entered into before January 1, 2012, that is still in effect on that date. The
14 remainder of this act is effective when it becomes law.