

1 "Sick leave" has the same meaning ascribed to the term in
2 chapter 398; provided that "sick leave" also extends beyond the
3 employee's own illness, injury, medical condition, need for
4 medical diagnosis or treatment, or medical reason, to also
5 encompass time taken off work by an employee for the purpose of
6 providing care or assistance to other persons, as specified
7 further in section -4(a), with an illness, injury, medical
8 condition, need for medical diagnosis or treatment, or other
9 medical reason.

10 "Small business" means an employer for which fewer than ten
11 persons work for compensation during a given week. In
12 determining the number of persons performing work for an
13 employer during a given week, all persons performing work for
14 compensation on a full-time, part-time, or temporary basis shall
15 be counted, including persons made available to work through the
16 services of a temporary services or staffing agency or similar
17 entity.

18 § -3 Accrual of paid sick leave. (a) For employees
19 working for an employer on or before the effective date of this
20 chapter, paid sick leave shall begin to accrue as of the
21 effective date of this chapter. For employees hired by an
22 employer after the effective date of this chapter, paid sick



1 leave shall begin to accrue ninety days after the commencement
2 of employment with the employer.

3 (b) For every thirty hours worked after paid sick leave
4 begins to accrue for an employee, the employee shall accrue one
5 hour of paid sick leave. Paid sick leave shall only be required
6 to accrue in hour-unit increments; provided that this section
7 shall not prohibit an employer from providing for accruals in
8 shorter increments. Paid sick leave shall not accrue in any
9 fraction of an hour-unit.

10 (c) Accrued paid sick leave that remains unused at the end
11 of a year shall be carried over to the next year; provided that:

12 (1) Employees of small businesses shall be able to accrue
13 not more than forty hours of paid sick leave; and

14 (2) Employees of other employers shall be able to accrue
15 not more than seventy-two hours of paid sick leave;

16 unless greater amounts are authorized by the employer or
17 pursuant to collective bargaining agreement.

18 (d) If an employer has a paid leave policy, such as a paid
19 time off policy, that makes available to employees an amount of
20 paid leave that may be used for the same purposes as paid sick
21 leave under this chapter and that is sufficient to meet the
22 requirements for accrued paid sick leave as stated in



1 subsections (a) to (c), the employer shall not be required to
2 provide additional paid sick leave.

3 (e) An employer shall not be required to provide financial
4 or other reimbursement to an employee upon the employee's
5 termination, resignation, retirement, or other separation from
6 employment, for accrued paid sick leave that the employee has
7 not used.

8 § -4 Use of paid sick leave. (a) An employee may use
9 paid sick leave not only when the employee is ill or injured or
10 for the purpose of the employee's receiving medical care,
11 treatment, or diagnosis, but also to aid or care for the
12 following persons when they are ill or injured or receiving
13 medical care, treatment, or diagnosis:

- 14 (1) Child;
- 15 (2) Parent;
- 16 (3) Legal guardian or ward;
- 17 (4) Sibling;
- 18 (5) Grandparent;
- 19 (6) Grandchild;
- 20 (7) Spouse;
- 21 (8) Registered domestic partner under any state or local
22 law; or



1 (9) Other designated person.

2 The employee may use all or any percentage of the
3 employee's paid sick leave to aid or care for those persons.

4 If the employee has no spouse or registered domestic
5 partner, the employee may designate one person as to whom the
6 employee may use paid sick leave to aid or care for the person.
7 The opportunity to make such a designation shall be extended to
8 the employee no later than the date on which the employee has
9 worked thirty hours after paid sick leave begins to accrue
10 pursuant to section -3(a). There shall be a window of ten
11 work days for the employee to make this designation.

12 Thereafter, the opportunity to make the designation, including
13 the opportunity to change such a designation previously made,
14 shall be extended to the employee on an annual basis, with a
15 window of ten work days for the employee to make the
16 designation.

17 (b) An employer may not require, as a condition of an
18 employee's taking paid sick leave, that the employee search for
19 or find a replacement worker to cover the hours during which the
20 employee is on paid sick leave.



1 (c) An employer may require employees to give reasonable
2 notification of an absence from work for which paid sick leave
3 is or will be used.

4 (d) An employer may only take reasonable measures to
5 verify or document that an employee's use of paid sick leave is
6 lawful.

7 (e) The employee may also use the employee's paid sick
8 leave for the purposes of section 392-24; provided that the
9 requirements for receiving temporary disability benefits under
10 chapter 392 are otherwise met.

11 (f) The employee may also use the employee's paid sick
12 leave for purposes of section 398-4; provided that the
13 requirements for taking family leave under chapter 398 are
14 otherwise met.

15 § -5 Notice and posting. (a) The department, upon the
16 effective date of this chapter, shall publish and make available
17 to employers in all languages spoken by limited English
18 proficient persons as to be determined under section 371-33(c) a
19 notice suitable for posting by employers in the workplace
20 informing employees of their rights under this chapter. The
21 department shall update this notice on December 1 of any year in
22 which there is a change in the languages spoken by limited



1 English proficient persons as to be determined under section
2 371-33(c).

3 (b) Every employer shall post in a conspicuous place at
4 any workplace or job site where any employee works the notice
5 required by subsection (a). Every employer shall post this
6 notice in all languages spoken by limited English proficient
7 persons as to be determined under section 371-33(c).

8 § -6 **Employer records.** Employers shall retain records
9 documenting hours worked by employees and paid sick leave taken
10 by employees, for a period of four years, and shall allow the
11 department access to those records, with appropriate notice and
12 at a mutually agreeable time, to monitor compliance with the
13 requirements of this chapter. When an issue arises as to an
14 employee's entitlement to paid sick leave under this chapter, if
15 the employer does not maintain or retain adequate records
16 documenting hours worked by the employee and paid sick leave
17 taken by the employee, or does not allow the department
18 reasonable access to those records, it shall be presumed that
19 the employer has violated this chapter, absent clear and
20 convincing evidence otherwise.

21 § -7 **Exercise of rights protected; retaliation**
22 **prohibited.** (a) It shall be unlawful for an employer or any



1 other person to interfere with, restrain, or deny the exercise
2 of, or the attempt to exercise, any right protected under this
3 chapter.

4 (b) It shall be unlawful for an employer or any other
5 person to discharge, threaten to discharge, demote, suspend, or
6 in any manner discriminate or take adverse action against any
7 person in retaliation for exercising rights protected under this
8 chapter. Those rights include but are not limited to:

9 (1) The right to use paid sick leave pursuant to this
10 chapter;

11 (2) The right to file a complaint or inform any person
12 about any employer's alleged violation of this
13 chapter;

14 (3) The right to cooperate with the department in its
15 investigations of alleged violations of this chapter;
16 and

17 (4) The right to inform any person of the person's
18 potential rights under this chapter.

19 (c) It shall be unlawful for an employer absence control
20 policy to count paid sick leave taken under this chapter as an
21 absence that may lead to or result in discipline, discharge,
22 demotion, suspension, or any other adverse action.



1 (d) Protections of this chapter shall apply to any person
2 who mistakenly but in good faith alleges violations of this
3 chapter.

4 (e) There shall be a rebuttable presumption that an
5 employer or any other person discharged, threatened with
6 discharge, demoted, suspended, or in some manner discriminated
7 or took adverse action against any person in retaliation for
8 exercising rights protected under this chapter when the employer
9 or any other person takes adverse action against a person within
10 ninety days of the person's performing any of the following:

11 (1) Filing a complaint with the department or a court
12 alleging a violation of this chapter;

13 (2) Informing any person about an employer's alleged
14 violation of this chapter;

15 (3) Cooperating with the department or other persons in
16 the investigation or prosecution of any alleged
17 violation of this chapter; or

18 (4) Opposing any policy, practice, or act that is unlawful
19 under this chapter.

20 § -8 Implementation and enforcement. (a) The
21 department shall be authorized to implement and enforce this
22 chapter and may adopt appropriate rules under chapter 91 for



1 those purposes. Rules adopted by the department shall have the
2 force and effect of law and may be relied upon by employers,
3 employees, and other persons to determine their rights and
4 responsibilities under this chapter. Rules may establish
5 procedures for ensuring fair, efficient, and cost-effective
6 implementation of this chapter, including procedures to inform
7 employees of their rights under this chapter, to monitor
8 employer compliance with this chapter, and for administrative
9 hearings to determine whether an employer or other person has
10 violated the requirements of this chapter.

11 (b) The department is authorized to take appropriate steps
12 to enforce this chapter. The department may investigate any
13 possible violations of this chapter by an employer or other
14 person. Where the department has reason to believe that a
15 violation has occurred, it may order any appropriate temporary
16 or interim relief to mitigate the violation pending completion
17 of a full investigation or hearing.

18 Where the department, after a hearing pursuant to chapter
19 91, determines that a violation has occurred, it may order any
20 appropriate relief including but not limited to reinstatement,
21 back pay, the payment of any sick leave unlawfully withheld, and
22 the payment of an additional sum as an administrative penalty to



1 each employee or person whose rights under this chapter were
2 violated. If any paid sick leave was unlawfully withheld, an
3 additional penalty of \$250, or three times the dollar amount of
4 paid sick leave withheld from the employee, whichever amount is
5 greater, shall be included in the administrative penalty paid to
6 the employee.

7 In addition, if a violation of this chapter resulted in
8 other harm to the employee or any other person, such as
9 discharge from employment, or otherwise violated the rights of
10 employees or other persons, such as a failure to post the notice
11 required by section -5(b), or an act of retaliation
12 prohibited by section -7, this administrative penalty shall
13 also include \$50 to each employee or person whose rights under
14 this chapter were violated for each day or portion thereof that
15 the violation occurred or continued.

16 Where prompt compliance is not forthcoming, the department
17 may take any appropriate enforcement action to secure
18 compliance, including initiating a civil action pursuant to
19 section -8(c) or, except where prohibited by state or federal
20 law, requesting that other departments revoke or suspend any
21 registration, certificates, permits, or licenses held or



1 requested by the employer or person until such time as the
2 violation is remedied.

3 In order to compensate the State for the costs of
4 investigating and remedying the violation, the department may
5 also order the violating employer or person to pay to the State
6 a sum of not more than \$50 for each day or portion thereof and
7 for each employee or person as to whom the violation occurred or
8 continued. These penalties shall be deposited into the general
9 fund.

10 An employee or other person may report to the department
11 any suspected violation of this chapter. The department shall
12 encourage reporting pursuant to this subsection by keeping
13 confidential, to the maximum extent permitted by applicable
14 laws, the name and other identifying information of the employee
15 or person reporting the violation; provided that with the
16 authorization of the person, the department may disclose the
17 person's name and identifying information as necessary to
18 enforce this chapter or for other appropriate purposes.

19 (c) The department, the attorney general, any person
20 aggrieved by a violation of this chapter, or any entity a member
21 of whom is aggrieved by a violation of this chapter may bring a
22 civil action in a court of competent jurisdiction against the



1 employer or other person violating this chapter. Upon
2 prevailing, the complainant shall be entitled to such legal or
3 equitable relief as may be appropriate to remedy the violation.
4 Relief may include but not be limited to reinstatement, back
5 pay, the payment of any sick leave unlawfully withheld, or
6 liquidated damages in the amount of \$50 to each employee or
7 person whose rights under this chapter were violated for each
8 hour or portion thereof that the violation occurred or
9 continued. Additionally, where the employer has unlawfully
10 withheld paid sick leave to an employee, the prevailing
11 complainant shall be entitled the dollar amount of paid sick
12 leave withheld from the employee multiplied by three, or \$250,
13 whichever amount is greater, and reinstatement in employment.
14 The prevailing complainant shall also be entitled to reasonable
15 attorneys' fees and costs.

16 (d) In any administrative or civil action brought under
17 this chapter, the department or court, as the case may be, shall
18 award interest on all amounts due and unpaid at the rate of
19 interest specified in section 478-3.

20 (e) The remedies, penalties, and procedures provided under
21 this chapter are cumulative.



1 **§ -9 Waiver through collective bargaining.** Nothing in
2 this chapter shall apply to employees covered by a bona fide
3 collective bargaining agreement to the extent that the
4 requirements of this chapter are expressly waived in the
5 collective bargaining agreement in clear and unambiguous terms.

6 **§ -10 Other legal requirements.** This chapter provides
7 minimum requirements pertaining to paid sick leave and shall not
8 be construed to preempt, limit, or otherwise affect the
9 applicability of any other law, regulation, requirement, policy,
10 or standard that provides for greater accrual or use by
11 employees of sick leave, whether paid or unpaid, or that extends
12 other protections to employees.

13 **§ -11 More generous employer leave policies.** This
14 chapter provides minimum requirements pertaining to paid sick
15 leave and shall not be construed to prevent employers from
16 adopting or retaining leave policies that are more generous than
17 policies that comply with this chapter. Employers are
18 encouraged to provide more generous leave policies than required
19 by this chapter."

20 SECTION 2. If any provision of this Act, or the
21 application thereof to any person or circumstance is held
22 invalid, the invalidity does not affect other provisions or



1 applications of the Act, which can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

4 SECTION 3. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun, before its effective date.

7 SECTION 4. This Act shall take effect on January 1, 2010.

8

INTRODUCED BY:



JAN 28 2009



Report Title:

Sick Leave

Description:

Requires employers to provide paid sick leave to employees.

