

HOUSE BILL 98

K3, P4

EMERGENCY BILL

8lr0118
CF SB 135

By: **The Speaker (By Request – Administration)**

Introduced and read first time: January 12, 2018

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Paid Leave Compromise Act of 2018**

3 FOR the purpose of requiring certain employers to provide certain employees with certain
4 paid time off; providing for the method of determining whether an employer is
5 required to provide paid time off; providing for the manner in which paid time off is
6 accrued by the employee and treated by the employer; providing that, except under
7 certain circumstances, certain employees of a unit of State or local government are
8 subject to certain provisions of the unit's laws, regulations, policies, and procedures
9 under certain circumstances; authorizing an employer, under certain circumstances,
10 to deduct the amount paid for paid time off from the wages paid to an employee on
11 the termination of employment under a certain provision of law; prohibiting an
12 employer from being required to pay out on the termination of employment certain
13 paid time off; authorizing an employer to deny a request for time off under certain
14 circumstances; prohibiting an employer from requiring that an employee disclose
15 certain information; prohibiting an employer from disclosing certain information
16 except under certain circumstances; authorizing an employer to apply to the
17 Department of Labor, Licensing, and Regulation for a certain waiver; requiring the
18 Department to grant the waiver under certain circumstances; specifying the types of
19 evidence that may be provided under a certain provision of this Act; specifying the
20 duration of the waiver; authorizing an employer to whom a certain waiver is granted
21 to apply for the renewal of the waiver; requiring the Department to adopt certain
22 regulations; requiring an employer to notify the employees that the employees are
23 entitled to certain paid time off; specifying the information that must be included in
24 the notice; requiring the Commissioner of Labor and Industry to create and make
25 available a certain poster and notice; requiring the Commissioner to provide
26 technical assistance to certain employers under certain circumstances; requiring the
27 Department to post a certain notice on a certain website in a certain format;
28 requiring an employer to keep certain records for a certain time period; authorizing
29 the Commissioner to inspect certain records; authorizing the Commissioner to waive
30 a certain penalty under certain circumstances; requiring and authorizing the
31 Commissioner to take certain actions when the Commissioner receives a certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 written complaint; subjecting certain actions to certain hearing and notice
 2 requirements; authorizing the Commissioner to bring a civil action in a certain court
 3 against an employer for a violation of certain provisions of this Act; authorizing the
 4 Attorney General or the employee to bring a civil action in a certain court against an
 5 employer for a violation of certain provisions of this Act under certain circumstances;
 6 providing that an employee may be entitled to certain damages, fees, and costs under
 7 certain circumstances; establishing certain prohibited actions; providing for certain
 8 criminal penalties; providing that certain protections apply to certain employees;
 9 authorizing the Commissioner to adopt regulations to carry out certain provisions of
 10 this Act; authorizing the Commissioner to conduct an investigation, under certain
 11 circumstances, to determine whether certain provisions of this Act have been
 12 violated; requiring the Commissioner, except under certain circumstances, to keep
 13 certain information confidential; providing that this Act preempts the authority of a
 14 local jurisdiction to enact a law that provides for certain sick and safe leave provided
 15 by certain employers; defining certain terms; making this Act an emergency
 16 measure; and generally relating to paid time off.

17 BY repealing and reenacting, with amendments,
 18 Article – Labor and Employment
 19 Section 2–106(b)
 20 Annotated Code of Maryland
 21 (2016 Replacement Volume and 2017 Supplement)

22 BY adding to
 23 Article – Labor and Employment
 24 Section 3–103(k); and 3–1301 through 3–1311 to be under the new subtitle “Subtitle
 25 13. Paid Leave Compromise Act”
 26 Annotated Code of Maryland
 27 (2016 Replacement Volume and 2017 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 29 That the Laws of Maryland read as follows:

30 Article – Labor and Employment

31 2–106.

32 (b) Except as provided in subsection (c) of this section, and in addition to authority
 33 to adopt regulations that is set forth elsewhere, the Commissioner may adopt regulations
 34 that are necessary to carry out:

35 (1) Title 3, Subtitle 3 of this article;

36 (2) Title 3, Subtitle 5 of this article;

37 (3) **TITLE 3, SUBTITLE 13 OF THIS ARTICLE;**

1 SERVICES AGENCY DOES NOT HAVE DAY-TO-DAY CONTROL OVER THE WORK
2 ASSIGNMENTS AND SUPERVISION OF THE INDIVIDUAL WHILE THE INDIVIDUAL IS
3 PROVIDING THE TEMPORARY STAFFING SERVICES; OR

4 (6) IS DIRECTLY EMPLOYED BY AN EMPLOYMENT AGENCY TO
5 PROVIDE PART-TIME OR TEMPORARY SERVICES TO ANOTHER PERSON.

6 (D) "EMPLOYER" INCLUDES:

7 (1) A UNIT OF STATE OR LOCAL GOVERNMENT; AND

8 (2) A PERSON THAT ACTS DIRECTLY OR INDIRECTLY IN THE INTEREST
9 OF ANOTHER EMPLOYER WITH AN EMPLOYEE.

10 (E) "PAID TIME OFF" MEANS PAID LEAVE AWAY FROM WORK THAT IS
11 PROVIDED BY AN EMPLOYER UNDER § 3-1304 OF THIS SUBTITLE.

12 3-1302.

13 (A) IN THIS SECTION, "EXISTING PAID LEAVE" INCLUDES:

14 (1) VACATION DAYS;

15 (2) SICK DAYS;

16 (3) SHORT-TERM DISABILITY BENEFITS;

17 (4) FLOATING HOLIDAYS;

18 (5) PARENTAL LEAVE; AND

19 (6) OTHER PAID LEAVE.

20 (B) THIS SUBTITLE MAY NOT BE CONSTRUED TO:

21 (1) REQUIRE AN EMPLOYER TO COMPENSATE AN EMPLOYEE FOR
22 UNUSED PAID TIME OFF WHEN THE EMPLOYEE LEAVES THE EMPLOYER'S
23 EMPLOYMENT;

24 (2) REQUIRE AN EMPLOYER TO MODIFY AN EXISTING PAID LEAVE
25 POLICY IF:

26 (I) THE POLICY PERMITS AN EMPLOYEE TO ACCRUE AND USE

1 LEAVE UNDER TERMS AND CONDITIONS THAT ARE AT LEAST EQUIVALENT TO THE
2 PAID TIME OFF PROVIDED FOR UNDER THIS SUBTITLE; OR

3 (II) THE PAID LEAVE POLICY DOES NOT REDUCE EMPLOYEE
4 COMPENSATION FOR AN ABSENCE DUE TO PAID TIME OFF; OR

5 (3) PREEMPT, LIMIT, OR OTHERWISE AFFECT ANY WORKERS'
6 COMPENSATION BENEFITS THAT ARE AVAILABLE UNDER TITLE 9 OF THIS ARTICLE.

7 (C) AN EMPLOYER WITH AN EXISTING PAID LEAVE POLICY THAT PROVIDES
8 AN AMOUNT OF PAID LEAVE MEETING THE TOTAL ANNUAL ACCRUAL REQUIREMENTS
9 PROVIDED FOR IN § 3-1304 OF THIS SUBTITLE AND ALLOWS AN EMPLOYEE TO USE
10 THE PAID LEAVE FOR ANY REASON SHALL BE EXEMPT FROM ALL OTHER
11 REQUIREMENTS OF THIS SUBTITLE.

12 (D) FOR THE PURPOSES OF SUBSECTION (B) OF THIS SECTION, THE TERMS
13 AND CONDITIONS OF A PAID LEAVE POLICY SHALL BE PRESUMED TO BE EQUIVALENT
14 IF THE TERMS AND CONDITIONS ALLOW AN EMPLOYEE TO ACCESS AND ACCRUE PAID
15 LEAVE AT THE SAME RATE OR AT A GREATER RATE THAN PROVIDED FOR IN § 3-1304
16 OF THIS SUBTITLE.

17 (E) THIS SUBTITLE PREEMPTS THE AUTHORITY OF A LOCAL JURISDICTION
18 TO ENACT A LAW THAT REGULATES PAID TIME OFF PROVIDED BY AN EMPLOYER
19 OTHER THAN THE LOCAL JURISDICTION.

20 3-1303.

21 (A) THIS SUBTITLE DOES NOT APPLY TO AN EMPLOYEE WHO:

22 (1) HAS BEEN EMPLOYED BY THE EMPLOYER FOR LESS THAN 120
23 DAYS DURING A 12-MONTH PERIOD;

24 (2) IS EMPLOYED IN THE CONSTRUCTION INDUSTRY, AS CLASSIFIED
25 BY CODE UNDER THE NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM;

26 (3) IS COVERED UNDER THE FEDERAL RAILROAD UNEMPLOYMENT
27 INSURANCE ACT; OR

28 (4) IS COVERED BY A BONA FIDE COLLECTIVE BARGAINING
29 AGREEMENT.

30 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF
31 A UNIT OF STATE OR LOCAL GOVERNMENT'S PAID TIME OFF ACCRUAL AND USE

1 REQUIREMENTS MEET OR EXCEED THE PAID TIME OFF PROVIDED FOR UNDER THIS
2 SUBTITLE, EMPLOYEES OF THE UNIT OF STATE OR LOCAL GOVERNMENT WHO ARE
3 PART OF THE UNIT'S PERSONNEL SYSTEM ARE SUBJECT TO THE UNIT'S LAWS,
4 REGULATIONS, POLICIES, AND PROCEDURES PROVIDING FOR:

5 (I) ACCRUAL AND USE OF PAID TIME OFF;

6 (II) GRIEVANCES; AND

7 (III) DISCIPLINARY ACTIONS.

8 (2) EMPLOYEES OF A UNIT OF STATE GOVERNMENT WHO ARE
9 ENTITLED TO PAID TIME OFF UNDER THIS SUBTITLE AND WHO ARE NOT COVERED
10 BY THE UNIT'S PAID TIME OFF ACCRUAL AND USE REQUIREMENTS ARE SUBJECT TO
11 § 3-1308 OF THIS SUBTITLE.

12 3-1304.

13 (A) (1) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH AND
14 UNLESS A WAIVER IS GRANTED TO THE EMPLOYER UNDER § 3-1305 OF THIS
15 SUBTITLE, AN EMPLOYER SHALL PROVIDE AN EMPLOYEE WITH PAID TIME OFF THAT
16 IS PAID AT THE SAME WAGE RATE AS THE EMPLOYEE NORMALLY EARNS AND THAT
17 AN EMPLOYEE MAY USE FOR ANY REASON IF, BASED ON A CALCULATION OF THE
18 AVERAGE MONTHLY NUMBER OF EMPLOYEES EMPLOYED BY THE EMPLOYER
19 DURING THE IMMEDIATELY PRECEDING YEAR:

20 1. BEGINNING JANUARY 1, 2018, THE EMPLOYER
21 EMPLOYS 50 OR MORE EMPLOYEES;

22 2. BEGINNING JANUARY 1, 2019, THE EMPLOYER
23 EMPLOYS 40 OR MORE EMPLOYEES; OR

24 3. BEGINNING JANUARY 1, 2020, OR ANY YEAR
25 THEREAFTER, THE EMPLOYER EMPLOYS 25 OR MORE EMPLOYEES.

26 (II) AN EMPLOYER MAY NOT BE REQUIRED TO PAY A TIPPED
27 EMPLOYEE MORE THAN THE APPLICABLE MINIMUM WAGE FOR PAID TIME OFF.

28 (2) EACH EMPLOYEE OF AN EMPLOYER SHALL BE INCLUDED IN THE
29 CALCULATION MADE UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION PROVIDED
30 THAT, DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR, THE EMPLOYEE
31 WAS EMPLOYED BY THE EMPLOYER FOR AT LEAST 120 DAYS.

1 **(B) THE PAID TIME OFF PROVIDED UNDER SUBSECTION (A) OF THIS**
2 **SECTION SHALL ACCRUE AT A RATE OF AT LEAST 1 HOUR FOR EVERY 30 HOURS AN**
3 **EMPLOYEE WORKS.**

4 **(C) AN EMPLOYER MAY NOT BE REQUIRED TO ALLOW AN EMPLOYEE TO:**

5 **(1) EARN MORE THAN 40 HOURS OF PAID TIME OFF IN A YEAR;**

6 **(2) USE MORE THAN 64 HOURS OF PAID TIME OFF IN A YEAR;**

7 **(3) ACCRUE A TOTAL OF MORE THAN 64 HOURS AT ANY TIME; OR**

8 **(4) USE PAID TIME OFF DURING THE FIRST 120 CALENDAR DAYS THE**
9 **EMPLOYEE WORKS FOR THE EMPLOYER.**

10 **(D) AT THE BEGINNING OF EACH YEAR, AN EMPLOYER MAY AWARD TO AN**
11 **EMPLOYEE THE FULL AMOUNT OF PAID TIME OFF THAT AN EMPLOYEE WOULD EARN**
12 **OVER THE COURSE OF THE YEAR RATHER THAN AWARDED THE TIME OFF AS THE**
13 **TIME OFF ACCRUES DURING THE YEAR.**

14 **(E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,**
15 **FOR THE PURPOSES OF CALCULATING THE ACCRUAL OF PAID TIME OFF, AN**
16 **EMPLOYEE WHO IS EXEMPT FROM OVERTIME WAGE REQUIREMENTS UNDER THE**
17 **FEDERAL FAIR LABOR STANDARDS ACT IS PRESUMED TO WORK 40 HOURS EACH**
18 **WORKWEEK.**

19 **(2) IF THE EMPLOYEE'S NORMAL WORKWEEK IS LESS THAN 40**
20 **HOURS, THE NUMBER OF HOURS IN THE NORMAL WORKWEEK SHALL BE USED.**

21 **(F) PAID TIME OFF SHALL BEGIN TO ACCRUE:**

22 **(1) JANUARY 1 OF THE YEAR IN WHICH THE EMPLOYER BECOMES**
23 **SUBJECT TO THIS SUBTITLE; OR**

24 **(2) IF THE EMPLOYEE IS HIRED AFTER JANUARY 1 OF THE YEAR IN**
25 **WHICH THE EMPLOYER BECOMES SUBJECT TO THIS SUBTITLE, THE DATE ON WHICH**
26 **THE EMPLOYEE BEGINS EMPLOYMENT WITH THE EMPLOYER.**

27 **(G) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, IF AN**
28 **EMPLOYEE HAS UNUSED PAID TIME OFF AT THE END OF EACH YEAR, THE EMPLOYEE**
29 **MAY CARRY OVER THE BALANCE OF THE PAID TIME OFF TO THE FOLLOWING YEAR.**

30 **(2) AN EMPLOYER MAY NOT BE REQUIRED TO ALLOW AN EMPLOYEE**

1 TO CARRY OVER MORE THAN 40 HOURS OF PAID TIME OFF UNDER PARAGRAPH (1)
2 OF THIS SUBSECTION.

3 (3) AN EMPLOYER MAY NOT BE REQUIRED TO ALLOW AN EMPLOYEE
4 TO CARRY OVER UNUSED PAID TIME OFF UNDER PARAGRAPH (1) OF THIS
5 SUBSECTION IF:

6 (I) THE EMPLOYER AWARDS THE EMPLOYEE THE FULL
7 AMOUNT OF PAID TIME OFF AT THE BEGINNING OF EACH YEAR UNDER SUBSECTION
8 (D) OF THIS SECTION; OR

9 (II) THE EMPLOYEE IS EMPLOYED BY A NONPROFIT ENTITY OR
10 A GOVERNMENTAL UNIT IN ACCORDANCE WITH A GRANT, THE DURATION OF WHICH
11 IS LIMITED TO 1 YEAR AND IS NOT SUBJECT TO RENEWAL.

12 (H) (1) AN EMPLOYER MAY ALLOW AN EMPLOYEE TO USE PAID TIME OFF
13 BEFORE THE EMPLOYEE ACCRUES THE AMOUNT NEEDED.

14 (2) IF AN EMPLOYEE IS ALLOWED UNDER PARAGRAPH (1) OF THIS
15 SUBSECTION TO USE PAID TIME OFF BEFORE IT HAS ACCRUED, THE EMPLOYER MAY
16 DEDUCT THE AMOUNT PAID FOR THE PAID TIME OFF FROM THE WAGES PAID TO THE
17 EMPLOYEE ON THE TERMINATION OF EMPLOYMENT UNDER § 3-505 OF THIS TITLE
18 IF:

19 (I) THE EMPLOYER AND EMPLOYEE MUTUALLY CONSENTED TO
20 THE DEDUCTION AS EVIDENCED BY A DOCUMENT SIGNED BY THE EMPLOYEE; AND

21 (II) THE EMPLOYEE LEAVES THE EMPLOYMENT OF THE
22 EMPLOYER BEFORE THE EMPLOYEE HAS ACCRUED THE AMOUNT OF PAID TIME OFF
23 THAT WAS USED.

24 (I) AN EMPLOYER MAY NOT BE REQUIRED TO PAY OUT ON THE
25 TERMINATION OF EMPLOYMENT UNUSED PAID TIME OFF ACCRUED BY AN
26 EMPLOYEE.

27 (J) AN EMPLOYER WHO ACQUIRES, BY SALE OR OTHERWISE, ANOTHER
28 EMPLOYER SHALL ALLOW ALL EMPLOYEES OF THE ORIGINAL EMPLOYER WHO
29 REMAIN EMPLOYED BY THE SUCCESSOR EMPLOYER TO RETAIN ALL UNUSED PAID
30 TIME OFF ACCRUED DURING EMPLOYMENT WITH THE ORIGINAL EMPLOYER.

31 (K) AN EMPLOYER MAY DENY A REQUEST TO TAKE PAID TIME OFF IF:

32 (1) THE EMPLOYER IS A PRIVATE EMPLOYER LICENSED UNDER TITLE

1 **7 OR TITLE 10 OF THE HEALTH – GENERAL ARTICLE TO PROVIDE SERVICES TO**
2 **DEVELOPMENTALLY DISABLED OR MENTALLY ILL INDIVIDUALS;**

3 **(2) THE NEED TO USE PAID TIME OFF IS FORESEEABLE;**

4 **(3) AFTER EXERCISING REASONABLE EFFORTS, THE EMPLOYER IS**
5 **UNABLE TO PROVIDE A SUITABLE REPLACEMENT EMPLOYEE; AND**

6 **(4) THE EMPLOYEE’S ABSENCE WILL CAUSE A DISRUPTION OF**
7 **SERVICE TO AT LEAST ONE INDIVIDUAL WITH A DEVELOPMENTAL DISABILITY OR**
8 **MENTAL ILLNESS.**

9 **(L) (1) AN EMPLOYER MAY NOT REQUIRE DISCLOSURE OF DETAILS**
10 **RELATING TO DOMESTIC VIOLENCE, SEXUAL ASSAULT, SEXUAL CONTACT, OR**
11 **STALKING OR THE DETAILS OF AN EMPLOYEE’S OR AN EMPLOYEE’S FAMILY**
12 **MEMBER’S HEALTH INFORMATION AS A CONDITION OF PROVIDING, EARNING,**
13 **ACCRUING, OR USING PAID TIME OFF UNDER THIS SUBTITLE.**

14 **(2) IF AN EMPLOYER POSSESSES INFORMATION PERTAINING TO**
15 **DOMESTIC VIOLENCE, SEXUAL ASSAULT, SEXUAL CONTACT, OR STALKING OR**
16 **HEALTH INFORMATION ABOUT AN EMPLOYEE OR EMPLOYEE’S FAMILY MEMBER,**
17 **THE INFORMATION SHALL BE TREATED AS CONFIDENTIAL AND NOT DISCLOSED**
18 **EXCEPT TO THE AFFECTED EMPLOYEE OR WITH THE PERMISSION OF THE AFFECTED**
19 **EMPLOYEE UNLESS REQUIRED BY EXISTING REGULATION OR LAW.**

20 **3–1305.**

21 **(A) AN EMPLOYER MAY APPLY TO THE DEPARTMENT FOR A HARDSHIP**
22 **WAIVER FROM THE REQUIREMENTS OF THIS SUBTITLE.**

23 **(B) (1) THE DEPARTMENT SHALL WAIVE THE REQUIREMENTS OF THIS**
24 **SUBTITLE FOR AN EMPLOYER THAT CAN PROVIDE SPECIFIC AND DEMONSTRATED**
25 **EVIDENCE THAT A SIGNIFICANT FINANCIAL HARDSHIP WILL RESULT FROM THE**
26 **EMPLOYER’S COMPLIANCE WITH THIS SUBTITLE.**

27 **(2) EVIDENCE PROVIDED UNDER PARAGRAPH (1) OF THIS**
28 **SUBSECTION MAY INCLUDE EVIDENCE THAT COMPLIANCE WITH THIS SUBTITLE:**

29 **(I) CREATES A RISK THAT THE EMPLOYER WILL HAVE TO CEASE**
30 **OPERATIONS;**

31 **(II) MAY FORCE THE EMPLOYER TO TERMINATE THE**
32 **EMPLOYMENT OF EMPLOYEES; OR**

1 (III) PLACES THE EMPLOYER AT A COMPETITIVE DISADVANTAGE
2 WITH EMPLOYERS THAT ARE NOT SUBJECT TO THIS SUBTITLE.

3 (C) (1) A WAIVER GRANTED UNDER THIS SECTION SHALL BE FOR A
4 2-YEAR PERIOD.

5 (2) AN EMPLOYER TO WHOM A WAIVER IS GRANTED UNDER THIS
6 SECTION MAY APPLY FOR THE RENEWAL OF THE WAIVER.

7 (D) THE DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT THIS
8 SECTION, INCLUDING REGULATIONS THAT:

9 (1) ESTABLISH A PROCESS FOR RECEIVING, PROCESSING, AND
10 REVIEWING WAIVER APPLICATIONS; AND

11 (2) PROVIDE GUIDANCE ABOUT THE APPLICATION OF THIS SECTION.

12 3-1306.

13 (A) UNLESS A WAIVER IS GRANTED TO THE EMPLOYER UNDER § 3-1305 OF
14 THIS SUBTITLE, AN EMPLOYER SHALL NOTIFY THE EMPLOYER'S EMPLOYEES THAT
15 THE EMPLOYEES ARE ENTITLED TO PAID TIME OFF UNDER THIS SUBTITLE.

16 (B) THE NOTICE PROVIDED UNDER SUBSECTION (A) OF THIS SECTION
17 SHALL INCLUDE:

18 (1) A STATEMENT OF HOW PAID TIME OFF IS ACCRUED UNDER §
19 3-1304 OF THIS SUBTITLE;

20 (2) A STATEMENT REGARDING THE PROHIBITION:

21 (I) IN § 3-1309 OF THIS SUBTITLE AGAINST THE EMPLOYER
22 TAKING ADVERSE ACTION AGAINST AN EMPLOYEE WHO EXERCISES A RIGHT UNDER
23 THIS SUBTITLE; AND

24 (II) IN § 3-1310 OF THIS SUBTITLE AGAINST AN EMPLOYEE
25 MAKING A COMPLAINT, BRINGING AN ACTION, OR TESTIFYING IN AN ACTION IN BAD
26 FAITH; AND

27 (3) INFORMATION REGARDING THE RIGHT OF AN EMPLOYEE TO
28 REPORT AN ALLEGED VIOLATION OF THIS SUBTITLE BY THE EMPLOYER TO THE
29 COMMISSIONER OR TO BRING A CIVIL ACTION UNDER § 3-1308 OF THIS SUBTITLE.

1 (C) THE COMMISSIONER SHALL:

2 (1) CREATE AND MAKE AVAILABLE A POSTER AND A MODEL NOTICE
3 AT NO CHARGE TO THE EMPLOYER THAT MAY BE USED BY AN EMPLOYER TO COMPLY
4 WITH SUBSECTION (A) OF THIS SECTION; AND

5 (2) PROVIDE TECHNICAL ASSISTANCE TO AN EMPLOYER IF AN
6 EMPLOYER REQUESTS ASSISTANCE REGARDING IMPLEMENTING THE PROVISIONS
7 OF THIS SUBTITLE.

8 (D) THE DEPARTMENT SHALL POST THE NOTICE CREATED UNDER
9 SUBSECTION (C)(1) OF THIS SECTION ON THE DEPARTMENT'S WEBSITE IN A
10 DOWNLOADABLE FORMAT.

11 3-1307.

12 (A) AN EMPLOYER SHALL KEEP FOR AT LEAST 3 YEARS A RECORD OF:

13 (1) PAID TIME OFF ACCRUED BY EACH EMPLOYEE; AND

14 (2) PAID TIME OFF USED BY EACH EMPLOYEE.

15 (B) THE COMMISSIONER MAY INSPECT A RECORD KEPT UNDER
16 SUBSECTION (A) OF THIS SECTION FOR THE PURPOSE OF DETERMINING WHETHER
17 THE EMPLOYER IS COMPLYING WITH THE PROVISIONS OF THIS SUBTITLE.

18 (C) THE COMMISSIONER MAY WAIVE A CIVIL PENALTY ASSESSED UNDER
19 THIS SUBTITLE IF THE PENALTY WAS ASSESSED FOR A VIOLATION THAT WAS DUE TO
20 AN ERROR CAUSED BY A THIRD-PARTY PAYROLL SERVICE PROVIDER WITH WHOM
21 THE EMPLOYER IN GOOD FAITH CONTRACTED FOR SERVICES.

22 3-1308.

23 (A) IF AN EMPLOYEE BELIEVES THAT AN EMPLOYER HAS VIOLATED THIS
24 SUBTITLE, THE EMPLOYEE MAY FILE A WRITTEN COMPLAINT WITH THE
25 COMMISSIONER.

26 (B) IF THE COMMISSIONER RECEIVES A COMPLAINT UNDER SUBSECTION
27 (A) OF THIS SECTION, THE COMMISSIONER SHALL:

28 (1) ATTEMPT TO RESOLVE THE ISSUE INFORMALLY; OR

1 **(2) DETERMINE WHETHER THE EMPLOYER HAS VIOLATED THIS**
2 **SUBTITLE.**

3 **(C) IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER HAS**
4 **VIOLATED THIS SUBTITLE, THE COMMISSIONER:**

5 **(1) SHALL ISSUE AN ORDER COMPELLING COMPLIANCE WITH THIS**
6 **SUBTITLE; AND**

7 **(2) MAY, IN THE COMMISSIONER'S DISCRETION, ASSESS A CIVIL**
8 **PENALTY OF:**

9 **(I) UP TO \$300 FOR EACH EMPLOYEE FOR WHOM THE**
10 **EMPLOYER IS NOT IN COMPLIANCE WITH THIS SUBTITLE; OR**

11 **(II) UP TO \$600 FOR EACH EMPLOYEE FOR WHOM THE**
12 **EMPLOYER IS NOT IN COMPLIANCE WITH THIS SUBTITLE IF THE VIOLATION**
13 **OCCURRED WITHIN 3 YEARS AFTER AN EMPLOYEE FILED A PREVIOUS COMPLAINT**
14 **THAT LED TO A DETERMINATION THAT A VIOLATION HAD OCCURRED.**

15 **(D) THE ACTIONS TAKEN UNDER SUBSECTIONS (B) AND (C) OF THIS**
16 **SECTION ARE SUBJECT TO THE NOTICE AND HEARING REQUIREMENTS OF TITLE 10,**
17 **SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.**

18 **(E) (1) IN DETERMINING WHETHER THERE IS A VIOLATION OF THIS**
19 **SUBTITLE, THE COMMISSIONER SHALL CONSIDER WHETHER THE EMPLOYEE HAS**
20 **BEEN DEPRIVED OF A RIGHT UNDER THIS SUBTITLE.**

21 **(2) IN DETERMINING THE AMOUNT OF ANY CIVIL PENALTY TO BE**
22 **IMPOSED, THE COMMISSIONER SHALL CONSIDER:**

23 **(I) THE SERIOUSNESS OF THE VIOLATION;**

24 **(II) THE SIZE OF THE EMPLOYER'S BUSINESS;**

25 **(III) THE EMPLOYER'S GOOD FAITH IN COMPLYING WITH THIS**
26 **SUBTITLE; AND**

27 **(IV) THE EMPLOYER'S HISTORY OF VIOLATIONS UNDER THIS**
28 **SUBTITLE.**

29 **(F) IF THE EMPLOYER FAILS TO COMPLY WITH AN ORDER ISSUED FOR A**
30 **VIOLATION UNDER SUBSECTION (C) OF THIS SECTION, THE COMMISSIONER MAY**

1 BRING AN ACTION TO ENFORCE THE ORDER AND CIVIL PENALTY IN THE CIRCUIT
2 COURT IN THE COUNTY WHERE THE EMPLOYER IS LOCATED.

3 (G) IF THE EMPLOYER FAILS TO COMPLY WITH AN ORDER ISSUED FOR A
4 SUBSEQUENT VIOLATION AGAINST THE SAME EMPLOYEE UNDER SUBSECTION (C) OF
5 THIS SECTION WITHIN 3 YEARS AFTER THE EMPLOYEE FILED A COMPLAINT THAT IS
6 DETERMINED TO BE A VIOLATION UNDER THIS SECTION, THE ATTORNEY GENERAL
7 OR THE EMPLOYEE MAY BRING AN ACTION TO ENFORCE THE ORDER IN THE CIRCUIT
8 COURT IN THE COUNTY WHERE THE EMPLOYER IS LOCATED.

9 (H) IF AN EMPLOYEE PREVAILS IN AN ACTION BROUGHT UNDER
10 SUBSECTION (G) OF THIS SECTION, THE EMPLOYEE MAY BE ENTITLED TO ACTUAL
11 DAMAGES AND REASONABLE ATTORNEY'S FEES AND COURT COSTS OF THE
12 EMPLOYEE.

13 3-1309.

14 (A) IN THIS SECTION, "ADVERSE ACTION" INCLUDES:

15 (1) DISCHARGE;

16 (2) DEMOTION;

17 (3) THREATENING THE EMPLOYEE WITH DISCHARGE OR DEMOTION;

18 AND

19 (4) ANY OTHER RETALIATORY ACTION THAT RESULTS IN A CHANGE
20 TO THE TERMS OR CONDITIONS OF EMPLOYMENT THAT WOULD DISSUADE A
21 REASONABLE EMPLOYEE FROM EXERCISING A RIGHT UNDER THIS SUBTITLE.

22 (B) A PERSON MAY NOT INTERFERE WITH THE EXERCISE OF OR THE
23 ATTEMPT TO EXERCISE ANY RIGHT GIVEN UNDER THIS SUBTITLE.

24 (C) AN EMPLOYER MAY NOT:

25 (1) TAKE ADVERSE ACTION OR DISCRIMINATE AGAINST AN EMPLOYEE
26 BECAUSE THE EMPLOYEE EXERCISES IN GOOD FAITH THE RIGHTS PROTECTED
27 UNDER THIS SUBTITLE;

28 (2) INTERFERE WITH, RESTRAIN, OR DENY THE EXERCISE BY AN
29 EMPLOYEE OF ANY RIGHT PROVIDED FOR UNDER THIS SUBTITLE; OR

30 (3) APPLY AN ABSENCE CONTROL POLICY THAT INCLUDES PAID TIME

1 OFF ABSENCES AS AN ABSENCE THAT MAY LEAD TO OR RESULT IN AN ADVERSE
2 ACTION BEING TAKEN AGAINST AN EMPLOYEE.

3 (D) THE PROTECTIONS AFFORDED UNDER THIS SUBTITLE SHALL APPLY TO
4 AN EMPLOYEE WHO MISTAKENLY, BUT IN GOOD FAITH, ALLEGES A VIOLATION OF
5 THIS SUBTITLE.

6 3-1310.

7 (A) AN EMPLOYEE MAY NOT IN BAD FAITH:

8 (1) FILE A COMPLAINT WITH THE COMMISSIONER ALLEGING A
9 VIOLATION OF THIS SUBTITLE;

10 (2) BRING AN ACTION UNDER § 3-1308 OF THIS SUBTITLE; OR

11 (3) TESTIFY IN AN ACTION UNDER § 3-1308 OF THIS SUBTITLE.

12 (B) AN EMPLOYEE WHO VIOLATES THIS SECTION IS GUILTY OF A
13 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000.

14 3-1311.

15 THIS SUBTITLE MAY BE CITED AS THE PAID LEAVE COMPROMISE ACT.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
17 measure, is necessary for the immediate preservation of the public health or safety, has
18 been passed by a yea and nay vote supported by three-fifths of all the members elected to
19 each of the two Houses of the General Assembly, and shall take effect from the date it is
20 enacted.