

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 305

Introduced by Crawford, 45; Cavanaugh, 6; Quick, 35.

Read first time January 15, 2019

Committee:

- 1 A BILL FOR AN ACT relating to labor; to adopt the Healthy and Safe
- 2 Families and Workplaces Act; and to provide severability.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known and may be
2 cited as the Healthy and Safe Families and Workplaces Act.

3 Sec. 2. For purposes of the Healthy and Safe Families and
4 Workplaces Act:

5 (1) Commissioner means the Commissioner of Labor;

6 (2) Department means the Department of Labor;

7 (3) Domestic abuse means any behavior within an intimate
8 relationship that causes physical, psychological, or emotional harm to
9 those in the relationship, including behavior that causes the employee
10 fear or concern for his or her own safety or the safety of someone close
11 to the employee or behavior done with the intent to harm or exert control
12 over the employee;

13 (4) Domestic assault means domestic assault in the first, second, or
14 third degree under section 28-323 or any similar crime committed in
15 another state;

16 (5) Employee means any individual employed by an employer who
17 receives compensation from such employer and includes recipients of
18 public benefits who are engaged in work activity as a condition of
19 receiving public assistance. Employee includes both full-time and part-
20 time employees. Employee does not include a minor child employed by his
21 or her parent.

22 (6) Employer includes any individual, partnership, limited liability
23 company, association, corporation, business trust, legal representative,
24 or any organized group of persons employing four or more employees at any
25 one time, excluding any employees who work no more than twenty weeks in
26 any calendar year, but does not include the United States, the State of
27 Nebraska, or any political subdivision thereof;

28 (7) Family member means:

29 (a) A biological, adopted, or foster child, a stepchild, or a legal
30 ward of an employee or the employee's spouse or domestic partner or a
31 person to whom the employee or the employee's spouse or domestic partner

1 stood in loco parentis when such person was a minor child, regardless of
2 the age or dependency status of such child, stepchild, legal ward, or
3 person;

4 (b) A biological, adoptive, or foster parent, a stepparent, or a
5 legal guardian of an employee or the employee's spouse or a person who
6 stood in loco parentis to the employee or the employee's spouse when the
7 employee or the employee's spouse was a minor child;

8 (c) An employee's spouse or domestic partner; or

9 (d) A grandparent, grandchild, or sibling, whether of a biological,
10 foster, adoptive, or step relationship, of the employee or the employee's
11 spouse;

12 (8) Health care professional means any person licensed under federal
13 or state law to provide medical or emergency services, including, but not
14 limited to, doctors, nurses, and emergency room personnel;

15 (9) Paid sick and safe time means time that is compensated at the
16 same hourly rate and with the same benefits, including health care
17 benefits, as the employee normally earns during hours worked and is
18 provided by an employer to an employee for the purposes described in
19 section 4 of this act, but in no case shall the hourly wage be less than
20 that provided under the Wage and Hour Act;

21 (10) Sexual assault means sexual assault under section 28-319 or
22 28-320, sexual assault of a child under section 28-319.01 or 28-320.01,
23 sexual assault by use of an electronic communication device under section
24 28-320.02, or any similar crime committed in another state; and

25 (11) Stalking means stalking under section 28-311.03 or any similar
26 crime committed in another state.

27 Sec. 3. (1) Employees shall accrue a minimum of one hour of paid
28 sick and safe time for every thirty hours worked. Such employees shall
29 not accrue more than forty hours of paid sick and safe time in a calendar
30 year unless the employer selects a higher limit.

31 (2) Employees who are exempt from overtime requirements under 29

1 U.S.C. 213(a)(1) shall be assumed to work forty hours in each work week
2 for purposes of paid sick and safe time accrual unless their normal work
3 week is less than forty hours, in which case paid sick and safe time
4 accrues based upon that normal work week.

5 (3) Paid sick and safe time accrual shall begin at the commencement
6 of employment.

7 (4) Employees shall be entitled to use accrued paid sick and safe
8 time beginning on the sixtieth calendar day following commencement of
9 employment. After the sixtieth calendar day, employees may use paid sick
10 and safe time as it is accrued.

11 (5) Paid sick and safe time shall be carried over to subsequent
12 calendar years, except that an employee's use of paid sick and safe time
13 in each calendar year shall not exceed forty hours unless the employer
14 selects a higher limit.

15 (6) Any employer with a paid leave policy, such as a paid time off
16 policy, who makes available an amount of paid leave which is sufficient
17 to meet the accrual requirements for paid sick and safe time under this
18 section and which may be used for the same purposes and under the same
19 conditions as paid sick and safe time under the Healthy and Safe Families
20 and Workplaces Act is not required to provide additional paid sick and
21 safe time.

22 (7) Nothing in this section shall be construed as requiring
23 financial or other reimbursement to an employee from an employer upon the
24 employee's termination, resignation, retirement, or other separation from
25 employment for accrued paid sick and safe time that has not been used.

26 (8) If an employee is transferred to a separate division, entity, or
27 location, but remains employed by the same employer, the employee shall
28 be entitled to all paid sick and safe time accrued at the prior division,
29 entity, or location and is entitled to use all paid sick and safe time as
30 provided in this section. When there is a separation from employment and
31 the employee is rehired within six months after separation by the same

1 employer, previously accrued paid sick and safe time that had not been
2 used shall be reinstated, and the employee shall be entitled to use
3 accrued paid sick and safe time and accrue additional paid sick and safe
4 time at the recommencement of employment.

5 (9) At its discretion, the employer may loan paid sick and safe time
6 to the employee in advance of accrual by such employee.

7 Sec. 4. (1) An employer shall allow an employee to use paid sick
8 and safe time for:

9 (a) An employee's mental or physical illness, injury, or health
10 condition; an employee's need for medical diagnosis, care, or treatment
11 of a mental or physical illness, injury, or health condition; or an
12 employee's need for preventive medical care;

13 (b) Care of a family member with a mental or physical illness,
14 injury, or health condition; care of a family member who needs medical
15 diagnosis, care, or treatment of a mental or physical illness, injury, or
16 health condition; or care of a family member who needs preventive medical
17 care; or

18 (c) Absence necessary due to domestic abuse, domestic assault,
19 sexual assault, or stalking, regardless of whether a charge has been
20 filed or a conviction has been obtained, if the leave is to allow the
21 employee to obtain any of the following for the employee or the
22 employee's family member:

23 (i) Medical attention needed to recover from physical or
24 psychological injury or disability caused by such domestic abuse,
25 domestic assault, sexual assault, or stalking;

26 (ii) Services from a victim services organization;

27 (iii) Psychological or other counseling;

28 (iv) Relocation due to the domestic abuse, domestic assault, sexual
29 assault, or stalking; or

30 (v) Legal services, including preparing for or participating in any
31 civil or criminal legal proceeding relating to or resulting from the

1 domestic abuse, domestic assault, sexual assault, or stalking.

2 (2) Paid sick and safe time shall be provided upon the oral request
3 of an employee as soon as practicable after the employee is aware of the
4 need for such paid sick and safe time. The request shall include the
5 expected duration of the absence, if reasonably possible.

6 (3) An employer cannot require, as a condition of an employee's
7 taking paid sick and safe time, that the employee search for or find a
8 replacement worker to cover the hours during which the employee is on
9 paid sick and safe time.

10 (4) Accrued paid sick and safe time may be used in the smaller of
11 hourly increments or the smallest increment that the employer's payroll
12 system uses to account for absences or use of other time.

13 (5)(a) If the use of paid sick and safe time exceeds more than three
14 consecutive workdays, an employer may require reasonable documentation
15 that the paid sick and safe time has been used for a purpose described in
16 subsection (1) of this section.

17 (b) Documentation signed by a health care professional indicating
18 that sick time is necessary shall be considered reasonable documentation.

19 (c) The following documentation shall be considered reasonable
20 documentation for absences due to domestic abuse, domestic assault,
21 sexual assault, or stalking:

22 (i) A police report indicating that the employee or his or her
23 family member was a victim of domestic abuse, domestic assault, sexual
24 assault, or stalking;

25 (ii) A court order protecting or separating the employee or his or
26 her family member from the perpetrator of an act of domestic abuse,
27 domestic assault, sexual assault, or stalking or other evidence from the
28 court or prosecuting attorney that the employee or his or her family
29 member has appeared in court or is scheduled to appear in court in a
30 proceeding related to the domestic abuse, domestic assault, sexual
31 assault, or stalking; or

1 (iii) Other documentation signed by an advocate as defined in
2 section 29-4302, an attorney, a police officer, a licensed mental health
3 professional, a medical professional, a social worker, an antiviolence
4 counselor, or a member of the clergy affirming that the employee or his
5 or her family member is a victim of domestic abuse, domestic assault,
6 sexual assault, or stalking.

7 (d) The employee may choose the type of applicable documentation to
8 submit and the employer shall not require more than one type of
9 reasonable documentation for the same incident.

10 (e) An employer shall not require that the documentation explain the
11 nature of the illness or the details of the domestic abuse, domestic
12 assault, sexual assault, or stalking.

13 (f) If required by the employer, the employee shall provide such
14 reasonable documentation to the employer no later than thirty days after
15 the first day of the period of time for which the employee is requesting
16 paid sick and safe time. The employer shall not delay the commencement of
17 paid sick and safe time on the basis that the employer has not yet
18 received the documentation.

19 (6) Any information provided to an employer regarding paid sick and
20 safe time shall be confidential except to the extent that any disclosure
21 of such information is:

22 (a) Requested or consented to in writing by the employee;
23 (b) Otherwise required by federal or state law; or
24 (c) Necessary to prevent a clear and definite danger to other
25 employees.

26 Sec. 5. (1) It shall be unlawful for an employer or any other
27 person to interfere with, restrain, or deny the exercise of, or the
28 attempt to exercise, any right protected under the Healthy and Safe
29 Families and Workplaces Act.

30 (2) An employer shall not take retaliatory personnel action or
31 discriminate against an employee because the employee has exercised

1 rights protected under the act. Such rights include, but are not limited
2 to, the right to use paid sick and safe time pursuant to the act, the
3 right to file a complaint or inform any person about any employer's
4 alleged violation of the act, the right to cooperate with the department
5 in its investigations of alleged violations of the act, and the right to
6 inform any person of his or her potential rights under the act.

7 (3) It is unlawful for an employer's absence control policy to count
8 paid sick and safe time taken under the act as an absence that may lead
9 to or result in discipline, discharge, demotion, suspension, or any other
10 adverse action.

11 (4) Protections under this section shall apply to any person who
12 mistakenly but in good faith alleges violations of the act.

13 Sec. 6. Employers shall give notice at the time of hire that
14 employees are entitled to paid sick and safe time, the amount of paid
15 sick and safe time, the terms of use for paid sick and safe time
16 guaranteed under the Healthy and Safe Families and Workplaces Act, that
17 retaliation against employees who request or use paid sick and safe time
18 is prohibited, and that each employee has the right to file a complaint
19 or bring a civil action if paid sick and safe time is denied by the
20 employer or the employee is retaliated against for exercising his or her
21 rights under the act.

22 Sec. 7. (1) An employee or other person may report to the
23 commissioner any suspected violation of the Healthy and Safe Families and
24 Workplaces Act. The commissioner shall encourage reporting pursuant to
25 this subsection by keeping confidential, to the maximum extent permitted
26 by applicable law, the name and other identifying information of the
27 employee or person reporting the suspected violation, except that with
28 the authorization of such person, the commissioner may disclose the
29 person's name and identifying information as necessary to enforce the act
30 or for other appropriate purposes. The commissioner may summon witnesses
31 and require the production of records, books, and documents for

1 examination in any investigation conducted by the department pursuant to
2 this section. The commissioner shall assess an administrative penalty
3 against an employer when an investigation reveals that the employer
4 violated the act. The administrative penalty shall be not more than five
5 hundred dollars in the case of a first violation and not more than five
6 thousand dollars in the case of a second or subsequent violation. The
7 commissioner shall notify the employer of the proposed administrative
8 penalty by certified mail or any other manner of delivery by which the
9 United States Postal Service can verify delivery. The employer shall have
10 fifteen working days after the date the commissioner sends notification
11 of the penalty to contest such penalty. Notice of contest shall be sent
12 to the commissioner who shall provide a hearing in accordance with the
13 Administrative Procedure Act.

14 (2) Any person aggrieved by a violation of the Health and Safe
15 Families and Workplaces Act or any entity, a member of which is aggrieved
16 by a violation of the act, may bring a civil action in a court of
17 competent jurisdiction against an employer who violates the act. The
18 action may be brought without first filing an administrative complaint.
19 Upon prevailing in an action brought pursuant to this subsection, an
20 aggrieved person shall recover:

21 (a) The full amount of any unpaid sick and safe time; and
22 (b) Attorney's fees and costs associated with the action.

23 Sec. 8. (1) Nothing in the Healthy and Safe Families and Workplaces
24 Act shall be construed to discourage or prohibit an employer from the
25 adoption or retention of a paid sick and safe time policy that is more
26 generous than the policy required by the act.

27 (2) The act provides minimum requirements pertaining to paid sick
28 and safe time and shall not be construed to preempt, limit, or otherwise
29 affect the applicability of any other law, rule, regulation, requirement,
30 policy, contract, or standard that provides for greater accrual or use by
31 employees of sick and safe time, whether paid or unpaid, or that extends

1 other protections to employees.

2 Sec. 9. The department shall administer and enforce the Healthy and
3 Safe Families and Workplaces Act and may adopt and promulgate rules and
4 regulations to carry out the purposes of the act.

5 Sec. 10. If any section in this act or any part of any section is
6 declared invalid or unconstitutional, the declaration shall not affect
7 the validity or constitutionality of the remaining portions.