

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 844

Introduced by Crawford, 45; Ebke, 32; Hansen, 26; Howard, 9; Pansing
Brooks, 28; Quick, 35; Walz, 15.

Read first time January 04, 2018

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 assault means domestic assault in the first, second, or
8 third degree under section 28-323 or any similar crime committed in
9 another state;

10 (4) Employee means any individual employed by an employer who
11 receives compensation from such employer and includes recipients of
12 public benefits who are engaged in work activity as a condition of
13 receiving public assistance. Employee includes both full-time and part-
14 time employees. Employee does not include:

15 (a) A minor child employed by his or her parent; or

16 (b) Any individual employed in agricultural labor as described in
17 section 48-602;

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

24 (6) Family member means:

25 (a) A biological, foster, or adopted child, a stepchild, a legal
26 ward, or a child to whom the employee stands in loco parentis;

27 (b) A biological, foster, or adoptive parent, a stepparent, or a
28 legal guardian of an employee or an employee's spouse or a person who
29 stood in loco parentis to an employee or an employee's spouse when the
30 employee or the employee's spouse was a child; or

31 (c) A person to whom the employee is legally married;

1 (7) Health care professional means any person licensed under federal
2 or state law to provide medical or emergency services, including, but not
3 limited to, doctors, nurses, and emergency room personnel;

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

10 (9) Sexual assault means sexual assault under section 28-319 or
11 28-320, sexual assault of a child under section 28-319.01 or 28-320.01,
12 sexual assault by use of an electronic communication device under section
13 28-320.02, or any similar crime committed in another state; and

14 (10) Stalking means stalking under section 28-311.03 or any similar
15 crime from another state.

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

20 (2) Employees who are exempt from overtime requirements under 29
21 U.S.C. 213(a)(1) shall be assumed to work forty hours in each work week
22 for purposes of paid sick and safe time accrual unless their normal work
23 week is less than forty hours, in which case paid sick and safe time
24 accrues based upon that normal work week.

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

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

31 (5) Paid sick and safe time shall be carried over to subsequent

1 calendar years, except that an employee's use of paid sick and safe time
2 in each calendar year shall not exceed forty hours unless the employer
3 selects a higher limit.

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

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

15 (8) If an employee is transferred to a separate division, entity, or
16 location, but remains employed by the same employer, the employee shall
17 be entitled to all paid sick and safe time accrued at the prior division,
18 entity, or location and is entitled to use all paid sick and safe time as
19 provided in this section. When there is a separation from employment and
20 the employee is rehired within six months after separation by the same
21 employer, previously accrued paid sick and safe time that had not been
22 used shall be reinstated, and the employee shall be entitled to use
23 accrued paid sick and safe time and accrue additional paid sick and safe
24 time at the recommencement of employment.

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

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

29 (a) An employee's mental or physical illness, injury, or health
30 condition; an employee's need for medical diagnosis, care, or treatment
31 of a mental or physical illness, injury, or health condition; or an

1 employee's need for preventive medical care;

2 (b) Care of a family member with a mental or physical illness,
3 injury, or health condition; care of a family member who needs medical
4 diagnosis, care, or treatment of a mental or physical illness, injury, or
5 health condition; or care of a family member who needs preventive medical
6 care; or

7 (c) Absence necessary due to domestic assault, sexual assault, or
8 stalking, regardless of whether a charge has been filed or a conviction
9 has been obtained, if the leave is to allow the employee to obtain any of
10 the following for the employee or the employee's family member:

11 (i) Medical attention needed to recover from physical or
12 psychological injury or disability caused by such domestic assault,
13 sexual assault, or stalking;

14 (ii) Services from a victim services organization;

15 (iii) Psychological or other counseling;

16 (iv) Relocation due to the domestic assault, sexual assault, or
17 stalking; or

18 (v) Legal services, including preparing for or participating in any
19 civil or criminal legal proceeding relating to or resulting from the
20 domestic assault, sexual assault, or stalking.

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

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

31 (4) An employer cannot require, as a condition of an employee's

1 taking paid sick and safe time, that the employee search for or find a
2 replacement worker to cover the hours during which the employee is on
3 paid sick and safe time.

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

7 (6)(a) If the use of paid sick and safe time exceeds more than three
8 consecutive workdays, an employer may require reasonable documentation
9 that the paid sick and safe time has been used for a purpose described in
10 subsection (1) of this section.

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

13 (c) The following documentation shall be considered reasonable
14 documentation for absences due to domestic assault, sexual assault, or
15 stalking:

16 (i) A police report indicating that the employee or his or her
17 family member was a victim of domestic assault, sexual assault, or
18 stalking;

19 (ii) A court order protecting or separating the employee or his or
20 her family member from the perpetrator of an act of domestic assault,
21 sexual assault, or stalking or other evidence from the court or
22 prosecuting attorney that the employee or his or her family member has
23 appeared in court or is scheduled to appear in court in a proceeding
24 related to the domestic assault, sexual assault, or stalking; and

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

31 (d) The employee may choose the type of applicable documentation to

1 submit and the employer shall not require more than one type of
2 reasonable documentation for the same incident.

3 (e) An employer shall not require that the documentation explain the
4 nature of the illness or the details of the violence.

5 (f) The employee shall provide such reasonable documentation to the
6 employer no later than thirty days after the first day of the period of
7 time for which the employee is requesting paid sick and safe time. The
8 employer shall not delay the commencement of paid sick and safe time on
9 the basis that the employer has not yet received the documentation.

10 (7) Any information provided to an employer regarding paid sick and
11 safe time shall be confidential except to the extent that any disclosure
12 of such information is:

13 (a) Requested or consented to in writing by the employee;

14 (b) Otherwise required by federal or state law; or

15 (c) Necessary to prevent a clear and definite danger to other
16 employees.

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

21 (2) An employer shall not take retaliatory personnel action or
22 discriminate against an employee because the employee has exercised
23 rights protected under the act. Such rights include, but are not limited
24 to, the right to use paid sick and safe time pursuant to the act, the
25 right to file a complaint or inform any person about any employer's
26 alleged violation of the act, the right to cooperate with the department
27 in its investigations of alleged violations of the act, and the right to
28 inform any person of his or her potential rights under the act.

29 (3) It is unlawful for an employer's absence control policy to count
30 paid sick and safe time taken under the act as an absence that may lead
31 to or result in discipline, discharge, demotion, suspension, or any other

1 adverse action.

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

4 Sec. 6. Employers shall give notice at the time of hire that
5 employees are entitled to paid sick and safe time, the amount of paid
6 sick and safe time, the terms of use for paid sick and safe time
7 guaranteed under the Healthy and Safe Families and Workplaces Act, that
8 retaliation against employees who request or use paid sick and safe time
9 is prohibited, and that each employee has the right to file a complaint
10 or bring a civil action if paid sick and safe time is denied by the
11 employer or the employee is retaliated against for exercising his or her
12 rights under the act.

13 Sec. 7. (1) An employee or other person may report to the
14 commissioner any suspected violation of the Healthy and Safe Families and
15 Workplaces Act. The commissioner shall encourage reporting pursuant to
16 this subsection by keeping confidential, to the maximum extent permitted
17 by applicable law, the name and other identifying information of the
18 employee or person reporting the suspected violation, except that with
19 the authorization of such person, the commissioner may disclose the
20 person's name and identifying information as necessary to enforce the act
21 or for other appropriate purposes. The commissioner may summon witnesses
22 and require the production of records, books, and documents for
23 examination in any investigation conducted by the department pursuant to
24 this section. The commissioner shall assess an administrative penalty
25 against an employer when an investigation reveals that the employer
26 violated the act. The administrative penalty shall be not more than five
27 hundred dollars in the case of a first violation and not more than five
28 thousand dollars in the case of a second or subsequent violation. The
29 commissioner shall notify the employer of the proposed administrative
30 penalty by certified mail or any other manner of delivery by which the
31 United States Postal Service can verify delivery. The employer shall have

1 fifteen working days after the date the commissioner sends notification
2 of the penalty to contest such penalty. Notice of contest shall be sent
3 to the commissioner who shall provide a hearing in accordance with the
4 Administrative Procedure Act.

5 (2) Any person aggrieved by a violation of the Health and Safe
6 Families and Workplace Act or any entity, a member of which is aggrieved
7 by a violation of the act, may bring a civil action in a court of
8 competent jurisdiction against an employer who violates the act. The
9 action may be brought without first filing an administrative complaint.
10 Upon prevailing in an action brought pursuant to this subsection, an
11 aggrieved person shall recover:

12 (a) The full amount of any unpaid sick and safe time; and

13 (b) Attorney's fees and costs associated with the action.

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

18 (2) The act provides minimum requirements pertaining to paid sick
19 and safe time and shall not be construed to preempt, limit, or otherwise
20 affect the applicability of any other law, rule, regulation, requirement,
21 policy, contract, or standard that provides for greater accrual or use by
22 employees of sick and safe time, whether paid or unpaid, or that extends
23 other protections to employees.

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

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