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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 657 Session of  
2021

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FEBRUARY 24, 2021

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, FEBRUARY 24, 2021

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AN ACT

1 Establishing public health emergency leave.

2 TABLE OF CONTENTS

3 Chapter 1. Preliminary Provisions

4 Section 101. Short title.

5 Section 102. Definitions.

6 Chapter 3. Emergency Leave

7 Section 301. Establishment of public health emergency leave.

8 Section 302. Notice.

9 Section 303. Ongoing threat.

10 Section 304. Use of public health emergency leave.

11 Section 305. Additional leave.

12 Section 306. Subrogation.

13 Section 308. Overtime.

14 Section 309. Termination.

15 Chapter 5. Enforcement

16 Section 501. Duties of department.

1 Section 502. Enforcement.  
2 Section 503. Exercise of rights protected and retaliation  
3 prohibited.  
4 Section 504. Notice and posting.  
5 Chapter 7. Administration  
6 Section 701. Employer records.  
7 Section 702. Confidentiality and nondisclosure.  
8 Section 703. No effect on more generous policies or laws.  
9 Section 704. Other legal requirements.  
10 Section 705. Public education and outreach.  
11 Section 706. Severability.  
12 Section 707. Effective date.

13 The General Assembly of the Commonwealth of Pennsylvania  
14 hereby enacts as follows:

15 CHAPTER 1

16 PRELIMINARY PROVISIONS

17 Section 101. Short title.

18 This act shall be known and may be cited as the Public Health  
19 Emergency Leave Act.

20 Section 102. Definitions.

21 The following words and phrases when used in this act shall  
22 have the meanings given to them in this section unless the  
23 context clearly indicates otherwise:

24 "Department." The Department of Labor and Industry of the  
25 Commonwealth.

26 "Employee." An individual who is employed by an employer  
27 doing business in this Commonwealth.

28 "Employer." As defined in the act of January 17, 1968  
29 (P.L.11, No.5), known as The Minimum Wage Act of 1968.

30 "Family member." Any of the following:

1 (1) A biological, adopted or foster child, stepchild or  
2 legal ward, a child of a domestic partner or a child to whom  
3 the employee stands in loco parentis, regardless of age.

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

9 (3) A person to whom the employee is legally married  
10 under the laws of any state or a domestic partner of an  
11 employee as registered under the laws of any state or  
12 political subdivision.

13 (4) A grandparent, grandchild or sibling, whether of a  
14 biological, foster, adoptive or step relationship, of the  
15 employee or the employee's spouse or domestic partner.

16 (5) A person for whom the employee is responsible for  
17 providing or arranging care, including helping that  
18 individual obtain diagnostic, preventive, routine or  
19 therapeutic health treatment.

20 (6) Any other individual related by blood or whose close  
21 association with the employee is the equivalent of a family  
22 relationship.

23 "Health care professional." A health care center or person,  
24 including a corporation, university or other educational  
25 institution licensed or approved by the Commonwealth to provide  
26 health care or professional medical services as a physician,  
27 certified nurse midwife, podiatrist, hospital, nursing home or  
28 birth center or any other person licensed under Federal or State  
29 law to provide medical or emergency services.

30 "Paid sick time." Time that is compensated at the same

1 hourly rate and with the same benefits, including health care  
2 benefits, as the employee normally earns during hours worked and  
3 is provided by an employer to an employee for the purposes of  
4 section 301, but in no case shall this hourly amount be less  
5 than the hourly amount under The Minimum Wage Act of 1968.

6 "Public health emergency." A threat to public health or  
7 sufficient threat to be the subject of an emergency or disaster  
8 declaration made by a Federal, State or local official with the  
9 authority to declare the emergency.

10 "Public health emergency leave." Paid sick leave which must  
11 be provided by an employer to an employee affected by a public  
12 health emergency.

13 "Retaliatory personnel action." Denial of a right guaranteed  
14 under this act or any actual or threatened discharge,  
15 suspension, demotion, reduction of hours, reporting an  
16 employee's suspected citizenship or immigration status, or the  
17 suspected citizenship or immigration status of a family member  
18 of the employee to a Federal, State or local department, or any  
19 other adverse action against an employee for the exercise of any  
20 right guaranteed herein, including any sanctions against an  
21 employee who is the recipient of public benefits for rights  
22 guaranteed under this act. Retaliation includes interference  
23 with or punishment for in any manner participating in or  
24 assisting an investigation, proceeding or hearing under this  
25 act.

26 CHAPTER 3

27 EMERGENCY LEAVE

28 Section 301. Establishment of public health emergency leave.

29 (a) Requirement.--Each employer of the Commonwealth shall  
30 provide paid sick time to employees whose residence or

1 employment is affected by a public health emergency. An employer  
2 shall provide the paid sick time in addition to any other leave  
3 benefits available to employees by contract or policy. Public  
4 health emergency leave shall be made available in accordance  
5 with the following:

6 (1) An employee who normally works 40 or more hours in a  
7 week shall be provided at least 112 hours of paid sick time.

8 (2) An employee who works fewer than 40 hours in a week  
9 shall be provided an amount of paid sick time equal to the  
10 amount of time the employee is otherwise scheduled to work or  
11 works on average in a 14-day period.

12 (b) Immediate provisions.--The public health emergency leave  
13 required in subsection (a) shall be provided to employees  
14 immediately for the use of employees under section 304,  
15 regardless of how long the employee has been employed.

16 (c) Usage.--An employee may use public health emergency  
17 leave from the first date of the emergency or disaster  
18 declaration until two weeks following the termination of the  
19 declaration.

20 Section 302. Notice.

21 Immediately after a declaration of a public health emergency  
22 within the Commonwealth, an employer shall provide notice to all  
23 employees of the eligibility to receive public health emergency  
24 leave if the employee's residence or place of employment is part  
25 of the area affected by the public health emergency.

26 Section 303. Ongoing threat.

27 If a public health emergency was declared before and remains  
28 in effect on the effective date of this act, public health  
29 emergency leave under this act shall be:

30 (1) provided to employees under section 301 on the

1 effective date of this section; and

2 (2) made available retroactively to employees employed  
3 on the effective date of this section.

4 Section 304. Use of public health emergency leave.

5 (a) Uses.--Nothing in this act shall be construed to require  
6 an employee to use public health emergency leave if the employee  
7 is able to perform work remotely. An employee may elect to use  
8 public health emergency leave for any of the following purposes  
9 regardless of the ability to work remotely:

10 (1) To care for oneself because:

11 (i) The employee is diagnosed with a communicable  
12 illness related to a public health emergency.

13 (ii) The employee is experiencing symptoms of a  
14 communicable illness related to a public health  
15 emergency.

16 (iii) To seek or obtain medical diagnosis, care or  
17 treatment if experiencing symptoms of a communicable  
18 illness related to a public health emergency.

19 (iv) To seek preventive care concerning a  
20 communicable illness related to a public health  
21 emergency.

22 (2) To care for a family member who:

23 (i) Is self-isolating due to being diagnosed with a  
24 communicable illness related to a public health  
25 emergency.

26 (ii) Is self-isolating due to experiencing symptoms  
27 of a communicable illness related to a public health  
28 emergency.

29 (iii) Needs medical diagnosis, care or treatment if  
30 experiencing symptoms of a communicable illness related

1 to a public health emergency.

2 (iv) Is seeking preventive care concerning a  
3 communicable illness related to a public health  
4 emergency.

5 (3) To adhere to a determination by a Federal, State or  
6 local public official, a health authority having jurisdiction  
7 or a health care provider that the employee's presence on the  
8 job or in the community would jeopardize the health of others  
9 because of the employee's exposure to a communicable illness  
10 or exhibiting of symptoms, regardless of whether the employee  
11 has been diagnosed with a communicable illness.

12 (4) To provide care to a family member due to a  
13 determination by a Federal, State or local public official, a  
14 health authority having jurisdiction or a health care  
15 provider that the family member's presence on the job or in  
16 the community would jeopardize the health of others because  
17 of the family member's exposure to a communicable illness or  
18 exhibiting of symptoms, regardless of whether the family  
19 member has been diagnosed with a communicable illness.

20 (5) Closure of the employee's place of business by order  
21 of a Federal, State or local public official or health  
22 authority or at the discretion of the employer due to a  
23 public health emergency.

24 (6) An employee's inability to work or telework while  
25 under an individual or general Federal, State or local  
26 quarantine or isolation order, including a shelter-in-place  
27 order, related to the public health emergency.

28 (7) Care of a child or other family member when the care  
29 provider of the individual is unavailable due to a public  
30 health emergency or if the child's or family member's school

1 or place of care has been closed by a Federal, State or local  
2 public official or at the discretion of the school or place  
3 of care due to a public health emergency, including if a  
4 school or place of care is physically closed but providing  
5 instruction remotely.

6 (b) Notice.--The employee shall provide notice to the  
7 employer of the need for paid sick time as practicable only when  
8 the need for paid sick time is foreseeable and the employer's  
9 place of business has not been closed.

10 (c) Limitations.--An employer may not require, as a  
11 condition of an employee's taking paid sick time, that the  
12 employee search for or find a replacement worker to cover the  
13 hours during which the employee is using paid sick time.

14 (d) Increments.--Paid sick time may be used in the smaller  
15 of hourly increments or the smallest increment that the  
16 employer's payroll system uses to account for absences or use of  
17 other time.

18 (e) Documentation.--Documentation may not be required for  
19 paid sick time under this act.

20 Section 305. Additional leave.

21 If an employee is entitled to paid sick time under Federal  
22 law for any of the purposes under this act, paid sick time under  
23 this act shall be in addition to that paid sick leave to the  
24 extent permitted by Federal law.

25 Section 306. Subrogation.

26 An employer may not require an employee to use other paid  
27 leave provided by the employer to the employee before the  
28 employee uses the public health emergency leave under this act.

29 Section 307. Overtime.

30 Employees who are exempt from overtime requirements under 29



1 U.S.C. § 213(a) (1) (relating to exemptions) of the Fair Labor  
2 Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. § 201 et seq.)  
3 will be assumed to work 40 hours in each work week for purposes  
4 of paid sick time under this act unless their normal work week  
5 is less than 40 hours, in which case paid sick time under this  
6 act is based upon that normal work week.

7 Section 308. Termination.

8 Nothing in this section shall be construed as requiring  
9 financial or other reimbursement to an employee from an employer  
10 upon the employee's termination, resignation, retirement or  
11 other separation from employment for paid sick time that has not  
12 been used.

13 CHAPTER 5

14 ENFORCEMENT

15 Section 501. Duties of department.

16 The department shall:

17 (1) Have authority to enforce this act.

18 (2) Be authorized to coordinate implementation and  
19 enforcement of this act.

20 (3) Promulgate appropriate guidelines or regulations for  
21 this act.

22 (4) Post the regulations and information about the  
23 rights and duties of employees and employers under this act  
24 on the department's publicly accessible Internet website.

25 Section 502. Enforcement.

26 This act shall be enforced under section 9 of the act of  
27 January 17, 1968 (P.L.11, No.5), known as The Minimum Wage Act  
28 of 1968.

29 Section 503. Exercise of rights protected and retaliation  
30 prohibited.

1 The following apply:

2 (1) It shall be unlawful for an employer or any other  
3 person to interfere with, restrain or deny the exercise of or  
4 the attempt to exercise any right protected under this act.

5 (2) An employer may not take retaliatory personnel  
6 action or discriminate against an employee or former employee  
7 because the person has exercised rights protected under this  
8 act. These rights include the following:

9 (i) The right to request or use paid sick time under  
10 this act.

11 (ii) The right to file a complaint with the  
12 department or courts or inform any person about any  
13 employer's alleged violation of this act.

14 (iii) The right to participate in an investigation,  
15 hearing or proceeding or cooperate with or assist the  
16 department in its investigations of alleged violations of  
17 this act.

18 (iv) The right to inform any person of his or her  
19 potential rights under this act.

20 (3) It shall be unlawful for an employer's absence  
21 control policy to count paid sick time taken under this act  
22 as an absence that may lead to or result in discipline,  
23 discharge, demotion, suspension or any other adverse action.

24 (4) Protections of this section shall apply to any  
25 person who mistakenly, but in good faith, alleges violations  
26 of this act.

27 (5) There shall be a rebuttable presumption of unlawful  
28 retaliatory personnel action under this section whenever an  
29 employer takes adverse action against a person within 90 days  
30 of when that person:

1 (i) files a complaint with the department or a court  
2 alleging a violation of any provision of this act;

3 (ii) informs any person about an employer's alleged  
4 violation of this act;

5 (iii) cooperates with the department or other  
6 persons in the investigation or prosecution of any  
7 alleged violation of this act;

8 (iv) opposes any policy, practice or act that is  
9 unlawful under this act; or

10 (v) informs any person of his or her rights under  
11 this act.

12 Section 504. Notice and posting.

13 (a) Notice.--Unless an employer's place of business is  
14 closed due to a public health emergency, an employer shall give  
15 employees written notice of their rights under this act, at the  
16 commencement of employment or by the effective date of this  
17 section, whichever is later, and annually thereafter. The notice  
18 shall contain the following information:

19 (1) That employees are entitled to public health  
20 emergency leave.

21 (2) The amount of public health emergency leave  
22 guaranteed under this act.

23 (3) The terms of use of public health emergency leave  
24 guaranteed under this act.

25 (4) That retaliatory personnel action against employees  
26 who request or use public health emergency leave is  
27 prohibited.

28 (5) That each employee has the right to file a complaint  
29 or bring a civil action if public health emergency leave as  
30 required by this act is denied by the employer or the

1 employee is subjected to retaliatory personnel action for  
2 requesting or taking public health emergency leave.

3 (6) The contact information for the department where  
4 questions about rights and responsibilities under this act  
5 can be answered.

6 (b) Languages.--The notice required in subsection (a) shall  
7 be in English, Spanish and any other language that is the first  
8 language spoken by at least 20% of the employer's workforce, if  
9 the notice has been translated and provided by the department.

10 (c) Amount available.--The amount of paid sick time  
11 available to the employee, the amount of paid sick time taken by  
12 the employee to date in the year and the amount of pay the  
13 employee has received as paid sick time shall be recorded in or  
14 on an attachment to the employee's regular paycheck.

15 (d) Display.--Unless an employer's place of business is  
16 closed due to a public health emergency, an employer shall  
17 display a poster that contains the information required in  
18 subsection (a) in a conspicuous and accessible place in each  
19 establishment where the employees are employed. In cases where  
20 the employer does not maintain a physical workplace, or an  
21 employee telecommutes or performs work through a web-based  
22 platform, notification shall be sent via electronic  
23 communication or a conspicuous posting on the web-based  
24 platform. The poster displayed shall be in English, Spanish and  
25 any language that is deemed appropriate by the department, if  
26 the poster has been provided by the department.

27 (e) Templates.--The department shall create and make  
28 available to employers model notices and posters that contain  
29 the information required under subsection (a) for employers' use  
30 in complying with subsections (a) and (d).

1 (f) Waiver.--If an employee's business is closed due to a  
2 public health emergency, the notice and posting requirements  
3 under subsections (a) and (d) shall be waived for the period in  
4 which the place of business is closed.

5 (g) Violations.--An employer who willfully violates the  
6 notice and posting requirements of this section shall be subject  
7 to a civil fine in an amount not to exceed \$100 for each  
8 separate offense.

9 CHAPTER 7

10 ADMINISTRATION

11 Section 701. Employer records.

12 (a) Records.--For a period of three years, an employer shall  
13 retain records documenting hours worked by employees, paid sick  
14 time and public health emergency leave taken by employees and  
15 allow the department access to these records, with appropriate  
16 notice and at a mutually agreeable time, to monitor compliance  
17 with the requirements of this act.

18 (b) Presumption.--If an issue arises as to an employee's  
19 entitlement to public health emergency leave under this section,  
20 if the employer does not maintain or retain adequate records  
21 documenting hours worked by the employee, paid sick time and  
22 public health emergency leave taken by the employee or does not  
23 allow the department reasonable access to such records, it shall  
24 be presumed that the employer has violated the act, absent clear  
25 and convincing evidence otherwise.

26 Section 702. Confidentiality and nondisclosure.

27 Any health or safety information possessed by an employer  
28 regarding an employee or employee's family member must:

29 (1) be maintained on a separate form and in a separate  
30 file from other personnel information;

1 (2) be treated as confidential medical records; and  
2 (3) not be disclosed except to the affected employee or  
3 with the express permission of the affected employee.

4 Section 703. No effect on more generous policies or laws.

5 Nothing in this act shall be construed as:

6 (1) Discouraging or prohibiting an employer from the  
7 adoption or retention of a paid sick time policy more  
8 generous than the one required in this act.

9 (2) Diminishing the obligation of an employer to comply  
10 with a contract, collective bargaining agreement, employment  
11 benefit plan or other agreement providing more generous paid  
12 sick time to an employee than required under this act.

13 (3) Diminishing the rights of public employees regarding  
14 paid sick time or use of paid sick time as provided in the  
15 laws of this Commonwealth relating to public employees.

16 (4) Superseding any provision of a local law that  
17 provides greater rights to paid sick time than the rights  
18 established under this act.

19 Section 704. Other legal requirements.

20 This act provides minimum requirements pertaining to paid  
21 sick time and may not be construed to preempt, limit or  
22 otherwise affect the applicability of any other law, regulation,  
23 requirement, policy or standard that provides for a greater  
24 amount, accrual or use by employees of paid sick time or that  
25 extends other protections to employees.

26 Section 705. Public education and outreach.

27 The department shall develop and implement a multilingual  
28 outreach program to inform employees, employers, parents, elder  
29 care providers and persons who are under the care of a health  
30 care provider about the availability of public health emergency

1 leave under this act.

2 Section 706. Severability.

3 If any provision of this act or application thereof to any  
4 person or circumstance is judged invalid, the invalidity shall  
5 not affect other provisions or applications of this act which  
6 can be given effect without the invalid provision or  
7 application, and to this end the provisions of this act are  
8 declared severable.

9 Section 707. Effective date.

10 This act shall take effect immediately.