

2017 -- H 5413 SUBSTITUTE A

LC001131/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- HEALTHY AND SAFE FAMILIES
AND WORKPLACES ACT

Introduced By: Representatives Regunberg, Craven, Serpa, Maldonado, and Fogarty

Date Introduced: February 08, 2017

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 28 of the General Laws entitled "LABOR AND LABOR
2 RELATIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 57

4 HEALTHY AND SAFE FAMILIES AND WORKPLACE ACT

5 **28-57-1. Short title.**

6 This chapter shall be known and may be cited as the "Healthy and Safe Families and
7 Workplaces Act."

8 **28-57-2. Legislative purpose.**

9 The purpose of this chapter is to ensure that employees in Rhode Island can address their
10 own health and safety needs, as well as the health and safety needs of their family members, by
11 requiring employers to allow employees to earn a minimum level of paid leave time including
12 time to care for their family members and allow for ease and uniformity of administration for the
13 business community in providing paid leave for their employees.

14 **28-57-3. Definitions.**

15 As used in the chapter, the following words and terms have the following meanings:

16 (1) "Care recipient" means a person for whom the employee is responsible for providing
17 or arranging health or safety related care, including, but not limited to, helping the person obtain
18 diagnostic, preventive, routine, or therapeutic health treatment or ensuring the person is safe

1 following domestic violence, sexual assault or stalking.

2 (2) "Child" means a person as defined in §28-41-34(1).

3 (3) "Department" means the department of labor and training.

4 (4) "Domestic partner" means a party to a civil union as defined in chapter 3.1 of title 15
5 or a person who meets the requirements in §§36-12-1(3)(i) through (3)(v) has the same meaning
6 as that term is defined in §8-8.2-20.

7 (5) "Domestic violence" means certain crimes when committed by one family or
8 household member against another as defined in §12-29-2.

9 (6) "Employee" means any person suffered or permitted to work by an employer, except
10 for those not considered employees as defined in §28-12-2. Independent contractors,
11 subcontractors, work study participants as described pursuant to 42 U.S.C. §2753.23,
12 apprenticeships and interns as defined under FLSA section 3(g) shall not be considered to be
13 employees for the purpose of this chapter.

14 (7) "Employer" means any individual or entity that includes any individual, partnership,
15 association, corporation, business trust, or any person or group of persons acting directly or
16 indirectly in the interest of an employer, in relation to an employee as defined in §28-12-2, but
17 does not include the federal government, and provided that in determining the number of
18 employees performing work for an employer as defined in 29 CFR 791.2 of the Federal Fair
19 Labor Standards Act, 29 U.S.C. §§201 et seq., the total number of employees in that group shall
20 be counted.

21 (8) "Family member" means a child, parent, spouse, mother-in-law, father-in-law,
22 grandparents, grandchildren or, domestic partner, sibling, care recipient, or member of the
23 employee's household.

24 (9) "Health care professional" means any person licensed under federal or Rhode Island
25 law to provide medical or emergency services, including, but not limited to, doctors, nurses, and
26 emergency room personnel.

27 (10) "Paid sick leave time" or "paid sick and safe leave time" means time that is
28 compensated at the same hourly rate and with the same benefits, including health care benefits, as
29 the employee normally earns during hours worked and is provided by an employer to an
30 employee for the purposes described in §28-57-5, but in no case shall the hourly wage paid leave
31 be less than that provided under §28-12-3.

32 (11) "Parent" means a person as defined in §28-41-34(5) or a person as defined in §28-
33 41-34(9).

34 (12) "Sexual assault" means a crime as defined in §§11-37-2, 11-37-4 or 11-37-6.

1 (13) "Sibling" means a brother or a sister, whether related through half blood, whole
2 blood or adoption, a foster sibling, or a step-sibling.

3 (14) "Spouse" means a person as defined in §28-41-34(7).

4 (15) "Stalking" means a crime as described in §§11-59-2 and 11-52-4.2.

5 (16) "Temporary employee" means a person as defined in §28-6.10-2(2)

6 (17) "Seasonal worker" means a person as defined in §28-6.10-2(2)

7 (18) "Year" means a regular and consecutive twelve (12) month period as determined by
8 the employer; except that for the purposes of §28-57-7 of this chapter, "year" means a calendar
9 year.

10 (19) "CCAP family child care provider" means a child care worker as defined in §40-6.6-
11 2(2).

12 **28-57-4. Exemptions.**

13 (a) Nothing in this chapter shall be construed to conflict with the provisions of the Food
14 Code or the Rules and Regulations pertaining to Reporting Infectious, Environmental and
15 Occupational Diseases.

16 (b) Any employer with a paid leave time off policy or paid sick and safe leave policy who
17 makes available at least twenty-four (24) hours during the calendar years of 2018, thirty-two (32)
18 hours during calendar year 2019 and up to a maximum of forty (40) hours per year thereafter of
19 paid time off or paid sick and safe leave to employees or any employer who offered unlimited
20 paid time off or paid sick and safe leave is deemed in compliance with section 5 of this chapter,
21 subject to the other provisions of this chapter.

22 (c) Any employer that employs less than eighteen (18) employees as defined in this act is
23 exempt from the provisions of this chapter; provided however, that any employee of the employer
24 shall not be terminated solely based upon the utilization of up to three (3) unpaid sick days in any
25 given year, subject to §28-57-6.

26 (d) Any employer is not required to provide any paid sick and/or safe leave time to any
27 employees that are employed by a municipality or the state.

28 (e) Any employer in the construction industry, as classified as code under the North
29 American Industry Classification System, is not required to provide any paid sick and/or safe
30 leave time to any employees that work under a collective bargaining agreement.

31 (f) Any employee licensed to practice nursing pursuant to chapter 34 of title 5 is not
32 subject to the provisions of this chapter if the employee:

33 (1) Is employed by a health care facility;

34 (2) Is under no obligation to work a regular schedule;

1 (3) Works only when he or she indicates that he or she is available to work and has no
2 obligation to work when he or she does not indicate availability; and

3 (4) Receives higher pay than that paid to an employee of the same health care facility
4 performing the same job on a regular schedule.

5 **28-57-5. Accrual of paid sick and safe leave time.**

6 (a) All employees employed by an employer of eighteen (18) or more employees in
7 Rhode Island shall accrue a minimum of one hour of paid sick and safe leave time for every thirty
8 five (35) hours worked up to a maximum of twenty-four (24) hours during the calendar years of
9 2018, thirty-two (32) hours during calendar year 2019 and up to a maximum of forty (40) hours
10 per year thereafter, unless the employer chooses to provide a higher annual limit in both the
11 accrual, as in §28-57-3(a) and carry/use as in §28-57-3(e). In determining the number of
12 employees who are employed by an employer for compensation, all employees defined in §28-
13 57-3(7) shall be counted.

14 (b) Employees who are exempt from the overtime requirements under 29 USC §213(a)(1)
15 of the Federal Fair Labor Standards Act, 29 U.S.C. §§201 et seq., will be assumed to work forty
16 (40) hours in each work week for purposes of paid sick and safe leave time accrual unless their
17 normal work week is less than forty (40) hours, in which case paid sick and safe leave time
18 accrues based upon that normal work week.

19 (c) Paid sick and safe leave time as provided in this chapter shall begin to accrue at the
20 commencement of employment or pursuant to the law's effective date, whichever is later. An
21 employer may provide all paid sick and safe leave time that an employee is expected to accrue in
22 a year at the beginning of the year.

23 (d) An employer may require a waiting period for newly hired employees of up to ninety
24 (90) work days. During this waiting period, an employee shall accrue earned sick time pursuant to
25 this subchapter, but shall not be permitted to use the earned sick time until after he or she has
26 completed the waiting period.

27 (e) Employer may elect to allow unused sick leave to be carried over into the following
28 year.

29 (f) Nothing in this chapter shall be construed as requiring financial or other
30 reimbursement to an employee from an employer upon the employee's termination, resignation,
31 retirement, or other separation from employment for accrued paid sick and safe leave time that
32 has not been used.

33 (g) If an employee is transferred to a separate division, entity or location within the State,
34 but remains employed by the same employer as defined in 29 CFR 791.2. of the Federal Fair

1 Labor Standards Act, 29 U.S.C. §§201 et seq., the employee is entitled to all paid sick and safe
2 leave time accrued at the prior division, entity or location and is entitled to use all paid sick and
3 safe leave time as provided in this When there is a separation from employment and the employee
4 is rehired within one hundred thirty-five (135) days of separation by the same employer,
5 previously accrued paid sick and safe leave time that had not been used shall be reinstated.
6 Further, the employee shall be entitled to use accrued paid sick and safe leave time and accrue
7 additional sick and safe leave time at the re-commencement of employment.

8 (h) When a different employer succeeds or takes the place of an existing employer, all
9 employees of the original employer who remain employed by the successor employer within the
10 State are entitled to all earned paid sick and safe leave time they accrued when employed by the
11 original employer, and are entitled to use earned paid sick and safe leave time previously accrued.

12 (i) At its discretion, an employer may loan sick and safe leave time to an employee in
13 advance of accrual by such employee.

14 (j) Any employer in the construction industry, as classified as code under the North
15 American Industry Classification System, is not required to provide any paid sick and/or safe
16 leave time to any employees that work under a collective bargaining agreement.

17 (k) Temporary employees shall also mean casual employees, as defined in §28-9.4-
18 2(b)(5), shall be entitled to use accrued paid sick and safe leave time beginning on the one
19 hundred eightieth calendar day following commencement of their employment, unless otherwise
20 permitted by the employer. On and after the one hundred eightieth calendar day of employment,
21 employees may use paid and safe leave time as it is accrued.

22 (l) Seasonal employees, as defined in §28-9.4-2(b)(6), shall be entitled to use accrued
23 paid sick and safe leave time beginning on the one hundred fiftieth calendar day following
24 commencement of their employment, unless otherwise permitted by the employer. On and after
25 the one hundred fiftieth calendar day of employment, employees may use paid and sick and safe
26 leave time as it is accrued.

27 **28-57-6. Use of paid sick and safe leave time.**

28 (a) Paid sick and safe leave time shall be provided to an employee by an employer for:

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

32 (2) Care of a family member with a mental or physical illness, injury or health condition;
33 care of a family member who needs medical diagnosis, care, or treatment of a mental or physical
34 illness, injury or health condition; care of a family member who needs preventive medical care;

1 (3) Closure of the employee's place of business by order of a public official due to a
2 public health emergency or an employee's need to care for a child whose school or place of care
3 has been closed by order of a public official due to a public health emergency, or care for oneself
4 or a family member when it has been determined by the health authorities having jurisdiction or
5 by a health care provider that the employee's or family member's presence in the community may
6 jeopardize the health of others because of their exposure to a communicable disease, whether or
7 not the employee or family member has actually contracted the communicable disease; or

8 (4) Time off needed when the employee or a member of the employee's family is a victim
9 of domestic violence, sexual assault or stalking.

10 (b) Paid sick and safe leave time shall be provided upon the request of an employee. Such
11 request may be made orally, in writing, by electronic means or by any other means acceptable to
12 the employer. When possible, the request shall include the expected duration of the absence.

13 (c) When the use of paid sick and safe leave time is foreseeable, the employee shall
14 provide notice of the need for such time to the employer in advance of the use of the sick and safe
15 leave time and shall make a reasonable effort to schedule the use of sick and safe leave time in a
16 manner that does not unduly disrupt the operations of the employer.

17 (d) An employer that requires notice of the need to use earned paid sick and safe leave
18 time where the need is not foreseeable shall provide a written policy that contains procedures for
19 the employee to provide notice. An employer that has not provided to the employee a copy of its
20 written policy for providing such notice shall not deny earned paid sick and safe leave time to the
21 employee based on non-compliance with such a policy.

22 (e) Unless otherwise in conflict with state or federal law or regulations, an employee may
23 decide how much sick time to use; provided, however, that an employer may set a minimum
24 increment for the use of sick time, not to exceed four (4) hours per day, provided such minimum
25 increment is reasonable under the circumstances.

26 (f) For paid sick and safe leave time of more than three (3) consecutive work days, an
27 employer may require reasonable documentation that the paid sick and safe leave time has been
28 used for a purpose covered by subsection (a) of this section if the employer has notified the
29 employee in writing of this requirement in advance of the employee's use of paid sick and safe
30 time. An employer may not require that the documentation explain the nature of the illness or the
31 details of the domestic violence, sexual assault, or stalking unless required by existing
32 government regulation or law. Nothing in this provision shall be construed to conflict with
33 existing government regulation or law.

34 (1) An employer may require written documentation for an employee's use of earned sick

1 time that occurs within two (2) weeks prior to an employee's final scheduled day of work before
2 termination of employment.

3 (2) Documentation signed by a health care professional indicating that paid sick leave
4 time is necessary shall be considered reasonable documentation under subsection (a) of this
5 section.

6 (3) One of the following, of the employee's choosing, shall be considered reasonable
7 documentation of an absence under subsection (a)(4) of this section:

8 (i) An employee's written statement that the employee or the employee's family member
9 is a victim of domestic violence, sexual assault, or stalking and that the leave taken was for one of
10 the purposes of §28-57-4(a)(4):

11 (ii) A police report indicating that the employee or employee's family member was a
12 victim of domestic violence, sexual assault, or stalking;

13 (iii) A court document indicating that the employee or employee's family member is
14 involved in legal action related to domestic violence, sexual assault, or stalking; or

15 (iv) A signed statement from a victim and witness advocate affirming that the employee
16 or employee's family member is receiving services from a victim services organization or is
17 involved in legal action related to domestic violence, sexual assault, or stalking.

18 (g) An employer's requirements for verification may not result in an unreasonable burden
19 or expense on the employee and may not exceed privacy or verification requirements otherwise
20 established by law.

21 (h) Paid sick and safe leave cannot be used as an excuse to be late for work without an
22 authorized purpose.

23 (i) If an employee is committing fraud or abuse by engaging in an activity that is not
24 consistent with allowable purposes for paid sick and safe leave in this section, an employer may
25 discipline the employee, up to and including termination of employment for misuse of sick leave.

26 (j) If an employee is exhibiting a clear pattern of taking leave on days just before or after
27 a weekend, vacation, or holiday, an employer may discipline the employee for misuse of paid sick
28 and safe leave, unless the employee provides reasonable documentation that the paid sick and
29 safe leave time has been used for a purpose covered by subsection (a) of this section.

30 (k) An employer may not require, as a condition of providing earned paid sick and safe
31 time under this chapter, that the employee search for or find a replacement worker to cover the
32 hours during which the employee is using paid sick and safe leave time. However, if an employee
33 is absent from work for any reason listed in §28-57-4(a) and by mutual consent of the employer
34 and the employee, the employee works an equivalent number of additional hours or shifts during

1 the same or the next pay period as the hours or shifts not worked due to reasons listed in §28-57-
2 4(a), an employee shall not be required to use accrued and earned paid or unpaid sick time for the
3 employee's absence during that time period, and the employer shall not be required to pay for sick
4 time taken during the time period.

5 **28-57-7. Family child care providers.**

6 CCAP family child care providers, shall accrue and may use paid sick and safe leave in
7 the same manner as do employees under this chapter. The implementation, but not the amount, of
8 paid sick and safe leave for CCAP family child care providers shall be a subject of negotiation
9 with director of the department of administration under §40-6.6-4. The department of human
10 services shall promulgate any necessary regulations to implement the requirement of paid sick
11 and safe leave for CCAP family child care providers.

12 **28-57-8 Uniformity.**

13 No municipality shall establish, mandate, or otherwise require an employer to provide
14 benefits in excess of those required under Chapter 28, including paid sick and safe leave to its
15 employees, other than the state paid sick and safe leave requirements, or to apply sick and safe
16 leave policies to statutorily exempt employees and workers.

17 **28-57-9. Regulations.**

18 The department shall coordinate implementation and enforcement of this chapter and
19 shall promulgate appropriate guidelines or regulations for such purposes. All regulations to be
20 drafted by the department pursuant to this act shall be in uniformity/accordance with existing
21 applicable regulations and statutes that govern §28-12-1 et seq.

22 **28-57-10. Enforcement.**

23 (a) Enforcement and notice requirements under §28-57-1 et seq. shall be in accordance
24 with enforcement and notice requirements of §28-12-1 et seq.

25 (b) Any employee or former employee aggrieved by a violation of the provisions of this
26 chapter shall be entitled to the same protections and relief as under of §28-12-1 et seq.

27 (c) An employer who violates this chapter shall be liable for a civil penalty in an amount
28 not less than one hundred dollars (\$100) for the first violation, and each subsequent violation
29 shall be subject to the penalties under of §28-12-1 et seq.

30 **28-57-11. Confidentiality and nondisclosure.**

31 An employer may not require disclosure of details relating to domestic violence, sexual
32 assault, sexual contact or stalking or the details of an employee's or an employee's family
33 member's health information as a condition of providing paid sick and safe leave time under this
34 chapter. If an employer possesses health information or information pertaining to domestic

1 violence, sexual assault, sexual contact, or stalking about an employee or employee's family
2 member, such information shall be treated as confidential and not disclosed except to the affected
3 employee or with the permission of the affected employee.

4 **28-57-12. Greater sick and safe leave policies.**

5 (a) Nothing in this chapter shall be construed in a manner to discourage or prohibit an
6 employer from the adoption of a paid sick and safe leave time policy greater that provides greater
7 rights or benefits than the one required in this chapter.

8 (b) Nothing in this chapter shall be construed as diminishing the obligation of an
9 employer to comply with any contract, collective bargaining agreement, employment benefit plan
10 or other agreement that provides greater sick and safe leave time to an employee than required in
11 this chapter.

12 (c) Nothing in this chapter shall be construed as diminishing the rights of public
13 employees regarding paid sick and safe leave or use of sick and safe leave time as provided in the
14 general laws.

15 **28-57-13. Public education and outreach.**

16 The department shall develop and implement a multilingual outreach program to inform
17 employees, parents, and persons who are under the care of a health care provider about the
18 availability of paid sick and safe leave time under this chapter. This program shall include the
19 distribution of notices and other written materials in English and in all languages spoken by more
20 than five percent (5%) of Rhode Island's population and any language deemed appropriate by the
21 department to all child care and elder care providers, domestic violence shelters or victim services
22 organizations, schools, hospitals, community health centers, and other health care providers.

23 **28-57-14. Allowable substitution of employers' paid sick and safe leave time.**

24 (a) Employers may have different paid leave policies for different groups of employees,
25 so long as all policies meet the minimum requirements of this chapter.

26 (b) Employers that prefer not to track accrual of paid sick and safe leave time over the
27 course of the benefit year may also use the following schedules for providing lump sums of sick
28 leave or paid time off to their employees. Employers using these schedules will be in compliance
29 even if an employee's hours vary from week to week. For employees working an average of:

30 (1) Thirty-seven and one-half (37.5) to forty (40) hours per week, provide eight (8) hours
31 per month for five (5) months;

32 (2) Thirty (30) hours per week, provide five (5) hours per month for eight (8) months

33 (3) Twenty-four (24) hours per week, provide four (4) hours per month for ten (10)
34 months;

1 (4) Twenty (20) hours per week, provide four (4) hours per month for nine (9) months;
2 (5) Sixteen (16) hours per week, provide three (3) hours per month for ten (10) months;
3 (6) Ten (10) hours per week, provide two (2) hours per month for ten (10) months;
4 (7) Five (5) hours per week, provide one hour per month for ten (10) months
5 (e) In the case an employer whose regular work day for full-time employees is less than
6 eight (8) hours per day, if the employer provides five (5) days of paid sick and safe time leave
7 consisting of the number of hours per day that constitute that full-time employee's work day and
8 provides them at the beginning of the year, the employer shall be in compliance with this
9 subsection.

10 **28-57-15. Severability.**

11 If any provision of this chapter or any rule or regulation created under this chapter, or the
12 application of any provision of this chapter to any person or circumstance shall be held invalid by
13 any court of competent jurisdiction, the remainder of the chapter, rule or regulation and the
14 application of such provision to other persons or circumstances shall not be affected thereby. The
15 invalidity of any section or sections or parts of any section of this chapter shall not affect the
16 validity of the remainder of this chapter and to this end the provisions of the chapter are declared
17 to be severable.

18 SECTION 2. This act shall take effect on July 1, 2018.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- HEALTHY AND SAFE FAMILIES
AND WORKPLACES ACT

- 1 This act would require employers with eighteen (18) or more employees to provide three
- 2 (3) paid sick days in 2018, four (4) paid sick days in 2019 and five (5) paid sick days thereafter.
- 3 This act would take effect on July 1, 2018.

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