

2017 -- H 5413 SUBSTITUTE B

LC001131/SUB B

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 WORKPLACES 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) "CCAP family child care provider" means a childcare worker as defined in §40-6.6-
3 2(2).
- 4 (3) "Child" means a person as defined in §28-41-34(1).
- 5 (4) "Department" means the department of labor and training.
- 6 (5) "Domestic partner" means a party to a civil union as defined in chapter 3.1 of title 15
7 or a person who meets the requirements in §§36-12-1(3)(i) through (3)(v) has the same meaning
8 as that term is defined in §8-8.2-20.
- 9 (6) "Domestic violence" means certain crimes when committed by one family or
10 household member against another as defined in §12-29-2.
- 11 (7) "Employee" means any person suffered or permitted to work by an employer, except
12 for those not considered employees as defined in §28-12-2. Independent contractors,
13 subcontractors, work study participants as described pursuant to 42 U.S.C. §2753.23,
14 apprenticeships and interns as defined under FLSA section 3(g) shall not be considered to be
15 employees for the purpose of this act.
- 16 (8) "Employer" means any individual or entity that includes any individual, partnership,
17 association, corporation, business trust, or any person or group of persons acting directly or
18 indirectly in the interest of an employer, in relation to an employee as defined in §28-12-2, but
19 does not include the federal government, and provided that in determining the number of
20 employees performing work for an employer as defined in 29 CFR 791.2. of the Federal Fair
21 Labor Standards Act, 29 U.S.C. §§201 et seq., the total number of employees in that group shall
22 be counted.
- 23 (9) "Family member" means a child, parent, spouse, mother-in-law, father-in-law,
24 grandparents, grandchildren or, domestic partner, sibling, care recipient, or member of the
25 employee's household.
- 26 (10) "Health care professional" means any person licensed under federal or Rhode Island
27 law to provide medical or emergency services, including, but not limited to, doctors, nurses, and
28 emergency room personnel.
- 29 (11) "Paid sick leave time" or "paid sick and safe leave time" means time that is
30 compensated at the same hourly rate and with the same benefits, including health care benefits, as
31 the employee normally earns during hours worked and is provided by an employer to an
32 employee for the purposes described in §28-57-5, but in no case shall the hourly wage paid leave
33 be less than that provided under §28-12-3.
- 34 (12) "Parent" means a person as defined in §28-41-34(5) or a person as defined in §28-

1 41-34(9).

2 (13) "Seasonal employee" means a person as defined in 26 CFR 54.4980H-1(a)(38).

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

4 (15) "Sibling" means a brother or a sister, whether related through half blood, whole
5 blood or adoption, a foster sibling, or a step-sibling.

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

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

8 (18) "Temporary employee" means any person working for, or obtaining employment
9 pursuant to an agreement with any employment agency, placement service, or training school or
10 center.

11 (19) "Unpaid sick time" is time that is used for the purposes described in §28-57-6 of this
12 chapter

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

16 **28-57-4. Exemptions.**

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

20 (b) Any employer with a paid leave time off policy or paid sick and safe leave policy who
21 makes available at least twenty-four (24) hours during calendar year 2018, thirty-two (32) hours
22 during calendar year 2019 and forty (40) hours per calendar year thereafter of paid time off or
23 paid sick and safe leave time to employees or any employer who offers unlimited paid time off or
24 paid sick and safe time is exempt from §28-57-5(a), (b), (c) and (e) of this chapter. Employers
25 that provide at least twenty-four (24) hours during calendar year 2018, thirty-two (32) hours
26 during calendar year 2019 and forty (40) hours per calendar year thereafter of paid sick or safe
27 leave or paid time off that can be used for the purposes consistent with this act at the beginning of
28 each benefit year do not need to track accrual, allow any carry-over, or payout.

29 (c) Any employer that employs less than eighteen (18) employees as defined in this act is
30 exempt from §28-57-5; provided however, that any such employer shall not take an adverse
31 action against an employee of the employer solely based upon the employee's use of up to
32 twenty-four (24) hours during calendar year 2018, thirty-two (32) hours during calendar year
33 2019 and forty (40) hours per calendar year thereafter, subject to §28-57-6 and §28-57-10.

34 (d) Any employer is not required to provide any paid sick and/or safe leave time to any

1 employees that are employed by a municipality or the state.

2 (e) Any employer in the construction industry, as classified as code under the North
3 American Industry Classification System, is not required to provide any paid sick and/or safe
4 leave time to any employees that work under a collective bargaining agreement until July 1, 2018.

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

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

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

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

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

13 **28-57-5. Accrual of paid sick and safe leave time.**

14 (a) All employees employed by an employer of eighteen (18) or more employees in
15 Rhode Island shall accrue a minimum of one hour of paid sick and safe leave time for every thirty
16 five (35) hours worked up to a maximum of twenty-four (24) hours during the calendar year of
17 2018, thirty-two (32) hours during calendar year 2019 and up to a maximum of forty (40) hours
18 per year thereafter, unless the employer chooses to provide a higher annual limit in both accrual
19 and use. In determining the number of employees who are employed by an employer for
20 compensation, all employees defined in §28-57-3(7) shall be counted.

21 (b) Employees who are exempt from the overtime requirements under 29 U.S.C.
22 §213(a)(1) of the Federal Fair Labor Standards Act, 29 U.S.C. §§201 et seq., will be assumed to
23 work forty (40) hours in each work week for purposes of paid sick and safe leave time accrual
24 unless their normal work week is less than forty (40) hours, in which case paid sick and safe leave
25 time accrues based upon that normal work week.

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

30 (d) An employer may require a waiting period for newly hired employees of up to ninety
31 (90) days. During this waiting period, an employee shall accrue earned sick time pursuant to this
32 subchapter or the employer's policy, if exempt under 25-57(4)(b), but shall not be permitted to
33 use the earned sick time until after he or she has completed the waiting period.

34 (e) Paid sick and safe leave time shall be carried over to the following calendar year;

1 however, an employee's use of paid sick and safe leave time provided under this chapter in each
2 calendar year shall not exceed twenty-four (24) hours during calendar year 2018 and thirty-two
3 (32) hours during calendar year 2019 and forty (40) hours per year thereafter. Alternatively, in
4 lieu of carryover of unused earned paid sick and safe leave time from one year to the next, an
5 employer may pay an employee for unused earned paid sick and safe leave time at the end of a
6 year and provide the employee with an amount of paid sick and safe leave that meets or exceeds
7 the requirements of this chapter that is available for the employee's immediate use at the
8 beginning of the subsequent year.

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

13 (g) If an employee is transferred to a separate division, entity or location within the State,
14 but remains employed by the same employer as defined in 29 CFR 791.2. of the Federal Fair
15 Labor Standards Act, 29 U.S.C. §§201 et seq., the employee is entitled to all paid sick and safe
16 leave time accrued at the prior division, entity or location and is entitled to use all paid sick and
17 safe leave time as provided in this act. When there is a separation from employment and the
18 employee is rehired within one hundred thirty-five (135) days of separation by the same
19 employer, previously accrued paid sick and safe leave time that had not been used shall be
20 reinstated. Further, the employee shall be entitled to use accrued paid sick and safe leave time and
21 accrue additional sick and safe leave time at the re-commencement of employment.

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

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

28 (j) Temporary employees shall be entitled to use accrued paid sick and safe leave time
29 beginning on the one hundred eightieth (180) calendar day following commencement of their
30 employment, unless otherwise permitted by the employer. On and after the one hundred eightieth
31 (180) calendar day of employment, employees may use paid and safe leave time as it is accrued.
32 During this waiting period, an employee shall accrue earned sick time pursuant to this chapter,
33 but shall not be permitted to use the earned sick time until after he or she has completed the
34 waiting period.

1 (k) Seasonal employees shall be entitled to use accrued paid sick and safe leave time
2 beginning on the one hundred fiftieth (150) calendar day following commencement of their
3 employment, unless otherwise permitted by the employer. On and after the one hundred fiftieth
4 (150) calendar day of employment, employees may use paid and sick and safe leave time as it is
5 accrued. During this waiting period, an employee shall accrue earned sick time pursuant to this
6 chapter, but shall not be permitted to use the earned sick time until after he or she has completed
7 the waiting period.

8 **28-57-6. Use of paid sick and safe leave time.**

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

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

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

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

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

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

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

32 (d) An employer that requires notice of the need to use earned paid sick and safe leave
33 time where the need is not foreseeable shall provide a written policy that contains procedures for
34 the employee to provide notice. An employer that has not provided to the employee a copy of its

1 written policy for providing such notice shall not deny earned paid sick and safe leave time to the
2 employee based on non-compliance with such a policy.

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

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

15 (1) An employer may require written documentation for an employee's use of earned sick
16 time that occurs within two (2) weeks prior to an employee's final scheduled day of work before
17 termination of employment.

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

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

23 (i) An employee's written statement that the employee or the employee's family member
24 is a victim of domestic violence, sexual assault, or stalking and that the leave taken was for one of
25 the purposes of §28-57-6(a)(4);

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

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

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

33 (g) An employer's requirements for verification may not result in an unreasonable burden
34 or expense on the employee and may not exceed privacy or verification requirements otherwise

1 established by law.

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

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

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

11 (k) An employer may not require, as a condition of providing earned paid sick and safe
12 time under this chapter, that the employee search for or find a replacement worker to cover the
13 hours during which the employee is using paid sick and safe leave time. However, if an employee
14 is absent from work for any reason listed in §28-57-6(a) and by mutual consent of the employer
15 and the employee, the employee works an equivalent number of additional hours or shifts during
16 the same or the next pay period as the hours or shifts not worked due to reasons listed in §28-57-
17 6(a), an employee shall not be required to use accrued and earned paid or unpaid sick time for the
18 employee's absence during that time period, and the employer shall not be required to pay for sick
19 time taken during the time period.

20 **28-57-7. Family child care providers.**

21 CCAP family childcare providers shall accrue and may use paid sick and safe leave in the
22 same manner as do employees under this chapter. The implementation, but not the amount, of
23 paid sick and safe leave for CCAP family child care providers shall be a subject of negotiation
24 with director of the department of administration under §40-6.6-4. The department of human
25 services shall promulgate any necessary regulations to implement the requirement of paid sick
26 and safe leave for CCAP family childcare providers. Nothing in this chapter shall be construed to
27 make CCAP family child care providers' employees of the state for any purpose, including for the
28 purposes of eligibility for the state employee pension program or state employee health benefits.

29 **28-57-8. Uniformity.**

30 No municipality shall establish, mandate, or otherwise require an employer to provide
31 benefits in excess of those required under this chapter, including paid sick and safe leave to its
32 employees, other than the paid sick and safe leave requirements provided by this chapter, or to
33 apply sick and safe leave policies to statutorily exempt employees and workers.

34 **28-57-9. Regulations.**

1 The department shall coordinate implementation and enforcement of this chapter and
2 shall promulgate appropriate guidelines or regulations for such purposes. All regulations to be
3 drafted by the department pursuant to this act shall conform with existing applicable regulations
4 and statutes that govern chapter 12 of title 28.

5 **28-57-10. Enforcement.**

6 (a) Enforcement and notice requirements pursuant to this chapter shall be in accordance
7 with enforcement and notice requirements of chapter 12 of title 28.

8 (b) Any employee or former employee aggrieved by a violation of the provisions of this
9 chapter shall be entitled to the same protections and relief as under chapters 12 and 14 of title 28.

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

13 **28-57-11. Confidentiality and nondisclosure.**

14 An employer may not require disclosure of details relating to domestic violence, sexual
15 assault, sexual contact or stalking or the details of an employee's or an employee's family
16 member's health information as a condition of providing paid sick and safe leave time under this
17 chapter. If an employer possesses health information or information pertaining to domestic
18 violence, sexual assault, sexual contact, or stalking about an employee or employee's family
19 member, such information shall be treated as confidential and not disclosed except to the affected
20 employee or with the permission of the affected employee unless required by existing regulation
21 or statute.

22 **28-57-12. Greater sick and safe leave policies.**

23 (a) Nothing in this chapter shall be construed in a manner to discourage or prohibit an
24 employer from the adoption of a paid sick and safe leave time policy that provides greater rights
25 or benefits than those provided pursuant to this chapter.

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

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

33 **28-57-13. Public education and outreach.**

34 The department shall develop and implement a multilingual outreach program to inform

1 employers, employees, parents, and persons who are under the care of a health care provider
2 about the availability of paid sick and safe leave time under this chapter. This program shall
3 include the distribution of notices and other written materials in English and in all languages
4 spoken by more than five percent (5%) of Rhode Island's population and any language deemed
5 appropriate by the department to all child care and elder care providers, domestic violence
6 shelters or victim services organizations, schools, hospitals, community health centers, and other
7 health care providers.

8 **28-57-14. Allowable substitution of employers' paid sick and safe leave time.**

9 (a) Employers may have different paid leave policies for different groups of employees,
10 provided that all policies meet the minimum requirements of this chapter.

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

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

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

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

20 (4) Twenty (20) hours per week, provide four (4) hours per month for nine (9) months;

21 (5) Sixteen (16) hours per week, provide three (3) hours per month for ten (10) months;

22 (6) Ten (10) hours per week, provide two (2) hours per month for ten (10) months;

23 (7) Five (5) hours per week, provide (one) (1) hour per month for ten (10) months.

24 (e) In the case an employer whose regular work day for full-time employees is less than
25 eight (8) hours per day, if the employer provides five (5) days of paid sick and safe time leave
26 consisting of the number of hours per day that constitute that full-time employee's work day and
27 provides them at the beginning of the year, the employer shall be in compliance with this sub-
28 section.

29 (f) Employers that provide forty (40) or more hours of paid time off or vacation to
30 employees that also may be used as paid sick and safe leave, consistent with this section, shall not
31 be required to provide additional sick leave to employees who use all their time for other
32 purposes and have need of paid sick and safe leave later in the year, provided that the employers'
33 leave policies make clear that additional time will not be provided.

34 **28-57-15. Severability.**

1 If any provision of this chapter or any rule or regulation created under this chapter, or the
2 application of any provision of this chapter to any person or circumstance shall be held invalid by
3 any court of competent jurisdiction, the remainder of the chapter, rule or regulation and the
4 application of such provision to other persons or circumstances shall not be affected thereby. The
5 invalidity of any section or sections or parts of any section of this chapter shall not affect the
6 validity of the remainder of this chapter and to this end the provisions of the chapter are declared
7 to be severable.

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

9 This act would require employers with eighteen (18) or more employees to provide three
10 (3) paid sick days in 2018, four (4) paid sick days in 2019 and five (5) paid sick days thereafter.

11 This act would take effect on July 1, 2018.

=====
LC001131/SUB B
=====