

**SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION**

S.F. No. 331

(SENATE AUTHORS: MURPHY)

DATE
01/25/2021

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Introduction and first reading
Referred to Labor and Industry Policy

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to employment; providing emergency paid sick leave to health care
1.3 employees excluded from the federal Families First Coronavirus Response Act.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. ESSENTIAL WORKERS EMERGENCY LEAVE ACT.

1.6 Subdivision 1. Definitions. (a) For the purposes of this section, the following terms have
1.7 the meanings given them.

1.8 (b) "Child" has the meaning given in United States Code, title 29, section 2611(12).

1.9 (c) "Emergency paid sick leave" means paid leave time provided under this section for
1.10 a reason provided in subdivision 2.

1.11 (d) "Essential worker" means a person who performs services for hire for an employer
1.12 for one day or more, and who:

1.13 (1) qualifies for a Critical Sector exemption under paragraph 6 of Executive Order 20-48
1.14 or any amendments to or replacements thereof;

1.15 (2) is unable to work or telework due to a reason provided in subdivision 2; and

1.16 (3) is not receiving workers' compensation benefits, unemployment insurance benefits,
1.17 or other benefits under state law or federal law or an executive order related to COVID-19
1.18 that wholly compensates the employee for the period of time the employee is unable to
1.19 work or telework due to a reason provided in subdivision 2.

1.20 (e) "Employer" means a person who employs one or more essential workers, including
1.21 a corporation, partnership, limited liability company, association, group of persons, state,

2.1 county, town, city, school district, or governmental subdivision, that has elected to exclude
2.2 such employees from emergency paid sick leave under the federal Families First Coronavirus
2.3 Response Act, Public Law 116-127.

2.4 (f) "Health care provider" has the meaning given in Code of Federal Regulations, title
2.5 29, section 826.30(c).

2.6 (g) "Retaliatory personnel action" means any form of intimidation, threat, reprisal,
2.7 harassment, discrimination, or adverse employment action, including discipline, discharge,
2.8 suspension, transfer, or reassignment to a lesser position in terms of job classification, job
2.9 security, or other condition of employment; reduction in pay or hours or denial of additional
2.10 hours; the accumulation of points under an attendance point system; informing another
2.11 employer that the person has engaged in activities protected by this section; or reporting or
2.12 threatening to report the actual or suspected citizenship or immigration status of an employee,
2.13 former employee, or family member of an employee to a federal, state, or local agency.

2.14 Subd. 2. **Emergency paid sick leave.** An employer shall provide emergency paid sick
2.15 leave to an employee who is unable to work or telework due to any of the following reasons:

2.16 (1) the employee is subject to a federal, state, or local quarantine or isolation order related
2.17 to COVID-19;

2.18 (2) the employee has been advised by a health care provider to self-quarantine due to
2.19 concerns related to COVID-19;

2.20 (3) the employee is experiencing symptoms of COVID-19 and seeking a medical
2.21 diagnosis;

2.22 (4) the employee is caring for an individual who is subject to an order as described in
2.23 clause (1) or has been advised as described in clause (2);

2.24 (5) the employee is caring for a child of the employee if the school or place of care of
2.25 the child has been closed, or the child care provider of the child is unavailable due to
2.26 COVID-19 precautions; or

2.27 (6) the employee is experiencing any other substantially similar condition specified by
2.28 the secretary of the Department of Health and Human Services in consultation with the
2.29 secretary of the Department of the Treasury and the secretary of the Department of Labor.

2.30 Subd. 3. **Duration and use of leave.** (a) An employee shall be entitled to emergency
2.31 paid sick leave as provided under this section for the following number of hours:

2.32 (1) up to 100 hours for an employee who:

- 3.1 (i) the employer considers to work full time;
- 3.2 (ii) works or was scheduled to work on average what are considered full-time hours by
3.3 the employer, including pursuant to any applicable collective bargaining agreement; or
- 3.4 (iii) works or was scheduled to work at least 40 hours per week for the employer on
3.5 average over a two-week period;
- 3.6 (2) a number of hours equal to 1.25 times the number of hours that an employee works
3.7 for the employer on average over a two-week period for any employee who:
- 3.8 (i) the employer considers to work part time;
- 3.9 (ii) works or was scheduled to work on average what are considered part-time hours by
3.10 the employer, including pursuant to any applicable collective bargaining agreement; or
- 3.11 (iii) works or was scheduled to work fewer than 40 hours per week for the employer on
3.12 average over a two-week period; or
- 3.13 (3) 17.5 times the average number of hours an employee worked per day for the employer
3.14 for the previous six months, or for the entire period the employee has worked for the
3.15 employer, whichever is shorter, for an employee who works variable hours and who is not
3.16 covered by clause (1) or (2).
- 3.17 (b) Leave under this section shall be available for use by an employee for a reason listed
3.18 in subdivision 2 beginning the day following final enactment and may be used intermittently,
3.19 provided that any amount of leave taken under this section shall end with the employee's
3.20 next scheduled work shift immediately following the termination of the employee's need
3.21 for leave under a reason provided in subdivision 2.
- 3.22 (c) After the first workday or portion thereof that an employee receives leave under this
3.23 section, an employer may require the employee to follow reasonable notice procedures to
3.24 continue receiving leave.
- 3.25 (d) Leave under this section expires 30 days after a peacetime emergency declared by
3.26 the governor in an executive order that relates to the infectious disease known as COVID-19
3.27 is terminated or rescinded.
- 3.28 Subd. 4. **Amount of compensation.** (a) An employee shall receive compensation for
3.29 each hour of emergency paid sick leave received under this section in an amount that shall
3.30 be the greater of:
- 3.31 (1) the employee's regular rate of pay for the employee's last pay period, including
3.32 pursuant to any collective bargaining agreement that applies;

4.1 (2) the state minimum wage in effect under Minnesota Statutes, section 177.24; or

4.2 (3) the local minimum wage to which the employee is entitled, except that in no event
4.3 shall emergency paid sick time provided under this section exceed \$6,388 in the aggregate.

4.4 (b) Unused or remaining leave under this section shall not carry over past the expiration
4.5 of this section.

4.6 (c) Nothing in this section shall be construed to require financial or other reimbursement
4.7 to an employee from an employer upon the employee's termination, resignation, retirement,
4.8 or other separation from employment for emergency paid sick time under this section that
4.9 has not been used by the employee.

4.10 Subd. 5. **Relationship to other leave.** (a) Except as provided in paragraph (c), emergency
4.11 paid sick leave under this section shall be in addition to any paid or unpaid leave provided
4.12 to an employee by an employer under a collective bargaining agreement, negotiated
4.13 agreement, contract, or any other employment policy.

4.14 (b) An employee may use leave provided under this section first, and except as provided
4.15 in paragraph (c), an employer shall not require an employee to use other paid or unpaid
4.16 leave provided by the employer before the employee uses the leave provided under this
4.17 section or in lieu of the leave provided under this section.

4.18 (c) Notwithstanding paragraphs (a) and (b), if an employer has already provided an
4.19 employee with additional paid leave for any reason provided in subdivision 2, and the leave
4.20 is in addition to the regular amount of paid leave provided by the employer and would
4.21 compensate the employee in an amount equal to or greater than the amount of compensation
4.22 provided under this section, the employer may count the hours of other additional paid leave
4.23 toward the total number of hours of emergency paid sick leave required under this section.

4.24 (d) Nothing in this section shall be deemed:

4.25 (1) to limit the rights of a public employee or employer under any law, rule, regulation,
4.26 or collectively negotiated agreement, or the rights and benefits that accrue to employees
4.27 through collective bargaining agreements, or the rights of employees with respect to any
4.28 other employment benefits; or

4.29 (2) to prohibit any personnel action that otherwise would have been taken regardless of
4.30 a request to use, or use of, any leave provided by this section.

4.31 (e) Nothing in this section shall prevent an employer from providing, or the parties to a
4.32 collective bargaining agreement from agreeing to, leave benefits that meet or exceed and

5.1 do not otherwise conflict with the requirements for emergency paid sick leave under this
5.2 section.

5.3 Subd. 6. **Requirements and enforcement.** (a) An employer shall provide notice to
5.4 employees of the requirements for emergency paid sick leave provided under this section.

5.5 (b) An employer shall not take any retaliatory personnel action against an employee for
5.6 requesting or obtaining emergency paid sick leave under this section or for bringing a
5.7 complaint related to this section, including a proceeding that seeks enforcement of this
5.8 section.

5.9 (c) In addition to any remedies otherwise provided by law, an employee seeking redress
5.10 for a violation of this section may bring a civil action in district court to recover any damages
5.11 recoverable at law, together with costs and disbursements, including reasonable attorney
5.12 fees. An employer who violates this section may be liable for compensatory damages,
5.13 injunctive relief, or other equitable relief as determined by the district court.

5.14 **EFFECTIVE DATE.** This section is effective the day following final enactment and
5.15 applies retroactively to all employees covered by this section as of March 13, 2020, and
5.16 sunsets 30 days after a peacetime emergency declared by the governor in an executive order
5.17 that relates to the infectious disease known as COVID-19 is terminated or rescinded.