

HOUSE BILL NO. 297

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PAID SICK LEAVE; CREATING THE HEALTHY FAMILIES AND WORKPLACES ACT; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; REQUIRING EMPLOYERS OF A CERTAIN SIZE TO PROVIDE A PAID SICK LEAVE POLICY FOR EMPLOYEES; ESTABLISHING AN ACCRUAL AND CARRY FORWARD POLICY; ESTABLISHING AUTHORIZED USES FOR PAID SICK LEAVE; REQUIRING EMPLOYERS TO KEEP RECORDS; REQUIRING CONFIDENTIALITY OF EMPLOYEE INFORMATION REGARDING PAID SICK LEAVE REQUESTS; PROVIDING FOR PROTECTION OF EMPLOYEE RIGHTS; PROHIBITING RETALIATION BY EMPLOYERS; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO ENFORCE THE HEALTHY FAMILIES AND WORKPLACES ACT; PROVIDING FOR EXCEPTIONS FOR EMPLOYERS AND COLLECTIVE BARGAINING AGREEMENTS THAT OFFER SIMILAR POLICIES; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 16] may be cited as the "Healthy Families and Workplaces Act".

NEW SECTION. **Section 2. Purpose.** The legislature declares that it is the purpose of the Healthy Families and Workplaces Act to:

- (1) safeguard the public health, safety, and welfare; and
- (2) establish minimum paid sick leave standards for employees at levels consistent with their health, efficiency, and general well-being.

1 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 16], unless the context
2 clearly indicates otherwise, the following definitions apply:

3 (1) "Commissioner" means the commissioner of the department of labor and industry as provided
4 in 2-15-1701.

5 (2) "Department" means the department of labor and industry as provided in 2-15-1701.

6 (3) "Domestic violence" has the same meaning as provided in 39-51-2111.

7 (4) "Employee" has the same meaning as provided in 39-3-201.

8 (5) "Employer" has the same meaning as provided in 39-3-201.

9 (6) "Family member" means:

10 (a) an individual related to the employee by blood, marriage, civil union, affinity, or adoption;

11 (b) a child for whom the employee exercises parental authority or a person who exercised parental
12 authority for the employee when the employee was a minor; or

13 (c) an individual for whom the employee is responsible for providing or arranging health or safety-
14 related care.

15 (7) (a) (i) "Paid sick leave" means time off from work that is:

16 (A) compensated at the same hourly rate or salary and with the same benefits, including health
17 care benefits, as the employee normally earns during hours worked; and

18 (B) provided by an employer to an employee for one or more of the purposes described in [section
19 6].

20 (ii) As used in subsection (7)(a)(i)(A) of this section:

21 (A) "same hourly rate or salary" does not include overtime, bonuses, or holiday pay;

22 (B) for employees paid on a commission basis only, "same hourly rate or salary" means a rate of
23 no less than the applicable minimum wage;

24 (C) for employees paid an hourly, weekly, or monthly wage who are also paid on a commission
25 basis, "same hourly rate or salary" means the rate of pay equivalent to the employee's hourly, weekly, or
26 monthly wage or the applicable minimum wage, whichever is greater.

27 (b) "Paid sick leave" is "wages" as defined in 39-3-201.

28 (8) "Retaliatory personnel action" means:

1 (a) the denial of any right guaranteed under [sections 1 through 16]; or

2 (b) any adverse action against an employee for exercising any right guaranteed in [sections 1
3 through 16], including:

4 (i) any threat, discipline, discharge, suspension, demotion, reduction of hours, or report or threat
5 to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration
6 status of a family member of the employee to a federal, state, or local agency;

7 (ii) any sanctions against an employee who is the recipient of public benefits for rights guaranteed
8 under [sections 1 through 16]; or

9 (iii) interference with or punishment for participating in or assisting, in any manner, an investigation,
10 proceeding, or hearing under [sections 1 through 16].

11 (9) "Sexual assault" has the same meaning as provided in 39-51-2111.

12 (10) "Year" means a regular and consecutive 12-month period as determined by an employer.

13

14 **NEW SECTION. Section 4. Authority of department -- rulemaking.** The commissioner is
15 authorized to issue, amend, and enforce rules for the purpose of carrying out the provisions of [sections 1
16 through 16].

17

18 **NEW SECTION. Section 5. Paid sick leave -- accrual -- carry forward -- comparable leave**
19 **provided by employer -- no payment for unused leave -- rulemaking.** (1) An employer with 10 or more
20 employees shall provide each employee paid sick leave as provided in this section.

21 (2) (a) Each employee earns at least 1 hour of paid sick leave for every 40 hours worked by the
22 employee, except that an employee is not entitled under this section to earn or use more than 80 hours of paid
23 sick leave each year unless the employer selects a higher limit. An employer may satisfy the accrual
24 requirements of this section by providing the employee with an amount of paid sick leave that meets or exceeds
25 the requirements of this section at the beginning of the year. Nothing in this section discourages or prohibits an
26 employer from providing paid sick leave that accrues at a faster or more generous rate than required by this
27 section.

28 (b) Nothing in [sections 1 through 16] precludes an employer from providing employees more paid

1 sick leave than the amounts specified in this section.

2 (c) An employee who is exempt from overtime required in 39-3-405 accrues paid sick leave based
3 on the assumption that the employee works 40 hours a week. If the employee's normal workweek consists of
4 fewer than 40 hours, the employee accrues paid sick leave based on the number of hours that comprise the
5 employee's normal workweek.

6 (3) (a) An employee begins to accrue paid sick leave when employment with the employer begins
7 and may use accrued paid sick leave as it is accrued.

8 (b) Up to 40 hours of paid sick leave that an employee accrues in a year but does not use carries
9 forward to, and may be used in, a subsequent year, except that an employer is not required to allow the
10 employee to use more than 80 hours of paid sick leave in a year. The maximum number of hours an employee
11 may accrue and carry forward under this section is 80 hours.

12 (4) An employer that has a paid leave policy for its employees may satisfy the requirements of this
13 section and is not required to provide additional paid sick leave to its employees if the employer:

14 (a) makes available to its employees, through its paid leave policy, an amount of paid leave
15 sufficient to meet the accrual requirements of subsection (2)(a); and

16 (b) allows its employees to use the paid leave for the same purposes and under the same
17 conditions as those applicable to paid sick leave under [sections 1 through 16].

18 (5) Nothing in this section requires an employer to provide financial or other reimbursement of
19 unused paid sick leave to an employee on termination, resignation, retirement, or other separation from
20 employment, except that an individual may recover paid sick leave as a remedy for a retaliatory personnel
21 action that prevented the individual from using paid sick leave.

22 (6) The department shall adopt rules regarding compensation and accrual of paid sick leave for
23 employees who are employed and compensated on a fee-for-service basis.

24
25 **NEW SECTION. Section 6. Use of paid sick leave -- purposes -- time increments.** (1) An
26 employer shall allow an employee to use the employee's accrued paid sick leave to be absent from work when:

27 (a) the employee:

28 (i) has a mental or physical illness, injury, or health condition that prevents the employee from

1 working;

2 (ii) needs to obtain a medical diagnosis, care, or treatment for a mental or physical illness, injury,
3 or health condition; or

4 (iii) needs to obtain preventive medical care;

5 (b) the employee needs to care for a family member who:

6 (i) has a mental or physical illness, injury, or health condition;

7 (ii) needs to obtain a medical diagnosis, care, or treatment for a mental or physical illness, injury,
8 or health condition; or

9 (iii) needs to obtain preventive medical care;

10 (c) the employee or the employee's family member has been the victim of domestic violence,
11 sexual assault, or harassment, and the use of leave is to:

12 (i) seek medical attention for the employee or the employee's family member to recover from a
13 mental or physical illness, injury, or health condition caused by the domestic violence, sexual assault, or
14 harassment;

15 (ii) obtain services from a victim services organization;

16 (iii) obtain mental health counseling or other counseling;

17 (iv) seek relocation due to the domestic violence, sexual assault, or harassment; or

18 (v) seek legal services, including preparation for or participation in a civil or criminal proceeding
19 relating to or resulting from the domestic violence, sexual assault, or harassment.

20 (2) Paid sick leave must be used in 1-hour time increments.

21 (3) For paid sick leave of four or more consecutive workdays, an employer may require reasonable
22 documentation that the paid sick leave is for a purpose authorized by this section.

23
24 **NEW SECTION. Section 7. Notice to employees.** (1) Each employer shall notify its employees that
25 they are entitled to paid sick leave pursuant to rules adopted by the department. The rules must require the
26 notice to:

27 (a) specify the amount of paid sick leave to which employees are entitled and the terms of its use
28 under [sections 5 and 6]; and

1 (b) inform employees that employers cannot retaliate against an employee for requesting or using
2 paid sick leave and that an employee has the right to file a complaint or bring a civil action if paid sick leave is
3 denied by the employer or the employer retaliates against the employee for exercising the employee's rights
4 under [section 10].

5 (2) If an employer does not maintain a physical workplace, or an employee teleworks or performs
6 work through a web-based platform, the employer shall provide the notice required in this section through
7 electronic communication or a conspicuous posting in the web-based platform.

8
9 **NEW SECTION. Section 8. Employer records.** (1) An employer shall retain records for each
10 employee for a 2-year period, documenting hours worked, paid sick leave accrued, and paid sick leave used.
11 On appropriate notice and at a mutually agreeable time, the employer shall allow the department access to the
12 records for the purposes of monitoring compliance with [sections 1 through 16].

13 (2) If an issue arises as to an employee's right to paid sick leave and the employer has not
14 maintained or retained adequate records for that employee or does not allow the department reasonable
15 access to the records, the employer must be presumed to have violated [sections 1 through 16] unless the
16 employer demonstrates compliance by a preponderance of the evidence.

17
18 **NEW SECTION. Section 9. Confidentiality of employee information -- definition.** (1) An employer
19 may not require the disclosure of details relating to domestic violence, sexual assault, or harassment or the
20 details of an employee's or an employee's family member's health information as a condition of providing paid
21 sick leave under [sections 1 through 16].

22 (2) Any health or safety information possessed by an employer regarding an employee or an
23 employee's family member:

24 (a) must be maintained on a separate form and in a file separate from other personnel information;

25 (b) must be treated as confidential medical records; and

26 (c) may not be disclosed, except to the affected employee or with the express permission of the
27 affected employee.

28 (3) For the purposes of this section, "affected employee" means the employee:

1 (a) about whom the health information pertains or who is the victim of the domestic violence,
2 sexual assault, or harassment; or

3 (b) whose family member is the subject of the health information or is the victim of the domestic
4 violence, sexual assault, or harassment.

5
6 **NEW SECTION. Section 10. Employee rights protected -- retaliation prohibited.** (1) An employee
7 is entitled to:

8 (a) use paid sick leave consistent with [section 6];

9 (b) file a complaint or inform any person about an employer's alleged violation of [sections 1
10 through 16];

11 (c) cooperate with the department in its investigation of an alleged violation of [sections 1 through
12 16]; and

13 (d) inform any person of the person's potential rights under [sections 1 through 16].

14 (2) (a) An employer may not take retaliatory personnel action or discriminate against an employee
15 or former employee because the employee or former employee has exercised, attempted to exercise, or
16 supported the exercise of rights protected under [sections 1 through 16], including the right to request or use
17 paid sick leave pursuant to [sections 1 through 16], the right to file a complaint with the division or court or
18 inform any person about any employer's alleged violation of [sections 1 through 16], the right to participate in an
19 investigation, hearing, or proceeding or cooperate with or assist the department in its investigations of alleged
20 violations of [sections 1 through 16], and the right to inform any person of the person's potential rights under
21 [sections 1 through 16].

22 (b) It is unlawful for an employer to count paid sick leave taken by an employee pursuant to
23 [section 6] as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other
24 retaliatory personnel action against the employee.

25 (3) The protections of this section apply to any person acting in good faith who alleges a violation
26 of [sections 1 through 16], even if the allegation is determined to be mistaken.

27
28 **NEW SECTION. Section 11. Enforcement.** Enforcement of [sections 1 through 16] must be treated

1 as a wage claim action and must be pursued in accordance with [sections 6 and 7].

2

3 **NEW SECTION. Section 12. Investigative powers of commissioner.** (1) The department shall
4 investigate each claim of denial of paid sick leave in violation of [section 6]. The department may investigate
5 claims of retaliation in violation of [section 10].

6 (2) The commissioner or the commissioner's authorized representatives are empowered to enter
7 and inspect places, question employees, and investigate facts, conditions, or matters that they may consider
8 appropriate to:

9 (a) determine whether any person has violated any provision of [sections 1 through 16] or any rule
10 adopted under [sections 1 through 16]; or

11 (b) aid in the enforcement of the provisions of [sections 1 through 16].

12 (3) In any proceeding before the commissioner, the commissioner or the commissioner's
13 authorized representatives may:

14 (a) administer oaths and examine witnesses under oath;

15 (b) issue subpoenas;

16 (c) compel the attendance of witnesses and the production of papers, books, accounts, records,
17 payrolls, documents, and testimony; and

18 (d) take depositions and affidavits.

19

20 **NEW SECTION. Section 13. Administrative decision -- court enforcement of administrative**

21 **decision.** (1) (a) If an investigation of employer retaliation or interference with employee rights yields an
22 administrative decision that the rights of multiple employees have been violated, the violation as it relates to
23 each employee is a separate violation for the purposes of fines, penalties, or other remedies.

24 (b) If an investigation of employer retaliation or interference with employee rights yields an
25 administrative decision that a violation cost an employee the employee's job or pay, the administrative decision
26 may include an order to reinstate the employee, to pay the employee's lost pay until reinstatement or for a
27 reasonable period if reinstatement is determined not to be feasible, or both.

28 (2) A department default order or a decision of the hearings officer, if judicial review is not sought,

1 may be enforced by application by the commissioner to a district court for an order or judgment enforcing the
 2 decision. The commissioner shall apply to the district court where the employer has its principal place of
 3 business or in the first judicial district of the state. A proceeding under this section is not a review of the validity
 4 of the administrative decision.

5 (3) If judicial review is sought, the district court may issue an order or a judgment enforcing the
 6 decision of the department or the hearings officer in a wage claim proceeding. In a case involving failure to pay
 7 the standard prevailing rate of wages provided for in Title 18, chapter 2, part 4, the district court may issue an
 8 order or a judgment enforcing the decision of the hearings officer.

9

10 NEW SECTION. Section 14. Other legal requirements applicable. (1) [Section 5] provides
 11 minimum requirements pertaining to paid sick leave and does not preempt, limit, or otherwise affect the
 12 applicability of any other law, regulation, requirement, policy, or standard that provides for a greater amount,
 13 accrual, or use by employees of paid sick leave or that extends other protections to employees.

14 (2) To the extent allowable and not in conflict with federal law, any paid sick leave provided to an
 15 employee of a federal contractor as required by Executive Order No. 13706, September 7, 2015, is considered
 16 paid sick leave provided under [section 5].

17

18 NEW SECTION. Section 15. Collective bargaining agreements. (1) (a) With agreement of the fund
 19 trustees, an employer signatory to a multiemployer collective bargaining agreement may fulfill its obligations
 20 under [sections 1 through 16] by making contributions to a multiemployer paid sick leave fund, plan, or program
 21 based on the hours each of its employees accrues pursuant to [sections 1 through 16] while working under the
 22 multiemployer collective bargaining agreement, if the fund, plan, or program enables employees to collect paid
 23 sick leave from the fund, plan, or program based on hours they have worked under the multiemployer collective
 24 bargaining agreement and for the purposes specified under [sections 1 through 16].

25 (b) Employees who work under a multiemployer collective bargaining agreement into which their
 26 employers make contributions as provided in subsection (1)(a) of this section may collect from the paid sick
 27 leave fund, plan, or program based on hours they have worked under the multiemployer collective bargaining
 28 agreement and for the purposes specified under [sections 1 through 16].

