

The Healthy Families Act (S. 636/H.R. 1516)

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People should not have to make impossible choices between caring for their health and keeping a paycheck or job. Yet more than 34 million workers – 29 percent of the private sector workforce – are forced to make that decision when illness strikes because they don't have access to paid sick days.¹ Some states and cities are doing better, but it is long past time for all working families to have the job and economic security paid sick days provide.

Legislative Overview

Sponsored by Rep. Rosa DeLauro (D-Conn.) and Sen. Patty Murray (D-Wash.), **the Healthy Families Act would set a national paid sick days standard – a critical step toward meeting the health and financial needs of working families.**

The Healthy Families Act would:

- ▶ Allow workers in businesses with 15 or more employees **to earn up to seven job-protected paid sick days each year** to be used to recover from their own illnesses, access preventive care, provide care to a sick family member, or attend school meetings related to a child's health condition or disability. Workers in businesses with fewer than 15 employees would earn up to seven job-protected *unpaid* sick days each year to be used for the same reasons, unless their employers choose to offer paid sick days.
- ▶ Allow workers who are **victims of domestic violence, stalking or sexual assault** to use their paid sick days to recover or seek assistance related to an incident.
- ▶ Include a **simple method for calculating accrued sick time**. Workers would earn a minimum of one hour of paid sick time for every 30 hours worked, up to 56 hours per year, unless the employer selects a higher limit.
- ▶ **Allow employers to require certification** if an employee uses more than three paid sick days in a row. For victims of domestic violence, the certification may be from a law enforcement officer, victim advocate or court order.
- ▶ **Allow employers to use their existing policies**, as long as they meet the minimums set forth for time, types of use and method of use, and give employers flexibility as to how they define a "year" for the purposes of sick time accrual.

Section-by-Section Summary

Sec. 1. Short Title.

Healthy Families Act

Sec. 2. Findings.

This section describes the need for paid sick days and the benefits that would result for workers, businesses, public health and the economy if workers had access to paid sick days.

Sec. 3. Purposes.

The purposes of this Act include: ensuring that all Americans can address their own health needs and that of their families without fear of losing pay or losing their jobs; minimizing health care costs; supporting victims of domestic violence, sexual assault or stalking; addressing historical patterns of gender discrimination; and ensuring equal employment opportunities for women, all in a manner feasible for employers.

Sec. 4. Definitions.

This section defines key terms in the Act.

- ▶ **Child.** A biological, foster or adopted child, a stepchild, a child of a domestic partner, a legal ward, or a child of a person standing in loco parentis who is under 18 years old or who is over 18 years old and incapable of their own self-care because of a mental or physical disability.
- ▶ **Domestic Partner.** An individual in a “committed relationship,” which is a relationship between any two individuals, age 18 or older, who are each other’s sole domestic partners and who share responsibility for a significant measure of each other’s common welfare. This includes, but is not limited to, same-sex partners whose marriages, civil unions or analogous relationships are granted recognition by a state or political subdivision.
- ▶ **Domestic Violence.** Domestic violence, sexual assault, stalking and dating violence are all defined as they are in the Violence Against Women Act of 1994. Domestic violence is violence committed by a person who is a current or former spouse of the victim; shares a child in common as a spouse with the victim; is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; or is similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the victim lives or the jurisdiction in which the employer involved is located. The bill clarifies that “jurisdiction receiving grant monies” is where the victim lives or where the employer is located.
- ▶ **Employee.** Defined in reference to the Fair Labor Standards Act of 1938, as a person who is employed by an employer and is engaged in commerce or an activity or industry affecting commerce. This includes all private employees and most federal, state and local employees. The Act does not cover elected officials, elected officials’ personal, policymaking, legal or constitutional advisory staff, and legislative employees other than legislative library employees.
- ▶ **Employer.** Includes private employers and public entities.
- ▶ **Covered employer.** Includes any person engaged in commerce who employs 15 or more employees in 20 calendar workweeks in the present or preceding year. Employers who employ fewer than 15 employees for each working day during each of

20 or more calendar workweeks in the present and preceding year, may offer paid sick time or must provide *unpaid* sick time to be used for the same purposes as paid sick time. When counting the number of employees, any person performing work for or for the benefit of the employer is counted. Employer also means anyone acting in the interest or as an agent of an employer and successors in interest of an employer. Public entities are also covered employers.

- ▶ **Employment Benefits.** The term means all benefits provided by an employer to an employee including health insurance, sick leave, annual leave, education benefits and pensions, regardless of written policy.
- ▶ **Health Care Provider.** A doctor of medicine or osteopathy who is authorized by the state in which they practice or other person determined by the Secretary of Labor to be capable of providing health care services who is not employed by the employer.
- ▶ **Paid Sick Time.** An increment of compensated leave that can be earned by an employee for use during absence from employment for the reasons provided in the Act.
- ▶ **Parent.** A person who is a biological, foster or adoptive parent, a stepparent, a parent-in-law, parent of a domestic partner, or a legal guardian or other person who stood in loco parentis to an employee when the employee was a child.
- ▶ **Secretary.** Secretary of Labor
- ▶ **Sexual Assault.** Defined as it is in the Violence Against Women Act to mean assaults committed by offenders who are strangers to the victim and assaults committed by offenders who are known or related by blood or marriage to the victim.
- ▶ **Spouse.** A person who is married according to the marriage laws of the state in which the employee's marriage was celebrated.
- ▶ **Stalking.** Defined as it is in the Violence Against Women Act to mean engaging in a course of conduct directed at a specific person that would cause reasonable people to fear for their safety or the safety of others or suffer substantial emotional distress.
- ▶ **State.** Defined as it is in the Fair Labor Standards Act to mean any state of the United States or the District of Columbia or any territory or possession of the United States.
- ▶ **Unpaid Sick Time.** Leave earned and used in the same manner and under the same conditions as paid sick time except no compensation is paid.
- ▶ **Victim Services Organization.** A nonprofit, nongovernment organization that provides assistance to victims of domestic violence, sexual assault or stalking or advocates for such victims.

Sec. 5. Earned Paid Sick Time.

- ▶ **Earning of Paid Sick Time.** Employers provide each employee with one hour of paid sick time for each 30 hours worked, up to a total of 56 hours in a calendar year unless the employer chooses to set a higher limit.
- ▶ **Exempt Employees.** Workers who are “exempt” employees under the Fair Labor Standards Act are assumed to work 40 hours per week.
- ▶ **Shorter Normal Workweek.** If an employee's normal workweek is less than 40 hours, the employee will earn paid sick time based upon that normal workweek.

- ▶ **Special Rule for Smaller Employers.** An employer with less than 15 employees may offer paid sick time, or if they opt not to offer paid sick time, the smaller employer must provide not fewer than seven days (56 hours) of *unpaid* sick time to be used for the same purposes as paid sick time. Employees who earn unpaid sick time shall be treated the same in all respects as those who earn paid sick time.
- ▶ **Dates for Beginning to Earn Paid Sick Time and Use.** Employees start earning paid sick time at the commencement of their employment, and can use the paid sick time they have earned beginning on the 60th calendar day of employment unless their employer voluntarily allows them to do so earlier.
- ▶ **Carryover.** Employees can carry over accrued paid sick time from one year to the next, but an employer is not required to permit employees to accrue more than 56 total hours at any given time.
- ▶ **Employers with Existing Policies.** Any employer that already provides an amount of paid leave sufficient to meet the requirements of the Act that can be used for the same purposes and under the same conditions as leave provided under the Act is not required to provide any additional paid sick time.
- ▶ **Construction.** Employers are not required to provide employee's compensation for earned paid sick time that has not been used upon the employee's termination, resignation, retirement or other separation from employment.
- ▶ **Reinstatement.** The employee's previously earned sick time shall be reinstated if an employee is rehired by the same employer within 12 months after the separation.
- ▶ **Prohibition.** An employer may not require an employee to search for or find a replacement worker to cover the hours during which the employee is using paid sick time.
- ▶ **Uses.** Paid sick time can be used to:
 - ▶ Address the employee's own physical or mental illness, injury, medical condition or seek preventive care.
 - ▶ Care for a child, parent, spouse, domestic partner or other individual related by blood or affinity who has an illness, injury, needs preventive care or is otherwise in need of care.
 - ▶ Attend a meeting at school or daycare facility about a child's health condition or disability.
 - ▶ Seek medical attention, obtain assistance, seek services, seek relocation or take legal action to address the effects of domestic violence, sexual assault or stalking for the employee or a family member as defined in the Act.
- ▶ **Scheduling.** For foreseeable uses of paid sick time, employees must make a reasonable effort to schedule leave at a time that does not disrupt their employer's operations.
- ▶ **Procedures.** Employees must request leave orally or in writing, and the request must include the expected duration of the leave. For foreseeable leave, this request should be made at least seven days in advance. Otherwise, it must be provided as soon as practicable after the need for leave arises.

- ▶ **Certification.** For leave exceeding three consecutive workdays, employers may request medical certification.
- ▶ **Timeliness.** A certification must be provided within 30 days of the date the leave commences.
- ▶ **Sufficient Certification.** The information disclosed in the certification is limited to the minimum necessary (date, duration, medical facts) to support the need for leave.
- ▶ **Limitation.** In issuing a certification, a health care provider shall make reasonable efforts to limit the medical facts described to the minimum necessary to establish a need for paid sick time.
- ▶ **Regulations.** Regulations shall prescribe the manner in which an individual without health insurance shall satisfy the certification requirements.
- ▶ **Confidentiality and Nondisclosure.** Nothing in the Act shall require a health care provider to disclose private medical information and employers are required to maintain medical certification documents as confidential medical records to be maintained in separate files from personnel information.
- ▶ **Certification in the Case of Domestic Violence, Sexual Assault or Stalking.** In the case of leave related to domestic violence, an employer may require documentation in the form of a police report, a court order or other documentation signed by a victims services organization, attorney, police officer, medical professional, social worker, antiviolence counselor or member of the clergy (but the employee may choose which of these forms of documentation to provide). The employer shall keep domestic violence-related certifications confidential except to the extent that disclosure is requested or consented to in writing by the employee or required by federal or state law.

Sec. 6. Notice Requirement.

Employers shall notify employees of their right to paid sick time in employee handbooks and post a notice advising employees of their rights under the Act. Employers may be issued a \$100 fine for willful violations of this requirement.

Sec. 7. Prohibited Acts.

- ▶ **Interference with Rights.** An employer is prohibited from discriminating or retaliating against workers for taking leave under the Act, and cannot count paid or unpaid sick time as a negative factor in hiring, promotion or shift assignments.
- ▶ **Interference with Proceedings or Inquires.** Discrimination or retaliation against workers who initiate or participate in a proceeding to enforce the Act's protections is prohibited.

Sec. 8. Enforcement Authority.

- ▶ **Investigative Authority.** The Secretary of Labor has investigative and enforcement authority for actions involving private sector employees and state employees as provided by the Fair Labor Standards Act.
- ▶ **Obligation to Keep and Preserve Records.** Employers must maintain records related to compliance with the Act in the same manner as other records under the Fair Labor Standards Act.

- ▶ **Required Submissions Generally Limited to Annual Basis.** The Secretary of Labor will not require an employer to submit records more than once a year unless the Secretary of Labor suspects a violation of the Act.
- ▶ **Subpoena Authority.** The Secretary of Labor will have subpoena authority to ensure compliance with the Act, as provided by the Fair Labor Standards Act.
- ▶ **Civil Action by Employees or Individuals.** Workers and their representatives have a private right of action in federal or state court to enforce the Act.
- ▶ **Liability, Damages, Fees and Costs.** Employers who violate the Act are liable to the affected employees for any wages, salary, benefits or other compensation lost as a result of the violation, or – if there was no such loss related to the violation – for actual monetary losses up to the amount of 56 hours of the employee’s wages or salary. Employers who violate the Act are also liable for interest on lost wages, benefits or compensation or other actual monetary losses, as well as liquidated damages and appropriate equitable relief. Defendants may also be responsible for attorney’s fees, expert witness fees and other costs of the action.
- ▶ **Action by the Secretary.** The Secretary of Labor shall receive, investigate and attempt to resolve complaints of violations of the Act. The Secretary of Labor may bring suit to recover damages on behalf of an aggrieved individual. Any sums recovered by the Secretary of Labor shall be held in a special deposit account to be paid to the affected individual; any sums not paid to an individual because of an inability to do so shall be deposited in the Treasury.
- ▶ **Limitation and Willful Violation.** The statute of limitations for individual or Department of Labor actions is two years after the last act comprising the violation, or three years for willful violations. An action brought by the Secretary of Labor starts on the date the complaint is filed.
- ▶ **Action for Injunction by Secretary.** The district courts of the United States have jurisdiction in an action brought by the Secretary of Labor for injunctive or equitable relief.
- ▶ **Solicitor of Labor.** The Solicitor of Labor may appear for the Secretary of Labor in court.
- ▶ **Employees of Federal Agencies and Offices.** For complaints involving employees of the Government Accountability Office and the Library of Congress, the authority of the Secretary of Labor shall be exercised respectively by the Comptroller General of the United States and the Librarian of Congress; claims involving employees covered by the Congressional Accountability Act, by civil service laws and by other federal acts shall be pursued subject to particular procedures and laws governing those employees and their employing agencies.
- ▶ **Remedies for State Employees/Waiver of Sovereign Immunity.** Any state that receives or uses federal financial assistance in any activity or program consents to waive sovereign immunity in suits brought by employees of the program or activity for equitable, legal or other relief. Officials of states can be sued in their official capacity for injunctive relief, with costs awarded to the prevailing party.

Sec. 9 Authorization of Appropriations for Education and Outreach.

Such sums may be appropriated as may be necessary for the Secretary of Labor to conduct a public awareness campaign to educate and inform the public of the paid sick time rights.

Sec. 10. Collection of Data on Paid Sick Time and Further Study.

The Commissioner of Labor Statistics shall compile information annually on the amount of paid and unpaid sick time available to employees by occupation and type of employment establishment and an estimate of the average sick time used. The Government Accountability Office shall conduct a study no later than five years after enactment to evaluate the Act. The study should include estimates of access to paid sick time, awareness and employer experiences by race, ethnicity, gender and occupation.

Sec. 11. Effect on Other Laws.

Nothing in the Act supersedes any applicable federal or state antidiscrimination law, nor any state or local law providing more generous leave rights than the Act requires.

Sec. 12. Effect on Existing Employment Benefits.

Nothing in the Act diminishes an employer's obligation to provide more generous leave benefits under an existing employment contract, collective bargaining agreement or employee benefit program. Employment contracts, collective bargaining agreements and employee benefit programs cannot diminish the rights provided under the Act.

Sec. 13. Encouragement of More Generous Leave Policies.

Nothing in the Act prevents an employer from voluntarily adopting a more generous leave policy.

Sec. 14. Regulations.

The Secretary of Labor will promulgate regulations 180 days after enactment that govern private sector and state employees and gives affected government agencies that employ other covered employees 90 days after the Secretary of Labor's regulations are promulgated to issue comparable regulations.

Sec. 15. Effective Date.

The law will take effect six months after the date regulations are issued (i.e., if the Secretary of Labor promulgates regulations on schedule, approximately one year after the date of enactment). It also provides that if there is an existing collective bargaining agreement in effect at the time the law becomes effective, the Act shall become effective on the date of termination of the agreement or 18 months after the issuance of the regulations, whichever is sooner.

¹ U.S. Bureau of Labor Statistics. (2018, July 20). *National Compensation Survey: Employee Benefits in the United States, March 2018*. (Table 5). Retrieved 12 December 2018, from <https://www.bls.gov/news.release/pdf/ebs2.pdf>