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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 41

01/11/2021 Authored by Frazier; Olson, L.; Agbaje; Hollins; Thompson and others

03/15/2021 The bill was read for the first time and referred to the Committee on Labor, Industry, Veterans and Military Affairs Finance and Policy

03/17/2021 Adoption of Report: Amended and re-referred to the Committee on State Government Finance and Elections

03/22/2021 Adoption of Report: Amended and re-referred to the Committee on Transportation Finance and Policy

Adoption of Report: Re-referred to the Committee on Public Safety and Criminal Justice Reform Finance and Policy

1.1 A bill for an act

1.2 relating to employment; providing emergency paid sick leave to certain employees

1.3 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.

1.8 (b) "Airport service provider" means a business other than an air carrier certificated by

1.9 the Federal Aviation Administration, that performs, under contract with a passenger air

1.10 carrier, airport facility management, or airport authority, functions on the property of the

1.11 airport that are directly related to the air transportation of persons, property, or mail, including

1.12 but not limited to:

1.13 (1) the loading and unloading of property on aircraft;

1.14 (2) assistance to passengers under Code of Federal Regulations, title 14, part 382;

1.15 (3) security;

1.16 (4) airport ticketing and check-in functions;

1.17 (5) ground-handling of aircraft;

1.18 (6) aircraft cleaning and sanitization functions; or

1.19 (7) airport authority.

(c) "Child" means a biological, adopted, or foster child, stepchild, legal ward, or child for whom the essential worker is a legal guardian.

(d) "Emergency paid sick leave" means paid leave time provided under this section for a reason provided in subdivision 2 that is not:

(1) fully compensated through workers' compensation benefits or unemployment insurance benefits; or

(2) guaranteed to essential workers through other paid sick leave benefits under state law or federal law or an executive order related to COVID-19.

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

(1) is an emergency responder or health care provider as defined in Code of Federal Regulations, title 29, section 826.30(c), including but not limited to nurses, peace officers, firefighters, correctional institution personnel, emergency medical services personnel, and social workers;

(2) is a licensed or unlicensed personnel employed by or under contract with:

(i) a hospital, boarding care home, or outpatient surgical center licensed under Minnesota Statutes, sections 144.50 to 144.56;

(ii) a nursing home licensed under Minnesota Statutes, sections 144A.01 to 144A.162;

(iii) a housing with services establishment registered under Minnesota Statutes, section 144D.02, and operating under Minnesota Statutes, sections 144G.01 to 144G.07;

(iv) the arranged home care provider of an establishment specified in item (iii);

(v) an unlicensed health care clinic; or

(vi) an unlicensed office of a physician or advanced practice registered nurse;

(3) is a public school employee;

(4) works for an airport service provider; or

(5) works for a private employer performing work in the following sectors:

(i) building service, including janitorial, building maintenance, and security services;

(ii) child care;

(iii) food service, including food manufacture, production, processing, preparation, sale, and delivery;

3.1 (iv) hotel accommodations;

3.2 (v) manufacturing; or

3.3 (vi) retail, including but not limited to sales, fulfillment, distribution, and delivery.

3.4 (f) "Employer" means a person who employs one or more essential workers, including
3.5 but not limited to a corporation, partnership, limited liability company, association, group
3.6 of persons, hospital, state, county, town, city, school district, or governmental subdivision,
3.7 excluding the federal government.

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

3.16 Subd. 2. **Emergency paid sick leave.** An employer shall provide emergency paid sick
3.17 leave to an essential worker who is unable to work or telework due to any of the following
3.18 reasons:

3.19 (1) the essential worker is subject to a federal, state, or local quarantine or isolation order
3.20 related to COVID-19;

3.21 (2) the essential worker has been advised by a health care provider to self-quarantine
3.22 due to concerns related to COVID-19;

3.23 (3) the essential worker is experiencing symptoms of COVID-19 and seeking a medical
3.24 diagnosis;

3.25 (4) the essential worker is seeking or awaiting the results of a diagnostic test for, or a
3.26 medical diagnosis of, COVID-19 and the essential worker has been exposed to COVID-19
3.27 or the essential worker's employer has requested a test or diagnosis;

3.28 (5) the essential worker is obtaining an immunization related to COVID-19 or recovering
3.29 from an injury, disability, illness, or condition related to the immunization;

3.30 (6) the essential worker is caring for an individual who is subject to an order as described
3.31 in clause (1) or has been advised as described in clause (2); or

4.1 (7) the essential worker is caring for a child of the essential worker if the school or place
4.2 of care of the child has been closed, or the child care provider of the child is unavailable
4.3 due to COVID-19 precautions.

4.4 Subd. 3. **Duration and use of leave.** (a) An essential worker shall be entitled to
4.5 emergency paid sick leave as provided under this section for the following number of hours
4.6 through March 31, 2021, and an equal number of hours for the period beginning April 1,
4.7 2021:

4.8 (1) up to 80 hours for an essential worker who:

4.9 (i) the employer considers to work full time;

4.10 (ii) works or was scheduled to work on average what are considered full-time hours by
4.11 the employer, including pursuant to any applicable collective bargaining agreement; or

4.12 (iii) works or was scheduled to work at least 40 hours per week for the employer on
4.13 average over a two-week period;

4.14 (2) a number of hours equal to the number of hours that an essential worker works for
4.15 the employer on average over a two-week period for any essential worker who:

4.16 (i) the employer considers to work part time;

4.17 (ii) works or was scheduled to work on average what are considered part-time hours by
4.18 the employer, including pursuant to any applicable collective bargaining agreement; or

4.19 (iii) works or was scheduled to work fewer than 40 hours per week for the employer on
4.20 average over a two-week period; or

4.21 (3) 14 times the average number of hours an essential worker worked per day for the
4.22 employer for the previous six months, or for the entire period the essential worker has
4.23 worked for the employer, whichever is shorter, for an essential worker who works variable
4.24 hours and who is not covered by clause (1) or (2).

4.25 (b) Leave under this section shall be available for use by an essential worker for a reason
4.26 listed in subdivision 2 beginning the day following final enactment and may be used
4.27 intermittently, provided that any amount of leave taken under this section shall end with
4.28 the essential worker's next scheduled work shift immediately following the termination of
4.29 the essential worker's need for leave under a reason provided in subdivision 2.

4.30 (c) After the first workday or portion thereof that an essential worker receives leave
4.31 under this section, an employer may require the essential worker to follow reasonable notice
4.32 procedures to continue receiving leave.

5.1 (d) Leave under this section expires 30 days after a peacetime emergency declared by
5.2 the governor in an executive order that relates to the infectious disease known as COVID-19
5.3 is terminated or rescinded.

5.4 Subd. 4. **Amount of compensation.** (a) An essential worker shall receive compensation
5.5 for each hour of emergency paid sick leave received under this section in an amount that
5.6 shall be the greater of:

5.7 (1) the essential worker's regular rate of pay for the essential worker's last pay period,
5.8 including pursuant to any collective bargaining agreement that applies;

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

5.10 (3) the local minimum wage to which the essential worker is entitled.

5.11 (b) In no event shall emergency paid sick time provided under this section exceed \$511
5.12 per day, nor shall emergency paid sick time provided under this section exceed \$5,110 in
5.13 the aggregate for the period ending March 31, 2021, or \$5,110 in the aggregate for the period
5.14 beginning April 1, 2021.

5.15 (c) Unused or remaining leave under this section shall not carry over past the expiration
5.16 of this section.

5.17 (d) Nothing in this section shall be construed to require financial or other reimbursement
5.18 to an essential worker from an employer upon the essential worker's termination, resignation,
5.19 retirement, or other separation from employment for emergency paid sick time under this
5.20 section that has not been used by the essential worker.

5.21 Subd. 5. **Relationship to other leave.** (a) Except as provided in paragraph (c), emergency
5.22 paid sick leave under this section shall be in addition to any paid or unpaid leave provided
5.23 to an essential worker by an employer under a collective bargaining agreement, negotiated
5.24 agreement, contract, or any other employment policy.

5.25 (b) An essential worker may use leave provided under this section first, and except as
5.26 provided in paragraph (c), an employer shall not require an essential worker to use other
5.27 paid or unpaid leave provided by the employer before the essential worker uses the leave
5.28 provided under this section or in lieu of the leave provided under this section.

5.29 (c) Notwithstanding paragraphs (a) and (b), if an employer has already provided an
5.30 essential worker with additional paid leave for any reason provided in subdivision 2, and
5.31 the leave was in addition to the regular amount of paid leave provided by the employer and
5.32 compensated the essential worker in an amount equal to or greater than the amount of
5.33 compensation provided under this section, the employer may credit the other additional

6.1 paid leave toward the total number of hours of emergency paid sick leave required under
6.2 this section; provided, however, that if the other paid leave compensated the essential worker
6.3 at an amount less than the amount of compensation provided under this section, the employer
6.4 is required to comply with this section to the extent of the deficiency to receive the credit
6.5 under this paragraph.

6.6 (d) An employer shall provide notice to essential workers of the requirements for
6.7 emergency paid sick leave provided under this section.

6.8 (e) Nothing in this section shall be deemed:

6.9 (1) to limit the rights of an essential worker or employer under any law, rule, regulation,
6.10 or collectively negotiated agreement, or the rights and benefits that accrue to essential
6.11 workers through collective bargaining agreements, or the rights of essential workers with
6.12 respect to any other employment benefits; or

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

6.15 (f) Nothing in this section shall prevent an employer from providing, or the parties to a
6.16 collective bargaining agreement from agreeing to, leave benefits that meet or exceed and
6.17 do not otherwise conflict with the requirements for emergency paid sick leave under this
6.18 section.

6.19 Subd. 6. **Requirements and enforcement.** (a) An employer shall not take any retaliatory
6.20 personnel action against an essential worker for requesting or obtaining emergency paid
6.21 sick leave under this section or for bringing a complaint related to this section, including a
6.22 proceeding that seeks enforcement of this section.

6.23 (b) The Department of Labor and Industry shall enforce this section. The commissioner
6.24 has the authority provided under Minnesota Statutes, section 177.27, subdivision 4, including
6.25 the authority to issue an order requiring an employer to comply with this section. The
6.26 commissioner may investigate complaints of violations of this section as necessary to
6.27 determine whether a violation has occurred. If the commissioner finds that an employer has
6.28 violated this section, the commissioner shall fine the employer up to \$1,000 for each willful
6.29 violation for each essential worker.

6.30 **EFFECTIVE DATE.** This section is effective the day following final enactment for
6.31 essential workers hired by an employer on or after the day following final enactment. This
6.32 section applies retroactively from March 13, 2020, for essential workers who were employed
6.33 on or after March 13, 2020, and are currently employed as of the day following final

- 7.1 enactment or May 17, 2021, whichever is earlier. Subdivisions 1 to 5 sunset on September
7.2 30, 2021, or 30 days after a peacetime emergency declared by the governor in an executive
7.3 order that relates to the infectious disease known as COVID-19 is terminated or rescinded,
7.4 whichever is later. Subdivision 6 sunsets June 30, 2023.