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HOUSE BILL NO. 418

Offered January 8, 2020

Prefiled January 3, 2020

A *BILL to amend the Code of Virginia by adding in Chapter 3 of Title 40.1 an article numbered 2.1, consisting of sections numbered 40.1-33.1 through 40.1-33.8, relating to the provision of paid sick leave to employees; civil penalties.*

 Patron—Cole, J.G.

 Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 40.1 an article numbered 2.1, consisting of sections numbered 40.1-33.1 through 40.1-33.8, as follows:

*Article 2.1.**Earned Sick Leave.***§ 40.1-33.1. Definitions.**

As used in this article, unless the context requires a different meaning:

"Earned sick leave" means paid leave away from work that is provided by an employer under § 40.1-33.2 and can be used for the purposes described in § 40.1-33.5. Earned sick leave includes paid time off that can be used by the employee for any purpose.

"Employee" does not include an individual:

1. Who (i) does not have a regular work schedule with the employer; (ii) contacts the employer for work assignments and is scheduled to work the assignments within 48 hours after contacting the employer; (iii) has no obligation to work for the employer if the individual does not contact the employer for work assignments; and (iv) is not employed by a temporary placement agency; or

2. Who regularly works eight hours or less each week.

"Family member" means any of the following:

1. A child, which for purposes of this article means a biological, adopted, or foster child, a stepchild, a ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of dependency status;

2. A biological, adoptive, or foster parent a stepparent, a legal guardian of an employee or the employee's spouse, or a person who stood in loco parentis when the employee was a minor child;

3. A spouse;

4. A grandparent;

5. A grandchild; or

6. A sibling.

§ 40.1-33.2. Earned sick leave required.

Every employer shall provide to its employees earned sick leave as provided in this article. When an employee takes leave for a purpose set forth in § 40.1-33.5, the employer shall compensate the employee for such time used at the same rate as the wage and with the same benefits that the employee would have earned or accrued had the employee worked such time during regular work hours.

§ 40.1-33.3. Accrual of sick leave; retaliation prohibited.

A. An employer shall provide each employee earned sick leave. An employee who takes earned sick leave shall be paid for such time taken at the same rate and with the same benefits as the employee normally earns. However, an employer with fewer than five employees shall provide each employee with both paid and unpaid sick leave as required by subsection C. An employee shall accrue paid sick leave before accruing unpaid sick leave in a calendar year.

B. The paid earned sick leave provided under subsection A shall accrue at a rate of at least one hour for every 30 hours an employee works, except an employer with five or more employees shall not be required to allow an employee to (i) earn more than 56 hours of earned sick leave in a calendar year or (ii) use more than 80 hours of earned sick leave in a calendar year.

C. The earned sick leave provided under subsection A shall accrue at a rate of at least one hour for every 30 hours an employee works, except an employer with fewer than 5 employees shall not be required to allow an employee to (i) earn more than 32 hours of paid earned sick leave and 24 hours of unpaid earned sick leave in a calendar year or (ii) use more than 80 hours of earned sick leave in a calendar year.

D. An employer shall not:

1. Retaliate against any person for lawfully opposing any violation of this article or filing a

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59 complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or
60 hearing under this article; or

61 2. Obstruct or prevent enforcement or compliance with this article.

62 **§ 40.1-33.4. Minimum earned sick leave standards.**

63 A. An employer may award earned sick leave as the leave accrues during the calendar year or may
64 award the full amount that an employee would earn over the entire calendar year at the beginning of a
65 calendar year.

66 B. To calculate the rate of accrual of earned sick leave for an employee who is exempt from the
67 overtime provisions of the federal Fair Labor Standards Act, the employer shall assume the employee
68 worked the number of hours worked in a normal workweek up to 40 hours each workweek.

69 C. Unless an employer awards the full amount of earned sick leave that the employee would earn
70 over the entire calendar year at the beginning of a calendar year, an employer shall permit an
71 employee to carry the balance of any unused earned sick leave over to the next calendar year, but an
72 employer shall not be required to permit an employee to carry over more than 56 hours of unused
73 earned sick leave.

74 D. If an employee is allowed to use earned sick leave before it has accrued, or if an employee who
75 receives the full amount of earned sick leave at the beginning of the year uses more than would have
76 been earned up to that time, the employer may deduct the amount paid for the earned sick leave from
77 the wages paid to the employee on the termination of employment if (i) the employer and employee
78 mutually consented to the deduction as evidenced by a document signed by the employee and (ii) the
79 employee leaves the employment of the employer before the employee has accrued the amount of earned
80 sick leave that was used.

81 E. If an employee is rehired by an employer to work within nine months after leaving the
82 employment, the employer shall reinstate any unused earned sick leave that the employee had when the
83 employee left the employment, except for when the employee voluntarily leaves work without good cause
84 as defined in § 60.2-618.

85 F. An employer may permit an employee to use earned sick leave before the amount needed by the
86 employee accrues.

87 G. An employer shall permit an employee to earn sick leave during an initial 90-day probationary
88 period, but may prohibit an employee from using earned sick leave during an initial 90-day
89 probationary period.

90 H. Nothing in this article:

91 1. Requires an employer to compensate an employee for unused earned sick leave when the employee
92 leaves the employer's employment;

93 2. Prohibits an employer from adopting or retaining a general paid leave policy that meets the
94 minimum requirement of this article; or

95 3. Affects a provision of a contract, a collective bargaining agreement, an employee benefit plan, or
96 any other agreement that requires the employer to provide general paid leave benefits that meet the
97 minimum requirements of this article.

98 **§ 40.1-33.5. Use of earned sick leave.**

99 A. An employee may use earned sick leave:

100 1. To care for or treat the employee's mental or physical illness, injury, or condition;

101 2. To obtain preventive medical care for the employee or the employee's family member;

102 3. To care for a family member with a mental or physical illness, injury, or condition;

103 4. If the employer's place of business has closed by order of a public official due to a public health
104 emergency;

105 5. If the school or child care center for the employee's family member is closed by order of a public
106 official due to a public health emergency; or

107 6. To care for a family member if a health official or health care provider has determined that the
108 family member's presence in the community would jeopardize the health of others because of the family
109 member's exposure to a communicable disease.

110 B. To use earned sick leave, an employee shall:

111 1. Request leave from the employer as soon as practicable after the employee determines that the
112 employee needs to take leave;

113 2. Notify the employer of the anticipated duration of the leave; and

114 3. Comply with any reasonable procedures established by the employer when requesting and taking
115 leave.

116 C. An employer shall not require an employee who requests earned sick leave to search for or find
117 an individual to take the employee's place while the employee takes leave.

118 D. An employer shall not require an employee to:

119 1. Disclose specific details of the mental or physical illness, injury, or condition of the employee or
120 the employee's family member; or

2. Provide as certification any information that would violate the federal Social Security Act, 42 U.S.C. § 301 et seq., or the federal Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d et seq.

E. By mutual consent of the employee and the employer, the employee may work additional hours or trade shifts with another employee during a pay period to make up the amount of work hours that the employee missed for which the employee could have used earned sick leave.

F. An employee may take earned sick leave in the smallest increment that the employer's payroll system uses to account for absences or work time, except that an employee must not be required to take earned sick leave in an increment of more than 4 hours.

G. An employer shall provide an employee with a written statement of available earned sick leave each time the employer pays wages to the employee. An employer may satisfy this requirement through an online system where the employee can access their own earned sick leave balances.

H. An employer may require an employee who uses more than three consecutive days of earned sick leave to provide reasonable documentation to verify that the leave was used appropriately.

§ 40.1-33.6. Notice.

An employer shall notify the employees that they are entitled to earned sick leave under this article. The employer's notice shall include:

1. A statement of how earned sick leave is accrued;
2. The permitted uses of earned sick leave;
3. A statement that the employer shall not retaliate against an employee for exercising the rights granted by this article; and
4. Information about the employee's right to file a complaint with the Commissioner for a violation of any rights granted by this article.

§ 40.1-33.7. Records.

A. An employer shall keep, for at least three years, a record of earned sick leave accrued by each employee and earned sick leave used by each employee.

B. After giving the employer notice and determining a mutually agreeable time for the inspection, the Commissioner may inspect a record kept under subsection A for the purposes of determining whether the employer is complying with this article.

§ 40.1-33.8. Civil penalties; enforcement actions.

A. Any employer who knowingly fails to provide earned sick leave to its employees in accordance with this article shall be subject to a civil penalty not to exceed \$1,000 for each violation. The Commissioner shall notify by certified mail any employer who he alleges has violated any provision of this article. Such notice shall contain a description of the alleged violation. The decision of the Commissioner shall be final. Civil penalties owed under this section shall be paid to the Commissioner for deposit into the general fund of the State Treasurer. The Commissioner shall prescribe procedures for the payment of proposed assessments of penalties that are not contested by employers. Such procedures shall include provisions for an employer to consent to abatement of the alleged violation and pay a proposed penalty or a negotiated sum in lieu of such penalty without admission of any civil liability arising from such alleged violation.

B. The Commissioner may require a written complaint of the violation of this article and, with the written and signed consent of an employee, may institute proceedings on behalf of an employee to enforce compliance with this article and collect the value of any earned sick leave unlawfully withheld from such employee, which shall be awarded to the employee entitled thereto.

C. Final orders of the Commissioner, the general district courts, or the circuit courts may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner or the court, as appropriate.