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HOUSE BILL NO. 2137

House Amendments in [] - February 3, 2021

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 40.1-33.3 through 40.1-33.9, relating to employees; paid sick leave.

Patron Prior to Engrossment—Delegate Guzman

Referred to Committee on Labor and Commerce

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 40.1-33.3 through 40.1-33.9, as follows:

Article 2.1.

Paid Sick Leave.

§ 40.1-33.3. Definitions.

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

"Employee" means an essential worker who works on average at least 20 hours per week or 90 hours per month. "Employee" does not include an individual who (i) is licensed, registered, or certified by a health regulatory board within the Department of Health Professions; (ii) is employed by a hospital licensed by the Department of Health; and (iii) works, on average, no more than 30 hours per month.

"Employer" has the same meaning as provided in § 40.1-2. "Employer" does not include any agency of the federal government.

"Essential worker" means employees identified by the Commissioner as essential, which shall include employees from the following categories:

1. Law-enforcement officers, firefighters, emergency medical services personnel, and other first responders;

2. Workers at essential retail businesses, as defined in the Governor's Executive Order 72 (2020);

3. Health care providers;

4. Long-term care providers;

5. Food manufacturing and supplier workers;

6. Home care providers;

7. Child care providers;

8. Home care workers, such as home health care, at-home hospice, home dialysis, or home infusion workers;

9. Domestic workers;

10. Educators and support staff;

11. Transportation workers;

12. Cleaning and security workers whose physical presence is necessary for the maintenance or security of their sites of employment; and

13. Prison or jail personnel.

"Family member" means:

1. Regardless of age, a biological child, adopted or foster child, stepchild, legal ward, child to whom the employee stands in loco parentis, or individual to whom an employee stood in loco parentis when the individual was a minor;

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

3. An individual to whom an employee is legally married under the laws of any state;

4. A grandparent, grandchild, or sibling, whether of a biological, foster, adoptive, or step relationship, of an employee or the employee's spouse;

5. An individual for whom an employee is responsible for providing or arranging care, including helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment; or

6. Any other individual related by blood or affinity whose close association with an employee is the equivalent of a family relationship.

"Paid sick leave" means leave that is compensated at the same hourly rate and with the same benefits, including health care benefits, as an employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in § 40.1-33.5; however, such hourly rate shall not be less than the minimum wage amount set forth in § 40.1-28.10 without reduction

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60 for any tip credit that the employer would otherwise be permitted to claim.

61 **§ 40.1-33.4. Accrual of paid sick leave.**

62 A. All employees shall accrue a minimum of one hour of paid sick leave for every 30 hours worked.
63 Paid sick leave shall be carried over to the year following the year in which it was accrued. An
64 employee shall not accrue or use more than 40 hours of paid sick leave in a year, unless the employer
65 selects a higher limit.

66 B. Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the federal
67 Fair Labor Standards Act, 29 U.S.C. § 201 et seq., will be assumed to work 40 hours in each workweek
68 for purposes of paid sick leave accrual unless their normal workweek is less than 40 hours, in which
69 case paid sick leave accrues on the basis of that normal workweek.

70 C. Paid sick leave as provided in this section shall begin to accrue at the commencement of
71 employment. An employer may provide all paid sick leave that an employee is expected to accrue in a
72 year at the beginning of the year.

73 D. Any employer with a paid leave policy, such as a paid time off policy, that provides an employee
74 an amount of paid leave sufficient to meet the requirements of this section and that may be used for the
75 same purposes and under the same conditions as paid sick leave under this article shall not be required
76 to provide additional paid sick leave to any employee that is eligible for paid leave under the policy.

77 E. Any employer that has entered into a bona fide collective bargaining agreement that requires the
78 employer to provide an amount of paid leave sufficient to meet the requirements of this section and that
79 may be used for the same purposes and under the same conditions as paid sick leave under this article
80 shall not be required to provide additional paid sick leave to any employee covered by such collective
81 bargaining agreement.

82 **§ 40.1-33.5. Use of paid sick leave.**

83 A. Paid sick leave shall be provided to an employee by an employer for:

84 1. An employee's mental or physical illness, injury, or health condition; an employee's need for
85 medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an
86 employee's need for preventive medical care; or

87 2. Care of a family member with a mental or physical illness, injury, or health condition; care of a
88 family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury,
89 or health condition; or care of a family member who needs preventive medical care.

90 B. Paid sick leave shall be provided upon the request of an employee. Such request may be made
91 orally, in writing, by electronic means, or by any other means acceptable to the employer. When
92 possible, the request shall include the expected duration of the absence.

93 C. When the use of paid sick leave is foreseeable, the employee shall make a good faith effort to
94 provide notice of the need for such leave to the employer in advance of the use of the paid sick leave
95 and shall make a reasonable effort to schedule the use of paid sick leave in a manner that does not
96 unduly disrupt the operations of the employer.

97 D. An employer that requires notice of the need to use paid sick leave shall provide a written policy
98 that contains procedures for its employees to provide notice. An employer that has not provided to an
99 employee a copy of its written policy for providing such notice shall not deny paid sick leave to the
100 employee based on noncompliance with such a policy.

101 E. An employer shall not require, as a condition of an employee's taking paid sick leave, that an
102 employee search for or find a replacement worker to cover the hours during which the employee is
103 using paid sick leave. An employer shall not require an employee to work an alternate shift to make up
104 for the use of sick leave.

105 F. For paid sick leave of three or more consecutive work days, an employer may require reasonable
106 documentation that the paid sick leave has been used for a purpose for which such leave is required to
107 be provided as set forth in subsection A.

108 **§ 40.1-33.6. Retaliatory action prohibited.**

109 No employer shall discharge, discipline, threaten, discriminate against, or penalize an employee, or
110 take other retaliatory action regarding an employee's compensation, terms, conditions, location, or
111 privileges of employment, because the employee (i) has requested or exercised the benefits provided for
112 in this article or (ii) has alleged a violation of this article.

113 **§ 40.1-33.7. Hardship waiver.**

114 The Commissioner shall provide a waiver from the provisions of this article to any employer that
115 provides, in a form and manner satisfactory to the Commissioner, evidence demonstrating that providing
116 paid sick leave threatens the financial viability of the employer, jeopardizes the ability of the employer
117 to sustain operations, significantly degrades the quality of the employer's business operations, or creates
118 a significant negative financial impact on the employer.

119 **§ 40.1-33.8. Regulations.**

120 The Commissioner shall promulgate regulations to implement the provisions of this article. Such
121 regulations shall:

- 122 1. Identify workers as essential based on the categories listed in § 40.1-33.3;
123 2. Include reasonable requirements for recordkeeping, confidentiality, and notifying employees of
124 their rights under this article;
125 3. Establish complaint, investigation, and enforcement procedures that include fines, not to exceed
126 \$500, for violations of this article;
127 4. Establish requirements for compensation and accrual of paid sick leave for employees employed
128 and compensated on a fee-for-service basis; and
129 5. Include procedures and requirements for an employer to qualify for a hardship waiver as provided
130 in § 40.1-33.7.
131 **§ 40.1-33.9. Encouragement of more generous earned paid sick leave policies.**
132 Nothing in this article shall be construed to discourage or prohibit an employer from the adoption or
133 retention of an earned paid sick leave policy more generous than the one required by this article.
134 [2. That the provisions of this act shall not apply to any retail business with fewer than 25
135 employees.]

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