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## HOUSE BILL NO. 348

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Labor and Commerce  
on February 1, 2024)

(Patrons Prior to Substitute—Delegates Ward and Mundon King [HB 256])

A BILL to amend and reenact §§ 40.1-33.3 through 40.1-33.6 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2.1 of Chapter 3 of Title 40.1 sections numbered 40.1-33.5:1, 40.1-33.5:2, and 40.1-33.6:1, relating to employment; paid sick leave; civil penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-33.3 through 40.1-33.6 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 2.1 of Chapter 3 of Title 40.1 sections numbered 40.1-33.5:1, 40.1-33.5:2, and 40.1-33.6:1 as follows:

§ 40.1-33.3. Definitions.

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

"Domestic violence" has the same meaning as provided in subdivision 7 of § 38.2-508.

"Employee" means a home health worker who works on average at least 20 hours per week or 90 hours per month. ~~"Employee" has the same meaning as provided in § 40.1-2 except that "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 an individual described in 45 U.S.C. § 351(d) who is subject to the federal Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).~~

"Employer" has the same meaning as provided in § 40.1-2. Notwithstanding the provisions of § 40.1-2.1, "employer" includes the Commonwealth and its agencies, institutions, and political subdivisions. "Employer" does not include any agency of the federal government.

"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 health or safety-related care, including helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment or ensuring the person is safe following domestic violence, sexual assault, or stalking; or

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

"Home health worker" means an individual who provides personal care, respite, or companion services to an individual who receives consumer-directed services under the state plan for medical assistance services.

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

"Retaliatory action" means a denial of any benefit provided pursuant to this article; any threat, discharge, suspension, demotion, or reduction of hours; or the taking of any other adverse action against an employee as a result of the employee's exercise of any paid sick leave benefits. "Retaliatory action" includes interference with or punishment for in any manner participating in or assisting an investigation, proceeding, or hearing under this article.

"Sexual assault" means any act prohibited by the provisions of § 18.2-61, 18.2-67.1, 18.2-67.3, or 18.2-67.4.

"Stalking" means conduct prohibited by the provisions of § 18.2-60.3.

"Year" means a regular and consecutive 12-month period as determined by the employer.

§ 40.1-33.4. Accrual of paid sick leave.

HOUSE SUBSTITUTE

HB348H1

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

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

68 C. *Employees who are employed and compensated on a fee-for-service basis shall accrue paid sick  
69 leave in accordance with regulations adopted by the Commissioner. The Commissioner shall promulgate  
70 such regulations, which shall provide for the accrual of paid sick leave for such employees that is  
71 consistent with the provisions of this section.*

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

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

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

85 G. *Nothing in this section shall be construed as requiring financial or other reimbursement to an  
86 employee from an employer upon the employee's termination, resignation, retirement, or other  
87 separation from employment for accrued paid sick leave that has not been used.*

88 H. *If an employee is transferred to a separate division, entity, or location but remains employed by  
89 the same employer, the employee is entitled to all paid sick leave accrued at the prior division, entity,  
90 or location and is entitled to use all paid sick leave as provided in this section. If an employee is  
91 separated from employment with an employer and the employee is rehired within 12 months of  
92 separation by the same employer, previously accrued paid sick leave that had not been used shall be  
93 reinstated. Further, the employee shall be entitled to use accrued paid sick leave and accrue additional  
94 paid sick leave at the recommencement of employment.*

95 I. *When a different employer succeeds or takes the place of an existing employer, all employees of  
96 the original employer who remain employed by the successor employer are entitled to all paid sick leave  
97 that they accrued when employed by the original employer and to use paid sick leave previously  
98 accrued.*

99 J. *At its discretion, an employer may loan paid sick leave to an employee in advance of accrual of  
100 paid sick leave by such employee.*

101 K. *Nothing in this article shall be construed (i) to discourage or prohibit an employer from the  
102 adoption or retention of a more generous paid sick leave policy than outlined herein, and nothing in  
103 this article shall be construed to preempt, limit, or otherwise affect the applicability of any other law,  
104 regulation, requirement, policy, or standard that provides for greater accrual or use by employees of  
105 paid sick leave or that extends other protections to employees, or (ii) as diminishing the rights of public  
106 employees regarding paid sick leave or the use of paid sick leave as provided under any applicable law.*

107 **§ 40.1-33.5. Use of paid sick leave.**

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

109 1. An employee's mental or physical illness, injury, or health condition; an employee's need for  
110 medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an  
111 employee's need for preventive medical care; ~~or~~

112 2. Care of a family member with a mental or physical illness, injury, or health condition; care of a  
113 family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury,  
114 or health condition; or care of a family member who needs preventive medical care; *or*

115 3. *Absence due to domestic violence, sexual assault, or stalking, provided the leave is to allow the  
116 employee to seek or obtain medical care, mental health care, counseling, legal services, relocation or  
117 securing of an existing home, or other victim services for the employee or the employee's family  
118 member.*

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

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

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

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

F. *Paid sick leave shall be used in hourly increments unless the employer allows paid sick leave to be taken in smaller increments.*

G. *An employer shall not require disclosure of details of health information about an employee or an employee's family member or details of domestic violence, sexual assault, or stalking, as a condition of providing paid sick leave under this article. Unless otherwise required by law, an employer who possesses health, domestic violence, sexual assault, or stalking information about an employee or an employee's family member shall treat such information as confidential and shall not disclose such information except to the employee or with the consent of the employee.*

H. For paid sick leave of three or more consecutive work days, an employer may require reasonable documentation that the paid sick leave has been used for a purpose for which such leave is required to be provided as set forth in subsection A. *For the use of paid sick leave related to subdivision A 1 or 2, documentation signed by a health care professional indicating that paid sick leave is necessary shall be considered reasonable documentation for purposes of this subsection. For the use of paid sick leave related to subdivision A 3, (i) a police report indicating domestic violence, sexual assault, or stalking; (ii) a court document indicating the employee is involved in legal action related to domestic violence, sexual assault, or stalking; (iii) documentation from a victim services advocate, the employee's attorney, a member of the clergy, or a health care professional that the employee is or was receiving services related to domestic violence, sexual assault, or stalking; or (iv) an employee's written statement that the use of paid sick leave is for one of the purposes described in subdivision A 3 shall be considered reasonable documentation for purposes of this subsection.*

**§ 40.1-33.5:1. Certain health care workers; waiver; exception.**

A. An employee 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 may waive the right to accrue and use paid sick leave under the provisions of this article. Such waiver shall be in writing and signed by the employee and the employer. If an employee waives his rights in accordance with this subsection, the employer shall be deemed to have satisfied the provisions of this article with respect to such employee.

B. Notwithstanding the provisions of this article, an employer shall not be required to provide paid sick leave under the provisions of this article to any employee who is employed on a pro re nata, or as-needed, basis, regardless of the number of hours worked in the month and who is (i) licensed, registered, or certified by a health regulatory board within the Department of Health Professions; (ii) employed by a facility licensed by the Department of Health; or (iii) employed by the University of Virginia Medical Center or Virginia Commonwealth University Health System Authority.

**§ 40.1-33.5:2. Notice and recordkeeping; regulations.**

The Commissioner shall promulgate regulations for employee notice and employer recordkeeping, including requirements for employers:

1. To notify employees of their rights under this article, both in writing and through required posting, including their right to file a complaint or bring a civil action for violations of this article;

2. To establish and maintain recordkeeping systems regarding the use and accrual of paid sick leave, including the requirement to retain records for three years; and

3. To ensure the confidentiality of any protected health information or information regarding domestic violence, sexual assault, or stalking that the employer possesses about an employee or an employee's family member.

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

A. No employer shall discharge, discipline, threaten, discriminate against, or penalize an employee, or take other retaliatory action regarding an employee's compensation, terms, conditions, location, or privileges of employment, because the employee (i) has requested or exercised the benefits provided for in this article or; (ii) has alleged a violation of this article; (iii) has participated in an investigation, hearing, or proceeding or cooperated with or assisted the Commissioner in investigations of any alleged

183 violation of this article; or (iv) has informed any individual of such individual's potential benefits under  
184 this article.

185 B. Neither an employer nor any other person shall interfere with, restrain, or deny the exercise of,  
186 or the attempt to exercise, any benefit provided pursuant to this article. An employer's absence control  
187 policy shall not count paid sick leave taken under this article as an absence that may lead to or result  
188 in discipline, discharge, demotion, suspension, or any other adverse action. Protections of this section  
189 shall apply to any person who mistakenly but in good faith alleges a violation of the provisions of this  
190 article.

191 **§ 40.1-33.6:1. Enforcement; civil penalties; civil actions.**

192 A. The Commissioner shall promulgate regulations for implementation and enforcement of this  
193 article.

194 B. The Commissioner shall enforce the provisions of this article. In effectuating such enforcement,  
195 the Commissioner shall establish a system utilizing multiple means of communication to receive  
196 complaints regarding noncompliance with this article and to investigate complaints received by the  
197 Commissioner in a timely manner.

198 C. Any person alleging a violation of this article shall have the right to file a complaint with the  
199 Commissioner within one year of the date the person knew or should have known of the alleged  
200 violation. The Commissioner shall encourage reporting pursuant to this section by keeping confidential,  
201 to the maximum extent permitted by applicable laws, the name and other identifying information of the  
202 employee or other person reporting the violation, provided, however, that with the authorization of such  
203 person, the Commissioner may disclose the person's name and identifying information as necessary to  
204 enforce this article or for other appropriate purposes.

205 D. Upon receiving a complaint alleging a violation of this article, the Commissioner shall investigate  
206 such complaint and attempt to resolve it through mediation between the complainant and the subject of  
207 the complaint or other means. The Commissioner shall keep the complainant notified regarding the  
208 status of his complaint and any resultant investigation. If the Commissioner believes that a violation has  
209 occurred, he shall issue to the offending person or employer a notice of violation and the relief required  
210 of the offending person or entity. The Commissioner shall prescribe the form and wording of such  
211 notices of violation, including any method of appealing a decision of the Commissioner.

212 E. The Commissioner shall notify any employer who he alleges has violated any provision of this  
213 article by certified mail. Such notice shall contain a description of the alleged violation. Within 15 days  
214 of receipt of notice of the alleged violation, the employer may request an informal conference with the  
215 Commissioner regarding such violation.

216 F. Any such employer who knowingly violates this article shall be subject to a civil penalty not to  
217 exceed \$150 for the first violation and, for subsequent violations that occur within two years of any  
218 previous violation, not to exceed \$300 for the second violation and not to exceed \$500 for each  
219 successive violation. In determining the amount of any civil penalty to be imposed, the Commissioner  
220 shall consider the size of the business of the employer charged and the gravity of the violation. The  
221 decision of the Commissioner shall be final.

222 G. The Commissioner, with the written and signed consent of an employee, may institute proceedings  
223 on behalf of an employee to enforce compliance with this article, to grant equitable relief as  
224 appropriate and permitted by law, and to collect the amount of any uncompensated sick leave that shall  
225 be paid to the employee entitled thereto. Upon entry of a final order of the Commissioner, or upon entry  
226 of a judgment against the employer, the Commissioner or the court shall assess attorney fees of  
227 one-third the amount set forth in the final order or judgment.

228 H. In addition to any civil penalties provided by this section, and without regard to any exhaustion  
229 of alternative administrative remedies provided for in this section, an employee who alleges a violation  
230 of this article may bring a civil action in a court of competent jurisdiction against an employer violating  
231 this article. Such action may be brought by a person aggrieved by a violation of this article without first  
232 filing an administrative complaint. Upon prevailing in an action brought pursuant to this section, the  
233 court shall order as a remedy to the employee (i) twice the amount of any uncompensated sick leave;  
234 (ii) twice the amount of any actual damages suffered as the result of an employer's violation of this  
235 article; (iii) injunctive relief as appropriate to restrain continued violation of this article; (iv) such legal  
236 or equitable relief as may be appropriate to remedy the violation, including the reinstatement of the  
237 employee to the same position held before the retaliatory action or to an equivalent position; and (v)  
238 compensation for any lost wages, benefits, and other remuneration, together with interest thereon and  
239 reasonable attorney fees and costs. The statute of limitations for a civil action brought pursuant to this  
240 section shall be for a period of two years from the date the alleged violation occurred or the date the  
241 aggrieved employee knew or should have known of the violation.

242 I. Civil penalties owed under this article shall be paid to the Commissioner for deposit into the  
243 general fund. The Commissioner shall prescribe procedures for the payment of proposed assessments of  
244 civil penalties that are not contested by employers. Such procedures shall include provisions for an

245 *employer to consent to abatement of the alleged violation and to pay a proposed civil penalty or a*  
246 *negotiated sum in lieu of such civil penalty without admission of any civil liability arising from such*  
247 *alleged violation.*  
248 **2. That the provisions of this act shall become effective on January 1, 2025.**