
OLR Bill Analysis

sHB 6537

AN ACT CONCERNING EXPANSION OF PAID SICK DAYS AND DOMESTIC WORKER COVERAGE.

SUMMARY

This bill expands the state's current paid sick leave law in numerous ways. It also establishes a new paid sick leave requirement for leave specifically related to COVID-19.

The state's current paid sick leave law generally requires employers with at least 50 employees to provide paid sick leave to their "service workers" in certain specified occupations. The bill expands the law by, among other things:

1. covering all private-sector employers and employees under it;
2. broadening the types of family members for whom an employee may use the leave;
3. increasing the rate at which employees accrue leave and removing the waiting period before they may use it; and
4. broadening the reasons employees may use the leave to include things such as the employer's closure due to a public health emergency.

It also makes numerous minor, technical, and conforming changes to the paid sick leave law.

The bill also creates a new requirement for all private-sector employers to provide additional COVID-19 sick leave to their employees. They must provide at least 80 hours of this leave to their regular full-time employees and a prorated amount of leave for other employees. The bill allows employees to use the leave retroactively to March 10, 2020, and until four weeks after the governor's emergency

declarations (presumably COVID-19-related) expire.

Under the bill, employees may use the COVID-19 sick leave for various reasons related to COVID-19, such as complying with a COVID-19 quarantine order; caring for a family member subject to a quarantine order; caring for a child whose school was closed due to COVID-19; or having a health condition that may increase the employee's susceptibility to COVID-19. Employees must be paid their normal hourly wage for their time on leave.

The bill requires the labor commissioner to enforce the bill's COVID-19 sick leave provisions, but it also allows people aggrieved by a violation to bring a civil lawsuit without first filing an administrative complaint with the commissioner. Among other things, it also establishes employer notice and recordkeeping requirements.

EFFECTIVE DATE: July 1, 2021, for the provision that expands the existing paid sick leave; upon passage for the provisions that establish COVID-19 sick leave.

§§ 1-6 — EXISTING PAID SICK LEAVE EXPANSION

Covered Employers & Employees (§ 1)

The current paid sick leave law covers private sector employers with at least 50 employees, except manufacturers and certain non-profits. The bill covers all private sector employers regardless of their size, industry, or non-profit status. It also requires the state's Personal Care Attendant Workforce Council to act on behalf of the employers of people who provide personal care assistance (PCAs) under a state-funded program, such as the Connecticut Home Care Program for Elders. (The consumer for whom the PCA provides services for is generally otherwise considered the PCA's employer.)

The bill also expands current law to cover all private sector employers' employees, rather than only the specified "service worker" occupations covered by current law. It also includes the day or temporary workers excluded from the current paid sick day law.

Family Members (§ 1)

Current law allows covered employees to use paid sick time to care for their child or spouse. The bill broadens the range of “family members” that employees may use paid sick time to care for to include their adult children, siblings, parents, grandparents, grandchildren, and anyone related by blood or affinity whose close association is the equivalent of these family members. Under the bill, children, siblings, parents, grandparents, and grandchildren include those relations by blood, marriage, adoption, or foster care.

Leave Accrual, Availability, and Uses (§§ 2-4)

Leave Accrual. The bill increases the rate at which employees accrue leave time, from one hour per every 40 hours worked to one hour per every 30 hours worked. It also allows employers to provide an employee, at the beginning of the year, with all of the sick leave that the employer expects the employee to accrue in the year.

The bill specifies that employees exempt from federal law’s overtime pay requirements must be assumed to work 40 hours per week for leave accrual purposes, unless their normal work week is less than 40 hours. If it is, then their leave accrual must be based on their normal work week. (Current law does not explicitly address this issue.)

Under current law, an employee’s termination is a break in service and the employee’s previously accrued sick time does not carry over if the employee is rehired by the same employer. The bill instead entitles a re-employed employee to any sick time he or she previously accrued with the employer.

The bill requires that employees maintain their accrued paid sick time when (1) they transfer to a separate division, entity, or location with the same employer or (2) when a different employer succeeds or replaces an existing employer. (Current law does not explicitly address either of these issues.)

Leave Availability. Under current law, employees must work 680 hours for their employer before they can use their leave. The bill

instead allows employees to use their leave as it is accrued. It also allows employees to use the leave regardless of how much they work by eliminating a provision in current law that allows employees to use leave only if they average at least 10 work hours per week.

Leave Uses. The bill expands the reasons for which an employee may use sick leave to include when (1) the employer's place of business is closed by order of a public official due to a public health emergency or (2) an employee needs to care for a family member whose school or place of care has been closed by such an order.

It also allows for leave if the employee needs to care for him or herself or a family member under quarantine (i.e., when it has been determined that the employee or family member's presence in the community may jeopardize others' health because of their exposure to a communicable disease, regardless of whether they actually contracted it). The determination for a quarantine must be made by a health authority with jurisdiction, a health care provider, or the employee's or family member's employer.

Current law allows an employee to use paid sick leave if he or she was a victim of family violence or sexual assault and needs leave to do certain things (e.g., receive counseling or participate in civil or criminal proceedings). The bill additionally allows employees to use the leave if their family member is a victim of family violence or sexual assault and needs to do these same things.

The current paid sick leave law deems an employer in compliance with its requirements to provide leave if the employer offers other paid leave that may be used for the same purposes as provided in the law. The bill requires that employees be able to use the other paid leave under the same conditions for the exception to apply.

The bill prohibits employers from requiring employees taking paid sick leave to look for or find a replacement to cover their hours on leave. It also removes a provision in current law that prohibits an employer from requiring employees to their use accrued paid sick leave if they choose to work additional hours or shifts during the same

or following pay period, in lieu of hours or shifts missed.

Documentation (§ 3)

Under certain circumstances, current law allows employers to require employees to provide documentation to support their reasons for taking leave. The bill limits this authority by prohibiting employers from requiring documentation that explains the nature of the illness or, if the employee is taking leave due to family violence or sexual assault, the details of the domestic violence, sexual assault, harassment, or stalking.

If the employer requires documentation but does not offer health insurance, the bill requires the employer to pay all out-of-pocket expenses for obtaining the documentation. If the employee has health insurance, the employer must pay any costs charged to the employee for the documentation. The employer must pay any costs charged to the employee for obtaining documentation for leave related to family violence, sexual assault, harassment, or stalking.

Lawsuits (§ 5)

The bill expands the current law's enforcement provisions to also allow the labor commissioner, the attorney general, or someone aggrieved by a violation of the paid sick leave law to bring a lawsuit against an employer without first filing an administrative complaint with the labor commissioner. Under current law, someone aggrieved by a violation may file a complaint with the labor commissioner and then appeal the commissioner's decision to the Superior Court.

Employer Notice & Records (§ 6)

Current law requires employers to notify employees about certain provisions of the paid sick leave law and allows them to do so by displaying a poster in the workplace. The bill instead requires employers to give written notice to each employee about these provisions and display a poster about them in the workplace. They must do this by January 1, 2022, or when an employee is hired, whichever is later. If the employer does not maintain a physical workplace, or an employee teleworks or works through a web-based

or app-based platform, the bill requires the employer to provide the notices through electronic communication or a posting on a web-based or app-based platform. It also requires the labor commissioner, within available appropriations, to provide posters and model written notices to employers.

The bill requires that employee “pay stubs” include an employee’s accrued paid sick time and use for the calendar year. It also requires employers to maintain their paid sick leave records for three years and give the labor commissioner access to them, with appropriate notice and at a mutually agreeable time (the bill does not specify when this three-year period begins). If an issue arises over an employee’s entitlement to paid sick leave and the employer does not have the required records, the bill requires that it be presumed that the employer violated the law’s notice and records requirements, absent clear and convincing evidence otherwise.

DOL Outreach Program (§ 6)

The bill allows the labor commissioner, within available appropriations, to develop and implement a multilingual outreach program to inform people about the paid sick leave law. The program must include notices and other written material in English, Spanish, and any language that is the first language spoken by at least 5% of the state’s population. These must be distributed to all child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers.

Lastly, the bill requires the labor commissioner to adopt regulations to implement the paid sick time law. Current law allows him to adopt regulations about the law’s notice requirements.

§§ 7-12 — COVID-19 SICK LEAVE

Leave Requirement (§§ 7, 8(a)&(b))

The bill requires all private-sector employers to provide their employees with additional COVID-19 sick leave that they can use for certain purposes related to COVID-19. They must provide at least 80 hours of this leave to employees who normally work 40 hours per

week. Employees who work less than that must receive COVID-19 sick time that equals the amount of time they are scheduled to work or that they work on average over a two-week period, whichever is greater. Employees exempt from federal law's overtime pay requirements must be assumed to work 40 hours per week for leave accrual purposes, unless their normal work week is less than 40 hours. If it is, then their leave accrual must be based on their normal work week.

To calculate leave amounts for employees who work variable schedules of less than 40 hours per week, the bill requires employers to use the employee's average weekly hours over the six months preceding the leave, including any leave hours that the employee took during that period. If the employee did not work over that period, the average must be the employee's reasonable expectation, at the time of hire, of the average number of hours per week that he or she would be regularly scheduled to work.

The bill requires that the leave be available to employees immediately and retroactively to March 10, 2020, regardless of how long they have been employed, and remain available until four weeks after the governor's emergency declarations (presumably over COVID-19) expire.

"Employers" who must provide COVID-19 sick leave are any person, firm, business, educational institution, nonprofit organization, corporation, limited liability company, or other entity. This includes the state's Personal Care Attendant Workforce Council, which under the bill is the employer of people who provide personal care assistance (PCAs) under a state-funded program, such as the Connecticut Home Care Program for Elders. It does not include the federal government.

"Employees" eligible for COVID-19 sick leave under the bill are anyone engaged in service to an employer in the employer's business.

Reasons for Leave (§§ 7-8(c)&(d))

Under the bill, employees may use the COVID-19 sick leave when they are unable to work, including through telework, because they:

1. need to (a) self-isolate and care for themselves due to a COVID-19 diagnosis or symptoms; (b) seek COVID-19 preventive care; or (c) seek or obtain a diagnosis, care, or treatment for COVID-19 symptoms;
2. need to comply with an order or determination to self-isolate because of their possible exposure to COVID-19 or have COVID-19 symptoms, regardless of whether they were diagnosed with COVID-19, and their physical presence on the job or in the community would jeopardize their health or that of other employees or someone in the employee's household (i.e., a quarantine order);
3. need to care for a family member who is (a) self-isolating or seeking preventive care, diagnosis, or treatment or (b) self-isolating due to a COVID-19 quarantine order;
4. were prohibited from working by their employer due to health concerns related to potential COVID-19 transmission;
5. are subject to an individual or general local, state, or federal quarantine or isolation order related to COVID-19;
6. need to care for a child or other family member whose care provider is unavailable due to COVID-19 or whose school or place of care has been closed by a local, state, or federal public official due to COVID-19 (including schools that are (a) physically closed but providing virtual learning, (b) requiring or allowing virtual learning, or (c) requiring or allowing a hybrid of in-person and virtual learning); or
7. have a health condition that may increase susceptibility to or risk of COVID-19, including age, heart disease, asthma, lung disease, diabetes, kidney disease, or a weakened immune system.

If the employee needs the leave to self-isolate due to a quarantine order, or to care for a family member who must self-isolate due to a

quarantine order, the order must be from a local, state, or federal public official, a health authority with jurisdiction, or the employer of the employee or employee's family member. But it does not have to be specific to the employee or family member.

Under the bill, a "family member" for whom an employee may take COVID-19 sick leave is (1) the employee's spouse, child, parent, grandparent, grandchild, or sibling, whether related to the employee by blood, marriage, adoption or foster care, or (2) an individual related to the employee by blood or affinity whose close association with the employee is the equivalent of those family relationships. A "parent" is a biological parent, foster parent, adoptive parent, stepparent, parent-in-law of the employee, legal guardian of an employee or an employee's spouse, an individual standing in loco parentis (i.e., in place of a parent) to an employee, or an individual who stood in loco parentis to the employee when the employee was a minor child.

COVID-19 Sick Leave Pay (§ 8(e))

The bill requires that an employee's pay for COVID-19 sick leave be the greater of the employee's normal hourly wage or the minimum wage. If an employee's hourly wage varies, the "normal hourly wage" is the employee's average hourly wage over the pay period prior to the one in which the employee uses the leave.

Employee Notice & Documentation (§ 8(f)&(g))

The bill requires an employee to give the employer advance notice about the need for COVID-19 sick leave as soon as practicable, but only if the need for leave is foreseeable and the employer's place of business has not been closed. It prohibits an employer from requiring an employee to provide documentation for COVID-19 sick leave.

Transfers & Successor Employers (§ 8(h))

The bill requires that employees maintain their accrued COVID-19 sick leave when (1) they transfer to a separate division, entity, or location with the same employer or (2) when a different employer succeeds or replaces an existing employer.

Employee Replacements (§ 8(i))

The bill prohibits employers from requiring that an employee search for or find a replacement worker to cover the hours during which the employee is using COVID-19 sick leave.

Other Benefits and Collective Bargaining Agreements (§ 9)

The bill specifies that its COVID-19 sick leave provisions do not (1) discourage or prohibit an employer from adopting or retaining a more generous COVID-19 sick leave, paid sick leave, or other paid leave policy; (2) diminish any rights provided to an employee under a collective bargaining agreement; or (3) prohibit an employer from establishing a policy that allows employees to donate unused COVID-19 sick leave to other employees.

It also allows an employee to use the COVID-19 sick leave before using the paid sick leave provided by current law, as amended by the bill. And it prohibits an employer from requiring an employee to use other paid leave before using the COVID-19 leave.

Enforcement (§ 10)

The bill makes it illegal for an employer or anyone else to interfere with, restrain, or deny someone using or trying to use the bill's COVID-19 sick leave rights. It prohibits employers from taking retaliatory personnel actions or discriminating against an employee because the employee (1) requests or uses COVID-19 sick leave or (2) files a complaint with the labor commissioner alleging the employer's violation. Under the bill, a "retaliatory personnel action" is a termination, suspension, constructive discharge, demotion, unfavorable reassignment, refusal to promote, reduction of hours, disciplinary action, or other adverse employment action taken by an employer against an employee.

Complaints & Lawsuits. The bill allows an employee aggrieved by a violation of the bill's COVID-19 sick leave provisions to file a complaint with the labor commissioner. Upon receiving the complaint, the commissioner may hold a hearing. If he finds the employer in violation by a preponderance of the evidence, the bill imposes the

same civil penalty allowed under the paid sick day law (up to \$500) and allows the commissioner to award the employee appropriate relief (e.g., pay for used sick leave, rehiring). A party aggrieved by the commissioner's decision may appeal to the Superior Court.

The bill requires the labor commissioner to advise an employee who files a complaint and is covered by a collective bargaining agreement that provides for COVID-19 sick leave about the employee's right to pursue a grievance with his or her collective bargaining agent.

The bill also allows anyone aggrieved by a violation of the bill's COVID-19 sick leave provisions, the labor commissioner, or the attorney general to bring a civil action in court without first filing an administrative complaint.

The bill requires the labor commissioner to administer these enforcement provisions within available appropriations.

Employer Notice & Records Requirements (§ 11)

Employer Notice. The bill requires employers to provide written notice to each employee (1) about the entitlement to COVID-19 sick leave, the amount of leave provided, and the terms under which it can be used; (2) that retaliatory personnel actions are prohibited; and (3) about the right to file a complaint with the labor commissioner or file a civil action. They must provide this notice within 14 days after the bill takes effect or at the employee's time of hiring, whichever is later.

The bill also requires employers to display a poster that contains the same information in both English and Spanish. If the employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based or app-based platform, the notification must be sent via electronic communication or a conspicuous posting in the web-based or app-based platform. The bill requires the labor commissioner to provide the posters and model written notices to all employers.

Additionally, the bill requires employers to include in employee pay stubs the number of hours, if any, of COVID-19 sick leave received and

used by each employee in the calendar year.

Employer Records Requirements. The bill requires employers to retain records documenting the hours worked and COVID-19 sick leave taken by employees for three years. (The bill does not specify when this three-year period begins.) The employers must allow the labor commissioner to access them, with appropriate notice and at a mutually agreeable time, to monitor compliance. For issues about an employee's entitlement to COVID-19 sick leave, if the employer does not maintain or retain adequate records, or does not allow reasonable access to them, the bill requires that it be presumed that the employer violated these recordkeeping requirements unless there is clear and convincing evidence otherwise.

DOL. The bill allows the labor commissioner to develop and implement a multilingual outreach program to inform employees, parents, and people under a health care provider's care about the availability of COVID-19 sick leave. The program may include notices and written materials in English and other languages.

It also requires the labor commissioner to promulgate appropriate guidelines or regulations to coordinate implementation and enforcement of the bill's COVID-19 sick leave provisions.

It requires the labor commissioner to administer these provisions on DOL's and the bill's employer notice and records requirements within available appropriations.

Disclosure of Health Information (§ 12)

Unless otherwise required by law, the bill prohibits an employer from requiring disclosure of the details of an employee's or an employee's family member's health information as a condition for providing COVID-19 sick leave. If an employer possesses this health information, it must be treated as confidential and not disclosed except to the employee or with the employee's permission.

BACKGROUND

Related Bills

sHB 6595 (§§ 20-25) and sSB 1002 (§§ 20-25), reported favorably by the Labor and Public Employee Committee, both contain COVID-19 sick leave provisions that are identical to §§ 7-12 in this bill.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 9 Nay 4 (03/25/2021)