

Senate Study Bill 3176 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON LABOR AND BUSINESS
RELATIONS BILL BY
CHAIRPERSON COURTNEY)

A BILL FOR

- 1 An Act providing minimum paid sick and safe time for employees
- 2 and including applicability provisions.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 91F.1 Title.

2 This chapter shall be known as the "*Healthy and Safe Families*
3 *and Workplaces Act*".

4 Sec. 2. NEW SECTION. 91F.2 Definitions.

5 1. "*Commissioner*" means the labor commissioner, appointed
6 pursuant to section 91.2.

7 2. "*Domestic abuse assault*" means as defined in section
8 708.2A.

9 3. "*Employee*" means as defined in the federal Fair Labor
10 Standards Act of 1938, as amended to January 1, 2007.

11 4. "*Employer*" means as defined in the federal Fair Labor
12 Standards Act of 1938, as amended to January 1, 2007.

13 5. "*Family member*" means any of the following:

14 a. An employee's spouse or domestic partner.

15 b. A child or foster child; stepchild; legal ward; a child
16 of a domestic partner; or a child to whom the employee stands
17 in loco parentis.

18 c. A parent or foster parent; stepparent; legal guardian;
19 or a person who stood in loco parentis to the employee when the
20 employee was a minor child.

21 d. A grandparent or spouse or domestic partner of a
22 grandparent.

23 e. A grandchild.

24 f. A sibling or foster sibling; stepsibling; or spouse or
25 domestic partner of a sibling, foster sibling, or stepsibling.

26 g. Any other individual related to the employee by blood
27 or affinity whose close association with the employee is the
28 equivalent of a familial relationship.

29 6. "*Health care professional*" means as defined in section
30 135.157.

31 7. "*Paid sick and safe time*" means time that is compensated
32 at the same hourly rate and with the same benefits, including
33 health care benefits, as the employee normally earns during
34 hours worked and is provided by an employer to an employee for
35 the purposes described in section 91F.4, but in no instance

1 shall the hourly wage be less than that provided in section
2 91D.1.

3 8. "*Retaliatory personnel action*" means the discharge,
4 suspension, or demotion of, or any other adverse action taken
5 by an employer against, an employee.

6 9. "*Sexual abuse*" means as defined in section 709.1.

7 10. "*Stalking*" means as defined in section 708.11.

8 Sec. 3. NEW SECTION. 91F.3 **Accrual — paid sick and safe**
9 **time.**

10 1. An employee who works for compensation for an employer
11 shall have the right to accrue and use paid sick and safe time
12 as provided in this chapter if the employee meets one of the
13 following criteria:

14 a. The employee works for one thousand forty hours or more
15 in a year.

16 b. The employee works for twenty hours or more in a week.

17 2. a. An employee shall accrue a minimum of five and
18 fifty-four hundredths hours of paid sick and safe time for
19 every forty hours worked.

20 b. An employee shall not accrue more than one hundred
21 forty-four hours of paid sick and safe time in a calendar year,
22 unless the employer selects a higher limit.

23 3. Employees who are exempt from overtime requirements
24 under 29 U.S.C. § 213(a)(1) of the federal Fair Labor Standards
25 Act of 1938 are deemed to work forty hours in each work week for
26 purposes of paid sick and safe time accrual unless their normal
27 work week is less than forty hours, in which case paid sick and
28 safe time accrues based upon that normal work week.

29 4. Paid sick and safe time as provided in this section shall
30 begin to accrue upon the commencement of employment for new
31 employees and for existing employees beginning July 1, 2010.

32 5. a. A new employee may use accrued paid sick and
33 safe time beginning on the sixtieth calendar day following
34 commencement of the employee's employment. On and after the
35 sixtieth calendar day of employment, an employee may use

1 accrued paid sick and safe time and accruing paid sick and safe
2 time as it accrues.

3 *b.* Existing employees may use paid sick and safe time as it
4 accrues pursuant to this chapter.

5 6. Accrued paid sick and safe time shall be carried over to
6 the following calendar year subject to the limit described in
7 subsection 2, paragraph *"b"*.

8 7. An employer with a paid leave policy who makes available
9 an amount of paid leave sufficient to meet the accrual
10 requirements of this section that may be used for the same
11 purposes and under the same conditions as paid sick and safe
12 time under this chapter is not required to provide additional
13 paid sick and safe time.

14 8. Nothing in this section shall be construed as requiring
15 financial or other reimbursement to an employee from an
16 employer upon the employee's termination, resignation,
17 retirement, or other separation from employment for accrued
18 paid sick and safe time that has not been used.

19 9. *a.* If an employee is transferred to a separate division,
20 entity, or location, but remains employed by the same employer,
21 the employee is entitled to all paid sick and safe time
22 previously accrued; is entitled to immediately use all accrued
23 paid sick and safe time as provided in this chapter; and shall
24 continue to accrue paid sick and safe time at the same rate or
25 higher as before the transfer.

26 *b.* When there is a separation from employment and the
27 employee is rehired within three months of the separation
28 by the same employer, previously accrued paid sick and safe
29 time that had not been used prior to the separation shall be
30 reinstated. The employee may use such accrued paid sick and
31 safe time immediately upon rehire, and paid sick and safe time
32 shall begin to accrue immediately upon rehire.

33 10. At the employer's discretion, the employer may advance
34 paid sick and safe time to an employee ahead of accrual of such
35 time by the employee.

1 Sec. 4. NEW SECTION. 91F.4 Use — paid sick and safe time.

2 1. Paid sick and safe time shall be provided to an employee
3 by an employer for the following purposes:

4 *a.* An employee's mental or physical illness, injury, or
5 health condition; an employee's need for medical diagnosis,
6 care, or treatment of a mental or physical illness, injury, or
7 health condition; an employee's need for preventive medical
8 care.

9 *b.* An employee's need to care for a family member with a
10 mental or physical illness, injury, or health condition; an
11 employee's need to care for a family member who needs medical
12 diagnosis, care, or treatment of a mental or physical illness,
13 injury, or health condition; an employee's need to care for a
14 family member who needs preventive medical care.

15 *c.* (1) Closure of the employee's place of work by order of
16 a public official due to a public health emergency.

17 (2) An employee's need to care for a family member whose
18 school or place of care has been closed by order of a public
19 official due to a public health emergency.

20 (3) An employee's need to care for a family member when
21 public health authorities or a health care professional has
22 determined that the family member's presence in the community
23 jeopardizes the health of others because of the family member's
24 exposure to communicable disease, whether or not the family
25 member has actually contracted the communicable disease.

26 *d.* An employee's need to be absent from work due to domestic
27 abuse assault, sexual abuse, or stalking, provided the leave
28 from work is to do one or more of the following:

29 (1) Seek medical attention for the employee or family member
30 to recover from physical or psychological injury or disability
31 caused by domestic abuse assault or sexual abuse.

32 (2) Obtain services from a victim services organization.

33 (3) Obtain psychological or other counseling.

34 (4) Seek relocation due to the domestic abuse assault,
35 sexual abuse, or stalking.

1 (5) Take legal action, including preparing for or
2 participating in any civil or criminal legal proceeding related
3 to or resulting from the domestic abuse assault, sexual abuse,
4 or stalking.

5 2. Paid sick and safe time shall be allowed upon the oral
6 request of an employee. When possible, the employee shall
7 include the expected duration of the employee's absence.

8 3. When the use of paid sick and safe time is foreseeable,
9 the employee shall make a good faith effort to provide notice
10 of the need for such time to the employer in advance of the use
11 of the paid sick and safe time, and the employee shall make a
12 reasonable effort to schedule the use of paid sick and safe
13 time in a manner that does not unduly disrupt the operations of
14 the employer.

15 4. Accrued paid sick and safe time may be used in the
16 smaller of hourly increments or the smallest increment that the
17 employer's payroll system uses to account for absences or use
18 of other time.

19 5. *a.* For paid sick and safe time for more than three
20 consecutive days, an employer may require reasonable
21 documentation that the paid sick and safe time is for the
22 purposes described in subsection 1.

23 (1) Documentation signed by a health care professional
24 indicating that sick time is necessary shall be considered
25 reasonable documentation.

26 (2) A police report indicating that the employee was a
27 victim of domestic abuse assault, sexual abuse, or stalking; a
28 court order; or a signed statement from a victim and witness
29 advocate affirming that the employee is involved in legal
30 action related to domestic abuse assault, sexual abuse, or
31 stalking shall be considered reasonable documentation.

32 *b.* An employer may not require that the documentation
33 explain the nature of the medical reason or the details of the
34 domestic abuse, sexual abuse, or stalking.

35 *c.* (1) If an employer chooses to require documentation

1 for use of paid sick time and the employee does not have
2 health insurance, the employer is responsible for paying all
3 out-of-pocket expenses the employee incurs in obtaining the
4 documentation.

5 (2) If the employee does have health insurance, the
6 employer is responsible for paying any costs charged to the
7 employee by the health care provider for providing the specific
8 documentation required by the employer.

9 6. An employer shall not require as a condition of allowing
10 paid sick and safe time under this chapter that the employee
11 search for or find a replacement worker to cover the hours
12 during which the employee will be using paid sick and safe
13 time.

14 Sec. 5. NEW SECTION. 91F.5 Exercise of rights —
15 retaliation prohibited.

16 1. An employer or any other person shall not interfere with,
17 restrain, or deny the exercise of, or the attempt to exercise,
18 any right protected under this chapter.

19 2. An employer shall not take retaliatory personnel action
20 or discriminate against an employee because the employee has
21 exercised rights protected under this chapter. Such rights
22 include but are not limited to the following:

23 a. The right to use paid sick and safe time pursuant to this
24 chapter.

25 b. The right to file a complaint or inform any person about
26 any employer's alleged violation of this chapter.

27 c. The right to cooperate with the commissioner in any
28 investigation of alleged violations of this chapter.

29 d. The right to inform any person of the person's potential
30 rights under this chapter.

31 3. An employer's absence control policy shall not count paid
32 sick and safe time taken pursuant to this chapter as an absence
33 that may lead to or result in discipline, discharge, demotion,
34 suspension, or any other adverse action.

35 4. The protections of this section shall apply to any person

1 who mistakenly but in good faith alleges violations of this
2 section.

3 5. There is a rebuttable presumption of retaliation under
4 this section whenever an employer takes adverse action against
5 an employee within ninety days of when that employee has done
6 any of the following:

7 a. Filed a complaint with the commissioner or a court
8 alleging a violation of any provision of this chapter.

9 b. Informed any person about an employer's alleged violation
10 of this chapter.

11 c. Cooperated with the commissioner or others in an
12 investigation or prosecution of any alleged violation of this
13 chapter.

14 d. Opposed any policy, practice, or act that is unlawful
15 under this chapter.

16 e. Informed any person of the person's potential rights
17 under this chapter.

18 Sec. 6. NEW SECTION. 91F.6 Notice and posting.

19 1. An employer shall give notice to employees of the
20 following:

21 a. Employees are entitled to paid sick and safe time.

22 b. The accrual amounts of paid sick and safe time.

23 c. The terms of use of paid sick and safe time guaranteed
24 under this chapter.

25 d. The prohibition against retaliation against employees who
26 request or use paid sick and safe time.

27 e. Each employee has the right to file a complaint or
28 bring a civil action if paid sick and safe time as required
29 by this chapter is denied by the employer, or the employee is
30 retaliated against for requesting or taking paid sick and safe
31 time.

32 2. a. An employer may comply with this section by supplying
33 each employee with a notice in English, and in any language
34 that is the first language spoken by at least five percent
35 of the employer's workforce, that contains the information

1 described in subsection 1.

2 *b.* (1) An employer may comply with this section by
3 displaying a poster in a conspicuous and accessible place in
4 each establishment where such employees are employed which
5 contains in English, and in any language that is the first
6 language spoken by at least five percent of the employer's
7 workforce, all the information required in subsection 1.

8 (2) The commissioner shall create and make available to
9 employers posters that contain the information required in
10 subsection 1 in English and in any language that the employer
11 informs the commissioner that more than five percent of the
12 employer's workforce speaks as a first language.

13 3. An employer who willfully violates the notice and posting
14 requirements of this section shall be subject to a civil
15 fine in an amount not to exceed one hundred dollars for each
16 separate offense.

17 Sec. 7. NEW SECTION. **91F.7 Damages recoverable by an**
18 **employee.**

19 In an action by an employee against the employee's employer
20 or former employer for an alleged violation of this chapter,
21 when it has been shown that the employer has intentionally
22 failed to provide paid sick and safe time to the employee
23 in violation of this chapter or failed to allow the employee
24 to use accrued paid sick and safe time as provided by this
25 chapter, the employer shall be liable to the employee for
26 the monetary value of the owed paid sick and safe time, plus
27 liquidated damages for failure to allow the employee to use
28 accrued paid sick and safe time, court costs, and any attorney
29 fees incurred in the civil action.

30 Sec. 8. NEW SECTION. **91F.8 Employer records.**

31 1. An employer shall retain records documenting hours
32 worked by employees and paid sick and safe time taken by
33 employees, for a period of five years.

34 2. An employer shall allow the commissioner access to such
35 records, with notice and at a mutually agreeable time, to

1 monitor compliance with the requirements of this chapter.

2 3. If an issue arises as to an employee's entitlement to
3 paid sick and safe time under this chapter and the employer
4 does not maintain or retain adequate records according to this
5 section or does not allow the commissioner access to such
6 records, the commissioner or other investigating authority
7 shall presume that the employer has violated this chapter,
8 absent clear and convincing evidence otherwise.

9 Sec. 9. NEW SECTION. 91F.9 **Enforcement.**

10 1. Upon the written complaint of the employee involved,
11 the commissioner may determine whether to investigate if an
12 employer has violated any provision of this chapter. The
13 commissioner shall keep confidential, to the extent permitted
14 by applicable law, the name of and other indentifying
15 information about the employee reporting the alleged violation.
16 However, the commissioner, with the authorization of the
17 complaining employee, may disclose the employee's name and
18 other information as necessary to enforce this chapter or for
19 other appropriate purposes.

20 2. If for any reason the commissioner makes a determination
21 not to investigate, the commissioner shall notify the
22 complaining employee within fourteen days of receipt of
23 the complaint. The commissioner shall otherwise notify
24 the employee of the determination to investigate within
25 a reasonable time. If it is determined that there is an
26 enforceable claim, the commissioner, with the consent of the
27 complaining employee and with the assistance of the office
28 of the attorney general if the commissioner requests such
29 assistance, shall, unless a settlement is reached, commence
30 a civil action in any court of competent jurisdiction to
31 recover for the benefit of any employee any paid sick and safe
32 time claims that have been assigned to the commissioner for
33 recovery. The commissioner may also request reasonable and
34 necessary attorney fees. With the consent of the assigning
35 employee, the commissioner may also settle a claim on behalf of

1 the assigning employee.

2 3. Proceedings under this section that precede commencement
3 of a civil action shall be conducted informally without any
4 party having a right to be heard before the commissioner. The
5 commissioner may join various assignments in one claim for the
6 purpose of settling or litigating their claims.

7 4. The provisions of subsections 1 and 2 shall not be
8 construed to prevent an employee from settling or bringing an
9 action for damages under section 91F.7 if the employee has not
10 assigned the claim under subsection 1.

11 5. Any recovery of attorney fees, in the case of actions
12 brought under this section by the commissioner, shall be
13 remitted by the commissioner to the treasurer of state for
14 deposit in the general fund of the state. The commissioner
15 shall not be required to pay any filing fee or other court
16 costs.

17 Sec. 10. NEW SECTION. 91F.10 Confidentiality and
18 nondisclosure.

19 1. An employer may not require disclosure of details
20 relating to domestic abuse assault, sexual abuse, or stalking,
21 or the details of an employee's medical condition or that of
22 a family member as a condition of allowing paid sick and safe
23 time under this chapter.

24 2. If an employer possesses health information or
25 information pertaining to domestic abuse assault, sexual abuse,
26 or stalking about an employee or an employee's family member,
27 such information shall be treated as confidential and not
28 disclosed except to the affected employee or with the written
29 permission of the affected employee.

30 Sec. 11. NEW SECTION. 91F.11 Other sick and safe time
31 policies — legal requirements.

32 1. Nothing in this chapter shall be construed to discourage
33 or prohibit an employer from the adoption or retention of a
34 paid sick and safe time policy that is more generous than that
35 provided in this chapter.

1 2. Nothing in this chapter shall be construed as diminishing
2 the obligation of an employer to comply with any contract,
3 collective bargaining agreement, employment benefit plan, or
4 other agreement that provides more generous paid sick and safe
5 time to an employee than required in this chapter.

6 3. Nothing in this chapter shall be construed as diminishing
7 the rights of public employees regarding paid sick and safe
8 time or the use of paid sick and safe time as provided by state
9 law.

10 4. This chapter provides minimum requirements pertaining to
11 paid sick and safe time and shall not be construed to preempt,
12 limit, or otherwise affect the applicability of any other law,
13 regulation, requirement, policy, or standard that provides for
14 greater accrual or use by employees of sick and safe time,
15 whether paid or unpaid, or that extends other protections to
16 employees.

17 Sec. 12. Section 91.4, subsection 5, Code 2009, is amended
18 to read as follows:

19 5. The director of the department of workforce development,
20 in consultation with the labor commissioner, shall, at the time
21 provided by law, make an annual report to the governor setting
22 forth in appropriate form the business and expense of the
23 division of labor services for the preceding year, the number
24 of disputes or violations processed by the division and the
25 disposition of the disputes or violations, and other matters
26 pertaining to the division which are of public interest,
27 together with recommendations for change or amendment of the
28 laws in this chapter and chapters 88, 88A, 88B, 89, 89A, 89B,
29 90A, 91A, 91C, 91D, 91E, 91F, 92, and 94A, and section 85.68,
30 and the recommendations, if any, shall be transmitted by the
31 governor to the first general assembly in session after the
32 report is filed.

33 Sec. 13. APPLICABILITY. This Act applies to all existing
34 employees on and after the effective date of this Act and to
35 all new employees hired on or after that date.

1

EXPLANATION

2 This bill, entitled the "Healthy and Safe Families and
3 Workplace Act", provides minimum paid sick and safe time for
4 all employees working part-time and full-time in the state.

5 The bill defines several terms including "family member" and
6 "paid sick and safe time".

7 The bill provides that all employees who work 1,040 or more
8 hours a year, or 20 or more hours a week, shall have the right
9 to accrue and use paid sick and safe time. The formula for
10 accruing paid sick and safe time is contained in the bill, and
11 there are limits for the amount of paid sick and safe time an
12 employee may accrue per year, unless the employer sets a higher
13 limit.

14 The formula for accruing paid sick and safe time and the
15 limitations and exceptions are provided in new Code section
16 91F.3. Paid sick and safe time shall begin to accrue for new
17 employees on the first day of work and for existing employees
18 on July 1, 2010. New employees may use accrued paid sick
19 and safe time starting the 60th day of employment; existing
20 employees may use paid sick and safe time as it accrues. Paid
21 sick and safe time shall carry over each year, but an employee
22 may not use more than 144 hours of paid sick and safe time per
23 year.

24 An employer who provides a paid leave policy that meets the
25 minimum accrual requirements and the same minimum uses and
26 conditions is deemed to be in compliance with the bill. The
27 bill does not require employees to be reimbursed for unused
28 paid sick and safe time upon separation from employment.
29 However, if an employee is moved or transferred within the
30 company, the employee shall retain all accrued paid sick and
31 safe time and may use such time immediately. If there is
32 an employment separation, but an employee is rehired within
33 three months, all accrued paid sick and safe time shall be
34 reinstated upon rehire and be available for immediate use. An
35 employer has the discretion to advance sick and safe time to

1 an employee.

2 The bill provides specific reasons for which employees may
3 use the paid sick and safe time in new Code section 91F.4.
4 An employee shall give reasonable notice to an employer
5 when use of paid sick and safe time is foreseeable. When an
6 employee uses more than three consecutive days of paid sick and
7 safe time, an employer may require reasonable documentation
8 that the time used is covered by the reasons the time may
9 be taken as provided in the bill. An employer who requests
10 documentation for use of paid sick time by an employee without
11 health insurance is responsible for paying all expenses related
12 to acquiring the documentation; for an employee with health
13 insurance, the employer is responsible for paying any costs
14 charged to the employee to receive the documentation. An
15 employer shall not require an employee to find a replacement
16 worker in order to use paid sick and safe time.

17 An employee's rights under the bill, including the right to
18 use paid sick and safe time and to file a complaint against
19 an employer, and the prohibitions against an employer's
20 retaliating against an employee exercising those rights are
21 explained in new Code section 91F.5.

22 Employers are required to give employees notice of their
23 rights to paid sick and safe time as described in new Code
24 section 91F.6, either by supplying each employee with a notice
25 or by posting such notice in an accessible and obvious place
26 where employees work. The notices for either method must
27 be in English and in any other language that at least five
28 percent of the employer's workforce speaks as a first language.
29 The commissioner shall create and make available the posters
30 for the employers. Violations of the notice and posting
31 requirements may result in a civil fine of not more than \$100
32 for each offense.

33 An employee may recover the monetary value of owed paid sick
34 and safe time plus liquidated damages for the wrongful denial
35 of use of accrued paid sick and safe time if an employer is

1 shown to have intentionally violated the bill pursuant to new
2 Code section 91F.7.

3 An employer must retain records documenting hours worked
4 by each employee and the amount of paid sick and safe time
5 taken by the employees for five years. The commissioner
6 shall have reasonable access to these records. If a question
7 arises about an employee's right to paid sick and safe time
8 and an employer does not have adequate records or does not
9 allow the commissioner to examine the employer's records, the
10 commissioner shall presume that the employer has violated the
11 bill.

12 Pursuant to new Code section 91F.9, an employee may submit
13 a written complaint to the commissioner, who will determine
14 whether to investigate the claim that an employer has violated
15 any provision of new Code chapter 91F. If the commissioner
16 decides to investigate, the commissioner shall commence a civil
17 action against the employer.

18 An employer may not require an employee to disclose details
19 relating to domestic abuse assault, sexual abuse, stalking, or
20 a medical condition as a condition of using paid sick and safe
21 time. An employer who has such information shall treat the
22 information as confidential and not disclose it without written
23 consent of the affected employee, according to new Code section
24 91F.10.

25 In new Code section 91F.11, the following considerations
26 are addressed: the Code chapter does not prohibit an employer
27 from providing a more generous paid sick and safe time policy;
28 it does not diminish an employer's previous contractual
29 obligations for more generous paid sick and safe time; and it
30 does not diminish public employees' rights to paid sick and
31 safe time as provided by law.

32 The bill applies to all existing employees on and after July
33 1, 2010, and to all new hires on or after that date.