

2017 -- S 0290

LC001160

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- HEALTHY AND SAFE FAMILIES
AND WORKPLACES ACT

Introduced By: Senators Goodwin, Calkin, Goldin, Seveney, and Satchell

Date Introduced: February 15, 2017

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 28 of the General Laws entitled "LABOR AND LABOR
2 RELATIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 57

4 HEALTHY AND SAFE FAMILIES AND WORKPLACES ACT

5 **28-57-1. Short title.**

6 This chapter shall be known and may be cited as the "Healthy and Safe Families and
7 Workplaces Act."

8 **28-57-2. Definitions.**

9 As used in this chapter, the following words and terms have the following meanings:

10 (1) "CCAP Family child care provider" means a child care worker as defined in §40-6.6-
11 2(2).

12 (2) "Department" means the department of labor and training.

13 (3) "Domestic partner" means a party to a civil union as defined in chapter 3.1 of title 15,
14 or a person who meets the requirements in §36-12-1(3)(i) through (v) and has the same meaning
15 as that term is defined in §8-8.2-20.

16 (4) "Domestic violence" means certain crimes when committed by one family or
17 household member against another as defined in §12-29-2.

18 (5) "Employee" means any person suffered or permitted to work by an employer, except

1 that independent contractors or subcontractors shall not be considered employees.

2 (6) "Employer" means any individual or entity that includes any individual, partnership,
3 association, corporation, business, trust, or any person or group of persons acting directly or
4 indirectly in the interest of an employer, in relation to an employee as defined in §28-12-2, but
5 does not include the federal government.

6 (7) "Family member" means:

7 (i) Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child
8 of a domestic partner, a child to whom the employee stands in loco parentis, or an individual to
9 whom the employee stood in loco parentis when the individual was a minor;

10 (ii) A biological, foster, stepparent or adoptive parent or legal guardian of an employee's
11 spouse or domestic partner or a person who stood in loco parentis when the employee or
12 employee's spouse or domestic partner was a minor child;

13 (iii) A person to whom the employee is legally married under the laws of any state, or a
14 domestic partner of an employee;

15 (iv) A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step
16 relationship) of the employee or the employee's spouse or domestic partner; or

17 (v) Any other individual related by blood or affinity whose close association with the
18 employee is the equivalent of a family relationship.

19 (8) "Health care professional" means any person licensed under federal or state law to
20 provide medical or emergency services, including, but not limited to, doctors, nurses, and
21 emergency room personnel.

22 (9) "Paid sick leave time" or "paid sick and safe leave time" means time that is
23 compensated at the same hourly rate and with the same benefits, including health care benefits, as
24 the employee normally earns during hours worked and is provided by an employer to an
25 employee for the purposes described in §28-57-3, but in no case shall the hourly wage paid leave
26 be less than that provided under §28-12-3.

27 (10) "Retaliatory personnel action" means denial of any right guaranteed under this
28 chapter and any threat, discharge, suspension, demotion, reduction of hours, reporting or
29 threatening to report an employee's suspected citizenship or immigration status, or the suspected
30 citizenship or immigration status of a family member of the employee to a federal, state or local
31 agency, or any other adverse action against an employee for the exercise of any right guaranteed
32 herein including any sanctions against an employee who is the recipient of public benefits for
33 rights guaranteed under this chapter. Retaliatory personnel action shall also include interference
34 with or punishment for in any manner participating in or assisting an investigation, proceeding, or

1 hearing under this chapter.

2 (11) "Sexual assault" means a crime as defined in §§11-37-2, 11-37-4 or 11-37-6.

3 (12) "Stalking" means a crime as defined in §§11-59-2 and 11-52-4.2, harassing another
4 person or willfully, maliciously and repeatedly following another person with the intent to place
5 that person in reasonable fear of bodily injury.

6 (13) "Year" means a regular and consecutive twelve (12) month period as determined by
7 the employer; except that for the purposes of §§28-57-7 and 28-57-9 of this chapter, year means a
8 calendar year.

9 **28-57-3. Accrual of paid sick and safe leave time.**

10 (a) All employees in the state shall accrue a minimum of one hour of paid sick and safe
11 leave time for every thirty (30) hours worked up to a maximum of fifty-six (56) hours per year,
12 unless the employer chooses to provide a higher annual limit.

13 (b) Employees who are exempt from the overtime requirements under 29 U.S.C.
14 §213(a)(1) of the Fair Labor Standards Act will be assumed to work forty (40) hours in each work
15 week for purposes of paid sick and safe leave time accrual unless their normal work week is less
16 than forty (40) hours, in which case paid sick and safe leave time accrues based upon that normal
17 work week.

18 (c) Paid sick and safe leave time as provided in this chapter shall begin to accrue at the
19 commencement of employment or pursuant to the law's effective date, whichever is later. An
20 employer may provide all paid sick and safe leave time that an employee is expected to accrue in
21 a year at the beginning of the year.

22 (d) Employees shall be entitled to use accrued paid sick and safe leave time beginning on
23 the ninetieth calendar day following commencement of their employment, unless otherwise
24 permitted by the employer. On and after the ninetieth calendar day of employment, employees
25 may use paid sick and safe leave time as it is accrued.

26 (e) Paid sick and safe leave time shall be carried over to the following calendar year;
27 however, an employee's use of paid sick and safe leave time provided under this chapter in each
28 calendar year shall not exceed fifty six (56) hours. Alternatively, in lieu of carryover of unused
29 earned paid sick and safe leave time from one year to the next, an employer may pay an employee
30 for unused earned paid sick and safe leave time at the end of a year and provide the employee
31 with an amount of paid sick and safe leave that meets or exceeds the requirements of this chapter
32 that is available for the employee's immediate use at the beginning of the subsequent year.

33 (f) Any employer with a paid leave time off policy, who makes available an amount of
34 paid leave time off sufficient to meet the accrual requirements of this section that may be used for

1 the same purposes and under the same conditions, including with regards to employee notice and
2 documentation, as paid sick and safe leave time under this chapter is not required to provide
3 additional paid sick and safe leave time.

4 (g) Nothing in this chapter shall be construed as requiring financial or other
5 reimbursement to an employee from an employer upon the employee's termination, resignation,
6 retirement, or other separation from employment for accrued paid sick and safe leave time that
7 has not been used.

8 (h) If an employee is transferred to a separate division, entity or location, but remains
9 employed by the same employer, the employee is entitled to all paid sick and safe leave time
10 accrued at the prior division, entity or location and is entitled to use all paid sick and safe leave
11 time as provided in this chapter. When there is a separation from employment and the employee
12 is rehired within one year of separation by the same employer, previously accrued paid sick and
13 safe leave time that had not been used shall be reinstated. Further, the employee shall be entitled
14 to use accrued paid sick and safe leave time and accrue additional sick and safe leave time at the
15 recommencement of employment.

16 (i) When a different employer succeeds or takes the place of an existing employer, all
17 employees of the original employer who remain employed by the successor employer are entitled
18 to all earned paid sick and safe leave time they accrued when employed by the original employer,
19 and are entitled to use earned paid sick and safe leave time previously accrued.

20 (j) At its discretion, an employer may loan sick and safe leave time to an employee in
21 advance of accrual by such employee.

22 **28-57-4. Use of paid sick and safe leave time.**

23 (a) Paid sick and safe leave time shall be provided to an employee by an employer for:

24 (1) An employee's mental or physical illness, injury or health condition; an employee's
25 need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health
26 condition; an employee's need for preventive medical care;

27 (2) Care of a family member with a mental or physical illness, injury or health condition;
28 care of a family member who needs medical diagnosis, care, or treatment of a mental or physical
29 illness, injury or health condition; care of a family member who needs preventive medical care;

30 (3) Closure of the employee's place of business by order of a public official due to a
31 public health emergency or an employee's need to care for a child whose school or place of care
32 has been closed by order of a public official due to a public health emergency, or care for oneself
33 or a family member when it has been determined by the health authorities having jurisdiction or
34 by a health care provider that the employee's or family member's presence in the community may

1 jeopardize the health of others because of their exposure to a communicable disease, whether or
2 not the employee or family member has actually contracted the communicable disease; or

3 (4) Time off needed when the employee or a member of the employee's family is a victim
4 of domestic violence, sexual assault or stalking.

5 (b) Paid sick and safe leave time shall be provided upon the request of an employee. Such
6 request may be made orally, in writing, by electronic means or by any other means acceptable to
7 the employer. When possible, the request shall include the expected duration of the absence.

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

12 (d) An employer that requires notice of the need to use earned paid sick and safe leave
13 time where the need is not foreseeable shall provide a written policy that contains procedures for
14 the employee to provide notice. An employer that has not provided to the employee a copy of its
15 written policy for providing such notice shall not deny earned paid sick and safe leave time to the
16 employee based on noncompliance with such a policy.

17 (e) Paid sick and safe leave time may be used in the lesser of hourly increments or the
18 smallest increment that the employer's payroll system uses to account for absences or use of other
19 time.

20 (f) For paid sick and safe leave time of more than three (3) consecutive work days, an
21 employer may require reasonable documentation that the paid sick and safe leave time has been
22 used for a purpose covered by subsection (a) of this section if the employer has notified the
23 employee in writing of this requirement in advance of the employee's use of paid sick and safe
24 time. An employer may not require that the documentation explain the nature of the illness or the
25 details of the domestic violence, sexual assault, or stalking.

26 (1) Documentation signed by a health care professional indicating that paid sick leave
27 time is necessary shall be considered reasonable documentation under subsection (a) of this
28 section.

29 (2) One of the following, of the employee's choosing, shall be considered reasonable
30 documentation of an absence under subsection (a)(4) of this section:

31 (i) An employee's written statement that the employee or the employee's family member
32 is a victim of domestic violence, sexual assault, or stalking and that the leave taken was for one of
33 the purposes of §28-57-4(4);

34 (ii) A police report indicating that the employee or employee's family member was a

1 victim of domestic violence, sexual assault, or stalking;

2 (iii) A court document indicating that the employee or employee's family member is
3 involved in legal action related to domestic violence, sexual assault, or stalking; or

4 (iv) A signed statement from a victim and witness advocate affirming that the employee
5 or employee's family member is receiving services from a victim services organization or is
6 involved in legal action related to domestic violence, sexual assault, or stalking.

7 (g) An employer's requirements for verification may not result in an unreasonable burden
8 or expense on the employee and may not exceed privacy or verification requirements otherwise
9 established by law.

10 (h) An employer may not require, as a condition of an employee's taking paid sick and
11 safe leave time, that the employee search for or find a replacement worker to cover the hours
12 during which the employee is using paid sick and safe leave time.

13 **28-57-5. Family child care providers.**

14 CCAP family child care providers shall accrue and may use paid sick and safe leave in
15 the same manner as do employees under this chapter. The implementation, but not the amount, of
16 paid sick and safe leave for CCAP family child care providers shall be a subject of negotiation
17 with director of the department of administration under §40-6.6-4. The department of human
18 services shall promulgate any necessary regulations to implement the requirement of paid sick
19 and safe leave for CCAP family child care providers.

20 **28-57-6. Exercise of rights protected; Retaliation prohibited.**

21 (a) It shall be unlawful for an employer or any other person to interfere with, restrain, or
22 deny the exercise, or the attempt to exercise, any right protected under this chapter.

23 (b) An employer shall not take retaliatory personnel action or discriminate against an
24 employee or former employee because the person has exercised rights protected under this
25 chapter. Such rights include, but are not limited to, the right to request or use paid sick and safe
26 leave pursuant to this chapter; the right to file a complaint with the department or the courts or
27 inform any person about any employer's alleged violation of this chapter; the right to participate
28 in an investigation, hearing or proceeding or cooperate with or assist the department in its
29 investigations of alleged violations of this chapter; and the right to inform any person of their
30 potential rights under this chapter.

31 (c) It shall be unlawful for an employer's absence control policy to count paid sick and
32 safe leave time taken under this chapter as an absence that may lead to or result in discipline,
33 discharge, demotion, suspension, or any other adverse action.

34 (d) Protections of this section shall apply to any person who mistakenly but in good faith

1 alleges violations of this chapter.

2 (e) There shall be a rebuttable presumption of unlawful retaliatory personnel action under
3 this section whenever an employer takes action against a person within ninety (90) days of when
4 that person:

5 (1) Files a complaint with the department or a court alleging a violation of any provision
6 of this chapter;

7 (2) Informs any person about an employer's alleged violation of this chapter;

8 (3) Cooperates with the department or other persons in the investigation or prosecution of
9 any alleged violation of this chapter;

10 (4) Opposes any policy, practice, or act that is unlawful under this chapter; or

11 (5) Informs any person of their rights under this chapter.

12 **28-57-7. Notice and posting.**

13 (a) Employers shall give employees written notice of the following at the commencement
14 of employment or by the effective date of this chapter, whichever is later, which shall include the
15 following information:

16 (1) Employees are entitled to paid sick and safe leave time;

17 (2) The amount of paid sick and safe leave time;

18 (3) The terms of paid sick and safe leave time use guaranteed under this chapter;

19 (4) That retaliatory personnel actions against employees who request or use paid sick and
20 safe leave time is prohibited;

21 (5) That each employee has the right to file a complaint or bring a civil action if paid sick
22 and safe leave time, as required by this chapter, is denied by the employer or the employee is
23 subjected to retaliatory personnel action for requesting or taking paid sick and safe leave time;
24 and

25 (6) Contact information for the department where questions about rights and
26 responsibilities under this chapter can be answered.

27 (b) Employers shall comply with this section by supplying each of their employees with a
28 notice in English and in any language that is the first language spoken by at least five percent
29 (5%) of the employer's workforce that contains the information required in subsection (a) of this
30 section, provided that the notice has been translated into such language by the department.

31 (c) The amount of paid sick and safe leave time available to the employee, the amount of
32 paid sick and safe leave time taken by the employee to date in the year and the amount of pay the
33 employee has received as paid sick and safe leave time shall be recorded in, or on an attachment
34 to, the employee's regular paycheck or be made available at the employees request.

1 (d) Employers shall display a poster in a conspicuous and accessible place in each
2 establishment where such employees are employed. The poster displayed shall be in English and
3 in any language that is the first language spoken by at least five percent (5%) of the employer's
4 workforce that contains the information required in subsection (a) of this section, provided that
5 the poster has been translated into such language by the department.

6 (e) The department shall create and make available to employers, in all languages spoken
7 by more than five percent (5%) of Rhode Island's population and any language deemed
8 appropriate by the department, posters that contain the information required under subsection (a)
9 of this section.

10 (f) An employer who willfully violates the notice and posting requirements of this section
11 shall be subject to a civil fine in an amount not to exceed one hundred dollars (\$100) for each
12 separate violation.

13 **28-57-8. Employer records.**

14 Employers shall retain records documenting hours worked by employees and paid sick
15 and safe leave time taken by employees, for a period of three (3) years, and shall allow the
16 department access to such records, with appropriate notice and at a mutually agreeable time, to
17 monitor compliance with the requirements of this chapter. When an issue arises as to an
18 employee's entitlement to paid sick and safe leave time under this chapter, if the employer does
19 not maintain or retain adequate records documenting hours worked by the employee and paid sick
20 and safe leave time taken by the employee, or does not allow the department reasonable access to
21 such records, it shall be presumed that the employer has violated the chapter, absent clear and
22 convincing evidence otherwise.

23 **28-57-9. Regulations.**

24 The department shall coordinate implementation and enforcement of this chapter and
25 shall promulgate appropriate guidelines or regulations for such purposes.

26 **28-57-10. Enforcement.**

27 (a) The department shall enforce the provisions of this chapter. In effectuating such
28 enforcement, the department shall establish a system utilizing multiple means of communication
29 to receive complaints regarding noncompliance with this chapter and investigate complaints
30 received by the department in a timely manner. The department is empowered to hold hearings
31 and shall cooperate with any employee in the enforcement of a claim against their employer in
32 any case where the claim is just and valid.

33 (b) Any person alleging a violation of this chapter shall have the right to file a complaint
34 with the department within one year of the date the person knew or should have known of the

1 alleged violation. The department shall maintain confidential the identity of any complainant
2 unless disclosure of such complainant's identity is necessary for resolution of the investigation or
3 otherwise required by law. The department shall, to the extent practicable, notify such
4 complainant that the department will be disclosing their identity prior to such disclosure.

5 (c) Upon receiving a complaint alleging a violation of this chapter, the department shall
6 investigate such complaint and attempt to resolve it through mediation. The department shall keep
7 complainants reasonably notified regarding the status of their complaint and any resultant
8 investigation. If the department believes that a violation has occurred, it shall issue to the
9 offending person or entity a notice of violation. The commissioner shall prescribe the form and
10 wording of such notices of violation. The notice of violation shall be returnable to the
11 administrative tribunal authorized to adjudicate violations of this chapter.

12 (d) The department shall have the power to impose penalties as provided in subsection (h)
13 of this section and to grant an employee or former employee all appropriate relief.

14 (e) In the event a complaint deemed just and valid cannot be resolved by the department
15 through mediation, the department shall order a hearing thereon at a time and place to be
16 specified, and shall give notice thereof, together with a copy of the complaint or the purpose
17 thereof, or a statement of the facts disclosed upon investigation, which notice shall be served
18 personally or by mail on any person, business, corporation, or entity of any kind affected thereby.
19 The hearing shall be scheduled within thirty (30) days upon determination that the complaint is
20 just and valid. The person, business, corporation, or entity shall have an opportunity to be heard
21 in respect to the matters complained of at the time and place specified in the notice. The hearing
22 shall be conducted by the department. The hearing officer in the hearing shall be deemed to be
23 acting in a judicial capacity, and shall have the right to issue subpoenas, administer oaths, and
24 examine witnesses. The enforcement of a subpoena issued under this section shall be regulated by
25 Rhode Island civil practice laws and rules. The hearing shall be expeditiously conducted and
26 upon such hearing the hearing officer shall determine the issues raised thereon and shall make a
27 determination and enter an order within thirty (30) days of the close of the hearing, and forthwith
28 serve a copy of the order, with a notice of the filing thereof, upon the parties to the proceeding,
29 personally or by mail. The order shall dismiss the complaint or direct payment of penalties under
30 subsection (h) of this section and direct payment of reasonable attorneys' fees and costs to the
31 complaining party.

32 (f) The director may institute investigations into violations of this chapter absent receipt
33 of a complaint and may institute any action to ensure compliance with this chapter.

34 (g) Any agreement between the employee and employer that purports to waive the

1 provisions of this chapter shall be deemed void as against public policy.

2 (h) An employer who violates this chapter shall be liable for a civil penalty in an amount
3 not less than five hundred dollars (\$500) and not greater than three thousand dollars (\$3,000) for
4 each violation of this chapter for a first offense, and up to five thousand dollars (\$5,000) for each
5 violation of this chapter, for any subsequent offense, which shall be shared equally between the
6 department and the aggrieved party.

7 (i) In determining the amount of any penalty imposed under this section, the director or
8 their designee shall consider the good faith of the employer, the size of the employer, the gravity
9 of the violation, the history of previous violations, and whether or not the violation was an
10 innocent mistake or willful.

11 (j) The department, the attorney general, any person aggrieved by a violation of this
12 chapter, or any entity member of which is aggrieved by a violation of this chapter may bring a
13 civil action in a court of competent jurisdiction against an employer violating this chapter. Such
14 action may be brought by a person aggrieved by a violation of this chapter without first filing an
15 administrative complaint.

16 (1) Aggrieved persons shall also be entitled to reasonable attorneys' fees.

17 (2) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall
18 be entitled to such legal or equitable relief as may be appropriate to remedy the violation,
19 including, without limitation, reinstatement to employment, back pay and injunctive relief, plus
20 liquidated damages of at least as much as provided as penalty amounts in subsection (h) of this
21 section.

22 (3) The statute of limitations for a civil action brought pursuant to this section shall be for
23 a period of three (3) years from the date the alleged violation occurred or the date the employee
24 knew or should have known of the violation.

25 **28-57-11. Confidentiality and nondisclosure.**

26 An employer may not require disclosure of details relating to domestic violence, sexual
27 assault, sexual contact or stalking or the details of an employee's or an employee's family
28 member's health information as a condition of providing paid sick and safe leave time under this
29 chapter. If an employer possesses health information or information pertaining to domestic
30 violence, sexual assault, sexual contact, or stalking about an employee or employee's family
31 member, such information shall be treated as confidential and not disclosed except to the affected
32 employee or with the permission of the affected employee.

33 **28-57-12. Greater sick and safe leave time policies.**

34 (a) This chapter provides minimum requirements pertaining to paid sick and safe leave

1 time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other
2 law, regulation, requirement, policy, or standard that provides for greater accrual or use by
3 employees of sick and safe leave time, whether paid or unpaid, or that extends other protections
4 to employees.

5 (b) Nothing in this chapter shall be construed to supersede or preempt any provision of
6 any local law that provides greater rights to paid sick and safe leave time than the rights
7 established under this chapter.

8 (c) Nothing in this chapter shall be construed in a manner to discourage or prohibit an
9 employer from the adoption of a paid sick and safe leave time policy greater that provides greater
10 rights or benefits than the one required in this chapter.

11 (d) Nothing in this chapter shall be construed as diminishing the obligation of an
12 employer to comply with any contract, collective bargaining agreement, employment benefit plan
13 or other agreement that provides greater sick and safe leave time to an employee than required in
14 this chapter.

15 (e) Nothing in this chapter shall be construed as diminishing the rights of public
16 employees regarding paid sick and safe leave or use of sick and safe leave time as provided under
17 existing laws.

18 **28-57-13. Public education and outreach.**

19 The department shall develop and implement a multilingual outreach program to inform
20 employees, parents, and persons who are under the care of a health care provider about the
21 availability of paid sick and safe leave time under this chapter. This program shall include the
22 distribution of notices and other written materials in English and in all languages spoken by more
23 than five percent (5%) of the state's population and any language deemed appropriate by the
24 department to all child care and elder care providers, domestic violence shelters or victim services
25 organizations, schools, hospitals, community health centers, and other health care providers.

26 **28-57-14. Severability.**

27 If any provision of this chapter, or any rule or regulation created under this chapter, or the
28 application of any provision of this chapter, to any person or circumstance, shall be held invalid
29 by any court of competent jurisdiction, the remainder of the chapter, rule or regulation and the
30 application of such provision to other persons or circumstances shall not be affected thereby. The
31 invalidity of any section or sections or parts of any section of this chapter shall not affect the
32 validity of the remainder of this chapter and to this end the provisions of the chapter are declared
33 to be severable.

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SECTION 2. This act shall take effect on January 1, 2018.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO LABOR AND LABOR RELATIONS -- HEALTHY AND SAFE FAMILIES
AND WORKPLACES ACT

- 1 This act would require all employers to provide their employees with a minimum level of
- 2 paid sick and safe leave including time to care for the employee's family members.
- 3 This act would take effect on January 1, 2018.

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