

2021 -- S 0612

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

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

Introduced By: Senators Goldin, Goodwin, Cano, Mendes, Mack, and Murray

Date Introduced: March 11, 2021

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-57-3, 28-57-4, 28-57-5, 28-57-6 and 28-57-14 of the General
2 Laws in Chapter 28-57 entitled "Healthy and Safe Families and Workplaces Act" are hereby
3 amended to read as follows:

4 **28-57-3. Definitions.**

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

- 6 (1) "Care recipient" means a person for whom the employee is responsible for providing
7 or arranging health- or safety-related care, including, but not limited to, helping the person obtain
8 diagnostic, preventive, routine, or therapeutic health treatment or ensuring the person is safe
9 following domestic violence, sexual assault, or stalking.
- 10 (2) "CCAP family childcare provider" means a childcare worker as defined in § 40-6.6-
11 2(2).
- 12 (3) "Child" means a person as defined in § 28-41-34(1).
- 13 (4) "Department" means the department of labor and training.
- 14 (5) "Domestic partner" means a party to a civil union as defined in chapter 3.1 of title 15
15 or a person who meets the requirements in §§ 36-12-1(3)(i) through (3)(v) has the same meaning
16 as that term is defined in § 8-8.2-20.
- 17 (6) "Domestic violence" means certain crimes when committed by one family or household
18 member against another as defined in § 12-29-2.

1 (7) "Employee" means any person suffered or permitted to work by an employer, except
2 for those not considered employees as defined in § 28-12-2. Independent contractors,
3 subcontractors, work study participants as described pursuant to 42 U.S.C. § 2753.23,
4 apprenticeships and interns as defined under FLSA section 3(g) shall not be considered to be
5 employees for the purpose of this act.

6 (8) "Employer" means any individual or entity that includes any individual, partnership,
7 association, corporation, business trust, or any person or group of persons acting directly or
8 indirectly in the interest of an employer, in relation to an employee as defined in § 28-12-2, but
9 does not include the federal government, and provided that in determining the number of employees
10 performing work for an employer as defined in 29 C.F.R. § 791.2 of the Federal Fair Labor
11 Standards Act, 29 U.S.C. § 201 et seq., the total number of employees in that group shall be
12 counted.

13 (9) "Family member" means a child, parent, spouse, mother-in-law, father-in-law,
14 grandparents, grandchildren, or domestic partner, sibling, care recipient, or member of the
15 employee's household.

16 (10) "Healthcare professional" means any person licensed under federal or Rhode Island
17 law to provide medical or emergency services, including, but not limited to: doctors, nurses, and
18 emergency room personnel.

19 (11) "Paid sick leave time" or "paid sick and safe leave time" means time that is
20 compensated at the same hourly rate and with the same benefits, including healthcare benefits, as
21 the employee normally earns during hours worked and is provided by an employer to an employee
22 for the purposes described in §§ 28-57-6 [or 28-57-16](#), but in no case shall the hourly wage paid
23 leave be less than that provided under § 28-12-3.

24 (12) "Parent" means a person as defined in § 28-41-34(5) or a person as defined in § 28-
25 41-34(9).

26 (13) "Seasonal employee" means a person as defined in 26 C.F.R. § 54.4980H-1(a)(38).

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

28 (15) "Sibling" means a brother or a sister, whether related through half blood, whole blood,
29 or adoption, a foster sibling, or a step-sibling.

30 (16) "Spouse" means a person as defined in § 28-41-34(7).

31 (17) "Stalking" means a crime as described in §§ 11-59-2 and 11-52-4.2.

32 (18) "Temporary employee" means any person working for, or obtaining employment
33 pursuant to an agreement with any employment agency, placement service, or training school or
34 center.

1 (19) "Unpaid sick time" is time that is used for the purposes described in § 28-57-6.

2 (20) "Year" means a regular and consecutive twelve-month-period as determined by the
3 employer; except that for the purposes of § 28-57-7, "year" means a calendar year.

4 **28-57-4. Exemptions.**

5 (a) Nothing in this chapter shall be construed to conflict with the provisions of the Food
6 Code or the Rules and Regulations pertaining to Reporting Infectious, Environmental and
7 Occupational Diseases.

8 (b) Any employer with a paid leave time off policy or paid sick and safe leave policy who
9 makes available at least twenty-four (24) hours during calendar year 2018, thirty-two (32) hours
10 during calendar year 2019 and forty (40) hours per calendar year thereafter of paid time off or paid
11 sick and safe leave time to employees or any employer who offers unlimited paid time off or paid
12 sick and safe time is exempt from § 28-57-5(a), (b), (c) and (e); provided, however, that such
13 employers are required to comply with § 28-57-16. In addition to complying with § 28-57-16,
14 employers. ~~Employers~~ that provide at least twenty-four (24) hours during calendar year 2018,
15 thirty-two (32) hours during calendar year 2019, and forty (40) hours per calendar year thereafter
16 of paid sick or safe leave or paid time off that can be used for the purposes consistent with this act
17 at the beginning of each benefit year do not need to track accrual, allow any carryover, or payout.

18 (c) Any employer that employs less than eighteen (18) employees as defined in this act is
19 exempt from § 28-57-5; provided, however,;

20 (1) ~~that any~~ Any such employer shall not take an adverse action against an employee of the
21 employer solely based upon the employee's use of up to twenty-four (24) hours during calendar
22 year 2018, thirty-two (32) hours during calendar year 2019, and forty (40) hours per calendar year
23 thereafter, subject to § 28-57-6 and § 28-57-10; and

24 (2) Any such employer shall comply with § 28-57-16.

25 (d) Any employer is not required to provide any paid sick and/or safe leave time to any
26 employees who are employed by a municipality or the state.

27 (e) Any employer in the construction industry, as classified as code under the North
28 American Industry Classification System, is not required to provide any paid sick and/or safe leave
29 time to any employees who work under a collective bargaining agreement until July 1, 2018.

30 (f) ~~Any~~ With the exception of § 28-57-16, any employee licensed to practice nursing
31 pursuant to chapter 34 of title 5 is not subject to the provisions of this chapter if the employee:

- 32 (1) Is employed by a healthcare facility;
- 33 (2) Is under no obligation to work a regular schedule;
- 34 (3) Works only when he or she indicates that he or she is available to work and has no

1 obligation to work when he or she does not indicate availability; and

2 (4) Receives higher pay than that paid to an employee of the same healthcare facility
3 performing the same job on a regular schedule.

4 **28-57-5. Accrual of paid sick and safe leave time.**

5 (a) All employees employed by an employer of eighteen (18) or more employees in Rhode
6 Island shall accrue a minimum of one hour of paid sick and safe leave time for every thirty five
7 (35) hours worked up to a maximum of twenty-four (24) hours during the calendar year of 2018,
8 thirty-two (32) hours during calendar year 2019 and up to a maximum of forty (40) hours per year
9 thereafter, unless the employer chooses to provide a higher annual limit in both accrual and use. In
10 determining the number of employees who are employed by an employer for compensation, all
11 employees defined in § 28-57-3(7) shall be counted.

12 (b) Employees who are exempt from the overtime requirements under 29 U.S.C. §
13 213(a)(1) of the Federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq., will be assumed to work
14 forty (40) hours in each work week for purposes of paid sick and safe leave time accrual unless
15 their normal work week is less than forty (40) hours, in which case paid sick and safe leave time
16 accrues based upon that normal work week.

17 (c) Paid sick and safe leave time as provided in this chapter shall begin to accrue at the
18 commencement of employment or pursuant to the law's effective date [July 1, 2018], whichever is
19 later. An employer may provide all paid sick and safe leave time that an employee is expected to
20 accrue in a year at the beginning of the year.

21 (d) ~~An~~ [Except as provided in § 28-57-16, an](#) employer may require a waiting period for
22 newly hired employees of up to ninety (90) days. During this waiting period, an employee shall
23 accrue earned sick time pursuant to this section or the employer's policy, if exempt under § 28-57-
24 4(b), but shall not be permitted to use the earned sick time until after he or she has completed the
25 waiting period.

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 twenty-four (24) hours during calendar year 2018, and thirty-two
29 (32) hours during calendar year 2019, and forty (40) hours per year thereafter, [in addition to any](#)
30 [paid sick leave time provided pursuant to § 28-57-16.](#) Alternatively, in lieu of carryover of unused
31 earned paid sick and safe leave time from one year to the next, an employer may pay an employee
32 for unused earned paid sick and safe leave time at the end of a year and provide the employee with
33 an amount of paid sick and safe leave that meets or exceeds the requirements of this chapter that is
34 available for the employee's immediate use at the beginning of the subsequent year.

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

4 (g) If an employee is transferred to a separate division, entity, or location within the state,
5 but remains employed by the same employer as defined in 29 C.F.R. § 791.2 of the Federal Fair
6 Labor Standards Act, 29 U.S.C. § 201 et seq., the employee is entitled to all paid sick and safe leave
7 time accrued [or provided pursuant to this chapter](#) at the prior division, entity, or location and is
8 entitled to use all paid sick and safe leave time as provided in this act. When there is a separation
9 from employment and the employee is rehired within one hundred thirty-five (135) days of
10 separation by the same employer, previously accrued [or received](#) paid sick and safe leave time
11 [pursuant to this chapter](#) that had not been used shall be reinstated. Further, the employee shall be
12 entitled to use ~~accrued~~ paid sick and safe leave time [accrued or received pursuant to this chapter](#)
13 and accrue additional sick and safe leave time at the re-commencement of employment.

14 (h) When a different employer succeeds or takes the place of an existing employer, all
15 employees of the original employer who remain employed by the successor employer within the
16 state are entitled to all earned paid sick and safe leave time they accrued [or received pursuant to](#)
17 [this chapter](#) when employed by the original employer, and are entitled to use earned paid sick and
18 safe leave time previously accrued [or received pursuant to this chapter](#).

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

21 (j) Temporary employees shall be entitled to use accrued paid sick and safe leave time
22 [pursuant to this section](#) beginning on the one hundred eightieth (180) calendar day following
23 commencement of their employment, unless otherwise permitted by the employer. On and after the
24 one hundred eightieth (180) calendar day of employment, employees may use paid sick and safe
25 leave time [pursuant to this section](#) as it is accrued. During this waiting period, an employee shall
26 accrue earned sick time pursuant to this ~~chapter~~ [section](#), but shall not be permitted to use the earned
27 sick time until after he or she has completed the waiting period.

28 (k) Seasonal employees shall be entitled to use accrued paid sick and safe leave time
29 [pursuant to this section](#) beginning on the one hundred fiftieth (150) calendar day following
30 commencement of their employment, unless otherwise permitted by the employer. On and after the
31 one hundred fiftieth (150) calendar day of employment, employees may use paid sick and safe
32 leave time as it is accrued [pursuant to this section](#). During this waiting period, an employee shall
33 accrue earned sick time pursuant to this ~~chapter~~ [section](#), but shall not be permitted to use the earned
34 sick time until after he or she has completed the waiting period.

1 **28-57-6. Use of paid sick and safe leave time.**

2 (a) Paid sick and safe leave time [accrued under § 28-57-5](#) shall be provided to an employee
3 by an employer for:

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

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

10 (3) Closure of the employee's place of business by order of a public official due to a public
11 health emergency or an employee's need to care for a child whose school or place of care has been
12 closed by order of a public official due to a public health emergency, or care for oneself or a family
13 member when it has been determined by the health authorities having jurisdiction or by a healthcare
14 provider that the employee's or family member's presence in the community may jeopardize the
15 health of others because of their exposure to a communicable disease, whether or not the employee
16 or family member has actually contracted the communicable disease; or

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

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

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

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

31 (e) Unless otherwise in conflict with state or federal law or regulations, an employee may
32 decide how much sick time to use; provided, however, that an employer may set a minimum
33 increment for the use of sick time, not to exceed four (4) hours per day, provided such minimum
34 increment is reasonable under the circumstances.

1 (f) For paid sick and safe leave time of more than three (3) consecutive work days, an
2 employer may require reasonable documentation that the paid sick and safe leave time has been
3 used for a purpose covered by subsection (a) of this section if the employer has notified the
4 employee in writing of this requirement in advance of the employee's use of paid sick and safe time.
5 An employer may not require that the documentation explain the nature of the illness or the details
6 of the domestic violence, sexual assault, or stalking unless required by existing government
7 regulation or law. Nothing in this provision shall be construed to conflict with existing government
8 regulation or law.

9 (1) An employer may require written documentation for an employee's use of earned sick
10 time that occurs within two (2) weeks prior to an employee's final scheduled day of work before
11 termination of employment.

12 (2) Documentation signed by a healthcare professional indicating that paid sick leave time
13 is necessary shall be considered reasonable documentation under subsection (a) of this section.

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

16 (i) An employee's written statement that the employee or the employee's family member is
17 a victim of domestic violence, sexual assault, or stalking and that the leave taken was for one of the
18 purposes of § 28-57-6(a)(4);

19 (ii) A police report indicating that the employee or employee's family member was a victim
20 of domestic violence, sexual assault, or stalking;

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

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

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

29 (h) Paid sick and safe leave cannot be used as an excuse to be late for work without an
30 authorized purpose.

31 (i) If an employee is committing fraud or abuse by engaging in an activity that is not
32 consistent with allowable purposes for paid sick and safe leave in this section, an employer may
33 discipline the employee, up to and including termination of employment for misuse of sick leave.

34 (j) If an employee is exhibiting a clear pattern of taking leave on days just before or after a

1 weekend, vacation, or holiday, an employer may discipline the employee for misuse of paid sick
2 and safe leave, unless the employee provides reasonable documentation that the paid sick and safe
3 leave time has been used for a purpose covered by subsection (a) of this section.

4 (k) An employer may not require, as a condition of providing earned paid sick and safe
5 time under this chapter, that the employee search for or find a replacement worker to cover the
6 hours during which the employee is using paid sick and safe leave time. However, if an employee
7 is absent from work for any reason listed in § 28-57-6(a) and by mutual consent of the employer
8 and the employee the employee works an equivalent number of additional hours or shifts during
9 the same or the next pay period as the hours or shifts not worked due to reasons listed in § 28-57-
10 6(a), an employee shall not be required to use accrued and earned paid or unpaid sick time for the
11 employee's absence during that time period, and the employer shall not be required to pay for sick
12 time taken during the time period.

13 **28-57-14. Allowable substitution of employers' paid sick and safe leave time.**

14 (a) Employers may have different paid leave policies for different groups of employees,
15 provided that all policies meet the minimum requirements of this chapter.

16 (b) Employers that prefer not to track accrual of paid sick and safe leave time [under § 28-](#)
17 [57-5](#) over the course of the benefit year may also use the following schedules for providing lump
18 sums of sick leave or paid time off to their employees. ~~Employers~~ [With the exception of additional](#)
19 [paid sick leave time required under § 28-57-16, employers](#) using these schedules will be in
20 compliance [with the requirements of accrued paid sick and safe leave time pursuant to § 28-57-5](#)
21 even if an employee's hours vary from week to week. For employees working an average of:

22 (1) Thirty-seven and one-half (37.5) to forty (40) hours per week, provide eight (8) hours
23 per month for five (5) months;

24 (2) Thirty (30) hours per week, provide five (5) hours per month for eight (8) months;

25 (3) Twenty-four (24) hours per week, provide four (4) hours per month for ten (10) months;

26 (4) Twenty (20) hours per week, provide four (4) hours per month for nine (9) months;

27 (5) Sixteen (16) hours per week, provide three (3) hours per month for ten (10) months;

28 (6) Ten (10) hours per week, provide two (2) hours per month for ten (10) months;

29 (7) Five (5) hours per week, provide one hour per month for ten (10) months.

30 (c) In the case of an employer whose regular work day for full-time employees is less than
31 eight (8) hours per day, if the employer provides five (5) days of paid sick and safe time leave
32 consisting of the number of hours per day that constitute that full-time employee's work day and
33 provides them at the beginning of the year, the employer shall be in compliance with ~~this subsection~~
34 [the requirements of accrued paid sick and safe leave time pursuant to § 28-57-5. Employers shall](#)

1 provide additional paid sick leave time pursuant to the requirements of accrued paid sick and safe
2 leave time pursuant to § 28-57-16.

3 (d) Employers that provide forty (40) or more hours of paid time off or vacation to
4 employees that also may be used as paid sick and safe leave, consistent with this section, shall not
5 be required to provide additional sick leave to employees who use all their time for other purposes
6 and have need of paid sick and safe leave later in the year, provided that:

7 (1) ~~the~~ The employers' leave policies make clear that additional time will not be provided;
8 and

9 (2) The employer provides an additional amount of paid time off or paid leave to employees
10 that also may be used as paid sick leave time for COVID-19 purposes pursuant to § 28-57-16.

11 SECTION 2. Chapter 28-57 of the General Laws entitled "Healthy and Safe Families and
12 Workplaces Act" is hereby amended by adding thereto the following section:

13 **28-57-16. Additional paid sick leave time for COVID-19 purposes.**

14 (a) An employer shall provide each employee of an employer with additional paid sick
15 leave time for COVID-19 purposes, in addition to paid sick and safe leave time accrued pursuant
16 to § 28-57-5, in the following amount:

17 (1) For employees who normally work forty (40) or more hours in a week, eighty (80)
18 hours;

19 (2) For employees who normally work fewer than forty (40) hours in a week, a number of
20 hours equal to the number of hours that such employee works, on average, over a two (2) week
21 period.

22 (b) In the case of an employee described in subsection (a)(2) of this section, whose schedule
23 varies from week to week to such an extent that an employer is unable to determine with certainty
24 the number of hours the employee would have worked if such employee had not taken paid sick
25 leave time under subsection (a) of this section, the employer shall use the following in place of such
26 number:

27 (1) Subject to subsection (a)(2) of this section, a number equal to the average number of
28 hours that the employee was scheduled per day over the six (6) month period ending on the date on
29 which the employee takes the paid sick leave time, including hours for which the employee took
30 leave of any type; or

31 (2) If the employee did not work over such period, the reasonable expectation of the
32 employee at the time of hiring of the average number of hours per day that the employee would
33 normally be scheduled to work.

34 (c) Notwithstanding any other provision in this chapter, the paid sick leave time under

1 subsection (a) of this section shall be available for immediate use by the employee for the purposes
2 described in subsection (e) of this section, regardless of how long the employee has been employed
3 by an employer.

4 (d) An employee may first use the paid sick leave time under subsection (a) of this section
5 for the purposes described in subsection (e) of this section. An employer may not require an
6 employee to use paid sick and safe time pursuant to § 28-57-5 or other paid leave provided by the
7 employer to the employee before the employee uses the paid sick leave time under subsection (a)
8 of this section.

9 (e) The paid sick leave time required in subsection (a) of this section shall be provided by
10 an employer to each employee employed by the employer to the extent that the employee is unable
11 to work or telework due to a need for leave because:

12 (1) The employee is subject to a federal, state, or local quarantine or isolation order related
13 to COVID-19.

14 (2) The employee has been advised by a health care professional to self-quarantine due to
15 concerns related to COVID-19.

16 (3) The employee is experiencing symptoms of COVID-19 and seeking a medical
17 diagnosis.

18 (4) The employee is caring for an individual who is subject to an order as described in
19 subsection (e)(1) of this section or has been advised to self-quarantine pursuant to subsection (e)(2)
20 of this section.

21 (5) The employee is caring for a child of such employee if the school or place of care of
22 the child has been closed, or the child care provider of such child is unavailable, due to COVID-
23 19 precautions.

24 (6) The employee is experiencing any other substantially similar condition specified by the
25 United States Secretary of Health and Human Services in consultation with the United States
26 Secretary of the Treasury and the United States Secretary of Labor.

27 (f) Notwithstanding any other provision in this chapter, the employee shall provide notice
28 to the employer of the need for paid sick leave time pursuant to this section as soon as practicable
29 only when the need for such paid sick leave time is foreseeable and the employer's place of business
30 has not been closed.

31 (g) Notwithstanding any other provision in this chapter, documentation shall not be
32 required for paid sick leave time under this section.

33 (h) An employee shall be entitled to use paid sick leave time under this section until March
34 31, 2021 or any extension of eligibility for the payroll credit for emergency paid sick leave pursuant

1 [to § 286 of the Consolidated Appropriations Act, 2021, whichever is later.](#)

2 SECTION 3. This act shall take effect upon passage.

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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 an employer to provide employees with additional paid sick leave
2 time, in addition to paid sick and safe leave time, for COVID-19 purposes. For employees who
3 work forty (40) hours or more per week an employer would be required to provide them with an
4 additional eighty (80) hours of paid sick leave time. For employees who work fewer than forty
5 (40) hours per week, an employer would be required to provide them with paid sick leave time
6 equal to an average of the amount of hours they work over a two (2) week period.

7 This act would take effect upon passage.

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