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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 29

01/10/2019 Authored by Her; Carlson, A.; Morrison; Kunesch-Podein; Vang and others
The bill was read for the first time and referred to the Committee on Labor

1.1 A bill for an act
1.2 relating to employment; providing for earned sick and safe time; authorizing
1.3 rulemaking; imposing civil penalties; requiring reports; proposing coding for new
1.4 law in Minnesota Statutes, chapters 177; 181; repealing Minnesota Statutes 2018,
1.5 section 181.9413.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 ARTICLE 1

1.8 EARNED SICK AND SAFE TIME

1.9 Section 1. [181.9445] EARNED SICK AND SAFE TIME.

1.10 Subdivision 1. **Definitions.** (a) For the purposes of this section and section 177.50, the
1.11 terms defined in this subdivision have the meanings given them.

1.12 (b) "Commissioner" means the commissioner of labor and industry or authorized designee
1.13 or representative.

1.14 (c) "Domestic abuse" has the meaning given in section 518B.01.

1.15 (d) "Earned sick and safe time" means leave, including paid time off and other paid leave
1.16 systems, that is paid at the same hourly rate as an employee earns from employment that
1.17 may be used for the same purposes and under the same conditions as provided under
1.18 subdivision 3.

1.19 (e) "Employee" means any person who is employed by an employer, including temporary
1.20 and part-time employees, who performs work for at least 80 hours in a year for that employer
1.21 in Minnesota. Employee does not include an independent contractor.

(f) "Employer" means a person who has one or more employees. Employer includes an individual, a corporation, a partnership, an association, a business trust, a nonprofit organization, a group of persons, a state, county, town, city, school district, or other governmental subdivision. An employer includes a person that hires temporary employees through an employment service.

(g) "Family member" means:

(1) an employee's:

(i) child, foster child, adult child, legal ward, or child for whom the employee is legal guardian;

(ii) spouse or registered domestic partner;

(iii) sibling, stepsibling, or foster sibling;

(iv) parent or stepparent;

(v) grandchild, foster grandchild, or stepgrandchild; or

(vi) grandparent or stepgrandparent;

(2) any of the family members listed in clause (1) of a spouse or registered domestic partner;

(3) any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship; and

(4) up to one individual annually designated by the employee.

(h) "Health care professional" means any person licensed under federal or state law to provide medical or emergency services, including doctors, physician assistants, nurses, and emergency room personnel.

(i) "Prevailing wage rate" has the meaning given in section 177.42 and as calculated by the Department of Labor and Industry.

(j) "Retaliatory personnel action" means:

(1) any form of intimidation, threat, reprisal, harassment, discrimination, or adverse employment action, including discipline, discharge, suspension, transfer, or reassignment to a lesser position in terms of job classification, job security, or other condition of employment; reduction in pay or hours or denial of additional hours; the accumulation of points under an attendance point system; informing another employer that the person has engaged in activities protected by this chapter; or reporting or threatening to report the actual

or suspected citizenship or immigration status of an employee, former employee, or family member of an employee to a federal, state, or local agency; and

(2) interference with or punishment for participating in any manner in an investigation, proceeding, or hearing under this chapter.

(k) "Sexual assault" means an act that constitutes a violation under sections 609.342 to 609.3453 or 609.352.

(l) "Stalking" has the meaning given in section 609.749.

(m) "Year" means a regular and consecutive 12-month period, as determined by an employer and clearly communicated to each employee of that employer.

Subd. 2. **Accrual of earned sick and safe time.** (a) An employee accrues a minimum of one hour of earned sick and safe time for every 30 hours worked up to a maximum of 48 hours of earned sick and safe time in a year. Employees may not accrue more than 48 hours of earned sick and safe time in a year unless the employer agrees to a higher amount.

(b) Employers must permit an employee to carry over accrued but unused sick and safe time into the following year. The total amount of accrued but unused earned sick and safe time for an employee may not exceed 80 hours at any time, unless an employer agrees to a higher amount.

(c) Employees who are exempt from overtime requirements under United States Code, title 29, section 213(a)(1), as amended through the effective date of this section, are deemed to work 40 hours in each workweek for purposes of accruing earned sick and safe time, except that an employee whose normal workweek is less than 40 hours will accrue earned sick and safe time based on the normal workweek.

(d) Earned sick and safe time under this section begins to accrue at the commencement of employment of the employee.

(e) Employees may use accrued earned sick and safe time beginning 90 calendar days following commencement of their employment. After 90 calendar days of employment, employees may use earned sick and safe time as it is accrued.

Subd. 3. **Use of earned sick and safe time.** (a) An employee may use accrued earned sick and safe time for:

(1) an employee's:

(i) mental or physical illness, injury, or other health condition;

4.1 (ii) need for medical diagnosis, care, or treatment of a mental or physical illness, injury,
4.2 or health condition; or

4.3 (iii) need for preventive medical or health care;

4.4 (2) care of a family member:

4.5 (i) with a mental or physical illness, injury, or other health condition;

4.6 (ii) who needs medical diagnosis, care, or treatment of a mental or physical illness,
4.7 injury, or other health condition; or

4.8 (iii) who needs preventive medical or health care;

4.9 (3) absence due to domestic abuse, sexual assault, or stalking of the employee or
4.10 employee's family member, provided the absence is to:

4.11 (i) seek medical attention related to physical or psychological injury or disability caused
4.12 by domestic abuse, sexual assault, or stalking;

4.13 (ii) obtain services from a victim services organization;

4.14 (iii) obtain psychological or other counseling;

4.15 (iv) seek relocation due to domestic abuse, sexual assault, or stalking; or

4.16 (v) seek legal advice or take legal action, including preparing for or participating in any
4.17 civil or criminal legal proceeding related to or resulting from domestic abuse, sexual assault,
4.18 or stalking;

4.19 (4) closure of the employee's place of business due to weather or other public emergency
4.20 or an employee's need to care for a family member whose school or place of care has been
4.21 closed due to weather or other public emergency; and

4.22 (5) when it has been determined by the health authorities having jurisdiction or by a
4.23 health care professional that the presence of the employee or family member of the employee
4.24 in the community would jeopardize the health of others because of the exposure of the
4.25 employee or family member of the employee to a communicable disease, whether or not
4.26 the employee or family member has actually contracted the communicable disease.

4.27 (b) An employer may require notice of the need for use of earned sick and safe time as
4.28 provided in this paragraph. If the need for use is foreseeable, an employer may require
4.29 advance notice of the intention to use earned sick and safe time but must not require more
4.30 than seven days' advance notice. If the need is unforeseeable, an employer may require an
4.31 employee to give notice of the need for earned sick and safe time as soon as practicable.

5.1 (c) When an employee uses earned sick and safe time for more than three consecutive
5.2 days, an employer may require reasonable documentation that the earned sick and safe time
5.3 is covered by paragraph (a). For earned sick and safe time under paragraph (a), clauses (1)
5.4 and (2), reasonable documentation may include a signed statement by a health care
5.5 professional indicating the need for use of earned sick and safe time. For earned sick and
5.6 safe time under paragraph (a), clause (3), an employer must accept a court record or
5.7 documentation signed by a volunteer or employee of a victims services organization, an
5.8 attorney, a police officer, or an antiviolence counselor as reasonable documentation. An
5.9 employer must not require disclosure of details relating to domestic abuse, sexual assault,
5.10 or stalking or the details of an employee's or an employee's family member's medical
5.11 condition as related to an employee's request to use earned sick and safe time under this
5.12 section.

5.13 (d) An employer may not require, as a condition of an employee using earned sick and
5.14 safe time, that the employee seek or find a replacement worker to cover the hours the
5.15 employee uses as earned sick and safe time.

5.16 (e) Earned sick and safe time may be used in the smallest increment of time tracked by
5.17 the employer's payroll system, provided such increment is not more than four hours.

5.18 Subd. 4. **Retaliation prohibited.** An employer shall not take retaliatory personnel action
5.19 against an employee because the employee has requested earned sick and safe time, used
5.20 earned sick and safe time, or made a complaint or filed an action to enforce a right to earned
5.21 sick and safe time under this section.

5.22 Subd. 5. **Reinstatement to comparable position after leave.** An employee returning
5.23 from a leave under this section is entitled to return to employment in the employee's former
5.24 position. If, during a leave under this section, the employer experiences a layoff and the
5.25 employee would have lost a position had the employee not been on leave, pursuant to the
5.26 good faith operation of a bona fide layoff and recall system, including a system under a
5.27 collective bargaining agreement, the employee is not entitled to reinstatement in the former
5.28 or comparable position. In such circumstances, the employee retains all rights under the
5.29 layoff and recall system, including a system under a collective bargaining agreement, as if
5.30 the employee had not taken the leave.

5.31 Subd. 6. **Pay and benefits after leave.** An employee returning from a leave under this
5.32 section is entitled to return to employment at the same rate of pay the employee had been
5.33 receiving when the leave commenced, plus any automatic adjustments in the employee's
5.34 pay scale that occurred during leave period. The employee returning from a leave is entitled

6.1 to retain all accrued preleave benefits of employment and seniority as if there had been no
6.2 interruption in service, provided that nothing under this section prevents the accrual of
6.3 benefits or seniority during the leave pursuant to a collective bargaining or other agreement
6.4 between the employer and employees.

6.5 Subd. 7. **Part-time return from leave.** An employee, by agreement with the employer,
6.6 may return to work part time during the leave period without forfeiting the right to return
6.7 to employment at the end of the leave, as provided under this section.

6.8 Subd. 8. **Notice and posting by employer.** (a) Employers must give notice that
6.9 employees are entitled to earned sick and safe time, including the amount of earned sick
6.10 and safe time, the accrual year for the employee, and the terms of its use under this section;
6.11 that retaliation against employees who request or use earned sick and safe time is prohibited;
6.12 and that each employee has the right to file a complaint or bring a civil action if earned sick
6.13 and safe time is denied by the employer or the employee is retaliated against for requesting
6.14 or using earned sick and safe time.

6.15 (b) Employers must supply employees with a notice in English and other appropriate
6.16 languages that contains the information required in paragraph (a) within 60 days of
6.17 commencement of employment or the effective date of this section, whichever is later.

6.18 (c) Employers shall display a poster in a conspicuous and accessible place in each
6.19 establishment where employees are employed that contains all information required under
6.20 paragraph (a). The commissioner shall create and make available to employers a poster and
6.21 a model notice that contains the information required under paragraph (a) for their use in
6.22 complying with this section.

6.23 (d) An employer that provides an employee handbook to its employees must include in
6.24 the handbook notice of employee rights and remedies under this section.

6.25 Subd. 9. **Required statement to employee.** (a) Upon request of the employee, the
6.26 employer must provide, in writing or electronically, current information stating the
6.27 employee's amount of:

6.28 (1) earned sick and safe time available to the employee; and

6.29 (2) used earned sick and safe time.

6.30 (b) Employers may choose a reasonable system for providing the information in paragraph
6.31 (a), including but not limited to listing information on each pay stub or developing an online
6.32 system where employees can access their own information.

7.1 Subd. 10. **Employer records.** (a) Employers shall retain accurate records documenting
7.2 hours worked by employees and earned sick and safe time taken and comply with all
7.3 requirements under section 177.30.

7.4 (b) An employer must allow an employee to inspect records required by this section and
7.5 relating to that employee at a reasonable time and place.

7.6 Subd. 11. **Confidentiality and nondisclosure.** (a) If, in conjunction with this section,
7.7 an employer possesses (1) health or medical information regarding an employee or an
7.8 employee's family member; (2) information pertaining to domestic abuse, sexual assault,
7.9 or stalking; (3) information that the employee has requested or obtained leave under this
7.10 section; or (4) any written or oral statement, documentation, record, or corroborating evidence
7.11 provided by the employee or an employee's family member, the employer must treat such
7.12 information as confidential. Information given by an employee may only be disclosed by
7.13 an employer if the disclosure is requested or consented to by the employee, when ordered
7.14 by a court or administrative agency, or when otherwise required by federal or state law.

7.15 (b) Records and documents relating to medical certifications, recertifications, or medical
7.16 histories of employees or family members of employees created for purposes of this section
7.17 or section 177.50 must be maintained as confidential medical records separate from the
7.18 usual personnel files.

7.19 Subd. 12. **No effect on more generous sick and safe time policies.** (a) Nothing in this
7.20 section shall be construed to discourage employers from adopting or retaining earned sick
7.21 and safe time policies that meet or exceed, and do not otherwise conflict with, the minimum
7.22 standards and requirements provided in this section.

7.23 (b) Nothing in this section shall be construed to limit the right of parties to a collective
7.24 bargaining agreement to bargain and agree with respect to earned sick and safe time policies
7.25 or to diminish the obligation of an employer to comply with any contract, collective
7.26 bargaining agreement, or any employment benefit program or plan that meets or exceeds,
7.27 and does not otherwise conflict with, the minimum standards and requirements provided in
7.28 this section.

7.29 (c) Employers who provide earned sick and safe time to their employees under a paid
7.30 time off policy or other paid leave policy that meets or exceeds, and does not otherwise
7.31 conflict with, the minimum standards and requirements provided in this section are not
7.32 required to provide additional earned sick and safe time.

7.33 (d) An employer may opt to satisfy the requirements of this section for construction
7.34 industry employees by:

8.1 (1) paying at least the prevailing wage rate as defined by section 177.42 and as calculated
8.2 by the Department of Labor and Industry; or

8.3 (2) paying at least the required rate established in a registered apprenticeship agreement
8.4 for apprentices registered with the Department of Labor and Industry.

8.5 An employer electing this option is deemed to be in compliance with this section for
8.6 construction industry employees who receive either at least the prevailing wage rate or the
8.7 rate required in the applicable apprenticeship agreement regardless of whether the employees
8.8 are working on private or public projects.

8.9 (e) This section does not prohibit an employer from establishing a policy whereby
8.10 employees may donate unused accrued sick and safe time to another employee.

8.11 (f) This section does not prohibit an employer from advancing sick and safe time to an
8.12 employee before accrual by the employee.

8.13 Subd. 13. **Termination; separation; transfer.** This section does not require financial
8.14 or other reimbursement to an employee from an employer upon the employee's termination,
8.15 resignation, retirement, or other separation from employment for accrued earned sick and
8.16 safe time that has not been used. If an employee is transferred to a separate division, entity,
8.17 or location, but remains employed by the same employer, the employee is entitled to all
8.18 earned sick and safe time accrued at the prior division, entity, or location and is entitled to
8.19 use all earned sick and safe time as provided in this section. When there is a separation from
8.20 employment and the employee is rehired within 180 days of separation by the same employer,
8.21 previously accrued earned sick and safe time that had not been used must be reinstated. An
8.22 employee is entitled to use accrued earned sick and safe time and accrue additional earned
8.23 sick and safe time at the commencement of reemployment.

8.24 Subd. 14. **Employer succession.** (a) When a different employer succeeds or takes the
8.25 place of an existing employer, all employees of the original employer who remain employed
8.26 by the successor employer are entitled to all earned sick and safe time accrued but not used
8.27 when employed by the original employer, and are entitled to use all earned sick and safe
8.28 time previously accrued but not used.

8.29 (b) If, at the time of transfer of the business, employees are terminated by the original
8.30 employer and hired within 30 days by the successor employer following the transfer, those
8.31 employees are entitled to all earned sick and safe time accrued but not used when employed
8.32 by the original employer, and are entitled to use all earned sick and safe time previously
8.33 accrued but not used.

9.1 Sec. 2. **REPEALER.**

9.2 Minnesota Statutes 2018, section 181.9413, is repealed.

9.3 Sec. 3. **EFFECTIVE DATE.**

9.4 Sections 1 and 2 are effective 180 days following final enactment.

9.5 **ARTICLE 2**

9.6 **EARNED SICK AND SAFE TIME ENFORCEMENT**

9.7 Section 1. **[177.50] EARNED SICK AND SAFE TIME ENFORCEMENT.**

9.8 Subdivision 1. **Definitions.** The definitions in section 181.9445, subdivision 1, apply to
9.9 this section.

9.10 Subd. 2. **Rulemaking authority.** The commissioner may adopt rules to carry out the
9.11 purposes of this section and section 181.9445.

9.12 Subd. 3. **Report of violations.** An employee or other person may report to the
9.13 commissioner any suspected violation of section 181.9445. The commissioner may initiate
9.14 an investigation pursuant to a report or when the commissioner has reason to believe that
9.15 a violation of this section or section 181.9445 has occurred.

9.16 Subd. 4. **Submission of records; penalty.** The commissioner may require the employer
9.17 of employees working in the state to submit to the commissioner photocopies, certified
9.18 copies, or, if necessary, the originals of employment records that the commissioner deems
9.19 necessary or appropriate. The records that may be required include full and correct statements
9.20 in writing, including sworn statements by the employer, containing information relating to
9.21 wages, hours, names, addresses, and any other information pertaining to the employer's
9.22 employees and the conditions of their employment as the commissioner deems necessary
9.23 or appropriate. The commissioner may require the records to be submitted in a specific
9.24 format by certified mail delivery or, if necessary, by personal delivery by the employer or
9.25 a representative of the employer, as authorized by the employer in writing. The commissioner
9.26 may fine the employer up to \$10,000 for each failure to submit or deliver records as required
9.27 by this section. This penalty is in addition to any penalties provided under section 177.32,
9.28 subdivision 1. In determining the amount of a civil penalty under this subdivision, the
9.29 appropriateness of such penalty to the size of the employer's business and the gravity of the
9.30 violation shall be considered. If an employer fails to maintain or retain adequate records or
9.31 fails to submit or deliver records as required by this section and an issue arises as to an

alleged violation of an employee's rights under this chapter, it shall be presumed that the employer has violated this chapter, absent clear and convincing evidence otherwise.

Subd. 5. **Compliance orders.** The commissioner may issue an order requiring an employer to comply with this section. The commissioner shall issue an order requiring an employer to comply with this section if the violation is repeated. A violation is repeated if at any time during the two years that preceded the date of violation the commissioner issued an order to the employer for a violation of this section and the order is final or the commissioner and the employer have entered into a settlement agreement that required the employer to pay back earned sick and safe time. The department shall serve the order upon the employer or the employer's authorized representative in person or by certified mail at the employer's place of business. An employer who wishes to contest the order must file written notice of objection to the order with the commissioner within 15 calendar days after being served with the order. A contested case proceeding must then be held in accordance with sections 14.57 to 14.69. If, within 15 calendar days after being served with the order, the employer fails to file a written notice of objection with the commissioner, the order becomes a final order of the commissioner.

Subd. 6. **Employer liability.** (a) If the commissioner finds that an employer has violated any section or any rule adopted under this section, and the commissioner issues an order to comply, the commissioner shall order the employer to cease and desist from engaging in the violative practice and to take affirmative steps that in the judgment of the commissioner will effectuate the purposes of the section or rule violated. The commissioner shall order the employer to pay to the aggrieved parties back pay, gratuities, and compensatory damages, less any amount actually paid to the employee by the employer, and for an additional equal amount as liquidated damages. In addition, the commissioner may order the employer to pay civil penalties of up to \$1,000 per violation. The commissioner must consider the factors described in section 14.045, subdivision 3, paragraph (a), when assessing these civil penalties.

(b) If the commissioner determines that an employer has repeatedly or willfully violated this section or any rule adopted under this section, the commissioner must order the employer to pay a civil penalty of up to \$10,000 per violation. The commissioner must consider the factors described in section 14.045, including those contained in section 14.045, subdivision 3, paragraph (b), when assessing these civil penalties.

(c) In addition, the commissioner may order the employer to reimburse the department and the attorney general for all appropriate litigation and hearing costs expended in preparation for and in conducting the contested case proceeding, unless payment of costs would impose extreme financial hardship on the employer. If the employer is able to establish

extreme financial hardship, then the commissioner may order the employer to pay a percentage of the total costs that will not cause extreme financial hardship. Costs include but are not limited to the costs of services rendered by the attorney general, private attorneys if engaged by the department, administrative law judges, court reporters, and expert witnesses, as well as the cost of transcripts. Interest shall accrue on, and be added to, the unpaid balance of a commissioner's order from the date the order is signed by the commissioner until it is paid, at an annual rate provided in section 549.09, subdivision 1, paragraph (c). The commissioner may establish escrow accounts for purposes of distributing damages.

(d) It is the responsibility of all employers to not enter into any contract or agreement for labor or services where the employer has any actual knowledge or knowledge arising from familiarity with the normal facts and circumstances of the business activity engaged in, or has any additional facts or information that, taken together, would make a reasonably prudent person undertake to inquire whether, taken together, the contractor is not complying or has failed to comply with this section. For purposes of this paragraph, "actual knowledge" means information obtained by the employer that the contractor has violated this section within the past two years and has failed to present the employer with credible evidence that such noncompliance has been cured going forward.

Subd. 7. **Individual remedies.** In addition to any other remedies provided by law, a person injured by a violation of this section may bring a civil action to recover any and all damages recoverable by law, together with costs and disbursements, including reasonable attorney fees, and may receive injunctive and other equitable relief as determined by a court.

Subd. 8. **Grants to community organizations.** The commissioner may make grants to community organizations for the purpose of outreach to and education for employees affected under this section regarding their rights under this section. The community-based organizations must be selected based on their experience, capacity, and relationships in high-violation industries. The work under such a grant may include the creation and administration of a statewide worker hotline.

Subd. 9. **Report to legislature.** (a) The commissioner must submit an annual report to the legislature, including to the chairs and ranking minority members of any relevant legislative committee. The report must include, but is not limited to:

(1) a list of all violations of this section, including the employer involved, and the nature of any violations; and

(2) an analysis of noncompliance with this section, including any patterns by employer, industry, or county.

- 12.1 (b) A report under this section must not include an employee's name or other identifying
12.2 information, any health or medical information regarding an employee or an employee's
12.3 family member, or any information pertaining to domestic abuse, sexual assault, or stalking
12.4 of an employee or an employee's family member.
- 12.5 **EFFECTIVE DATE.** This section is effective 180 days after final enactment.

181.9413 SICK LEAVE BENEFITS; CARE OF RELATIVES.

(a) An employee may use personal sick leave benefits provided by the employer for absences due to an illness of or injury to the employee's child, as defined in section 181.940, subdivision 4, adult child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent, for reasonable periods of time as the employee's attendance may be necessary, on the same terms upon which the employee is able to use sick leave benefits for the employee's own illness or injury. This section applies only to personal sick leave benefits payable to the employee from the employer's general assets.

(b) An employee may use sick leave as allowed under this section for safety leave, whether or not the employee's employer allows use of sick leave for that purpose for such reasonable periods of time as may be necessary. Safety leave may be used for assistance to the employee or assistance to the relatives described in paragraph (a). For the purpose of this section, "safety leave" is leave for the purpose of providing or receiving assistance because of sexual assault, domestic abuse, or stalking. For the purpose of this paragraph:

(1) "domestic abuse" has the meaning given in section 518B.01;

(2) "sexual assault" means an act that constitutes a violation under sections 609.342 to 609.3453 or 609.352; and

(3) "stalking" has the meaning given in section 609.749.

(c) An employer may limit the use of safety leave as described in paragraph (b) or personal sick leave benefits provided by the employer for absences due to an illness of or injury to the employee's adult child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent to no less than 160 hours in any 12-month period. This paragraph does not apply to absences due to the illness or injury of a child, as defined in section 181.940, subdivision 4.

(d) For purposes of this section, "personal sick leave benefits" means time accrued and available to an employee to be used as a result of absence from work due to personal illness or injury, but does not include short-term or long-term disability or other salary continuation benefits.

(e) For the purpose of this section, "child" includes a stepchild and a biological, adopted, and foster child.

(f) For the purpose of this section, "grandchild" includes a step-grandchild, and a biological, adopted, and foster grandchild.

(g) This section does not prevent an employer from providing greater sick leave benefits than are provided for under this section.

(h) An employer shall not retaliate against an employee for requesting or obtaining a leave of absence under this section.