

MODEL PAID SICK DAYS BILL 2008

A Bill to Be Entitled “Healthy Families, Healthy Workplaces Act”

Whereas the legislature finds that:

(1) Most workers in the state of **X** will at some time during the year need temporary time off from work to take care of his or her own health needs or the health needs of members of their families.

(2) Nationally, 51% of all workers have paid sick days and only 30% of workers may use those sick days to care for sick children.¹ There are many workers in **X** who do not have to any paid sick days, or who have an inadequate number of paid sick days, to care for their own health needs or the health needs of members of their families. **To calculate the number of workers in your jurisdiction without paid sick days go to www.paid sick days.org and follow the link to Paid Sick Days Research/Cost and Benefits of Sick Days.**

(3) Low-income workers are significantly less likely to have paid sick time than other members of the workforce. Only one in five low income workers (20%) have access to paid sick time.²

(4) Providing workers time off to attend to their own health care and the health care of family members will ensure a healthier and more productive workforce in the state of **X**.

(5) Paid sick days will have a positive effect on the public health of **X** by allowing sick workers the occasional option of staying at home to care for themselves when ill, thus

¹ Institute for Women’s Policy Research Fact Sheet, “Paid Sick Days Improve Public Health by Reducing the Spread of Disease” (February 2006) <http://www.iwpr.org/pdf/B250.pdf>

² Dr. Vicky Lovell, “No Time to Be Sick: Why Everyone Suffers When Workers Don’t Have Paid Sick Leave,” at 13 (Institute for Women’s Policy Research 2004) <http://www.iwpr.org/pdf/B242.pdf>

lessening their recovery time and reducing the likelihood of spreading illness to other members of the workforce and to the public.³

(6) Paid sick days will allow parents to provide personal care for their sick children. Parental care makes children's recovery faster, prevents more serious illnesses, and improves children's overall mental and physical health.⁴

(7) Providing a minimal number of paid sick days is affordable for employers and good for business.⁵

(8) Paid sick days are good for business. Employers who provide paid sick days have greater employee retention and avoid the problem of workers coming to work sick and lowering productivity.⁶

(9) Almost 60% of those who provide unpaid care to an adult family member or friend must combine their caregiving with employment in order to provide financially for their family member and themselves.⁷

(10) Employees frequently lose their jobs or are disciplined with suspensions or demerits for taking sick days to care for sick family members or even to recover from their own illnesses.⁸

³ Institute for Women's Policy Research Fact Sheet, "Paid Sick Days Improve Public Health by Reducing the Spread of Disease" (February 2006) <http://www.iwpr.org/pdf/B250.pdf>.

⁴ Institute for Women's Policy Research Fact Sheet, "Paid Sick Days Improve Public Health by Reducing the Spread of Disease" (February 2006) <http://www.iwpr.org/pdf/B250.pdf>.

⁵ Dr. Vicky Lovell, "Valuing Good Health: An Estimate of the Cost and Savings of the Healthy Families Act" (Institute for Women's Policy Research April 2005) <http://www.iwpr.org/pdf/B248.pdf>.

⁶ Dr. Vicky Lovell, "Valuing Good Health: An Estimate of the Cost and Savings of the Healthy Families Act" (Institute for Women's Policy Research April 2005) <http://www.iwpr.org/pdf/B248.pdf>.

⁷ Sheel M. Pandya, "Support for Working Family Caregivers: Paid Leave Policies in California and Beyond," at 1, (National Center on Caregiving June 2006).
http://caregiver.org/caregiver/jsp/content/pdfs/op_2006_paid_leave2.pdf.

⁸ National Partnership for Women & Families, "Voters Overwhelmingly Support Paid Sick Days," (2007) http://paysickdays.nationalpartnership.org/site/DocServer/paid_sick_days_polling_one_pager_10.2.07.pdf?docID=2602.

(11) Workers in jobs with high public contact, such as service workers and restaurant workers, are very unlikely to have paid sick days. Because of the lack of paid sick days, these workers have no choice but to come to work when they are ill, thereby increasing the risk of passing illnesses on to co-workers and customers. Employers can be held liable for the costs of diseases spread by their workers who lack paid sick days.⁹

(12) Many employers would like to provide their workers with paid sick days but fear being at a competitive disadvantage because other employers do not.

The purposes of this Act are:

(1) To ensure that all workers in **X** can address their own health needs and the health needs of their families by requiring employers to provide a minimum level of paid sick days including time for family care;

(2) To diminish public and private health care costs in **X** by enabling workers to seek early and routine medical care for themselves and their family members;

(3) To protect employees in **X** from losing their jobs while they use sick days to care for themselves or their families;

(4) To safeguard the public welfare, health, safety and prosperity of the people of and visitors to **X**; and

(5) To accomplish the purposes described in paragraphs (1), (2), (3), and (4) in a manner that is feasible for employers. **Issue for Advocates: Tailor the Findings and Purpose to the Local Authority and Reasons for the Law**

Be It Enacted by the Legislature of **X:**

⁹ Institute for Women’s Policy Research Fact Sheet, “Paid Sick Days Improve Public Health by Reducing the Spread of Disease” <http://www.iwpr.org/pdf/B250.pdf>.

Section 1. Definitions For Purposes of this Act:

(1) “Agency” means [state agency responsible for enforcement of labor laws]. **Issue for Advocates: Selecting an Enforcement Agency**

(2) “Employee” is as defined in [state minimum wage act or federal Fair Labor Standards Act (29 USC § 203(e))]. **Issue for Advocates: Use of FLSA Definitions of Employee and Employer**

(3) “Employer” is as defined in [state minimum wage act or federal Fair Labor Standards Act (29 USC § 203(d))]. **Issue for Advocates: ERISA**

(4) “Family member” is defined as

(A) A biological, adopted or foster child, stepchild or legal ward or a child to whom the employee stands *in loco parentis*.

(B) A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee’s spouse or a person who stood *in loco parentis* when the employee was a minor child.

(C) A person to whom the employee is legally married under the laws of [your state].

(D) A grandparent or spouse of a grandparent;

(E) A grandchild;

(F) A biological, foster, or adopted sibling or spouse of a biological, foster or adopted sibling;

(G) A domestic partner;

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

Issue for Advocates: Broader Definition of Family Members and Using Existing Legal Definitions

(5) “Small business” means any private individual, firm, partnership, institution, corporation, or association for which fewer than **X** persons work for compensation during

a given week. In determining the number of persons performing work for compensation during a given week, all persons performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity. In situations in which the number of persons who work for compensation per week fluctuates above and below **X** or more per week over the course of a year, an employer is not considered a small business if it maintained **X** or more employees on the payroll during 20 or more calendar workweeks (not necessarily consecutive workweeks) in either the current or the preceding calendar year. **Issue for Advocates: Determining Small Business Size; Issue for Advocates: Counting Employees**

(6) “Health care professional” means any person licensed under Federal or **X** law to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel.

(7) “Paid sick time” or “paid sick days” means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in Section 3 of this Act.

(8) “Retaliatory personnel action” means the discharge, suspension, or demotion by an employer of an employee or any other adverse action taken by an employer against an employee.

Section 2. Accrual of Paid Sick Time

(1) All employees who work in **X** for more than **X** hours in a year have the right to paid sick time as provided in this section. **Issue for Advocates: Setting the De minimus Exemption**

(2) All employees shall accrue a minimum of one hour of paid sick time for every **X hours** worked. Employees will not accrue more than **X** hours of paid sick time in a

calendar year, unless the employer selects a higher limit. **Issue for Advocates:**

Calculating the Accrual Rate

(3) Employees of small businesses will not accrue more than **X** hours of paid sick time in a calendar year, unless the employer selects a higher limit.

(4) Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the Federal Fair Labor Standards Act will be assumed to work 40 hours in each work week for purposes of paid sick time accrual unless their normal work week is less than 40 hours, in which case paid sick time accrues based upon that normal work week. **Issue for Advocates: Assuming 40 Hours Worked**

(5) Paid sick time as provided in this section shall begin to accrue at the commencement of employment.

(6) Employees shall be entitled to use accrued paid sick time beginning on the **X** calendar day following commencement of their employment. After the **X** calendar day of employment, employees may use sick time as it is accrued. **Issue for Advocates: Waiting Period**

(7) Paid sick time shall be carried over to the following calendar year; however, an employee's use of sick time provided under this Act in each calendar year shall not exceed **X** hours for employees of small businesses and **X** hours for employees of all other businesses. **Issue for Advocates: Carry-forward**

(8) Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the accrual requirements of this section that may be used for the same purposes and under the same conditions as paid sick time under this section is not required to provide additional paid sick time. **Issue for Advocates: Protecting PTO Accounts and Vacation Leave**

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

(10) When there is a separation from employment and the employee is rehired within **X months** of separation by the same employer, previously accrued paid sick time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued paid sick time and accrue additional sick time at the re-commencement of employment.

Issue for Advocates: Seasonal and Temporary Workers

(11) At its discretion, the employer may loan sick time to the employee in advance of accrual by such employee.

Section 3. Use of Paid Sick Time

(1) Paid sick time shall be provided to an employee by an employer for:

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

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

(2) Paid sick time shall be provided upon the oral request of an employee. When possible, the request shall include the expected duration of the absence. **Issue for**

Advocates: Location of Work for Use of Paid Sick Time

(3) When the use of sick time is foreseeable, the employee shall make a good faith effort to provide notice of the need for such time to the employer in advance of the use of the sick time and shall make a reasonable effort to schedule the use of sick time in a manner that does not unduly disrupt the operations of the employer. **Issue for Advocates:**

Allowing the Employer to Require Notice

(4) Accrued sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

(5) For sick time of more than 3 consecutive days, an employer may require reasonable documentation that the sick time is covered by subsection (1). Documentation signed by a health care professional indicating that sick time is necessary shall be considered reasonable documentation. An employer may not require that the documentation explain the nature of the illness. If an employer chooses to require documentation and the employee does not have health insurance, the employer is responsible for paying all of out of pocket expenses the employee incurs in obtaining the documentation. If the employee does have health insurance, the employer is responsible for paying any costs charged to the employee by the health care provider for providing the specific documentation required by the employer. **Issue for Advocates: Certification Limits and Content; Issue for Advocates: The Federal Family Medical Leave Act (FMLA)**

(6) An employer may not require, as a condition of providing paid sick time under this Act, that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick time.

Section 4. Exercise of Rights Protected; Retaliation Prohibited

(1) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Act.

(2) An employer shall not take retaliatory personnel action or discriminate against an employee because the employee has exercised rights protected under this Act. Such rights include but are not limited to the right to use paid sick time pursuant to this Act; the right to file a complaint or inform any person about any employer's alleged violation of this Act; the right to cooperate with the Agency in its investigations of alleged violations of this Act; and the right to inform any person of his or her potential rights under this section.

(3) It shall be unlawful for an employer's absence control policy to count paid sick time taken under this Act as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

(4) Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this section.

(5) There shall be a rebuttable presumption of unlawful retaliation under this section whenever an employer takes adverse action against a person within 90 days of when that person: (a) files a complaint with the Agency or a court alleging a violation of any provision of this section; (b) informs any person about an employer's alleged violation of this section; (c) cooperates with the Agency or other persons in the investigation or prosecution of any alleged violation of this section; (d) opposes any policy, practice, or act that is unlawful under this section; or (e) informs any person of his or her rights under this section.

Section 5. Notice and Posting

(1) Employers shall give notice that employees are entitled to paid sick time, the amount of paid sick time, and the terms of its use guaranteed under this Act, that retaliation against employees who request or use paid sick time is prohibited and that each employee has the right to file a complaint or bring a civil action if sick time as required by this

section is denied by the employer or the employee is retaliated against for requesting or taking paid sick time.

(2) Employers may comply with this section by supplying each of their employees with a notice in English and in any language that is the first language spoken by at least 5% of the employer's workforce that contains the information required in (1).

(3) Employers may comply with this section by displaying a poster in a conspicuous and accessible place in each establishment where such employees are employed which contains in English and in any language that is the first language spoken by at least 5% of the employer's workforce, all information required under (1).

(4) The Agency shall create and make available to employers posters that contain the information required under (1) for their use in complying with this subsection.

(5) An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed \$100 for each separate offense.

Section 6. Employer Records

Employers shall retain records documenting hours worked by employees and paid sick time taken by employees, for a period of five years, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Act. When an issue arises as to an employee's entitlement to paid sick time under this section, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid sick time taken by the employee, or does not allow the Agency reasonable access to such records, it shall be presumed that the employer has violated the Act, absent clear and convincing evidence otherwise.

Section 7. Regulations

The Agency shall be authorized to coordinate implementation and enforcement of this section and shall promulgate appropriate guidelines or regulations for such purposes.

Section 8. Enforcement

There are four models of enforcement:

(1) An individual can file a complaint with State or local Agency that can investigate the claim and issue a decision; (2) An individual can file a complaint with an Agency and the Agency will hold a hearing and make a ruling; (3) An individual can file a claim in court; (4) a state or local attorney or the Agency can file a claim in court. Having an Agency that can take and investigate complaints and/or issue a ruling regarding discrimination is especially helpful because it may allow employees to proceed without legal representation. All of these mechanisms are included below, but all may not be necessary or possible for a specific jurisdiction. Additionally, some localities may not have the home rule authority to allow decisions to be reviewed in court or may have to limit the courts they use. See Issue for Advocates: Selecting Enforcement Agency.

(1) Administrative Enforcement

(A) An employee or other person may report to the Agency any suspected violation of this Act. The Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation. Provided, however, that with the authorization of such person, the Agency may disclose his or her name and identifying information as necessary to enforce this section or for other appropriate purposes.

(B) The Agency is authorized to take appropriate steps to enforce this section.

Issue for Advocates: Procedures for Agency Enforcement

(2) Civil Enforcement

(A) The Agency, the Attorney General, any person aggrieved by a violation of this Act, or any entity a member of which is aggrieved by a violation of this Act may bring a civil action in a court of competent jurisdiction against an employer violating this Act. Such action may be brought by a person aggrieved by a violation of this section without first filing an administrative complaint.

(B) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall recover the full amount of any unpaid sick time plus any actual damages suffered as the result of the employer's violation of this Act plus an equal amount of liquidated damages. Aggrieved persons shall also be entitled to reasonable attorney's fees. **Issue for Advocates: Liquidated Damages**

(C) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, reinstatement in employment, back pay and injunctive relief.

(D) Any person aggrieved by a violation of this Act may file a complaint with the Attorney General. The filing of a complaint with the Attorney General will not preclude the filing of a civil action.

(E) The Attorney General may bring a civil action to enforce this Act. The Attorney General may seek injunctive relief. In addition to injunctive relief, or in lieu thereof, for any employer or other person found to have willfully violated this Act, the Attorney General may seek to impose a fine of \$1,000 per violation, payable to the state.

(F) The statute of limitations for a civil action brought pursuant to this section shall be for a period of **X** years from the date the alleged violation occurred. **Issue for Advocates: Setting the Statute of Limitations**

(G) Actions brought pursuant to this section may be brought as a class action pursuant to the laws of **[your state]**.

Section 9. Confidentiality and Nondisclosure

If an employer gathers or possesses health information about an employee or employee's family member through the implementation of this Act, such information shall be treated as confidential and not disclosed except to the affected employee or with the permission of the affected employee.

Section 10. Encouragement of more generous sick time policies; no effect on more generous policies

(1) Nothing in this Act shall be construed to discourage or prohibit an employer from the adoption or retention of a paid sick time policy more generous than the one required herein.

(2) Nothing in this Act shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time to an employee than required herein.

Issue for Advocates: Collective Bargaining Agreements

(3) Nothing in this Act shall be construed as diminishing the rights of public employees regarding paid sick time or use of sick time as provided in **[laws of the state pertaining to public employees]**.

Section 11. Other Legal Requirements

This Act provides minimum requirements pertaining to paid sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick time, whether paid or unpaid, or that extends other protections to employees.

Section 12. Severability

If any provision of this Act or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

Section 13. Effective Date

This Act will take effect X days following enactment.

