

## **DRAFT MODEL LEGISLATION** **Establishing Paid Sick Time for a Public Health Emergency**

The following model bill would establish paid sick time for a public health emergency, which is especially necessary given the ongoing pandemic. Although the Families First Coronavirus Response Act (FFCRA) provided certain working individuals with emergency paid sick days related to COVID-19 in 2020, the law’s guaranteed emergency paid leave expired on December 31, 2020. Congress did not renew paid sick leave for COVID-19, leaving a critical need for cities and states to pass public health emergency leave legislation to protect workers, safeguard public health, and ensure that businesses can stay open safely by minimizing the costly spread of illness in the workplace.

This model bill, which was adapted from model paid sick and safe time legislation developed by A Better Balance and the National Partnership for Women & Families, would guarantee emergency paid sick leave during a public health emergency, such as COVID-19, as well as future emergencies. Based on this approach, emergency paid sick time is tied to any declared or proclaimed public health emergency. An alternative option is to provide additional paid sick time for a specific emergency, such as COVID-19. A Better Balance is available to help tailor this language to COVID-19 or a specific emergency if that is the preferred approach. However, one benefit of the language in this model is that it would provide additional emergency paid sick time any time a public health emergency is declared, rather than limiting it to a specific emergency like COVID-19. On the other hand, tying additional emergency sick time to a specific emergency means the additional sick leave will be available as long as the condition continues and there is a need for paid sick time, even if the order itself changes abruptly or goes back and forth as many have during COVID-19.

Please note that drafting a paid sick time policy requires state-specific research, analysis of underlying state and/or local law and consideration of complex policy issues. Please contact us at [sleiwant@abetterbalance.org](mailto:sleiwant@abetterbalance.org) or [jmake@abetterbalance.org](mailto:jmake@abetterbalance.org) regarding more information on how to adapt or customize this model.

### **A Bill to Be Entitled “Public Health Emergency Leave Act”**

#### **Whereas the [legislative body] finds that:**

[Legislative findings, including research and data regarding COVID-19 and paid sick leave, are available if such findings are typical in your jurisdiction and you would like to include them.]

#### **The purposes of this Act are:**

- (1) To ensure that all workers in [X - State or Local Government Name] can address their own health needs and those of their family members during a public health emergency, by requiring employers to provide a minimum level of paid sick time, including time to care for their family members;
- (2) To ensure that workers in [X] and their families can follow the orders and recommendations of public health officials or health care providers during an emergency that threatens their health and the health of others in the community;

- (3) To protect the public’s health in [X] by reducing the risk of contagion during a public health emergency;
- (4) To promote the economic security and stability of workers in [X] and their families during a public health emergency;
- (5) To protect workers in [X] from losing their jobs or facing workplace discipline when they use paid sick time during a public health emergency to care for themselves or their families;
- (6) To safeguard the public welfare, health, safety and prosperity of the people of [X]; and
- (7) To accomplish the purposes described in paragraphs (1)-(6) in a manner that is feasible for employers.

**Be It Enacted by the [Legislature/Council/Government Body of X]:**

### **Section 1. Definitions**

For Purposes of this Act:

- (1) “Agency” means [state, county or city agency responsible for enforcement of labor laws or the agency, with sufficient authority, that is best suited to enforcing this law, if there is no local labor enforcement agency].
- (2) “Employee” is as defined in [state wage and hour law, local law or federal Fair Labor Standards Act (29 U.S.C. § 203(e)); you should choose the most inclusive option, or we can help to draft a new definition] but does not include those who work in [X] for fewer than [# - typically 80] hours in a calendar year. “Employee” includes recipients of public benefits who are engaged in work activity as a condition of receiving public assistance. [May also specifically add: “Employee” does not include an “employee” as defined by 45 U.S.C. 351(d) who is subject to the federal Railroad Unemployment Insurance Act, 45 U.S.C. 351 et seq.]

(A) There shall be a rebuttable presumption that any individual performing work for a hiring entity is an employee under this Act unless the hiring entity can demonstrate that all of the following conditions are satisfied: (i) The individual is free from the control and direction of the hiring entity in connection with the performance of the labor or services, both under the contract for the performance of the work and in fact; (ii) The individual performs labor or services that are outside the usual course of the hiring entity’s business; and (iii) The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the labor or services performed. [Note: We recommend including this language, although it is advisable to confirm that there are no legal barriers in your jurisdiction. If included, the definition of employer and employee may need to be adjusted as well to ensure there’s no conflict with the test, which we can help to do. This language is recommended since far too many individuals are misclassified as independent contractors, rather than employees, which denies them certain labor protections—like paid sick time—that are only available to employees. This language creates a presumption that an individual performing work for a business or hiring entity is an employee unless the business or hiring entity can show that the working individual is an independent contractor who meets the three-part test described here. This test is commonly known as the “ABC” test.]

- (3) “Employer” is as defined in [state wage and hour law, local law or federal Fair Labor Standards Act (29 U.S.C. § 203(d)); you should choose the most inclusive option, or we can help to draft a new definition].

For the purposes of this Act, “employer” does not include any of the following:

- (A) The United States Government.
- (B) **For local bills only:** The State of [X], including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary.
- (C) **For local bills only:** Any county or local government other than [X – **OR For local bills if necessary due to limitations on authority of legislative body to determine benefits for locality’s own workers:** Any county or local government.]

(4) “Family member” means:

(A) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the employee stands *in loco parentis*, regardless of age;

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

(C) A person to whom the employee is legally married under the laws of any state, or a domestic partner of an employee [as defined under X state/county/city law or] as registered under the laws of any state or political subdivision;

(D) A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step relationship) of the employee or the employee’s spouse or domestic partner;

(E) A person for whom the employee is responsible for providing or arranging health or safety-related care, including but not limited to helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment or ensuring the person is safe following domestic violence, sexual assault or stalking; or

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

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

(6) “Paid sick time” 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, but in no case shall this hourly amount be less than that provided under 29 U.S.C. §206(a)(1) [or your state or local minimum wage law].

(7) “Public health emergency” means a declaration or proclamation related to a public health threat, risk, disaster, or emergency that is made or issued by a federal, state or local official with the authority to make or issue such a declaration or proclamation.

(8) “Retaliatory personnel action” means denial of any right guaranteed under this Act and any threat, discharge, suspension, demotion, reduction of hours or pay, reporting or threatening to report an employee’s suspected citizenship or immigration status, or the suspected citizenship or immigration status

of a family member of the employee to a federal, state or local agency, or any other adverse action against an employee for exercising or attempting to exercise any right guaranteed herein including any sanctions against an employee who is the recipient of public benefits for rights guaranteed under this Act. Retaliatory personnel action shall also include interfering with or punishing an individual for in any manner participating in or assisting an investigation, proceeding or hearing under this Act, or willfully preventing or attempting to prevent an individual from securing other employment by word, writing, or any other action for exercising or attempting to exercise any right guaranteed under this Act.

(9) “Whistleblower” means a current or former employee, contractor, subcontractor or employee of such a contractor or subcontractor of an alleged violator of this Act, regardless of whether that person has received full or partial relief under Section 8. [Note: whistleblower protections are included as an enforcement option under Section 8(4) of this model bill; this definition should only be included if those protections are added]

## Section 2. Use of Paid Sick Time

- (1) On the date a public health emergency affecting [state/local government name] is declared or proclaimed, an employer shall provide each employee of an employer with paid sick time in the following amount: (A) employees who normally work 40 or more hours in a week shall be provided at least 80 hours of paid sick time; (B) employees who work fewer than 40 hours in a week shall be provided an amount of paid sick time equal to the amount of time the employee is otherwise scheduled to work or works on average in a two-week period, whichever is greater.
- (2) In the case of an employee described in subsection (1)(B) whose schedule varies from week to week, the employer shall use the following in place of such number to determine the amount of time worked on average in a two-week period: (A) Subject to subsection (2)(B), a number equal to the average number of hours that the employee was scheduled per week over the 6-month period ending on the date on which the employee takes paid sick time under this Section, including hours for which the employee took leave of any type; (B) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per week that the employee would normally be scheduled to work.
- (3) If a public health emergency was declared or proclaimed before and remains in effect on the effective date of this Act, paid sick time under this Act shall be: (A) provided to employees pursuant to subsection (1) on the effective date of this Act; and (B) made available retroactively to employees employed on the effective date of this Act to the date the public health emergency was declared or proclaimed.
- (4) The paid sick time required in subsection (1) shall be provided to employees immediately for use for any of the purposes described in Section 3 beginning on the date of any public health emergency, regardless of how long they have been employed. An employee shall be entitled to use this paid sick time until [X] weeks following the official termination or suspension of the public health emergency.
- (5) With respect to an employer that provides paid leave on the day before the effective date of this Act, the paid sick time under this Act shall be made available to employees of the employer in addition to such paid leave; and the employer may not change such paid leave on or after such effective date to avoid being subject to this subsection. An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time under subsection (1).

(6) 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 under this Act unless their normal work week is less than 40 hours, in which case paid sick time under this Act is based upon that normal work week.

(7) 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 paid sick time that has not been used, unless such financial or other reimbursement is required under another law.

### **Section 3. Paid Sick Time Purposes**

(1) Paid sick time shall be provided to an employee by an employer when the employee is unable to perform the functions of the position of such employee, including through telework, due to a need for leave for any of the following purposes related to a public health emergency:

(A) An employee's need to: (i) self-isolate and care for oneself because the individual is diagnosed with a communicable illness related to a public health emergency; (ii) self-isolate and care for oneself because the individual is experiencing symptoms of a communicable illness related to a public health emergency; (iii) seek preventive care concerning a communicable illness related to a public health emergency; (iv) seek or obtain medical diagnosis, care, or treatment if experiencing symptoms of a communicable illness related to a public health emergency; or (v) obtain immunization related to the public health emergency or recover from any injury, disability, illness, or condition related to such immunization;

(B) An employee's need to comply with an order or determination to self-isolate, on the basis that the employee's physical presence on the job or in the community would jeopardize the employee's health, the health of other employees, or the health of an individual in the employee's household because of: (i) possible exposure to a communicable illness related to a public health emergency; or (ii) exhibiting of symptoms of a communicable illness related to a public health emergency, regardless of whether the employee has been diagnosed with such illness;

(C) An employee's need to take care of a family member who is: (i) self-isolating, seeking preventive care, seeking or obtaining medical diagnosis, care, treatment, or immunizations, or recovering from such immunization, for the purposes described in paragraph (A) of this subsection; or (ii) self-isolating due to an order or determination as described in paragraph (B) of this subsection;

(D) An employee's inability to work or telework because the employee is: (i) prohibited from working by the employer due to health concerns related to the potential transmission of a communicable illness related to the public health emergency; (ii) seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, the communicable illness related to the public health emergency and such employee has been exposed to the communicable illness or the employee's employer has requested such test or diagnosis; or (iii) subject to an individual or general local, state, or federal quarantine or isolation order, including a shelter-in-place or stay-at-home order, related to a public health emergency [note: it is advisable to check on terminology in your jurisdiction for isolation/quarantine/shelter-in-place/stay-at-home orders to ensure use of relevant language];

(E) An employee's need to take care of a child or other family member when the care provider of such individual is unavailable due to a public health emergency, or if the child's or family member's school

or place of care has been closed by a local, state or federal public official or at the discretion of the school or place of care due to a public health emergency, including if a school or place of care: (i) is physically closed but providing virtual learning instruction; (ii) requires or makes optional a virtual learning instruction; or (iii) requires or makes available a hybrid of in-person and virtual learning instruction models; or

(F) An employee's inability to work because the employee has a health condition that may increase susceptibility to or risk of a communicable illness related to the public health emergency including, but not limited to: age, heart disease, asthma, lung disease, diabetes, kidney disease, or a weakened immune system.

(2) An order or determination pursuant to subsections (1)(B) or (1)(C)(ii) shall be made by a local, state, or federal public official, a health authority having jurisdiction, a health care professional, or the employer of the employee or employee's family member. Such order or determination need not be specific to such employee or family member.

(3) The employee shall provide notice to the employer of the need for paid sick time as practicable when the need for paid sick time is foreseeable and the employer's place of business has not been closed.

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

(5) Paid 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.

(6) Documentation shall not be required for paid sick time under this Act.

#### **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. An employee need not explicitly refer to this Act or the rights enumerated herein to be protected from retaliatory personnel actions.

(2) An employer shall not take retaliatory personnel action or discriminate against an employee or former employee because the person has exercised or attempted to exercise rights protected under this Act. Such rights include but are not limited to the right to request or use paid sick time pursuant to this Act; the right to file a complaint with the Agency or courts or inform any person about any employer's alleged violation of this Act; the right to participate in an investigation, hearing or proceeding or cooperate with or assist the Agency in its investigations of alleged violations of this Act; the right to inform any person of his or her potential rights under this Act; or the right to disclose or intend to disclose a violation of this Act through a good faith written or oral communication to an employer, an employer's agent, other employee, a government agency, an attorney or legal aid organization, a community or labor organization, or to the public such as through print, online, social, or any other media.

(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 a retaliatory personnel action 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 Act.

(5) There shall be a rebuttable presumption of unlawful retaliatory personnel action 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 Act; (b) informs any person about an employer's alleged violation of this Act; (c) cooperates with the Agency or other persons in the investigation or prosecution of any alleged violation of this Act; (d) opposes any policy, practice, or act that is unlawful under this Act; or (e) informs any person of his or her rights under this Act.

### Section 5. Notice and Posting

(1) Employers shall give employees written notice of the following at the commencement of employment or by the effective date of this Act, whichever is later, and annually thereafter: employees are entitled to paid sick time and the amount of paid sick time, the terms of its use guaranteed under this Act, that retaliatory personnel action against employees who request or use paid sick time is prohibited, that each employee has the right to [file a complaint or bring a civil action, depending on what enforcement measures are included] if paid sick time as required by this Act is denied by the employer or the employee is subjected to retaliatory personnel action for requesting or taking paid sick time, and the contact information for the Agency where questions about rights and responsibilities under this Act can be answered.

(2) Within 7 days of the declaration or proclamation of a public health emergency affecting [state/local government name], employers shall provide employees with written notice of the public health emergency and their right to paid sick time pursuant to this Act. If a public health emergency continues for a period of longer than three months, employers shall be required to provide written notice to their employees pursuant to this section every three months.

(3) The notices required in subsections (1) and (2) shall be in English, [X, X,] and any language that is the first language spoken by at least [X%] of the employer's workforce, provided that such notice has been translated and provided by the Agency.

(4) The amount of paid sick time available to the employee, the amount of paid sick time taken by the employee to date in the year and the amount of pay the employee has received as paid sick time shall be recorded in, or on an attachment to, the employee's regular paycheck.

(5) Employers shall display a poster that contains the information required in subsection (1) in a conspicuous and accessible place in each establishment where such employees are employed; provided, however, that in cases where the employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based or app-based platform, notification shall be sent via electronic communication or a conspicuous posting in the web-based or app-based platform. The poster displayed shall be in English, [X, X,] and any language that is deemed appropriate by the Agency, provided that such poster has been provided by the Agency.

(6) The Agency shall create and make available to employers model notices and posters that contain the information required under subsection (1) for employers' use in complying with subsections (1), (2) and (5).

(7) If an employer's business is closed due to a public health emergency, the notice and posting requirements under subsections (1), (2), and (5) shall be waived for the period in which the place of business is closed.

(8) 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. Each day that a violation occurs or is not corrected shall constitute a separate offense.

## Section 6. Employer Records

Employers shall retain records documenting compliance with the applicable requirements of this Act, including hours worked by employees and paid sick time taken by employees, for a period of [three] years, and shall allow the Agency access to such records and other information, in accordance with applicable law and with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Act or in furtherance of an investigation conducted pursuant to this Act. When an issue arises as to an employee's entitlement to paid sick time under this Act, 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 other information required to be maintained by this Act, or does not allow the Agency reasonable access to such records, it shall be presumed [in an administrative or civil action, depending upon the enforcement mechanisms in the bill] 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 Act and shall promulgate appropriate guidelines or regulations for such purposes.

## Section 8. Enforcement

**NOTE:** There are several different ways to enforce a paid sick time law, and a bill can contain a combination of them as long as the jurisdiction permits the types of enforcement selected. The model language includes all options. We are available to help streamline this language.

### (1) Administrative Enforcement

(A) The Agency shall enforce the provisions of this Act. In effectuating such enforcement, the Agency shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this Act and investigate complaints received by the Agency in a timely manner. The Agency shall have the authority on its own initiative to investigate, inspect workplaces, and to subpoena records and witnesses. Where an employer does not comply with any of the requirements of this Act, the Agency shall order relief as authorized in this Section.

(B) Any person alleging a violation of this Act shall have the right to file a complaint with the Agency within [X months/years] of the date the person knew or should have known of the alleged violation. 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 Act or for other appropriate purposes.

(C) Upon receiving a complaint alleging a violation of this Act, the Agency shall investigate such complaint. The Agency shall keep complainants notified regarding the status of their complaint and any resultant investigation. If the Agency believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation and the relief required of the offending person or entity. The Agency



shall prescribe the form and wording of such notices of violation including any method of appealing the decision of the Agency.

(D) The Agency shall have the power to impose penalties provided for in this Act and to grant an employee or former employee all appropriate relief. Such relief shall include but not be limited to: (i) for each instance of paid sick time taken by an employee but unlawfully not compensated by the employer: three times the wages that should have been paid under this Act or [SX] whichever is greater; (ii) for each instance of paid sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker: [SX]; (iii) for each instance of a retaliatory personnel action not including discharge from employment: the greater of [SX] or three times the actual damages including but not limited to unpaid wages and benefits, plus punitive damages, and equitable relief as appropriate; and (iv) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, [SX] and equitable relief, including reinstatement, as appropriate, of the individual to the same position held before any retaliatory personnel action, or to an equivalent position, and reinstatement of full fringe benefits and seniority rights.

(E) Any entity or person found to be in violation of the provisions of this Act shall be liable for: (i) payment to the [state/county/city] of reasonable costs and attorney's fees; and (ii) a civil penalty payable to [state/county/city] not to exceed [SX] for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed [SX] for the second violation and not to exceed [SX] for each successive violation. Each day that a violation occurs or is not corrected shall constitute a separate violation for purposes of this paragraph. The Agency shall also have the power to issue an order to comply with the requirements of this Act and to restrain continued violations, including through a stop-work order or business closure.

(F) The Agency shall annually report on its website the number and nature of the complaints received pursuant to this Act, the results of investigations undertaken pursuant to this Act, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this Act, and the average time for a complaint to be resolved pursuant to this Act.

## (2) *Civil Enforcement*

(A) The Agency, the Attorney General [or City/County Attorney], 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 and costs.

(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 to employment, back pay, punitive damages, compensatory damages payable to the aggrieved person equal to three times the actual damages, and/or injunctive relief.

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

(E) The Attorney General [or City/County Attorney] may bring a civil action to enforce this Act. The Attorney General [or City/County Attorney] 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 [or City/County Attorney] may seek to impose a fine of [\$X - example: \$1,000] per violation, payable to the [City/County/State].

(F) The statute of limitations for a civil action brought pursuant to this section shall be for a period of [#] years from the date the alleged violation occurred or the date the employee knew or should have known of the violation.

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

(3) [City/County/State] officials are hereby authorized to consider, to the maximum extent permitted by law, an employer's record of noncompliance with this Act in making decisions on [city/county/state] contracts, land use approvals and other entitlements to expand or operate within the [city/county/state]. The [city/county/state] is authorized to either deny approval or to condition approval on the employer's future compliance.

#### (4) *Whistleblower Protection*

(A) The penalties specified in subsection (1)(E) of this Section, and injunctive and declaratory relief, may be recovered through a civil action brought on behalf of the Agency in a court of competent jurisdiction by a whistleblower or by a representative nonprofit or labor organization designated by said person, pursuant to the following procedures:

(i) The whistleblower shall give written notice to the Agency of the specific provisions of this Act alleged to have been violated. The whistleblower or representative organization may commence a civil action under this subsection if no enforcement action is taken by the Agency within 30 days.

(ii) Civil penalties recovered pursuant to this subsection shall be distributed as follows: 60 percent to the Agency for enforcement of this act, with 25 percent of that amount reserved for grants to community organizations for outreach and education about employee rights under this Act; and 40 percent to the whistleblower or representative organization to be distributed to the employees affected by the violation. Any person that prevails in an action under this subsection, whether or not the Agency has intervened in that action, shall be entitled to an award of reasonable attorney's fees, expert fees, and other costs.

(iii) The right to bring an action under this section shall not be impaired by any private contract. A public enforcement action shall be tried promptly, without regard to concurrent adjudication of private claims.

### **Section 9. Confidentiality and Nondisclosure**

(1) Unless otherwise required by law, an employer may not require disclosure of the details of an employee's or an employee's family member's health information as a condition of providing paid sick time under this Act.

(2) Unless otherwise required by law, any health or safety information possessed by an employer regarding an employee or employee's family member must:

- (A) be maintained on a separate form and in a separate file from other personnel information;
- (B) be treated as confidential medical records; and
- (C) not be disclosed except to the affected employee or with the express permission of the affected employee.

### **Section 10. Encouragement of More Generous Paid Sick Time Policies; No Effect on More Generous Policies or Laws**

- (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 paid sick time to an employee than required herein. Nothing in this Act shall be construed as diminishing the rights of public employees regarding paid sick time or use of paid sick time as provided in [laws of the state pertaining to public employees].
- (3) [For State laws] Nothing in this Act shall be construed to preempt or supersede any provision of any local law that provides greater rights to paid sick time than the rights established under this Act.
- (4) The rights and remedies under this Act may not be waived by any agreement, policy, form, or condition of employment. [Note: This language may need to be adjusted depending on any language regarding collective bargaining agreements (CBAs) and the ability of a CBA to waive any provisions of the law through clear, explicit language in the CBA; we can discuss models on paid sick time laws and CBAs with you for this topic.]

### **Section 11. Other Legal Requirements**

- (1) If any Federal law entitles an employee to paid sick leave for any of the purposes provided in Section 3 of this Act, paid sick time provided under this Act shall be in addition to that paid sick leave, to the extent permitted by the Federal law. [This language provides that, if federal law allows, the paid sick time under this law is additional to any leave under future federal paid leave laws; this language should be adjusted if you would like leave to run concurrently, to the extent federal law allows.]
- (2) 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 a greater amount or use by employees of paid sick time or that extends other protections to employees.

### **Section 12. Public Education and Outreach**

The Agency [or another relevant official, administrative agency] shall develop and implement a multilingual outreach program to inform employees, employers, parents, caregivers, elder care providers, and persons who are under the care of a health care professional about the availability of paid sick time under this Act.

### **Section 13. Severability**



**Headquarters**  
5 Columbus Circle, 11<sup>th</sup> floor  
New York, NY 10019  
tel: 212.430.5982

**Southern Office**  
2301 21<sup>st</sup> Ave. South, Suite 355  
Nashville, TN 37212  
tel: 615.915.2417

**DC Office**  
815 16<sup>th</sup> Street NW, Suite 4162  
Washington, DC 20005

**Colorado Office**  
303 E. 17<sup>th</sup> Ave., Suite 400  
Denver, CO 80203

[abetterbalance.org](http://abetterbalance.org) | [info@abetterbalance.org](mailto:info@abetterbalance.org)

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 14. Effective Date**

This Act will take effect # days following enactment. [The effective date should be as soon as possible according to the local government’s or state’s laws, and advocates should consider whether any emergency clauses can have it take effect sooner than a legal default. We also recommend making this emergency paid sick time permanent, but you could also add—if necessary—a sunset here to have it take place for only a certain period of time, such as 2 years, to address the ongoing pandemic].

**Please note that this document does not constitute legal advice.**

© 2022, A Better Balance