

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

The following model bill would establish paid sick time leave for a public health emergency, which is especially necessary given the current pandemic. This legislation was adapted from model paid sick and safe time legislation developed by A Better Balance and the National Partnership for Women & Families.

Please note that the President signed into law the [Families First Coronavirus Response Act \(FFCRA\)](#) on March 18, 2020.

- Among other provisions, the law will provide—until December 31, 2020—10 emergency paid sick days for certain sick time needs related to coronavirus (including a worker’s or family member’s quarantine/self-isolation, seeking a medical diagnosis due to coronavirus symptoms, or when a child’s school or place of care is closed or childcare is unavailable). In addition to these 10 paid sick days, workers are eligible for partial wage replacement for up to 12 weeks *but only when a worker needs to care for a child whose school/place of care has been closed, or childcare is unavailable, due to coronavirus*. **The law applies to public agencies regardless of size, but it only covers private entities that employ fewer than 500 employees. Moreover, an employer of a health care provider or emergency responder may elect to exclude such worker from the emergency leave provisions.**
- Furthermore, the Secretary of Labor has authority to issue regulations for good cause that: 1) exclude certain health care providers or emergency responders from eligibility, including by allowing their employers to opt them out; and 2) exempt businesses with fewer than 50 employees from the emergency paid sick and family leave requirements related to school and child care closures, or the unavailability of child care due to coronavirus, when the imposition of such requirements would jeopardize the business’ viability. The Department of Labor has in fact issued regulations allowing for both exemptions, and the regulations define “health care provider” and “emergency responder” broadly. The exemption for businesses with fewer than 50 employees from the leave requirements on school/child care closures, or unavailability of child care, allow those businesses to meet the exemption by documenting certain information for their records (rather than submitting information to the government for any review).

Until December 31, 2020, passage of an emergency paid sick leave bill like this model legislation would provide *additional* emergency paid sick leave to employees who are covered beyond the federal law, and it could provide an opportunity for states and localities to: 1) cover employees in private-sector businesses with 500 or more employees, as well as employees of health care providers and emergency responders, who are excluded from the FFCRA; and/or 2) provide a right to emergency paid sick time on a permanent basis and for future public health emergencies as well, beyond December 31, 2020.

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 or 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 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) “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].
- (3) “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] 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.]

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(4) “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].

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.]

(5) “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 care, including but not limited to helping that individual obtain diagnostic, preventive, routine or therapeutic health treatment; or

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

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

(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, 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 the exercise of any right guaranteed herein including any sanctions against an employee who is the recipient of public benefits for rights guaranteed under this Act. Retaliation shall also include interference

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with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing 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 of a public health emergency affecting [state/local government name], 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 112 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 14-day period, whichever is greater.

(2) In the case of an employee described in (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 14-day period: (A) Subject to (2)(B), a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes the public health emergency leave, 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 day that the employee would normally be scheduled to work.

(3) If a public health emergency was declared before and remains in effect on the effective date of this Act, paid sick time under this Act shall be: (i) provided to employees pursuant to (1) on the effective date of this Act; and (ii) made available retroactively to employees employed on the effective date of this Act.

(4) The paid sick time required in (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 (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.

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(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.

Section 3. Paid Sick Time Purposes

(1) Paid sick time shall be provided to an employee by an employer for the following absences, including inability to telework, 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 or obtain medical diagnosis, care, or treatment if experiencing symptoms of a communicable illness related to a public health emergency; or (iv) seek preventive care concerning a communicable illness related to a public health emergency.

(B) Care of a family member who: (i) is self-isolating due to being diagnosed with a communicable illness related to a public health emergency; (ii) is self-isolating due to experiencing symptoms of a communicable illness related to a public health emergency; (iii) needs medical diagnosis, care, or treatment if experiencing symptoms of a communicable illness related to a public health emergency; or (iv) is seeking preventive care concerning a communicable illness related to a public health emergency.

(C) Determination by a local, state, or federal public official, a health authority having jurisdiction, a health care provider, or the employee's employer that the employee's presence on the job or in the community would jeopardize the health of others because of the employee's exposure to a contagious illness or exhibiting of symptoms, regardless of whether the employee has been diagnosed with a contagious illness;

(D) Care of a family member due to a determination by a local, state, or federal public official, a health authority having jurisdiction, a health care provider, or a family member's employer that the family member's presence on the job or in the community would jeopardize the health of others because of the family member's exposure to a contagious illness or exhibiting of symptoms, regardless of whether the family member has been diagnosed with a contagious illness;

(E) An employee's inability to work or telework while subject to either: 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; or closure of the employee's place of business by order of a local, state, or federal public official or health authority or at the discretion of the employer due 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]; or

(F) 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 is physically closed but providing instruction remotely.

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

(3) 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.

(4) 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.

(5) 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.

(2) An employer shall not take retaliatory personnel action or discriminate against an employee or former employee because the person has exercised 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; and the right to inform any person of his or her potential rights under this Act.

(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 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

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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) The notice required in (1) 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.

(3) 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.

(4) Employers shall display a poster that contains the information required in (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 platform, notification shall be sent via electronic communication or a conspicuous posting in the web-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.

(5) The Agency shall create and make available to employers model notices and posters that contain the information required under (1) for employers' use in complying with (1) and (4).

(6) If an employer's business is closed due to a public health emergency, the notice and posting requirements under (1) and (4) shall be waived for the period in which the place of business is closed.

(7) 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 [three] 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 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.

(B) Any person alleging a violation of this Act shall have the right to file a complaint with the Agency within [X days/weeks/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: (1) 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 [\$X] whichever is greater; (2) 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: [\$X]; (3) for each instance of unlawful retaliation not including discharge from employment: full compensation including wages and benefits lost, an additional amount of at least [\$X] and equitable relief as appropriate; and (4) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, [\$X] and equitable relief, including reinstatement, as appropriate.

(E) Any entity or person found to be in violation of the provisions of this Act shall be liable for a civil penalty payable to [state/county/city] not to exceed [\$X] for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed [\$X] for the second violation and not to exceed [\$X] for each successive violation.

(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 chapter.

(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.

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(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.

(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 and 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 Section 8(1)(E), 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 120 days.

(ii) Civil penalties recovered pursuant to this subsection shall be distributed as follows: 70 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 30 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

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section, whether or not the Agency has intervened in that action, shall be entitled to an award of reasonable attorney's fees and 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

Any health or safety information possessed by an employer regarding an employee or employee's family member must:

- (1) be maintained on a separate form and in a separate file from other personnel information;
- (2) be treated as confidential medical records; and
- (3) 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 supersede any provision of any local law that provides greater rights to paid sick time than the rights established under this Act.

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.
- (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, accrual, 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, elder care providers, and persons who are under the care of a health care provider about the availability of paid sick time under this Act.

Section 13. Severability



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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. [We 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 current pandemic].

Please note that this document does not constitute legal advice.