

SB0230/717870/2

BY: Finance Committee

SUBSTITUTE AMENDMENTS TO SENATE BILL 230
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 4, after “leave;” insert “providing that, except under certain circumstances, certain employees of a unit of State or local government are subject to certain provisions of the unit’s laws, regulations, policies, and procedures under certain circumstances; prohibiting an employer from being required to pay a tipped employee more than a certain wage for earned sick and safe leave;”; in line 20, after “offer;” insert “providing that an employer is not required to consent to a certain request under certain circumstances;”; in line 22, strike “or allowing an employee to work certain hours or shifts”; and in line 24, after “leave;” insert “requiring an employer to offer a certain employee employed in the restaurant industry the employee’s base rate of pay for the employee’s absence, except under certain circumstances; authorizing an employer, in lieu of offering to pay a certain employee the employee’s base rate of pay, to offer an additional shift of the same number of hours within a certain time frame; authorizing an employer to deduct accrued earned sick and safe leave for leave taken under certain circumstances;”.

On page 2, in line 1, after “notice;” insert “requiring the Commissioner to develop a certain model paid sick and safe leave policy for use by certain employers for certain purposes; requiring the Commissioner to provide technical assistance to certain employers under certain circumstances; requiring the Department of Labor, Licensing, and Regulation to post a certain notice and model on a certain Web site in a certain format;”; in line 3, after “a” insert “rebuttable”; in line 4, after “circumstances;” insert “prohibiting an employer from being assessed a certain civil penalty under certain circumstances; providing for the liability of certain payroll service providers under certain circumstances;”; in line 11, strike “requiring” and substitute “authorizing”; and in line 21, after “employers;” insert “authorizing certain jurisdictions to amend certain sick and safe leave laws enacted before a certain date;”.

(Over)

AMENDMENT NO. 2

On page 4, in line 5, strike “OR”; and in line 7, after “ARTICLE” insert “;

(5) IS EMPLOYED BY A TEMPORARY SERVICES AGENCY TO PROVIDE TEMPORARY STAFFING SERVICES TO ANOTHER PERSON IF THE TEMPORARY SERVICES AGENCY DOES NOT HAVE DAY-TO-DAY CONTROL OVER THE WORK ASSIGNMENTS AND SUPERVISION OF THE INDIVIDUAL WHILE THE INDIVIDUAL IS PROVIDING THE TEMPORARY STAFFING SERVICES; OR

(6) IS DIRECTLY EMPLOYED BY AN EMPLOYMENT AGENCY TO PROVIDE PART-TIME OR TEMPORARY SERVICES TO ANOTHER PERSON”.

On page 5, in line 18, after “(A)” insert “IN THIS SECTION, “EXISTING PAID LEAVE” INCLUDES:

(1) VACATION DAYS;

(2) SICK DAYS;

(3) SHORT-TERM DISABILITY BENEFITS;

(4) FLOATING HOLIDAYS;

(5) PARENTAL LEAVE; AND

(6) OTHER PAID TIME OFF THAT MAY BE USED UNDER THE TERMS AND CONDITIONS AS PAID SICK AND SAFE LEAVE.

(B)”;

in line 23, after “IF” insert “:

(I)”;

and in line 25, after the semicolon insert “OR

(II) THE PAID LEAVE POLICY DOES NOT REDUCE EMPLOYEE COMPENSATION FOR AN ABSENCE DUE TO SICK OR SAFE LEAVE;”.

On page 6, in line 4, after “ADOPTING” insert “AND ENFORCING”; strike beginning with “LIMITS” in line 4 down through “SUBTITLE” in line 6 and substitute “PROHIBITS THE IMPROPER USE OF EARNED SICK AND SAFE LEAVE, INCLUDING PROHIBITING A PATTERN OF ABUSE OF EARNED SICK AND SAFE LEAVE”; in line 7, strike “(A)(2)” and substitute “(B)(2)”; in lines 7 and 14, strike “(B)” and “(C)”, respectively, and substitute “(C)” and “(D)”, respectively; in line 14, strike “THIS” and substitute “(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THIS”; after line 16, insert:

“(2) THIS SUBSECTION DOES NOT PREEMPT A LOCAL JURISDICTION FROM AMENDING A LAW THAT WAS ENACTED BEFORE JANUARY 1, 2017, AND REGULATES SICK AND SAFE LEAVE PROVIDED BY AN EMPLOYER.”;

in line 19, strike “8” and substitute “12”; in line 20, strike “OR”; and in line 24, after “TERMS” insert “;OR

(3) (I) IS CALLED TO WORK BY THE EMPLOYER ON AN AS-NEEDED BASIS IN A HEALTH OR HUMAN SERVICES INDUSTRY;

(II) CAN REJECT OR ACCEPT THE SHIFT OFFERED BY THE EMPLOYER;

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(III) IS NOT GUARANTEED TO BE CALLED ON TO WORK BY THE EMPLOYER; AND

(IV) IS NOT EMPLOYED BY A TEMPORARY STAFFING AGENCY”.

On page 7, after line 4, insert:

“(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF A UNIT OF STATE OR LOCAL GOVERNMENT’S SICK LEAVE ACCRUAL AND USE REQUIREMENTS EXCEED THE SICK AND SAFE LEAVE PROVIDED FOR UNDER THIS SUBTITLE, EMPLOYEES OF THE UNIT OF STATE OR LOCAL GOVERNMENT ARE SUBJECT TO THE UNIT’S LAWS, REGULATIONS, POLICIES, AND PROCEDURES, TO THE EXTENT OF ANY CONFLICT WITH THE PROVISIONS OF THIS SUBTITLE EXIST, PROVIDING FOR:

(I) ACCRUAL AND USE OF SICK LEAVE;

(II) GRIEVANCES; AND

(III) DISCIPLINARY ACTIONS.

(2) EMPLOYEES OF A UNIT OF STATE GOVERNMENT THAT ARE ENTITLED TO SICK AND SAFE LEAVE UNDER THIS SUBTITLE ARE SUBJECT TO § 3-1308 OF THIS SUBTITLE.”;

in line 6, strike “AN” and substitute “(I) SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH, AN”; in line 9, strike “(2)” and substitute “(II)”; in the same line, after “SHALL” insert “AT LEAST”; after line 10, insert:

“(III) AN EMPLOYER MAY NOT BE REQUIRED TO PAY A TIPPED EMPLOYEE MORE THAN THE APPLICABLE MINIMUM WAGE FOR EARNED SICK AND SAFE LEAVE.”;

in line 11, strike “(3)” and substitute “(2)”; in line 26, strike “56” and substitute “48”; and in line 30, strike “OR”.

On page 8, in line 1, strike “90” and substitute “106”; and strike beginning with “OR” in line 2 down through “SHORTER” in line 3 and substitute “; OR

(5) ACCRUE EARNED SICK AND SAFE LEAVE DURING A:

(I) 2-WEEK PAY PERIOD IN WHICH THE EMPLOYEE WORKED FEWER THAN 24 HOURS TOTAL;

(II) 1-WEEK PAY PERIOD IF THE EMPLOYEE WORKED FEWER THAN A COMBINED TOTAL OF 24 HOURS IN THE CURRENT AND THE IMMEDIATELY PRECEDING PAY PERIOD; OR

(III) PAY PERIOD IN WHICH:

1. THE EMPLOYEE IS PAID TWICE A MONTH REGARDLESS OF THE NUMBER OF WEEKS IN A PAY PERIOD; AND

2. THE EMPLOYEE WORKED FEWER THAN 26 HOURS IN THE PAY PERIOD”.

AMENDMENT NO. 3

On page 9, strike beginning with “EMPLOYMENT” in line 1 down through “GRANT” in line 2 and substitute “EMPLOYEE IS EMPLOYED BY A NONPROFIT

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ENTITY OR A GOVERNMENTAL UNIT IN ACCORDANCE WITH A GRANT THE DURATION OF WHICH IS LIMITED TO 1 YEAR AND IS NOT SUBJECT TO RENEWAL”; and in line 3, strike “9 MONTHS” and substitute “37 WEEKS”.

On page 10, in line 4, strike the second “OR”; after line 4, insert:

“(4) FOR MATERNITY OR PATERNITY LEAVE; OR”;

and in line 5, strike “(4)” and substitute “(5)”.

On page 11, in line 5, after “(I)” insert “1.”; in line 7, strike “(II)” and substitute “2.”; in line 8, after “EMPLOYER” insert “; OR

(II) 1. THE EMPLOYER IS A PRIVATE EMPLOYER LICENSED UNDER TITLE 7 OR TITLE 10 OF THE HEALTH – GENERAL ARTICLE TO PROVIDE SERVICES TO DEVELOPMENTALLY DISABLED OR MENTALLY ILL INDIVIDUALS;

2. THE NEED TO USE EARNED SICK AND SAFE LEAVE IS FORESEEABLE;

3. AFTER EXERCISING REASONABLE EFFORTS, THE EMPLOYER IS UNABLE TO PROVIDE A SUITABLE REPLACEMENT EMPLOYEE; AND

4. THE EMPLOYEE’S ABSENCE WILL CAUSE A DISRUPTION OF SERVICE TO AT LEAST ONE INDIVIDUAL WITH A DEVELOPMENTAL DISABILITY OR MENTAL ILLNESS”;

before line 29, insert:

“(3) AN EMPLOYER IS NOT REQUIRED TO CONSENT TO AN EMPLOYEE’S REQUEST TO WORK ADDITIONAL HOURS OR TRADE SHIFTS IF THE ADDITIONAL HOURS OR TRADE IN SHIFTS WOULD RESULT IN THE EMPLOYER BEING REQUIRED TO PAY OVERTIME TO THE EMPLOYEE.”;

and strike in their entirety lines 24 through 26, inclusive.

AMENDMENT NO. 4

On page 12, in line 1, strike “NOT”; in line 2, strike “OF MORE THAN” and substitute “**NOT EXCEEDING**”; in line 30, after “PROHIBITION” insert “:

(I)”;

and after line 32, insert:

“(II) IN § 3-1310 OF THIS SUBTITLE AGAINST AN EMPLOYEE MAKING A COMPLAINT, BRINGING AN ACTION, OR TESTIFYING IN AN ACTION IN BAD FAITH; AND”.

On page 13, in line 5, after “SHALL” insert “:

(1)”;

in line 6, after “NOTICE” insert “**AT NO CHARGE TO THE EMPLOYER**”; in line 7, after “SECTION” insert “;

(2) DEVELOP A MODEL PAID SICK AND SAFE LEAVE POLICY THAT AN EMPLOYER MAY USE AS A PAID SICK AND SAFE LEAVE POLICY IN AN EMPLOYEE HANDBOOK OR OTHER WRITTEN GUIDANCE TO EMPLOYEES CONCERNING EMPLOYEE BENEFITS OR LEAVE PROVIDED BY THE EMPLOYER; AND

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(3) PROVIDE TECHNICAL ASSISTANCE TO AN EMPLOYER, IF AN EMPLOYER REQUESTS ASSISTANCE REGARDING IMPLEMENTING THE PROVISIONS OF THIS SUBTITLE.

(D) THE DEPARTMENT SHALL POST THE NOTICE AND MODEL PAID SICK AND SAFE LEAVE POLICY CREATED AND DEVELOPED UNDER SUBSECTION (C)(1) AND (2) OF THIS SECTION ON THE DEPARTMENT'S WEB SITE IN A DOWNLOADABLE FORMAT”;

in line 16, after “(C)” insert “(1)”; in line 18, strike “SHALL BE PRESUMED TO HAVE” and substitute “CREATES A REBUTTABLE PRESUMPTION THAT THE EMPLOYER”; and after line 18, insert:

“(2) (I) AN EMPLOYER MAY NOT BE ASSESSED A CIVIL PENALTY BY THE COMMISSIONER UNDER THIS SUBTITLE DUE TO AN UNINTENTIONAL PAYROLL ERROR OR WRITTEN NOTICE ERROR CAUSED BY A THIRD-PARTY PAYROLL SERVICE PROVIDER WITH WHOM THE EMPLOYER CONTRACTED FOR SERVICES.

(II) IF AN EMPLOYER CONTRACTS WITH A THIRD-PARTY PAYROLL SERVICE PROVIDER AND THE EMPLOYER IS FOUND IN VIOLATION OF THIS SUBTITLE AS A RESULT OF THE PAYROLL SERVICE PROVIDER'S ACTIONS, THE PAYROLL SERVICE PROVIDER IS LIABLE FOR ANY PENALTIES AND COSTS INCURRED BY THE EMPLOYER.”.

AMENDMENT NO. 5

On page 5, in line 5, after “(I)” insert ““RESTAURANT” MEANS AN ESTABLISHMENT THAT:

(1) ACCOMMODATES THE PUBLIC;

(2) IS EQUIPPED WITH A DINING ROOM WITH FACILITIES FOR PREPARING AND SERVING REGULAR MEALS; AND

(3) HAS AVERAGE DAILY RECEIPTS FROM THE SALE OF FOOD THAT EXCEED THE AVERAGE DAILY RECEIPTS FROM THE SALE OF ALCOHOLIC BEVERAGES.

(J);

and in lines 12 and 14, strike “**(J)**” and “**(K)**”, respectively, and substitute “**(K)**” and “**(L)**”, respectively.

On page 11, in line 13, after “**(1)**” insert “**(I)**”; in line 16, after “**PERIOD**” insert “**, OR THE FOLLOWING PAY PERIOD,**”; in lines 18 and 20, strike “**(2)**” and “**(3)**”, respectively, and substitute “**(II)**” and “**(III)**”, respectively; in line 21, strike “**PARAGRAPH (1) OF THIS SUBSECTION**” and substitute “**SUBPARAGRAPH (I) OF THIS PARAGRAPH**”; in the same line, strike the colon; strike in their entirety lines 22 and 23; in line 27, strike “**(III)**”; and after line 28, insert:

“(2) (I) THIS PARAGRAPH APPLIES ONLY TO AN EMPLOYEE EMPLOYED IN THE RESTAURANT INDUSTRY WHO IS COMPENSATED AS A TIPPED EMPLOYEE UNDER § 3-419 OF THIS TITLE AND WHO WOULD BE ENTITLED TO PAID LEAVE UNDER § 3-1304 OF THIS SUBTITLE IF THE EMPLOYEE:

1. NEEDS TO TAKE EARNED SICK AND SAFE LEAVE;

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2. PREFERS AND IS ABLE TO WORK ADDITIONAL HOURS OR TRADE SHIFTS WITH ANOTHER EMPLOYEE IN THE SAME PAY PERIOD OR THE FOLLOWING PAY PERIOD; AND

3. REQUIRES THE EMPLOYER TO ARRANGE COVERAGE OF THE SHIFT.

(II) IF THE EMPLOYER IS CONTACTED TO ARRANGE THE COVERAGE OF A SHIFT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE EMPLOYER SHALL HAVE THE DISCRETION TO OFFER THE EMPLOYEE A CHOICE OF:

1. BEING PAID THE MINIMUM WAGE REQUIRED UNDER § 3-413 OF THIS TITLE FOR THE EMPLOYEE'S ABSENCE; OR

2. WORKING AN EQUIVALENT SHIFT OF THE SAME NUMBER OF HOURS IN THE SAME PAY PERIOD OR THE FOLLOWING PAY PERIOD.

(III) AN EMPLOYER THAT DOES NOT OFFER THE TIPPED EMPLOYEE THE CHOICE UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH SHALL PAY TO THE EMPLOYEE THE MINIMUM WAGE REQUIRED UNDER § 3-413 OF THIS TITLE FOR THE USE OF THE EARNED SICK AND SAFE LEAVE.

(IV) AN EMPLOYER MAY DEDUCT AN ABSENCE TAKEN UNDER THIS PARAGRAPH FROM THE EMPLOYEE'S ACCRUED EARNED SICK AND SAFE LEAVE."

AMENDMENT NO. 6

On page 14, in line 29, strike "SHALL" and substitute "MAY".

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On page 16, after line 16, insert:

“SECTION 3. AND BE IT FURTHER ENACTED, That this Act may not be construed to preempt any federal law or regulation governing employees subject to federal law or regulations.”;

and in line 17, strike “3.” and substitute “4.”.