

1 HB557
2 117569-1
3 By Representative Coleman
4 RFD: Commerce
5 First Read: 11-FEB-10

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8 SYNOPSIS: This bill would require employers to
9 provide a minimum level of paid sick and safe time
10 for employees, including time for family care.

11 This bill would make provision for employees
12 to seek early and routine medical care for
13 themselves and family members.

14 This bill would protect employees from job
15 lost while on sick and safe leave to care for
16 themselves or family members.

17 This bill would provide for assistance to
18 victims of domestic violence and their family with
19 job protection while receiving treatment.

20 This bill would provide for administrative
21 and civil remedies.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 To establish the Healthy and Safe Families and
2 Workplaces Act; to provide definitions; to provide for accrual
3 of paid sick and safe time; to provide for use of paid sick
4 and safe time; to provide for the exercise of protected rights
5 and to prohibit retaliation; to provide for the posting of
6 notice by the employer; to provide for confidentiality of
7 employer records and to provide exceptions; to provide for the
8 promulgation of rules and regulations pursuant to the
9 Administrative Procedure Act; and to provide for
10 administrative and civil remedies.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. This act shall be known and cited as the
13 Healthy and Safe Families and Workplaces Act.

14 Section 2. The Legislature of Alabama finds that:

15 (1) Most workers in the State of Alabama will at
16 some time during the year need temporary time off from work to
17 take care of his or her own health needs or the health needs
18 of members of their families.

19 (2) Nationally, 52 percent of all private sector
20 workers have paid sick time and only 30 percent of workers may
21 use that time to care for sick children. There are many
22 workers in Alabama who do not have any paid sick time, or who
23 have inadequate time, to care for their own health needs or
24 the health needs of members of their families. In Alabama,
25 740,000 Alabamians or 48 percent of Alabama workers are not
26 able to take a paid sick day when they are ill.

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

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

8 (5) Paid sick time will have a positive effect on
9 the public health of Alabama by allowing sick workers the
10 occasional option of staying at home to care for themselves
11 when ill, thus lessening their recovery time and reducing the
12 likelihood of spreading illness to other members of the
13 workforce and to the public.

14 (6) Paid sick time will allow parents to provide
15 personal care for their sick children. Parental care makes
16 children's recovery faster, prevents more serious illnesses,
17 and improves the overall mental and physical health of the
18 children.

19 (7) Providing a minimal amount of paid sick time is
20 affordable for employers and good for business.

21 (8) Paid sick time is good for business. Employers
22 who provide paid sick time have greater employee retention and
23 avoid the problem of workers coming to work sick and lowering
24 productivity.

25 (9) Almost 60 percent of those who provide unpaid
26 care to an adult family member or friend must combine their

1 caregiving with employment in order to provide financially for
2 their family member and themselves.

3 (10) Employees frequently lose their jobs or are
4 disciplined with suspensions or demerits for taking sick time
5 to care for sick family members or even to recover from their
6 own illnesses. One in six workers report they or a family
7 member has been fired, suspended, punished, or threatened by
8 an employer because they needed to take sick time for
9 themselves or a family member.

10 (11) Workers in jobs with high public contact, such
11 as service workers and restaurant workers, are very unlikely
12 to have paid sick time. Because of the lack of paid sick time,
13 these workers have no choice but to come to work when they are
14 ill, thereby increasing the risk of passing illnesses on to
15 co-workers and customers.

16 (12) In the event of an outbreak that presents a
17 threat to public health, for example, the H1N1 outbreak of
18 2009, government officials request that sick workers stay home
19 and keep sick children home from school or child care to
20 prevent the spread of the virus, and to safeguard workplace
21 productivity. However, because many workers lack paid sick
22 time, to protect their paychecks and their jobs, many are
23 unable to comply with these requests.

24 (13) Many employers would like to provide their
25 workers with paid sick time but fear being at a competitive
26 disadvantage because other employers do not.

1 (14) Nearly one in three American women report
2 physical or sexual abuse by a husband or boyfriend at some
3 point in their lives. Domestic violence results in an
4 estimated 1,200 deaths and two million injuries among women
5 annually. Intimate partner violence also affects men; women
6 account for 85 percent of the victims of intimate partner
7 violence and men account for approximately 15 percent of the
8 victims. Therefore, women disproportionately need time off to
9 care for their health or to find solutions, such as a
10 restraining order or finding housing, to avoid or prevent
11 physical or sexual abuse.

12 (15) The Centers for Disease Control has estimated
13 that domestic violence costs over seven hundred million
14 dollars (\$700,000,000) annually due to the victim's lost
15 productivity in employment.

16 (16) Victims of domestic violence are forced to lose
17 days of paid employment because of the violence they face. The
18 mean number of days of paid work lost by rape victims is 8.1
19 days, for victims of physical assault 7.2 days, and for
20 stalking 10.1 days. Without paid sick and safe days, these
21 victims are in grave danger of losing their jobs. The loss of
22 employment can be particularly devastating for victims of
23 domestic violence, who often need economic security to ensure
24 safety.

25 (17) The United States General Accounting Office
26 found that 25 - 50 percent of domestic violence victims

1 reported losing a job due, at least in part, to domestic
2 violence.

3 Section 3. As used in this act, the following words
4 shall have the following meanings:

5 (1) DEPARTMENT. The Department of Labor.

6 (2) DOMESTIC VIOLENCE. As defined in Section
7 13A-6-130, 13A-6-131, and 13A-6-132 of the Code of Alabama
8 1975.

9 (3) EMPLOYEE. As defined in Section 25-4-7 of the
10 Code of Alabama 1975, and includes recipients of public
11 benefits who are engaged in work activity as a condition of
12 receiving public assistance.

13 (4) EMPLOYER. As defined in Section 25-4-8 of the
14 Code of Alabama 1975.

15 (5) FAMILY MEMBER. Includes all of the following:

16 a. A biological, adopted, or foster child,
17 stepchild, or legal ward, a child of a domestic partner, or a
18 child to whom the employee stands in loco parentis.

19 b. A biological, foster, stepparent, adoptive
20 parent, or legal guardian of an employee or an employee's
21 spouse or domestic partner or a person who stood in loco
22 parentis when the employee was a minor child.

23 c. A person to whom the employee is legally married
24 under the laws of Alabama.

25 d. A grandparent or spouse or domestic partner of a
26 grandparent.

27 e. A grandchild.

1 f. A biological, foster, or adopted sibling or
2 spouse or domestic partner of a biological, foster, or adopted
3 sibling.

4 g. A domestic partner.

5 h. Any other individual related by blood or affinity
6 whose close association with the employee is the equivalent of
7 a family relationship.

8 (6) HEALTH CARE PROFESSIONAL. Any person licensed
9 under federal or Alabama law to provide medical or emergency
10 services, including, but not limited to, doctors, nurses, and
11 emergency room personnel.

12 (7) PAID SICK TIME. Time that is compensated at the
13 same hourly rate and with the same benefits, including health
14 care benefits, as the employee normally earns during hours
15 worked and is provided by an employer to an employee for the
16 purposes described in Section 3, but in no case shall the
17 hourly wage be less than that provided under 29 U.S.C.
18 §206(a)(1).

19 (8) RETALIATORY PERSONNEL ACTION. The discharge,
20 suspension, or demotion by an employer of an employee or any
21 other adverse action taken by an employer against an employee
22 and also includes any sanctions against a recipient of public
23 benefits.

24 (9) SEXUAL ASSAULT. Any sexual offense enumerated in
25 Sections 13A-6-60 to 13A-6-70, inclusive, of the Code of
26 Alabama 1975.

1 (10) SMALL BUSINESS. As defined in Section 25-10-3
2 of the Code of Alabama 1975.

3 (11) STALKING. As defined in Section 13A-6-90 of the
4 Code of Alabama 1975.

5 Section 4. (1) All employees who work in Alabama for
6 more than 2060 hours in a year have the right to paid sick and
7 safe time as provided in this section.

8 (2) All employees shall accrue a minimum of 8.40
9 hours of paid sick and safe time for every 80 hours worked.
10 Employees shall not accrue more than 101.20 hours of paid sick
11 and safe time in a calendar year.

12 (3) Employees of small businesses will not accrue
13 more than 202 hours of paid sick and safe time in a calendar
14 year.

15 (4) Employees who are exempt from overtime
16 requirements under 29 U.S.C. §213(a)(1) of the Federal Fair
17 Labor Standards Act will be assumed to work 40 hours in each
18 work week for purposes of paid sick and safe time accrual
19 unless their normal work week is less than 40 hours, in which
20 case paid sick and safe time accrues based upon that normal
21 work week.

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

25 (6) Employees shall be entitled to use accrued paid
26 sick and safe time beginning on the 12th calendar day
27 following commencement of their employment. After the 12th

1 calendar day of employment, employees may use paid sick and
2 safe time as it is accrued.

3 (7) Paid sick and safe time shall be carried over to
4 the following calendar year; however, an employee's use of
5 paid sick and safe time pursuant to this act in each calendar
6 year shall not exceed 600 hours for employees of small
7 businesses and 1200 hours for employees of all other
8 businesses.

9 (8) Any employer with a paid leave policy, such as a
10 paid time off policy, who makes available an amount of paid
11 leave sufficient to meet the accrual requirements of this
12 section that may be used for the same purposes and under the
13 same conditions as paid sick and safe time under this section
14 shall not be required to provide additional paid sick and safe
15 time.

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

21 (10) If an employee is transferred to a separate
22 division, entity, or location, but remains employed by the
23 same employer, the employee shall be entitled to all paid sick
24 time accrued at the prior division, entity, or location and
25 shall be entitled to use all paid sick time as provided in
26 this section. When there is a separation from employment and
27 the employee is rehired within 36 months of separation by the

1 same employer, previously accrued paid sick and safe time that
2 had not been used shall be reinstated. The employee shall be
3 entitled to use accrued paid sick and safe time and accrue
4 additional sick and safe time at the re-commencement of
5 employment.

6 (11) The employer may loan sick and safe time to the
7 employee in advance of accrual by such employee.

8 Section 5. (a) Paid sick and safe time shall be
9 provided to an employee by an employer for all of the
10 following:

11 (1) An employee's mental or physical illness,
12 injury, or health condition; an employee's need for medical
13 diagnosis, care, or treatment of a mental or physical illness,
14 injury, or health condition; or an employee's need for
15 preventive medical care.

16 (2) Care of a family member with a mental or
17 physical illness, injury, or health condition; care of a
18 family member who needs medical diagnosis, care, or treatment
19 of a mental or physical illness, injury, or health condition;
20 or care of a family member who needs preventive medical care.

21 (3) Closure of the employee's place of business by
22 order of a public official due to a public health emergency or
23 an employee's need to care for a child whose school or place
24 of care has been closed by order of a public official due to a
25 public health emergency or care for a family member when it
26 has been determined by the health authorities having
27 jurisdiction or by a health care provider that the presence of

1 the family member in the community would jeopardize the health
2 of others because of the exposure of the family member to a
3 communicable disease, whether or not the family member has
4 actually contracted the communicable disease.

5 (4) Absence necessary due to domestic violence,
6 sexual assault, or stalking, provided the leave is to do any
7 of the following:

8 a. Seek medical attention for the employee or
9 employee's child, spouse, parent, grandparent, or extended
10 family member to recover from physical or psychological injury
11 or disability caused by domestic or sexual violence.

12 b. Obtain services from a victim services
13 organization.

14 c. Obtain psychological or other counseling.

15 d. Seek relocation due to the domestic or sexual
16 violence or stalking.

17 e. Take legal action, including preparing for or
18 participating in any civil or criminal legal proceeding
19 related to or resulting from the domestic or sexual violence.

20 (b) Paid sick and safe time shall be provided upon
21 the oral request of an employee. When possible, the request
22 shall include the expected duration of the absence.

23 (c) When the use of paid sick and safe time is
24 foreseeable, the employee shall make a good faith effort to
25 provide notice of the need for such time to the employer in
26 advance of the use of the sick and safe time and shall make a
27 reasonable effort to schedule the use of sick and safe time in

1 a manner that does not unduly disrupt the operations of the
2 employer.

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

7 (e) For sick and safe time of more than three
8 consecutive days, an employer may require reasonable
9 documentation that the sick and safe time is covered by
10 subsection (a). Documentation signed by a health care
11 professional indicating that sick time is necessary shall be
12 considered reasonable documentation. A police report
13 indicating that the employee was a victim of domestic
14 violence, stalking, or sexual assault; a court order; or a
15 signed statement from a victim and witness advocate affirming
16 that the employee is involved in legal action related to
17 domestic violence, stalking, or sexual assault shall be
18 considered reasonable documentation. An employer shall not
19 require that the documentation explain the nature of the
20 illness or the details of the violence. If an employer chooses
21 to require documentation for sick time and the employee does
22 not have health insurance, the employer shall be responsible
23 for paying all of out of pocket expenses the employee incurs
24 in obtaining the documentation. If the employee does have
25 health insurance, the employer shall be responsible for paying
26 any costs charged to the employee by the health care provider

1 for providing the specific documentation required by the
2 employer.

3 (f) An employer shall not require, as a condition of
4 providing paid sick and safe time under this act, that the
5 employee search for or find a replacement worker to cover the
6 hours during which the employee is on paid sick and safe time.

7 Section 6. (a) It shall be unlawful for an employer
8 or any other person to interfere with, restrain, or deny the
9 exercise of, or the attempt to exercise, any right protected
10 under this act.

11 (b) An employer shall not take retaliatory personnel
12 action or discriminate against an employee because the
13 employee has exercised rights protected under this act. Such
14 rights include, but are not limited to, the right to use paid
15 sick and safe time pursuant to this act; the right to file a
16 complaint or inform any person about any employer's alleged
17 violation of this act; the right to cooperate with the
18 department in its investigations of alleged violations of this
19 act; and the right to inform any person of his or her
20 potential rights under this section.

21 (c) It shall be unlawful for an employer's absence
22 control policy to count paid sick and safe time taken under
23 this act as an absence that may lead to or result in
24 discipline, discharge, demotion, suspension, or any other
25 adverse action.

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

4 (e) An employee or other person may report to the
5 department any suspected violation of this act. The department
6 shall encourage reporting pursuant to this subsection by
7 keeping confidential, to the maximum extent permitted by
8 applicable laws, the name and other identifying information of
9 the employee or person reporting the violation. With the
10 authorization of such person, the department may disclose his
11 or her name and identifying information as necessary to
12 enforce this section or for other appropriate purposes and
13 take appropriate steps to enforce this section.

14 (f) (1) The department, the Attorney General, any
15 person aggrieved by a violation of this act, or any entity a
16 member of which is aggrieved by a violation of this act may
17 bring a civil action in a court of competent jurisdiction
18 against an employer violating this act. The action may be
19 brought by a person aggrieved by a violation of this section
20 without first filing a complaint pursuant to subsection (e).

21 (2) Upon prevailing in an action brought pursuant to
22 this section, any aggrieved person shall recover the full
23 amount of any unpaid sick and safe time plus any actual
24 damages suffered as the result of the employer's violation of
25 this act plus an equal amount of liquidated damages. An
26 aggrieved person shall also be entitled to reasonable
27 attorney's fees.

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

6 (g) There shall be a rebuttable presumption of
7 unlawful retaliation under this section whenever an employer
8 takes adverse action against a person within 90 days of when
9 that person shall have done any of the following:

10 (1) Files a complaint with the department or a court
11 alleging a violation of any provision of this section.

12 (2) Informs any person about an employer's alleged
13 violation of this section.

14 (3) Cooperates with the department or other persons
15 in the investigation or prosecution of any alleged violation
16 of this section.

17 (4) Opposes any policy, practice, or act that is
18 unlawful under this section.

19 (5) Informs any person of his or her rights under
20 this section.

21 Section 7. (a) An employer shall give notice that
22 employees shall be entitled to paid sick and safe time, the
23 amount of paid sick and safe time, and the terms of its use
24 guaranteed pursuant to this act, that retaliation against
25 employees who request or use paid sick and safe time is
26 prohibited and that each employee has the right to file a
27 complaint or bring a civil action if sick and safe time as

1 required by this section is denied by the employer or the
2 employee is retaliated against for requesting or taking paid
3 sick and safe time.

4 (b) An employer may comply with this section by
5 supplying each employee with a notice in English and in any
6 language that is the first language spoken by at least five
7 percent of the employer's workforce that contains the
8 information required in subsection (a).

9 (c) An employer may comply with this section by
10 displaying a poster in a conspicuous and accessible place in
11 each establishment where employees are employed which contains
12 in English and in any language that is the first language
13 spoken by at least five percent of the employer's workforce
14 all information required under subsection (a).

15 (d) The department shall create and make available
16 to employers posters that contain the information required
17 under subsection (a) for their use in complying with this
18 section.

19 (e) An employer who willfully violates the notice
20 and posting requirements of this section shall be subject to a
21 civil fine in an amount not to exceed one hundred dollars
22 (\$100) for each separate offense.

23 Section 8. An employer shall retain records
24 documenting hours worked by employees and paid sick and safe
25 time taken by employees for a period of five years and shall
26 allow the department access to the records, with appropriate
27 notice and at a mutually agreeable time, to monitor compliance

1 with the requirements of this act. When an issue arises as to
2 the entitlement of an employee to paid sick and safe time
3 under this section, if the employer does not maintain or
4 retain adequate records documenting hours worked by the
5 employee and paid sick and safe time taken by the employee, or
6 does not allow the department reasonable access to such
7 records, it shall be presumed that the employer has violated
8 the act, absent clear and convincing evidence otherwise.

9 Section 9. The department shall coordinate
10 implementation and enforcement of this act and shall
11 promulgate rules pursuant to the Administrative Procedure Act.

12 Section 10. (a) (1) An employee or other person may
13 report to the department any suspected violation of this act.
14 The department shall encourage reporting pursuant to this
15 subsection by maintaining confidentiality, to the maximum
16 extent permitted by applicable laws, of the name and other
17 identifying information of the employee or person reporting
18 the violation. Upon the authorization of such person, the
19 department may disclose his or her name and identifying
20 information as necessary to enforce this act or for other
21 appropriate purposes.

22 (2) The department shall take appropriate steps to
23 enforce this section.

24 (b) (1) The department, the Attorney General, any
25 person aggrieved by a violation of this act, or any entity a
26 member of which is aggrieved by a violation of this act may
27 bring a civil action in a court of competent jurisdiction

1 against an employer violating this act. The action may be
2 brought by a person aggrieved by a violation of this section
3 without first filing an administrative complaint.

4 (2) Upon prevailing in an action brought pursuant to
5 this section, an aggrieved person shall recover the full
6 amount of any unpaid sick and safe time plus any actual
7 damages suffered as the result of the employer's violation of
8 this act plus an equal amount of liquidated damages. An
9 aggrieved person shall also be entitled to reasonable
10 attorney's fees.

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

16 (4) Any person aggrieved by a violation of this act
17 may file a complaint with the Attorney General. The filing of
18 a complaint with the Attorney General shall not preclude the
19 filing of a civil action.

20 (5) The Attorney General may bring a civil action to
21 enforce this act. The Attorney General may seek injunctive
22 relief. In addition to injunctive relief, or in lieu thereof,
23 for any employer or other person found to have willfully
24 violated this act, the Attorney General may seek to impose a
25 fine of one thousand dollars (\$1,000) per violation, payable
26 to the State Treasury.

1 (6) The statute of limitations for a civil action
2 brought pursuant to this section shall be for a period of two
3 years from the date the alleged violation occurred.

4 (7) Actions brought pursuant to this section may be
5 brought as a class action pursuant to the laws of the state.

6 Section 11. An employer may not require disclosure
7 of details relating to domestic violence, sexual assault, or
8 stalking or the details of an employee's medical condition as
9 a condition of providing paid sick leave pursuant to this act.
10 If an employer possesses health information or information
11 pertaining to domestic violence, sexual assault, or stalking
12 about an employee or employee's family member, the information
13 shall be treated as confidential and shall not be disclosed
14 except to the affected employee or with the permission of the
15 affected employee.

16 Section 12. (a) Nothing in this act shall be
17 construed to discourage or prohibit an employer from the
18 adoption or retention of a paid sick and safe time policy more
19 generous than the one required herein.

20 (b) Nothing in this act shall be construed as
21 diminishing the obligation of an employer to comply with any
22 contract, collective bargaining agreement, employment benefit
23 plan, or other agreement providing more generous sick and safe
24 time to an employee than required in this act.

25 (c) Nothing in this act shall be construed as
26 diminishing the rights of public employees regarding paid sick
27 and safe time or use of sick and safe time.

1 Section 13. This act provides minimum requirements
2 pertaining to paid sick and safe time and shall not be
3 construed to preempt, limit, or otherwise affect the
4 applicability of any other law, regulation, requirement,
5 policy, or standard that provides for greater accrual or use
6 by employees of sick and safe time, whether paid or unpaid, or
7 that extends other protections to employees.

8 Section 14. This act shall become effective on the
9 first day of the third month following its passage and
10 approval by the Governor, or its otherwise becoming law.