

SB 67 - AS INTRODUCED

2021 SESSION

21-1056

04/06

SENATE BILL **67**

AN ACT relative to paid sick leave.

SPONSORS: Sen. Whitley, Dist 15; Sen. Perkins Kwoka, Dist 21; Sen. Rosenwald, Dist 13; Sen. Watters, Dist 4; Sen. Prentiss, Dist 5; Sen. D'Allesandro, Dist 20; Sen. Sherman, Dist 24; Sen. Soucy, Dist 18; Rep. McWilliams, Merr. 27; Rep. Schultz, Merr. 18; Rep. Wazir, Merr. 17

COMMITTEE: Commerce

ANALYSIS

This bill establishes a paid sick leave program.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to paid sick leave.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Findings. The general court finds that ensuring working people have access to paid sick leave
2 will help to protect the public's health by minimizing the spread of contagious illnesses in the
3 workplace and ensure working people and their families can address their own health and safety
4 needs. The general court further finds that enabling workers paid sick leave to seek early and
5 routine medical care for themselves and their family members diminishes public and private health
6 care costs in New Hampshire and prevents disruptions to commerce in the event of a public health
7 emergency. The general court seeks to safeguard the public welfare, health, safety, and prosperity of
8 the people of and visitors to New Hampshire by ensuring all individuals employed in the state of
9 New Hampshire are able to earn paid sick leave.

10 2 New Chapter; Paid Sick Leave for Employees. Amend RSA by inserting after chapter 275-H
11 the following new chapter:

12 CHAPTER 275-I

13 PAID SICK LEAVE FOR EMPLOYEES

14 275-I:1 Definitions. In this chapter:

15 I. "Commissioner" means the commissioner of the department of labor.

16 II. "Department" means the department of labor.

17 III. "Domestic violence" means "domestic violence" as defined in RSA 173-B:1, I.

18 IV. "Employee" means "employee" as defined in RSA 279:1, X and includes recipients of
19 public benefits who are engaged in work activity as a condition of receiving public assistance.

20 V. "Employer" means "employer" as defined in RSA 279:1, XI.

21 VI. "Family member" means:

22 (a) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic
23 partner, or a child to whom the employee stands in loco parentis.

24 (b) A biological, foster, stepparent, or adoptive parent, or legal guardian of an employee
25 or an employee's spouse or domestic partner or a person who stood in loco parentis when the
26 employee was a minor child.

27 (c) A person to whom the employee is legally married under the laws of New Hampshire.

28 (d) A grandparent or spouse or domestic partner of a grandparent

29 (e) A grandchild.

30 (f) A biological, foster, or adopted sibling or spouse, or domestic partner of a biological,
31 foster, or adopted sibling.

1 VII. "Health care professional" means any person licensed under federal or state law to
2 provide medical or emergency services, including doctors, nurses, and emergency room personnel.

3 VIII. "Paid sick leave" means time that is compensated at the same hourly rate and with the
4 same benefits, including health care benefits, as the employee normally earns during hours worked
5 and is provided by an employer to an employee for the purposes described in RSA 275-I:3.

6 IX. "Retaliatory personnel action" means the discharge, suspension, or demotion by an
7 employer of an employee or any other adverse action taken by an employer against an employee and
8 also includes any sanctions against a recipient of public benefits.

9 X. "Sexual assault" means "sexual assault" as defined in RSA 632-A.

10 XI. "Stalking" means "stalking" as defined as in RSA 633:3-a.

11 XII. "Public health emergency" means a declaration or proclamation related to a public
12 health threat, risk, disaster or emergency that is made or issued by a federal, state or local official
13 with the authority to make or issue such a declaration.

14 275-I:2 Accrual of Paid Sick Leave.

15 I. All full or part-time employees who work in New Hampshire shall receive paid sick leave
16 as provided in this chapter. Employees shall begin to accrue sick leave upon being hired.

17 II. Employees shall accrue a minimum of one hour of paid sick leave for every 30 hours
18 worked.

19 III. Employees shall not accrue or use more than 72 hours of paid sick leave in a calendar
20 year, unless the employer selects a higher limit.

21 IV. Employees who are exempt from overtime requirements under 29 U.S.C. section
22 213(a)(1) of the Federal Fair Labor Standards Act will be assumed to work 40 hours in each work
23 week for purposes of paid sick leave accrual unless their normal work week is less than 40 hours, in
24 which case paid sick leave accrues based upon that normal work week.

25 V. Paid sick leave as provided in this section shall begin to accrue at the commencement of
26 employment or on the date this law goes into effect, whichever is later. Employees may use paid sick
27 leave as it is accrued.

28 VI. Employers shall allow employees to carry over paid sick leave to the following calendar
29 year.

30 VII. Any employer with a paid time off policy who makes available an amount of paid time
31 off sufficient to meet the requirements of this chapter and which may be used for the same purposes
32 and under the same conditions as paid sick leave under this chapter shall not be required to provide
33 additional paid sick leave.

34 VIII. Nothing in this chapter shall be construed as requiring financial or other
35 reimbursement to an employee from an employer upon the employee's termination, resignation,
36 retirement, or other separation from employment for accrued paid sick leave that has not been used.

IX. Upon separation from employment, if the employee is rehired within 12 months of separation by the same employer, previously accrued paid sick leave that had not been used shall be reinstated. If an employee is transferred to another entity, division, or location but remains employed by the same employer the employee is entitled to all paid sick leave accrued with the employer in the previous entity, division, or location.

X. Employers may advance sick leave to an employee ahead of accrual by such employee.
275-I:3 Use of Paid Sick Leave.

I. Paid sick leave shall be provided to an employee by an employer for:

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

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

(c) Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease; or

(d) Absence necessary due to domestic violence, sexual assault, or stalking, provided the leave is to:

(1) Seek medical attention for the employee or employee's family member to recover from physical or psychological injury or disability caused by domestic or sexual violence.

(2) Obtain services from a victim services organization.

(3) Obtain psychological or other counseling.

(4) Seek relocation due to the domestic or sexual violence or stalking.

(5) Take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic or sexual violence.

II. Paid sick leave shall be provided upon the oral request of an employee. When possible, the request shall include the expected duration of the absence.

III. When the use of paid sick leave is foreseeable, the employee shall make a good faith effort to provide notice of the need for such leave to the employer in advance of the use of the leave

1 and shall make a reasonable effort to schedule the use of paid sick leave in a manner that does not
2 unduly disrupt the operations of the employer.

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

5 275-I:4 Exercise of Rights Protected.

6 I. No employer or any other person shall interfere with, restrain, deny the exercise of, or
7 deny the attempt to exercise, any right protected under this chapter.

8 II. No employer shall take retaliatory personnel action or discriminate against an employee
9 because the employee has exercised rights protected under this chapter.

10 III. No employer shall count paid sick leave taken under this chapter as an absence that
11 may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

12 IV. This chapter shall apply to any person who mistakenly, but in good faith, alleges
13 violations of this section.

14 V. There shall be a rebuttable presumption of unlawful retaliation under this chapter
15 whenever an employer takes adverse action against an employee or former employee within 90 days
16 of when that employee or former employee:

17 (a) Files a complaint with the department or a court alleging a violation of any provision
18 of this section.

19 (b) Informs any person about an employer's alleged violation of this section.

20 (c) Cooperates with the department or other persons in the investigation or prosecution
21 of any alleged violation of this section.

22 (d) Opposes any policy, practice, or act that is unlawful under this section.

23 (e) Informs any person of his or her rights under this section.

24 275-I:5 Notice and Posting.

25 I. Employers shall give notice that employees are entitled to paid sick leave, the amount of
26 paid sick leave, and the terms of its use guaranteed under this chapter, that retaliation against
27 employees who request or use paid sick leave is prohibited, and that each employee has the right to
28 file a complaint or bring a civil action if sick leave as required by this section is denied by the
29 employer or the employee is retaliated against for requesting or taking paid sick leave.

30 II. Employers shall provide each of their employees with a notice in English and in any
31 language that is the first language spoken by at least 5 percent of the employer's workforce that
32 contains the information required in paragraph I.

33 III. Employers shall display a poster in a conspicuous and accessible place in each
34 establishment where such employees are employed which contains in English and in any language
35 that is the first language spoken by at least 5 percent of the employer's workforce, all information
36 required under paragraph I.

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1 IV. The department shall create and make available to employers posters that contain the
2 information required under paragraph I.

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

5 275-I:6 Employer Records. Employers shall retain records that document the hours worked by
6 employees and paid sick leave taken by employees, for a period of 5 years, and shall allow the
7 department access to such records, with appropriate notice and at a mutually agreeable time, to
8 monitor compliance with the requirements of this chapter. If the employer does not maintain or
9 retain adequate records documenting hours worked by the employee and paid sick leave taken by the
10 employee, or does not allow the department reasonable access to such records, it shall be presumed
11 that the employer has violated the chapter, absent clear and convincing evidence otherwise.

12 275-I:7 Regulations.

13 I. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the forms,
14 procedures, implementation, and enforcement of this chapter.

15 II. The commissioner shall coordinate implementation and enforcement of this chapter.

16 275-I:8 Enforcement.

17 I. The department shall enforce the provisions of this chapter. In effectuating such
18 enforcement, the department shall establish a system utilizing multiple means of communication to
19 receive complaints regarding non-compliance with this chapter and investigate complaints received
20 by the department in a timely manner. The department shall encourage reporting pursuant to this
21 section by protecting the confidentiality of, to the maximum extent permitted by applicable laws, the
22 name and other identifying information of the employee or person reporting the violation. However,
23 with the authorization of such person, the department may disclose his or her name and identifying
24 information as necessary to enforce this section or for other appropriate purposes.

25 II. Upon receiving a complaint alleging a violation of this chapter, the department shall
26 investigate such complaint and attempt to resolve it through mediation between the complainant
27 and the subject of the complaint, or other means. The department shall keep complainants notified
28 regarding the status of their complaint and any resultant investigation. If the department believes
29 that a violation has occurred, it shall issue to the offending person or entity a notice of violation and
30 the relief required of the offending person or entity. The department shall prescribe the form and
31 wording of such notices of violation including any method of appealing the decision of the
32 department.

33 III. The department shall have the power to impose penalties provided for in this chapter
34 and to grant an employee or former employee all appropriate relief. Any entity or person found to be
35 in violation of the provisions of this chapter shall be liable for a civil penalty payable to the state.

36 IV. The department, the attorney general, any person aggrieved by a violation of this
37 chapter, or any entity a member of which is aggrieved by a violation of this chapter may bring a civil

1 action in a court of competent jurisdiction against an employer violating this chapter. Such action
2 may be brought by a person aggrieved by a violation of this section without first filing an
3 administrative complaint.

4 V. Upon prevailing in an action brought pursuant to this section, aggrieved persons shall
5 recover the full amount of any unpaid earned sick time plus any actual damages suffered as the
6 result of the employer's violation of this chapter plus an equal amount of liquidated damages and
7 shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation,
8 including, without limitation, reinstatement to employment, back pay, and injunctive relief.
9 Aggrieved persons shall also be entitled to reasonable attorney's fees.

10 VI. The statute of limitations for a civil action brought pursuant to this section shall be for a
11 period of 3 years from the date the alleged violation occurred or the date the employee knew or
12 should have known of the violation.

13 VII. Actions brought pursuant to this section may be brought as a class action pursuant to
14 the laws of New Hampshire.

15 275-I:9 Confidentiality and Nondisclosure. An employer shall not require disclosure of details
16 relating to domestic violence, sexual assault, or stalking or the details of an employee's medical
17 condition as a condition of providing paid sick leave under this chapter. If an employer possesses
18 health information or information pertaining to domestic violence, sexual assault, or stalking about
19 an employee or employee's family member, such information shall be treated as confidential and not
20 disclosed except to the affected employee or with the permission of the affected employee.

21 275-I:10 Statutory Minimum for Sick Leave Policies.

22 I. Nothing in this chapter shall be construed to discourage or prohibit an employer from the
23 adoption or retention of a paid sick leave policy which exceeds the requirements of this chapter.

24 II. Nothing in this chapter shall be construed as altering or diminishing the obligation of an
25 employer to comply, with any contract, collective bargaining agreement, employment benefit plan, or
26 other agreement providing more generous paid sick leave to an employee than required in this
27 chapter.

28 III. Nothing in this chapter shall be construed as diminishing the rights of public employees
29 regarding paid sick leave or use of sick leave as provided in any laws of the state of New Hampshire.

30 275-I:11 Other Legal Requirements. This chapter provides minimum requirements pertaining
31 to paid sick leave and shall not be construed to preempt, limit, or otherwise affect the applicability of
32 any other law, regulation, requirement, policy, standard, or collective bargaining agreement that
33 provides for greater accrual or use by employees of sick leave, whether paid or unpaid, or that
34 extends other protections to employees.

35 275-I:12 Severability. If any provision of this chapter or application thereof to any person or
36 circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the

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- 1 chapter which can be given effect without the invalid provision or application, and to this end the
- 2 provisions of this chapter are declared severable.
- 3 3 Effective Date. This act shall take effect 60 days after its passage.