

HB 590-FN - AS INTRODUCED

2021 SESSION

21-0766

06/04

HOUSE BILL ***590-FN***

AN ACT relative to paid sick time.

SPONSORS: Rep. Wallner, Merr. 10; Rep. Altschiller, Rock. 19; Rep. Wazir, Merr. 17; Rep. K. Murray, Rock. 24; Rep. Schultz, Merr. 18; Sen. Rosenwald, Dist 13; Sen. Whitley, Dist 15

COMMITTEE: Labor, Industrial and Rehabilitative Services

ANALYSIS

This bill requires employers to provide paid sick time for employees.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 time.

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

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

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

12 CHAPTER 275-I

13 PAID SICK TIME 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.

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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 time" means time that is compensated at the same hourly rate for hourly
4 employees and at the prorated salaried basis for salaried employees performing no work during a
5 given period and with the same benefits, including health care benefits, as the employee normally
6 earns during hours worked and is provided by an employer to an employee for the purposes
7 described in RSA 275-I:3.

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

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

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

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

16 275-I:2 Accrual of Paid Sick Time.

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

19 II. Employees shall accrue a minimum of one hour of paid sick time for every 30 hours
20 worked.

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

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

27 V. Paid sick time shall begin to accrue at the commencement of employment or on the
28 effective date of this chapter, whichever is later. Employees may use paid sick time as it is accrued.

29 VI. An Employee may carry over paid sick time to the following calendar 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 time under this chapter shall not be required to provide
33 additional paid sick time.

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

1 IX. If an employee is rehired within 12 months of separation by the same employer,
2 previously accrued unused paid sick time shall be reinstated. If an employee is transferred to a
3 another entity, division, or location but remains employed by the same employer, the employee is
4 entitled to all paid sick time accrued with the employer in the previous entity, division, or location.

5 X. Employers may advance sick time to an employee ahead of accrual by such employee.

6 275-I:3 Use of Paid Sick Time.

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

8 (a) The employee's:

9 (1) Mental or physical illness, injury, or health condition;

10 (2) Need for medical diagnosis, care, or treatment of a mental or physical illness,
11 injury, or health condition; or

12 (3) Need for preventive medical care.

13 (b)(1) Caring for a family member with a mental or physical illness, injury, or health
14 condition;

15 (2) A family member's medical diagnosis, care, or treatment of a mental or physical
16 illness, injury, or health condition; or

17 (3) A family member's preventive medical care.

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

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

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

29 (2) Obtain services from a victim services organization.

30 (3) Obtain psychological or other counseling.

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

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

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

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

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

3 IV. An employer shall not require, as a condition of providing paid sick time under this
4 chapter, that the employee find a replacement worker to cover the hours during which the employee
5 is on paid sick time.

6 275-I:4 Exercise of Rights Protected.

7 I. No employer shall:

8 (a) Interfere with, restrain, deny the exercise of, or deny the attempt to exercise any
9 right protected under this chapter.

10 (b) Take retaliatory personnel action or discriminate against an employee because the
11 employee has exercised rights protected under this chapter.

12 (c) Count paid sick time taken under this chapter as an absence that may lead to or
13 result in discipline, discharge, demotion, suspension, or any other adverse action.

14 II. This chapter shall apply to any person who mistakenly, but in good faith, alleges
15 violations of this section.

16 III. There shall be a rebuttable presumption of unlawful retaliation whenever an employer
17 takes adverse action against an employee or former employee within 90 days of when that employee
18 or former employee:

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

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

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

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

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

26 275-I:5 Notice and Posting.

27 I. Employers shall give notice:

28 (a) That employees are entitled to paid sick time;

29 (b) The amount of paid sick time;

30 (c) The terms of the use of sick guaranteed under this chapter;

31 (d) That retaliation against an employee who requests or uses paid sick time is
32 prohibited; and

33 (e) That each employee has the right to file a complaint or bring a civil action if sick time
34 as required by this chapter is denied by the employer or if the employee is retaliated against for
35 requesting or taking paid sick time.

1 II. An employer shall provide each employee with a notice containing the information
2 required under paragraph I in English and in any language that is the first language spoken by at
3 least 5 percent of the employer's workforce.

4 III. An employer shall display a poster in a conspicuous and accessible place in each
5 establishment where employees are employed that contains all information required under
6 paragraph I in English and in any language that is the first language spoken by at least 5 percent of
7 the employer's workforce.

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

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

17 275-I:7 Regulations.

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

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

21 275-I:8 Enforcement.

22 I. The department shall enforce the provisions of this chapter. The department shall
23 establish a system using multiple means of communication to receive complaints of non-compliance
24 with this chapter and investigate complaints received by the department in a timely manner. The
25 department shall encourage reporting violations of this chapter by keeping the name and other
26 identifying information of the employee or person reporting the violation confidential to the extent
27 permitted by law. However, the department may disclose a person's name and identifying
28 information as necessary to enforce this section or for other appropriate purposes with the consent of
29 such person.

30 II. The department shall impose penalties and to grant an employee or former employee all
31 appropriate relief.

32 III. The department shall set fines for violations of this chapter.

33 IV. The department, the attorney general, or any person aggrieved by a violation of this
34 chapter, may bring a civil action in a court of competent jurisdiction against an employer. Such
35 action may be brought without first filing an administrative complaint.

36 V. A prevailing plaintiff shall recover the full amount of any unpaid earned sick time plus
37 any actual damages suffered as a result of the employer's violation of this Chapter plus an equal

1 amount of liquidated damages and shall be entitled to such legal or equitable relief as may be
2 appropriate, including, without limitation, reinstatement to employment, back pay, and injunctive
3 relief. Prevailing plaintiffs shall also be entitled to reasonable attorney's fees.

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

7 VII. Actions brought pursuant to this section may be brought as a class action under the
8 laws of New Hampshire.

9 275-I:9 Confidentiality and Nondisclosure. No employer shall require disclosure of details
10 relating to domestic violence, sexual assault, or stalking, or the details of an employee's medical
11 condition as a condition of providing paid sick time under this chapter. If an employer possesses
12 health information or information pertaining to domestic violence, sexual assault, or stalking about
13 an employee or employee's family member, such information shall be treated as confidential and not
14 disclosed except to the affected employee or with the permission of the affected employee.

15 275-I:10 Statutory Minimum for Sick Time Policies.

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

18 II. Nothing in this chapter shall be construed as altering or diminishing the obligation of an
19 employer to comply with any contract, collective bargaining agreement, employment benefit plan, or
20 other agreement providing more generous paid sick time to an employee than required in this
21 chapter.

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

24 275-I:11 Other Legal Requirements. This chapter provides minimum requirements pertaining
25 to paid sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of
26 any other law, regulation, requirement, policy, standard, or collective bargaining agreement that
27 provides for greater accrual or use by employees of sick time, whether paid or unpaid, or that
28 extends other protections to employees.

29 275-I:12 Severability. If any provision of this chapter or application thereof to any person or
30 circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the
31 chapter which can be given effect without the invalid provision or application, and to this end the
32 provisions of this chapter are declared severable.

33 3 Effective Date. This act shall take effect 60 days after its passage.

HB 590-FN- FISCAL NOTE
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AN ACT relative to paid sick time.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input checked="" type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Various Government Funds			

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill requires employers to provide paid sick time for employees. The Department of Administrative Services states this bill would have no impact on full-time State employees since these employees already earn generous sick time which allows them to care for themselves and family members. The bill would have an impact for part-time workers because part-time workers do not currently accrue sick time. Under proposed RSA 275-I:2, employees would accrue a minimum of one hour for every 30 hours worked and are eligible for no more than 72 hours of paid leave. While the actual impact on State expenditures is indeterminable, the Department produced a report on total hours worked by part-time employee by agency and then calculated one hour of paid family leave for every 30 hours worked per part-time worker. The report yielded an estimated annual cost of \$1.8 million. The Department examined the funding source for those hours and estimated the following impact on the various State government funds:

Estimated Annual Impact	
General Fund	\$264,266

Liquor Fund	\$193,126
Lottery Fund	\$2,051
Highway Fund	\$45,016
Turnpike Fund	\$45,880
Fish & Game Funds	\$2,483
Federal Funds	\$135,588
Interagency transfers & Other Funds	\$391,217
Total	\$1,079,627

The Department of Labor indicates there would likely be an indeterminable increase in expenditures at the state, county and local levels incurred to address increased staffing needs. It is possible that some government employers have existing benefits in excess of what is being proposed. It is also possible that government entities could see higher costs in contracts they have with entities affected by the requirement to provide paid sick time. The Department indicates any increase in expenditures is difficult to credibly quantify. The Department does not anticipate it would require additional staff to administer this chapter. The Department does not expect the bill would impact county or local revenues. It is possible that there would be an indeterminable increase in state revenue as a result of fines resulting from the proposed legislation.

The Department of Justice indicates the bill creates an enforcement mechanism through which the Department of Labor or the Department of Justice may bring a lawsuit against businesses that either department believes have violated the law. It provides that the prevailing party in such a lawsuit may recover reasonable costs and attorney's fees. Because this bill creates a new set of laws and regulations that would require enforcement, the Department of Justice cannot anticipate the increase in workload that may arise as a result of the bill. The Department anticipates that it would lead to an increase in complaints for the Department to review and may lead to an increase in affirmative litigation brought by the Department. Some costs may be offset by the Department's ability to recover costs and fees. The bill also may create an increase in workload as the Department, as the legal representation for all State agencies, would likely need to work with the Department of Labor to review claims and determine whether the Department of Justice would assist the Department of Labor in bringing litigation to enforce the statute on the Department of Labor's behalf. These costs may also be offset by the ability to recover costs and fees. The Department concludes the fiscal impact is indeterminable because the potential for increased costs is unknown as is the potential for recovery through successful litigation.

The New Hampshire Association of Counties indicates this bill would require the counties to provide part-time/per diem employees with paid sick leave for every 30 hours of work. The

Association states the bill would extend benefits to domestic partners, currently not all of the counties cover domestic partnerships, only marriages. In addition to the extension of benefits it would also require additional hires at the county offices to administer tracking hours of part time/per diem employees. Based on current part time and per diem employees at county offices, the Association estimates the bill would increase county expenditures by \$750,000.

The New Hampshire Municipal Association indicates under this bill an employee would accrue a minimum of one hour of paid sick leave for every 30 hours worked, to a maximum of 72 hours of sick leave in a calendar year, unless the employer chooses a higher limit. The employee would be compensated at the same hourly rate for sick leave that he or she is normally paid for hours worked. The Association assumes most municipal employers already provide paid sick leave, but cannot confirm total numbers or the terms of their sick leave policies. For any municipal employer that currently has a less generous policy than what is provided in the bill, there may be an increase in municipal expenditures. Because the Association does not have detailed information, it is unable to estimate the amount of the increase. There should be no effect on municipal revenues.

The Judicial Branch assumes that the paid sick time benefit described in the bill is consistent with the paid sick time benefit that is currently offered by the Judicial Branch. The Judicial Branch also assumes that per-diem employees would not be covered under the bill as “part-time employees.” Based on these assumptions, the Branch does not believe this bill would have a significant fiscal impact. If the intent is for per-diem employees to be covered by the use of “part-time employees” however, the fiscal impact would be significant.

It is assumed that any fiscal impact would occur after July 1, 2021.

AGENCIES CONTACTED:

Departments of Labor, Justice and Administrative Services, the Judicial Branch and New Hampshire Municipal Association