

By Senator Thompson

12-00215-16

2016294__

1 A bill to be entitled
2 An act relating to labor regulations; creating s.
3 448.111, F.S.; providing powers and duties of the
4 executive director of the Department of Economic
5 Opportunity; defining terms; providing applicability;
6 requiring certain employers to provide employees with
7 paid or unpaid earned sick and safe leave under
8 certain conditions; providing employer and employee
9 requirements; authorizing an employee to file a civil
10 action under certain conditions; providing penalties;
11 providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 448.111, Florida Statutes, is created to
16 read:

17 448.111 Healthy Working Families Act.-

18 (1) (a) Upon the receipt of a written complaint by an
19 employee, the executive director may conduct an investigation to
20 determine whether a violation of this section has occurred.

21 (b) To the extent practicable, the executive director shall
22 keep confidential the identity of an employee who has filed a
23 written complaint alleging a violation of this section unless
24 the employee waives confidentiality.

25 (2) As used in this section, the term:

26 (a) "Abuse" means:

27 1. An act that causes serious bodily harm.

28 2. An act that places a person in fear of imminent serious
29 bodily harm.

12-00215-16

2016294__

30 3. Assault.

31 4. Domestic violence.

32 5. False imprisonment.

33 6. Stalking.

34 (b) "Department" means the Department of Economic
35 Opportunity.

36 (c) "Domestic violence" has the same meaning as described
37 in s. 741.28.

38 (d) "Earned sick and safe leave" means paid or unpaid leave
39 away from work which is provided by an employer under this
40 section.

41 (e) "Employee" does not include a person who meets all of
42 the following criteria:

43 1. Has an irregular work schedule with the employer.

44 2. Contacts the employer for work assignments and is
45 scheduled to work the assignments within 4 hours after
46 contacting the employer.

47 3. Has no obligation to work for the employer if the
48 individual does not contact the employer for work assignments.

49 4. Is not employed by a temporary placement agency.

50 (f) "Employer" means a state or local government agency and
51 a person who acts directly or indirectly in the interest of
52 another employer with an employee.

53 (g) "Executive director" means the executive director of
54 the Department of Economic Opportunity.

55 (h) "Family member" means:

56 1. A biological child, an adopted child, a foster child, or
57 a stepchild of the employee.

58 2. A minor for whom the employee has legal or physical

12-00215-16

2016294__

59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87

custody or guardianship.

3. A minor for whom the employee is the primary caregiver.

4. A biological parent, an adoptive parent, a foster parent, or a stepparent of the employee or of the employee's spouse.

5. The legal guardian of the employee.

6. A person who served as the primary caregiver of the employee when the employee was a minor.

7. The spouse of the employee.

8. A grandparent of the employee.

9. The spouse of a grandparent of the employee.

10. A grandchild of the employee.

11. A biological sibling, an adopted sibling, or a foster sibling of the employee.

12. The spouse of a biological sibling, a foster sibling, or an adopted sibling of the employee.

(i) "Health care provider" means a physician licensed under chapter 458 or chapter 459.

(j) "Sexual assault" means:

1. Rape or a sexual offense.

2. Sexual abuse of a minor.

3. Sexual abuse of a vulnerable adult.

(k) "Stalking" has the same meaning as described in s. 784.048.

(l) "Year," unless the context requires otherwise, means:

1. If the employer uses a calendar year for his or her regular business, a calendar year.

2. If the employer uses a fiscal year for his or her regular business, a fiscal year.

12-00215-16

2016294__

88 (3) This section does not:

89 (a) Require an employer to compensate an employee for
90 unused earned sick and safe leave when the employee leaves the
91 employer's employment.

92 (b) Prohibit an employer from establishing a policy under
93 which employees may voluntarily exchange assigned work hours.

94 (c) Prohibit an employer from adopting or retaining a
95 general paid leave policy that meets the minimum requirements of
96 this section.

97 (d) Affect a provision of a contract, a collective
98 bargaining agreement, an employee benefit plan, or any other
99 agreement that requires the employer to provide general paid
100 leave benefits that meet the minimum requirements of this
101 section.

102 (e) Preempt, limit, or otherwise affect any other law that
103 provides for earned sick and safe leave benefits that exceed
104 those required under this section.

105 (f) Preempt, limit, or otherwise affect any workers'
106 compensation benefits.

107 (4) This section does not apply to an employee who
108 regularly works less than 8 hours a week for an employer.

109 (5) (a) The executive director shall develop and implement a
110 multilingual outreach program to inform employees and other
111 affected persons about the availability of earned sick and safe
112 leave under this section.

113 (b) The program established under paragraph (a) must
114 include the distribution of notices and other written material
115 in at least English and Spanish to child care and elder care
116 providers, community health centers, domestic violence shelters,

12-00215-16

2016294__

117 health care providers, hospitals, and schools.

118 (6) (a) Effective October 1, 2016, an employer who employs
119 more than 9 employees shall provide each employee with paid
120 earned sick and safe leave, and an employer who employs fewer
121 than 10 employees shall provide each employee with unpaid earned
122 sick and safe leave, accrued at a rate of at least 1 hour for
123 every 30 hours that the employee works on or after that date.

124 (b) For the purpose of determining whether an employer is
125 required to provide paid or unpaid earned sick and safe leave
126 under this subsection, the number of employees is determined by
127 calculating the average number of all employees employed by the
128 employer each month during the preceding year.

129 (c) An employer is not required to allow an employee to use
130 earned sick and safe leave during the first 3 months of
131 employment; to earn in a year, or to carry forward from one year
132 to the next, more than 56 hours of earned sick and safe leave;
133 or to use more than 80 hours of earned sick and safe leave in
134 the course of a year.

135 (d) An employer may award to an employee at the beginning
136 of a year the full amount of earned sick and safe leave that an
137 employee would earn over the course of the year rather than
138 awarding the leave as it accrues.

139 (e) 1. Except as provided in subparagraph 2., for the
140 purpose of calculating the accrual of earned sick and safe
141 leave, an employee who is exempt from overtime wage requirements
142 under the federal Fair Labor Standards Act is assumed to work 40
143 hours each workweek.

144 2. If the employee's normal workweek is less than 40 hours,
145 the actual number of hours worked is used.

12-00215-16

2016294__

146 (f) An employee may carry forward the unused balance of
147 earned sick and safe leave at the end of a year up to the limit
148 specified in paragraph (c).

149 (g) If an employee begins working in a separate division or
150 location but remains employed by the employer, the employee is
151 entitled to the earned sick and safe leave that accrued before
152 the employee moved to the separate division or location up to
153 the maximum allowed under this subsection.

154 (h) If an employee is rehired by an employer within 12
155 months after leaving the employment of the employer, the
156 employer shall reinstate any unused earned sick and safe leave
157 that the employee had when the employee left the employment of
158 the employer. This requirement does not apply when an employee
159 is rehired by an employer more than 12 months after leaving the
160 employment of the employer.

161 (i)1. An employer may allow an employee to use earned sick
162 and safe leave before the employee accrues the amount he or she
163 wishes to use. Any such use shall be documented by the employer
164 and signed by the employee.

165 2. If an employee is allowed to use earned sick and safe
166 leave before it has accrued and subsequently leaves employment
167 before accruing the number of hours used, the employer may
168 deduct the amount he or she paid to the employee for any
169 unaccrued hours from the wages it pays to the employee at the
170 time of his or her termination of employment. This subparagraph
171 does not apply if the employer does not obtain the signed
172 documentation required under subparagraph 1.

173 (7) (a) An employer shall allow an employee to use earned
174 sick and safe leave:

12-00215-16

2016294__

175 1. To obtain care or treatment for the employee or a family
176 member of the employee for any mental or physical illness,
177 condition, or injury.

178 2. To obtain preventive medical care for the employee or a
179 family member of the employee.

180 3. If the employer's place of business has closed by order
181 of a public official due to a public health emergency.

182 4. If the school of, or child care provider for, the
183 employee's family member has closed by order of a public
184 official due to a public health emergency.

185 5. To care for a family member if a public official or
186 health care provider has determined that the family member's
187 presence in the community would jeopardize the health of others
188 because of the family member's exposure to a communicable
189 disease.

190 6. If an absence from work is necessary due to domestic
191 violence, sexual assault, or stalking committed against the
192 employee or a family member of the employee and the leave is
193 being used:

194 a. By the employee, on behalf of the employee or the
195 employee's family member, to obtain:

196 (I) Medical attention that is needed to recover from a
197 related physical or psychological injury or disability;

198 (II) Related services from a victim services organization;

199 (III) Related psychological or other counseling; or

200 (IV) Legal services, including preparing for or
201 participating in a civil or criminal proceeding related to or
202 resulting from the domestic violence, sexual assault, or
203 stalking; or

12-00215-16

2016294__

204 b. While the employee has temporarily relocated due to the
205 domestic violence, sexual assault, or stalking.

206 (b) In order to use earned sick and safe leave, an employee
207 must:

208 1. Request the leave from the employer as soon as
209 practicable after the employee determines that he or she needs
210 to use the leave;

211 2. Notify the employer of the anticipated duration of the
212 leave; and

213 3. Comply with any reasonable procedures established by the
214 employer under paragraph (c).

215 (c) An employer may establish reasonable procedures to be
216 used by an employee in requesting and using earned sick and safe
217 leave. However, an employer may not:

218 1. Require an employee who is requesting earned sick and
219 safe leave to search for or find a person to work in the
220 employee's stead during the time the employee is absent.

221 2. Disclose details of:

222 a. Any domestic violence, sexual assault, or stalking
223 committed against the employee or a family member of the
224 employee.

225 b. Any mental or physical illness, condition, or injury of
226 the employee or a family member of the employee.

227 3. Provide as certification any information that would
228 violate the federal Social Security Act or the federal Health
229 Insurance Portability and Accountability Act.

230 (d) Upon the mutual consent of the employer and employee,
231 an employee may work additional hours or trade shifts with
232 another employee to make up work hours that the employee took

12-00215-16

2016294__

233 off which otherwise would have required the employee to use
234 earned sick and safe leave. However, an employee may not be
235 required to offer or to accept an offer of additional work hours
236 or a trade in shifts.

237 (e) An employee may use earned sick and safe leave in the
238 smallest increment that the employer's payroll system uses to
239 account for absences or use of the employee's work time. An
240 employer may not require an employee to use earned sick and safe
241 leave in increments of more than 1 hour.

242 (f) When wages are paid to an employee, the employer shall
243 provide a written statement regarding the amount of earned sick
244 and safe leave that is available for use by the employee.

245 (g)1. An employer may require an employee who uses earned
246 sick and safe leave for more than two consecutive scheduled
247 shifts to provide reasonable documentation to verify that the
248 leave was used as provided under paragraph (a).

249 2. For purposes of this paragraph, reasonable documentation
250 includes:

251 a. For leave used under subparagraph (a)1. or subparagraph
252 (a)5., documentation from a health care provider or public
253 health official that the use of earned sick and safe leave is
254 necessary.

255 b. For leave used under subparagraph (a)3., a copy of the
256 notice received by the employee of the closure order.

257 c. For leave used under subparagraph (a)6.:

258 (I) A report by a law enforcement officer indicating that
259 the employee or a family member of the employee was the victim
260 of domestic violence, sexual assault, or stalking;

261 (II) Documentation of an indictment for domestic violence,

12-00215-16

2016294__

262 sexual assault, or stalking committed against the employee or a
263 family member of the employee;

264 (III) Certification by a state attorney's office, child
265 protective services, a law enforcement agency, the victim's
266 attorney, or the victim's advocate that the employee or a family
267 member of the employee is a party to or witness in a legal
268 action related to the domestic violence, sexual assault, or
269 stalking committed against the employee or a family member of
270 the employee;

271 (IV) A court order protecting the employee or a family
272 member of the employee from the perpetrator of the domestic
273 violence, sexual assault, or stalking committed against the
274 employee or a family member of the employee; or

275 (V) A notice from a court, the victim's attorney, or the
276 state attorney's office that the employee or a family member of
277 the employee appeared or is scheduled to appear in court in
278 connection with the domestic violence, sexual assault, or
279 stalking committed against the employee or a family member of
280 the employee.

281 3. An employer may not require that documentation verifying
282 the use of the earned sick and safe leave under subparagraph
283 (a)1. or subparagraph (a)5. explain the nature of the mental or
284 physical illness, injury, or condition or that documentation
285 verifying the use of the earned sick and safe leave under
286 subparagraph (a)6. include details regarding the domestic
287 violence, sexual assault, or stalking.

288 4. Any documentation required under subparagraph 1. which
289 relates to the mental or physical health of, or to domestic
290 violence, sexual assault, or stalking committed against an

12-00215-16

2016294__

291 employee or a family member must be maintained by the employer
292 in a confidential file that is separate from the employee's
293 personnel file. An employer may not disclose such documentation
294 without first receiving permission from the employee to do so.

295 (8) (a) An employer shall notify his or her employees that
296 they are entitled to earned sick and safe leave under this
297 section. Such notice shall include:

298 1. A statement of how earned sick and safe leave is accrued
299 under subsection (6);

300 2. The purposes for which the employer is required to allow
301 an employee to use earned sick and safe leave under subsection
302 (7);

303 3. A statement regarding the prohibition in subsection (11)
304 of the employer's taking adverse action against an employee who
305 exercises a right under this section; and

306 4. Information regarding the right of an employee to report
307 an alleged violation of this section by the employer to the
308 executive director or to bring a civil action under paragraph
309 (10) (b).

310 (b) The department shall create and make available a poster
311 and a model notice that may be used by an employer in complying
312 with paragraph (a). The model notice must be printed in at least
313 English and Spanish, and in any other language that the
314 executive director determines is necessary to notify employees
315 of their rights under this section.

316 (c) An employer may comply with paragraph (a) by:

317 1. Displaying the poster in a conspicuous and accessible
318 area at the location at which the employees work; or

319 2. Including the model notice, or a notice that contains

12-00215-16

2016294__

320 the same information that is included in the model notice, in an
321 employee handbook or other electronic or printed employee
322 publication relating to employee benefits or leave or providing
323 such notice to each employee upon hiring.

324 (d) An employer who violates this subsection is subject to
325 a civil penalty of not more than \$125 for the first violation
326 and not more than \$250 for each subsequent violation.

327 (9) (a) An employer shall keep for at least 3 years a record
328 of earned sick and safe leave accrued and used by each employee.
329 The employer may keep the record in the same manner that the
330 employer keeps other records required to be kept under this
331 section.

332 (b) After giving the employer notice and determining a
333 mutually agreeable time for the inspection, the executive
334 director may inspect a record kept under paragraph (a) for the
335 purpose of determining whether the employer is complying with
336 this section.

337 (c) There is a rebuttable presumption that an employer has
338 violated this section, which may be overcome only by clear and
339 convincing evidence, if it is alleged that the employer has
340 failed to provide the amount of earned sick and safe leave
341 available to an employee, and the employer fails to:

- 342 1. Keep a record as required under paragraph (a); or
343 2. Allow the executive director to inspect a record kept
344 under paragraph (a).

345 (10) (a) When the executive director determines that a
346 violation of this section has occurred, the executive director
347 may:

- 348 1. Attempt to resolve informally, by mediation, any issue

12-00215-16

2016294__

349 involved in the violation;

350 2. With the written consent of the employee, request that
351 the Attorney General bring an action in accordance with this
352 section on behalf of the employee; and

353 3. Bring an action on behalf of an employee in the county
354 in which the violation allegedly occurred.

355 (b) An employee may bring a civil action against the
356 employer for a violation of this section regardless of whether
357 the employee first filed a complaint with the executive
358 director.

359 (c) An action brought under paragraph (a) or paragraph (b)
360 must be filed within 3 years after the occurrence of the act on
361 which the action is based.

362 (d)1. In an action under paragraph (a) or paragraph (b), if
363 a court finds that an employer violated this section, the court
364 may award the employee:

365 a. The full monetary value of any unpaid earned sick and
366 safe leave;

367 b. Actual economic damages suffered by the employee as a
368 result of the employer's violation of this section;

369 c. An additional amount not exceeding three times the
370 damages awarded under sub-subparagraph b.;

371 d. Reasonable attorney fees and other costs; and

372 e. Any other relief that the court deems appropriate,
373 including reinstatement of employment, back pay, and injunctive
374 relief.

375 2. If benefits are recovered under this subsection, they
376 shall be paid to the employee without cost to the employee.

377 3. If the action was brought by the Attorney General under

12-00215-16

2016294__

378 subparagraph (a)2., the court may order the employer to pay the
379 state \$1,000 per violation.

380 (11) (a) As used in this subsection, the term "adverse
381 action" includes discharge or demotion, or a threat of such
382 action, or any other retaliatory action that results in a change
383 to the terms or conditions of employment which would dissuade a
384 reasonable employee from exercising a right under this section.

385 (b) A person may not interfere with the exercise of, or the
386 attempt to exercise, any right given under this section.

387 (c)1. An employer may not:

388 a. Take adverse action or discriminate against an employee
389 because the employee in good faith exercises the rights
390 protected under this section; or

391 b. Count earned sick and safe leave that an employee used
392 in accordance with this section as an absence that may lead to
393 or result in any adverse action being taken against the
394 employee.

395 2. There is a rebuttable presumption that an employer has
396 violated this subsection if the employer takes adverse action
397 against an employee within 90 days after the employee:

398 a. Files a complaint with the executive director alleging a
399 violation of this section or brings a civil action under
400 paragraph (10) (b);

401 b. Informs a person about an alleged violation of this
402 subsection by his or her employer;

403 c. Cooperates with the executive director or another person
404 in the investigation or prosecution of an alleged violation of
405 this subsection by his or her employer; or

406 d. Opposes a policy or practice of his or her employer or

12-00215-16

2016294__

407 an act committed by the employer which is unlawful under this
408 subsection.

409 (d) The protections afforded under this subsection apply to
410 an employee who mistakenly, but in good faith, alleges a
411 violation of this subsection.

412 (12) (a) An employee may not in bad faith:

413 1. File a complaint with the executive director alleging a
414 violation of this section;

415 2. Bring an action under paragraph (10) (b); or

416 3. Testify in an action under paragraph (10) (b).

417 (b) An employee who violates this subsection commits a
418 misdemeanor of the first degree, punishable as provided in s.
419 775.082 or s. 775.083.

420 Section 2. This act shall take effect July 1, 2016.