**South Carolina General Assembly**

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**H. 3397**

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Summary: Earned Paid Sick Leave Act

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[1/22/2015](file:///p:\pprever\2015-16\3397_20150122.docx)

**A** **BILL**

TO AMEND THE CODE OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA EARNED PAID SICK LEAVE ACT” BY ADDING CHAPTER 47 TO TITLE 41 SO AS TO PROVIDE THAT PRIVATE SECTOR EMPLOYEES SHALL ACCRUE EARNED PAID AND EARNED UNPAID SICK LEAVE, TO PROVIDE FOR THE METHOD OF AND LIMITS OF ACCRUAL, TO PROVIDE FOR THE CIRCUMSTANCES UNDER WHICH AN EMPLOYEE MAY USE EARNED PAID OR EARNED UNPAID SICK LEAVE, TO PROVIDE FOR CERTIFICATION OF THE REASONS FOR WHICH EARNED PAID OR EARNED UNPAID SICK LEAVE IS USED, TO PROVIDE THAT AN EMPLOYER MAY NOT HINDER AN EMPLOYEE’S USE OF EARNED PAID OR EARNED UNPAID SICK LEAVE, TO PROVIDE THAT EMPLOYERS MAY NOT PENALIZE A PERSON FOR PROPERLY USING EARNED PAID OR EARNED UNPAID SICK LEAVE, TO PROVIDE THAT EMPLOYERS WHO HAVE POLICIES THAT EXCEED THE PROVISIONS OF THIS CHAPTER DO NOT HAVE TO CHANGE THOSE POLICIES, TO PROVIDE THAT EMPLOYEES SHALL PROVIDE REASONABLE NOTICE TO EMPLOYERS BEFORE USING EARNED PAID OR EARNED UNPAID SICK LEAVE IF POSSIBLE, TO PROVIDE FOR NOTICE OF THE PROVISIONS OF THIS CHAPTER TO EMPLOYERS AND EMPLOYEES, AND TO DEFINE NECESSARY TERMS; AND TO AMEND SECTION 8‑11‑40, AS AMENDED, RELATING TO SICK LEAVE FOR STATE EMPLOYEES, SO AS TO PROVIDE THIRTY DAYS OF SICK LEAVE ANNUALLY, TO PROVIDE AN EMPLOYER SHALL ADVANCE UP TO TO THIRTY DAYS OF SICK LEAVE TO AN EMPLOYEE, TO PROVIDE AN EMPLOYEE SHALL SATISFY ANY LEAVE DEFICIT RESULTING FROM A LEAVE ADVANCE, AND TO PROVIDE THAT STATE EMPLOYEES ANNUALLY MAY USE THIRTY DAYS OF SICK LEAVE TO CARE FOR ILL MEMBERS OF THEIR IMMEDIATE FAMILIES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act shall be referred to and may be cited as the “South Carolina Earned Paid Sick Leave Act”.

SECTION 2. Title 41 of the 1976 Code is amended by adding:

“CHAPTER 47

Earned Paid Sick Leave

Section 41‑47‑10. For the purposes of this chapter:

(1) ‘Agricultural labor’ means as defined in Section 41‑27‑120.

(2) ‘Child’ means a person under the age of eighteen.

(3) ‘Earned paid sick time’ means the time that is provided by an employer to an employee as computed pursuant to Section 41‑47‑20 and is compensated at the same hourly rate as the employee earns from the employee’s employment at the time the employee uses the paid sick leave; provided, however, that this hourly rate may not be less than the federal minimum wage.

(4) ‘Earned paid sick leave’ means the time provided by an employer to an employee as computed in Section 41‑47‑40 to use for the purposes provided in Section 41‑47‑30.

(5) ‘Earned unpaid sick leave’ means the time provided by an employer to an employee as computed in Section 41‑47‑40 to use for the purposes provided in Section 41‑47‑40.

(6) ‘Employee’ means as defined in Section 41‑1‑65(A)(2).

(7) ‘Employer’ means as defined in Section 41‑1‑65(A)(1).

(8) ‘Federal act’ means the Family and Medical Leave Act of 1993, 29 U.S.C. Sections 2601 to 2654, inclusive, as may be amended.

(9) ‘Health care provider’ means as is provided in regulations promulgated pursuant to the Family and Medical Leave Act of 1993, 29 U.S.C. Sections 2601 to 2654, inclusive, as may be amended.

(10) ‘Parent’ means a biological, adoptive, foster parent, or step parent of an employee or an employee’s spouse; or other person who stood in loco parentis during the childhood of an employee or employee’s spouse.

(11) ‘Seasonal employer’ means an employer that, because of climatic conditions or the nature of the product or service, customarily operates all or a functionally distinct occupation within its business only during a regularly recurring period of less than sixteen weeks for all seasonal periods during a calendar year.

(12) ‘Seasonal employment’ means services performed for wages for a seasonal employer during the seasonal period in the employers’ seasonal operations.

(13) ‘Seasonal employee’ means an employee who is employed by a seasonal employer in seasonal employment.

Section 41‑47‑20. An employee who works in this State who must be absent from work for the reasons provided in Section 41‑47‑30 is entitled to not less than the hours of earned paid sick leave and earned unpaid sick leave provided in Section 41‑47‑40 during a calendar year, except for seasonal employees and individuals engaged in agricultural labor who are entitled to earned paid sick leave pursuant to this section at the discretion of the employer.

Section 41‑47‑30. An employer shall provide earned paid and unpaid sick leave to an employee for:

(1) the care for the employee’s child or spouse who is suffering from a physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care, or who is suffering from a condition covered under the federal act;

(2) the care for the employee’s own physical or mental illness, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care, or that is a condition covered under the federal act;

(3) an employee to attend the employee’s routine medical appointment or a routine medical appointment of the employee’s child or spouse;

(4) matters related to a public health emergency; and

(5) an employee to address the psychological or physical effects of criminal domestic violence arising under Chapter 25, Title 16.

Section 41‑47‑40. (A) Earned sick leave must accrue at a rate of one hour for every forty hours worked beginning with the date of hire.

(B) Employees who are exempt from overtime requirements under 29 U.S.C. 213(a)(1) of the Federal Fair Labor Standards Act are considered to work forty hours each work week for the purposes of earned paid sick leave accrual unless their normal work week is less than forty hours, in which case earned paid sick leave accrues based on that normal work week.

(C) Employees may not accrue more than fifty‑six hours of earned sick leave in a calendar year, unless the employer allows a higher limit.

(D) During a calendar year, employers with:

(1) more than ten employees are not required to provide more than fifty‑six hours of earned paid sick leave;

(2) six to ten employees are not required to provide more than forty hours of earned paid sick time to their employees; and

(3) fewer than six employees are required to provide a minimum of forty hours of earned unpaid sick leave to their employees.

(E)(1) Earned sick leave may be used as accrued, or be loaned by the employer, at its discretion, to the employee in advance of actual accrual, provided that an employer does not require an employee to reimburse the employer for any unearned sick leave loaned by the employer.

(2) Accrued earned sick leave must be used in the smaller of hourly increments of the smallest increment that the employer’s payroll system uses to account for absences or use of other time.

(3) Earned paid sick leave and earned unpaid sick leave annually must carry over to the extent not used by the employee; provided, however, an employer is not required to allow use of earned paid sick leave and earned unpaid sick leave in a single calendar year that exceeds the maximum benefit they are required to provide pursuant to this section.

(4) An employer is not required to pay‑out unused earned paid sick leave upon the separation of the employee from the employer.

Section 41‑47‑50. If an employee is absent from work for any reason listed in Section 41‑47‑30, and by mutual consent of the employer and employee, the employee works an equivalent number of additional hours or shifts during the same or the next pay period as the hours or shifts not worked due to reasons listed in Section 41‑47‑30, the employee is not required to use earned paid sick leave accrued or earned unpaid sick leave for the employee’s absence during that time period and the employer is not required to pay for sick leave taken during that time period. However, the employer may not require the employee to work additional shifts or hours, or require, as a condition of an employee’s taking earned paid sick leave or earned unpaid sick leave, that the employee find, or attempt to find, a replacement employee to cover the hours during which the employee is using earned or unearned sick leave.

Section 41‑47‑60. (A) Subject to the provisions of Section 41‑47‑40, an employer may require certification of the qualifying illness, injury, or health condition. Any reasonable documentation signed by a health care provider involved in following or treating the illness, injury, or health condition, and indicating the need for the amount of sick time taken, is considered acceptable certification.

(B) Nothing in this section requires an employee to provide as certification any information from a health care provider that is in violation of Section 1177 of the Social Security Act, 42 U.S.C. 1320d‑6, or the regulations promulgated under Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d‑2.

Section 41‑47‑70. When the use of earned sick leave is foreseeable, the employee shall make a good faith effort to provide notice of this need to the employer in advance of the use of the sick leave.

Section 41‑47‑80. It is unlawful for an employer to interfere with, restrain, or deny the exercise of, or attempt to exercise, a right provided under, or in connection with, this chapter including, but not limited to, using the taking of earned sick leave as a negative factor in an employment action such as hiring, evaluation, promotion, disciplinary action, termination, or counting earned sick leave under a no‑fault attendance policy.

Section 41‑47‑90. It is unlawful for an employer to take adverse action against an employee because the employee opposes a practice that the employee reasonably believes to be in violation of this chapter, or supports the exercise of right of another under this chapter.

Section 41‑47‑100. Nothing in this chapter may be construed to discourage employers from adopting or retaining paid sick leave policies more generous than policies that comply with the requirements of this chapter and nothing in this chapter may be construed to diminish the obligation of an employer to comply with a contract, collective bargaining agreement, or an employment benefit plan that provides greater paid sick leave rights to employees than the rights established in this chapter.

Section 41‑47‑110. An employer who provides an employee with paid time off, vacation, or other paid leave policies who makes available an amount of paid time off sufficient to meet the accrual requirements of this chapter that may be used for the same purposes and under the same conditions as paid sick leave under this chapter are not required to provide additional paid sick leave.

Section 41‑47‑120. The Department of Employment and Workforce may promulgate regulations necessary to carry out the provisions of this chapter.

Section 41‑47‑130. The Department of Employment and Workforce shall produce notice of the provisions of this chapter for each employer in the State. The notice must be posted in a conspicuous place accessible to employees in every establishment where employees with rights under this chapter work. An employer also shall provide each employee with a copy of this notice which must contain:

(1) information describing the rights to earned paid sick leave and earned unpaid sick leave in this chapter;

(2) information about the notices, documentation, and other requirements placed on employees to exercise their rights to earned paid sick leave and earned unpaid sick leave;

(3) information that describes the protections that an employee has in exercising his rights in this chapter;

(4) the name, address, and phone number of the Department of Employment and Workforce’s office where questions about the rights and responsibilities under this chapter can be answered; and

(5) information about filing a complaint with the Department of Employment and Workforce.”

SECTION 3. Section 8‑11‑40 of the 1976 Code, as last amended by Act 295 of 2004, is further amended to read:

“Section 8‑11‑40. (A) All full‑time state employees in FTE positions are entitled to ~~fifteen~~ thirty days’ sick leave a year with pay. Sick leave is earned by full‑time state employees in FTE positions at the rate of one and one‑fourth days a month and may be accumulated, but no more than one hundred eighty days may be carried over from one calendar year to another. The department or agency head is authorized to advance up to thirty days of sick leave to give an employee a total of thirty days of sick leave that he may take with pay during a year, and upon return to work all sick leave earned by the employee must be applied to the sick leave deficit until the deficit resulting from the sick leave he was advanced under this subsection is eliminated. If an employee separates from employment before satisfying the sick leave deficit, and later returns to employment with the State, the leave deficit must be satisfied upon reemployment before he may use any sick leave that he subsequently accrues. The department or agency head is authorized to grant additional sick leave in extenuating circumstances upon approval of the State Budget and Control Board. All part‑time state employees in FTE positions are entitled to sick leave prorated on the basis of ~~fifteen~~ thirty days a year subject to the same carry‑over specified in this section. If an employee transfers from one state agency to another, his sick leave balance also is transferred. The State Budget and Control Board may promulgate regulations in accordance with law as may be necessary to administer the provisions of this section, including the power to define the use of sick leave.

(B) State employees in FTE positions who are physically attacked while in the performance of official duties and suffer bodily harm as a result of the attack must be placed on administrative leave with pay by their employers rather than sick leave. The period of administrative leave for each incident may not exceed one hundred eighty calendar days.

(C) Employees earning sick leave as provided in this section may use not more than ~~ten~~ thirty days of sick leave annually to care for ill members of their immediate families. For purposes of this section, the employee’s ‘immediate family’ means the employee’s spouse and children and the following relations to the employee or the spouse of the employee: mother, father, brother, sister, grandparent, legal guardian, and grandchildren.”

SECTION 4. This act takes effect January 1, 2016.

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