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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS – SICK LEAVE

Introduced By: Representatives Messier, Carnevale, Handy, Naughton, and Ferri

Date Introduced: February 25, 2010

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 28 of the General Laws entitled "LABOR AND LABOR
2 RELATIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 54

4 HEALTHY AND SAFE FAMILIES AND WORKPLACES ACT

5 **28-54-1. Short title.** – This chapter shall be known and may be cited as the “Healthy and
6 Safe Families and Workplaces Act.”

7 **28-54-2. Legislative findings.** – The general assembly finds that:

8 (1) Most workers in the State of Rhode Island will at some time during the year need
9 temporary time off from work to take care of his or her own health needs or the health needs of
10 members of their families.

11 (2) Nationally, fifty-two percent (52%) of all private sector workers have paid sick time
12 and only thirty percent (30%) of workers may use that time to care for sick children. There are
13 many workers in Rhode Island who do not have any paid sick time, or who have inadequate time,
14 to care for their own health needs or the health needs of members of their families. In fact, one
15 hundred ninety thousand (190,000) Rhode Islanders, or forty-six percent (46%) of all workers, are
16 unable to take a sick day when they are ill.

17 (3) Low-income workers are significantly less likely to have paid sick time than other
18 members of the workforce. Only one in five (5) low-income workers (twenty percent (20%) has
19 access to paid sick time.

1 (4) Providing workers time off to attend to their own health care and the health care of
2 family members will ensure a healthier and more productive workforce in the State of Rhode
3 Island.

4 (5) Paid sick time will have a positive effect on the public health of Rhode Island by
5 allowing sick workers the occasional option of staying at home to care for themselves when ill,
6 thus lessening their recovery time and reducing the likelihood of spreading illness to other
7 members of the workforce and to the public.

8 (6) Paid sick time will allow parents to provide personal care for their sick children.
9 Parental care makes children’s recovery faster, prevents more serious illnesses, and improves
10 children’s overall mental and physical health.

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

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

16 (9) Almost sixty percent (60%) of those who provide unpaid care to an adult family
17 member or friend must combine their caregiving with employment in order to provide financially
18 for their family member and themselves.

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

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

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

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

1 (14) Nearly 1 in three (3) American women report physical or sexual abuse by a husband
2 or boyfriend at some point in their lives. Domestic abuse results in an estimated one thousand two
3 hundred (1,200) deaths and two million (2,000,000) injuries among women annually. Two
4 hundred forty-eight thousand three hundred (248,300) individuals were raped or sexually in 2007.
5 Intimate partner violence also affects men; women account for eighty-five percent (85%) of the
6 victims of intimate partner violence and men account for approximately fifteen percent (15%) of
7 the victims. Therefore, women disproportionately need time off to care for their health or to find
8 solutions, such as a restraining order or finding housing, to avoid or prevent physical or sexual
9 abuse.

10 (15) The centers for disease control has estimated that domestic abuse costs over seven
11 hundred million dollars (\$700,000,000) annually due to the victim's lost productivity in
12 employment.

13 (16) Victims of domestic abuse are forced to lose days of paid employment because of
14 the violence they face. The mean number of days of paid work lost by rape victims is eight and
15 one tenth (8.1) days, for victims of physical assault seven and two tenths (7.2) days and for
16 stalking ten and one tenth (10.1) days. Without paid sick and safe days, these victims are in grave
17 danger of losing their jobs. The loss of employment can be particularly devastating for victims of
18 domestic abuse, who often need economic security to ensure safety.

19 (17) The general accounting office found that twenty-five percent (25%) – fifty percent
20 (50%) of domestic abuse victims reported losing a job due, at least in part, to domestic abuse.

21 **28-54-3. Legislative purposes.** – (a) To ensure that all workers in Rhode Island can
22 address their own health and safety needs and the health and safety needs of their families by
23 requiring employers to provide a minimum level of paid sick and safe time including time for
24 family care.

25 (b) To diminish public and private health care costs in Rhode Island by enabling workers
26 to seek early and routine medical care for themselves and their family members;

27 (c) To protect employees in Rhode Island from losing their jobs while they use sick and
28 safe time to care for themselves or their families;

29 (d) To assist victims of domestic abuse and their family members by providing them with
30 job protected time away from work to allow them to receive treatment and to take the necessary
31 steps to ensure their protection;

32 (e) To safeguard the public welfare, health, safety and prosperity of the people of Rhode
33 Island; and

34 (f) To accomplish the purposes described above in a manner that is feasible for

1 employers.

2 **28-54-4. Definitions.** – As used in this chapter, the following words and terms have the
3 following meaning:

4 (1) “Agency” means Rhode Island department of labor and training.

5 (2) “Employee” is as defined in subdivision 28-12-2(5) and includes recipients of public
6 benefits who are engaged in work activity as a condition of receiving public assistance.

7 (3) “Employer” is as defined in subdivision 28-12-2(6).

8 (4) “Domestic abuse” is as defined in subdivision 15-15-1(2).

9 (5) “Sexual contact” is as defined in chapter 11-37.

10 (6) “Stalking” is defined as in Rhode Island general laws, subdivision 15-15-1(6).

11 (7) “Family member” is defined as:

12 (i) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic
13 partner, or a child to whom the employee stand in loco parentis;

14 (ii) A biological, foster, stepparent or adoptive parent or legal guardian of an employee or
15 an employee’s spouse or domestic partner or a person who stood in loco parentis when the
16 employee was a minor child;

17 (iii) A person to whom the employee is legally married under the laws of Rhode Island;

18 (iv) A grandparent or spouse or domestic partner of a grandparent;

19 (v) A grandchild;

20 (vi) A biological, foster, or adopted sibling or spouse or domestic partner of a biological,
21 foster or adopted sibling;

22 (vii) A domestic partner; or

23 (viii) Any other individual related by blood or affinity whose close association with the
24 employee is the equivalent of a family relationship.

25 (8) “Small business” means any private individual, firm, partnership, institution,
26 corporation, or association for which fewer than ten (10) persons work for compensation during a
27 given week. In determining the number of persons performing work for compensation during a
28 given week, all persons performing work for compensation on a full-time, part-time, or temporary
29 basis shall be counted, including persons made available to work through the services of
30 temporary services or staffing agency or similar entity. In situations in which the number of
31 persons who work for compensation per week fluctuates above and below ten (10) or more per
32 week over the course of a year, an employer is not considered a small business if it maintained
33 ten (10) or more employees on the payroll during twenty (20) or more calendar workweeks (not
34 necessarily consecutive workweeks) in either the current or the preceding calendar year.

1 (9) “Health care professional” means any person licensed under federal or Rhode Island
2 law to provide medical or emergency services, including, but not limited to, doctors, nurses and
3 emergency room personnel.

4 (10) “Paid sick time” (or “paid sick and safe time”) means time that is compensated at the
5 same hourly rate and with the same benefits, including health care benefits, as the employee
6 normally earns during hours worked and is provided by an employer to an employee for the
7 purposes described in section 28-54-6 of this chapter, but in no case shall the hourly wage be less
8 than that provided under Rhode Island general laws, section 28-12-2.

9 (11) “Retaliatory personnel action” means the discharge, suspension, or demotion by an
10 employer or an employee or any other adverse action taken by an employer against an employee
11 and also includes any sanctions against a recipient of public benefits.

12 **28-54-5. Accrual of paid sick and safe time.** – (a) All employees who work in Rhode
13 Island for more than four (4) days in a year have the right to paid sick and safe time as provided
14 in this section.

15 (b) Employees will not accrue more than seven (7) days of paid sick and safe time in a
16 calendar year or to a pro rata number of paid days or hours under the provisions of subsection (a),
17 unless the employer selects a higher limit.

18 (1) All employees shall accrue a minimum of one hour of paid sick and safe time for
19 every thirty (30) hours worked up to the maximum of seven (7) paid sick days.

20 (c) Employees of small businesses will not accrue more than four (4) days of paid sick
21 and safe time in a calendar year, unless the employer selects a higher limit.

22 (d) Employees who are exempt from overtime requirements under 29 U.S.C. §213(a)(1)
23 of the federal fair labor standards act will be assumed to work forty (40) hours in each work week
24 for purposes of paid sick and safe time accrual unless their normal work week is less than forty
25 (40) hours, in which case paid sick and safe time accrues based upon that normal work week.

26 (e) Paid sick and safe time as provided in this section shall begin to accrue at the
27 commencement of employment.

28 (f) Employees shall be entitled to use accrued paid sick and safe time beginning on the
29 ninetieth (90th) calendar day following commencement of their employment. After the ninetieth
30 (90th) calendar day of employment, employees may use paid sick and safe time as it is accrued.

31 (g) Paid sick and safe time shall be carried over to the following calendar year; however,
32 an employee’s use of paid sick and safe time provided under this act in each calendar year shall
33 not exceed four (4) days for employees of small businesses and seven (7) days for employees of
34 all other businesses.

1 (h) Any employer with a paid leave policy, such as a paid time off policy, who makes
2 available an amount of paid leave sufficient to meet the accrual requirements of this section that
3 may be used for the same purposes and under the same conditions as paid sick and safe time
4 under; this section is not required to provide additional paid sick and safe time.

5 (i) Nothing in this section shall be construed as requiring financial or other
6 reimbursement to an employee from an employer upon the employee's termination, resignation,
7 retirement, or other separation from employment for accrued paid sick and safe time that has not
8 been used.

9 (j) If an employee is transferred to a separate division, entity or location, but remains
10 employed by the same employer, the employee is entitled to all paid sick time accrued at the prior
11 division, entity or location and is entitled to use all paid sick time as provided in this section.
12 When there is a separation from employment and the employee is rehired within 1 year of
13 separation by the same employer, previously accrued paid sick and safe time that had not been
14 used shall be reinstated. Further, the employee shall be entitled to use accrued paid sick and safe
15 time and accrue additional sick and safe time at the re-commencement of employment.

16 (k) At its discretion, the employer may loan sick and safe time to the employee in
17 advance of accrual by such employee.

18 **28-54-6. Use of paid sick and safe time.** – (a) Paid sick and safe time shall be provided
19 to an employee by an employer for:

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

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

26 (3) Closure of the employee's place of business by order of a public official due to a
27 public health emergency or an employee's need to care for a child whose school or place of care
28 has been closed by order the pubic official due to a public health emergency or care for a family
29 member when it has been determined by the health authorities having jurisdiction or by a health
30 care provider that the family member's presence in the community would jeopardize the health of
31 others because of the family member's exposure to a communicable disease, whether or not the
32 family member has actually contracted the communicable disease.

33 (4) Absence necessary due to domestic abuse, sexual assault or stalking, provided the
34 leave is to:

1 (i) Seek medical attention for the employee or employee’s child, spouse, parent,
2 grandparent or extended family member to recover from physical or psychological injury or
3 disability caused by domestic or sexual violence; or

4 (ii) Obtain services from a victim services organization; or

5 (iii) Obtain psychological or other counseling; or

6 (iv) Seek relocation due to the domestic or sexual violence or stalking; or

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

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

11 (c) When the use of paid sick and safe time is foreseeable, the employee shall make good
12 faith effort to provide notice the need for such time to the employer in advance of the use of the
13 sick and safe time and shall make a reasonable effort to schedule the use of sick and safe time in a
14 manner that does not unduly disrupt the operations of the employer.

15 (d) Accrued sick and safe time may be used in the smaller of hourly increments or the
16 smallest increment that the employer’s payroll system uses to account for absences or use of other
17 time.

18 (e) For sick and safe time of more than three (3) consecutive days, an employer may
19 require reasonable documentation that the sick and safe time is covered by subsection (1).
20 Documentation signed by a health care professional indicating that sick time is necessary shall be
21 considered reasonable documentation. A police report indicating that the employee was a victim
22 of domestic abuse, stalking, or sexual assault; a court order; or a signed statement from a victim
23 and witness advocate affirming that the employee is involved in legal action related to domestic
24 abuse, stalking or sexual assault shall be considered reasonable documentation. An employer may
25 not require that the documentation explain the nature of the illness of the details of the violence.
26 If an employer chooses to require documentation for sick time and the employee does not have
27 health insurance, the employer is responsible for paying all of out of pocket expenses the
28 employee incurs in obtaining the documentation. If the employee does have health insurance, the
29 employer is responsible for paying any costs charged to the employee by the health care provider
30 for providing the specific documentation required by the employer.

31 (f) An employer may not require, as a condition of providing paid sick and safe time
32 under this chapter, that the employee search for or find a replacement worker to cover the hours
33 during which the employee is on paid sick and safe time.

34 **28-54-7. Exercise of rights protected; retaliation prohibited.** – (a) It shall be unlawful

1 for an employer or any other person to interfere with, restrain, or deny the exercise of, or the
2 attempt to exercise, any right protected under this chapter.

3 (b) An employer shall not take retaliatory personnel action or discriminate against an
4 employee because the employee has exercised rights protected under this chapter. Such rights
5 include but are not limited to the right to use paid sick and safe time pursuant to this chapter; the
6 right to file a complaint or inform any person about any employer's alleged violation of this
7 chapter; the right to cooperate with the agency in its investigations of alleged violations of this
8 chapter; and the right to inform any person of his or her potential rights under this section.

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

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

14 (e) There shall be a rebuttable presumption of unlawful retaliation under this section
15 whenever an employer takes adverse action against a person within ninety (90) days of when that
16 person: (1) Files a complaint with the agency or a court alleging a violation of any provision of
17 this section; (2) Informs any person about an employer's alleged violation of this section; (3)
18 Cooperates with the agency or other persons in the investigation or prosecution of any alleged
19 violation of this section; (4) Opposes any policy, practice, or act that is unlawful under this
20 section; or (5) Informs any person of his or her rights under this section.

21 **28-54-8. Notice and posting.** – (a) Employers shall give notice that employees are
22 entitled to paid sick and safe time, the amount of paid sick and safe time, and the terms of its use
23 guaranteed under this chapter, that the retaliation against employees who request or use paid sick
24 and safe time is prohibited and that each employee has the right to file a complaint or bring a civil
25 action if sick and safe time as required by this section is denied by the employer or the employee
26 is retaliated against for requesting or taking paid sick and safe time.

27 (b) Employers may comply with this section by supplying each of their employees with a
28 notice in English and in any language that is the first language spoken by at least five percent
29 (5%) of the employer's workforce, all information required under subsection (a).

30 (c) Employers may comply with this section by displaying a poster in a conspicuous and
31 accessible place in each establishment where such employees are employed which contains in
32 English and in any language that is the first language spoken by at least five percent (5%) of the
33 employer's workforce, all information required under subsection (a).

34 (d) The agency shall create and make available to employers posters that contain the

1 information required under subsection (a) for their use in complying with this subsection.

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

5 **28-54-9. Employer records.** – Employers shall retain records documenting hours worked
6 by employees and paid sick and safe time taken by employees, for a period of five (5) years, and
7 shall allow the agency access to such records, with appropriate notice and at a mutually agreeable
8 time, to monitor compliance with the requirements of this chapter. When an issue arises as to an
9 employee’s entitlement to paid sick and safe time under this section, if the employer does not
10 maintain or retain adequate records documenting hours worked by the employee and paid sick
11 and safe time taken by the employee, or does not allow the agency reasonable access to such
12 records, it shall be presumed that the employer has violated the chapter, absent clear and
13 convincing evidence otherwise.

14 **28-54-10. Regulations.** – The agency shall be authorized to coordinate implementation
15 and enforcement of this section and shall promulgate appropriate guidelines or regulations for
16 such purposes.

17 **28-54-11. Enforcement.** – (a) Administrative enforcement. (1) An employee or other
18 person may report to the agency any suspected violation of this act. The agency shall encourage
19 reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted
20 by applicable laws, the name and other identifying information of the employee or person
21 reporting the violation. Provided, however, that with the authorization of such person, the agency
22 may disclose his or her name and identifying information as necessary to enforce this section or
23 for other appropriate purposes.

24 (2) The agency is authorized to take appropriate steps to enforce this section.

25 **28-54-12. Confidentiality and non-disclosure.** – An employer may not require
26 disclosure of details relating to domestic abuse, sexual assault or stalking or the details of an
27 employee’s medical condition as a condition of providing paid sick leave under this chapter. If an
28 employer possesses health information or information pertaining to domestic abuse, sexual
29 assault or stalking about an employee or employee’s family member, such information shall be
30 treated as confidential and not disclosed except to the affected employee or with the permission
31 of the affect employee.

32 **28-54-13. Encouragement of more generous sick and safe time policies; No effect on**
33 **more generous policies.** – (a) Nothing in this chapter shall be construed to discourage or prohibit
34 an employer from the adoption or retention of a paid sick and safe time policy more generous

1 than the one required herein.

2 (b) Nothing in this chapter shall be construed as diminishing the obligation of an
3 employer to comply with any contract, collective bargaining agreement, employment benefit plan
4 or other agreement providing more generous sick and safe time to an employee than required
5 herein.

6 (c) Nothing in this chapter shall be construed as diminishing the rights of public
7 employees regarding paid sick and safe time or use of sick and safe time as provided in Rhode
8 Island general laws.

9 **28-54-14. Other legal requirements.** – This chapter provides minimum requirements
10 pertaining to paid sick and safe time and shall not be construed to preempt, limit, or otherwise
11 affect the applicability of any other law, regulation, requirement, policy, or standard that provides
12 for greater accrual or use by employees of sick and safe time, whether paid or unpaid, or that
13 extends other protections to employees.

14 **28-54-15. Severability.** – If any provision of this chapter or application thereof to any
15 person or circumstance is judged invalid, the invalidity shall not affect other provisions or
16 applications of the chapter which can be given effect without the invalid provision or application,
17 and to this end the provisions of this chapter are declared severable.

18 This chapter shall take effect ninety (90) days following enactment, provided that in the
19 case of employees covered by a collective bargaining agreement in effect on the effective date
20 prescribed herein, this act shall apply on the date of the termination of such agreement.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO LABOR AND LABOR RELATIONS – SICK LEAVE

1 This act would create comprehensive laws designed to provide workers to seek medical
2 leave, to require employers to provide paid sick time for their employees and would protect
3 employees from job loss for their approved use of their sick leave.

4 This act would take effect ninety (90) days from passage, provided that in the case of
5 employees covered by a collective bargaining agreement in effect at the time of passage, and
6 would not go into effect until the applicable agreement expires.

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