

Law Proposed by Initiative Petition First to be Submitted to the General Assembly

TITLE

THE HEALTHY FAMILIES ACT

SUMMARY

The law proposed by this initiative petition would enact Chapter 4114 of the Ohio Revised Code to require employers to provide a minimum amount of paid sick leave to employees in Ohio.

For purposes of proposed Chapter 4114 of the Ohio Revised Code, child means a biological, foster or adopted child, stepchild, legal ward, or a child of a person standing in loco parentis under 18 or age 18 or older if that child is incapable of self-care. The proposed Act incorporates the definitions of Employer and Employee from the Ohio Fair Minimum Wage Amendment to the Ohio Constitution, except that “employer” shall not include an employer who employs less than 25 employees. Sick leave is defined as an increment of compensated leave provided as a benefit of employment to be used for certain enumerated purposes.

The proposed law would require employers to provide the following:

- Seven (7) days of paid sick leave annually for employees working 30 hours or more a week; or
- A pro rata amount of paid sick leave annually for employees working less than 30 hours per week or less than 1,560 hours per year.

Sick leave would accumulate at least monthly and begin accrual immediately, however employers would not be required to grant sick leave during the first 90 days of the employment relationship. It would be in the employer’s discretion to loan sick leave to an employee in advance of accrual. Accrued sick leave would carry over from year to year but employers would not be required to permit the accumulation of more than seven days per year. For periods of sick leave that are less than a normal workday, sick leave would be calculated on an hourly basis, or the smallest increment used by the employer’s payroll system to calculate other types of leave. For employees whose schedule varies on a weekly basis, a weekly average of hours worked over a twelve-week period would be used to calculate the accrual of sick leave.

Under the proposed law, sick leave could be used by an employee for an absence resulting from a physical or mental illness, injury or medical condition; an absence resulting from obtaining professional medical diagnosis or preventive medical care; or an absence for the purpose of caring for a child, parent, or spouse, who has a physical or mental illness, injury or medical condition or needs a diagnosis or preventive medical care.

The proposed law would require an employer to grant an oral or written request for paid sick leave so long as the request includes the reason for the absence and the expected duration of the leave. When possible, the employee should give seven days notice and make reasonable efforts to schedule leave in a manner so as not to unduly disrupt the employer’s operations.

Under the proposed Act, an employer may only require an employee to provide certification from a health professional if the absence covers more than three consecutive work days, and the employee would then have to provide the employer with such certification within thirty days. The proposed law would require any information regarding an employee’s sick leave to be kept in a confidential manner, only to be disclosed to the affected employee or with express permission of the employee.

Employers would be required to post notices regarding the law in a conspicuous place. A violation of the posting requirements would result in a fine not to exceed \$100 for each separate violation. The proposed law would give the director of commerce rule-making powers to carry out the purposes of the proposed law. Amendments would be permitted from time to time.

Nothing in the proposed Act would interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their choosing in order to establish sick leave, paid leave, and other terms and conditions of employment in excess of the minimum sick leave established by the Act.

Employers may not eliminate or reduce existing leave policies to comply with the provisions of the proposed law and should not be discouraged from providing a more generous leave policy. The proposed law would require employers to retain records pertaining to paid sick leave taken for a period of three years and would require employers to allow inspection of those records by the department of commerce for monitoring compliance with the Act.

Prohibited acts by the employer would include: denying to the director of commerce access to a place of employment or records; failure to make, keep, and preserve any records under the Act; falsifying any records or refusal to furnish them to the director; and failure to post an appropriate notice. An employer is prohibited from interfering with, restraining, or denying the exercise of or attempted exercise of any right provided in this Act. An employer would be prohibited from discriminating against or discharging an employee for exercising or attempting to exercise any right under the Act, including filing a complaint, instituting proceedings, or testifying about an employer's non-compliance with the Act, using paid sick leave taken as a negative factor in an employment action, such as hiring, promotion, or a disciplinary action, or counting the sick leave under a no-fault attendance policy. An employer would be prohibited from providing any accrued sick leave less than the minimum amount described in the proposed law.

Any employee or the attorney general would be able to enforce the provisions of the proposed law by bringing a civil action. The attorney general would have the power to investigate and obtain conciliation of an alleged violation but an investigation would not be a prerequisite to bring court action. Each day of a violation would be considered a separate violation and an employer would be liable to an affected employee for: damages equal to the amount of lost wages, benefits or other compensation, or in cases in which wages, salary, employment benefits, or other compensation, has not been denied or lost, actual monetary losses sustained as a direct result of the violations up to a sum equal to ten days of wages or salary, an additional amount as treble damages, and reasonable attorney fees; equitable relief as appropriate, including employment, reinstatement and promotion.

FULL TEXT OF PROPOSED LAW

THE HEALTHY FAMILIES ACT

Be it enacted by the people of Ohio,

Chapter 4114: Healthy Families Act

4114.01 Definitions

- (A) “Child” means a biological, foster, or adopted child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is:
- (1) Under 18 years of age; or
 - (2) 18 years of age or older and incapable of self-care due to a physical or mental disability.
- (B) “Employee” and “employer” have the same definitions as those found in Article II, Section 34a of the Ohio Constitution, except that “employer” shall not include an employer who employs less than 25 employees.
- (C) “Health Care Professional” means any person licensed under federal or state law to provide health care services, including, but not limited to, nurses, doctors, and emergency room personnel.
- (D) “Parent” is defined as a biological, foster, or adoptive parent, a stepparent, legal guardian, parent-in-law, or an individual who stood in loco parentis when a person was a child.
- (E) “Pro rata” with respect to benefits offered to part-time employees, means the proportion of each of the benefits offered to full-time employees that are offered to part-time employees that, for each benefit, is equal to the ratio of part-time hours worked to full-time hours worked.
- (F) “Sick leave” is defined as an increment of compensated leave provided by an employer to an employee as a benefit of employment for use by the employee during an absence from employment for any of the reasons described in 4114.03(A) of the Revised Code.

4114.02 Accumulation of Sick Leave

- (A) Employers shall provide each employee with not less than:
- (1) Seven (7) days of paid sick leave annually for employees working 30 hours or more a week; or
 - (2) A pro rata amount of paid sick leave annually for employees working less than 30 hours per week or less than 1,560 hours per year.

- (B) Sick leave shall begin to accumulate immediately, but no employer shall be required to grant accrued sick leave before ninety (90) days from the commencement of employment. Paid sick leave must accrue at least monthly and, after the initial ninety (90) day waiting period, may be used as it is accrued. At the employer's discretion, sick leave may be loaned to the employee in advance of the accrual by such employee.
- (C) Accrued sick leave provided under this section shall carry over from year to year, but this Act shall not be construed to require an employer to permit an employee to accumulate more than seven (7) days of sick leave per year.
- (D) For periods of paid sick leave less than a normal workday, that leave shall be counted:
 - (1) On an hourly basis; or
 - (2) If less than an hour, in the smallest increment that the employer's payroll system uses to account for absences or use of other leave.
- (E) If the schedule of an employee varies from week to week, a weekly average of the hours worked over the 12-week period prior to the beginning of a sick leave period shall be used to calculate the employee's normal workweek for the purposes of determining the amount of sick leave to which the employee is entitled.

4114.03 Use of Sick Leave

- (A) Sick leave accrued under this section may be used by an employee for any of the following:
 - (1) An absence resulting from a physical or mental illness, injury or medical condition of the employee;
 - (2) An absence resulting from obtaining professional medical diagnosis or care, or preventive medical care, for the employee;
 - (3) An absence for the purpose of caring for a child, parent, or a spouse, who has any of the conditions or needs diagnosis or care described in paragraphs (1) or (2) above.
- (B) Employees shall make reasonable efforts to schedule leave in a manner that does not unduly disrupt the operations of the employer.
- (C) Sick leave shall be provided upon the oral or written request of an employee. Such request shall include:
 - (1) The reason for the absences involved and expected duration of leave; and
 - (2) In cases in which leave is foreseeable at least seven (7) days in advance of such leave, seven (7) days notice shall be provided; or
 - (3) In cases in which leave is not foreseeable at least seven (7) days in advance of such leave, notice shall be given as soon as practicable once the employee becomes aware of the need for such leave.

4114.04 Certification

- (A) An employer may only require that a request for leave be supported by the certification of a health care professional if the leave period covers more than three (3) consecutive work days.
- (B) An employee must provide certification of a health care professional upon request to the employer in a timely manner, no later than thirty (30) days after the first day of leave. The employer shall not delay the commencement of the leave on the basis that the employer has not yet received certification.
- (C) Any health information possessed by an employer regarding an employee, employee's child, parent, or spouse shall:
 - (1) Be maintained on a separate form and in a separate file from other personnel information;
 - (2) Be treated as confidential medical records; and
 - (3) Not be disclosed except to the affected employee or with the express permission of the affected employee.

4114.05 Posting Requirements

- (A) Every employer subject to sections 4114.01 to 4114.11 of the Revised Code, or to any rules issued thereunder, shall keep a summary of the sections, approved by the director of commerce, and copies of any applicable rules issued thereunder, or a summary of the rules, posted in a conspicuous and accessible place in or about the premises wherein any person subject thereto is employed. Employees shall be furnished copies of the summaries and rules by the state, on request, without charge.
- (B) An employer who willfully violates the posting requirements of this section shall be subject to a civil fine in an amount not to exceed \$100.00 for each separate offense.

4114.06 Rules

The director of commerce shall adopt rules in accordance with Chapter 119 of the Revised Code as the director considers appropriate to carry out the purposes of sections 4114.01 to 4114.11 of the Revised Code. The rules may be amended from time to time and may include, but are not limited to, proper notice of employees' protections under the Act, computations of paid sick time, proper accrual, and the retention of pertinent records.

4114.07 Effect on Current Leave Policies

- (A) Nothing in this Act shall be construed to discourage an employer from the adoption or retention of a paid leave policy more generous than the one required by this Act.
- (B) An employer with a leave policy providing paid leave options shall not be required to modify such policy, if such policy offers an employee the option at the employee's

discretion to take paid leave that is at least equivalent to the sick leave described in this section.

- (C) An employer may not eliminate or reduce leave in existence on the date of enactment of this Act, regardless of the type of such leave, in order to comply with the provisions of this Act.

4114.08 Right to Collective Bargaining

Nothing in sections 4114.01 to 4114.11 of the Revised Code interferes with, impedes, or in any way diminishes the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish sick leave, paid leave, and other terms and conditions of employment in excess of the minimum paid sick days established in section 4114.01 to 4114.11 of the Revised Code.

4114.09 Employer Records

Employers shall retain records documenting hours worked by employees and paid sick leave taken by employees, for a period of three (3) years, and shall allow the director of the department of commerce access to such records to monitor compliance with the requirements of this Act.

4114.10 Prohibited Acts by the employer

- (A) No employer shall hinder or delay the director of commerce in the performance of the director's duties in the enforcement of section 4114.01 to 4114.11 of the Revised Code, or refuse to admit the director to any place of employment, or fail to make, keep, and preserve any records as required under those sections, or falsify any of those records, or refuse to make them accessible to the director upon demand, or refuse to furnish them or any other information required for the proper enforcement of those sections to the director upon demand, or fail to post a summary of those sections or a copy of any applicable rules as required by section 4114.05 of the Revised Code. Each day of violation constitutes a separate offense.
- (B) No employer shall interfere with, restrain, or deny the exercise of or the attempted exercise of any right provided in this Act;
- (C) No employer shall discharge or in any manner discriminate against any employee for opposing any practice made unlawful by this Act, including:
 - (1) Discharging, or discriminating against any employee for making any complaint to the employee's employer, or to the director, that the employee has not been allowed to accrue or use sick leave in accordance with sections 4114.01 to 4114.11 of the Revised Code, or because the employee has made any complaint or is about to cause to be instituted any proceeding under or related to those sections, or because the employee has testified or is about to testify in any proceeding, or because the employee is assisting another in exercising such a right;

- (2) Using paid sick leave taken pursuant to this Act as a negative factor in an employment action, such as hiring, promotion, or a disciplinary action; or
- (3) Counting the use of paid sick leave under a no-fault attendance policy.

(D) No employer shall provide or agree to provide any accrued sick leave less than the amount applicable under sections 4114.01 to 4114.11.

(E) No employer shall otherwise violate sections 4114.01 to 4114.11 of the Revised Code, or any rule adopted thereunder. Each day of violation constitutes a separate offense.

4114.11 Enforcement

(A) Any employee or the attorney general may enforce the provisions of this statute by bringing a civil action against an employer to enforce the provisions of this section. The attorney general may conduct an investigation to obtain voluntary conciliation of an alleged violation. Such an investigation shall not be a prerequisite to the bringing of a court action.

(B) Any employer who violates section 4114.01 to 4114.11 of the Revised Code shall be liable to any affected employee for:

(1) Damages equal to:

(a) The amount of:

- i. Any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or
- ii. In cases in which wages, salary, employment benefits, or other compensation has not been denied or lost to such employee, any actual monetary losses sustained by the employee as a direct result of the violation up to a sum equal to ten (10) days of wages or salary for the employee;

(b) The interest on the amount described in subclause (i) calculated at the prevailing rate; and

(c) An additional amount as treble damages; and

(d) Reasonable attorney fees.

(2) For such equitable relief as may be appropriate, including employment, reinstatement and promotion.