



# Healthy Families Act

Advocates' Answers to Businesses' Frequently Asked Questions

The Healthy Families Act has a simple goal: to ensure that American workers have paid sick time so that they can address their own or their family's health needs without losing their job or a day's wages. Under the proposed bill: workers earn paid sick time at the rate of one hour for every thirty hours worked; or, seven days per year for full-time work. In May 2009, Senator Ted Kennedy (D-MA) and Congresswoman Rosa DeLauro (D-CT) reintroduced the Healthy Families Act (S-1152 and H.R. 2460). Paid sick days legislation already has been implemented in some cities and about a dozen campaigns in states and localities are underway.

Besides ensuring all Americans can address their health needs, the Healthy Families Act would diminish public and private health care costs by: enabling workers to seek early medical care; assisting employees who are victims of domestic violence by providing them with time to be treated; and by accomplishing these purposes in a manner that is feasible for employers.

This bill would benefit employers and employees, so it is vital that businesses understand the facts of the Healthy Families Act. The policy debate should focus on the merits of the proposal, not misinformation. While some companies may never support paid sick days, many employers provide paid sick days, and more may want a level playing field for paid sick days. Others may come to believe, as the San Francisco Restaurant Association said when that city's law was moving, "we would be fools not to" support a basic, minimum standard so sick workers can stay away from workplaces and customers.

Readers are invited to send in additional questions to CLASP as this will be an evolving text.

## Scope of Coverage

### 1. Q: What constitutes a "covered employer" for purposes of the Act?

A: A covered employer means any person engaged in commerce or in any industry or activity affecting commerce that employs 15 employees or greater for each working day during each of 20 weeks or greater in the year.

### 2. Q: Are any employers exempt from the Healthy Families Act?

A: Yes. Employers with fewer than 15 workers are exempt from coverage.

## Earning Paid Sick Days

### 3. Q: At what rate do employees earn paid sick days?

A: For every 30 hours worked, an employee earns 1 hour of paid sick time.

**4. Q: Is there a minimum cap on the number of hours of paid sick time an employee earns at a given time?**

A: **Yes.** For an employer that has 15 employees or greater, there is a limit of 56 hours (7 days) of paid sick days at a given time.

**5. Q: May the employer voluntarily set a higher limit of paid sick days in a calendar year?**

A: **Yes.** An employer may choose to set a higher limit of paid sick days in a calendar year. Thus, an employer with 15 employees or greater is not precluded from having policies that exceed the minimum number of days required by the Act. An exempt employer with fewer than fifteen employees is also not precluded from providing paid sick days to employees.

**6. Q: When does an employee begin to earn paid time?**

A: An employee begins to earn paid sick time at the commencement of his/her employment. The employee, shall be eligible to access the paid sick days beginning on the 60th calendar day following commencement of his/her employment.

**7. Q: May an employer loan paid sick days to an employee in advance of the employee earning such time?**

A: **Yes.** The employer at its discretion may loan paid sick days to an employee in advance of his earning such time.

**8. Q: Does an employee's earned paid sick time carry over from one calendar year to the next?**

A: **Yes,** except an employee may not earn more than 56 hours (7 days) of paid sick time in one calendar year. Thus, an employee does not need to 'start over' each year to earn hours but the employer is never required to provide more than 56 hours of earned paid sick time in a twelve-month period.

**9. Q: If an employer offers a paid time off or vacation policy that allows time off for sick days, is that sufficient to meet the requirements of the Act?**

A: **Yes.** As long as the employer's policy offers employees paid time in the same amount and for the same purposes as outlined in the Act; the employer is not required to provide additional paid sick time. So, if an employee comes down with the flu and can use vacation time or paid time off without giving advanced notice, those policies are adequate if the total amount of time and uses conform with the requirements of the Act.

**10. Q: Can the rights established for employees under the Act be diminished by an independent contract, collective bargaining agreement, or another employment benefit program or plan?**

A: **No.** Less protective programs or plans shall not diminish employees' rights under the Act.

**11. Q: Are employers required to pay employees for unused paid sick time when the employees quit, retire, or are fired?**

A: **No.** Employers are not required to pay employees for earned unused paid sick time upon the employee's termination, resignation, or other separation from employment.

**12. Q: Must an employer reinstate an employee's previously earned paid sick time if that employee has been separated from employment?**

A: **Yes.** An employer must reinstate an employee's previously earned paid sick time if the employee is rehired within 12 months after the separation by the same employer.

**13. Q: For what purposes may an employee use paid sick days?**

A: An employee may use paid sick time for:

- physical or mental illness, injury, or a medical condition to themselves
- aid or care for a child, parent, spouse, or any other individual related by blood or having the equivalent of a familial relationship that is receiving medical care or a diagnosis
- an absence related to seeking medical attention for domestic violence toward the employee, the employee's child, parent, spouse, or any other individual related by blood or having the equivalent of a familial relationship; or to seek relocation or take legal action.

**14. Q: May an employer require an employee to provide advance notification for every use of paid sick time?**

A: **No,** however, an employee shall provide advanced oral or written notice to the employer including the reason for the absence and the expected duration of the period whenever it is foreseeable. If the need is foreseeable at least seven days in advance, the employee shall provide at least seven days advanced notice to the employer. If the need is not foreseeable, the employee shall inform the employer as soon as practicable after the employee is aware of the need.

## **Certification**

**15. Q: May an employer require an employee to provide a doctor's note for use of paid sick time?**

A: **Yes.** An employer may require that a request for paid sick time be supported by a certification issued by the health care provider of the eligible employee (or of the employee's child, parent, spouse, or other individual related by blood or the equivalent of a familial relationship) if the paid sick time is greater than 3 consecutive workdays.

**16. Q: If an employer requires an employee to provide a certification, when shall the employee provide a copy?**

A: The employee shall provide a copy within a timely manner, not later than 30 days after the first day of the period of time.

**17. Q: What information must a certification contain in order to be sufficient?**

A: The certification must state: the date on which the period of time will be needed; the probable duration of the period of time; the appropriate medical facts within the knowledge of the health care provider regarding the condition, subject to privacy concerns; a statement that absence from work is necessary or the dates on which a medical diagnosis is scheduled, or that time to care is needed (for the victim of domestic violence).

For paid time for victims of domestic violence or stalking, an employer may require:

- a police report indicating that the employee, or a member of the employee's family described was a victim of domestic violence, sexual assault, or stalking; or
- a court order protecting or separating the employee or a member of the employee's family described in subsection from the perpetrator of an act of domestic violence, sexual assault, or stalking; or
- evidence from the court or prosecuting attorney that the employee or a member of the employee's family has appeared in court or is scheduled to appear in court in a proceeding related to domestic violence, sexual assault, or stalking; or
- other documentation signed by an employee or volunteer working for a victim services organization, an attorney, a police officer, a medical professional, a social worker, an antiviolence counselor, or a member of the clergy, affirming that the employee or a member of the employee's family is a victim of domestic violence, sexual assault, or stalking.

## Notice and Posting

**18. Q: Is an employer required to post a notice informing employees of their rights under the Act?**

A: **Yes.** An employer must post a notice informing employees of their rights in conspicuous places where notices are customarily posted or in employee handbooks. The notice shall include pertinent information describing paid sick time, information pertaining to the filing of an action under the Act, and the details of the notice requirement.

**19. Q: Is an employer subject to a penalty for violating the posting requirement?**

A: **Yes.** An employer who willfully violates the posting requirements will be subject to a civil fine in an amount no greater than \$100 for each separate offense.

## Exercise of Rights Protected; Retaliation Prohibited

**20. Q: If an employer has a policy that may lead to discipline, discharge, demotion, suspension, or any other adverse action, can an employee's use of paid sick time count against him or her?**

A: **No.** It is unlawful for an employer to count paid sick time taken under the Act as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action. It is lawful however, for the employer to discipline or react to an employee's failure to comply with the terms of the Act.

**21. Q: Can an employer retaliate against an employee for using paid sick time?**

A: **No.** It is unlawful for an employer or any other person to discharge, or in any manner discriminate against any person in retaliation for exercising rights under the Act.

## Employer Records

**22. Q: Does an employer have an obligation to keep and preserve records in compliance with the Act?**

A: **Yes.** An employer must keep and preserve records of the persons employed by him and of the wages, hours, and other conditions and practices of employment, and preserve such records and make reports to the Secretary of Labor as prescribed by regulation.

## Enforcement

**23. Q: Do employees or other individuals have a right to seek damages against the employer for violation of the Act?**

A: **Yes.** An employee or other similarly situated individuals may bring an action to recover damages or equitable relief against an employer in a federal or state court.

**24. Q: May the Secretary of Labor bring an administrative action against the employer?**

A: **Yes.** The Secretary of Labor may investigate and attempt to resolve complaints of interference or retaliation under the Act. The Secretary of Labor may also bring a civil action to recover damages.

**25. Q: For what types of damages may an employer be found liable?**

A: An employer may be found liable for compensatory damages up to a sum equal to 7 days of wages or salary, interest on the compensatory damages, liquidated damages, and any appropriate equitable relief.