



The Healthy Families Act

A Detailed Review for Businesses

MARCH 2017 | ZOE ZILIAK MICHEL

In March 2017, Senator Patty Murray (D-WA) and Congresswoman Rosa DeLauro (D-CT) introduced the Healthy Families Act (HFA) (S. 636 and H.R. 1516). The HFA would ensure that America’s workers have time to address their own or their family’s health needs without losing their income for the time they are absent, or even their jobs. Under the proposed bill, workers would earn job-protected sick time at the rate of one hour for every 30 hours worked, up to a maximum of about 7 days per year, or more if the employer chooses. The introduction of this federal legislation comes as the sick days movement is gaining steam around the country; earned sick time legislation has already passed in over three dozen cities, counties, and states.

The HFA would benefit employers as well as employees. Businesses that provide paid sick time enjoy reduced turnover and improved or maintained worker productivity, as well as a healthier business – literally.^{1,2,3} When they don’t have paid sick time, ill employees report to their jobs but aren’t able to produce at their full capacity, and they risk exposing co-workers and customers to infection. Businesses will benefit from a healthier, more productive workforce when their employees can afford to take the time they need to recover without risking their wages or jobs.

This brief for employers provides an overview of the provisions of the HFA.

Covered Employers

Definition of covered employer. Under the HFA, a covered employer means any person or entity engaged in commerce or in any industry or activity affecting commerce, as well as public agencies and some specially listed agencies of the federal government.

Paid vs. unpaid sick time requirements. An employer with 15 or more employees (during each of at least 20 weeks in the year) will be required to provide **paid** sick time. Smaller employers may provide **unpaid** sick time. (Throughout this document, we refer to simply “sick time” when the provisions of the HFA apply to both paid and unpaid sick time.)

Earning Sick Time

Rate of sick time accrual. For every 30 hours worked, an employee earns 1 hour of sick time.

Option to cap sick time accrual. An employer may limit employees to accruing 56 hours (7 days) of sick time at a given time. Accrual may also be limited to 56 hours per year. However, an employer may choose to set a higher limit (or no limit at all).

Option for employers with fewer than 15 employees to provide paid sick time. While small employers have the option of providing unpaid sick time to their employees, they may instead provide paid sick time if they choose.

Paid Time Off (PTO) or vacation policies. A PTO or vacation policy may meet the requirements of the HFA as long as the employer's policy offers employees time off in the same amount and for the same purposes as outlined in the bill. For example, if an employee comes down with the flu and can use PTO or vacation time without giving advance notice, those policies are adequate if the total amount of time and uses conform to the requirements of the HFA.

Date of initial sick time accrual. An employee begins to earn sick time at the commencement of employment. (See below for waiting period regarding use of sick time by new employees.)

Carryover of sick time. An employee's sick time carries over from one calendar year to the next, with the exception that an employee's accrual of sick time may be limited to 56 hours (7 days) at one time. As a result, an employee does not lose all earned but unused hours at the end of the calendar year. However, the employer is never required to allow employees to accrue more than 56 hours of earned sick time at one time.

Reinstatement of sick time for rehired employees. An employer must reinstate an employee's previously earned sick time if the employee is rehired within 12 months after the separation by the same employer. The employee will be eligible to use the sick time beginning on the date of rehire.

Exempt employees. For the purposes of calculating sick time accrual, employees who are exempt from overtime requirements⁴ are assumed to work 40-hour weeks. If the normal workweek of an exempt employee is shorter than 40 hours, however, the employee earns sick time based on that shorter normal workweek.

Contracts, collective bargaining agreements, and other employee benefit programs. Employees' rights under the HFA are not diminished if they are covered by programs or plans that offer less protection than the law. (However, the presence of a collective bargaining agreement would affect the date on which an employee gains coverage under the HFA. For employees not covered by a collective bargaining agreement, the HFA would take effect six months after the U.S. Secretary of Labor issued regulations. For employees covered under a collective bargaining agreement, the HFA would take effect either 18 months after the Secretary of Labor issued regulations or on the date the collective bargaining effect was terminated, whichever was earlier.)

Using Sick Time

Date of eligibility to use sick time. Employees become eligible to access their sick time beginning on the 60th calendar day following commencement of their employment. Employers may choose to allow employees to use their sick time sooner, and may loan sick time to employees in advance.

Allowed uses of sick time. Employees may use sick time for **a)** their own physical or mental illness, injury, or medical condition; **b)** obtaining professional medical diagnosis or care, including preventive care; **c)** caring for a family member or anyone related by blood or affinity who is the equivalent of a family member; **d)** attending a child's school meeting or meeting at a place where the child is receiving care necessitated by the child's health condition or disability; or **e)** obtaining various types of treatment or assistance (including taking legal action) for themselves or a family member in cases of domestic violence,

sexual assault, or stalking.

Advance notification of intent to use sick time. An employer may not require an employee to provide advance notification for every use of sick time. However, an employee must provide advance oral or written notice to the employer, including the expected duration of the use, *whenever it is foreseeable*. If the need is foreseeable at least seven days in advance, the employee must provide at least seven days' advance notice to the employer. If the need is not foreseeable, the employee must inform the employer as soon as practicable. Employees are not required to inform employers of the reason for the absence.

No requirement for employee to find replacement. Employers may not make employees' use of sick time conditional upon searching for or finding a replacement employee to cover the hours during which the employee will use the sick time.

No requirement for payout upon separation from employment. Employers are not required to pay employees for earned unused sick time upon the employee's termination, resignation, retirement, or other separation from employment.

Certification of Need for Absence

Requiring certification. An employer may require that a request to use sick time be supported by a certification issued by the health care provider of the eligible employee or of the employee's family member (or from sources listed below in cases of domestic violence, sexual assault, or stalking) only if the sick time is used for *more than three consecutive workdays*. Employers have the option not to require such certification.

Deadline for submission of certification. The employee shall provide a copy within a timely manner, not later than 30 days after the first day on which sick time is used.

Required information for certifications of sick time use for medical conditions.

When the use of sick time is due to a medical condition of the employee or the employee's family member, the certification must indicate the date on which the sick time will be needed; the probable duration of the absence; the appropriate medical facts within the knowledge of the health care provider regarding the condition, subject to privacy concerns; and a statement that absence from work is medically necessary; or the dates on which a medical diagnosis or procedure is scheduled, or a statement that time to care for a family member is needed.

Medical privacy concerns. In issuing the certification, the health care provider must make reasonable efforts to limit the medical facts disclosed to the minimum necessary to establish a need for the employee to use sick time.

Required information for certifications of sick time use related to domestic

violence, sexual assault, or stalking. For time off because an employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking, an employer may require that an employee submit one of the following forms of documentation, but may not specify which form of documentation the employee must submit:

- A police report indicating that the employee or a member of the employee's family 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 from the perpetrator of an act of domestic violence, sexual assault, or stalking; **or**

- Other 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.

Employer maintenance of employee confidentiality. If a certification for an employee's use of sick time includes medical information or information about domestic violence, sexual assault, or stalking related to an employee or the employee's family member, the employer must keep that information in a separate file from other personnel information and not disclose the information without permission of the employee. An exception is granted in cases where reporting the domestic violence, sexual assault, or stalking is required by federal or state law.

Notice and Posting

Notification of rights. An employer must notify employees of their rights under the HFA both by including information about sick time rights in any employee handbook and by posting a notice with the information in a conspicuous place where employee notices are usually posted. The information in the employee handbook and the posted notice must include pertinent information describing available sick time, information pertaining to the filing of an action under the HFA, the details of the notice requirement for foreseeable absences, and the protections the employee has under the HFA, as well as information on how to contact the Secretary of Labor if any of the rights are violated.

Penalty for posting violations. 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

Application of sick time use to absence control policies forbidden. Employers may not count use of sick time against employees under a no-fault attendance policy or other absence control policy.

Protection from retaliation. Employers may not discriminate against, discharge, or retaliate against employees or job applicants for exercising or attempting to exercise their rights under the HFA.

Employer Records

Record-keeping and reporting. Employers must keep and preserve records of their employees and of their wages, hours, and other conditions and practices of employment, including earning and use of sick time, and preserve such records and make reports to the Secretary of Labor as prescribed by regulation. Employers will not have to submit records of compliance with the HFA more than once in any 12-month period, unless the Secretary has reason to believe the employer has violated the HFA or one of its regulations.

Enforcement

Employee right of action. Employees or their representatives may bring a civil action to recover damages or equitable relief against an employer in a federal or state court for violation of the HFA.

Federal government right of action. The Secretary of Labor may investigate and attempt to resolve complaints of interference or retaliation under the HFA. The Secretary of Labor may also bring a civil action to recover damages.

Types of damages. An employer may be found liable for compensatory damages including any wages, salary, employment benefits, or other compensation lost under the violation; interest on the compensatory damages; liquidated damages; and any appropriate equitable relief, including employment, reinstatement, and promotion. In cases when no wages, salary, employment benefits, or other compensation have been lost, the employer may instead be liable for any actual monetary losses sustained due to the violation up to a sum equal to 56 hours of wages or salary for the employee.

Statute of limitations. For actions against an employer brought by an employee, his/her representative, or the Secretary of Labor, the actions may generally be brought no later than two years after the date of the last alleged violation. However, in cases of *willful* violation of the HFA by the employer, the limit is extended to three years.

Interaction between Federal and Local Laws

No preemption provision. The HFA will neither supersede nor preempt more generous state or local laws regarding sick time. State and local laws providing greater sick time rights than are provided under the Healthy Families Act can continue to be passed and enforced.

¹ Jennifer Romich, Wes Bignell, Tracy Brazg, et al., *Implementation and Early Outcomes of the City of Seattle Paid Sick and Safe Time Ordinance*, University of Washington, 2014,

² Eileen Appelbaum, Ruth Milkman, Luke Elliott, and Teresa Kroeger, *Good for Business? Connecticut's Paid Sick Leave Law*, Center for Economic and Policy Research, 2014, <http://cepr.net/documents/good-for-buisness-2014-02-21.pdf>.

³ Robert Drago and Vicky Lovell, *San Francisco's Paid Sick Leave Ordinance: Outcomes for Employers and Employees*, Institute for Women's Policy Research, 2011, <http://www.iwpr.org/publications/pubs/San-Fran-PSD>.

⁴ Employees [who meet certain criteria](#) may be [exempt from the provisions of the Fair Labor Standards Act](#), including the requirement that they be paid overtime if they work over 40 hours in a week.