S T A T E O F N E W Y O R K

2666

2009-2010 Regular Sessions

I N S E N A T E

February 26, 2009

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to enacting the "paid sick leave act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The labor law is amended by adding a new article 5-A to read as follows:

ARTICLE 5-A

PAID SICK LEAVE

SECTION 171. SHORT TITLE.
172. DEFINITIONS.
173. ACCRUAL OF PAID SICK LEAVE.
174. USE OF PAID SICK LEAVE.
175. NOTICE AND POSTING.
176. EMPLOYER RECORDS.
177. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.
178. ENFORCEMENT.
179. WAIVER BY COLLECTIVE BARGAINING.
180. MINIMUM REQUIREMENTS.
181. SEVERABILITY.

S 171. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "PAID SICK LEAVE ACT".

S 172. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE:

1. "EMPLOYEE" MEANS ANY INDIVIDUAL WHO PERFORMS SERVICES FOR AND UNDER THE CONTROL AND DIRECTION OF AN EMPLOYER FOR WAGES OR OTHER REMUNERATION.

2. "EMPLOYER" MEANS ANY PERSON, FIRM, PARTNERSHIP, INSTITUTION, LIMITED LIABILITY COMPANY, CORPORATION OR ASSOCIATION THAT EMPLOYS ONE OR MORE EMPLOYEES; AND THE STATE, ANY POLITICAL SUBDIVISION THEREOF, ANY DEPARTMENT, BOARD, BUREAU, DIVISION, COMMISSION, COMMITTEE, PUBLIC

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD06283-01-9

AUTHORITY, PUBLIC CORPORATION, COUNCIL, OFFICE OR OTHER GOVERNMENTAL ENTITY PERFORMING A GOVERNMENTAL OR PROPRIETARY FUNCTION FOR THE STATE OR ANY POLITICAL SUBDIVISION THEREOF.

3. "PAID SICK LEAVE" MEANS THE PAYMENT OF THE FULL WAGES OF AN EMPLOYEE DURING ANY PERIOD OF SUCH EMPLOYEE'S ABSENCE FROM HIS OR HER EMPLOYMENT BECAUSE OF ILLNESS, INJURY, MEDICAL CONDITION, NEED FOR MEDICAL DIAGNOSIS OR TREATMENT FOR HIMSELF, HERSELF, OR HIS OR HER CHILD, SPOUSE, PARENT, GRANDPARENT, GRANDCHILD, SIBLING, OR AUNT OR UNCLE.

4. "SMALL BUSINESS" MEANS AN EMPLOYER WITH LESS THAN TEN EMPLOYEES DURING ANY WEEK.

S 173. ACCRUAL OF PAID SICK LEAVE. 1. FOR EMPLOYEES EMPLOYED BY AN EMPLOYER IMMEDIATELY PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE, PAID SICK LEAVE WITH SUCH EMPLOYER SHALL BEGIN TO ACCRUE UPON THE EFFECTIVE DATE OF THIS ARTICLE. FOR EMPLOYEES WHO COMMENCE EMPLOYMENT WITH AN EMPLOYER AFTER THE EFFECTIVE DATE OF THIS ARTICLE, PAID SICK LEAVE WITH SUCH EMPLOYER SHALL BEGIN TO ACCRUE ON THE NINETIETH DAY AFTER THE COMMENCEMENT OF SUCH EMPLOYMENT.

2. PAID SICK LEAVE SHALL ACCRUE AT A RATE OF ONE HOUR OF SUCH LEAVE FOR EVERY TWENTY HOURS WORKED BY THE EMPLOYEE FOR HIS OR HER EMPLOYER. PAID SICK LEAVE SHALL ACCRUE IN WHOLE HOUR INCREMENTS.

3. NO EMPLOYEE SHALL ACCRUE, AT ANY ONE PERIOD OF TIME, MORE THAN EIGHTY HOURS OF PAID SICK LEAVE; PROVIDED, HOWEVER, THAT THE EMPLOYEE OF A SMALL BUSINESS SHALL NOT ACCRUE MORE THAN FORTY HOURS OF PAID SICK LEAVE.

4. ANY EMPLOYER WHICH PROVIDES PAID SICK LEAVE THAT EQUALS OR EXCEEDS THE REQUIREMENTS OF SUBDIVISIONS ONE, TWO AND THREE OF THIS SECTION, SHALL NOT BE REQUIRED TO PROVIDE ADDITIONAL PAID SICK LEAVE PURSUANT TO THIS SECTION.

5. NO EMPLOYER SHALL BE REQUIRED TO PROVIDE FINANCIAL OR OTHER REIMBURSEMENT FOR UNUSED ACCRUED PAID SICK LEAVE, UPON THE TERMINATION, RESIGNATION, RETIREMENT OR OTHER SEPARATION FROM EMPLOYMENT OF ANY EMPLOYEE.

S 174. USE OF PAID SICK LEAVE. 1. AN EMPLOYEE MAY USE PAID SICK LEAVE NOT ONLY WHEN HE OR SHE IS ILL OR INJURED, OR FOR THE PURPOSE OF THE EMPLOYEE'S RECEIVING MEDICAL CARE, TREATMENT OR DIAGNOSIS; BUT ALSO TO AID OR CARE FOR ANY OF THE FOLLOWING PERSONS WHEN THEY ARE ILL OR INJURED, OR RECEIVING MEDICAL CARE, TREATMENT OR DIAGNOSIS: A CHILD; PARENT; LEGAL GUARDIAN OR WARD; SIBLING; GRANDPARENT; GRANDCHILD; SPOUSE; OR DESIGNATED PERSON. THE EMPLOYEE MAY USE ALL OR ANY PERCENTAGE OF HIS OR HER PAID SICK LEAVE TO AID OR CARE FOR THE AFOREMENTIONED PERSONS. THE AFOREMENTIONED CHILD, PARENT, SIBLING, GRANDPARENT, AND GRANDCHILD RELATIONSHIPS INCLUDE NOT ONLY BIOLOGICAL RELATIONSHIPS BUT ALSO RELATIONSHIPS RESULTING FROM ADOPTION, STEP-RELATIONSHIPS, AND FOSTER CARE RELATIONSHIPS. "CHILD" INCLUDES A CHILD OF A DOMESTIC PARTNER AND A CHILD OF A PERSON STANDING IN LOCO PARENTIS.

IF THE EMPLOYEE HAS NO SPOUSE, THE EMPLOYEE MAY DESIGNATE ONE PERSON AS TO WHOM THE EMPLOYEE MAY USE PAID SICK LEAVE TO AID OR CARE FOR THE PERSON. THE OPPORTUNITY TO MAKE SUCH A DESIGNATION SHALL BE EXTENDED TO THE EMPLOYEE NO LATER THAN THE DATE ON WHICH THE EMPLOYEE HAS WORKED THIRTY HOURS AFTER PAID SICK LEAVE BEGINS TO ACCRUE. THERE SHALL BE A PERIOD OF TEN WORK DAYS FOR THE EMPLOYEE TO MAKE THIS DESIGNATION. THEREAFTER, THE OPPORTUNITY TO MAKE SUCH A DESIGNATION, INCLUDING THE OPPORTUNITY TO CHANGE SUCH A DESIGNATION PREVIOUSLY MADE, SHALL BE EXTENDED TO THE EMPLOYEE ON AN ANNUAL BASIS, WITH A PERIOD OF TEN WORK DAYS FOR THE EMPLOYEE TO MAKE SUCH DESIGNATION.

2. AN EMPLOYER SHALL NOT REQUIRE, AS A CONDITION OF AN EMPLOYEE'S USE OF PAID SICK LEAVE, THAT THE EMPLOYEE SEARCH FOR OR FIND A REPLACEMENT WORKER TO WORK THE PERIOD DURING WHICH SUCH EMPLOYEE IS USING PAID SICK LEAVE.

3. AN EMPLOYER MAY REQUIRE EMPLOYEES TO PROVIDE, WHENEVER POSSIBLE, REASONABLE NOTIFICATION OF AN ABSENCE FROM WORK FOR WHICH PAID SICK LEAVE IS OR WILL BE USED. THE PERIOD OF SUCH REASONABLE NOTIFICATION SHALL NOT BE MORE THAN TWENTY-FOUR HOURS PRIOR TO ANY SUCH ABSENCE.

4. AN EMPLOYER MAY ONLY TAKE REASONABLE MEASURES TO VERIFY OR DOCUMENT THAT AN EMPLOYEE'S USE OF PAID SICK LEAVE IS LAWFUL.

S 175. NOTICE AND POSTING. 1. THE DEPARTMENT SHALL ESTABLISH, PUBLISH AND MAKE AVAILABLE TO ALL EMPLOYERS, IN ALL LANGUAGES SPOKEN BY FIVE PERCENT OR MORE OF THE STATE'S WORKFORCE, A NOTICE SUITABLE FOR POSTING BY EMPLOYERS IN THE WORKPLACE INFORMING EMPLOYEES OF THEIR RIGHTS PURSUANT TO THIS ARTICLE. THE DEPARTMENT SHALL, ON OR BEFORE DECEMBER FIRST, UPDATE SUCH NOTICE IN ANY YEAR IN WHICH THERE IS A CHANGE IN THE LANGUAGES SPOKEN BY FIVE PERCENT OR MORE OF THE STATE'S WORKFORCE.

2. EVERY EMPLOYER SHALL CONSPICUOUSLY POST IN THE WORKPLACE OR JOB SITE THE NOTICE ESTABLISHED PURSUANT TO SUBDIVISION ONE OF THIS SECTION.

S 176. EMPLOYER RECORDS. EVERY EMPLOYER SHALL, FOR A PERIOD OF FOUR YEARS, MAINTAIN RECORDS FOR EACH EMPLOYEE DOCUMENTING THE HOURS WORKED AND THE PAID SICK LEAVE USED. THE DEPARTMENT SHALL HAVE ACCESS TO SUCH RECORDS DURING THE NORMAL BUSINESS HOURS OF EACH EMPLOYER. WHEN THERE IS AN ISSUE RELATING TO AN EMPLOYEE'S ACCRUAL AND USE OF PAID SICK LEAVE THERE SHALL BE, ABSENT CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY, A PRESUMPTION THAT THE EMPLOYER VIOLATED THE PROVISIONS OF THIS ARTICLE, IF THE EMPLOYER FAILS TO MAINTAIN THE RECORDS REQUIRED BY THIS SECTION OR FAILS TO PROVIDE ACCESS THERETO TO THE DEPARTMENT.

S 177. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED. 1. IT SHALL BE UNLAWFUL FOR ANY EMPLOYER OR ANY OTHER PERSON TO INTERFERE WITH, RESTRAIN, OR DENY THE ACCRUAL OR USE OF OR THE ATTEMPTED USE OF ANY PAID SICK LEAVE REQUIRED BY THIS ARTICLE.

2. NO EMPLOYER OR ANY OTHER PERSON SHALL DISCHARGE, THREATEN TO DISCHARGE, DEMOTE, SUSPEND, OR IN ANY OTHER MANNER DISCRIMINATE OR TAKE ADVERSE ACTION AGAINST ANY EMPLOYEE IN RETALIATION FOR EXERCISING ANY RIGHT GRANTED BY THIS ARTICLE. SUCH RIGHTS SHALL INCLUDE, BUT NOT BE LIMITED TO, THE USE OF PAID SICK LEAVE, THE FILING OF A COMPLAINT OR INFORMING ANY PERSON ABOUT ANY VIOLATION OF THIS ARTICLE, THE COOPERATION WITH THE DEPARTMENT IN THE INVESTIGATION OF ANY ALLEGED VIOLATION OF THIS ARTICLE, AND THE INFORMING OF ANY PERSON OF HIS OR HER RIGHTS PURSUANT TO THIS ARTICLE.

3. NO EMPLOYER SHALL CONSIDER OR USE PAID SICK LEAVE TAKEN PURSUANT TO THIS ARTICLE AS AN ABSENCE THAT MAY LEAD TO OR RESULT IN THE DISCIPLINE OF, THE DISCHARGE OF, THE DEMOTION OF, THE SUSPENSION OF OR ANY OTHER ACTION AGAINST ANY EMPLOYEE.

4. THE PROVISIONS OF THIS SECTION SHALL APPLY TO ANY PERSON WHO, IN GOOD FAITH, ALLEGES A VIOLATION OF THIS ARTICLE.

5. THE TAKING OF ANY ADVERSE ACTION AGAINST AN EMPLOYEE WITHIN NINETY DAYS OF ANY PERSON FILING A COMPLAINT WITH THE DEPARTMENT OR A COURT ALLEGING A VIOLATION OF THE PROVISIONS OF THIS ARTICLE, INFORMING ANY OTHER PERSON RELATING TO AN ALLEGED VIOLATION OF THIS ARTICLE BY AN EMPLOYER, COOPERATING WITH THE DEPARTMENT OR ANY OTHER PERSON IN THE INVESTIGATION OR PROSECUTION OF ANY ALLEGED VIOLATION OF THIS ARTICLE OR INFORMING ANY PERSON OF THE PROVISIONS OF THIS ARTICLE, SHALL ESTABLISH A REBUTTABLE PRESUMPTION THAT SUCH ADVERSE ACTION WAS TAKEN IN RETALIATION FOR EXERCISING THE RIGHTS GRANTED PURSUANT TO THIS ARTICLE.

S 178. ENFORCEMENT. 1. THE DEPARTMENT IS CHARGED WITH THE DUTY TO ENFORCE THE PROVISIONS OF THIS ARTICLE. FURTHERMORE, THE COMMISSIONER IS AUTHORIZED AND DIRECTED TO PROMULGATE ANY RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE.

2. FOR ANY VIOLATION OF THIS ARTICLE THE DEPARTMENT MAY ORDER AN EMPLOYER TO GRANT REINSTATEMENT, BACK PAY, THE PAYMENT FOR ANY PAID SICK LEAVE WITHHELD AND/OR THE PAYMENT OF A PENALTY TO THE AFFECTED EMPLOYEE. FURTHERMORE, THE DEPARTMENT SHALL IMPOSE A CIVIL PENALTY, FOR ANY VIOLATION OF THIS ARTICLE, EQUAL TO TRIPLE THE MONETARY VALUE OF THE PAID SICK LEAVE DENIED OR TWO HUNDRED DOLLARS, WHICHEVER SHALL BE GREATER.

S 179. WAIVER BY COLLECTIVE BARGAINING. ALL OR ANY PORTION OF THE PROVISIONS OF THIS ARTICLE MAY BE WAIVED WITH REGARD TO ANY EMPLOYEES AND EMPLOYERS WHO ARE SUBJECT TO A BONA FIDE COLLECTIVE BARGAINING AGREEMENT TO THE EXTENT THAT SUCH PROVISIONS ARE EXPRESSLY WAIVED IN SUCH AGREEMENT IN CLEAR AND UNAMBIGUOUS TERMS.

S 180. MINIMUM REQUIREMENTS. THE PROVISIONS OF THIS ARTICLE SHALL CONSTITUTE THE MINIMUM REQUIREMENTS OF THE PROVISION OF PAID SICK LEAVE TO EMPLOYEES. NO PROVISION OF THIS ARTICLE SHALL BE DEEMED TO PROHIBIT ANY EMPLOYER FROM GRANTING GREATER PAID SICK LEAVE BENEFITS THAN THOSE REQUIRED BY THIS ARTICLE.

S 181. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION TO BE INVALID AND AFTER EXHAUSTION OF ALL FURTHER JUDICIAL REVIEW, THE JUDGEMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN THIS OPERATION TO THE CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ACT DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH THE JUDGEMENT SHALL HAVE BEEN RENDERED.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided, however, that, effective immediately, any rules and regulations necessary to implement the provisions of this act on its effective date are authorized and directed to be completed on or before such date.