

***** Act 338 of 2018 THIS NEW ACT IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

***** Act 338 of 2018 THIS TITLE, BEGINNING WITH "AN INITIATION OF LEGISLATION," IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE. THIS AMENDED TITLE BEGINNING WITH "AN ACT," IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

EARNED SICK TIME ACT Act 338 of 2018

An initiation of legislation to provide workers with the right to earn sick time for personal or family health needs, as well as purposes related to domestic violence and sexual assault and school meetings needed as the result of a child's disability, health issues or issues due to domestic violence and sexual assault; to specify the conditions for accruing and using earned sick time; to prohibit retaliation against an employee for requesting, exercising, or enforcing rights granted in this act; to prescribe powers and duties of certain state departments, agencies, and officers; to provide for promulgation of rules; and to provide remedies and sanctions. AN ACT to require certain employers to provide certain employees with paid medical leave for personal or family health needs, as well as purposes related to domestic violence and sexual assault; to specify the conditions for accruing and using paid medical leave; to prescribe powers and duties of certain state departments, agencies, and officers; and to provide remedies and sanctions.

History: 2018, Act 338, Eff. (sine die);—Am. 2018, Act 369, Eff. (sine die).

The People of the State of Michigan enact:

***** 408.961.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

***** 408.961.new THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE: See 408.961.amended *****

408.961.new Short title.

Sec. 1. This act shall be known and may be cited as the "earned sick time act".

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.961.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.961.amended Short title.

Sec. 1. This act shall be known and may be cited as the "paid medical leave act".

History: 2018, Act 338, Eff. (sine die);—Am. 2018, Act 369, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.962.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

***** 408.962.new THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE: See 408.962.amended *****

408.962.new Definitions.

Sec. 2. As used in this act:

(a) "Department" means the department of licensing and regulatory affairs.

(b) "Director" means the director of the department of licensing and regulatory affairs or his or her designee.

(c) "Domestic partner" means an adult in a committed relationship with another adult, including both same-sex and different-sex relationships. "Committed relationship" means one in which the employee and another individual share responsibility for a significant measure of each other's common welfare, such as any

relationship between individuals of the same or different sex that is granted legal recognition by a state, political subdivision, or the District of Columbia as a marriage or analogous relationship, including, but not limited to, a civil union.

(d) "Domestic violence" has the same meaning as provided in section 1 of 1978 PA 389, MCL 400.1501.

(e) "Earned sick time" means time off from work that is provided by an employer to an employee, whether paid or unpaid, that can be used for the purposes described in subsection (1) of section 4 of this act.

(f) "Employee" means an individual engaged in service to an employer in the business of the employer, except that employee does not include an individual employed by the United States government.

(g) "Employer" means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs 1 or more individuals, except that employer does not include the United States government.

(h) "Family member" includes all of the following:

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

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

(iii) A person to whom the employee is legally married under the laws of any state or a domestic partner.

(iv) A grandparent.

(v) A grandchild.

(vi) A biological, foster, or adopted sibling.

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

(i) "Health care professional" means any of the following:

(i) Any person licensed under federal law or the law of this state to provide health care services, including, but not limited to, nurses, doctors, and emergency room personnel.

(ii) A certified midwife.

(j) "Retaliatory personnel action" means any of the following:

(i) Denial of any right guaranteed under this act.

(ii) A threat, discharge, suspension, demotion, reduction of hours, or other adverse action against an employee or former employee for exercise of a right guaranteed under this act.

(iii) Sanctions against an employee who is a recipient of public benefits for exercise of a right guaranteed under this act.

(iv) Interference with, or punishment for, an individual's participation in any manner in an investigation, proceeding, or hearing under this act.

(k) "Sexual assault" means any act that constitutes a violation of section 520b, 520c, 520d, 520e, 520f, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, 750.520f, and 750.520g.

(l) "Small business" means an employer for which fewer than 10 individuals work for compensation during a given week. In determining the number of individuals performing work for compensation during a given week, all individuals performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including individuals made available to work through the services of a temporary services or staffing agency or similar entity. An employer is not a small business if it maintained 10 or more employees on its payroll during any 20 or more calendar workweeks in either the current or the preceding calendar year.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.962.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.962.amended Definitions.

Sec. 2. As used in this act:

(a) "Benefit year" means any consecutive 12-month period used by an employer to calculate an eligible employee's benefits.

(b) "Department" means the department of licensing and regulatory affairs.

(c) "Director" means the director of the department or the director's designee.

(d) "Domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

(e) "Eligible employee" means an individual engaged in service to an employer in the business of the employer and from whom an employer is required to withhold for federal income tax purposes. Eligible employee does not include any of the following:

(i) An individual who is exempt from overtime requirements under section 13(a)(1) of the fair labor standards act, 29 USC 213(a)(1).

(ii) An individual who is not employed by a public agency, as that term is defined in section 3 of the fair labor standards act, 29 USC 203, and who is covered by a collective bargaining agreement that is in effect.

(iii) An individual employed by the United States government, another state, or a political subdivision of another state.

(iv) An individual employed by an air carrier as a flight deck or cabin crew member that is subject to title II of the railway labor act, 45 USC 151 to 188.

(v) An employee as described in section 201 of the railway labor act, 45 USC 181.

(vi) An employee as defined in section 1 of the railroad unemployment insurance act, 45 USC 351.

(vii) An individual whose primary work location is not in this state.

(viii) An individual whose minimum hourly wage rate is determined under section 4b of the improved workforce opportunity wage act, 2018 PA 337, MCL 408.934b.

(ix) An individual described in section 29(1)(l) of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.29.

(x) An individual employed by an employer for 25 weeks or fewer in a calendar year for a job scheduled for 25 weeks or fewer.

(xi) A variable hour employee as defined in 26 CFR 54.4980H-1.

(xii) An individual who worked, on average, fewer than 25 hours per week during the immediately preceding calendar year.

(f) "Employer" means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs 50 or more individuals. Employer does not include the United States government, another state, or a political subdivision of another state.

(g) "Family member" includes all of the following:

(i) A biological, adopted or foster child, stepchild or legal ward, or a child to whom the eligible employee stands in loco parentis.

(ii) A biological parent, foster parent, stepparent, or adoptive parent or a legal guardian of an eligible employee or an eligible employee's spouse or an individual who stood in loco parentis when the eligible employee was a minor child.

(iii) An individual to whom the eligible employee is legally married under the laws of any state.

(iv) A grandparent.

(v) A grandchild.

(vi) A biological, foster, or adopted sibling.

(h) "Health care provider" means that term as defined in section 101 of the family and medical leave act, 29 USC 2611.

(i) "Paid medical leave" means time off from work that is provided by an employer to an eligible employee that can be used for the purposes described in section 4(1).

(j) "Sexual assault" means any act that violates section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

History: 2018, Act 338, Eff. (sine die);—Am. 2018, Act 369, Eff. (sine die).

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***** 408.963.new THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE: See 408.963.amended *****

408.963.new Earned sick time to be provided by employer; accrual; use; "year" defined; workweek; compliance; pay rate; "normal hourly wage" defined; replacement worker not required.

Sec. 3. (1) Each employer shall provide earned sick time to each of the employer's employees in this state.

(a) Employees of a small business shall accrue a minimum of one hour of earned sick time for every 30

hours worked but shall not be entitled to use more than 40 hours of paid earned sick time in a year unless the employer selects a higher limit. If an employee of a small business accrues more than 40 hours of earned sick time in a calendar year, the employee shall be entitled to use an additional 32 hours of unpaid earned sick time in that year, unless the employer selects a higher limit. Employees of a small business must be entitled to use paid earned sick time before using unpaid earned sick time.

(b) All other employees shall accrue a minimum of one hour of paid earned sick time for every 30 hours worked but shall not be entitled to use more than 72 hours of paid earned sick time per year, unless the employer selects a higher limit.

(c) Earned sick time shall carry over from year to year, but a small business is not required to permit an employee to use more than 40 hours of paid earned sick time and 32 hours of unpaid earned sick time in a single year, and other employers are not required to permit an employee to use more than 72 hours of paid earned sick time in a single year.

(2) Earned sick time as provided in this section shall begin to accrue on the effective date of this law, or upon commencement of the employee's employment, whichever is later. An employee may use accrued earned sick time as it is accrued, except that an employer may require an employee hired after April 1, 2019, to wait until the ninetieth calendar day after commencing employment before using accrued earned sick time.

(3) For purposes of subsection (1), "year" shall mean a regular and consecutive twelve-month period, as determined by an employer.

(4) For purposes of earned sick time accrual under this act, an employee who is exempt from overtime requirements under section 13(a)(1) of the Fair Labor Standards Act, 29 USC 213(a)(1), is assumed to work 40 hours in each workweek unless the employee's normal work week is less than 40 hours, in which case earned sick time accrues based upon that normal workweek.

(5) An employer other than a small business is in compliance with this section if the employer provides any paid leave in at least the same amounts as that provided under this act that may be used for the same purposes and under the same conditions provided in this act and that is accrued at a rate equal to or greater than the rate described in subsections (1) and (2). An employer that is a small business is in compliance with this section if the employer provides paid leave in at least the same amounts as that provided under this act that may be used for the same purposes and under the same conditions provided in this act and that is accrued at a rate equal to or greater than the rate described in subsections (1) and (2) provided further that that employees of the small business are entitled to use paid earned sick time before using unpaid earned sick time. For purposes of this subsection, "paid leave" includes but is not limited to paid vacation days, personal days, and paid time off.

(6) An employer shall pay each employee using paid earned sick time at a pay rate equal to the greater of either the normal hourly wage for that employee or the minimum wage established under the workforce opportunity wage act, 2014 PA 138, MCL 408.411 to 408.424, but not less than the minimum wage rate established in section 4 of the workforce opportunity wage act, 2014, PA 138, MCL 408.414. For any employee whose hourly wage varies depending on the work performed, the "normal hourly wage" means the average hourly wage of the employee in the pay period immediately prior to the pay period in which the employee used paid earned sick time.

(7) An employer shall not require an employee to search for or secure a replacement worker as a condition for using earned sick time.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.963.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.963.amended Paid medical leave to be provided by employer; accrual; use; carry over for benefit year; pay rate; "hours worked" and "paid leave" defined.

Sec. 3. (1) An employer shall provide paid medical leave to each of the employer's eligible employees in this state.

(2) Except as otherwise provided in subsection (3), an eligible employee must accrue paid medical leave at a rate of at least one hour of paid medical leave for every 35 hours worked. An employer is not required to allow an eligible employee to accrue more than 1 hour of paid medical leave in a calendar week. An employer may limit an eligible employee's accrual of paid medical leave to not less than 40 hours per benefit year. An employer is not required to allow an eligible employee to carry over more than 40 hours of unused accrued

paid medical leave from one benefit year to another benefit year. An employer is not required to allow an eligible employee to use more than 40 hours of paid family medical leave in a single benefit year.

(3) As an alternative to subsection (2), an employer may provide at least 40 hours of paid medical leave to an eligible employee at the beginning of a benefit year. For eligible employees hired during a benefit year, an employer may prorate paid medical leave provided under this subsection. If an employer elects to provide paid medical leave to an eligible employee pursuant to this subsection, the employer is not required to allow the eligible employee to carry over any of that paid medical leave to another benefit year.

(4) Paid medical leave as provided in this section shall begin to accrue on the effective date of this law, or upon commencement of the employee's employment, whichever is later. An employee may use accrued paid medical leave as it is accrued, except that an employer may require an employee to wait until the ninetieth calendar day after commencing employment before using accrued paid medical leave.

(5) There is a rebuttable presumption that an employer is in compliance with this act if the employer provides at least 40 hours of paid leave to an eligible employee each benefit year.

(6) An employer shall pay each eligible employee using paid medical leave at a pay rate equal to the greater of either the normal hourly wage or base wage for that eligible employee or the minimum wage rate established in section 4 of the improved workforce opportunity wage act, 2018 PA 337, MCL 408.934. An employer is not required to include overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, or gratuities in the calculation of an eligible employee's normal hourly wage or base wage.

(7) As used in this section:

(a) "Hours worked" does not include, unless otherwise included by an employer, hours taken off from work by an eligible employee for paid leave.

(b) "Paid leave" includes, but is not limited to, paid vacation days, paid personal days, and paid time off.

History: 2018, Act 338, Eff. (sine die);—Am. 2018, Act 369, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

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***** 408.964.new THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE: See 408.964.amended *****

408.964.new Earned sick time; permissible uses; advance notice; incremental use; documentation; disclosure of details relating to domestic violence or sexual assault or family member's medical condition; other purposes.

Sec. 4. (1) An employer shall permit an employee to use the earned sick time accrued under section 3 for any of the following:

(a) The employee's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the employee's mental or physical illness, injury, or health condition; or preventative medical care for the employee.

(b) For the employee's family member's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the employee's family member's mental or physical illness, injury, or health condition; or preventative medical care for a family member of the employee.

(c) If the employee of the employee's family member is a victim of domestic violence or sexual assault, for medical care or psychological or other counseling for physical or psychological injury or disability; to obtain services from a victim services organization; to relocate due to domestic violence or sexual assault; to obtain legal services; or to participate in any civil or criminal proceedings related to or resulting from the domestic violence or sexual assault.

(d) For meetings at a child's school or place of care related to the child's health or disability, or the effects of domestic violence or sexual assault on the child; or

(e) For closure of the employee's place of business by order of a public official due to a public health emergency; for an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; or when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or employee's family member's presence in the community would jeopardize the health of others because of the employee's or family member's exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease.

(2) If the employee's need to use earned sick time is foreseeable, an employer may require advance notice,

not to exceed 7 days prior to the date the earned sick time is to begin, of the intention to use the earned sick time. If the employee's need for the earned sick time is not foreseeable, an employer may require the employee to give notice of the intention as soon as practicable.

(3) Earned sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

(4) For earned sick time of more than 3 consecutive days, an employer may require reasonable documentation that the earned sick time has been used for a purpose described in subsection (1). Upon the employer's request, the employee must provide the documentation to the employer in a timely manner. The employer shall not delay the commencement of earned sick time on the basis that the employer has not yet received documentation. Documentation signed by a health care professional indicating that earned sick time is necessary is reasonable documentation for purposes of this subsection. In cases of domestic violence or sexual assault, one of the following types of documentation selected by the employee shall be considered reasonable documentation: (a) a police report indicating that the employee or the employee's family member was a victim of domestic violence or sexual assault; (b) a signed statement from a victim and witness advocate affirming that the employee or employee's family member is receiving services from a victim services organization; or (c) a court document indicating that the employee or employee's family member is involved in legal action related to domestic violence or sexual assault. An employer shall not require that the documentation explain the nature of the illness or the details of the violence. If an employer chooses to require documentation for earned sick time, the employer is responsible for paying all out-of-pocket expenses the employee incurs in obtaining the documentation. If the employee does have health insurance, the employer is responsible for paying any costs charged to the employee by the health care provider for providing the specific documentation required by the employer.

(5) An employer shall not require disclosure of details relating to domestic violence or sexual assault or the details of an employee's or an employee's family member's medical condition as a condition of providing earned sick time under this act. If an employer possesses health information or information pertaining to domestic violence or sexual assault about an employee or employee's family member, the employer shall treat that information as confidential and shall not disclose that information except to the affected employee or with the permission of the affected employee.

(6) This act does not require an employer to provide earned sick time for any purposes other than as described in this section.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.964.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.964.amended Paid medical leave; permissible uses; advance notice; incremental use; documentation; disclosure of details relating to domestic violence or sexual assault or family member's medical condition; other purposes.

Sec. 4. (1) An employer shall allow an eligible employee to use paid medical leave accrued under section 3 for any of the following:

(a) The eligible employee's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the eligible employee's mental or physical illness, injury, or health condition; or preventative medical care for the eligible employee.

(b) The eligible employee's family member's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the eligible employee's family member's mental or physical illness, injury, or health condition; or preventative medical care for a family member of the eligible employee.

(c) If the eligible employee or the eligible employee's family member is a victim of domestic violence or sexual assault, the medical care or psychological or other counseling for physical or psychological injury or disability; to obtain services from a victim services organization; to relocate due to domestic violence or sexual assault; to obtain legal services; or to participate in any civil or criminal proceedings related to or resulting from the domestic violence or sexual assault.

(d) For closure of the eligible employee's primary workplace by order of a public official due to a public health emergency; for an eligible employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; or if it has been determined by the health authorities having jurisdiction or by a health care provider that the eligible employee's or eligible

employee's family member's presence in the community would jeopardize the health of others because of the eligible employee's or family member's exposure to a communicable disease, whether or not the eligible employee or family member has actually contracted the communicable disease.

(2) An eligible employee shall, when requesting to use paid medical leave, comply with his or her employer's usual and customary notice, procedural, and documentation requirements for requesting leave. An employer shall give an eligible employee at least 3 days to provide the employer with documentation. This act does not prohibit an employer from disciplining or discharging an eligible employee for failing to comply with the employer's usual and customary notice, procedural, and documentation requirements for requesting leave.

(3) Paid medical leave must be used in 1-hour increments unless the employer has a different increment policy and the policy is in writing in an employee handbook or other employee benefits document.

(4) An employer may require an eligible employee who is using paid medical leave because of domestic violence or sexual assault to provide documentation that the paid medical leave has been used for that purpose. The following types of documentation are satisfactory for purposes of this subsection:

(a) A police report indicating that the eligible employee or the eligible employee's family member was a victim of domestic violence or sexual assault.

(b) A signed statement from a victim and witness advocate affirming that the eligible employee or eligible employee's family member is receiving services from a victim services organization.

(c) A court document indicating that the eligible employee or eligible employee's family member is involved in legal action related to domestic violence or sexual assault.

(5) An employer shall not require that the documentation provided under subsection (4) explain the details of the violence. An employer shall not require disclosure of details relating to domestic violence or sexual assault or the details of an eligible employee's or an eligible employee's family member's medical condition as a condition of providing paid medical leave under this act. If an employer possesses health information or information pertaining to domestic violence or sexual assault about an eligible employee or eligible employee's family member, the employer shall treat that information as confidential and shall not disclose that information except to the affected eligible employee or with the permission of the affected eligible employee.

(6) This act does not require an employer to provide paid medical leave for any purposes other than as described in this section.

History: 2018, Act 338, Eff. (sine die);—Am. 2018, Act 369, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

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***** 408.965.new THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE: See 408.965.amended *****

408.965.new Transfer of employee to separate division, entity, or location; retention of earned sick time; reinstatement; successor employer; unused earned sick time.

Sec. 5. (1) If an employee is transferred to a separate division, entity, or location, but remains employed by the same employer, the employee shall retain all earned sick time that was accrued at the prior division, entity, or location and may use all accrued earned sick time as provided in section 4. If an employee separates from employment and is rehired by the same employer within 6 months of the separation, the employer shall reinstate previously accrued, unused earned sick time and shall permit the reinstated employee to use that earned sick time and accrue additional earned sick time upon reinstatement.

(2) If a different employer succeeds or takes the place of an existing employer, the successor employer assumes the responsibility for the earned sick time rights that employees who remain employed by the successor employer accrued under the original employer. Those employees are entitled to use earned sick time previously accrued on the terms provided in this act.

(3) This act does not require an employer to provide financial or other reimbursement to an employee for accrued earned sick time that was not used upon the employee's termination, resignation, retirement, or other separation from employment.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

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408.965.amended Transfer of employee to separate division, entity, or location; retention of paid medical leave; unused paid medical leave.

Sec. 5. (1) If an eligible employee is transferred to a separate division, entity, or location, but remains employed by the same employer, the eligible employee retains all paid medical leave that was accrued at the prior division, entity, or location and may use the accrued paid medical leave pursuant to section 4. If an eligible employee separates from employment and is rehired by the same employer, the employer is not required to allow the eligible employee to retain any unused paid medical leave that the eligible employee previously accumulated while working for the employer.

(2) This act does not require an employer to provide financial or other reimbursement to an eligible employee for accrued paid medical leave that was not used before the end of a benefit year or before the eligible employee's termination, resignation, retirement, or other separation from employment.

History: 2018, Act 338, Eff. (sine die);—Am. 2018, Act 369, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.966.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

***** 408.966 THIS SECTION IS REPEALED BY ACT 369 OF 2018 EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.966.new Exercise of rights under act; interference, restraint, or denial prohibited; retaliatory personnel action or discrimination prohibited; absence control policy leading to or resulting in retaliatory personnel action prohibited; person mistakenly alleging violation; rebuttable presumption of violation.

Sec. 6. (1) An employer or any other person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this act.

(2) An employer shall not take retaliatory personnel action or discriminate against an employee because the employee has exercised a right protected under this act. Rights protected by this act include, but are not limited to, the right to use earned sick time pursuant to this act, the right to file a complaint or inform any person about any employer's alleged violation of this act, the right to cooperate with the department in its investigations of alleged violations of this act, and the right to inform any person of his or her rights under this act.

(3) An employer's absence control policy shall not treat earned sick time taken under this act as an absence that may lead to or result in retaliatory personnel action.

(4) The protections in this section apply to any person who mistakenly but in good faith alleges a violation of this section.

(5) There is a rebuttable presumption of a violation of this section if an employer takes adverse personnel action against a person within 90 days after that person does any of the following:

- (a) Files a complaint with the department or a court alleging a violation of this act.
- (b) Informs any person about an employer's alleged violation of this act.
- (c) Cooperates with the department or another person in the investigation or prosecution of any alleged violation of this act.
- (d) Opposes any policy, practice, or act that is prohibited under this act.
- (e) Informs any person of his or her rights under this act.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.967.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

***** 408.967.new THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE: See 408.967.amended *****

408.967.new Violation of act; actions by employee; enforcement by director; civil remedies;

civil fine.

Sec. 7. (1) If an employer violates this act, the employee affected by the violation, at any time within 3 years after the violation or the date when the employee knew of the violation, whichever is later, may do any of the following:

(a) Bring a civil action for appropriate relief, including, but not limited to, payment for used earned sick time; rehiring or reinstatement to the employee's previous job; payment of back wages; reestablishment of employee benefits to which the employee otherwise would have been eligible if the employee had not been subjected to retaliatory personnel action or discrimination; and an equal additional amount as liquidated damages together with costs and reasonable attorney fees as the court allows.

(b) File a claim with the department, which shall investigate the claim. Filing a claim with the department is neither a prerequisite nor a bar to bringing a civil action.

(2) (a) The director shall enforce the provisions of this act. In effectuating such enforcement, the director shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this act and investigate complaints received by the department in a timely manner.

(b) Any person alleging a violation of this chapter shall have the right to file a complaint with the department. The department shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation, provided, however, that with the authorization of such person, the department may disclose his or her name and identifying information as necessary to enforce this chapter or for other appropriate purposes.

(c) Upon receiving a complaint alleging a violation of this chapter, the department shall investigate such complaint and attempt to resolve it through mediation between the complainant and the subject of the complaint, or other means. The department shall keep complainants notified regarding the status of their complaint and any resultant investigation. If the department believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation and the relief required of the offending person or entity. The department shall prescribe the form and wording of such notices of violation including any method of appealing the decision of the department.

(d) The department shall have the power to impose penalties and to grant an employee or former employee all appropriate relief including but not limited to payment of all earned sick time improperly withheld, any and all damages incurred by the complainant as the result of violation of this act, back pay and reinstatement in the case of job loss.

(3) If the director determines that there is reasonable cause to believe that an employer violated this act and the department is subsequently unable to obtain voluntary compliance by the employer within a reasonable time, the department shall bring a civil action as provided in subsection (1)(a) on behalf of the employee. The department may investigate and file a civil action under subsection (1)(a) on behalf of all employees that employer who are similarly situated at the same work site and who have not brought a civil action under subsection (1)(a). A contract or agreement between the employer and the employee or any acceptance by the employee of a paid or unpaid leave policy that provides fewer rights or benefits than provided by this act is void and unenforceable.

(4) In addition to liability for civil remedies described in this section, an employer who fails to provide earned sick time in violation of this act or takes retaliatory personnel action against an employee or former employee is subject to a civil fine of not more than \$1,000.00.

(5) An employer that willfully violates a notice or posting requirement of section 8 is subject to a civil fine of not more than \$100.00 for each separate violation.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.967.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.967.amended Violation of act; actions by employee; enforcement by department; administrative fine.

Sec. 7. (1) If an employer violates this act, the eligible employee affected by the violation, at any time within 6 months after the violation may file a claim with the department.

(2) The director shall enforce this act. The director shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this act and investigate complaints

received by the department in a timely manner.

(3) Upon receiving a complaint alleging a violation of this act, the department shall investigate the complaint and attempt to resolve it through mediation between the complainant and the subject of the complaint, or other means. The department shall keep complainants notified regarding the status of their complaint and any resultant investigation. If the department determines that a violation has occurred, it shall issue to the offending person a notice of violation and the relief required of the offending person. The department shall prescribe the form and wording of notices of violation, which must include the method of appealing the determination of the department.

(4) The department may impose penalties and grant an eligible employee or former eligible employee payment of all paid medical leave improperly withheld. The department is the trustee for the eligible employee or former eligible employee and shall distribute and account for money collected under this subsection.

(5) An employer that fails to provide paid medical leave in violation of this act is subject to an administrative fine of not more than \$1,000.00.

(6) An employer that willfully violates the posting requirement of section 8 is subject to an administrative fine of not more than \$100.00 for each separate violation.

History: 2018, Act 338, Eff. (sine die);—Am. 2018, Act 369, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.968.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

***** 408.968.new THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE: See 408.968.amended *****

408.968.new Written notice to employee; contents; language; display of poster; creation by department; availability.

Sec. 8. (1) An employer subject to this act shall provide written notice to each employee at the time of hiring or by April 1, 2019, whichever is later, including, but not limited to, all of the following:

- (a) The amount of earned sick time required to be provided to an employee under this act.
- (b) The employer's choice of how to calculate a "year" according to subsection 3 of section 3.
- (c) The terms under which earned sick time may be used.
- (d) That retaliatory personnel action by the employer against an employee for requesting or using earned sick time for which the employee is eligible is prohibited.

(e) The employee's right to bring a civil action or file a complaint with the department for any violation of this act.

(2) The notice required under subsection (1) shall be in English, Spanish, and any language that is the first language spoken by at least 10% of the employer's workforce, as long as the department has translated the notice into such language.

(3) An employer shall display a poster at the employer's place of business, in a conspicuous place that is accessible to employees, that contains the information in subsection (1). The poster displayed should be in English, Spanish, and any language that is the first language spoken by at least 10% of the employer's workforce, as long as the department has translated the poster into such language.

(4) The department shall create and make available to employers notices and posters that contain the information required under subsection (1) for employers' use in complying with this section. The department shall provide such notices and posters in English, Spanish, and any other languages deemed appropriate by the department.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.968.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.968.amended Display of poster notice to employee; contents; availability.

Sec. 8. (1) An employer shall display a poster at the employer's place of business, in a conspicuous place that is accessible to eligible employees, that contains all of the following information:

- (a) The amount of paid medical leave required to be provided to an eligible employee under this act.
 - (b) The terms under which paid medical leave may be used.
 - (c) The eligible employee's right to file a complaint with the department for any violation of this act.
- (2) The department shall create and make available to employers, at no cost, posters that contain the information required under subsection (1) for employers' use in complying with this section.

History: 2018, Act 338, Eff. (sine die);—Am. 2018, Act 369, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.969.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

***** 408.969 THIS SECTION IS REPEALED BY ACT 369 OF 2018 EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.969.new Multilingual outreach program.

Sec. 9. The department shall develop and implement a multilingual outreach program to inform employees, parents, and persons who are under the care of a health care provider about the availability of earned sick time under this act. This program must include distribution of notices and other written materials in English and in other languages to child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.970.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

***** 408.970.new THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE: See 408.970.amended *****

408.970.new Retention of records.

Sec. 10. An employer shall retain for not less than 3 years records documenting the hours worked and earned sick time taken by employees. To monitor compliance with the requirements of this act, an employer shall allow the department access to those records, with appropriate notice and at a mutually agreeable time. If a question arises as to whether an employer has violated an employee's right to earned sick time under this act and the employer does not maintain or retain adequate records documenting the hours worked and earned sick time taken by the employee or does not allow the department reasonable access to those records, there is a presumption that the employer has violated the act, which can be rebutted only by clear and convincing evidence.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.970.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.970.amended Retention of records; open for inspection.

Sec. 10. An employer shall retain for not less than 1 year records documenting the hours worked and paid medical leave taken by eligible employees. Those records shall be open to inspection by the director at any reasonable time.

History: 2018, Act 338, Eff. (sine die);—Am. 2018, Act 369, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.971.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

***** 408.971.new THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF

THE 2018 REGULAR SESSION SINE DIE: See 408.971.amended *****

408.971.new Other law, regulation, requirement, policy, or standard, including collective bargaining agreement; scope and limitation of act.

Sec. 11. (1) This act provides minimum requirements pertaining to earned sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard, including a collective bargaining agreement, that provides for greater accrual or use of time off, whether paid or unpaid, or that extends other protections to employees.

(2) This act does not do any of the following:

(a) Prohibit an employer from providing more earned sick time than is required under this act.

(b) Diminish any rights provided to any employee under a collective bargaining agreement.

(c) Subject to section 12, preempt or override the terms of any collective bargaining agreement in effect prior to the effective date of this act.

(d) Prohibit an employer from establishing a policy that permits an employee to donate unused accrued earned sick time to another employee.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.971.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.971.amended Scope and limitation of act.

Sec. 11. This act does not do any of the following:

(a) Prohibit an employer from providing more paid medical leave than is required under this act.

(b) Diminish any other rights provided to any eligible employee under a collective bargaining agreement.

(c) Subject to section 12, preempt or override the terms of any collective bargaining agreement in effect prior to the effective date of this act.

(d) Prohibit an employer from establishing a policy that permits an eligible employee to donate unused accrued paid medical leave to another eligible employee.

History: 2018, Act 338, Eff. (sine die);—Am. 2018, Act 369, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.972.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.972.new Collective bargaining agreement.

Sec. 12. If an employer's employees are covered by a collective bargaining agreement in effect on the effective date of this act, this act applies beginning on the stated expiration date in the collective bargaining agreement, notwithstanding any statement in the agreement that it continues in force until a future date or event or the execution of a new collective bargaining agreement.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.973.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

***** 408.973 THIS SECTION IS REPEALED BY ACT 369 OF 2018 EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.973.new Rules.

Sec. 13. The director may promulgate rules in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as necessary to administer this act.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.974.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

***** 408.974.new THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE: See 408.974.amended *****

408.974.new Severability.

Sec. 14. If any portion of this act or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect, impair, or invalidate the other portions or applications of the act that can be given effect without the invalid portion or application, and to this end the provisions of this act are declared to be severable.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.974.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.974.amended Severability.

Sec. 14. If any portion of this act or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect, impair, or invalidate the other portions or applications of the act that can be given effect without the invalid portion or application, and to this end the provisions of this act are declared to be severable. If a federal paid medical leave mandate is enacted, this act does not apply as of the effective date of the mandate.

History: 2018, Act 338, Eff. (sine die);—Am. 2018, Act 369, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.