

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 3092**

BY DELEGATES FLEISCHAUER, PINSON, THOMPSON,  
YOUNG, DOYLE, GRIFFITH, LOVEJOY, GARCIA, AND SKAFF

[Introduced March 12, 2021; Referred to the Committee on  
Workforce Development then Health and Human  
Resources]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §16-63-1, §16-63-2, §16-63-3, §16-63-4, §16-63-5, §16-63-6, §16-63-7, §16-  
3 63-8, §16-63-9, §16-63-10, §16-63-11, §16-63-12, §16-63-13, §16-63-14, and §16-63-15,  
4 all relating to ensuring that all workers in West Virginia can address their own health  
5 and safety needs and the health and safety needs of their families by requiring  
6 employers to provide a minimum level of paid sick time, including time to care for their  
7 family members; diminishing public and private health care costs and promoting  
8 preventive health services in West Virginia by enabling workers to seek early and  
9 routine medical care for themselves and their family members; protecting the public's  
10 health in West Virginia by reducing the risk of contagion, including during a public  
11 health emergency, and to ensure that workers in West Virginia and their families can  
12 follow the orders and recommendations of public health officials or health care  
13 professionals during an emergency that threatens their health and the health of others  
14 in the community; promoting the economic security and stability of workers and their  
15 families; protecting employees in West Virginia from losing their jobs or facing  
16 workplace discipline when they use the paid sick time they earn to care for themselves  
17 or their families; assisting victims of domestic violence and their family members by  
18 providing them job-protected time away from work to receive treatment and to take the  
19 necessary steps to ensure their safety; safeguarding the public welfare, health, safety  
20 and prosperity of the people of West Virginia; and accomplishing the purposes  
21 described in paragraphs (1)-(7) in a manner that is feasible for employers; and all to  
22 be known as the "Emergency Healthy Families and Workplace Act."

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 63. EMERGENCY HEALTHY FAMILIES AND WORKPLACE ACT.**

**§16-63-1. Definitions.**

1           For purposes of this article:

2           (1) "Division" means the Division of Labor.

3           (2) "Domestic violence" is as defined in §48-27-202 of this code.

4           (3) "Employee" includes any individual employed by an employer within West Virginia.

5           "Employee" includes recipients of public benefits who are engaged in work activity as a condition  
6           of receiving public assistance. An employee does not include a bona fide independent contractor.

7           "Employee" does not include an "employee" as defined by 45 U.S.C. 351(d) who is subject to the  
8           federal Railroad Unemployment Insurance Act, 45 U.S.C. 351 et seq.

9           (A) There shall be a rebuttable presumption that any individual performing work for a hiring  
10           entity is an employee under this article unless the hiring entity can demonstrate that all of the  
11           following conditions are satisfied:

12           (i) The individual is free from the control and direction of the hiring entity in connection with  
13           the performance of the labor or services, both under the contract for the performance of the work  
14           and in fact;

15           (ii) The individual performs labor or services that are outside the usual course of the hiring  
16           entity's business; and

17           (iii) The individual is customarily engaged in an independently established trade,  
18           occupation, profession or business of the same nature as that involved in the labor or services  
19           performed.

20           (4) "Employer" includes the State of West Virginia, its agencies, departments, and all its  
21           political subdivisions, any individual, partnership, association, public or private corporation, or any  
22           person or group of persons acting directly or indirectly in the interest of any employer in relation  
23           to an employee. For the purposes of this article, "employer" does not include the United States  
24           Government.

25           (5) "Family member" means:

26           (A) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic

27 partner, or a child to whom the employee stands in loco parentis, regardless of age;

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

31 (C) A person to whom the employee is legally married under the laws of any state, or a  
32 domestic partner of an employee as registered under the laws of any state or political subdivision;

33 (D) A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step  
34 relationship) of the employee or the employee's spouse or domestic partner;

35 (E) A person for whom the employee is responsible for providing or arranging care,  
36 including but not limited to helping that individual obtain diagnostic, preventive, routine or  
37 therapeutic health treatment; or

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

40 (6) "Health care professional" means any person licensed under federal or any state law  
41 to provide medical or emergency services, including but not limited to doctors, nurses and  
42 emergency room personnel.

43 (7) "Paid sick time" means time that is compensated at the same hourly rate and with the  
44 same benefits, including health care benefits, as the employee normally earns during hours  
45 worked and is provided by an employer to an employee for the purposes described in §16-63-3  
46 and §16-63-4 of this code, but in no case shall this hourly amount be less than that provided under  
47 §21-5C-2(a) of this code.

48 (8) "Public health emergency" means a declaration or proclamation related to a public  
49 health threat, risk, disaster, or emergency that is made or issued by a federal, state or local official  
50 with the authority to make or issue such a declaration or proclamation.

51 (9) "Retaliatory personnel action" means denial of any right guaranteed under this article  
52 and any threat, discharge, suspension, demotion, reduction of hours, reporting or threatening to

53 report an employee's suspected citizenship or immigration status, or the suspected citizenship or  
54 immigration status of a family member of the employee to a federal, state or local agency, or any  
55 other adverse action against an employee for the exercise of any right guaranteed herein  
56 including any sanctions against an employee who is the recipient of public benefits for rights  
57 guaranteed under this article. Retaliation shall also include interference with or punishment for in  
58 any manner participating in or assisting an investigation, proceeding or hearing under this article.

59 (10) "Sexual abuse" means any of the offenses proscribed in §61-8b-7, §61-8b-8, or §61-  
60 8b-9 of this code.

61 (11) "Sexual assault" means any of the offenses proscribed in §61-8b-3, §61-8b-4, or §61-  
62 8b-5 of this code.

63 (12) "Stalking" means any of the offenses proscribed in §61-2-9a of this code.

64 (13) "Whistleblower" means a current or former employee, contractor, subcontractor or  
65 employee of such a contractor or subcontractor of an alleged violator of this article, regardless of  
66 whether that person has received full or partial relief under §16-63-9 of this code.

67 (14) "Year" means a regular and consecutive 12-month period as determined by the  
68 employer; except that for the purposes of §16-63-6 and §16-63-8 of this code, "year" shall mean  
69 a calendar year.

**§16-63-2. Accrual of General Paid Sick Leave Time.**

1 (a) All employees shall accrue a minimum of one hour of paid sick time for every 30 hours  
2 worked. Employees shall not use more than 72 hours of paid sick time in a year, unless the  
3 employer selects a higher limit.

4 (b) Employees who are exempt from overtime requirements under 29 U.S.C. §213(a)(1)  
5 of the Federal Fair Labor Standards Act will be assumed to work 40 hours in each work week for  
6 purposes of paid sick time accrual unless their normal work week is less than 40 hours, in which  
7 case paid sick time accrues based upon that normal work week.

8 (c) Paid sick time as provided in this section shall begin to accrue at the commencement

9 of employment or on the date this law goes into effect, whichever is later. An employee shall be  
10 entitled to use paid sick time as it is accrued. An employer may provide all paid sick time that an  
11 employee is expected to accrue in a year at the beginning of the year.

12 (d) Paid sick time shall be carried over to the following year, but this article does not require  
13 an employer to permit an employee to use more than 72, or the number of hours decided upon in  
14 subsection (a) above, hours of paid sick time per year, in addition to any paid sick time pursuant  
15 to §16-63-4 of this code during a public health emergency. Alternatively, in lieu of carryover of  
16 unused paid sick time provided pursuant to this section from one year to the next, an employer  
17 may pay an employee for unused paid sick time provided pursuant to this section at the end of a  
18 year and provide the employee with an amount of paid sick time that meets or exceeds the  
19 requirements of this section that is available for the employee's immediate use at the beginning  
20 of the subsequent year.

21 (e) Any employer with a paid leave policy, such as a paid time off policy, who makes  
22 available an amount of paid leave sufficient to meet the requirements of this article that may be  
23 used for the same purposes and under the same conditions as paid sick time under this article is  
24 not required to provide additional paid sick time under this article.

25 (f) If an employee is transferred to a separate division, entity or location, but remains  
26 employed by the same employer, the employee is entitled to all paid sick time accrued at the prior  
27 division, entity or location and is entitled to use all paid sick time as provided in this article. When  
28 there is a separation from employment and the employee is rehired within 12 months of separation  
29 by the same employer, previously accrued paid sick time that had not been used shall be  
30 reinstated. Further, the employee shall be entitled to use accrued paid sick time and accrue  
31 additional paid sick time at the re-commencement of employment.

32 (g) When a different employer succeeds or takes the place of an existing employer, all  
33 employees of the original employer who remain employed by the successor employer are entitled  
34 to all paid sick time they accrued or received under this article when employed by the original

35 employer, and are entitled to use paid sick time previously accrued or received under this Article.

36 (h) At its discretion, an employer may loan paid sick time to an employee in advance of  
37 accrual by such employee.

**§16-63-3. Use of General Paid Sick Time.**

1 (a) Paid sick time shall be provided to an employee by an employer for:

2 (1) An employee's mental or physical illness, injury or health condition; an employee's  
3 need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health  
4 condition; an employee's need for preventive medical care;

5 (2) Care of a family member with a mental or physical illness, injury or health condition;  
6 care of a family member who needs medical diagnosis, care, or treatment of a mental or physical  
7 illness, injury or health condition; care of a family member who needs preventive medical care; or  
8 in the case of a child, to attend a school meeting or a meeting at a place where the child is  
9 receiving care necessitated by the child's health condition or disability, domestic violence, sexual  
10 assault, sexual abuse, or stalking; or

11 (3) Absence necessary due to domestic violence, sexual assault, sexual abuse, or  
12 stalking, provided the leave is to allow the employee to obtain for the employee or the employee's  
13 family member:

14 (A) Medical attention needed to recover from physical or psychological injury or disability  
15 caused by domestic violence, sexual assault, sexual abuse, or stalking;

16 (B) Services from a victim services organization;

17 (C) Psychological or other counseling;

18 (D) Relocation or taking steps to secure an existing home due to the domestic violence,  
19 sexual assault, sexual abuse, or stalking; or

20 (E) Legal services, including preparing for or participating in any civil or criminal legal  
21 proceeding related to or resulting from the domestic violence, sexual assault, sexual abuse, or  
22 stalking.

23 (b) Paid sick time under this section shall be provided upon the oral request of an  
24 employee. When possible, the request shall include the expected duration of the absence.

25 (c) When the use of paid sick time under this section is foreseeable, the employee shall  
26 make a good faith effort to provide notice of the need for such time to the employer in advance of  
27 the use of paid sick time and shall make a reasonable effort to schedule the use of paid sick time  
28 in a manner that does not unduly disrupt the operations of the employer.

29 (d) An employer that requires notice of the need to use paid sick time under this section  
30 where the need is not foreseeable shall provide a written policy that contains reasonable  
31 procedures for employees to provide notice. An employer that has not provided to the employee  
32 a copy of its written policy for providing such notice shall not deny paid sick time to the employee  
33 based on non-compliance with such a policy.

34 (e) An employer may not require, as a condition of an employee's taking paid sick time  
35 under this section and §16-63-4 of this code, that the employee search for or find a replacement  
36 worker to cover the hours during which the employee is using paid sick time.

37 (f) Paid sick time under this section and §16-63-4 of this code may be used in the smaller  
38 of hourly increments or the smallest increment that the employer's payroll system uses to account  
39 for absences or use of other time.

40 (g) Except as provided in §16-63-4 of this code, for paid sick time of more than three  
41 consecutive work days, an employer may require reasonable documentation that the paid sick  
42 time has been used for a purpose covered by subsection (a).

43 (1) Documentation signed by a health care professional indicating that paid sick time is or  
44 was necessary shall be considered reasonable documentation. However, if the employee or  
45 employees family member did not receive services from a health care professional, or if  
46 documentation cannot be obtained from a health care professional in reasonable time or without  
47 added expense, the employee can provide a written statement indicating that the employee is  
48 taking or took paid sick time for a qualifying purpose covered by subsection (a). Such employee



49 writing need not be notarized or in any particular format.

50 (2) In cases of domestic violence, sexual assault, sexual abuse, or stalking, one of the  
51 following types of documentation selected by the employee shall be considered reasonable  
52 documentation: (i) a police report indicating that the employee or the employee's family member  
53 was a victim of domestic violence, sexual assault, sexual abuse, or stalking; (ii) a written  
54 statement from a witness advocate affirming that the employee or employee's family member is  
55 or was receiving services from a victim services organization; (iii) a court document indicating that  
56 the employee or employee's family member is or was involved in legal action related to domestic  
57 violence, sexual assault, sexual abuse, or stalking; or (iv) a written statement from the employee  
58 affirming that the employee or employee's family member is taking or took paid sick time for a  
59 qualifying purpose of subsection (a). A written statement pursuant to this subsection need not be  
60 notarized or in any particular format.

61 (3) An employer may not require that the documentation explain the nature of the illness,  
62 details of the underlying health needs, or the details of the domestic violence, sexual assault,  
63 sexual abuse, or stalking.

**§16-63-4. Additional Emergency Paid Sick Time During a Public Health Emergency.**

1 (a) On the date of a public health emergency affecting West Virginia, an employer shall  
2 provide each employee of an employer with additional paid sick time, in addition to paid sick time  
3 under §16-63-2 and §16-63-3 of this code of this code, in the following amount:

4 (1) Employees who normally work 40 or more hours in a week shall be provided at least  
5 80 hours of additional paid sick time;

6 (2) Employees who work fewer than 40 hours in a week shall be provided an amount of  
7 additional paid sick time equal to the amount of time the employee is otherwise scheduled to work  
8 or works on average in a two-week period, whichever is greater.

9 (b) In the case of an employee described in subdivision (2), subsection (a) of this section  
10 whose schedule varies from week to week, the employer shall use, in place of such number to

11 determine the amount of time worked on average in a two-week period:

12 (1) Subject to paragraph (B), subdivision (3), subsection (a) of this section, a number equal  
13 to the average number of hours that the employee was scheduled per week over the six-month  
14 period ending on the date on which the employee takes the public health emergency leave,  
15 including hours for which the employee took leave of any type:

16 (2) If the employee did not work over such period, the reasonable expectation of the  
17 employee at the time of hiring of the average number of hours per week that the employee would  
18 normally be scheduled to work.

19 (c) If a public health emergency was declared before and remains in effect on the effective  
20 date of this article, paid sick time under this section shall be:

21 (1) Provided to employees pursuant to subsection (a) of this section on the effective date  
22 of this article; and

23 (2) Made available retroactively to employees employed on the effective date of this  
24 article.

25 (d) The paid sick time required in subsection (a) of this section shall be provided to  
26 employees immediately for use for any of the purposes described in subsection (e) of this section  
27 beginning on the date of any public health emergency, regardless of how long they have been  
28 employed. An employee shall be entitled to use paid sick time under this section until four weeks  
29 following the official termination or suspension of the public health emergency.

30 (e) The paid sick time required in subsection (a) of this section shall be provided to an  
31 employee by an employer when the employee is unable to perform the functions of the position  
32 of such employee, including through telework, due to a need for leave for any of the following  
33 purposes related to a public health emergency:

34 (1) An employee's need to:

35 (A) Self-isolate and care for oneself because the individual is diagnosed with a  
36 communicable illness related to a public health emergency;

37 (B) Self-isolate and care for oneself because the individual is experiencing symptoms of  
38 a communicable illness related to a public health emergency;

39 (C) Seek preventive care concerning a communicable illness related to a public health  
40 emergency; or

41 (D) Seek or obtain medical diagnosis, care, or treatment if experiencing symptoms of a  
42 communicable illness related to a public health emergency.

43 (2) An employee's need to comply with an order or determination to self-isolate, on the  
44 basis that the employee's physical presence on the job or in the community would jeopardize the  
45 employee's health, the health of other employees, or the health of an individual in the employee's  
46 household because of:

47 (A) Possible exposure to a communicable illness related to a public health emergency; or

48 (B) Exhibiting of symptoms of a communicable illness related to a public health emergency,  
49 regardless of whether the employee has been diagnosed with such illness;

50 (3) An employee's need to take care of a family member who:

51 (A) is self-isolating, seeking preventive care, or seeking or obtaining medical diagnosis,  
52 care, or treatment for the purposes described in subdivision (1), subsection (e) of this section; or

53 (ii) self-isolating due to an order or determination as described in subdivision (2),  
54 subsection (e) of this section;

55 (4) An employee's inability to work or telework while subject to an individual or general  
56 local, state, or federal quarantine or isolation order, including a stay-at-home order, related to a  
57 public health emergency;

58 (5) An employee's need to take care of a child or other family member when the care  
59 provider of such individual is unavailable due to a public health emergency, or if the child's or  
60 family member's school or place of care has been closed by a local, state or federal public official  
61 or at the discretion of the school or place of care due to a public health emergency, including if a  
62 school or place of care:

63 (i) is physically closed but providing virtual learning instruction;

64 (ii) requires or makes optional virtual learning instruction; or

65 (iii) requires or makes available a hybrid of in-person and virtual learning instruction

66 models; or

67 (f) An employee's inability to work because the employee has a health condition that may

68 increase susceptibility to or risk of a communicable illness related to the public health emergency

69 including, but not limited to: age, heart disease, asthma, lung disease, diabetes, kidney disease,

70 or a weakened immune system.

71 (g) An order or determination pursuant to subdivision (2), subsection (e) and subdivision

72 (3), subsection (e) of this section may be made by a local, state, or federal public official, a health

73 authority having jurisdiction, a health care professional, or the employer of the employee or

74 employee's family member. Such order or determination need not be specific to such employee

75 or family member.

76 (h) An employee may first use the paid sick time under this section prior to using paid sick

77 time for purposes under section 3(1). An employer may not require an employee to use other paid

78 leave provided by the employer to the employee before the employee uses the paid sick time

79 under this article.

80 (i) Notwithstanding any other provision in this article, the employee shall provide notice to

81 the employer of the need for paid sick time as practicable only when the need for paid sick time

82 is foreseeable and the employer's place of business has not been closed.

83 (j) Notwithstanding any other provision in this article, documentation shall not be required

84 for paid sick time under this section.

**§16-63-5. Exercise of Rights Protected; Retaliation Prohibited.**

1 (a) It shall be unlawful for an employer or any other person to interfere with, restrain, or

2 deny the exercise of, or the attempt to exercise, any right protected under this article.

3 (b) An employer shall not take retaliatory personnel action or discriminate against an

4 employee or former employee because the person has exercised rights protected under this  
5 article. Such rights include but are not limited to the right to request or use paid sick time pursuant  
6 to this article; the right to file a complaint with the division or courts or inform any person about  
7 any employer's alleged violation of this article; the right to participate in an investigation, hearing  
8 or proceeding or cooperate with or assist the division in its investigations of alleged violations of  
9 this article; and the right to inform any person of his or her potential rights under this article.

10 (c) It shall be unlawful for an employer's absence control policy to count paid sick time  
11 taken under this article as an absence that may lead to or result in discipline, discharge, demotion,  
12 suspension, or any other adverse action.

13 (d) Protections of this section shall apply to any person who mistakenly but in good faith  
14 alleges violations of this article.

15 (e) There shall be a rebuttable presumption of unlawful retaliatory personnel action under  
16 this section whenever an employer takes adverse action against a person within 90 days of when  
17 that person:

18 (1) Files a complaint with the division or a court alleging a violation of any provision of this  
19 article;

20 (2) Informs any person about an employer's alleged violation of this article;

21 (3) Cooperates with the division or other persons in the investigation or prosecution of any  
22 alleged violation of this article;

23 (4) Opposes any policy, practice, or act that is unlawful under this article; or

24 (5) Informs any person of his or her rights under this article.

### **§16-63-6. Notice and Posting.**

1 (a) Notwithstanding §21-5-9 of this code, employers shall give employees written notice  
2 of the following at the commencement of employment or by the effective date of this article,  
3 whichever is later, and annually thereafter: Employees are entitled to paid sick time and the  
4 amount of paid sick time, the terms of its use guaranteed under this article, that retaliatory

5 personnel action against employees who request or use paid sick time is prohibited, that each  
6 employee has the right to file a complaint or bring a civil action if paid sick time as required by this  
7 article is denied by the employer or the employee is subjected to retaliatory personnel action for  
8 requesting or taking paid sick time, and the contact information for the division where questions  
9 about rights and responsibilities under this article can be answered.

10 (b) Within seven days of the declaration or proclamation of a public health emergency,  
11 employers shall provide employees with written notice of the public health emergency and their  
12 right to additional paid sick time pursuant to §16-63-4 of this code. If a public health emergency  
13 continues for a period of longer than three months, employers shall be required to provide written  
14 notice to their employees pursuant to this section every three months.

15 (c) The notice required in subsection (a) and subsection (b) of this section shall be in  
16 English and any language that is the first language spoken by at least five percent of the  
17 employer's workforce, provided that such notice has been provided by the division.

18 (d) The amount of paid sick time available to the employee, the amount of paid sick time  
19 taken by the employee to date in the year and the amount of pay the employee has received as  
20 paid sick time shall be recorded in, or on an attachment to, the employee's regular paycheck.

21 (e) Employers shall display a poster that contains the information required in subsection  
22 (a) of this section in a conspicuous and accessible place in each establishment where such  
23 employees are employed: *Provided*, That in cases where the employer does not maintain a  
24 physical workplace, or an employee teleworks or performs work through a web-based or app-  
25 based platform, notification shall be sent via electronic communication or a conspicuous posting  
26 in the web-based or app-based platform. The poster displayed shall be in English and any  
27 language that is the first language spoken by at least five percent of the employer's workforce,  
28 provided that such poster has been provided by the division.

29 (f) The division shall create and make available to employers, in all languages spoken by  
30 more than five percent of the state's workforce and any language deemed appropriate by the

31 division, model notices and posters that contain the information required under subsection (a) and  
32 subsection (b) of this section for employers' use in complying with subsection (a), subsection (b),  
33 and subsection (c) of this section.

34 (g) If an employer's business is closed due to a public health emergency, the notice and  
35 posting requirements under subsection (a), subsection (b), and subsection (c) of this section shall  
36 be waived for the period in which the place of business is closed.

37 (h) An employer who willfully violates the notice and posting requirements of this section  
38 shall be subject to a civil fine in an amount not to exceed \$100 for each separate offense.

**§16-63-7. Employer Records.**

1 Employers shall retain records documenting hours worked by employees and paid sick  
2 time taken by employees, for a period of five years, and shall allow the division access to such  
3 records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the  
4 requirements of this article. When an issue arises as to an employee's entitlement to paid sick  
5 time under this article, if the employer does not maintain or retain adequate records documenting  
6 hours worked by the employee and paid sick time taken by the employee, or does not allow the  
7 division reasonable access to such records, it shall be presumed that the employer has violated  
8 the article, absent clear and convincing evidence otherwise.

**§16-63-8. Regulations.**

1 The division shall be authorized to coordinate implementation and enforcement of this  
2 article and shall promulgate appropriate guidelines or regulations for such purposes.

**§16-63-9. Enforcement.**

1 (a) Administrative Enforcement:

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

6           (2) Any person alleging a violation of this article shall have the right to file a complaint with  
7 the division within three years of the date the person knew or should have known of the alleged  
8 violation. The division shall encourage reporting pursuant to this subsection by keeping  
9 confidential, to the maximum extent permitted by applicable laws, the name and other identifying  
10 information of the employee or person reporting the violation, provided, however, that with the  
11 authorization of such person, the division may disclose his or her name and identifying information  
12 as necessary to enforce this article or for other appropriate purposes.

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

20           (4) The division shall have the power to impose penalties provided for in this article and to  
21 grant an employee or former employee all appropriate relief. Such relief shall include but not be  
22 limited to:

23           (A) For each instance of paid sick time taken by an employee but unlawfully not  
24 compensated by the employer: three times the wages that should have been paid under this  
25 Article;

26           (B) For each instance of paid sick time requested by an employee but unlawfully denied  
27 by the employer and not taken by the employee or unlawfully conditioned upon searching for or  
28 finding a replacement worker;

29           (C) For each instance of unlawful retaliation not including discharge from employment:  
30 Full compensation including wages and benefits lost, an additional amount and equitable relief as  
31 appropriate; and



32 (D) For each instance of unlawful discharge from employment: Full compensation  
33 including wages and benefits lost, and equitable relief, including reinstatement, as appropriate.

34 (5) Any entity or person found to be in violation of the provisions of this article shall be  
35 liable for a civil penalty payable to West Virginia not to exceed \$250 for the first violation and, for  
36 subsequent violations that occur within two years of any previous violation, not to exceed \$500  
37 for the second violation and not to exceed \$750 for each successive violation.

38 (6) The division shall annually report on its website the number and nature of the  
39 complaints received pursuant to this article, the results of investigations undertaken pursuant to  
40 this article, including the number of complaints not substantiated and the number of notices of  
41 violations issued, the number and nature of adjudications pursuant to this article, and the average  
42 time for a complaint to be resolved pursuant to this chapter.

43 (b) Civil Enforcement:

44 (1) The division, the Attorney General, any person aggrieved by a violation of this article,  
45 or any entity a member of which is aggrieved by a violation of this article may bring a civil action  
46 in a court of competent jurisdiction against an employer violating this article. Such action may be  
47 brought by a person aggrieved by a violation of this section without first filing an administrative  
48 complaint.

49 (2) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall  
50 recover the full amount of any unpaid sick time plus any actual damages suffered as the result of  
51 the employer's violation of this article plus an equal amount of liquidated damages, as the court  
52 deems appropriate. Aggrieved persons shall also be entitled to reasonable attorney's fees, as the  
53 court deems appropriate.

54 (3) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall  
55 be entitled to such legal or equitable relief as the court deems appropriate to remedy the violation,  
56 including, without limitation, reinstatement to employment, back pay and injunctive relief.

57 (4) Any person aggrieved by a violation of this article may file a complaint with the Attorney

58 General. The filing of a complaint with the Attorney General will not preclude the filing of a civil  
59 action.

60 (5) The Attorney General may bring a civil action to enforce this article. The Attorney  
61 General may seek injunctive relief. In addition to injunctive relief, or in lieu thereof, for any  
62 employer or other person found to have willfully violated this article, the Attorney General may  
63 seek to impose a fine of not more than \$5,000 per violation, payable to the State.

64 (6) The statute of limitations for a civil action brought pursuant to this section shall be for  
65 a period of three years from the date the alleged violation occurred or the date the employee knew  
66 or should have known of the violation.

67 (7) Actions brought pursuant to this section may be brought as a class action to the extent  
68 permitted by the laws of West Virginia.

69 (c) State officials are hereby authorized to consider, to the maximum extent permitted by  
70 law, an employer's record of noncompliance with this article in making decisions on state  
71 contracts, land use approvals and other entitlements to expand or operate within the state. The  
72 state is authorized to either deny approval or to condition approval on the employer's future  
73 compliance.

74 (d) Whistleblower Protection:

75 (1) The penalties specified in subdivision (5), subsection (a) of this section, and injunctive  
76 and declaratory relief, may be recovered through a civil action brought on behalf of the division in  
77 a court of competent jurisdiction by a whistleblower or by a representative nonprofit or labor  
78 organization designated by said person, pursuant to the following procedures:

79 (A) The whistleblower shall give written notice to the division of the specific provisions of  
80 this Article alleged to have been violated. The whistleblower or representative organization may  
81 commence a civil action under this subsection if no enforcement action is taken by the division  
82 within 120 days.

83 (B) Civil penalties recovered pursuant to this subsection shall be distributed as follows: 70

84 percent to the division for enforcement of this article, with 25 percent of that amount reserved for  
85 grants to community organizations for outreach and education about employee rights under this  
86 article; and 30 percent to the whistleblower or representative organization to be distributed to the  
87 employees affected by the violation. Any person that prevails in an action under this section,  
88 whether or not the division has intervened in that action, shall be entitled to an award of  
89 reasonable attorney's fees and costs.

90 (C) The right to bring an action under this section shall not be impaired by any private  
91 contract. A public enforcement action shall be tried promptly, without regard to concurrent  
92 adjudication of private claims.

**§16-63-10. Confidentiality and Nondisclosure.**

1 (a) Unless otherwise required by law, an employer may not require disclosure of details  
2 relating to domestic violence, sexual assault, sexual abuse, or stalking or the details of an  
3 employee's or an employee's family member's health information as a condition of providing paid  
4 sick time under this article.

5 (b) Unless otherwise required by law, any health or safety information possessed by an  
6 employer regarding an employee or employee's family member must:

7 (1) Be maintained on a separate form and in a separate file from other personnel  
8 information;

9 (2) Be treated as confidential medical records; and

10 (3) Not be disclosed except to the affected employee or with the express permission of  
11 the affected employee.

**§16-63-11. Encouragement of More Generous Paid Sick Time Policies; No Effect on More**  
**Generous Policies or Laws.**

1 (a) Nothing in this article shall be construed to discourage or prohibit an employer from  
2 the adoption or retention of a paid sick time policy more generous than the one required herein.

3 (b) Nothing in this article shall be construed as diminishing the obligation of an employer

4 to comply with any contract, collective bargaining agreement, employment benefit plan or other  
5 agreement providing more generous paid sick time to an employee than required herein. Nothing  
6 in this article shall be construed as diminishing the rights of public employees regarding paid sick  
7 time or use of paid sick time as provided in Chapter 29 of this code or §143-1-14 of the West  
8 Virginia Code of State Rules.

9 (c) Nothing in this article shall be construed to preempt or supersede any provision of any  
10 local law that provides greater rights to paid sick time than the rights established under this article.

**§16-63-12. Other Legal Requirements.**

1 (a) If any federal law entitles an employee to paid sick leave for any of the purposes  
2 provided in §16-63-3 or §16-63-4 of this code, paid sick time provided under this article shall be  
3 in addition to that paid sick leave, to the extent permitted by the federal law.

4 (b) This article provides minimum requirements pertaining to paid sick time and shall not  
5 be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation,  
6 requirement, policy, or standard that provides for a greater amount, accrual, or use by employees  
7 of paid sick time or that extends other protections to employees.

8 (c) Nothing in this article shall be construed as requiring financial or other reimbursement  
9 to an employee from an employer upon the employee's termination, resignation, retirement or  
10 other separation from employment for paid sick time under this article that has not been used.

**§16-63-13. Public Education and Outreach.**

1 The division shall develop and implement a multilingual outreach program to inform  
2 employees, parents and persons who are under the care of a health care professional about the  
3 availability of paid sick time under this article. This program shall include the distribution of notices  
4 and other written materials in English and any language that is the first language spoken by at  
5 least five percent of the state's population to all child care and elder care providers, domestic  
6 violence shelters, schools, hospitals, community health centers and other health care  
7 professionals.

**§16-63-14. Severability.**

1           If any provision of this article or application thereof to any person or circumstance is judged  
2 invalid, the invalidity shall not affect other provisions or applications of the article which can be  
3 given effect without the invalid provision or application, and to this end the provisions of this article  
4 are declared severable.

**§16-63-15. Effective Date.**

1           This article takes effect 90 days following enactment.

NOTE: The purpose of this bill is to ensure the health and safety of all West Virginians by requiring employers to provide a certain amount of paid sick leave, lowering healthcare costs, and ensuring protection for vulnerable West Virginians.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.