

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3115

**FISCAL
NOTE**

BY DELEGATES THOMPSON, WALKER, BARACH, GRIFFITH,

ZUKOFF AND YOUNG

[Introduced March 12, 2021; Referred to the
Committee on Workforce Development then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §21-5I-1, §21-5I-2, §21-5I-3, §21-5I-4, §21-5I-5, §21-5I-6, §21-5I-7, §21-5I-8,
 3 §21-5I-9, and §21-5I-10, all relating to requiring earned paid sick leave for all employees;
 4 making findings and declaring policy; defining terms; specifying conditions for use of
 5 earned paid leave; establishing minimum standards for accrual of earned paid sick leave
 6 and retention of accrued leave hours; allowing employers to require documentation of
 7 illness or care; requiring employers to develop policies; providing for banking of donation
 8 and banking of unused leave; providing for conversion of unused paid sick leave into other
 9 benefits; allowing for more generous policies; declaring that this article is not to supersede
 10 or prevent the application of other laws regarding leave and benefits; specifying an
 11 effective date; and prohibiting discrimination or reprisals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5I. WORKER HEALTH AND LEAVE LAW.

§21-5I-1. Legislative findings and policy.

1 The Legislature finds that a healthy workforce is an essential component of a productive
 2 workplace and economy, failure to accommodate for the absence of employees due to disease
 3 or other illness can lead to significant interruption of business and productivity, and workers in
 4 this state should not be forced to choose between continued employment and caring for
 5 themselves and their families. Workers should not be subject to potential infection and illness
 6 because their coworkers are compelled to show up at work when they may be ill.

7 Through reasonable and responsible policies, employers can play a key role in preventing
 8 and slowing the spread of diseases in the workplace and preventing the interruption of business
 9 due to the prevalence of illness. By providing adequate time for an employee to attend to his or
 10 her health, employers foster a safer and more conducive work environment.

§21-5I-2. Definitions.

1 As used in this article:

2 “Family member” means the spouse or domestic partner of the employee, the biological,
3 adoptive, or foster parent or child of the employee, stepparent, legal guardian, grandparent or
4 grandchild of the employee, a person with whom the employee was or is in a relationship in loco
5 parentis, or a biological, foster, stepparent or adoptive parent or legal guardian of an employee’s
6 spouse or domestic partner, or a person who stood in loco parentis when the employee’s spouse
7 or domestic partner was a minor child;

8 “Earned paid sick leave” means time that is compensated at the same hourly rate as the
9 employee normally earns during hours worked and is provided by an employer to an employee
10 for the purposes described in §21-5I-4 of this code.

11 “Year” means a consecutive 12-month period as determined by the employer.

§21-5I-3. Qualifying absence.

1 (a) Earned paid sick leave may be used for the following reasons:

2 (1) For an employee’s personal mental or physical illness, including pregnancy, childbirth,
3 injury, therapy, and routine medical and dental appointments;

4 (2) To care for a family member with an illness, injury, or medical appointment;

5 (3) If the employee’s place of business closes for a public health emergency, or to care
6 for a child whose school or daycare closes for a similar reason;

7 (4) To care for a family member whose presence in the community would jeopardize the
8 health of others; or

9 (5) If the employee is excluded from work by law due to health reasons.

10 (b) Sick leave may not be used to receive paid time off for any period in which the
11 employee receives Workers’ Compensation benefits for time off work.

§21-5I-4. Employees to be provided paid leave for illness and injury; alternative policies;
minimum rates of accrual; retention of earned paid sick leave upon transfer or
rehire.

1 (a) Employers shall provide employees with paid sick leave that is earned or accrued in

2 proportion to the number of hours that the employee works. The rates of accrual and restrictions
3 on accumulation of paid sick leave specified in this section are minimum requirements and nothing
4 in this article shall be deemed to limit or prohibit an employer from providing more generous
5 earned sick leave policies or alternative policies that provide paid sick leave benefits equivalent
6 to the standards listed in this section. Any employer with a paid leave policy, such as a paid time
7 off policy, who makes available an amount of paid leave sufficient to meet the accrual
8 requirements of this section that may be used for the same purposes and under the same
9 conditions as earned paid sick leave under this article is not required to provide additional paid
10 sick leave.

11 (b) An employee who receives more than one type of paid leave may elect which type and
12 the amount of each of those types of paid leave to use, except that the employee's election may
13 be limited by a bona fide employment policy as long as the policy is uniformly applied to all
14 employees at that workplace.

15 (c) When using earned paid sick leave, employees shall be paid at the rate the employee
16 would have earned had they not been absent; however, employees are not required to be paid
17 for lost tips, commissions, shift differentials, or overtime.

18 (d)(1) An employer with 15 or more employees shall provide the employees a minimum of
19 one hour of earned paid sick leave for every 30 hours worked, and the employer may limit the
20 accrual or use of earned paid sick leave, but not less than 40 hours per year.

21 (2) An employer with 15 or more employees shall provide the employees a minimum of
22 one hour of earned paid sick leave for every 30 hours worked, and the employer may limit the
23 accrual or use of earned paid sick leave, but not less than 24 hours per year.

24 (e) An employee is not entitled under this section to use paid leave until that leave has
25 been earned: *Provided*, That an employer, at its discretion, may provide a portion of or all earned
26 paid sick leave that an employee is expected to accrue in a year at the beginning of the year, or
27 an employer may loan earned paid sick leave to an employee in advance of accrual by such

28 employee.

29 (f)(1) If an employee is transferred to a separate division, entity, or location, but remains
30 employed by the same employer, the employee is entitled to earned paid sick leave accrued at
31 the prior division, entity, or location and is entitled to use all earned paid sick leave as provided in
32 this section. When there is a separation from employment and the employee is rehired within 10
33 months of separation by the same employer, previously accrued earned paid sick leave that had
34 not been used shall be reinstated.

35 (2) When a different employer succeeds or takes the place of an existing employer, all
36 employees of the original employer who remain employed by the successor employer are entitled
37 to all earned paid sick leave they accrued when employed by the original employer and are
38 entitled to use earned paid sick leave previously accrued.

39 (g) Nothing in this article shall be construed as requiring financial or other reimbursement
40 to an employee from an employer upon the employee's termination, resignation, retirement, or
41 other separation from employment for accrued earned paid sick leave that has not been used.

§21-5I-5. Documentation of illness or care; coverage for shifts.

1 (a) If an employee uses more than three consecutive days of sick leave or exhibits a
2 pattern of abusing leave, an employer may request reasonable documentation verifying the
3 employee is out for a qualifying reason. Employers may deny the use of sick leave for an absence
4 until the employee provides the requested documentation.

5 (b) When using earned paid sick leave, employees shall not be required to find coverage
6 for their shift; however, employees may elect to trade shifts instead of using sick leave for
7 scheduled appointments.

§21-5I-6. Prevention of contagion.

1 Every employer shall develop policies to prevent the spread of illness or infection in the
2 workplace including, but not limited to, quarantine requirements, spacing or separation of
3 employees and their work or duty stations, and use of protective equipment, screens, shields, or

4 constructions.

§21-5I-7. Employee leave bank; application of unused leave toward other benefits.

1 (a) An employer is not required to set a cap or limit on the amount of paid sick leave that
2 an employee may use. Employers may establish policies to allow an employee to donate his or
3 her unused leave, of any form, to another employee for use and paid sick leave or to donate
4 unused paid leave, from limited forms of leave, to a sick leave bank for the benefit of other
5 employees.

6 (b) An employer may, but is not required to, pay an employee for unused earned paid sick
7 leave at the end of a year and provide the employee with an amount of earned paid sick leave
8 that meets or exceeds the requirements of this article that is available for the employee's
9 immediate use at the beginning of the subsequent year.

10 (c) Nothing in this article shall be construed to prohibit or restrict an employer from
11 implementing policies to convert unused earned paid sick leave into other employee benefits;
12 Provided, That when so converted, those benefits shall be considered wages as defined in §21-
13 5-1 of this code and shall be payable to the employee upon separation from employment as
14 provided under §21-5-1 et seq. of this code.

§21-5I-8. Encouragement of more generous earned paid sick leave policies; relationship to
other leave laws; benefits not to be exclusive.

1 (a) Nothing in this article shall be construed to discourage or prohibit an employer from
2 the adoption or retention of an earned paid sick leave policy more generous than is required under
3 this article.

4 (b) Nothing in this article shall be construed as diminishing the obligation of an employer
5 to comply with any contract, collective bargaining agreement, employment benefit plan or other
6 agreement providing more generous paid sick leave to an employee than required herein. Nothing
7 in this article shall be construed as diminishing the rights of public employees regarding paid sick
8 leave or use of paid sick leave.

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

12 (d) Except for the exclusion of benefits provided under or through a Workers'
13 Compensation program as indicated by §21-5I-3(b) of this code, the benefits mandated by this
14 article are not to be exclusive. An eligible employee shall not be denied benefits under the
15 provisions of this article on the basis that those benefits are redundant or duplicative of other
16 benefits provided to the employee under, or by the operation of, any state, local, or federal law.

§21-5I-9. Applicability; time of effect.

1 The provisions of this article shall apply to all contracts for employment entered into or
2 renewed on or after January 1, 2022 and to all new employees hired on or after that date. Where
3 an employee works without an express contract for employment, the provisions of this article shall
4 apply to the employer-employee relationship and conditions of employment for the employee's
5 time and labor provided on or after January 1, 2022.

§21-5I-10. Discrimination and reprisals prohibited.

1 No employer may discharge, threaten, or otherwise discriminate or retaliate against an
2 employee because the employee for requesting, using, or complaining that they are not receiving
3 sick leave as required by this article or because the employee is requested or subpoenaed by the
4 Division of Labor to participate in an investigation, hearing or inquiry or subpoenaed by a litigant
5 in an administrative proceeding or in a court action relating to sick leave.

NOTE: The purpose of this bill is to establish minimum requirements and protections for earned paid sick leave for all workers in this state.

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