

As Introduced

**127th General Assembly
Regular Session
2007-2008**

H. B. No. 536

By Initiative

—

A B I L L

To enact sections 4114.00 to 4114.11 of the Revised Code to enact the Healthy Families Act. 1
2

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4114.00, 4114.01, 4114.02, 4114.03, 4114.04, 4114.05, 4114.06, 4114.07, 4114.08, 4114.09, 4114.10, and 4114.11 of the Revised Code be enacted to read as follows: 3
4
5

Sec. 4114.00. Chapter 4114. of the Revised Code is the Healthy Families Act. 6
7

Sec. 4114.01. Definitions 8

(A) "Child" means a biological, foster, or adopted child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is: 9
10
11

(1) Under 18 years of age; or 12

(2) 18 years of age or older and incapable of self-care due to a physical or mental disability. 13
14

(B) "Employee" and "employer" have the same definitions as those found in Article II, Section 34a of the Ohio Constitution, except that "employer" shall not include an employer who employs less than 25 employees. 15
16
17
18

(C) "Health Care Professional" means any person licensed under federal or state law to provide health care services, including, but not limited to, nurses, doctors, and emergency room personnel. 19
20
21
22

(D) "Parent" is defined as a biological, foster, or adoptive parent, a stepparent, legal guardian, parent-in-law, or an individual who stood in loco parentis when a person was a child. 23
24
25

(E) "Pro rata" with respect to benefits offered to part-time employees, means the proportion of each of the benefits offered to full-time employees that are offered to part-time employees that, for each benefit, is equal to the ratio of part-time hours worked to full-time hours worked. 26
27
28
29
30

(F) "Sick leave" is defined as an increment of compensated leave provided by an employer to an employee as a benefit of employment for use by the employee during an absence from employment for any of the reasons described in section 4114.03(A) of the Revised Code. 31
32
33
34
35

Sec. 4114.02. Accumulation of Sick Leave 36

(A) Employers shall provide each employee with not less than: 37

(1) Seven (7) days of paid sick leave annually for employees working 30 hours or more a week; or 38
39

(2) A pro rata amount of paid sick leave annually for employees working less than 30 hours per week or less than 1,560 hours per year. 40
41
42

(B) Sick leave shall begin to accumulate immediately, but no employer shall be required to grant accrued sick leave before ninety (90) days from the commencement of employment. Paid sick leave must accrue at least monthly and, after the initial ninety (90) day waiting period, may be used as it is accrued. At the employer's discretion, sick leave may be loaned to the employee in 43
44
45
46
47
48

advance of the accrual by such employee. 49

(C) Accrued sick leave provided under this section shall 50
carry over from year to year, but this Act shall not be construed 51
to require an employer to permit an employee to accumulate more 52
than seven (7) days of sick leave per year. 53

(D) For periods of paid sick leave less than a normal 54
workday, that leave shall be counted: 55

(1) On an hourly basis; or 56

(2) If less than an hour, in the smallest increment that the 57
employer's payroll system uses to account for absences or use of 58
other leave. 59

(E) If the schedule of an employee varies from week to week, 60
a weekly average of the hours worked over the 12-week period prior 61
to the beginning of a sick leave period shall be used to calculate 62
the employee's normal workweek for the purposes of determining the 63
amount of sick leave to which the employee is entitled. 64

Sec. 4114.03. Use of Sick Leave 65

(A) Sick leave accrued under this section may be used by an 66
employee for any of the following: 67

(1) An absence resulting from a physical or mental illness, 68
injury, or medical condition of the employee; 69

(2) An absence resulting from obtaining professional medical 70
diagnosis or care, or preventive medical care, for the employee; 71

(3) An absence for the purpose of caring for a child, parent, 72
or a spouse, who has any of the conditions or needs diagnosis or 73
care described in paragraphs (1) or (2) above. 74

(B) Employees shall make reasonable efforts to schedule leave 75
in a manner that does not unduly disrupt the operations of the 76
employer. 77

(C) Sick leave shall be provided upon the oral or written request of an employee. Such request shall include: 78
79

(1) The reason for the absences involved and expected duration of leave; and 80
81

(2) In cases in which leave is foreseeable at least seven (7) days in advance of such leave, seven (7) days notice shall be provided; or 82
83
84

(3) In cases in which leave is not foreseeable at least seven (7) days in advance of such leave, notice shall be given as soon as practicable once the employee becomes aware of the need for such leave. 85
86
87
88

Sec. 4114.04. Certification 89

(A) An employer may only require that a request for leave be supported by the certification of a health care professional if the leave period covers more than three (3) consecutive work days. 90
91
92

(B) An employee must provide certification of a health care professional upon request to the employer in a timely manner, no later than thirty (30) days after the first day of leave. The employer shall not delay the commencement of the leave on the basis that the employer has not yet received certification. 93
94
95
96
97

(C) Any health information possessed by an employer regarding an employee, employee's child, parent, or spouse shall: 98
99

(1) Be maintained on a separate form and in a separate file from other personnel information; 100
101

(2) Be treated as confidential medical records; and 102

(3) Not be disclosed except to the affected employee or with the express permission of the affected employee. 103
104

Sec. 4114.05. Posting Requirements 105

(A) Every employer subject to sections 4114.01 to 4114.11 of the Revised Code, or to any rules issued thereunder, shall keep a summary of the sections, approved by the director of commerce, and copies of any applicable rules issued thereunder, or a summary of the rules, posted in a conspicuous and accessible place in or about the premises wherein any person subject thereto is employed. Employees shall be furnished copies of the summaries and rules by the state, on request, without charge. 106
107
108
109
110
111
112
113

(B) An employer who willfully violates the posting requirements of this section shall be subject to a civil fine in an amount not to exceed \$100.00 for each separate offense. 114
115
116

Sec. 4114.06. Rules 117

The director of commerce shall adopt rules in accordance with Chapter 119. of the Revised Code as the director considers appropriate to carry out the purposes of sections 4114.01 to 4114.11 of the Revised Code. The rules may be amended from time to time and may include, but are not limited to, proper notice of employees' protections under the Act, computations of paid sick time, proper accrual, and the retention of pertinent records. 118
119
120
121
122
123
124

Sec. 4114.07. Effect on Current Leave Policies 125

(A) Nothing in this Act shall be construed to discourage an employer from the adoption or retention of a paid leave policy more generous than the one required by this Act. 126
127
128

(B) An employer with a leave policy providing paid leave options shall not be required to modify such policy, if such policy offers an employee the option at the employee's discretion to take paid leave that is at least equivalent to the sick leave described in this section. 129
130
131
132
133

(C) An employer may not eliminate or reduce leave in existence on the date of enactment of this Act, regardless of the 134
135

type of such leave, in order to comply with the provisions of this 136
Act. 137

Sec. 4114.08. Right to Collective Bargaining 138

Nothing in sections 4114.01 to 4114.11 of the Revised Code 139
interferes with, impedes, or in any way diminishes the right of 140
employees to bargain collectively with their employers through 141
representatives of their own choosing in order to establish sick 142
leave, paid leave, and other terms and conditions of employment in 143
excess of the minimum paid sick days established in sections 144
4114.01 to 4114.11 of the Revised Code. 145

Sec. 4114.09. Employer Records 146

Employers shall retain records documenting hours worked by 147
employees and paid sick leave taken by employees, for a period of 148
three (3) years, and shall allow the director of the department of 149
commerce access to such records to monitor compliance with the 150
requirements of this Act. 151

Sec. 4114.10. Prohibited Acts by the employer 152

(A) No employer shall hinder or delay the director of 153
commerce in the performance of the director's duties in the 154
enforcement of sections 4114.01 to 4114.11 of the Revised Code, or 155
refuse to admit the director to any place of employment, or fail 156
to make, keep, and preserve any records as required under those 157
sections, or falsify any of those records, or refuse to make them 158
accessible to the director upon demand, or refuse to furnish them 159
or any other information required for the proper enforcement of 160
those sections to the director upon demand, or fail to post a 161
summary of those sections or a copy of any applicable rules as 162
required by section 4114.05 of the Revised Code. Each day of 163
violation constitutes a separate offense. 164

(B) No employer shall interfere with, restrain, or deny the exercise of or the attempted exercise of any right provided in this Act. 165
166
167

(C) No employer shall discharge or in any manner discriminate against any employee for opposing any practice made unlawful by this Act, including: 168
169
170

(1) Discharging, or discriminating against any employee for making any complaint to the employee's employer, or to the director, that the employee has not been allowed to accrue or use sick leave in accordance with sections 4114.01 to 4114.11 of the Revised Code, or because the employee has made any complaint or is about to cause to be instituted any proceeding under or related to those sections, or because the employee has testified or is about to testify in any proceeding, or because the employee is assisting another in exercising such a right; 171
172
173
174
175
176
177
178
179

(2) Using paid sick leave taken pursuant to this Act as a negative factor in an employment action, such as hiring, promotion, or a disciplinary action; or 180
181
182

(3) Counting the use of paid sick leave under a no-fault attendance policy. 183
184

(D) No employer shall provide or agree to provide any accrued sick leave less than the amount applicable under sections 4114.01 to 4114.11 of the Revised Code. 185
186
187

(E) No employer shall otherwise violate sections 4114.01 to 4114.11 of the Revised Code, or any rule adopted thereunder. Each day of violation constitutes a separate offense. 188
189
190

Sec. 4114.11. Enforcement 191

(A) Any employee or the attorney general may enforce the provisions of this statute by bringing a civil action against an employer to enforce the provisions of this section. The attorney 192
193
194

general may conduct an investigation to obtain voluntary 195
conciliation of an alleged violation. Such an investigation shall 196
not be a prerequisite to the bringing of a court action. 197

(B) Any employer who violates sections 4114.01 to 4114.11 of 198
the Revised Code shall be liable to any affected employee for: 199

(1) Damages equal to: 200

(a) The amount of: 201

(i) Any wages, salary, employment benefits, or other 202
compensation denied or lost to such employee by reason of the 203
violation; or 204

(ii) In cases in which wages, salary, employment benefits, or 205
other compensation has not been denied or lost to such employee, 206
any actual monetary losses sustained by the employee as a direct 207
result of the violation up to a sum equal to ten (10) days of 208
wages or salary for the employee; 209

(b) The interest on the amount described in subclause (i) 210
calculated at the prevailing rate; and 211

(c) An additional amount as treble damages; and 212

(d) Reasonable attorney fees. 213

(2) For such equitable relief as may be appropriate, 214
including employment, reinstatement and promotion. 215