

Act No. 369

Public Acts of 2018

Approved by the Governor

December 13, 2018

Filed with the Secretary of State

December 14, 2018

EFFECTIVE DATE: 91st day after final adjournment of 2018 Regular Session

STATE OF MICHIGAN

99TH LEGISLATURE

REGULAR SESSION OF 2018

Introduced by Senator Shirkey

ENROLLED SENATE BILL No. 1175

AN ACT to amend 2018 PA 338, entitled “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,” by amending the title and sections 1, 2, 3, 4, 5, 7, 8, 10, 11, and 14 (MCL 408.961, 408.962, 408.963, 408.964, 408.965, 408.967, 408.968, 408.970, 408.971, and 408.974); and to repeal acts and parts of acts.

The People of the State of Michigan enact:

TITLE

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.

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

Enacting section 1. Sections 6, 9, and 13 of 2018 PA 338, MCL 408.966, 408.969, and 408.973, are repealed.

Secretary of the Senate

Clerk of the House of Representatives

Approved

Governor