

# HOUSE BILL NO. 5350

September 29, 2021, Introduced by Reps. Young, Bolden, Manoogian, Weiss, Neeley, Cavanagh, Pohutsky, Stone, Rogers, Kuppa, Steckloff, Hope, Hood, Brabec, Haadsma, Sowerby, Koleszar, Brixie, Aiyash, Morse, Breen, Tyrone Carter, Puri, Ellison, O'Neal, Cherry, Sneller, Thanedar, Scott, Lasinski and Anthony and referred to the Committee on Workforce, Trades, and Talent.

A bill to require employers to provide paid parental leave to certain employees; to specify the conditions for using paid parental leave; to prohibit retaliation against an employee for requesting, exercising, or enforcing rights guaranteed under this act; to provide for the powers and duties of certain state departments, agencies, and officers; to provide for the promulgation of rules; and to provide remedies and sanctions.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

1 parental leave act".

2 Sec. 2. As used in this act:

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

5 (b) "Director" means the director of the department or his or  
6 her designee.

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

10 (d) "Employer" means an individual, person, firm, business,  
11 educational institution, nonprofit agency, corporation, limited  
12 liability company, government entity, or other entity that employs  
13 50 or more individuals, except that employer does not include the  
14 United States government. Employer includes a small employer that  
15 enters into an agreement under section 3(7).

16 (e) "Parental leave" means time off from work that is provided  
17 by an employer to an employee for purposes related to the birth of  
18 the employee's child or care of the employee's newborn child.

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

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

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

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

26 (iv) Interference with, or punishment for, a person's  
27 participation in any manner in an investigation, proceeding, or  
28 hearing under this act.

29 (g) "Small employer" means an individual, person, firm,

1 business, educational institution, nonprofit agency, corporation,  
2 limited liability company, government entity, or other entity that  
3 employs 49 or fewer individuals.

4 Sec. 3. (1) An employer shall provide 4 weeks of paid parental  
5 leave annually to each of the employer's full-time employees  
6 pursuant to this act. An employer shall not require an employee to  
7 search for or secure a replacement worker as a condition for using  
8 parental leave.

9 (2) An employee may take parental leave beginning on the  
10 effective date of this act or upon commencement of the employee's  
11 employment, whichever is later.

12 (3) An employer shall pay to an employee who uses paid  
13 parental leave at a rate equal to the greater of either the normal  
14 hourly wage rate for that employee or the minimum hourly wage rate  
15 established under section 4 of the improved workforce opportunity  
16 wage act, 2018 PA 337, MCL 408.934. For an employee whose hourly  
17 wage varies depending on the work performed, "normal hourly wage"  
18 means the average hourly wage of the employee in the pay period  
19 immediately preceding the pay period in which the employee uses  
20 parental leave.

21 (4) An employer is in compliance with this section if the  
22 employer provides any paid leave, or combination of paid leave,  
23 that may be used for the same purposes and under the same  
24 conditions provided in this act for a duration that is equal to or  
25 greater than the duration in subsection (1). As used in this  
26 subsection, "paid leave" includes, but is not limited to, paid  
27 vacation and personal days and paid time off.

28 (5) An employer may require advance notice, not to exceed 30  
29 days before the date parental leave is to begin, of the intention

1 to use parental leave.

2 (6) An employer is not required to provide financial or other  
3 reimbursement to an employee for parental leave that was not used  
4 before the employee's termination, resignation, retirement, or  
5 other separation from employment.

6 (7) Two or more small employers may enter into an agreement to  
7 provide the paid parental leave required under this section.

8 Sec. 4. (1) An employer or any other person shall not  
9 interfere with, restrain, or deny the exercise of, or the attempt  
10 to exercise, any right guaranteed under this act.

11 (2) An employer shall not take retaliatory personnel action or  
12 discriminate against an employee because the employee has exercised  
13 a right guaranteed under this act.

14 (3) An employer's absence control policy must not treat  
15 parental leave taken under this act as an absence that may lead to  
16 or result in retaliatory personnel action.

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

19 (5) There is a rebuttable presumption of a violation of this  
20 section if an employer takes retaliatory personnel action against a  
21 person within 365 days after that person does any of the following:

22 (a) Files a complaint with the department or a court alleging  
23 a violation of this act.

24 (b) Informs a person about an employer's alleged violation of  
25 this act.

26 (c) Cooperates with the department or another person in the  
27 investigation or prosecution of an alleged violation of this act.

28 (d) Opposes a policy, practice, or act that is prohibited  
29 under this act.

1 (e) Informs a person of his or her rights under this act.

2 Sec. 5. If an employer violates this act, an employee affected  
3 by the violation may, within 5 years after the date of the  
4 violation or the date when the employee first knew of the  
5 violation, whichever is later, do any of the following:

6 (a) Bring a civil action for appropriate relief, including,  
7 but not limited to, any of the following:

8 (i) Payment for used parental leave.

9 (ii) Rehiring or reinstatement to the employee's previous job.

10 (iii) Payment of back wages.

11 (iv) Reestablishment of employee benefits for which the  
12 employee otherwise would have been eligible if the employee had not  
13 been subjected to the violation.

14 (v) An equal additional amount as damages together with costs  
15 and reasonable attorney fees as the court allows.

16 (b) File a complaint with the department. Filing a complaint  
17 with the department is not a prerequisite or a bar to bringing a  
18 civil action.

19 Sec. 6. (1) The director shall enforce this act. The director  
20 shall establish a system utilizing multiple means of communication  
21 to receive complaints regarding noncompliance with this act and  
22 investigate complaints received by the department in a timely  
23 manner.

24 (2) The department shall encourage the filing of complaints by  
25 keeping the name and other identifying information of the  
26 complainant confidential. However, if the complainant gives the  
27 department authorization, the department may disclose the  
28 complainant's name and identifying information as necessary to  
29 enforce this act or for other appropriate purposes.

1           (3) Upon receiving a complaint alleging a violation of this  
2 act, the department shall investigate the complaint and attempt to  
3 resolve it through mediation between the complainant and the  
4 subject of the complaint, or other means. The department shall keep  
5 complainants notified regarding the status of their complaint and a  
6 related investigation. If the department determines that there is  
7 reasonable cause to believe that a violation occurred, it shall  
8 issue to the offending person a notice of violation and the relief  
9 required of the offending person. The department shall prescribe  
10 the form and wording of violation notices, which must include the  
11 method of appealing the department's determination. If the  
12 department is unable to obtain voluntary compliance by the person  
13 within a reasonable amount of time, the department must bring a  
14 civil action on behalf of the employee as provided in section 5(a).  
15 The department may file a civil action under this subsection on  
16 behalf of all employees of the employer who are similarly situated  
17 at the same work site and who have not brought a civil action under  
18 section 5(a).

19           (4) In addition to liability for civil remedies described in  
20 section 5, an employer violates this act is subject to a civil fine  
21 of not more than \$1,500.00.

22           (5) An employer that willfully violates a notice or posting  
23 requirement under section 7 is subject to a civil fine of not more  
24 than \$1,500.00 for each separate violation.

25           Sec. 7. (1) An employer shall provide written notice to an  
26 employee at the time of the employee's hiring or by April 1, 2022,  
27 whichever is later, that includes at least all of the following  
28 information:

29           (a) The amount of parental leave required to be provided to an

1 employee under this act.

2 (b) The purposes for which parental leave may be used under  
3 this act.

4 (c) That retaliatory personnel action by the employer against  
5 an employee for requesting or using parental leave for which the  
6 employee is eligible is prohibited.

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

9 (2) An employer shall display a poster at the employer's place  
10 of business, in a conspicuous place that is accessible to  
11 employees, that contains all of the information listed in  
12 subsection (1).

13 (3) The department shall create and make available to  
14 employers notices and posters that contain the information listed  
15 in subsection (1) for employers' use in complying with this  
16 section.

17 Sec. 8. An employer shall retain for not less than 3 years  
18 records documenting the hours worked and parental leave taken by an  
19 employee. To monitor compliance with the requirements of this act,  
20 an employer shall allow the department access to those records,  
21 with appropriate notice and at a mutually agreeable time. If a  
22 question arises as to whether an employer has violated an  
23 employee's right to parental leave under this act and the employer  
24 does not maintain or retain adequate records documenting the hours  
25 worked and parental leave taken by the employee or does not allow  
26 the department reasonable access to those records, there is a  
27 presumption that the employer violated this act, which can be  
28 rebutted only by clear and convincing evidence.

29 Sec. 9. (1) This act provides minimum requirements pertaining

1 to parental leave and does not do any of the following:

2 (a) Preempt, limit, or otherwise affect the applicability of  
3 any other law, regulation, requirement, policy, or standard,  
4 including a collective bargaining agreement, that provides for more  
5 paid parental leave, or that extends other protections to  
6 employees.

7 (b) Prohibit an employer from providing more paid parental  
8 leave than is required under this act or allowing an employee to  
9 use more paid parental leave than is required under this act.

10 (c) Diminish any rights provided to any employee under a  
11 collective bargaining agreement.

12 (d) Subject to section 10, preempt or override the terms of a  
13 collective bargaining agreement in effect prior to the effective  
14 date of this act.

15 (e) Prohibit an employer from establishing a policy that  
16 permits an employee to donate unused parental leave to another  
17 employee.

18 (2) A contract or agreement entered into on or after the  
19 effective date of this act between an employer and an employee or  
20 an acceptance by the employee on or after the effective date of  
21 this act of a parental leave policy that provides fewer rights or  
22 benefits than provided by this act is void and unenforceable.

23 Sec. 10. If an employer's employees are covered by a  
24 collective bargaining agreement in effect on the effective date of  
25 this act, this act applies to those employees beginning on the  
26 stated expiration date in the collective bargaining agreement,  
27 notwithstanding any statement in the agreement that it continues in  
28 force until a future date or event or the execution of a new  
29 collective bargaining agreement.



1           Sec. 11. The director may promulgate rules in accordance with  
2 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201  
3 to 24.328, as necessary to administer this act.