

SENATE BILL NO. 658

September 29, 2021, Introduced by Senators HOLLIER, ALEXANDER, BAYER, IRWIN, MOSS and MCMORROW and referred to the Committee on Economic and Small Business Development.

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
2 parental leave act".

3 Sec. 2. As used in this act:

1 (a) "Department" means the department of licensing and
2 regulatory affairs.

3 (b) "Director" means the director of the department or his or
4 her designee.

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

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

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

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

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

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

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

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

27 (g) "Small employer" means an individual, person, firm,
28 business, educational institution, nonprofit agency, corporation,
29 limited liability company, government entity, or other entity that

1 employs 49 or fewer individuals.

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

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

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

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

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

29 (6) An employer is not required to provide financial or other

1 reimbursement to an employee for parental leave that was not used
2 before the employee's termination, resignation, retirement, or
3 other separation from employment.

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

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

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

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

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

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

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

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

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

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

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

29 Sec. 5. If an employer violates this act, an employee affected

1 by the violation may, within 5 years after the date of the
2 violation or the date when the employee first knew of the
3 violation, whichever is later, do any of the following:

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

6 (i) Payment for used parental leave.

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

8 (iii) Payment of back wages.

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

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

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

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

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

28 (3) Upon receiving a complaint alleging a violation of this
29 act, the department shall investigate the complaint and attempt to

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

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

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

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

27 (a) The amount of parental leave required to be provided to an
28 employee under this act.

29 (b) The purposes for which parental leave may be used under

1 this act.

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

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

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

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

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

27 Sec. 9. (1) This act provides minimum requirements pertaining
28 to parental leave and does not do any of the following:

29 (a) Preempt, limit, or otherwise affect the applicability of

1 any other law, regulation, requirement, policy, or standard,
2 including a collective bargaining agreement, that provides for more
3 paid parental leave, or that extends other protections to
4 employees.

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

8 (c) Diminish any rights provided to any employee under a
9 collective bargaining agreement.

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

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

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

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

28 Sec. 11. The director may promulgate rules in accordance with
29 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201

1 to 24.328, as necessary to administer this act.