

2026 SESSION

INTRODUCED

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SENATE BILL NO. 372

Offered January 14, 2026

Prefiled January 13, 2026

A BILL to amend and reenact §§ 40.1-33.3 through 40.1-33.6 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 40.1-33.5:1 and 40.1-33.5:2 and by adding in Article 2.1 of Chapter 3 of Title 40.1 a section numbered 40.1-33.6:1, relating to employment; paid sick leave; civil penalties.

Patron—Carroll Foy

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-33.3 through 40.1-33.6 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 40.1-33.5:1 and 40.1-33.5:2 and by adding in Article 2.1 of Chapter 3 of Title 40.1 a section numbered 40.1-33.6:1 as follows:

§ 40.1-33.3. Definitions.

As used in this article, unless the context requires a different meaning:

"Employee" means a home health worker who works on average at least 20 hours per week or 90 hours per month. "Employee" does not include an individual who (i) is licensed, registered, or certified by a health regulatory board within the Department of Health Professions; (ii) is employed by a hospital licensed by the Department of Health; and (iii) works, on average, no more than 30 hours per month.

"Domestic violence" has the same meaning as provided in subdivision 7 of § 38.2-508.

"Employer" has the same meaning as provided in § 40.1-2. Notwithstanding the provisions of § 40.1-2.1, "employer" includes the Commonwealth and its agencies, institutions, and political subdivisions. "Employer" does not include any agency of the federal government.

"Family member" means:

1. Regardless of age, a biological child, adopted or foster child, stepchild, legal ward, child to whom the employee stands in loco parentis, or individual to whom an employee stood in loco parentis when the individual was a minor;

2. A biological parent, foster parent, stepparent, adoptive parent, legal guardian of an employee or an employee's spouse, or individual who stood in loco parentis to an employee when the employee or employee's spouse was a minor child;

3. An individual to whom an employee is legally married under the laws of any state;

4. A grandparent, grandchild, or sibling, whether of a biological, foster, adoptive, or step relationship, of an employee or the employee's spouse;

5. An individual for whom an employee is responsible for providing or arranging *health or safety-related* care, including helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment or ensuring the person is safe following domestic violence, sexual assault, or stalking; or

6. Any other individual related by blood or affinity whose close association with an employee is the equivalent of a family relationship.

"Home health worker" means an individual who provides personal care, respite, or companion services to an individual who receives consumer-directed services under the state plan for medical assistance services.

"Paid sick leave" means leave that is compensated at the same hourly rate and with the same benefits, including health care benefits, as an employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in § 40.1-33.5; however, such hourly rate shall not be less than the minimum wage amount set forth in § 40.1-28.10 without reduction for any tip credit that the employer would otherwise be permitted to claim.

"Retaliatory action" means a denial of any benefit provided pursuant to this article; any threat, discharge, suspension, demotion, or reduction of hours; or the taking of any other adverse action against an employee as a result of the employee's exercise of any paid sick leave benefits. "Retaliatory action" includes interference with or punishment for in any manner participating in or assisting an investigation, proceeding, or hearing under this article.

"Sexual assault" means any act prohibited by the provisions of § 18.2-61, 18.2-67.1, 18.2-67.3, or 18.2-67.4.

"Stalking" means conduct prohibited by the provisions of § 18.2-60.3.

"Year" means a regular and consecutive 12-month period as determined by the employer.

§ 40.1-33.4. Accrual of paid sick leave.

A. All employees shall accrue a minimum of one hour of paid sick leave for every 30 hours worked. Paid

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59 sick leave shall be carried over to the year following the year in which it was accrued. An employee shall not
60 accrue ~~or~~, use, or carry over more than 40 hours of paid sick leave in a year, unless the employer selects a
61 higher limit.

62 B. Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the federal Fair
63 Labor Standards Act, 29 U.S.C. § 201 et seq., will be assumed to work 40 hours in each workweek for
64 purposes of paid sick leave accrual unless their normal workweek is less than 40 hours, in which case paid
65 sick leave accrues on the basis of that normal workweek.

66 C. Employees who are employed and compensated on a fee-for-service basis shall accrue paid sick leave
67 in accordance with regulations adopted by the Commissioner. The Commissioner shall promulgate such
68 regulations, which shall provide for the accrual of paid sick leave for such employees that is consistent with
69 the provisions of this section.

70 D. Paid sick leave as provided in this section shall begin to accrue at the commencement of employment.
71 An employer may provide all paid sick leave that an employee is expected to accrue in a year at the
72 beginning of the year.

73 D. E. Any employer with a paid leave policy, such as a paid time off policy, that provides an employee an
74 amount of paid leave sufficient to meet the requirements of this section and that may be used for the same
75 purposes and under the same conditions as paid sick leave under this article shall not be required to provide
76 additional paid sick leave to any employee that is eligible for paid leave under the policy.

77 E. F. Any employer that has entered into a bona fide collective bargaining agreement that requires the
78 employer to provide an amount of paid leave sufficient to meet the requirements of this section and that may
79 be used for the same purposes and under the same conditions as paid sick leave under this article shall not be
80 required to provide additional paid sick leave to any employee covered by such collective bargaining
81 agreement.

82 G. Nothing in this section shall be construed as requiring financial or other reimbursement to an
83 employee from an employer upon the employee's termination, resignation, retirement, or other separation
84 from employment for accrued paid sick leave that has not been used.

85 H. If an employee is transferred to a separate division, entity, or location but remains employed by the
86 same employer, the employee is entitled to all paid sick leave accrued at the prior division, entity, or location
87 and is entitled to use all paid sick leave as provided in this section. If an employee is separated from
88 employment with an employer and the employee is rehired within 12 months of separation by the same
89 employer, previously accrued paid sick leave that had not been used shall be reinstated. Further, the
90 employee shall be entitled to use accrued paid sick leave and accrue additional paid sick leave at the
91 commencement of employment.

92 I. When a different employer succeeds or takes the place of an existing employer, all employees of the
93 original employer who remain employed by the successor employer are entitled to all paid sick leave that
94 they accrued when employed by the original employer and to use paid sick leave previously accrued.

95 J. At its discretion, an employer may loan paid sick leave to an employee in advance of accrual of paid
96 sick leave by such employee.

97 K. Nothing in this article shall be construed (i) to discourage or prohibit an employer from the adoption
98 or retention of a more generous paid sick leave policy than outlined herein; (ii) to preempt, limit, or
99 otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides
100 for greater accrual or use by employees of paid sick leave or that extends other protections to employees; or
101 (iii) as diminishing the rights of public employees regarding paid sick leave or the use of paid sick leave as
102 provided under any applicable law.

103 § 40.1-33.5. Use of paid sick leave.

104 A. Paid sick leave shall be provided to an employee by an employer for:

105 1. An employee's mental or physical illness, injury, or health condition; an employee's need for medical
106 diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need
107 for preventive medical care; ~~or~~

108 2. Care of a family member with a mental or physical illness, injury, or health condition; care of a family
109 member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health
110 condition; or care of a family member who needs preventive medical care; ~~or~~

111 3. Absence due to domestic violence, sexual assault, or stalking, provided that the leave is to allow the
112 employee to seek or obtain medical care, mental health care, counseling, legal services, relocation or
113 securing of an existing home, or other victim services for the employee or the employee's family member.

114 B. Paid sick leave shall be provided upon the request of an employee. Such request may be made orally, in
115 writing, by electronic means, or by any other means acceptable to the employer. When possible, the request
116 shall include the expected duration of the absence.

117 C. When the use of paid sick leave is foreseeable, the employee shall make a good faith effort to provide
118 notice of the need for such leave to the employer in advance of the use of the paid sick leave and shall make a
119 reasonable effort to schedule the use of paid sick leave in a manner that does not unduly disrupt the
120 operations of the employer.

121 D. An employer that requires notice of the need to use paid sick leave shall provide a written policy that
122 contains procedures for its employees to provide notice. An employer that has not provided to an employee a
123 copy of its written policy for providing such notice shall not deny paid sick leave to the employee based on
124 noncompliance with such a policy.

125 E. An employer shall not require, as a condition of an employee's taking paid sick leave, that an employee
126 search for or find a replacement worker to cover the hours during which the employee is using paid sick
127 leave. An employer shall not require an employee to work an alternate shift to make up for the use of sick
128 leave.

129 F. *Paid sick leave shall be used in hourly increments unless the employer allows paid sick leave to be
130 taken in smaller increments.*

131 G. *An employer shall not require disclosure of details of health information about an employee or an
132 employee's family member or details of domestic violence, sexual assault, or stalking as a condition of
133 providing paid sick leave under this article. Unless otherwise required by law, an employer who possesses
134 health, domestic violence, sexual assault, or stalking information about an employee or an employee's family
135 member shall treat such information as confidential and shall not disclose such information except to the
136 employee or with the consent of the employee.*

137 H. For paid sick leave of three or more consecutive work days, an employer may require reasonable
138 documentation that the paid sick leave has been used for a purpose for which such leave is required to be
139 provided as set forth in subsection A. *For the use of paid sick leave related to subdivision A 1 or 2,
140 documentation signed by a health care professional indicating that paid sick leave is necessary shall be
141 considered reasonable documentation for purposes of this subsection. For the use of paid sick leave related
142 to subdivision A 3, (i) a police report indicating domestic violence, sexual assault, or stalking; (ii) a court
143 document indicating the employee is involved in legal action related to domestic violence, sexual assault, or
144 stalking; (iii) documentation from a victim services advocate, the employee's attorney, a member of the
145 clergy, or a health care professional that the employee is or was receiving services related to domestic
146 violence, sexual assault, or stalking; or (iv) the employee's written statement that the use of paid sick leave is
147 for one of the purposes described in subdivision A 3 shall be considered reasonable documentation for
148 purposes of this subsection.*

149 **§ 40.1-33.5:1. Certain health care workers; waiver; exception.**

150 A. An employee who (i) is licensed, registered, or certified by a health regulatory board within the
151 Department of Health Professions; (ii) is employed by a hospital licensed by the Department of Health; and
152 (iii) works, on average, no more than 30 hours per month may waive the right to accrue and use paid sick
153 leave under the provisions of this article. Such waiver shall be in writing and signed by the employee and the
154 employer. If an employee waives his rights in accordance with this subsection, the employer shall be deemed
155 to have satisfied the provisions of this article with respect to such employee.

156 B. Notwithstanding the provisions of this article, an employer shall not be required to provide paid sick
157 leave under the provisions of this article to any employee who is employed on a pro re nata, or as-needed,
158 basis, regardless of the number of hours worked in the month and who is (i) licensed, registered, or certified
159 by a health regulatory board within the Department of Health Professions; (ii) employed by a facility
160 licensed by the Department of Health; or (iii) employed by the University of Virginia Medical Center or
161 Virginia Commonwealth University Health System Authority.

162 **§ 40.1-33.5:2. Notice and recordkeeping; regulations.**

163 The Commissioner shall promulgate regulations for employee notice and employer recordkeeping,
164 including requirements for employers:

165 1. To notify employees of their rights under this article, both in writing and through required posting,
166 including their right to file a complaint or bring a civil action for violations of this article;

167 2. To establish and maintain recordkeeping systems regarding the use and accrual of paid sick leave,
168 including the requirement to retain records for three years; and

169 3. To ensure the confidentiality of any protected health information or information regarding domestic
170 violence, sexual assault, or stalking that the employer possesses about an employee or an employee's family
171 member.

172 **§ 40.1-33.6. Retaliatory action prohibited.**

173 A. No employer shall discharge, discipline, threaten, discriminate against, or penalize an employee, or
174 take other retaliatory action regarding an employee's compensation, terms, conditions, location, or privileges
175 of employment, because the employee (i) has requested or exercised the benefits provided for in this article
176 or; (ii) has alleged a violation of this article; (iii) has participated in an investigation, hearing, or proceeding
177 or cooperated with or assisted the Commissioner in investigations of any alleged violation of this article; or
178 (iv) has informed any individual of such individual's potential benefits under this article.

179 B. Neither an employer nor any other person shall interfere with, restrain, deny the exercise of, or deny
180 the attempt to exercise any benefit provided pursuant to this article. An employer's absence control policy
181 shall not count paid sick leave taken under this article as an absence that may lead to or result in discipline,
182 discharge, demotion, suspension, or any other adverse action. Protections of this section shall apply to any

183 person who mistakenly but in good faith alleges a violation of the provisions of this article.

184 **§ 40.1-33.6.1. Enforcement; civil penalties; civil actions.**

185 A. The Commissioner shall promulgate regulations for implementation and enforcement of this article.

186 B. The Commissioner shall enforce the provisions of this article. In effectuating such enforcement, the
187 Commissioner shall establish a system utilizing multiple means of communication to receive complaints
188 regarding noncompliance with this article and to investigate complaints received by the Commissioner in a
189 timely manner.

190 C. Any person alleging a violation of this article shall have the right to file a complaint with the
191 Commissioner within one year of the date the person knew or should have known of the alleged violation. The
192 Commissioner shall encourage reporting pursuant to this section by keeping confidential, to the maximum
193 extent permitted by applicable laws, the name and other identifying information of the employee or other
194 person reporting the violation, provided, however, that with the authorization of such person, the
195 Commissioner may disclose the person's name and identifying information as necessary to enforce this article
196 or for other appropriate purposes.

197 D. Upon receiving a complaint alleging a violation of this article, the Commissioner shall investigate
198 such complaint and attempt to resolve it through mediation between the complainant and the subject of the
199 complaint or other means. The Commissioner shall keep the complainant notified regarding the status of his
200 complaint and any resultant investigation. If the Commissioner believes that a violation has occurred, he
201 shall issue to the offending person or employer a notice of violation and the relief required of the offending
202 person or entity. The Commissioner shall prescribe the form and wording of such notices of violation,
203 including any method of appealing a decision of the Commissioner.

204 E. The Commissioner shall notify any employer who he alleges has violated any provision of this article
205 by certified mail. Such notice shall contain a description of the alleged violation. Within 15 days of receipt of
206 notice of the alleged violation, the employer may request an informal conference with the Commissioner
207 regarding such violation.

208 F. Any such employer who knowingly violates this article shall be subject to a civil penalty not to exceed
209 \$150 for the first violation and, for subsequent violations that occur within two years of any previous
210 violation, not to exceed \$300 for the second violation and not to exceed \$500 for each successive violation. In
211 determining the amount of any civil penalty to be imposed, the Commissioner shall consider the size of the
212 business of the employer charged and the gravity of the violation. The decision of the Commissioner shall be
213 final.

214 G. The Commissioner, with the written and signed consent of an employee, may institute proceedings on
215 behalf of an employee to enforce compliance with this article, to grant equitable relief as appropriate and
216 permitted by law, and to collect the amount of any uncompensated sick leave that shall be paid to the
217 employee entitled thereto. Upon entry of a final order of the Commissioner, or upon entry of a judgment
218 against the employer, the Commissioner or the court shall assess attorney fees of one-third the amount set
219 forth in the final order or judgment.

220 H. In addition to any civil penalties provided by this section, and without regard to any exhaustion of
221 alternative administrative remedies provided for in this section, an employee who alleges a violation of this
222 article may bring a civil action in a court of competent jurisdiction against an employer violating this article.
223 Such action may be brought by a person aggrieved by a violation of this article without first filing an
224 administrative complaint. Upon prevailing in an action brought pursuant to this section, the court shall order
225 as a remedy to the employee (i) twice the amount of any uncompensated sick leave; (ii) twice the amount of
226 any actual damages suffered as the result of an employer's violation of this article; (iii) injunctive relief as
227 appropriate to restrain continued violation of this article; (iv) such legal or equitable relief as may be
228 appropriate to remedy the violation, including the reinstatement of the employee to the same position held
229 before the retaliatory action or to an equivalent position; and (v) compensation for any lost wages, benefits,
230 and other remuneration, together with interest thereon and reasonable attorney fees and costs. The statute of
231 limitations for a civil action brought pursuant to this section shall be for a period of two years from the date
232 the alleged violation occurred or the date the aggrieved employee knew or should have known of the
233 violation.

234 I. Civil penalties owed under this article shall be paid to the Commissioner for deposit into the general
235 fund. The Commissioner shall prescribe procedures for the payment of proposed assessments of civil
236 penalties that are not contested by employers. Such procedures shall include provisions for an employer to
237 consent to abatement of the alleged violation and to pay a proposed civil penalty or a negotiated sum in lieu
238 of such civil penalty without admission of any civil liability arising from such alleged violation.

239 **2. That the provisions of this act shall become effective on July 1, 2027.**