

SENATE BILL No. 1257

December 4, 2018, Introduced by Senators HOLLIER, HERTEL, YOUNG, CONYERS, GREGORY, WARREN, KNEZEK, BIEDA, HOPGOOD, ANANICH and HOOD and referred to the Committee on Government Operations.

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 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.

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:

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

6 (b) "Director" means the director of the department or his or

1 her designee.

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

5 (d) "Employer" means an individual, person, firm, business,
6 educational institution, nonprofit agency, corporation, limited
7 liability company, government entity, or other entity that employs
8 1 or more individuals, except that employer does not include the
9 United States government.

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

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

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

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

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

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

23 Sec. 3. (1) An employer shall provide 16 weeks of paid
24 parental leave annually to each of the employer's full-time
25 employees pursuant to this act. An employer shall not require an
26 employee to search for or secure a replacement worker as a
27 condition for using parental leave.

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

4 (3) An employer shall pay to an employee who uses paid
5 parental leave at a rate equal to the greater of either the normal
6 hourly wage rate for that employee or the minimum hourly wage rate
7 established under section 4 of the workforce opportunity wage act,
8 2014 PA 138, MCL 408.414. For an employee whose hourly wage varies
9 depending on the work performed, "normal hourly wage" means the
10 average hourly wage of the employee in the pay period immediately
11 preceding the pay period in which the employee uses parental leave.

12 (4) An employer is in compliance with this section if the
13 employer provides any paid leave, or combination of paid leave,
14 that may be used for the same purposes and under the same
15 conditions provided in this act for a duration that is equal to or
16 greater than the duration in subsection (1). As used in this
17 subsection, "paid leave" includes, but is not limited to, paid
18 vacation, personal days, and paid time off.

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

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

26 Sec. 4. (1) An employer or any other person shall not
27 interfere with, restrain, or deny the exercise of, or the attempt

1 to exercise, any right protected under this act.

2 (2) An employer shall not take retaliatory personnel action or
3 discriminate against an employee because the employee has exercised
4 a right protected under this act.

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

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

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

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

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

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

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

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

22 Sec. 5. If an employer violates this act, an employee affected
23 by the violation, at any time within 5 years after the violation or
24 the date when the employee first knew of the violation, whichever
25 is later, may do any of the following:

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

1 (i) Payment for used parental leave.

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

3 (iii) Payment of back wages.

4 (iv) Reestablishment of employee benefits for which the
5 employee otherwise would have been eligible if the employee had not
6 been subjected to the violation.

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

9 (b) File a claim with the department. Filing a claim with the
10 department is not a prerequisite or a bar to bringing a civil
11 action.

12 Sec. 6. (1) The director shall enforce this act. The director
13 shall establish a system utilizing multiple means of communication
14 to receive complaints regarding noncompliance with this act and
15 investigate complaints received by the department in a timely
16 manner.

17 (2) A person alleging a violation of this act may file a
18 complaint with the department. The department shall encourage
19 reporting pursuant to this subsection by keeping the name and other
20 identifying information of the person reporting the violation
21 confidential. However, if the person reporting the violation gives
22 the department authorization, the department may disclose the
23 person's name and identifying information as necessary to enforce
24 this act or for other appropriate purposes.

25 (3) Upon receiving a complaint alleging a violation of this
26 act, the department shall investigate the complaint and attempt to
27 resolve it through mediation between the complainant and the

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

16 (4) In addition to liability for civil remedies described in
17 section 5, an employer who fails to provide parental leave in
18 violation of this act or takes retaliatory personnel action against
19 an employee or former employee is subject to a civil fine of not
20 more than \$1,500.00.

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

24 Sec. 7. (1) An employer shall provide written notice to an
25 employee at the time of the employee's hiring or by April 1, 2019,
26 whichever is later, that includes at least all of the following
27 information:

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

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

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

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

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

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

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

1 presumption that the employer violated this act, which can be
2 rebutted only by clear and convincing evidence.

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

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

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

13 (c) Diminish any rights provided to any employee under a
14 collective bargaining agreement.

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

18 (e) Prohibit an employer from establishing a policy that
19 permits an employee to donate unused parental leave to another
20 employee.

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

26 Sec. 10. If an employer's employees are covered by a
27 collective bargaining agreement in effect on the effective date of

1 this act, this act applies to those employees beginning on the
2 stated expiration date in the collective bargaining agreement,
3 notwithstanding any statement in the agreement that it continues in
4 force until a future date or event or the execution of a new
5 collective bargaining agreement.

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