

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH30482-LR-152 (04/25)

Short Title: Paid Sick/Disability/Family Leave & Trust. (Public)

Sponsors: Representatives Harrison and Fisher (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT REQUIRING PAID LEAVE EMPLOYMENT BENEFITS FOR EMPLOYEES AND
3 ESTABLISHING A TRUST FUND TO SECURE THOSE BENEFITS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 95 of the General Statutes is amended by adding a new Article
6 to read:

7 "Article 21A.

8 "Paid Leave Benefits and Trust Fund.

9 "§ 95-246. Definitions.

10 Definitions. – The following definitions apply in this Article:

- 11 (1) Employment benefits. – All benefits provided or made available to employees
12 by an employer, including group life insurance, health insurance, disability
13 insurance, sick leave, annual or vacation leave, educational benefits, and
14 pensions.
- 15 (2) Family care benefits. – The disability benefits provided pursuant to this Article
16 to a covered employee who is on leave from or who has left employment with
17 the employer because the employee is caring for a family member for one of the
18 following reasons: (i) the birth of a child of the employee, (ii) the placement of
19 a child with the employee for adoption or foster care, or (iii) a serious health
20 condition of a family member of the employee.
- 21 (3) Family care leave. – The leave taken by a covered employee from employment
22 to provide care for a family member for one of the following reasons: (i) the
23 birth of a child of the employee, (ii) the placement of a child with the employee
24 for adoption or foster care, or (iii) a serious health condition of a family
25 member of the employee.
- 26 (4) Family member. – The spouse, child, parent, parent of spouse, grandparent, or
27 grandchild of an individual seeking leave or disability benefits under this
28 Article.
- 29 (5) Serious health condition. – An illness, injury, impairment, or physical or mental
30 condition that involves either (i) inpatient care in a hospital, hospice, or
31 residential medical facility or (ii) continuing treatment by a health care
32 provider.
- 33 (6) Temporary disability benefits. – Disability benefits provided to a covered
34 employee who is on a leave from or who has left employment with the
35 employer because of a serious health condition of the employee that makes the
36 employee unable to perform the functions of the employee's position.



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1 (7) Temporary disability leave. – Leave taken by a covered employee from
2 employment because of a serious health condition of the employee that makes
3 the employee unable to perform the functions of the employee's position.

4 **"§ 95-246.1. Paid leave required; temporary disability; family care.**

5 (a) Eligibility. – An employee is eligible for temporary disability leave or family care
6 leave if the employee has at least 1,250 hours of service for the employer. The duration of
7 temporary disability or family care leave shall be limited as provided by this section.

8 (b) Birth of Child. – In the case of family care leave taken because of (i) the birth of a child
9 of the employee or (ii) the placement of a child with the employee for adoption or foster care, the
10 entitlement to leave shall expire at the end of the 12-month period beginning on the date of the
11 birth or placement.

12 (c) Certification. – An employer may, at its option, require that a request for temporary
13 disability or family care leave be supported by a certification of the need for leave.

14 (d) Restoration. – An employee who has taken temporary disability or family care leave
15 pursuant to this section shall be restored to the employee's previous position, or to a substantially
16 similar position, with the same status, pay, employment benefits, length of service credit, and
17 seniority as of the date of leave, provided that the right to such restoration shall be limited to 12
18 weeks during any 12-month period. An employer shall not be required to restore an employee who
19 has taken temporary disability or family care leave to the previous or to a substantially similar
20 position if other employees of equal length of service credit and status in the same or substantially
21 similar positions have been laid off due to economic conditions or other changes in operating
22 conditions affecting employment during the period of leave; provided, however, that the employee
23 who has taken leave shall retain any preferential consideration for another position to which the
24 employee was entitled as of the date of leave.

25 (e) Accrued Leave. – Taking of temporary disability or family care leave shall not affect
26 an employee's right to receive accrued vacation time, sick leave, bonuses, advancement, seniority,
27 length of service credit, employment benefits, plans or programs for which the employee was
28 eligible at the date of the employee's leave, and any other rights incident to the employee's
29 employment.

30 (f) Coverages Continued. – During the duration of an employee's temporary disability or
31 family care leave, the employer shall continue to provide for and contribute to the employee's
32 employment-related health insurance benefits, if any, under the same terms and conditions as
33 those existing prior to leave, up to 12 weeks during any 12-month period.

34 (g) Other Laws. – Nothing in this section shall be construed so as to affect any bargaining
35 agreement, company policy, or other federal or State law which provides for greater or additional
36 rights to leave than those provided for by this section.

37 (h) Notification. – If an employee intends to take family care leave because of the birth of
38 a child of the employee, or the placement of a child with the employee for adoption or foster care,
39 and where the need for leave is foreseeable, the employee shall notify the employer of the
40 intended leave at least 30 days prior to the date that the leave is to begin, except that if the date of
41 the birth or placement requires leave to begin in less than 30 days, the employee shall provide such
42 notice as is practicable. If an employee intends to take temporary disability or family care leave
43 because of a serious health condition of the employee or of a family member of the employee, and
44 where the need for leave is foreseeable based on planned medical treatment, the employee shall
45 notify the employer of the intended leave at least 30 days prior to the date that the leave is to
46 begin, except that if the date of the treatment requires leave to begin in less than 30 days, the
47 employee shall provide such notice as is practicable. The notice required under this subsection
48 shall consist of the anticipated starting date of the leave, the length of the leave, and the expected
49 date of return. If an employer fails to provide notice of the provisions of this section, the
50 employee's notice requirement shall be waived.

1 (i) Unlawful Activity. – It is unlawful for any employer to retaliate by discharging, firing,
2 suspending, expelling, disciplining, or in any other manner discriminating against an employee:

3 (1) For exercising any right to which such employee is entitled under this section or
4 with the purpose of interfering with the exercise of any right to which such
5 employee is entitled under this section or

6 (2) Who has filed a complaint or instituted or caused to be instituted a proceeding
7 under or related to this section, has testified or is about to testify in an inquiry
8 or proceeding, or has given or is about to give information connected to any
9 inquiry or proceeding relating to this section.

10 (j) Seniority. – Any negative change in the seniority, status, employment benefits, pay, or
11 other terms or conditions of employment of an employee who has been restored to a position
12 pursuant to this section that occurs within six months of such restoration, or of an employee who
13 has participated in proceedings or inquiries pursuant to this section within six months of the
14 termination of proceedings, shall be presumed to be retaliation under this section.

15 (k) Enforcement. – The Commissioner of Labor shall interpret and enforce of this Article
16 and may adopt rules and regulations for that purpose.

17 **"§ 95-246.2. Benefit computations; other requirements.**

18 (a) Computation of Benefits. – The weekly benefit amount under this Article shall be
19 determined as follows:

20 (1) For an eligible individual whose yearly earnings are not more than thirty
21 percent (30%) of the area median income, the weekly benefit amount shall be
22 equal to ninety-five percent (95%) of the eligible individual's weekly wage;

23 (2) For an eligible individual whose yearly earnings are more than thirty percent
24 (30%) of but not more than fifty percent (50%) of the area median income, the
25 weekly benefit amount shall be equal to ninety percent (90%) of the eligible
26 individual's weekly wage;

27 (3) For an eligible individual whose yearly earnings are more than fifty percent
28 (50%) of but not more than eighty percent (80%) of the area median income,
29 the weekly benefit amount shall be equal to eighty-five percent (85%) of the
30 eligible individual's weekly wage; and

31 (4) For an eligible individual whose yearly earnings are more than eighty percent
32 (80%) of the area median income, the weekly benefit amount shall be equal to
33 sixty-six percent (66%) of the eligible individual's weekly wage.

34 (b) Cap on Benefits. – The weekly benefit determined under subsection (a)(1) of this
35 section shall not exceed one thousand dollars (\$1,000) per week. Commencing January 1, 2018,
36 the Commissioner of Labor shall adjust annually the maximum weekly benefit amount to reflect
37 changes in the United States Bureau of Labor Statistics Consumer Price Index for all urban
38 consumers, all goods, or its successor index.

39 (c) Prorated Benefits. – For an employee who takes leave on a part-time basis, the weekly
40 benefit amount shall be prorated.

41 (1) Temporary disability benefits. – The duration of temporary disability benefits
42 shall not exceed 26 weeks during the benefit year unless the employee takes
43 leave on a part-time basis, in which case the duration of temporary disability
44 benefits shall not exceed 52 calendar weeks and the total benefit amount shall
45 not exceed 26 times the weekly benefit amount.

46 (2) Family care benefits. – The duration of family care benefits shall not exceed 12
47 weeks during the benefit year unless the employee takes leave on a part-time
48 basis, in which case the duration of family care benefits shall not exceed 24
49 calendar weeks and the total benefit amount shall not exceed 12 times the
50 weekly benefit amount.

1 (d) Waiting Period. – No temporary disability or family care benefits shall be paid during
2 the first seven consecutive days of any claim for such benefits. An employee may but shall not be
3 required to utilize accrued sick or vacation pay during the first seven consecutive days of his claim
4 for temporary disability benefits.

5 (e) Certification. – An employee who makes a claim for:

6 (1) Temporary disability benefits shall provide a certification issued by the health
7 care provider of the employee. The certification shall be sufficient if it states the
8 date on which the serious health condition commenced, the probable duration
9 of the condition, the appropriate medical facts within the knowledge of the
10 health care provider, and a statement that the employee is unable to perform the
11 functions of his position.

12 (2) Family care benefits because of the serious health condition of a family
13 member of the employee shall provide a certification issued by the health care
14 provider of the family member. The certification shall be sufficient if it states
15 the date on which the serious health condition commenced, the probable
16 duration of the condition, the appropriate medical facts within the knowledge of
17 the health care provider, a statement that the employee is needed to care for the
18 family member, and an estimate of the amount of time that the employee is
19 needed to care for the family member.

20 (3) Family care benefits because of the birth of a child of the employee shall
21 provide either a birth certificate or a certification issued by the health care
22 provider of the child of the eligible employee. The certification shall be
23 sufficient if it states the date of the child's birth.

24 (4) Family care benefits because of the placement of a child with the employee for
25 adoption or foster care shall provide a certification issued by the health care
26 provider of the child, an adoption or foster care agency involved in the
27 placement, or by other persons as determined by the division. The certification
28 shall be sufficient if it states the date of placement.

29 (5) Family care benefits because of the placement with the employee for adoption
30 or foster care of a child 18 years of age or older and incapable of self-care
31 because of a mental or physical disability shall, in addition to the certification
32 required by subdivision (4) of this subsection, also provide a certification issued
33 by the health care provider of the child or by other persons as determined by the
34 division. The certification shall be sufficient if it states the nature of the
35 disability and fact that the child is incapable of self-care.

36 (f) Misrepresentation. – An individual shall not be eligible to receive disability benefits if
37 the Commissioner of Labor finds that the individual, for the purpose of obtaining disability
38 benefits, has willfully made a false statement or representation, with actual knowledge of the
39 falsity thereof, or has willfully withheld a material fact concerning the facts required to be certified
40 pursuant to this subsection.

41 (g) Confidentiality. – Any medical or health information required under this section shall
42 be treated as confidential and not disclosed except with permission from the employee who
43 provided it unless disclosure is otherwise required by law.

44 (h) Ineligibility. – No individual may receive benefits under this section for a week in
45 which the individual receives an amount equal to or greater than the weekly benefit amount in the
46 form of wages or a wage replacement under any of the following:

47 (1) Any government program or law, including, but not limited to unemployment
48 insurance, workers' compensation other than for permanent partial disability
49 incurred prior to the temporary disability claim, or under other State or federal
50 temporary or permanent disability benefits law.

51 (2) A permanent disability policy or program of an employer.

1 (3) A temporary disability policy or program of an employer.

2 (4) A paid sick, vacation, family, or medical leave policy of an employer. For a
3 week in which an individual receives wages or a wage replacement less than the
4 weekly benefit amount, the individual shall receive disability benefits equal to
5 the difference between the weekly benefit amount and the amount of wages or
6 wage replacement received.

7 Any wage replacement received under the programs or policies listed in this subsection and
8 resulting from the same birth, adoption, or serious health condition on which the individual's claim
9 for disability benefits is based shall be deducted from the total amount of disability benefits for
10 which the individual would otherwise be eligible.

11 (i) No Exhaustion Requirement. – Nothing in this subsection shall be construed to allow
12 an employer to compel an employee to exhaust rights to any paid sick, vacation, or personal time
13 prior to receiving benefits under this Article.

14 (j) Public Education. – There Commissioner of Labor shall establish a division of family
15 and medical leave which shall conduct a public education campaign to inform workers and
16 employers about the availability of temporary disability and family care leave and benefits, the
17 requirements for receiving such leave and benefits, and how to apply for such leave and benefits.

18 **"§ 95-246.3. Benefits administration; security.**

19 (a) An employer or an association of employers shall secure temporary disability and
20 family care benefits for employees in any of the following ways:

21 (1) By depositing and maintaining with the Treasurer of the State, the contributions
22 which the employer is required to pay according to the terms of this Article and
23 in the form and manner determined by the division.

24 (2) By insuring and keeping insured the payment of temporary disability and
25 family care benefits with any stock, mutual, reciprocal, or other insurer
26 authorized to transact the business of disability insurance in the State, provided
27 that the policy is acceptable to the division as satisfying the obligation to
28 provide for the payment of disability benefits under this Article, that the
29 benefits under the policy are at least as favorable as the disability benefits
30 required by this Article and that the policy does not require contributions from
31 any employee or class of employees.

32 (3) By a private plan or agreement which the employer may, by her or his sole act,
33 terminate at any time, provided that the plan or agreement is acceptable to the
34 division as satisfying the obligation to provide for the payment of disability
35 benefits under this Article, that the benefits under the plan or agreement are at
36 least as favorable as the disability benefits required by this Article, and that the
37 policy does not require contributions from any employee or class of employees.

38 (4) By any plan or agreement in existence by agreement or collective bargaining
39 contract between the employer or employers or an association of employers and
40 an association of employees, provided that the plan or agreement is acceptable
41 to the division as satisfying the obligation to provide for the payment of
42 disability benefits under this Article, that the benefits under the plan or
43 agreement are at least as favorable as the disability benefits required by this
44 Article, and that the plan or agreement does not require contributions from any
45 employee or of any class of employees.

46 (5) Nothing in this Article shall be construed as to affect any bargaining agreement,
47 company policy, or other State or federal law which provides for greater or
48 additional benefits than those required under this Article.

49 (6) Nothing in this Article shall be construed as prohibiting employees from
50 contributing to the additional cost attributable to providing benefits that are
51 greater than those required under this Article.

1 **(b)** If payment of disability benefits is provided in whole or in part pursuant to
2 subdivisions (2), (3), or (4) of subsection (a) of this section, the employer or insurer shall file with
3 the division a notice of coverage and statement of benefits provided.

4 **(c)** Employers providing for the payment of disability benefits under subdivisions (2), (3),
5 or (4) of subsection (a) of this section shall not be required to make contributions pursuant to
6 subdivision (1) of subsection (a) of this section.

7 **"§ 95-246.4. Trust fund established.**

8 **(a)** There is established in the Treasury of the State, separate and apart from all public
9 monies or funds of the State, a family and employment security trust fund which shall be
10 administered by the State Treasurer exclusively for the purposes of this Article. All payments
11 pursuant to this Article shall be paid into the trust fund, and all disability benefits payable under
12 this Article shall be paid from the trust fund. The trust fund shall consist of the following:

13 **(1)** All contributions collected pursuant to this section, together with any interest
14 thereon.

15 **(2)** Interest earned on any monies in the trust fund.

16 **(3)** Any property or securities acquired through the use of monies belonging to the
17 trust fund.

18 **(4)** All earnings of such property and securities.

19 **(5)** All monies transferred into the trust fund from the family and employment
20 security administrative account.

21 **(6)** All other monies received for the trust fund from any source.

22 **(b)** There is established in the Treasury of the State, separate and apart from all public
23 monies or funds of the State, a family and employment security administrative account which shall
24 be administered by the State Treasurer exclusively for the purposes of this Article. The
25 administrative account shall consist of the following:

26 **(1)** All contributions collected pursuant to this section, together with any interest
27 thereon.

28 **(2)** All fines and penalties for the administrative account pursuant to this Article.

29 **(3)** All monies collected by way of subrogation.

30 **(4)** Interest earned on any monies belonging to the administrative account.

31 **(5)** Any property or securities acquired through the use of monies belonging to the
32 administrative account.

33 **(6)** All earnings of such property and securities.

34 **(7)** All monies appropriated to the administrative account by the legislature.

35 **(8)** All other monies received for the administrative account from any source.

36 **(c)** The State Treasurer shall be the treasurer and custodian of the family and employment
37 security trust fund and the family and employment security administrative account and shall
38 administer the trust fund and administrative account. All monies in the trust fund and
39 administrative account shall be held in trust for the purposes of this Part only and shall not be
40 expended, released, appropriated, or otherwise disposed of for any other purpose. Monies in the
41 trust fund and administrative account may be deposited in any depository bank in which general
42 funds of the State may be deposited, but such monies shall not be commingled with other State
43 funds and shall be maintained in separate accounts on the books of the depository bank. Such
44 monies shall be secured by the depository bank to the same extent and in the same manner as
45 required by the general depository law of the State, and collateral pledged for this purpose shall be
46 kept separate and distinct from any other collateral pledged to secure other funds of the State. The
47 trust fund shall maintain an annualized amount of at least one hundred forty percent (140%) of the
48 previous year's expenditure.

49 **(d)** The State Treasurer shall pay all expenses incurred in administering the provisions of
50 this Article. In the event that the balance in the family and employment security trust fund shall at
51 any time be insufficient to pay disability benefits under this Article, the Governor, upon the State

1 Treasurer's request, shall cause such sums as may be required for the payment of such disability
2 benefits to be transferred from the family and employment security administrative account to the
3 family and employment security trust fund.

4 (e) Expenditures of monies in the family and employment security trust fund shall not be
5 subject to provisions of the State Budget Act. Benefits shall be paid from the trust fund upon
6 warrants drawn upon the State Treasury by vouchers approved by the Commissioner of Labor.

7 (f) The State Treasurer may, from time to time, invest such monies in the family and
8 employment security trust fund as are in excess of the amount deemed necessary for the payment
9 of disability benefits for a reasonable future period. Such monies may be invested in bonds of any
10 political or municipal corporation or subdivision of the State, or any of the outstanding bonds of
11 the State, or invested in bonds or interest-bearing notes or obligations of the State, or of the United
12 States, or those for which the faith and credit of the United States are pledged for the payment of
13 principal and interest (or in federal land bank bonds or joint stock farm bonds). The investments
14 shall at all times be so made that all the assets of the trust fund shall always be readily convertible
15 into cash when needed for the payment of disability benefits. The treasurer shall have the power to
16 dispose of securities or other properties belonging to the trust fund when needed for the payment
17 of disability benefits.

18 (g) Temporary disability and family care benefits shall be paid from the family and
19 employment security trust fund to eligible individuals. Disability benefits shall also be paid from
20 the trust fund to an employee who is entitled to receive such disability benefits but cannot because
21 of the bankruptcy of his employer or because the employer is not in compliance with this Article.
22 Disability benefits paid from the trust fund to such employee may be recovered through
23 bankruptcy proceedings or from the noncomplying employer. The treasurer shall institute
24 administrative and legal action to effect recovery of such disability benefits.

25 (h) For the purpose of accumulating funds for the payment of temporary disability and
26 family care benefits, and administrative costs, each employer shall in the first year after the date
27 the employer becomes subject to this Article, and each year thereafter, pay amounts as determined
28 by the Treasurer. Each employer shall transmit all such payments to the trust fund or
29 administrative account in such manner, at such time, and under such conditions as shall be
30 prescribed by regulations.

31 (i) On or before October first of each year, the Treasurer shall certify to the Secretary of
32 the Executive Office of Labor and Workforce Development the estimated costs for the coming
33 year of disability benefits and for administrative services provided by the division. Said rates of
34 employer contribution to both the trust fund and the administrative account as established by this
35 Article shall be adjusted annually as consistent with the needs of the operation of said trust fund
36 and administrative account.

37 (j) An employer to whom the division has sent a request for wage and employment
38 information for an employee claiming temporary disability or family care benefits under this
39 Article shall complete and file such information within 10 days from the date the request was sent.
40 If an employer does not respond within 10 days, that employer may be held liable for any and all
41 related costs incurred by the State.

42 **"§ 95-246.5. Information and posting requirements.**

43 (a) Every employer subject to this Article shall keep posted in a conspicuous place or
44 places on its premises a workplace notice prepared or approved by the division which shall set
45 forth excerpts from this Article and other information the division deems necessary to explain the
46 Article. The workplace notice shall be issued in English, Spanish, Chinese, Haitian Creole, Italian,
47 Portuguese, Vietnamese, Laotian, Khmer, Russian, and any other language that is the primary
48 language of at least 10,000 or one-half of one percent (0.5%) of all residents of the State. Each
49 employer with five or more employees whose primary language is not English shall post the
50 workplace notice in that language, if such notice is available from the division.

1 (b) Each employer shall issue to each employee, within 30 days from date of the
2 employee's first day of work, written information provided or approved by the division which
3 explains the availability of temporary disability and family care leave, and temporary disability
4 and family care benefits provided pursuant to this Article.

5 (c) Each employer shall issue to each employee taking temporary disability or family care
6 leave, as soon as practicable, but not more than 30 days from the date that the employee gives
7 notice of leave, written information provided or approved by the division, which shall contain the
8 name and mailing address of the employer; the identification number assigned to the employer by
9 the division; information describing the availability of temporary disability and family care
10 benefits provided pursuant to this Article; instructions on how to file a claim for disability
11 benefits; the address and telephone number of the regional office of the division which serves the
12 recipient; and the telephone number of the division. Delivery is made when an employer provides
13 such information to an employee in person or by mail to the employee's last known address.

14 (d) Any employer who fails to comply with the provisions of subsection (a) or (b) of this
15 section shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than three
16 hundred dollars (\$300.00). A subsequent violation of this subsection by the same employer shall
17 be punished by a fine of not less than two hundred fifty dollars (\$250.00) nor more than one
18 thousand dollars (\$1,000). Where an employer fails to comply with this provision, an employee
19 shall be deemed to have provided notice of leave under this Article. The employer shall have the
20 burden of demonstrating compliance with subsections (a) and (b) of this section.

21 (e) The waiting period for an employee who did not receive the information required by
22 this Article and who failed to file timely for disability benefits shall be the initial week that such
23 employee would have been eligible to receive temporary disability benefits or family care benefits.

24 **"§ 95-246.6. Construction of this Article.**

25 This Article shall be liberally construed as remedial legislation to further its purpose of
26 providing job-protected temporary disability and family care leave, as well as temporary disability
27 and family care benefits, to the employees of the State. All presumptions shall be made in favor of
28 the availability of leave and the payment of disability benefits under this Article."

29 **SECTION 2.** This act becomes effective July 1, 2017.