

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend the Code of Virginia by adding in Chapter 3 of Title 40.1 an article numbered 2.1,  
3 consisting of sections numbered 40.1-33.3 through 40.1-33.6, relating to employees; paid sick leave.

4 [H 2137]  
5 Approved

6 Be it enacted by the General Assembly of Virginia:  
7 1. That the Code of Virginia is amended by adding in Chapter 3 of Title 40.1 an article numbered  
8 2.1, consisting of sections numbered 40.1-33.3 through 40.1-33.6, as follows:

9 Article 2.1.  
10 Paid Sick Leave.

11 § 40.1-33.3. Definitions.

12 As used in this article, unless the context requires a different meaning:  
13 "Employee" means a home health worker who works on average at least 20 hours per week or 90  
14 hours per month. "Employee" does not include an individual who (i) is licensed, registered, or certified  
15 by a health regulatory board within the Department of Health Professions; (ii) is employed by a  
16 hospital licensed by the Department of Health; and (iii) works, on average, no more than 30 hours per  
17 month.

18 "Employer" has the same meaning as provided in § 40.1-2. "Employer" does not include any agency  
19 of the federal government.

20 "Family member" means:

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

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

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

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

30 5. An individual for whom an employee is responsible for providing or arranging care, including  
31 helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment; or

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

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

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

42 § 40.1-33.4. Accrual of paid sick leave.

43 A. All employees shall accrue a minimum of one hour of paid sick leave for every 30 hours worked.  
44 Paid sick leave shall be carried over to the year following the year in which it was accrued. An  
45 employee shall not accrue or use more than 40 hours of paid sick leave in a year, unless the employer  
46 selects a higher limit.

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

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

54 D. Any employer with a paid leave policy, such as a paid time off policy, that provides an employee  
55 an amount of paid leave sufficient to meet the requirements of this section and that may be used for the  
56 same purposes and under the same conditions as paid sick leave under this article shall not be required

57 to provide additional paid sick leave to any employee that is eligible for paid leave under the policy.

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

63 **§ 40.1-33.5. Use of paid sick leave.**

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

65 1. An employee's mental or physical illness, injury, or health condition; an employee's need for  
66 medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an  
67 employee's need for preventive medical care; or

68 2. Care of a family member with a mental or physical illness, injury, or health condition; care of a  
69 family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury,  
70 or health condition; or care of a family member who needs preventive medical care.

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

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

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

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

86 F. For paid sick leave of three or more consecutive work days, an employer may require reasonable  
87 documentation that the paid sick leave has been used for a purpose for which such leave is required to  
88 be provided as set forth in subsection A.

89 **§ 40.1-33.6. Retaliatory action prohibited.**

90 No employer shall discharge, discipline, threaten, discriminate against, or penalize an employee, or  
91 take other retaliatory action regarding an employee's compensation, terms, conditions, location, or  
92 privileges of employment, because the employee (i) has requested or exercised the benefits provided for  
93 in this article or (ii) has alleged a violation of this article.