

111TH CONGRESS  
1ST SESSION

# H. R. 3991

To ensure that American workers are able to follow, without financial harm, the recommendations of their employer and public health authorities to stay home when they have symptoms of a contagious disease that may put co-workers, customers, or the public at risk.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 2009

Mr. GEORGE MILLER of California (for himself, Mr. KILDEE, Ms. WOOLSEY, Ms. HIRONO, Mr. HARE, Ms. CLARKE, Mr. PIERLUISI, and Mr. SABLAN) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To ensure that American workers are able to follow, without financial harm, the recommendations of their employer and public health authorities to stay home when they have symptoms of a contagious disease that may put co-workers, customers, or the public at risk.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Emergency Influenza  
5 Containment Act”.

1 **SEC. 2. PURPOSE.**

2       The purpose of this Act is to ensure that American  
3 workers are able to follow, without financial harm, the rec-  
4 ommendations of their employer and public health authori-  
5 ties to stay home when they have symptoms of a con-  
6 tagious disease that may put co-workers, customers, or the  
7 public at risk.

8 **SEC. 3. PAID SICK LEAVE REQUIREMENT.**

9       (a) IN GENERAL.—An employer who directs an em-  
10 ployee to leave work or not to come in to work because  
11 the employer believes the employee has symptoms of a con-  
12 tagious illness, or has been in close contact with an indi-  
13 vidual who has symptoms of a contagious illness, shall pro-  
14 vide paid sick leave to the employee for each workday (or  
15 portion thereof) the employee complies with such direc-  
16 tion, up to a maximum of 5 workdays per 12-month pe-  
17 riod.

18       (b) EMPLOYEE COMPLIANCE WITH EMPLOYER DI-  
19 RECTION.—An employee shall be considered to be in com-  
20 pliance with an employer’s direction to leave work or not  
21 come in to work if the employee leaves work or does not  
22 come in to work when the employer instructs or advises  
23 the employee to do so because the employer believes that  
24 the employee—

25               (1) has symptoms of a contagious illness; or

1           (2) has been in close contact with an individual  
2 who has symptoms of a contagious illness.

3           (c) DURATION OF LEAVE.—

4           (1) IN GENERAL.—An employee shall be pro-  
5 vided paid sick leave (as calculated in accordance  
6 with paragraph (2)) by the employer of the employee  
7 for each workday (or portion thereof) the employee  
8 complies with the employer’s direction to leave work  
9 or not come in to work, up to a maximum of 5 days  
10 per 12-month period.

11           (2) CALCULATION OF PAID SICK LEAVE.—

12           (A) CALCULATION.—The amount of paid  
13 sick leave shall be calculated based on the em-  
14 ployee’s regular rate of pay and the number of  
15 hours the employee would otherwise be normally  
16 scheduled to work.

17           (B) GUIDELINES.—The Secretary of Labor  
18 shall issue guidelines to assist employers in cal-  
19 culating the amount of paid sick leave under  
20 subparagraph (A).

21           (3) REASONABLE NOTICE.—After the first  
22 workday (or portion thereof) an employee receives  
23 paid sick leave under this Act, an employer may re-  
24 quire the employee to follow reasonable notice proce-

1       dures in order to continue receiving such paid sick  
2       leave.

3               (4) EMPLOYER'S TERMINATION OF PAID SICK  
4       LEAVE.—Paid sick leave provided to an employee  
5       under this Act shall cease beginning with the em-  
6       ployee's next scheduled workshift immediately fol-  
7       lowing notification by the employer to the employee  
8       that the employer believes the employee no longer  
9       has symptoms of a contagious illness or poses a  
10      threat of contagion to other employees of the em-  
11      ployer or to the public.

12 **SEC. 4. NOTICE.**

13       Each employer shall post and keep posted, in con-  
14      spicuous places on the premises of the employer where no-  
15      tices to employees are customarily posted, a notice, to be  
16      prepared or approved by the Secretary of Labor of the  
17      requirements described in this Act.

18 **SEC. 5. PROHIBITED ACTS.**

19       It shall be unlawful for any employer to discharge,  
20      discipline, or in any other manner discriminate against  
21      any employee who—

22               (1) complies, in accordance with this Act, with  
23      an employer's direction to leave work or not come in  
24      to work; or

1           (2) has filed any complaint or instituted or  
2           caused to be instituted any proceeding under or re-  
3           lated to this Act (including a proceeding that seeks  
4           enforcement of this Act), or has testified or is about  
5           to testify in any such proceeding.

6 **SEC. 6. ENFORCEMENT.**

7           (a) UNPAID SICK LEAVE.—An employer who fails to  
8           pay sick leave in violation of this Act shall—

9                   (1) be considered to have failed to pay min-  
10           imum wages in violation of section 6 of the Fair  
11           Labor Standards Act of 1938 (29 U.S.C. 206); and

12                   (2) be subject to the penalties described in sec-  
13           tion 16 of such Act (29 U.S.C. 216) with respect to  
14           such violation.

15           (b) UNLAWFUL TERMINATION.—An employer who  
16           willfully violates section 5(2) shall—

17                   (1) be considered to be in violation of section  
18           15(a)(3) of the Fair Labor Standards Act of 1938  
19           (29 U.S.C. 215(a)(3)); and

20                   (2) be subject to the penalty described in sec-  
21           tion 16(a) of such Act (29 U.S.C. 216(a)) with re-  
22           spect to such violation.

1 **SEC. 7. RULE OF CONSTRUCTION.**

2 Nothing in this Act shall be construed to in any way  
3 diminish the rights or benefits that an employee is entitled  
4 to under any—

- 5 (1) other Federal, State, or local law;  
6 (2) collective bargaining agreement; or  
7 (3) existing employer policy.

8 **SEC. 8. EFFECTIVE DATE.**

9 This Act, and the requirements under this Act, shall  
10 be effective not later than 15 days after the date of enact-  
11 ment of this Act.

12 **SEC. 9. SUNSET.**

13 This Act, and the requirements under this Act, shall  
14 expire 2 years after the effective date of this Act.

15 **SEC. 10. DEFINITIONS.**

16 For purposes of the Act:

17 (1) **CONTAGIOUS ILLNESS.**—The term “con-  
18 tagious illness” includes influenza-like-illnesses such  
19 as the novel H1N1 virus.

20 (2) **EMPLOY; EMPLOYEE.**—The terms “employ”  
21 and “employee” have the same meanings given such  
22 terms in subsections (e) and (g) of section 3 of the  
23 Fair Labor Standards Act of 1938 (29 U.S.C. 203  
24 (e) and (g)).

25 (3) **EMPLOYER.**—The term “employer” has the  
26 meaning given such term in section 3(d) of the Fair

1 Labor Standards Act of 1938 (29 U.S.C. 203(d)),  
2 except that the term does not include an employer  
3 who—

4 (A) employs fewer than 15 employees; or

5 (B) with respect to an employee being di-  
6 rected to leave work or not come in to work,  
7 provides such employee with at least 5 days of  
8 paid sick leave per 12-month period that may  
9 be used at such employee's discretion.

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