

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

S

1

SENATE BILL 740*

Short Title: Front Line State Employee Hazard Pay/Funds. (Public)

Sponsors: Senators Peterson and Garrett (Primary Sponsors).

Referred to: Rules and Operations of the Senate

May 18, 2020

1 A BILL TO BE ENTITLED
2 AN ACT MANDATING HAZARD PAY FOR THE MANDATORY STATE EMPLOYEES
3 ON THE FRONT LINE FIGHTING THE COVID-19 COMMUNICABLE DISEASE
4 PANDEMIC AND APPROPRIATING FUNDS FOR THAT PURPOSE AND DIRECTING
5 THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE PROVISION OF
6 HAZARD PAY TO PRIVATE AND LOCAL GOVERNMENTAL EMPLOYEES IN THIS
7 STATE.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. Article 2 of Chapter 126 of the General Statutes is amended by adding
10 a new section to read:

11 "**§ 126-8.6. Mandatory State operations; mandatory employees; hazard pay requirements.**

12 (a) Definitions. – The following definitions apply in this section:

13 (1) Epidemic. – A disease occurring suddenly in a community, region, or country
14 in numbers clearly in excess of normal. This includes the occurrence of several
15 cases of a disease associated with a common source.

16 (2) High-risk employees. – Employees in a certain age group or who have serious
17 underlying medical conditions and might be at higher risk for severe illness
18 from a communicable disease as identified by the federal Centers for
19 Communicable Diseases or the Division of Public Health of the North
20 Carolina Department of Human Services.

21 (3) Isolation. – A control measure issued by a local health director or the State
22 Health Director under G.S. 130A-145 limiting the movement or action of
23 persons or animals infected or reasonably suspected to be infected with a
24 communicable disease or condition for the period of communicability to
25 prevent the spread of the communicable disease or condition, as described in
26 G.S. 130A-2(3a).

27 (4) Mandatory employee. – An employee with a permanent, probationary, or
28 time-limited appointment who is required to report to a designated work site
29 (particularly when all other employees are restricted from coming into the
30 workplace), other than their personal residence, and only for those specific
31 dates and times that such onsite reporting is required during a public health
32 emergency. Mandatory employees include, but are not limited to, employees
33 in positions that directly impact: (i) public health and patient care, (ii) public
34 safety, (iii) operation of critical infrastructure and facilities, (iv) operation and
35 safety of sensitive research labs and ongoing care for research animals and the
36 custody or care of persons or property for whom the State has a duty to



1 continue to serve. Mandatory employees may also be referred to as "essential
2 employees."

3 (5) Pandemic. – The worldwide spread of an infectious/communicable disease
4 affecting a large number of people.

5 (6) Quarantine. – A control measure issued by a local health director or the State
6 Health Director under G.S. 130A-145 limiting the movement or action of
7 persons or animals who have been exposed to or are reasonably suspected of
8 having been exposed to a communicable disease or condition for the period of
9 time necessary to prevent the spread of the communicable disease or
10 condition, as described in G.S. 130A-2(7a).

11 (7) Social distancing. – Actions taken to reduce the opportunities for close contact
12 between people in order to limit the spread of a communicable disease.

13 (8) State agency or agency. – The legislative, executive, and judicial branches of
14 State government and the respective departments, divisions, and other units
15 thereof. The term includes The University of North Carolina.

16 (b) Findings and Policy. – Notwithstanding the existence of a communicable disease
17 epidemic or pandemic in this State, the mandatory essential functions of government must
18 continue, even if isolation, quarantine, and social distancing are public health control measures
19 that may be required to protect the public health. Certain State employees are essential such that
20 their continued presence in the workplace may be required in a situation. It is the policy of this
21 State to provide mandatory State employees with (i) the most effective equipment and measures
22 to protect their health in the workplace and (ii) hazard pay to compensate them for their continued
23 service during an epidemic or pandemic.

24 (c) Agency Responsibilities. – It is the responsibility of the head of each State agency to
25 consult with local, State, and federal public health officials to assess the severity of the individual
26 situation and to determine what actions shall be taken (including the closure of the agency or
27 university, by facility or location). Each State agency shall:

28 (1) Comply with and adhere to any control measures, other orders, or instructions
29 from federal, State, and local public health agencies to prevent transmission
30 of a communicable disease.

31 (2) Require that agency management and employees follow public health
32 guidelines.

33 (3) Immediately inform agency management and other employees, and the local
34 health department, of any evidence in the workplace of a communicable
35 disease that could seriously endanger the health of employees and others.

36 (d) Mandatory Operations. – In order to continue essential State government functions,
37 the head of each State agency shall predetermine and designate mandatory operations and
38 designate the mandatory employees to staff the operations even when isolation, quarantine, and
39 social distancing are public health control measures that may be required to protect the public
40 health during a communicable disease pandemic or epidemic.

41 (e) Mandatory Employees. – A mandatory employee may be required to work during a
42 pandemic or epidemic in order to maintain mandatory operations. A mandatory employee may
43 be excused from work if the employee is:

44 (1) A high-risk employee;

45 (2) Isolated, quarantined, ill, or subject to other public health control measures;
46 or

47 (3) Required to care for a member of the employee's immediate family who is
48 isolated, quarantined, or ill or who requires the employee's care due to the
49 closure of a public or private school, a day care center, or an elder care facility.

1 Based on an agency's operational needs, a supervisor may excuse a mandatory employee if
2 they are a parent (or guardian) who is required to stay home with underage children because of
3 the closure of a day care facility, public or private school, or elder care facility.

4 If operational needs change, a mandatory employee may be required to return to work, but
5 only for documented compelling reasons that will not jeopardize the health and safety of the
6 mandatory employee. Management's discretion or convenience is not a compelling reason when
7 the employee has been advised by a health care provider to quarantine due to exposure to a
8 communicable disease. The advice to quarantine must be documented and based upon the health
9 care provider's belief that the employee has the communicable disease, may have been exposed
10 to the communicable disease, or is particularly vulnerable to the communicable disease.

11 Each State agency shall maintain a list of mandatory employees by position, including current
12 employee name and contact information. The agency head shall develop an alternative plan for
13 personnel in case the designated personnel are unable to work. Alternative workers may include
14 current employees who are not designated as mandatory but who possess the skills to fill in for
15 mandatory employees, retirees, contract workers, or other temporary employees. Employees
16 designated as mandatory personnel shall be notified of such designation and the requirement to
17 report for, or remain at, work in emergency situations.

18 If mandatory personnel are required to remain at the work site for an extended period of time,
19 the agency or university must provide adequate housing and food. If an employee remains on the
20 employer's premises for 24 hours a day, the employee shall be eligible for extra hazard duty pay
21 as appropriate and may be entitled to receive pay for all those hours depending on the situation.
22 Employees shall have a normal night's sleep and ample eating time and this time is not considered
23 as hours worked. At a minimum, the sleep allowance is for eight hours of sleep and the meal
24 period is for three hours.

25 (f) Hazard Pay/Compensatory Time. – When an agency is closed or when management
26 determines that only mandatory employees are required to report to a specific work site
27 (particularly when all other employees are restricted from coming into the workplace), the
28 mandatory employees shall be granted hazard pay of at least 1.5 or an equivalent ratio in
29 compensatory time for hours worked onsite up to 40 hours in a work week. It is the agency head's
30 discretion to determine any other appropriate compensation options based on the availability of
31 funds, operational needs of the agency, and in consideration of the duties being performed.
32 Compensatory time must be used within 24 months of it being awarded, or it will expire.
33 Agencies shall make every effort to give employees the opportunity to take this time off.
34 Compensatory time earned during a public health emergency is not paid out at expiration or upon
35 separation and does not transfer to another State agency. This provision applies to all designated
36 mandatory employees, both exempt and nonexempt, under the Fair Labor Standards Act (FLSA).

37 (g) Discipline and Appeals. – Individuals designated as mandatory employees may be
38 subject to disciplinary action, up to and including termination of employment, for willful failure
39 to report for or remain at work. Each situation will be reviewed on a case-by-case basis to
40 determine appropriate action. A mandatory employee may appeal the denial of an exemption,
41 any disciplinary action under this section, or both, pursuant to G.S. 126-34.02.

42 (h) Applicability. – This section applies to all State employees, whether or not they are
43 exempt or nonexempt from the provisions of this Chapter."

44 **SECTION 2.(a)** G.S. 126-8 reads as rewritten:
45 **"§ 126-8. Minimum leave granted State employees.**

46 The Except as otherwise authorized by G.S. 126-8.6(f), the amount of vacation leave granted
47 to each full-time State employee subject to the provisions of this Chapter shall be determined in
48 accordance with a graduated scale established by the State Human Resources Commission which
49 shall allow the equivalent rate of not less than two weeks' vacation per calendar year, prorated
50 monthly, cumulative to at least 30 days. On December 31 of each year, any State employee who
51 has vacation leave in excess of the allowed accumulation shall have that leave converted to sick

1 leave. Sick leave allowed as needed to such State employees shall be at a rate not less than 10
2 days for each calendar year, cumulative from year to year. Notwithstanding any other provisions
3 of this section, no full-time State employee subject to the provisions of Chapter 126, as the same
4 appears in the Cumulative Supplement to Volume 3B of the General Statutes, on May 23, 1973,
5 shall be allowed less than the equivalent of three weeks' vacation per calendar year, cumulative
6 to at least 30 days."

7 **SECTION 2.(b)** G.S. 126-34.02(b) is amended by adding a new subdivision to read:

8 "(b) The following issues may be heard as contested cases after completion of the agency
9 grievance procedure and the Office of State Human Resources review:

10 ...

11 (7) Treatment of mandatory employees. – A mandatory employee may appeal the
12 denial of an exemption, the adequacy of the amount of hazard pay, and any
13 disciplinary action under G.S. 126-8.6."

14 **SECTION 2.(c)** The Legislative Research Commission shall study the practices of
15 private and local governmental employers in this State regarding hazard pay for their employees
16 and report its findings and any legislative proposals to the 2021 General Assembly upon its
17 convening.

18 **SECTION 3.** There is appropriated from the General Fund to the Office of State
19 Budget and Management the sum of five million dollars (\$5,000,000) for the 2020-2021 fiscal
20 year to fund mandatory employee hazard pay and otherwise implement the provisions of this act.

21 **SECTION 4.** Section 3 of this act becomes effective July 1, 2020. The remainder of
22 this act is effective when it becomes law.