

117TH CONGRESS
2D SESSION

H. R. 8819

To provide employment protection and paid emergency leave to workers impacted by certain climate disasters, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 2022

Ms. BUSH (for herself, Mr. GARCÍA of Illinois, Mr. ESPAILLAT, Ms. CLARKE of New York, Ms. OCASIO-CORTEZ, Mrs. CAROLYN B. MALONEY of New York, Mr. GRIJALVA, Ms. LEE of California, Ms. TLAIB, and Mr. BOWMAN) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To provide employment protection and paid emergency leave to workers impacted by certain climate disasters, and for other purposes.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Worker Safety in Climate Disasters Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Paid emergency time.

Sec. 3. Employment protection during climate disaster.
 Sec. 4. Employer requirements.
 Sec. 5. Prohibited acts.
 Sec. 6. Enforcement.
 Sec. 7. Definitions.
 Sec. 8. Regulatory authorities.
 Sec. 9. Rules of construction.
 Sec. 10. Effective date.

1 SEC. 2. PAID EMERGENCY TIME.

2 (a) IN GENERAL.—An employer shall provide to each
 3 employee employed by the employer paid emergency time
 4 to the extent that the employee is unable to work (or
 5 telework) due to an applicable climate disaster, includ-
 6 ing—

7 (1) a need to relocate for safety;

8 (2) recovery efforts relating to economic sta-
 9 bility and community safety—

10 (A) in the community in which the em-
 11 ployee resides;

12 (B) at the workplace of the employee; and

13 (C) at the home of the employee;

14 (3) a need to care for family members resulting
 15 from the closure of schools or other facilities;

16 (4) an injury or illness affecting either the em-
 17 ployee or their immediate family; and

18 (5) disruptions of public transit services or
 19 commuter routes.

20 (b) DURATION OF PAID EMERGENCY TIME.—

1 (1) IN GENERAL.—An employee shall be enti-
2 tled to paid emergency time for a number of hours
3 determined under paragraph (2).

4 (2) NUMBER OF HOURS.—The number of hours
5 of paid emergency time to which an employee is enti-
6 tled during an applicable climate disaster period
7 shall be as follows:

8 (A) For full-time employees, 80 hours.

9 (B) For part-time employees, a number of
10 hours equal to the number of hours that such
11 employee works, on average, over a 2-week pe-
12 riod.

13 (c) PROHIBITION.—An employer may not require, as
14 a condition of providing paid emergency time under this
15 Act, that the employee involved search for or find a re-
16 placement employee to cover the hours during which the
17 employee is using paid emergency time.

18 (d) AVAILABILITY OF PAID EMERGENCY TIME.—The
19 paid emergency time under subsection (a) shall be avail-
20 able for immediate use by the employee for the purposes
21 described in such subsection, regardless of how long the
22 employee has been employed by an employer.

23 (e) PROHIBITION ON SUBSTITUTION OF LEAVE
24 TIME.—An employer may not require an employee to sub-
25 stitute any of the accrued paid vacation leave, personal

1 leave, or family leave of such employee for paid emergency
2 time provided under subsection (a).

3 (f) AMOUNT OF PAID EMERGENCY TIME.—

4 (1) IN GENERAL.—The amount of paid emer-
5 gency time provided to an employee under this sec-
6 tion shall be calculated based on the employee’s re-
7 quired compensation under paragraph (2) and the
8 number of hours the employee would otherwise be
9 normally scheduled to work (or the number of hours
10 calculated under paragraph (3)), except that in no
11 event shall the amount of such paid emergency time
12 paid per day exceed—

13 (A) for calendar year 2022, \$511; and

14 (B) for any calendar year after 2022, an
15 amount equal to the product of—

16 (i) \$511, multiplied by

17 (ii) the quotient obtained by divid-
18 ing—

19 (I) the Consumer Price Index for
20 Urban Wage Earners and Clerical
21 Workers (as published by the Bureau
22 of Labor Statistics) for the calendar
23 year immediately preceding such cal-
24 endar year; by

1 (II) the Consumer Price Index
2 for calendar year 2021.

3 (2) REQUIRED COMPENSATION.—Subject to
4 paragraph (1), the employee’s required compensation
5 under this subparagraph shall be not less than the
6 greater of the following:

7 (A) The employee’s regular rate of pay (as
8 determined under section 7(e) of the Fair
9 Labor Standards Act of 1938 (29 U.S.C.
10 207(e))).

11 (B) The minimum wage rate in effect
12 under section 6(a)(1) of the Fair Labor Stand-
13 ards Act of 1938 (29 U.S.C. 206(a)(1)).

14 (C) The minimum wage rate in effect for
15 such employee in the applicable State or local-
16 ity, whichever is greater, in which the employee
17 is employed.

18 (3) VARYING SCHEDULE HOURS CALCULA-
19 TION.—In the case of a part-time employee de-
20 scribed in subsection (b)(2)(B) whose schedule varies
21 from week to week to such an extent that an em-
22 ployer is unable to determine with certainty the
23 number of hours the employee would have worked if
24 such employee had not taken paid emergency time

1 under subsection (a), the employer shall use the fol-
2 lowing in place of such number:

3 (A) Subject to subparagraph (B), a num-
4 ber equal to the average number of hours that
5 the employee was scheduled per week over the
6 6-month period ending on the date on which the
7 employee takes the paid emergency time, in-
8 cluding hours for which the employee took leave
9 of any type.

10 (B) If the employee did not work over such
11 period, the reasonable expectation of the em-
12 ployee at the time of hiring of the average num-
13 ber of hours per week that the employee would
14 normally be scheduled to work.

15 (4) GUIDELINES.—Not later than 120 days
16 after the date of enactment of this Act, the Sec-
17 retary of Labor shall issue guidelines to assist em-
18 ployers in calculating the amount of paid emergency
19 time under paragraph (1).

20 (5) REASONABLE AND PRACTICABLE NOTICE.—
21 After the first workday (or portion thereof) an em-
22 ployee receives paid emergency time under this Act,
23 an employer may require the employee to follow rea-
24 sonable and practicable notice procedures in order to
25 continue receiving such paid emergency time.

1 (6) PUBLICATION OF PAY LIMITATION.—Not
2 later than December 1 of each year, the Secretary
3 of Labor shall publish the amount determined under
4 paragraph (1)(B) that will be in effect for the fol-
5 lowing calendar year.

6 **SEC. 3. EMPLOYMENT PROTECTION DURING CLIMATE DIS-**
7 **ASTER.**

8 (a) RESTORATION TO POSITION.—Any eligible em-
9 ployee who uses paid emergency time under section 2 for
10 the intended purpose of the paid emergency time shall be
11 entitled, on return from using paid emergency time—

12 (1) to be restored by the employer to the posi-
13 tion of employment held by the employee when the
14 use of paid emergency time commenced; or

15 (2) to be restored to an equivalent position with
16 equivalent employment benefits, pay, and other
17 terms and conditions of employment.

18 (b) LOSS OF BENEFITS.—The use of paid emergency
19 time shall not result in the loss of any employment benefit
20 accrued prior to the date on which the use of paid emer-
21 gency time commenced.

22 (c) LIMITATIONS.—Nothing in this section shall be
23 construed to entitle any restored employee to—

1 (1) the accrual of any seniority or employment
 2 benefits during any period during which such re-
 3 stored employee uses paid emergency time; or

4 (2) any right, benefit, or position of employ-
 5 ment other than any right, benefit, or position to
 6 which the employee would have been entitled had the
 7 employee not used paid emergency time.

8 (d) CONSTRUCTION.—Nothing in this section shall be
 9 construed to prohibit an employer from requiring an em-
 10 ployee to report periodically to the employer on the status
 11 and intention of the employee to return to work.

12 **SEC. 4. EMPLOYER REQUIREMENTS.**

13 (a) MONITORING FOR APPLICABLE CLIMATE DIS-
 14 ASTER.—

15 (1) IN GENERAL.—An employer shall monitor
 16 for, using the tools identified by the Secretary of
 17 Labor pursuant to paragraph (3), and notify an em-
 18 ployee of the existence of, applicable climate disas-
 19 ters.

20 (2) EXCLUSION FOR REMOTE EMPLOYEES.—

21 (A) IN GENERAL.—An employer is not re-
 22 quired to monitor for applicable climate disas-
 23 ters affecting remote employees.

24 (B) EXCLUSION FOR REMOTE EMPLOY-
 25 ERS.—An employer who employs only remote

1 employees shall monitor for, and notify an em-
2 ployee of the existence of, applicable climate
3 disasters affecting the area where the largest
4 concentration of such remote employees reside.

5 (3) MONITORING GUIDELINES.—Not later than
6 one year after the date of enactment of this Act, the
7 Secretary of Labor shall issue guidelines that iden-
8 tify tools for employers to use in monitoring for ap-
9 plicable climate disasters.

10 (b) NOTICE.—

11 (1) IN GENERAL.—Each employer shall post
12 and keep posted, in conspicuous places on the prem-
13 ises of the employer where notices to employees are
14 customarily posted, a notice, to be prepared or ap-
15 proved by the Secretary of Labor, of the require-
16 ments described in this Act.

17 (2) MODEL NOTICE.—Not later than 180 days
18 after the date of enactment of this Act, the Sec-
19 retary of Labor shall make publicly available a
20 model of a notice that meets the requirements of
21 paragraph (1).

22 **SEC. 5. PROHIBITED ACTS.**

23 (a) INTERFERENCE WITH RIGHTS.—

24 (1) EXERCISE OF RIGHTS.—It shall be unlawful
25 for any employer to interfere with, restrain, or deny

1 the exercise of or the attempt to exercise, any right
2 provided under this Act.

3 (2) DISCRIMINATION.—It shall be unlawful for
4 any employer to discharge or in any other manner
5 discriminate against any individual for opposing any
6 practice made unlawful by this Act.

7 (b) INTERFERENCE WITH PROCEEDINGS OR INQUIR-
8 IES.—It shall be unlawful for any person to discharge or
9 in any other manner discriminate against any individual
10 because such individual—

11 (1) has filed any charge, or has instituted or
12 caused to be instituted any proceeding, under or re-
13 lated to this Act;

14 (2) has given, or is about to give, any informa-
15 tion in connection with any inquiry or proceeding re-
16 lating to any right provided under this Act; or

17 (3) has testified, or is about to testify, in any
18 inquiry or proceeding relating to any right provided
19 under this Act.

20 **SEC. 6. ENFORCEMENT.**

21 (a) UNPAID EMERGENCY LEAVE TIME.—An em-
22 ployer who violates section 2 shall—

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

1 (2) be subject to the penalties described in sec-
2 tions 16 and 17 of such Act (29 U.S.C. 216; 217)
3 with respect to such violation, except that no person
4 shall be imprisoned under such sections for a viola-
5 tion of section 2 of this Act.

6 (b) UNLAWFUL ACTION AGAINST EMPLOYEE.—An
7 employer who willfully violates section 5 shall—

8 (1) be considered to be in violation of section
9 15(a)(3) of the Fair Labor Standards Act of 1938
10 (29 U.S.C. 215(a)(3)); and

11 (2) be subject to the penalties described in sec-
12 tions 16 and 17 of such Act (29 U.S.C. 216; 217)
13 with respect to such violation, except that no person
14 shall be imprisoned under such sections for a viola-
15 tion of section 2 of this Act.

16 **SEC. 7. DEFINITIONS.**

17 For purposes of this Act:

18 (1) EMPLOYEE.—The term “employee” means
19 any individual employed by an employer.

20 (2) EMPLOYER.—

21 (A) IN GENERAL.—Subject to subpara-
22 graph (B), the term “employer”—

23 (i) means any individual who employs
24 an employee; and

1 (ii) includes any individual acting di-
2 rectly or indirectly in the interest of an
3 employer in relation to an employee.

4 (B) EXCLUSION OF PUBLIC EMPLOYERS.—

5 The term “employer” does not include—

6 (i) the Government of the United
7 States;

8 (ii) the government of any State; or

9 (iii) any unit of local government, de-
10 partment, agency, or instrumentality there-
11 of.

12 (3) FLSA TERMS.—The terms “employ” and
13 “State” have the meanings given such terms in sec-
14 tion 3 of the Fair Labor Standards Act of 1938 (29
15 U.S.C. 203).

16 (4) APPLICABLE CLIMATE DISASTER.—

17 (A) IN GENERAL.—The term “applicable
18 climate disaster” means, with respect to an em-
19 ployee, a climate disaster determined by the
20 Secretary to affect or be likely to affect such
21 employee.

22 (B) CLIMATE DISASTER.—The term “cli-
23 mate disaster” means a weather or climate
24 event (including an earthquake, flood, heat
25 event, hurricane, severe blizzard, superstorm,

1 tornado, tsunami, utility failure, volcanic explo-
2 sion, or wildfire) with the potential to cause
3 great damage or loss of life.

4 **SEC. 8. REGULATORY AUTHORITIES.**

5 The Secretary of Labor shall have the authority to
6 issue regulations for good cause under sections 553(b)(B)
7 and 553(d)(A) of title 5, United States Code—

8 (1) to exempt small businesses with fewer than
9 50 employees from the requirements of paragraphs
10 (3) and (4) of section 2(a) when the imposition of
11 such requirements would jeopardize the viability of
12 the business as a going concern; and

13 (2) as necessary, to carry out the purposes of
14 this Act.

15 **SEC. 9. RULES OF CONSTRUCTION.**

16 Nothing in this Act shall be construed—

17 (1) to in any way diminish the rights or bene-
18 fits that an employee is entitled to under any—

19 (A) other Federal, State, or local law;

20 (B) collective bargaining agreement; or

21 (C) existing employer policy; or

22 (2) to require financial or other reimbursement
23 to an employee from an employer upon the employ-
24 ee's termination, resignation, retirement, or other
25 separation from employment for paid emergency

1 leave time under this Act that has not been used by
2 such employee.

3 **SEC. 10. EFFECTIVE DATE.**

4 This Act, and the requirements under this Act, shall
5 take effect not later than 180 days after the date of enact-
6 ment of this Act.

