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# HOUSE BILL No. 1167

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-2-16; IC 31-14-14-6; IC 31-17-4-11.

**Synopsis:** Employee right to parenting time. Requires the employer of a parent to provide parenting time to an employee parent if a court has ordered parenting time during the employee's regularly scheduled hours of employment. Provides for enforcement by the commissioner of labor.

**Effective:** July 1, 2011.

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January 10, 2011, read first time and referred to Committee on Family, Children and Human Affairs.

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First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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## HOUSE BILL No. 1167



A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 22-2-16 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2011]:

4 **Chapter 16. Employment Leave for Parenting Time**

5 **Sec. 1. As used in this chapter, "child" has the meaning set forth**  
6 **in IC 31-9-2-13(a).**

7 **Sec. 2. As used in this chapter, "commissioner" refers to the**  
8 **commissioner of labor appointed under IC 22-1-1-2(a).**

9 **Sec. 3. (a) As used in this chapter, "employee" means an**  
10 **individual who:**

11 **(1) has been employed for at least twelve (12) months by an**  
12 **employer from whom parenting time rights are requested**  
13 **under this chapter; and**

14 **(2) has worked an average number of hours per week equal to**  
15 **at least seventy-five percent (75%) of a full-time equivalent**  
16 **position as defined:**

17 **(A) in a bona fide agreement between the employer and the**



1           employee;  
 2           (B) by the employer's personnel policies or practices; or  
 3           (C) in a negotiated collective bargaining agreement or  
 4           settlement agreement.

5           **(b) The term does not include an independent contractor.**

6           **Sec. 4. As used in this chapter, "employer" means:**

- 7           (1) an individual;
- 8           (2) a partnership;
- 9           (3) an association;
- 10          (4) a limited liability company;
- 11          (5) a corporation;
- 12          (6) a business trust;
- 13          (7) an office, agency, department, bureau, or other body
- 14          corporate and politic of the state;
- 15          (8) a municipal corporation (as defined in IC 36-1-2-10); or
- 16          (9) a nonprofit organization;

17           that employs at least fifty (50) employees for each working day  
 18           during each of twenty (20) or more calendar weeks in the current  
 19           or preceding calendar year.

20           **Sec. 5. As used in this chapter, "parenting time" has the**  
 21           **meaning set forth in IC 31-9-2-88.5.**

22           **Sec. 6. An employee who has been granted parenting time by an**  
 23           **order:**

- 24           (1) under IC 31-14-14-1;
- 25           (2) under IC 31-17-4-1; or
- 26           (3) from a court with jurisdiction from another state or
- 27           territory;

28           is entitled to exercise the parenting time rights during regularly  
 29           scheduled hours of employment of the employee.

30           **Sec. 7. An exercise of parenting time rights described in section**  
 31           **6 of this chapter is subject to the following conditions:**

- 32           (1) Except as provided in subdivision (3), the employer shall
- 33           require the employee to submit a copy of the order granting
- 34           parenting time rights at least thirty (30) days before the date
- 35           requested for the parenting time rights. If the order for
- 36           parenting time rights is issued less than thirty (30) days before
- 37           the date that the parenting time rights are to begin, the
- 38           employee shall give at least seven (7) days notice to the
- 39           employer of the desire of the employee to exercise the right of
- 40           the employee to obtain parenting time rights.
- 41           (2) The employer may require the employee to furnish a
- 42           written verification from the child's school that the child is

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1 not in attendance at the time of the desired parenting rights.  
2 If an employer requires an employee to submit a verification,  
3 the employee:

4 (A) shall submit the verification not later than five (5)  
5 working days after the date of the request for written  
6 verification; or

7 (B) if the employee does not comply with clause (A), is  
8 subject to the employer's standard discipline imposed for  
9 an unexcused absence from work.

10 (3) An employee who is making up parenting time rights in  
11 accordance with IC 10-16-7-22 must notify the employer of  
12 the date requested for the parenting time rights  
13 simultaneously with the notification given to the custodial  
14 parent of the desire to exercise the parenting time rights.

15 Sec. 8. A notice in a form approved by the commissioner setting  
16 forth the rights of employees under this chapter must be:

17 (1) conspicuously and continuously posted by the employer in  
18 the area in which employees are routinely employed; or

19 (2) disseminated to the employees in a manner reasonably  
20 intended to give notice.

21 Sec. 9. A person may not discharge or otherwise discriminate  
22 against a person who does any of the following:

23 (1) Files a complaint, institutes a proceeding, or causes  
24 another person to file a complaint or institute a proceeding  
25 concerning the rights and duties arising under this chapter.

26 (2) Assists or intends to assist in an investigation or a  
27 proceeding concerning the rights and duties arising under this  
28 chapter.

29 (3) Testifies or intends to testify in an investigation or a  
30 proceeding concerning the rights and duties arising under this  
31 chapter.

32 Sec. 10. The commissioner shall adopt rules under IC 4-22-2 to  
33 implement this chapter.

34 Sec. 11. The commissioner shall enforce this chapter.

35 Sec. 12. (a) A person who is aggrieved by an alleged violation of  
36 this chapter may file a written complaint with the commissioner  
37 not later than thirty (30) days after the earlier of:

38 (1) the date that the person discovers the violation; or

39 (2) the date that the person should have discovered the  
40 violation.

41 (b) If a complaint is filed with the commissioner under  
42 subsection (a), the commissioner shall investigate the complaint

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and attempt to informally resolve the complaint.  
(c) If a dispute is not informally resolved within one hundred twenty (120) days after the commissioner receives the complaint, the commissioner shall initiate a proceeding under IC 4-21.5-3-6 and adjudicate the complaint under IC 4-21.5-3. The commissioner shall join as parties to the proceeding the complainant and each person who is alleged to have committed a violation under this chapter. Unless the parties to the proceeding agree to a later date or the interests of justice require, the presiding officer in the proceeding shall schedule a hearing on the complaint to be held not later than one hundred eighty (180) days after the commissioner receives the complaint.

Sec. 13. The commissioner may issue any reasonable order to remedy a violation under this chapter. The order may include the following:

- (1) A requirement that the employee be reinstated in the position or an equivalent position that the employee held before taking the parenting time described in this chapter.
- (2) A requirement that the employer reimburse the employee for compensation and benefits lost as a result of the violation.
- (3) A requirement that the employer pay the employee for reasonable attorney's fees incurred to bring the complaint and participate as a party in the informal and formal proceedings under this chapter.
- (4) A requirement that the employer pay a civil penalty to the employee in an amount not to exceed one thousand dollars (\$1,000).

Sec. 14. (a) This chapter does not prohibit an employee from taking parenting time rights granted under any of the following:

- (1) Another law.
- (2) A bona fide agreement between the employee and employer or a representative of the employee and the employer.
- (3) A policy of the employer.

(b) This chapter does not prohibit an employer from providing parenting time rights in addition to the requirements of this chapter.

Sec. 15. (a) A public servant who grants parenting time under this chapter is not considered to be engaging in ghost employment under IC 35-44-2-4.

(b) An employee who exercises parenting time rights under this chapter is not considered to be engaging in ghost employment

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under IC 35-44-2-4.

**Sec. 16. This chapter does not:**

- (1) excuse noncompliance with a provision of a collective bargaining agreement or other employment benefit program or plan in effect on July 1, 2011, that is not in substantial conflict with this chapter; or**
- (2) justify an employer in reducing employment benefits provided by the employer that exceed the benefits required by this chapter.**

SECTION 2. IC 31-14-14-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 6. An employee granted parenting time rights under this chapter is entitled to employment leave for parenting time under IC 22-2-16.**

SECTION 3. IC 31-17-4-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 11. An employee granted parenting time rights under this chapter is entitled to employment leave for parenting time under IC 22-2-16.**

SECTION 4. [EFFECTIVE JULY 1, 2011] **(a) Notwithstanding IC 22-2-16-10, as added by this act, the commissioner of labor shall carry out the duties imposed upon the commissioner under IC 22-2-16-10, as added by this act, under interim written guidelines approved by the commissioner of labor.**

**(b) This SECTION expires on the earlier of the following:**

- (1) The date rules are adopted under IC 22-2-16-10, as added by this act.**
- (2) December 31, 2012.**

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