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

The General Assembly of North Carolina enacts:

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

“§ 126-8.6. Mandatory State operations; mandatory employees; hazard pay requirements.
(a) Definitions. – The following definitions apply in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) A high-risk employee;

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

(3) Required to care for a member of the employee's immediate family who is isolated, quarantined, or ill or who requires the employee's care due to the closure of a public or private school, a day care center, or an elder care facility.
Based on an agency's operational needs, a supervisor may excuse a mandatory employee if they are a parent (or guardian) who is required to stay home with underage children because of the closure of a day care facility, public or private school, or elder care facility.

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

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

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

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

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

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


The Except as otherwise authorized by G.S. 126-8.6(f), the amount of vacation leave granted to each full-time State employee subject to the provisions of this Chapter shall be determined in accordance with a graduated scale established by the State Human Resources Commission which shall allow the equivalent rate of not less than two weeks' vacation per calendar year, prorated monthly, cumulative to at least 30 days. On December 31 of each year, any State employee who has vacation leave in excess of the allowed accumulation shall have that leave converted to sick
leave. Sick leave allowed as needed to such State employees shall be at a rate not less than 10
days for each calendar year, cumulative from year to year. Notwithstanding any other provisions
of this section, no full-time State employee subject to the provisions of Chapter 126, as the same
appears in the Cumulative Supplement to Volume 3B of the General Statutes, on May 23, 1973,
shall be allowed less than the equivalent of three weeks' vacation per calendar year, cumulative
to at least 30 days."

SECTION 2.(b) G.S. 126-34.02(b) is amended by adding a new subdivision to read:
"(b) The following issues may be heard as contested cases after completion of the agency
grievance procedure and the Office of State Human Resources review:

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

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

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

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