



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2771

by Rep. Christian L. Mitchell

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.878 new

Creates the Healthy Workplace Act and amends the State Finance Act. Requires employers to provide specified paid sick days to employees. Sets forth the purposes for and manner in which the sick days may be used. Contains provisions regarding employer responsibilities, unlawful employer practices, and other matters. Provides that the Department of Labor shall administer the Act. Authorizes the imposition of civil penalties. Authorizes individuals to file civil actions with respect to violations. Creates the Healthy Workplace Fund as a special fund in the State treasury. Effective immediately.

LRB100 08738 JLS 18876 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the the
5 Healthy Workplace Act.

6 Section 5. Findings and purpose.

7 (a) The General Assembly finds:

8 (1) Nearly every worker in the State is likely to need
9 time off to attend to his or her own illness or that of a
10 family member. More than 40% of all private sector workers
11 in Illinois (over 2,500,000 people) have no right to a paid
12 sick day. Over three-fourths of the lowest-wage workers do
13 not receive paid sick days and cannot forfeit a day's work,
14 so they often come into work sick.

15 (2) Preventive and routine medical care helps avoid
16 illness and injury by detecting illnesses early on and
17 shortening the duration of illnesses. Providing employees
18 with time off to attend to their own health care needs
19 ensures that they will be healthier and more efficient
20 employees. It will also reduce the spread of disease within
21 workplaces and to the public, such as customers, when
22 employees go to work sick, a practice known as
23 "presenteeism". Routine medical care results in savings by

1 detecting and treating illness and injury early and
2 decreasing the need for emergency care. These savings
3 benefit public and private payers of health insurance.

4 (4) When the school of a worker's child is closed
5 because of extreme weather, it is often at the last minute
6 and workers cannot find someone to babysit so they are
7 forced to stay at home to take care of their children.

8 (5) Nearly one-quarter of American women report
9 domestic violence and nearly one in 5 women report
10 experiencing rape at some time during their lives. Many
11 workers, men and women, need time off to care for their
12 health after these incidents or to take legal action.
13 Without paid time off, victims are in danger of losing
14 their jobs.

15 (6) Employers that provide paid sick days see better
16 productivity, reduced flu contagion, and lower turnover,
17 which saves them the costs of replacing and training
18 workers.

19 (b) This Act is enacted to establish the Healthy Workplace
20 Act to provide at least a minimum time-off standard of paid
21 sick days for all workers.

22 Section 10. Definitions. As used in this Act:

23 "Child" means a son or daughter who is a biological,
24 adopted, or foster child, a stepchild, a legal ward, or a child
25 of a person standing in loco parentis.

1 "Department" means the Illinois Department of Labor.

2 "Employee" means any person who performs services for an
3 employer for wage, remuneration, or other compensation. This
4 includes persons working any number of hours, including a
5 full-time or part-time status.

6 "Employer" means one who employs at least one employee,
7 including, but not limited to, this State and its political
8 subdivisions, a temporary services agency, an employment
9 agency, or an employee organization.

10 "Family member" means a child, spouse, parent, the child or
11 parent of an employee's spouse, a sibling, grandparent,
12 grandchild, or any other individual related by blood or who
13 close association with the employee is the equivalent of a
14 family relationship.

15 "Healthcare provider" means a person:

16 (1) who is: (i) licensed to practice medicine in all of
17 its branches in Illinois and possesses the degree of doctor
18 of medicine; (ii) licensed to practice medicine in all of
19 its branches in Illinois and possesses the degree of doctor
20 of osteopathy or osteopathic medicine; (iii) licensed to
21 practice medicine in all of its branches or as an
22 osteopathic physician in another state or jurisdiction; or
23 (iv) any other person determined by final rule under the
24 Family and Medical Leave Act of 1993; and

25 (2) who is not employed by an employer to whom the
26 provider issues certifications under this Act.

1 "Paid sick day" means a portion of or a regular workday
2 when an employee is unable to report to work because of a
3 reason described in subsection (b) of Section 15.

4 "Parent" means a biological or adoptive parent, a foster or
5 stepparent, a parent of a legal ward, or a person who stands in
6 loco parentis to an employee or an employee's spouse.

7 "Spouse" means a party to a marriage or a party to a civil
8 union as defined by Illinois statute.

9 Section 15. Provision of paid sick days.

10 (a) All employees who work in Illinois who are absent from
11 work for a reason set forth in subsection (b) shall be entitled
12 to earn and use a maximum of 7 paid sick days during a 12-month
13 period or a pro rata number of paid sick days or hours under
14 the provisions of subsection (c). The 12-month period for an
15 employee shall be calculated from the date of hire or
16 subsequent anniversary date.

17 (b) Paid sick days shall be provided to an employee by an
18 employer to:

19 (1) care for the employee's own physical or mental
20 illness, injury, or health condition, or seek medical
21 diagnosis or care;

22 (2) care for the employee's family member who is
23 suffering from a physical or mental illness, injury, or
24 health condition, or seek medical diagnosis or care; or

25 (3) attend a medical appointment for himself or herself

1 or a medical appointment of the employee's family member;

2 (4) care for a child whose school or place of care has
3 been closed by order of a public official due to a public
4 health emergency or to not go in to work because of the
5 closure of the employee's place of business by order of a
6 public health official due to a public health emergency; or

7 (5) be off from work because he or she or the
8 employee's family member is the victim of domestic violence
9 as defined in Section 103(3) of the Illinois Domestic
10 Violence Act of 1986 or sexual violence as defined under
11 Article 11 and Sections 12-7.3, 12-7.4, and 12-7.5 of the
12 Illinois Criminal Code of 2012.

13 (c) Paid sick days shall accrue at the rate of one hour of
14 paid sick time for every 30 hours worked up to the maximum of
15 56 hours of paid sick days unless the employer selects a higher
16 limit. Employees who are exempt from the overtime requirements
17 of the federal Fair Labor Standards Act (29 U.S.C. 213(a)(1))
18 shall be deemed to work 40 hours in each work week for purposes
19 of paid sick day accrual unless their normal work week is less
20 than 40 hours, in which case paid sick days accrue based on
21 that normal work week. Employees shall determine how much paid
22 sick days they need to use, provided that employers may set a
23 reasonable minimum increment for the use of a paid sick day not
24 to exceed 2 hours per day.

25 (d) Employees shall be paid their regular rate of pay for a
26 paid sick day. However, an employee engaged in an occupation in

1 which gratuities have customarily and usually constituted and
2 have been recognized as part of the remuneration for hire
3 purposes shall be paid by his or her employer at least the full
4 Illinois minimum wage for a paid sick day taken.

5 (e) Paid sick days shall begin to accrue at the
6 commencement of employment or on the effective date of this
7 Act, whichever is later. An employee shall be entitled to begin
8 using a sick day 120 days following commencement of his or her
9 employment or 120 days following the effective date of this
10 Act, whichever is later. Nothing in this Section shall be
11 construed to discourage or prohibit an employer from allowing
12 the use of paid sick days at an earlier date than this Section
13 requires. Nothing in this Act shall be construed to discourage
14 employers from adopting or retaining paid sick day policies
15 more generous than policies that comply with the requirements
16 of this Act.

17 (f) An employer may require certification of the qualifying
18 illness, injury, or health condition when paid sick days cover
19 more than 3 consecutive workdays. Any reasonable documentation
20 signed by a healthcare provider involved in following or
21 treating the illness, injury, or health condition, and
22 indicating the need for the amount of sick days taken, shall be
23 deemed acceptable certification. Nothing in this Act shall be
24 construed to require an employee to provide as certification
25 any information from a healthcare provider that would be in
26 violation of Section 1177 of the Social Security Act or the

1 regulations promulgated pursuant to the federal Health
2 Insurance Portability and Accountability Act of 1996. If an
3 employer possesses health information about an employee or
4 employee's family member, such information shall be treated as
5 confidential and not disclosed except with the permission of
6 the affected employee. For time used pursuant to subdivision
7 (b) (5), any one of the following is acceptable documentation,
8 and only one of the following shall be required: a police
9 report, court document, or signed statement from an attorney, a
10 member of the clergy, or a victim services advocate. It is up
11 to the employee to determine which documentation to submit.

12 The employer shall not delay the commencement of leave
13 taken for purposes of subsection (b) of this Section nor delay
14 pay for this period on the basis that the employer has not yet
15 received the certification.

16 (g) Paid sick days shall be provided upon the oral request
17 of an employee. If the necessity for paid sick days under this
18 Act is foreseeable, the employee shall provide the employer
19 with not less than 7 days' notice before the date the leave is
20 to begin. If the necessity for leave is not foreseeable, the
21 employee shall provide such notice as soon as is practicable
22 after the employee is aware of the necessity of such leave. An
23 employer may not require, as a condition of providing paid sick
24 days under this Act, that the employee search for or find a
25 replacement worker to cover the hours during which the employee
26 is on paid sick days leave.

1 (h) Paid sick days shall carry over annually to the extent
2 not used by the employee, provided that nothing in this Act
3 shall be construed to require an employer to allow use of more
4 than 7 paid sick days for an employee unless an employer agrees
5 to do so.

6 (i) It shall be unlawful for an employer to interfere with,
7 restrain, deny, change work days or hours scheduled to avoid
8 paying sick days, or discipline an employee for the exercise
9 of, or the attempt to exercise, any right provided under or in
10 connection with this Act, including considering the use of paid
11 sick days as a negative factor in an employment action that
12 involves hiring, terminating, evaluating, promoting,
13 disciplining, or counting the paid sick days under a no-fault
14 attendance policy.

15 (j) During any period an employee takes leave under this
16 Act, the employer shall maintain coverage for the employee and
17 any family member under any group health plan for the duration
18 of such leave at at least the level and conditions of coverage
19 as would have been provided if the employee had not taken the
20 leave.

21 (k) Nothing in this Section shall be construed as requiring
22 financial or other reimbursement to an employee from an
23 employer upon the employee's termination, resignation,
24 retirement, or other separation from employment for accrued
25 paid sick days that have not been used.

26 (l) Nothing in this Section shall be construed to prohibit

1 an employer from taking disciplinary action, up to and
2 including termination, against an employee who uses paid sick
3 days provided pursuant to this Act for purposes other than
4 those described in this Section.

5 (m) If an employee is transferred to a separate division,
6 entity, or location, but remains employed by the same employer,
7 the employee is entitled to all paid sick days accrued at the
8 prior division, entity, or location and is entitled to use all
9 paid sick days as provided in this Section. Where there is a
10 separation from employment and the employee is rehired within
11 12 months of separation by the same employer, previously
12 accrued paid sick days that had not been used shall be
13 reinstated. Such employee shall be entitled to use accrued paid
14 sick days at the commencement of employment following a
15 separation from employment of 12 months or less.

16 (n) All or any portion of the applicable requirement in
17 this Section shall not apply to any employee covered by a bona
18 fide collective bargaining agreement to the extent that such
19 requirements are expressly waived in the collective bargaining
20 agreement in clear and unambiguous language.

21 Section 20. Related employer responsibilities.

22 (a) An employer subject to any provision of this Act shall
23 make and preserve records documenting hours worked by employees
24 and the amount of paid sick days taken by employees for a
25 period of not less than 3 years and shall allow the Department

1 access to such records, with appropriate notice and a mutually
2 agreeable time, to monitor compliance with the requirements of
3 this Section.

4 (b) An agreement by an employee to waive his or her right
5 under this Act, except as allowed under subsection (n) of
6 Section 15, is void as against public policy.

7 (c) Employers who have a paid time off policy that complies
8 with at least the minimum requirements of this Act shall not be
9 required to modify such a policy if such policy offers an
10 employee the option, at the employee's discretion, to take paid
11 sick days that are at least equivalent to the paid sick days
12 described in this Act.

13 (d) Employers shall post and keep posted in a conspicuous
14 place on the premises of the employer where notices to
15 employees are customarily posted, or include in an employee
16 manual or policy, a notice, to be prepared by the Department,
17 summarizing the requirements of this Act and information
18 pertaining to the filing of a charge. If an employer's
19 workforce is comprised of a significant portion of workers who
20 are not literate in English, the employer is responsible for
21 providing the notice in a language in which the employees are
22 literate. An employer who willfully violates the notice and
23 posting requirements of this Section shall be subject to a
24 civil penalty in an amount not to exceed \$100 for each separate
25 offense.

1 Section 25. Unlawful employer practices. It is unlawful for
2 any employer to take any adverse action against an employee
3 because the employee (1) exercises rights or attempts to
4 exercise rights under this Act, (2) opposes practices which
5 such employee believes to be in violation of this Act, or (3)
6 supports the exercise of rights of another under this Act.

7 Exercising rights under this Act includes filing an action
8 or instituting or causing to be instituted any proceeding under
9 or related to this Act; providing or agreeing to provide any
10 information in connection with any inquiry or proceeding
11 relating to any right provided under this Act; or testifying to
12 or agreeing to testify in any inquiry or proceeding relating to
13 any right provided under this Act.

14 Section 30. Department responsibilities.

15 (a) The Department shall administer and enforce this Act
16 and adopt rules under the Illinois Administrative Procedure Act
17 for the purpose of this Act. The Department shall have the
18 powers and the parties shall have the rights provided in the
19 Illinois Administrative Procedure Act for contested cases. The
20 Department shall have the power to conduct investigations in
21 connection with the administration and enforcement of this Act,
22 including the power to conduct depositions and discovery and to
23 issue subpoenas. If the Department finds cause to believe that
24 this Act has been violated, the Department shall notify the
25 parties in writing and the matter shall be referred to an

1 Administrative Law Judge to schedule a formal hearing in
2 accordance with hearing procedures established by rule.

3 (b) The Department is authorized to impose civil penalties
4 prescribed in Section 35 in administrative proceedings that
5 comply with the Illinois Administrative Procedure Act and to
6 supervise the payment of the unpaid wages and damages owing to
7 the employee or employees under this Act. The Department may
8 bring any legal action necessary to recover the amount of
9 unpaid wages, damages, and penalties, and the employer shall be
10 required to pay the costs. Any sums recovered by the Department
11 on behalf of an employee under this Act shall be paid to the
12 employee or employees affected. However, 20% of any penalty
13 collected from the employer for a violation of this Act shall
14 be deposited into the Healthy Workplace Fund, a special fund
15 created in the State treasury that is dedicated to enforcing
16 this Act.

17 (c) The Attorney General may bring an action to enforce the
18 collection of any civil penalty imposed under this Act.

19 Section 35. Enforcement.

20 (a) An employee who believes his or her rights under this
21 Act or any rule adopted under this Act have been violated may,
22 within 3 years after the date of the last event constituting
23 the alleged violation for which the action is brought, file a
24 complaint with the Department or file a civil action.

25 (b) Any employer that violates this Act is liable in a

1 claim filed with the Department or in a civil action in circuit
2 court to any affected individuals for actual and compensatory
3 damages, with interest at the prevailing rate, punitive
4 damages, and such equitable relief as may be appropriate, in
5 addition to reasonable attorney's fees, reasonable expert
6 witness fees, and other costs of the action to be paid by the
7 defendant. A civil action may be brought without first filing
8 an administrative complaint.

9 (c) Any employer that the Department or a court finds by a
10 preponderance of the evidence to have knowingly, repeatedly, or
11 with reckless disregard violated any provision of this Act or
12 any rule adopted under this Act is subject to a civil money
13 penalty not to exceed \$2,500 for each separate offense.

14 Section 95. Severability. The provisions of this Act are
15 severable under Section 1.31 of the Statute on Statutes.

16 Section 97. The State Finance Act is amended by adding
17 Section 5.878 as follows:

18 (30 ILCS 105/5.878 new)

19 Sec. 5.878. The Healthy Workplace Fund.

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.