



Sen. Martin A. Sandoval

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1 AMENDMENT TO SENATE BILL 3239

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 3239 by replacing  
3 everything after the enacting clause with the following:

4 "ARTICLE I. SHORT TITLE, FINDINGS AND PURPOSES, GENERAL  
5 REQUIREMENTS FOR LEAVE

6 Section 100. Short title. This Act may be cited as the  
7 Illinois Family and Medical Leave Act.

8 Section 101. Definitions. As used in this Article:

9 (1) (Blank).

10 (2) Eligible Employee.

11 (A) In General. The term "eligible employee" means an  
12 employee who has been employed:

13 (i) for at least 12 months by the employer with  
14 respect to whom leave is requested under Section 102;

15 and

1           (ii) for at least 1,250 hours of service with such  
2           employer during the previous 12-month period.

3           (B) Exclusions. The term "eligible employee" does not  
4           include:

5           (i) any Federal officer or employee covered under  
6           Subchapter V of Chapter 63 of Title 5, United States  
7           Code; or

8           (ii) any employee of an employer who is employed at  
9           a work site at which such employer employs less than 50  
10           employees if the total number of employees employed by  
11           that employer within 75 miles of that work site is less  
12           than 50.

13           (C) Determination. For purposes of determining whether  
14           an employee meets the hours of service requirement  
15           specified in subparagraph (A)(ii), the legal standards  
16           established under Section 7 of the Fair Labor Standards Act  
17           of 1938 (29 U.S.C. 207) shall apply.

18           (3) Employ; Employee; State. The terms "employ",  
19           "employee", and "State" have the same meanings given such terms  
20           in subsections (c), (e), and (g) of Section 3 of the Fair Labor  
21           Standards Act of 1938 (29 U.S.C. 203 (c), (e), and (g)).

22           (4) Employer.

23           (A) In general. The term "employer":

24           (i) means any person who employs 50 or more  
25           employees for each working day during each of 20 or  
26           more calendar workweeks in the current or preceding

1 calendar year;

2 (ii) includes:

3 (I) any person who acts, directly or  
4 indirectly, in the interest of an employer to any  
5 of the employees of such employer; and

6 (II) any successor in interest of an employer;  
7 and

8 (iii) includes any State officer, department, or  
9 agency, any unit of local government, and any school  
10 district.

11 (B) (Blank).

12 (5) Employment benefits. The term "employment benefits"  
13 means all benefits provided or made available to employees by  
14 an employer, including group life insurance, health insurance,  
15 disability insurance, sick leave, annual leave, educational  
16 benefits, and pensions, regardless of whether such benefits are  
17 provided by a practice or written policy of an employer or  
18 through an "employee benefit plan", as defined in Section 3(3)  
19 of the Employee Retirement Income Security Act of 1974 (29  
20 U.S.C. 1002(3)).

21 (6) Health care provider. The term "health care provider"  
22 means:

23 (A) a doctor of medicine or osteopathy who is  
24 authorized to practice medicine or surgery (as  
25 appropriate) by the State in which the doctor practices; or

26 (B) any other person determined by the Director to be

1 capable of providing health care services.

2 (7) Parent. The term "parent" means the biological parent  
3 of an employee or an individual who stood in loco parentis to  
4 an employee when the employee was a son or daughter.

5 (8) Person. The term "person" has the same meaning given  
6 such term in Section 3(a) of the Fair Labor Standards Act of  
7 1938 (29 U.S.C. 203(a)).

8 (9) Reduced leave schedule. The term "reduced leave  
9 schedule" means a leave schedule that reduces the usual number  
10 of hours per workweek, or hours per workday, of an employee.

11 (10) Director. The term "Director" means the Director of  
12 Labor.

13 (11) Serious health condition. The term "serious health  
14 condition" means an illness, injury, impairment, or physical or  
15 mental condition that involves:

16 (A) inpatient care in a hospital, hospice, or  
17 residential medical care facility; or

18 (B) continuing treatment by a health care provider.

19 (12) Son or daughter. The term "son or daughter" means a  
20 biological, adopted, or foster child, a stepchild, a legal  
21 ward, or a child of a person standing in loco parentis, who is:

22 (A) under 18 years of age; or

23 (B) 18 years of age or older and incapable of self-care  
24 because of a mental or physical disability.

25 (13) Spouse. The term "spouse" means a husband or wife, as  
26 the case may be.

1           (14) Domestic partner. The term "domestic partner" means a  
2 single, unmarried adult person of the same sex as the employee  
3 who is in a committed, intimate relationship with the employee,  
4 is not a domestic partner to any other person, and who is  
5 designated to the employer by such employee as that employee's  
6 domestic partner.

7           ` (23) Sibling. The term "sibling" means any person who is a  
8 son or daughter of an employee's parent.

9           Section 102. Leave requirement.

10          (a) In general.

11           (1) Entitlement to leave. Subject to Section 103, an  
12 eligible employee shall be entitled to a total of 12  
13 workweeks of leave during any 12-month period for one or  
14 more of the following:

15           (A) Because of the birth of a son or daughter of  
16 the employee and in order to care for such son or  
17 daughter.

18           (B) Because of the placement of a son or daughter  
19 with the employee for adoption or foster care.

20           (C) In order to care for the spouse, or a son,  
21 daughter, parent, son-in-law, daughter-in-law,  
22 father-in-law, mother-in-law, domestic partner, or  
23 sibling of the employee, if such spouse, son, daughter,  
24 parent, son-in-law, daughter-in-law, father-in-law,  
25 mother-in-law, domestic partner, or sibling has a

1           serious health condition.

2           (D) Because of a serious health condition that  
3           makes the employee unable to perform the functions of  
4           the position of such employee.

5           (2) Expiration of entitlement. The entitlement to  
6           leave under subparagraphs (A) and (B) of paragraph (1) for  
7           a birth or placement of a son or daughter shall expire at  
8           the end of the 12-month period beginning on the date of  
9           such birth or placement.

10          (b) Leave taken intermittently or on a reduced leave  
11          schedule.

12           (1) In general. Leave under subparagraph (A) or (B) of  
13           subsection (a)(1) shall not be taken by an employee  
14           intermittently or on a reduced leave schedule unless the  
15           employee and the employer of the employee agree otherwise.  
16           Subject to paragraph (2), subsection (e)(2), and Section  
17           103(b)(5), leave under subparagraph (C) or (D) of  
18           subsection (a)(1) may be taken intermittently or on a  
19           reduced leave schedule when medically necessary. The  
20           taking of leave intermittently or on a reduced leave  
21           schedule pursuant to this paragraph shall not result in a  
22           reduction in the total amount of leave to which the  
23           employee is entitled under subsection (a) beyond the amount  
24           of leave actually taken.

25           (2) Alternative position. If an employee requests  
26           intermittent leave, or leave on a reduced leave schedule,

1 under subparagraph (C) or (D) of subsection (a)(1), that is  
2 foreseeable based on planned medical treatment, the  
3 employer may require such employee to transfer temporarily  
4 to an available alternative position offered by the  
5 employer for which the employee is qualified and that:

6 (A) has equivalent pay and benefits; and

7 (B) better accommodates recurring periods of leave  
8 than the regular employment position of the employee.

9 (c) Unpaid leave permitted. Except as provided in  
10 subsection (d), leave granted under subsection (a) may consist  
11 of unpaid leave. Where an employee is otherwise exempt under  
12 regulations issued by the Secretary of the U.S. Department of  
13 Labor pursuant to Section 13(a)(1) of the Fair Labor Standards  
14 Act of 1938 (29 U.S.C. 213(a)(1)), the compliance of an  
15 employer with this Article by providing unpaid leave shall not  
16 affect the exempt status of the employee under such Section.

17 (d) Relationship to paid leave.

18 (1) Unpaid leave. If an employer provides paid leave  
19 for fewer than 12 workweeks, the additional weeks of leave  
20 necessary to attain the 12 workweeks of leave required  
21 under this Article may be provided without compensation.

22 (2) Substitution of paid leave.

23 (A) In general. An eligible employee may elect, or  
24 an employer may require the employee, to substitute any  
25 of the accrued paid vacation leave, personal leave, or  
26 family leave of the employee for leave provided under

1           subparagraph (A), (B), or (C) of subsection (a)(1) for  
2           any part of the 12-week period of such leave under such  
3           subsection.

4           (B) Serious health condition. An eligible employee  
5           may elect, or an employer may require the employee, to  
6           substitute any of the accrued paid vacation leave,  
7           personal leave, or medical or sick leave of the  
8           employee for leave provided under subparagraph (C) or  
9           (D) of subsection (a)(1) for any part of the 12-week  
10          period of such leave under such subsection, except that  
11          nothing in this Article shall require an employer to  
12          provide paid sick leave or paid medical leave in any  
13          situation in which such employer would not normally  
14          provide any such paid leave.

15         (e) Foreseeable leave.

16           (1) Requirement of notice. In any case in which the  
17           necessity for leave under subparagraph (A) or (B) of  
18           subsection (a)(1) is foreseeable based on an expected birth  
19           or placement, the employee shall provide the employer with  
20           not less than 30 days' notice, before the date the leave is  
21           to begin, of the employee's intention to take leave under  
22           such subparagraph, except that if the date of the birth or  
23           placement requires leave to begin in less than 30 days, the  
24           employee shall provide such notice as is practicable.

25           (2) Duties of employee. In any case in which the  
26           necessity for leave under subparagraph (C) or (D) of



1 subsection (a)(1) is foreseeable based on planned medical  
2 treatment, the employee:

3 (A) shall make a reasonable effort to schedule the  
4 treatment so as not to disrupt unduly the operations of  
5 the employer, subject to the approval of the health  
6 care provider of the employee or the health care  
7 provider of the son, daughter, spouse, parent,  
8 son-in-law, daughter-in-law, father-in-law,  
9 mother-in-law, domestic partner, or sibling of the  
10 employee, as appropriate; and

11 (B) shall provide the employer with not less than  
12 30 days' notice, before the date the leave is to begin,  
13 of the employee's intention to take leave under such  
14 subparagraph, except that if the date of the treatment  
15 requires leave to begin in less than 30 days, the  
16 employee shall provide such notice as is practicable.

17 (f) Spouses employed by the same employer. In any case in  
18 which a husband and wife entitled to leave under subsection (a)  
19 are employed by the same employer, the aggregate number of  
20 workweeks of leave to which both may be entitled may be limited  
21 to 12 workweeks during any 12-month period, if such leave is  
22 taken:

23 (1) under subparagraph (A) or (B) of subsection (a)(1);

24 or

25 (2) to care for a sick parent under subparagraph (C) of  
26 such subsection.

1 Section 103. Certification.

2 (a) In general. An employer may require that a request for  
3 leave under subparagraph (C) or (D) of Section 102(a)(1) be  
4 supported by a certification issued by the health care provider  
5 of the eligible employee or of the son, daughter, spouse,  
6 parent, son-in-law, daughter-in-law, father-in-law,  
7 mother-in-law, domestic partner, or sibling of the employee, as  
8 appropriate. The employee shall provide, in a timely manner, a  
9 copy of such certification to the employer.

10 (b) Sufficient certification. Certification provided under  
11 subsection (a) shall be sufficient if it states:

12 (1) the date on which the serious health condition  
13 commenced;

14 (2) the probable duration of the condition;

15 (3) the appropriate medical facts within the knowledge  
16 of the health care provider regarding the condition;

17 (4) (A) for purposes of leave under Section  
18 102(a)(1)(C), a statement that the eligible employee is  
19 needed to care for the son, daughter, spouse, parent,  
20 son-in-law, daughter-in-law, father-in-law, mother-in-law,  
21 domestic partner, or sibling and an estimate of the amount  
22 of time that such employee is needed to care for the son,  
23 daughter, spouse, parent, son-in-law, daughter-in-law,  
24 father-in-law, mother-in-law, domestic partner, or  
25 sibling; and

1 (B) for purposes of leave under Section 102(a)(1)(D), a  
2 statement that the employee is unable to perform the  
3 functions of the position of the employee;

4 (5) in the case of certification for intermittent  
5 leave, or leave on a reduced leave schedule, for planned  
6 medical treatment, the dates on which such treatment is  
7 expected to be given and the duration of such treatment;

8 (6) in the case of certification for intermittent  
9 leave, or leave on a reduced leave schedule, under Section  
10 102(a)(1)(D), a statement of the medical necessity for the  
11 intermittent leave or leave on a reduced leave schedule,  
12 and the expected duration of the intermittent leave or  
13 reduced leave schedule; and

14 (7) in the case of certification for intermittent  
15 leave, or leave on a reduced leave schedule, under Section  
16 102(a)(1)(C), a statement that the employee's intermittent  
17 leave or leave on a reduced leave schedule is necessary for  
18 the care of the son, daughter, parent, spouse, son-in-law,  
19 daughter-in-law, father-in-law, mother-in-law, domestic  
20 partner, or sibling who has a serious health condition, or  
21 will assist in their recovery, and the expected duration  
22 and schedule of the intermittent leave or reduced leave  
23 schedule.

24 (c) Second opinion.

25 (1) In general. In any case in which the employer has  
26 reason to doubt the validity of the certification provided

1 under subsection (a) for leave under subparagraph (C) or  
2 (D) of Section 102(a)(1), the employer may require, at the  
3 expense of the employer, that the eligible employee obtain  
4 the opinion of a second health care provider designated or  
5 approved by the employer concerning any information  
6 certified under subsection (b) for such leave.

7 (2) Limitation. A health care provider designated or  
8 approved under paragraph (1) shall not be employed on a  
9 regular basis by the employer.

10 (d) Resolution of conflicting opinions.

11 (1) In general. In any case in which the second opinion  
12 described in subsection (c) differs from the opinion in the  
13 original certification provided under subsection (a), the  
14 employer may require, at the expense of the employer, that  
15 the employee obtain the opinion of a third health care  
16 provider designated or approved jointly by the employer and  
17 the employee concerning the information certified under  
18 subsection (b).

19 (2) Finality. The opinion of the third health care  
20 provider concerning the information certified under  
21 subsection (b) shall be considered to be final and shall be  
22 binding on the employer and the employee.

23 (e) Subsequent recertification. The employer may require  
24 that the eligible employee obtain subsequent recertifications  
25 on a reasonable basis.

1 Section 104. Employment and benefits protection.

2 (a) Restoration to position.

3 (1) In general. Except as provided in subsection (b),  
4 any eligible employee who takes leave under Section 102 for  
5 the intended purpose of the leave shall be entitled, on  
6 return from such leave:

7 (A) to be restored by the employer to the position  
8 of employment held by the employee when the leave  
9 commenced; or

10 (B) to be restored to an equivalent position with  
11 equivalent employment benefits, pay, and other terms  
12 and conditions of employment.

13 (2) Loss of benefits. The taking of leave under Section  
14 102 shall not result in the loss of any employment benefit  
15 accrued prior to the date on which the leave commenced.

16 (3) Limitations. Nothing in this Section shall be  
17 construed to entitle any restored employee to:

18 (A) the accrual of any seniority or employment  
19 benefits during any period of leave; or

20 (B) any right, benefit, or position of employment  
21 other than any right, benefit, or position to which the  
22 employee would have been entitled had the employee not  
23 taken the leave.

24 (4) Certification. As a condition of restoration under  
25 paragraph (1) for an employee who has taken leave under  
26 Section 102(a)(1)(D), the employer may have a uniformly

1 applied practice or policy that requires each such employee  
2 to receive certification from the health care provider of  
3 the employee that the employee is able to resume work,  
4 except that nothing in this paragraph shall supersede a  
5 valid State or local law or a collective bargaining  
6 agreement that governs the return to work of such  
7 employees.

8 (5) Construction. Nothing in this subsection shall be  
9 construed to prohibit an employer from requiring an  
10 employee on leave under Section 102 to report periodically  
11 to the employer on the status and intention of the employee  
12 to return to work.

13 (b) Exemption concerning certain highly compensated  
14 employees.

15 (1) Denial of restoration. An employer may deny  
16 restoration under subsection (a) to any eligible employee  
17 described in paragraph (2) if:

18 (A) such denial is necessary to prevent  
19 substantial and grievous economic injury to the  
20 operations of the employer;

21 (B) the employer notifies the employee of the  
22 intent of the employer to deny restoration on such  
23 basis at the time the employer determines that such  
24 injury would occur; and

25 (C) in any case in which the leave has commenced,  
26 the employee elects not to return to employment after

1 receiving such notice.

2 (2) Affected employees. An eligible employee described  
3 in paragraph (1) is a salaried eligible employee who is  
4 among the highest paid 10 percent of the employees employed  
5 by the employer within 75 miles of the facility at which  
6 the employee is employed.

7 (c) Maintenance of health benefits.

8 (1) Coverage. Except as provided in paragraph (2),  
9 during any period that an eligible employee takes leave  
10 under Section 102, the employer shall maintain coverage  
11 under any "group health plan" (as defined in Section  
12 5000(b)(1) of the Internal Revenue Code of 1986) for the  
13 duration of such leave at the level and under the  
14 conditions coverage would have been provided if the  
15 employee had continued in employment continuously for the  
16 duration of such leave.

17 (2) Failure to return from leave. The employer may  
18 recover the premium that the employer paid for maintaining  
19 coverage for the employee under such group health plan  
20 during any period of unpaid leave under Section 102 if:

21 (A) the employee fails to return from leave under  
22 Section 102 after the period of leave to which the  
23 employee is entitled has expired; and

24 (B) the employee fails to return to work for a  
25 reason other than:

26 (i) the continuation, recurrence, or onset of

1 a serious health condition that entitles the  
2 employee to leave under subparagraph (C) or (D) of  
3 Section 102(a) (1); or

4 (ii) other circumstances beyond the control of  
5 the employee.

6 (3) Certification.

7 (A) Issuance. An employer may require that a claim  
8 that an employee is unable to return to work because of  
9 the continuation, recurrence, or onset of the serious  
10 health condition described in paragraph (2) (B) (i) be  
11 supported by:

12 (i) a certification issued by the health care  
13 provider of the son, daughter, spouse, parent,  
14 son-in-law, daughter-in-law, father-in-law,  
15 mother-in-law, domestic partner, or sibling of the  
16 employee, as appropriate, in the case of an  
17 employee unable to return to work because of a  
18 condition specified in Section 102(a) (1) (C); or

19 (ii) a certification issued by the health care  
20 provider of the eligible employee, in the case of  
21 an employee unable to return to work because of a  
22 condition specified in Section 102(a) (1) (D).

23 (B) Copy. The employee shall provide, in a timely  
24 manner, a copy of such certification to the employer.

25 (C) Sufficiency of certification.

26 (i) Leave due to serious health condition of



1           employee.    The   certification   described   in  
2           subparagraph (A)(ii) shall be sufficient if the  
3           certification states that a serious health  
4           condition prevented the employee from being able  
5           to perform the functions of the position of the  
6           employee on the date that the leave of the employee  
7           expired.

8           (ii) Leave due to serious health condition of  
9           family member. The certification described in  
10          subparagraph (A)(i) shall be sufficient if the  
11          certification states that the employee is needed  
12          to care for the son, daughter, spouse, parent,  
13          son-in-law, daughter-in-law, father-in-law,  
14          mother-in-law, domestic partner, or sibling who  
15          has a serious health condition on the date that the  
16          leave of the employee expired.

17          Section 105. Prohibited Acts.

18          (a) Interference with rights.

19               (1) Exercise of rights. It shall be unlawful for any  
20               employer to interfere with, restrain, or deny the exercise  
21               of or the attempt to exercise, any right provided under  
22               this Article.

23               (2) Discrimination. It shall be unlawful for any  
24               employer to discharge or in any other manner discriminate  
25               against any individual for opposing any practice made

1 unlawful by this Article.

2 (b) Interference with proceedings or inquiries. It shall be  
3 unlawful for any person to discharge or in any other manner  
4 discriminate against any individual because such individual:

5 (1) has filed any charge, or has instituted or caused  
6 to be instituted any proceeding, under or related to this  
7 Article;

8 (2) has given, or is about to give, any information in  
9 connection with any inquiry or proceeding relating to any  
10 right provided under this Article; or

11 (3) has testified, or is about to testify, in any  
12 inquiry or proceeding relating to any right provided under  
13 this Article.

14 Section 106. Investigative authority.

15 (a) In general. To ensure compliance with the provisions of  
16 this Article, or any rule or order issued under this Article,  
17 the Director shall have, subject to subsection (c), the  
18 authority to investigate complaints.

19 (b) Obligation to keep and preserve records. Any employer  
20 shall make, keep, and preserve records pertaining to compliance  
21 with this Article in accordance with rules adopted by the  
22 Director.

23 (c) Required submissions generally limited to an annual  
24 basis. The Director shall not under the authority of this  
25 Section require any employer or any plan, fund, or program to

1 submit to the Director any books or records more than once  
2 during any 12-month period, unless the Director has reasonable  
3 cause to believe there may exist a violation of this Article or  
4 any rule or order issued pursuant to this Article, or is  
5 investigating a charge pursuant to Section 107(b).

6 (d) Subpoena powers. For the purposes of any investigation  
7 provided for in this Section, the Director shall have the  
8 authority to issue subpoenas.

9 Section 107. Enforcement.

10 (a) Civil action by employees.

11 (1) Liability. Any employer who violates Section 105  
12 shall be liable to any eligible employee affected:

13 (A) for damages equal to:

14 (i) the amount of:

15 (I) any wages, salary, employment  
16 benefits, or other compensation denied or lost  
17 to such employee by reason of the violation; or

18 (II) in a case in which wages, salary,  
19 employment benefits, or other compensation  
20 have not been denied or lost to the employee,  
21 any actual monetary losses sustained by the  
22 employee as a direct result of the violation,  
23 such as the cost of providing care, up to a sum  
24 equal to 12 weeks of wages or salary for the  
25 employee;

1           (ii) the interest on the amount described in  
2           clause (i) calculated at the rate of interest on  
3           judgments set forth in Section 2-1303 of the Code  
4           of Civil Procedure; and

5           (iii) an additional amount as liquidated  
6           damages equal to the sum of the amount described in  
7           clause (i) and the interest described in clause  
8           (ii), except that if an employer who has violated  
9           Section 105 proves to the satisfaction of the court  
10          that the act or omission which violated Section 105  
11          was in good faith and that the employer had  
12          reasonable grounds for believing that the act or  
13          omission was not a violation of Section 105, such  
14          court may, in the discretion of the court, reduce  
15          the amount of the liability to the amount and  
16          interest determined under clauses (i) and (ii),  
17          respectively; and

18          (B) for such equitable relief as may be  
19          appropriate, including employment, reinstatement, and  
20          promotion.

21          (2) Right of action. An action to recover the damages  
22          or equitable relief prescribed in paragraph (1) may be  
23          maintained against any employer (including a public  
24          agency) in the circuit court by any one or more employees  
25          for and in behalf of:

26                 (A) the employees; or

1 (B) the employees and other employees similarly  
2 situated.

3 (3) Fees and costs. The court in such an action shall,  
4 in addition to any judgment awarded to the plaintiff, allow  
5 a reasonable attorney's fee, reasonable expert witness  
6 fees, and other costs of the action to be paid by the  
7 defendant.

8 (4) Limitations. The right provided by paragraph (2) to  
9 bring an action by or on behalf of any employee shall  
10 terminate:

11 (A) on the filing of a complaint by the Director in  
12 an action under subsection (d) in which restraint is  
13 sought of any further delay in the payment of the  
14 amount described in paragraph (1) (A) to such employee  
15 by an employer responsible under paragraph (1) for the  
16 payment; or

17 (B) on the filing of a complaint by the Director in  
18 an action under subsection (b) in which a recovery is  
19 sought of the damages described in paragraph (1) (A)  
20 owing to an eligible employee by an employer liable  
21 under paragraph (1), unless the action described in  
22 subparagraph (A) or (B) is dismissed without prejudice  
23 on motion of the Director.

24 (b) Action by the Director.

25 (1) Administrative action. The Director shall receive,  
26 investigate, and attempt to resolve complaints of

1 violations of Section 105.

2 (2) Civil action. The Director may bring an action in  
3 the circuit court to recover the damages described in  
4 subsection (a)(1)(A).

5 (3) Sums recovered. Any sums recovered by the Director  
6 pursuant to paragraph (2) shall be held in a special  
7 deposit account and shall be paid, on order of the  
8 Director, directly to each employee affected. Any such sums  
9 not paid to an employee because of inability to do so  
10 within a period of 3 years shall be deposited into the  
11 General Revenue Fund.

12 (c) Limitation.

13 (1) In general. Except as provided in paragraph (2), an  
14 action may be brought under this Section not later than 2  
15 years after the date of the last event constituting the  
16 alleged violation for which the action is brought.

17 (2) Willful violation. In the case of such action  
18 brought for a willful violation of Section 105, such action  
19 may be brought within 3 years of the date of the last event  
20 constituting the alleged violation for which such action is  
21 brought.

22 (3) Commencement. In determining when an action is  
23 commenced by the Director under this Section for the  
24 purposes of this subsection, it shall be considered to be  
25 commenced on the date when the complaint is filed.

26 (d) Action for injunction by Director. The circuit court

1 shall have jurisdiction, for cause shown, in an action brought  
2 by the Director:

3 (1) to restrain violations of Section 105, including  
4 the restraint of any withholding of payment of wages,  
5 salary, employment benefits, or other compensation, plus  
6 interest, found by the court to be due to eligible  
7 employees; or

8 (2) to award such other equitable relief as may be  
9 appropriate, including employment, reinstatement, and  
10 promotion.

11 Section 108. Special rules concerning employees of local  
12 educational agencies.

13 (a) Application.

14 (1) In general. Except as otherwise provided in this  
15 Section, the rights (including the rights under Section  
16 104, which shall extend throughout the period of leave of  
17 any employee under this Section), remedies, and procedures  
18 under this Article shall apply to:

19 (A) any "local educational agency" (as defined in  
20 Section 1471(12) of the Elementary and Secondary  
21 Education Act of 1965 (20 U.S.C. 2891(12)) and an  
22 eligible employee of the agency; and

23 (B) any private elementary or secondary school and  
24 an eligible employee of the school.

25 (2) Definitions. For purposes of the application

1 described in paragraph (1):

2 (A) Eligible employee. The term "eligible  
3 employee" means an eligible employee of an agency or  
4 school described in paragraph (1).

5 (B) Employer. The term "employer" means an agency  
6 or school described in paragraph (1).

7 (b) Leave does not violate certain other federal laws. A  
8 local educational agency and a private elementary or secondary  
9 school shall not be in violation of the Individuals with  
10 Disabilities Education Act (20 U.S.C. 1400 et seq.), Section  
11 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title  
12 VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.),  
13 solely as a result of an eligible employee of such agency or  
14 school exercising the rights of such employee under this  
15 Article.

16 (c) Intermittent leave or leave on a reduced schedule for  
17 instructional employees.

18 (1) In general. Subject to paragraph (2), in any case  
19 in which an eligible employee employed principally in an  
20 instructional capacity by any such educational agency or  
21 school requests leave under subparagraph (C) or (D) of  
22 Section 102(a)(1) that is foreseeable based on planned  
23 medical treatment and the employee would be on leave for  
24 greater than 20 percent of the total number of working days  
25 in the period during which the leave would extend, the  
26 agency or school may require that such employee elect



1           either:

2                   (A) to take leave for periods of a particular  
3                   duration, not to exceed the duration of the planned  
4                   medical treatment; or

5                   (B) to transfer temporarily to an available  
6                   alternative position offered by the employer for which  
7                   the employee is qualified, and that:

8                           (i) has equivalent pay and benefits; and

9                           (ii) better accommodates recurring periods of  
10                   leave than the regular employment position of the  
11                   employee.

12           (2) Application. The elections described in  
13           subparagraphs (A) and (B) of paragraph (1) shall apply only  
14           with respect to an eligible employee who complies with  
15           Section 102(e)(2).

16           (d) Rules applicable to periods near the conclusion of an  
17           academic term. The following rules shall apply with respect to  
18           periods of leave near the conclusion of an academic term in the  
19           case of any eligible employee employed principally in an  
20           instructional capacity by any such educational agency or  
21           school:

22                   (1) Leave more than 5 weeks prior to end of term. If  
23                   the eligible employee begins leave under Section 102 more  
24                   than 5 weeks prior to the end of the academic term, the  
25                   agency or school may require the employee to continue  
26                   taking leave until the end of such term, if:

1 (A) the leave is of at least 3 weeks duration; and

2 (B) the return to employment would occur during the  
3 3-week period before the end of such term.

4 (2) Leave less than 5 weeks prior to end of term. If  
5 the eligible employee begins leave under subparagraph (A),  
6 (B), or (C) of Section 102(a)(1) during the period that  
7 commences 5 weeks prior to the end of the academic term,  
8 the agency or school may require the employee to continue  
9 taking leave until the end of such term, if:

10 (A) the leave is of greater than 2 weeks duration;  
11 and

12 (B) the return to employment would occur during the  
13 2-week period before the end of such term.

14 (3) Leave less than 3 weeks prior to end of term. If  
15 the eligible employee begins leave under subparagraph (A),  
16 (B), or (C) of Section 102(a)(1) during the period that  
17 commences 3 weeks prior to the end of the academic term and  
18 the duration of the leave is greater than 5 working days,  
19 the agency or school may require the employee to continue  
20 to take leave until the end of such term.

21 (e) Restoration to equivalent employment position. For  
22 purposes of determinations under Section 104(a)(1)(B)  
23 (relating to the restoration of an eligible employee to an  
24 equivalent position), in the case of a local educational agency  
25 or a private elementary or secondary school, such determination  
26 shall be made on the basis of established school board policies

1 and practices, private school policies and practices, and  
2 collective bargaining agreements.

3 (f) Reduction of the amount of liability. If a local  
4 educational agency or a private elementary or secondary school  
5 that has violated this Article proves to the satisfaction of  
6 the court that the agency, school, or department had reasonable  
7 grounds for believing that the underlying act or omission was  
8 not a violation of this Article, such court may, in the  
9 discretion of the court, reduce the amount of the liability  
10 provided for under Section 107(a)(1)(A) to the amount and  
11 interest determined under clauses (i) and (ii), respectively,  
12 of such Section.

13 Section 109. Notice.

14 (a) In general. Each employer shall post and keep posted,  
15 in conspicuous places on the premises of the employer where  
16 notices to employees and applicants for employment are  
17 customarily posted, a notice, to be prepared or approved by the  
18 Director, setting forth excerpts from, or summaries of, the  
19 pertinent provisions of this Article and information  
20 pertaining to the filing of a charge.

21 (b) Penalty. Any employer that willfully violates this  
22 Section may be assessed a civil money penalty not to exceed  
23 \$100 for each separate offense.

1 ARTICLE III. (BLANK)

2 ARTICLE IV. MISCELLANEOUS PROVISIONS

3 Section 401. Effect on other laws.

4 (a) Federal and State antidiscrimination laws. Nothing in  
5 this Act shall be construed to modify or affect any federal or  
6 State law prohibiting discrimination on the basis of race,  
7 religion, color, national origin, sex, age, or disability.

8 (b) State and local laws. Nothing in this Act shall be  
9 construed to supersede any provision of any State or local law  
10 that provides greater family or medical leave rights than the  
11 rights established under this Act.

12 Section 402. Effect on existing employment benefits.

13 (a) More protective. Nothing in this Act shall be construed  
14 to diminish the obligation of an employer to comply with any  
15 collective bargaining agreement or any employment benefit  
16 program or plan that provides greater family or medical leave  
17 rights to employees than the rights established under this Act.

18 (b) Less protective. The rights established for employees  
19 under this Act shall not be diminished by any collective  
20 bargaining agreement or any employment benefit program or plan.

21 Section 403. Encouragement of more generous leave

1 policies. Nothing in this Act shall be construed to discourage  
2 employers from adopting or retaining leave policies more  
3 generous than any policies that comply with the requirements  
4 under this Act.

5 Section 404. Rules. The Director shall prescribe such  
6 rules as are necessary to carry out this Act not later than 120  
7 days after the effective date of this Act.

8 Section 404.1. Applicability; coordination.

9 (1) In the case of a collective bargaining agreement in  
10 effect on the effective date of this Act, Article I shall apply  
11 on the earlier of:

12 (A) the date of the termination of such agreement; or

13 (B) the date that occurs 12 months after the effective  
14 date of this Act.

15 (2) Nothing in this Act shall be construed to limit the  
16 applicability of the federal Family and Medical Leave Act of  
17 1993 with regard to employers and employees covered by that  
18 Act.

19 (3) In the case of leave that is subject to the federal  
20 Family and Medical Leave Act of 1993:

21 (A) the 12-month period during which 12 workweeks of  
22 leave may be taken under this Act shall run concurrently  
23 with the 12-month period under the federal Family and  
24 Medical Leave Act of 1993, and shall commence the date

1 leave taken under the federal Family and Medical Leave Act  
2 of 1993 commences; and

3 (B) leave taken under this Act shall run concurrently  
4 with leave taken under the federal Family and Medical Leave  
5 Act of 1993.

6 (4) The aggregate amount of leave taken under this Act or  
7 the federal Family and Medical Leave Act of 1993, or both,  
8 shall not exceed 12 workweeks in a 12-month period.

9 Section 405. Effective date. This Act takes effect 6 months  
10 after it becomes law."