

HB4724



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB4724

Introduced 2/3/2012, by Rep. Kelly M. Cassidy

SYNOPSIS AS INTRODUCED:

New Act

Creates the Illinois Family and Medical Leave Act. Contains provisions similar to those in the federal Family and Medical Leave Act of 1993. Contains provisions concerning applicability and coordination.

LRB097 13739 AEK 61639 b

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 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

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

18 (B) Exclusions. The term "eligible employee" does not
19 include:

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

1 (ii) any employee of an employer who is employed at
2 a work site at which such employer employs less than 50
3 employees if the total number of employees employed by
4 that employer within 75 miles of that work site is less
5 than 50.

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

11 (D) Airline flight crews.

12 (i) Determination. For purposes of determining
13 whether an employee who is a flight attendant or flight
14 crewmember (as such terms are defined in regulations of
15 the Federal Aviation Administration) meets the hours
16 of service requirement specified in subparagraph
17 (A)(ii), the employee will be considered to meet the
18 requirement if:

19 (I) the employee has worked or been paid for
20 not less than 60 percent of the applicable total
21 monthly guarantee, or the equivalent, for the
22 previous 12-month period, for or by the employer
23 with respect to whom leave is requested under
24 Section 102; and

25 (II) the employee has worked or been paid for
26 not less than 504 hours (not counting personal

1 commute time or time spent on vacation leave or
2 medical or sick leave) during the previous
3 12-month period, for or by that employer.

4 (ii) File. Each employer of an employee described
5 in clause (i) shall maintain on file with the Director
6 (in accordance with such regulations as the Director
7 may prescribe) containing information specifying the
8 applicable monthly guarantee with respect to each
9 category of employee to which such guarantee applies.

10 (iii) Definition. For the purposes of this
11 Section, "applicable monthly guarantee" means:

12 (I) for an employee described in clause (i)
13 other than an employee on reserve status, the
14 minimum number of hours for which an employer as
15 agreed to schedule such employee for any given
16 month; and

17 (II) for an employee described in clause (i)
18 who is on reserve status, the number of hours for
19 which an employer has agreed to pay such employee
20 on reserve status for any given month, as
21 established in the applicable collective
22 bargaining agreement or, if none exists, in the
23 employer's policies.

24 (3) Employ; Employee; State. The terms "employ",
25 "employee", and "State" have the same meanings given such terms
26 in subsections (c), (e), and (g) of Section 3 of the Fair Labor

1 Standards Act of 1938 (29 U.S.C. 203 (c), (e), and (g)).

2 (4) Employer.

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

4 (i) means any person who employs 50 or more
5 employees for each working day during each of 20 or
6 more calendar workweeks in the current or preceding
7 calendar year;

8 (ii) includes:

9 (I) any person who acts, directly or
10 indirectly, in the interest of an employer to any
11 of the employees of such employer; and

12 (II) any successor in interest of an employer;

13 and

14 (iii) includes any State officer, department, or
15 agency, any unit of local government, and any school
16 district.

17 (B) (Blank).

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

26 (6) Health care provider. The term "health care provider"

1 means:

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

5 (B) any other person determined by the Director to be
6 capable of providing health care services.

7 (7) Parent. The term "parent" means the biological father
8 or mother, adoptive father or mother, stepfather or stepmother,
9 or foster father or mother of an employee or an individual who
10 stood in loco parentis to an employee when the employee was a
11 son or daughter.

12 (8) Person. The term "person" has the same meaning given
13 such term in Section 203(a) of the Fair Labor Standards Act of
14 1938 (29 U.S.C. 203(a)).

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

18 (10) Director. The term "Director" means the Director of
19 Labor.

20 (11) Serious health condition. The term "serious health
21 condition" means an illness, injury, impairment, or physical or
22 mental condition that involves:

23 (A) inpatient care in a hospital, hospice, or
24 residential medical care facility; or

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

26 (12) Son or daughter. The term "son or daughter" means a

1 biological, adopted, or foster child, a stepchild, a legal
2 ward, or a child of a person standing in loco parentis, who is:

3 (A) under 18 years of age; or

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

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

8 (14) Covered active duty. The term "covered active duty"
9 means:

10 (A) in the case of a member of a regular component of
11 the Armed Forces, duty during the deployment of the member
12 with the Armed Forces to a foreign country; and

13 (B) in the case of a member of a reserve component of
14 the Armed Forces, duty during the deployment of the member
15 with the Armed Forces to a foreign country under a call or
16 order to active duty under a provision of law referred to
17 in Section 101(a)(13)(B) of Title 10 of the United States
18 Code (10 U.S.C. 101(a)(13)(B)).

19 (15) Covered servicemember. The term "covered
20 servicemember" means:

21 (A) a member of the Armed Forces (including a member of
22 the National Guard or Reserves) who is undergoing medical
23 treatment, recuperation, or therapy, is otherwise in
24 outpatient status, or is otherwise on the temporary
25 disability retired list, for a serious injury or illness;
26 or

1 (B) a veteran who is undergoing medical treatment,
2 recuperation, or therapy, for a serious injury or illness
3 and who was a member of the Armed Forces (including a
4 member of the National Guard or Reserves) at any time
5 during the period of 5 years preceding the date on which
6 the veteran undergoes that medical treatment,
7 recuperation, or therapy.

8 (16) Outpatient status. The term "outpatient status", with
9 respect to a covered servicemember, means the status of a
10 member of the Armed Forces assigned to:

11 (A) a military medical treatment facility as an
12 outpatient; or

13 (B) a unit established for the purpose of providing
14 command and control of members of the Armed Forces
15 receiving medical care as outpatients.

16 (17) Next of kin. The term "next of kin", used with respect
17 to an individual, means the nearest blood relative of that
18 individual.

19 (18) Serious injury or illness. The term "serious injury or
20 illness":

21 (A) in the case of a member of the Armed Forces
22 (including a member of the National Guard or Reserves),
23 means an injury or illness that was incurred by the member
24 in line of duty on active duty in the Armed Forces (or
25 existed before the beginning of the member's active duty
26 and was aggravated by service in line of duty on active

1 duty in the Armed Forces) and that may render the member
2 medically unfit to perform the duties of the member's
3 office, grade, rank, or rating; and

4 (B) in the case of a veteran who was a member of the
5 Armed Forces (including a member of the National Guard or
6 Reserves) at any time during a period described in
7 paragraph (15) (B), means a qualifying (as defined by the
8 Secretary of Labor) injury or illness that was incurred by
9 the member in line of duty on active duty in the Armed
10 Forces (or existed before the beginning of the member's
11 active duty and was aggravated by service in line of duty
12 on active duty in the Armed Forces) and that manifested
13 itself before or after the member became a veteran.

14 (19) Veteran. The term "veteran" has the meaning given the
15 term in section 101 of Title 38 of the United States Code (38
16 U.S.C. 101).

17 Section 102. Leave requirement.

18 (a) In general.

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

23 (A) Because of the birth of a son or daughter of
24 the employee and in order to care for such son or
25 daughter.

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

3 (C) In order to care for the spouse, or a son,
4 daughter, or parent, of the employee, if such spouse,
5 son, daughter, or parent has a serious health
6 condition.

7 (D) Because of a serious health condition that
8 makes the employee unable to perform the functions of
9 the position of such employee.

10 (E) Because of any qualifying exigency (as the
11 Director shall, by regulation, determine) arising out
12 of the fact that the spouse, or a son, daughter, or
13 parent of the employee is on covered active duty (or
14 has been notified of an impending call or order to
15 covered active duty) in the Armed Forces.

16 (2) Expiration of entitlement. The entitlement to
17 leave under subparagraphs (A) and (B) of paragraph (1) for
18 a birth or placement of a son or daughter shall expire at
19 the end of the 12-month period beginning on the date of
20 such birth or placement.

21 (3) Servicemember family leave. Subject to Section
22 103, an eligible employee who is the spouse, son, daughter,
23 parent, or next of kin of a covered servicemember shall be
24 entitled to a total of 26 workweeks of leave during a
25 12-month period to care for the servicemember. The leave
26 described in this paragraph shall only be available during

1 a single 12-month period.

2 (4) Combined leave total. During the single 12-month
3 period described in paragraph (3), an eligible employee
4 shall be entitled to a combined total of 26 workweeks of
5 leave under paragraphs (1) and (3). Nothing in this
6 paragraph shall be construed to limit the availability of
7 leave under paragraph (1) during any other 12-month period.

8 (5) Calculation of leave for airline flight crews. The
9 Director may provide, by regulation, a method for
10 calculating the leave described in paragraph (1) with
11 respect to employees described in Section 101(2)(D).

12 (b) Leave taken intermittently or on a reduced leave
13 schedule.

14 (1) In general. Leave under subparagraph (A) or (B) of
15 subsection (a)(1) shall not be taken by an employee
16 intermittently or on a reduced leave schedule unless the
17 employee and the employer of the employee agree otherwise.
18 Subject to paragraph (2), subsection (e)(2), and
19 subsection (b)(5) or (f) (as appropriate) of Section 103,
20 leave under subparagraph (C) or (D) of subsection (a)(1) or
21 under subsection (a)(3) may be taken intermittently or on a
22 reduced leave schedule when medically necessary. Subject
23 to subsection (e)(3) and section 103(f), leave under
24 subsection (a)(1)(E) may be taken intermittently or on a
25 reduced leave schedule. The taking of leave intermittently
26 or on a reduced leave schedule pursuant to this paragraph

1 shall not result in a reduction in the total amount of
2 leave to which the employee is entitled under subsection
3 (a) beyond the amount of leave actually taken.

4 (2) Alternative position. If an employee requests
5 intermittent leave, or leave on a reduced leave schedule,
6 under subparagraph (C) or (D) of subsection (a)(1) or under
7 subsection (a)(3), that is foreseeable based on planned
8 medical treatment, the employer may require such employee
9 to transfer temporarily to an available alternative
10 position offered by the employer for which the employee is
11 qualified and that:

12 (A) has equivalent pay and benefits; and

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

15 (c) Unpaid leave permitted. Except as provided in
16 subsection (d), leave granted under subsection (a) may consist
17 of unpaid leave. Where an employee is otherwise exempt under
18 regulations issued by the United States Secretary of Labor
19 pursuant to Section 213(a)(1) of the Fair Labor Standards Act
20 of 1938 (29 U.S.C. 213(a)(1)), the compliance of an employer
21 with this Article by providing unpaid leave shall not affect
22 the exempt status of the employee under such Section.

23 (d) Relationship to paid leave.

24 (1) Unpaid leave. If an employer provides paid leave
25 for fewer than 12 workweeks (or 26 workweeks in the case of
26 leave provided under subsection (a)(3)), the additional

1 weeks of leave necessary to attain the 12 workweeks (or 26
2 workweeks, as appropriate) of leave required under this
3 subchapter may be provided without compensation.

4 (2) Substitution of paid leave.

5 (A) In general. An eligible employee may elect, or
6 an employer may require the employee, to substitute any
7 of the accrued paid vacation leave, personal leave, or
8 family leave of the employee for leave provided under
9 subparagraph (A), (B), or (C) of subsection (a)(1) for
10 any part of the 12-week period of such leave under such
11 subsection.

12 (B) Serious health condition. An eligible employee
13 may elect, or an employer may require the employee, to
14 substitute any of the accrued paid vacation leave,
15 personal leave, or medical or sick leave of the
16 employee for leave provided under subparagraph (C) or
17 (D) of subsection (a)(1) for any part of the 12-week
18 period of such leave under such subsection, except that
19 nothing in this Article shall require an employer to
20 provide paid sick leave or paid medical leave in any
21 situation in which such employer would not normally
22 provide any such paid leave. An eligible employee may
23 elect, or an employer may require the employee, to
24 substitute any of the accrued paid vacation leave,
25 personal leave, family leave, or medical or sick leave
26 of the employee for leave provided under subsection

1 (a) (3) for any part of the 26-week period of such leave
2 under such subsection, except that nothing in this
3 subchapter requires an employer to provide paid sick
4 leave or paid medical leave in any situation in which
5 the employer would not normally provide any such paid
6 leave.

7 (e) Foreseeable leave.

8 (1) Requirement of notice. In any case in which the
9 necessity for leave under subparagraph (A) or (B) of
10 subsection (a) (1) is foreseeable based on an expected birth
11 or placement, the employee shall provide the employer with
12 not less than 30 days' notice, before the date the leave is
13 to begin, of the employee's intention to take leave under
14 such subparagraph, except that if the date of the birth or
15 placement requires leave to begin in less than 30 days, the
16 employee shall provide such notice as is practicable.

17 (2) Duties of employee. In any case in which the
18 necessity for leave under subparagraph (C) or (D) of
19 subsection (a) (1) is foreseeable based on planned medical
20 treatment, the employee:

21 (A) shall make a reasonable effort to schedule the
22 treatment so as not to disrupt unduly the operations of
23 the employer, subject to the approval of the health
24 care provider of the employee or the health care
25 provider of the son, daughter, spouse, parent, or
26 covered servicemember of the employee, as appropriate;

1 and

2 (B) shall provide the employer with not less than
3 30 days' notice, before the date the leave is to begin,
4 of the employee's intention to take leave under such
5 subparagraph, except that if the date of the treatment
6 requires leave to begin in less than 30 days, the
7 employee shall provide such notice as is practicable.

8 (3) Notice for leave due to covered active duty of
9 family member. In any case in which the necessity for leave
10 under subsection (a)(1)(E) is foreseeable, whether because
11 the spouse, or a son, daughter, or parent, of the employee
12 is on covered active duty, or because of notification of an
13 impending call or order to covered active duty, the
14 employee shall provide such notice to the employer as is
15 reasonable and practicable.

16 (f) Spouses employed by the same employer.

17 (1) In general. In any case in which a husband and wife
18 entitled to leave under subsection (a) are employed by the
19 same employer, the aggregate number of workweeks of leave
20 to which both may be entitled may be limited to 12
21 workweeks during any 12-month period described in
22 subsection (a)(3), if such leave is taken:

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

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

1 (2) Servicemember family leave.

2 (A) In general. The aggregate number of workweeks
3 of leave to which both that husband and wife may be
4 entitled under subsection (a) may be limited to 26
5 workweeks during the single 12-month period described
6 in subsection (a) (3) if the leave is:

7 (i) leave under subsection (a) (3); or

8 (ii) a combination of leave under subsection
9 (a) (3) and leave described in paragraph (1).

10 (B) Both limitations applicable. If the leave
11 taken by the husband and wife includes leave described
12 in paragraph (1), the limitation in paragraph (1) shall
13 apply to the leave described in paragraph (1).

14 Section 103. Certification.

15 (a) In general. An employer may require that a request for
16 leave under subparagraph (C) or (D) of paragraph (1) or
17 paragraph (3) of Section 102(a) be supported by a certification
18 issued by the health care provider of the eligible employee or
19 of the son, daughter, spouse, or parent of the employee, or of
20 the next of kin of an individual in the case of leave taken
21 under such paragraph (3), as appropriate. The employee shall
22 provide, in a timely manner, a copy of such certification to
23 the employer.

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

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

3 (2) the probable duration of the condition;

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

6 (4) (A) for purposes of leave under Section
7 102(a)(1)(C), a statement that the eligible employee is
8 needed to care for the son, daughter, spouse, or parent and
9 an estimate of the amount of time that such employee is
10 needed to care for the son, daughter, spouse or parent; and

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

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

18 (6) in the case of certification for intermittent
19 leave, or leave on a reduced leave schedule, under Section
20 102(a)(1)(D), a statement of the medical necessity for the
21 intermittent leave or leave on a reduced leave schedule,
22 and the expected duration of the intermittent leave or
23 reduced leave schedule; and

24 (7) in the case of certification for intermittent
25 leave, or leave on a reduced leave schedule, under Section
26 102(a)(1)(C), a statement that the employee's intermittent

1 leave or leave on a reduced leave schedule is necessary for
2 the care of the son, daughter, parent or spouse who has a
3 serious health condition, or will assist in their recovery,
4 and the expected duration and schedule of the intermittent
5 leave or reduced leave schedule.

6 (c) Second opinion.

7 (1) In general. In any case in which the employer has
8 reason to doubt the validity of the certification provided
9 under subsection (a) for leave under subparagraph (C) or
10 (D) of Section 102(a)(1), the employer may require, at the
11 expense of the employer, that the eligible employee obtain
12 the opinion of a second health care provider designated or
13 approved by the employer concerning any information
14 certified under subsection (b) for such leave.

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

18 (d) Resolution of conflicting opinions.

19 (1) In general. In any case in which the second opinion
20 described in subsection (c) differs from the opinion in the
21 original certification provided under subsection (a), the
22 employer may require, at the expense of the employer, that
23 the employee obtain the opinion of a third health care
24 provider designated or approved jointly by the employer and
25 the employee concerning the information certified under
26 subsection (b).

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

5 (e) Subsequent recertification. The employer may require
6 that the eligible employee obtain subsequent recertifications
7 on a reasonable basis.

8 (f) Certification related to covered active duty or call to
9 covered active duty. An employer may require that a request for
10 leave under Section 102(a)(1)(E) be supported by a
11 certification issued at such time and in such manner as the
12 Director may by regulation prescribe. If the Director issues a
13 regulation requiring such certification, the employee shall
14 provide, in a timely manner, a copy of such certification to
15 the employer.

16 Section 104. Employment and benefits protection.

17 (a) Restoration to position.

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

22 (A) to be restored by the employer to the position
23 of employment held by the employee when the leave
24 commenced; or

25 (B) to be restored to an equivalent position with

1 equivalent employment benefits, pay, and other terms
2 and conditions of employment.

3 (2) Loss of benefits. The taking of leave under Section
4 102 shall not result in the loss of any employment benefit
5 accrued prior to the date on which the leave commenced.

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

8 (A) the accrual of any seniority or employment
9 benefits during any period of leave; or

10 (B) any right, benefit, or position of employment
11 other than any right, benefit, or position to which the
12 employee would have been entitled had the employee not
13 taken the leave.

14 (4) Certification. As a condition of restoration under
15 paragraph (1) for an employee who has taken leave under
16 Section 102(a)(1)(D), the employer may have a uniformly
17 applied practice or policy that requires each such employee
18 to receive certification from the health care provider of
19 the employee that the employee is able to resume work,
20 except that nothing in this paragraph shall supersede a
21 valid State or local law or a collective bargaining
22 agreement that governs the return to work of such
23 employees.

24 (5) Construction. Nothing in this subsection shall be
25 construed to prohibit an employer from requiring an
26 employee on leave under Section 102 to report periodically

1 to the employer on the status and intention of the employee
2 to return to work.

3 (b) Exemption concerning certain highly compensated
4 employees.

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

8 (A) such denial is necessary to prevent
9 substantial and grievous economic injury to the
10 operations of the employer;

11 (B) the employer notifies the employee of the
12 intent of the employer to deny restoration on such
13 basis at the time the employer determines that such
14 injury would occur; and

15 (C) in any case in which the leave has commenced,
16 the employee elects not to return to employment after
17 receiving such notice.

18 (2) Affected employees. An eligible employee described
19 in paragraph (1) is a salaried eligible employee who is
20 among the highest paid 10 percent of the employees employed
21 by the employer within 75 miles of the facility at which
22 the employee is employed.

23 (c) Maintenance of health benefits.

24 (1) Coverage. Except as provided in paragraph (2),
25 during any period that an eligible employee takes leave
26 under Section 102, the employer shall maintain coverage

1 under any "group health plan" (as defined in Section
2 5000(b)(1) of the Internal Revenue Code of 1986) for the
3 duration of such leave at the level and under the
4 conditions coverage would have been provided if the
5 employee had continued in employment continuously for the
6 duration of such leave.

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

11 (A) the employee fails to return from leave under
12 Section 102 after the period of leave to which the
13 employee is entitled has expired; and

14 (B) the employee fails to return to work for a
15 reason other than:

16 (i) the continuation, recurrence, or onset of
17 a serious health condition that entitles the
18 employee to leave under subparagraph (C) or (D) of
19 Section 102(a)(1) or under Section 102(a)(3); or

20 (ii) other circumstances beyond the control of
21 the employee.

22 (3) Certification.

23 (A) Issuance. An employer may require that a claim
24 that an employee is unable to return to work because of
25 the continuation, recurrence, or onset of the serious
26 health condition described in paragraph (2)(B)(i) be

1 supported by:

2 (i) a certification issued by the health care
3 provider of the son, daughter, spouse or parent of
4 the employee, as appropriate, in the case of an
5 employee unable to return to work because of a
6 condition specified in Section 102(a)(1)(C);

7 (ii) a certification issued by the health care
8 provider of the eligible employee, in the case of
9 an employee unable to return to work because of a
10 condition specified in Section 102(a)(1)(D); or

11 (iii) a certification issued by the health
12 care provider of the servicemember being cared for
13 by the employee, in the case of an employee unable
14 to return to work because of a condition specified
15 in Section 102(a)(3).

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

18 (C) Sufficiency of certification.

19 (i) Leave due to serious health condition of
20 employee. The certification described in
21 subparagraph (A)(ii) shall be sufficient if the
22 certification states that a serious health
23 condition prevented the employee from being able
24 to perform the functions of the position of the
25 employee on the date that the leave of the employee
26 expired.

1 (ii) Leave due to serious health condition of
2 family member. The certification described in
3 subparagraph (A)(i) shall be sufficient if the
4 certification states that the employee is needed
5 to care for the son, daughter, spouse, or parent
6 who has a serious health condition on the date that
7 the leave of the employee expired.

8 Section 105. Prohibited Acts.

9 (a) Interference with rights.

10 (1) Exercise of rights. It shall be unlawful for any
11 employer to interfere with, restrain, or deny the exercise
12 of or the attempt to exercise, any right provided under
13 this Article.

14 (2) Discrimination. It shall be unlawful for any
15 employer to discharge or in any other manner discriminate
16 against any individual for opposing any practice made
17 unlawful by this Article.

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

21 (1) has filed any charge, or has instituted or caused
22 to be instituted any proceeding, under or related to this
23 Article;

24 (2) has given, or is about to give, any information in
25 connection with any inquiry or proceeding relating to any

1 right provided under this Article; or
2 (3) has testified, or is about to testify, in any
3 inquiry or proceeding relating to any right provided under
4 this Article.

5 Section 106. Investigative authority.

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

10 (b) Obligation to keep and preserve records. Any employer
11 shall make, keep, and preserve records pertaining to compliance
12 with this Article in accordance with rules adopted by the
13 Director.

14 (c) Required submissions generally limited to an annual
15 basis. The Director shall not under the authority of this
16 Section require any employer or any plan, fund, or program to
17 submit to the Director any books or records more than once
18 during any 12-month period, unless the Director has reasonable
19 cause to believe there may exist a violation of this Article or
20 any rule or order issued pursuant to this Article, or is
21 investigating a charge pursuant to Section 107(b).

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

1 Section 107. Enforcement.

2 (a) Civil action by employees.

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

5 (A) for damages equal to:

6 (i) the amount of:

7 (I) any wages, salary, employment
8 benefits, or other compensation denied or lost
9 to such employee by reason of the violation; or

10 (II) in a case in which wages, salary,
11 employment benefits, or other compensation
12 have not been denied or lost to the employee,
13 any actual monetary losses sustained by the
14 employee as a direct result of the violation,
15 such as the cost of providing care, up to a sum
16 equal to 12 weeks (or 26 weeks, in a case
17 involving leave under Section 102(a)(3)) of
18 wages or salary for the employee;

19 (ii) the interest on the amount described in
20 clause (i) calculated at the rate of interest on
21 judgments set forth in Section 2-1303 of the Code
22 of Civil Procedure; and

23 (iii) an additional amount as liquidated
24 damages equal to the sum of the amount described in
25 clause (i) and the interest described in clause
26 (ii), except that if an employer who has violated

1 Section 105 proves to the satisfaction of the court
2 that the act or omission which violated Section 105
3 was in good faith and that the employer had
4 reasonable grounds for believing that the act or
5 omission was not a violation of Section 105, such
6 court may, in the discretion of the court, reduce
7 the amount of the liability to the amount and
8 interest determined under clauses (i) and (ii),
9 respectively; and

10 (B) for such equitable relief as may be
11 appropriate, including employment, reinstatement, and
12 promotion.

13 (2) Right of action. An action to recover the damages
14 or equitable relief prescribed in paragraph (1) may be
15 maintained against any employer (including a public
16 agency) in the circuit court by any one or more employees
17 for and in behalf of:

18 (A) the employees; or

19 (B) the employees and other employees similarly
20 situated.

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

26 (4) Limitations. The right provided by paragraph (2) to

1 bring an action by or on behalf of any employee shall
2 terminate:

3 (A) on the filing of a complaint by the Director in
4 an action under subsection (d) in which restraint is
5 sought of any further delay in the payment of the
6 amount described in paragraph (1) (A) to such employee
7 by an employer responsible under paragraph (1) for the
8 payment; or

9 (B) on the filing of a complaint by the Director in
10 an action under subsection (b) in which a recovery is
11 sought of the damages described in paragraph (1) (A)
12 owing to an eligible employee by an employer liable
13 under paragraph (1), unless the action described in
14 subparagraph (A) or (B) is dismissed without prejudice
15 on motion of the Director.

16 (b) Action by the Director.

17 (1) Administrative action. The Director shall receive,
18 investigate, and attempt to resolve complaints of
19 violations of Section 105.

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

23 (3) Sums recovered. Any sums recovered by the Director
24 pursuant to paragraph (2) shall be held in a special
25 deposit account and shall be paid, on order of the
26 Director, directly to each employee affected. Any such sums

1 not paid to an employee because of inability to do so
2 within a period of 3 years shall be deposited into the
3 General Revenue Fund.

4 (c) Limitation.

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

9 (2) Willful violation. In the case of such action
10 brought for a willful violation of Section 105, such action
11 may be brought within 3 years of the date of the last event
12 constituting the alleged violation for which such action is
13 brought.

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

18 (d) Action for injunction by Director. The circuit court
19 shall have jurisdiction, for cause shown, in an action brought
20 by the Director:

21 (1) to restrain violations of Section 105, including
22 the restraint of any withholding of payment of wages,
23 salary, employment benefits, or other compensation, plus
24 interest, found by the court to be due to eligible
25 employees; or

26 (2) to award such other equitable relief as may be

1 appropriate, including employment, reinstatement, and
2 promotion.

3 Section 108. Special rules concerning employees of local
4 educational agencies.

5 (a) Application.

6 (1) In general. Except as otherwise provided in this
7 Section, the rights (including the rights under Section
8 104, which shall extend throughout the period of leave of
9 any employee under this Section), remedies, and procedures
10 under this Article shall apply to:

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

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

17 (2) Definitions. For purposes of the application
18 described in paragraph (1):

19 (A) Eligible employee. The term "eligible
20 employee" means an eligible employee of an agency or
21 school described in paragraph (1).

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

24 (b) (Blank).

25 (c) Intermittent leave or leave on a reduced schedule for

1 instructional employees.

2 (1) In general. Subject to paragraph (2), in any case
3 in which an eligible employee employed principally in an
4 instructional capacity by any such educational agency or
5 school requests leave under subparagraph (C) or (D) of
6 Section 102(a)(1) or under Section 102(a)(3) that is
7 foreseeable based on planned medical treatment and the
8 employee would be on leave for greater than 20 percent of
9 the total number of working days in the period during which
10 the leave would extend, the agency or school may require
11 that such employee elect either:

12 (A) to take leave for periods of a particular
13 duration, not to exceed the duration of the planned
14 medical treatment; or

15 (B) to transfer temporarily to an available
16 alternative position offered by the employer for which
17 the employee is qualified, and that:

18 (i) has equivalent pay and benefits; and

19 (ii) better accommodates recurring periods of
20 leave than the regular employment position of the
21 employee.

22 (2) Application. The elections described in
23 subparagraphs (A) and (B) of paragraph (1) shall apply only
24 with respect to an eligible employee who complies with
25 Section 102(e)(2).

26 (d) Rules applicable to periods near the conclusion of an

1 academic term. The following rules shall apply with respect to
2 periods of leave near the conclusion of an academic term in the
3 case of any eligible employee employed principally in an
4 instructional capacity by any such educational agency or
5 school:

6 (1) Leave more than 5 weeks prior to end of term. If
7 the eligible employee begins leave under Section 102 more
8 than 5 weeks prior to the end of the academic term, the
9 agency or school may require the employee to continue
10 taking leave until the end of such term, if:

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

12 (B) the return to employment would occur during the
13 3-week period before the end of such term.

14 (2) Leave less than 5 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) or under Section 102(a)3
17 during the period that commences 5 weeks prior to the end
18 of the academic term, the agency or school may require the
19 employee to continue taking leave until the end of such
20 term, if:

21 (A) the leave is of greater than 2 weeks duration;

22 and

23 (B) the return to employment would occur during the
24 2-week period before the end of such term.

25 (3) Leave less than 3 weeks prior to end of term. If
26 the eligible employee begins leave under subparagraph (A),

1 (B), or (C) of Section 102(a)(1) or under Section 102(a)3
2 during the period that commences 3 weeks prior to the end
3 of the academic term and the duration of the leave is
4 greater than 5 working days, the agency or school may
5 require the employee to continue to take leave until the
6 end of such term.

7 (e) Restoration to equivalent employment position. For
8 purposes of determinations under Section 104(a)(1)(B)
9 (relating to the restoration of an eligible employee to an
10 equivalent position), in the case of a local educational agency
11 or a private elementary or secondary school, such determination
12 shall be made on the basis of established school board policies
13 and practices, private school policies and practices, and
14 collective bargaining agreements.

15 (f) Reduction of the amount of liability. If a local
16 educational agency or a private elementary or secondary school
17 that has violated this Article proves to the satisfaction of
18 the court that the agency, school, or department had reasonable
19 grounds for believing that the underlying act or omission was
20 not a violation of this Article, such court may, in the
21 discretion of the court, reduce the amount of the liability
22 provided for under Section 107(a)(1)(A) to the amount and
23 interest determined under clauses (i) and (ii), respectively,
24 of such Section.

25 Section 109. Notice.

1 Section 402. Effect on existing employment benefits.

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

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

10 Section 403. Encouragement of more generous leave
11 policies. Nothing in this Act shall be construed to discourage
12 employers from adopting or retaining leave policies more
13 generous than any policies that comply with the requirements
14 under this Act.

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

18 Section 404.1. Applicability; coordination.

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

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

1 (B) the date that occurs 12 months after the effective
2 date of this Act.

3 (2) Nothing in this Act shall be construed to limit the
4 applicability of the federal Family and Medical Leave Act of
5 1993 with regard to employers and employees covered by that
6 Act.

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

9 (A) the 12-month period during which 12 workweeks (or
10 26 weeks, in a case involving leave under Section
11 102(a)(3)) of leave may be taken under this Act shall run
12 concurrently with the 12-month period under the federal
13 Family and Medical Leave Act of 1993, and shall commence
14 the date leave taken under the federal Family and Medical
15 Leave Act of 1993 commences; and

16 (B) leave taken under this Act shall run concurrently
17 with leave taken under the federal Family and Medical Leave
18 Act of 1993.

19 (4) The aggregate amount of leave taken under this Act or
20 the federal Family and Medical Leave Act of 1993, or both,
21 shall not exceed 12 workweeks (or 26 weeks, in a case involving
22 leave under Section 102(a)(3)) in a 12-month period.