



Rep. Jehan Gordon-Booth

Filed: 5/27/2021

10200SB0208ham002

LRB102 04034 JLS 27202 a

1 AMENDMENT TO SENATE BILL 208

2 AMENDMENT NO. _____. Amend Senate Bill 208, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 1. Short title. This Act may be cited as the Paid
6 Leave for All Workers Act.

7 Section 5. Findings; legislative intent; construction.

8 (a) The General Assembly finds that it is in the public
9 policy interests of the State for all working Illinoisans to
10 have some paid leave from work to maintain their health and
11 well-being, care for their families, or use for any other
12 reason of their choosing.

13 (b) It is the intent of the General Assembly by enacting
14 this Act:

15 (1) To establish a minimum paid leave standard for all
16 workers in Illinois.

1 (2) To provide employment security and economic
2 security for employees who need to use paid time off from
3 work for any reason.

4 (3) To safeguard the welfare, health, safety, and
5 prosperity of the people of Illinois.

6 (4) To ensure that an employee not be denied use of
7 leave for noncompliance with leave notification policies
8 if the employer has not provided a written copy of its
9 notification policy to the employee.

10 In order to effectuate this intent, the provisions of this
11 Act shall be liberally construed in favor of providing workers
12 with the greatest amount of paid time off from work and
13 employment security.

14 (c) Nothing in this Act shall be construed to discourage
15 employers from adopting or retaining paid sick leave, paid
16 vacation, paid holidays, or any other paid time off or paid
17 leave policy more generous than policies that comply with the
18 requirements of this Act. Nothing in this Act shall be
19 construed to discourage or prohibit an employer from allowing
20 the use of paid leave at an earlier date than this Act
21 requires.

22 Unless otherwise provided in a collective bargaining
23 agreement, nothing in this Act shall be construed to waive or
24 otherwise limit an employee's right to final compensation for
25 any type of leave promised to be paid under a contract of
26 employment or employment policy and earned by the employee

1 pursuant to the Illinois Wage Payment and Collection Act.

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

3 "Construction industry" means any constructing, altering,
4 reconstructing, repairing, rehabilitating, refinishing,
5 refurbishing, remodeling, remediating, renovating, custom
6 fabricating, maintenance, landscaping, improving, wrecking,
7 painting, decorating, demolishing, or adding to or subtracting
8 from any building, structure, highway, roadway, street,
9 bridge, alley, sewer, ditch, sewage disposal plant,
10 waterworks, parking facility, railroad, excavation or other
11 structure, project, development, real property, or
12 improvement, or to do any part thereof, whether or not the
13 performance of the work herein described involves the addition
14 to or fabrication into, any structure, project, development,
15 real property, or improvement herein described of any material
16 or article of merchandise.

17 "Construction industry" also includes moving construction
18 related materials on the job site or to or from the job site,
19 snow plowing, snow removal, and refuse collection.

20 "Department" means the Illinois Department of Labor.

21 "Domestic work" and "domestic worker" have the same
22 meanings as defined in Section 10 of the Domestic Workers'
23 Bill of Rights Act, except that "domestic worker" also
24 includes independent contractors, sole proprietors, and
25 partnerships.

1 "Employee" has the same application and meaning as that
2 provided in Sections 1 and 2 of the Illinois Wage Payment and
3 Collection Act. "Employee" also includes all domestic workers,
4 and, for the purposes of this Act, domestic workers shall not
5 be excluded as employees under the provisions of item (1),
6 (2), or (3) of Section 2 of the Illinois Wage Payment and
7 Collection Act. "Employee" does not include:

8 (1) an employee as defined in the federal Railroad
9 Unemployment Insurance Act (45 U.S.C. 351 et seq.) or the
10 Railway Labor Act;

11 (2) a student enrolled in and regularly attending
12 classes in a college or university that is also the
13 student's employer, and who is employed on a temporary
14 basis at less than full time at the college or university,
15 but this exclusion applies only to work performed for that
16 college or university; or

17 (3) a short-term employee who is employed by an
18 institution of higher education for less than 2
19 consecutive calendar quarters during a calendar year and
20 who does not have a reasonable expectation that they will
21 be rehired by the same employer of the same service in a
22 subsequent calendar year.

23 "Employer" has the same application and meaning as that
24 provided in Sections 1 and 2 of the Illinois Wage Payment and
25 Collection Act, except that for purposes of this Act,
26 "employer" also means the State and units of local government,

1 any political subdivision of the State or units of local
2 government, or any State or local government agency.

3 "Employer" does not include school districts organized
4 under the School Code or park districts organized under the
5 Park District Code.

6 "Writing" or "written" means a printed or printable
7 communication in physical or electronic format, including a
8 communication that is transmitted through electronic mail,
9 text message, or a computer system or is otherwise sent or
10 stored electronically.

11 Section 15. Provision of paid leave.

12 (a) An employee who works in Illinois is entitled to earn
13 and use up to a minimum of 56 hours of paid leave during a
14 12-month period or a pro rata number of hours of paid leave
15 under the provisions of subsection (b). The paid leave may be
16 used by the employee for any purpose as long as the paid leave
17 is taken in accordance with the provisions of this Act.

18 (b) Paid leave under this Act shall accrue at the rate of
19 one hour of paid leave for every 40 hours worked up to a
20 minimum of 56 hours of paid leave or such greater amount if the
21 employer provides more than 56 hours. Employees who are exempt
22 from the overtime requirements of the federal Fair Labor
23 Standards Act (29 U.S.C. 213(a)(1)) shall be deemed to work 40
24 hours in each workweek for purposes of paid leave accrual
25 unless their regular workweek is less than 40 hours, in which

1 case paid leave accrues based on that regular workweek.
2 Employees shall determine how much paid leave they need to
3 use, however employers may set a reasonable minimum increment
4 for the use of paid leave not to exceed 2 hours per day. If an
5 employee's scheduled workday is less than 2 hours day, the
6 employee's scheduled workday shall be used to determine the
7 amount of paid leave.

8 (c) An employer may make available the minimum number of
9 hours of paid leave, subject to pro rata requirements provided
10 in subsection (b), to an employee on the first day of
11 employment or the first day of the 12-month period. Employers
12 that provide the minimum number of hours of paid leave to an
13 employee on the first day of employment or the first day of the
14 12-month period are not required to carryover paid leave from
15 12-month period to 12-month period and may require employees
16 to use all paid leave prior to the end of the benefit period or
17 forfeit the unused paid leave. However, under no circumstances
18 shall an employee be credited with paid leave that is less than
19 what the employee would have accrued under subsections (a) and
20 (g) of this Section.

21 (d) The 12-month period may be any consecutive 12-month
22 period designated by the employer in writing at the time of
23 hire. Changes to the 12-month period may be made by the
24 employer if notice is given to employees in writing prior to
25 the change and the change does not reduce the eligible accrual
26 rate and paid leave available to the employee. If the employer

1 changes the designated 12-month period, the employer shall
2 provide the employee with documentation of the balance of
3 hours worked, paid leave accrued and taken, and the remaining
4 paid leave balance.

5 (e) Paid leave under this Act may be taken by an employee
6 for any reason of the employee's choosing. An employee is not
7 required to provide an employer a reason for the leave and may
8 not be required to provide documentation or certification as
9 proof or in support of the leave. An employee may choose
10 whether to use paid leave provided under this Act prior to
11 using any other leave provided by the employer or State law.

12 (f) Employees shall be paid their hourly rate of pay for
13 paid leave. However, employees engaged in an occupation in
14 which gratuities or commissions have customarily and usually
15 constituted and have been recognized as part of the
16 remuneration for hire purposes shall be paid by their employer
17 at least the full minimum wage in the jurisdiction in which
18 they are employed when paid leave is taken. This wage shall be
19 treated as the employee's regular rate of pay for purposes of
20 this Act.

21 (g) Paid leave under this Act shall begin to accrue at the
22 commencement of employment or on the effective date of this
23 Act, whichever is later. Employees shall be entitled to begin
24 using paid leave 90 days following commencement of their
25 employment or 90 days following the effective date of this
26 Act, whichever is later.

1 (h) Paid leave under this Act shall be provided upon the
2 oral or written request of an employee in accordance with the
3 employer's reasonable paid leave policy notification
4 requirements which may include the following:

5 (1) If use of paid leave under this Act is
6 foreseeable, the employer may require the employee to
7 provide 7 calendar days' notice before the date the leave
8 is to begin.

9 (2) If paid leave under this Act is not foreseeable,
10 the employee shall provide such notice as soon as is
11 practicable after the employee is aware of the necessity
12 of the leave. An employer that requires notice of paid
13 leave under this Act when the leave is not foreseeable
14 shall provide a written policy that contains procedures
15 for the employee to provide notice.

16 (3) Employers shall provide employees with written
17 notice of the paid leave policy notification requirements
18 in this Section in the manner provided in Section 20 for
19 notice and posting and within 5 calendar days of any
20 change to the employer's reasonable paid leave policy
21 notification requirements.

22 (4) An employer may not require, as a condition of
23 providing paid leave under this Act, that the employee
24 search for or find a replacement worker to cover the hours
25 during which the employee takes paid leave.

26 (i) Except as provided in subsection (b), paid leave under

1 this Act shall carry over annually to the extent not used by
2 the employee, provided that nothing in this Act shall be
3 construed to require an employer to provide more than 60 hours
4 of paid leave for an employee in the 12-month period unless the
5 employer agrees to do so.

6 (j) Nothing in this Section or any other Illinois law or
7 rule shall be construed as requiring financial or other
8 payment to an employee from an employer upon the employee's
9 termination, resignation, retirement, or other separation from
10 employment for paid leave accrued under this Act that has not
11 been used. Nothing in this Section or any other Illinois law or
12 rule shall be construed as requiring financial or other
13 reimbursements to an employee from an employer for unused paid
14 leave under this Act at the end of the benefit year or any
15 other time.

16 (k) If an employee is transferred to a separate division,
17 entity, or location, but remains employed by the same
18 employer, the employee is entitled to all paid leave accrued
19 at the prior division, entity, or location and is entitled to
20 use all paid leave as provided in this Section. If there is a
21 separation from employment and the employee is rehired within
22 12 months of separation by the same employer, previously
23 accrued paid leave that had not been used by the employee shall
24 be reinstated. The employee shall be entitled to use accrued
25 paid leave at the commencement of employment following a
26 separation from employment of 12 months or less.

1 (1) Paid leave under this Act shall not be charged or
2 otherwise credited to an employee's paid time off bank or
3 employee account unless the employer's policy permits such a
4 credit. If the paid leave under this Act is credited to an
5 employee's paid time off bank or employee vacation account
6 then any unused paid leave shall be paid to the employee upon
7 the employee's termination, resignation, retirement, or other
8 separation to the same extent as vacation time under existing
9 Illinois law or rule. Nothing in this Act shall be construed to
10 waive or otherwise limit an employee's right to final
11 compensation for promised and earned, but unpaid vacation time
12 or paid time off, as provided under the Illinois Wage Payment
13 and Collection Act and rules. Employers shall provide
14 employees with written notice of changes to the employer's
15 vacation time, paid time off, or other paid leave policies
16 that affect an employee's right to final compensation for such
17 leave.

18 (m) During any period an employee takes leave under this
19 Act, the employer shall maintain coverage for the employee and
20 any family member under any group health plan for the duration
21 of such leave at no less than the level and conditions of
22 coverage that would have been provided if the employee had not
23 taken the leave. The employer shall notify the employee that
24 the employee is still responsible for paying the employee's
25 share of the cost of the health care coverage, if any.

26 (n) Nothing in this Act shall be deemed to affect the

1 validity or change the terms of bona fide collective
2 bargaining agreements in force on or before the effective date
3 of this Act. Nothing in this Act shall apply to any employee
4 who is covered by a bona fide collective bargaining agreement.
5 After the effective date of this Act, requirements of this Act
6 may be waived in a bona fide collective bargaining agreement,
7 but only if the waiver is set forth explicitly in such
8 agreement in clear and unambiguous terms.

9 Nothing in this Section shall be deemed to interfere with,
10 impede, or in any way diminish the right of employees to
11 bargain collectively with their employers through
12 representatives of their own choosing in order to establish
13 wages or other conditions of work in excess of the applicable
14 minimum standards of the provisions of this Act.

15 In no event shall this Section apply to any employee
16 working in the construction industry who is covered by a bona
17 fide collective bargaining agreement nor to any employee who
18 is covered by a bona fide collective bargaining agreement with
19 an employer that provides services nationally and
20 internationally of delivery, pickup, and transportation of
21 parcels, documents, and freight.

22 (o) An agreement by an employee to waive his or her rights
23 under this Act is void as against public policy.

24 Section 20. Related employer responsibilities.

25 (a) An employer subject to this Act shall make and

1 preserve records documenting hours worked, paid leave accrued
2 and taken, and remaining paid leave balance for each employee
3 for a period of not less than 3 years and shall allow the
4 Department access to such records, at reasonable times during
5 business hours, to monitor compliance with the requirements of
6 this Act. In addition, the records shall be preserved for the
7 duration of any claim pending pursuant to Section 35. An
8 employer that provides paid leave on an accrual basis pursuant
9 to subsection (b) of Section 15 shall provide notice of the
10 amount of paid leave accrued or used by an employee upon
11 request by the employee in accordance with the employer's
12 reasonable paid leave policy notification provisions. An
13 employer that fails to comply with this subsection is in
14 violation of the Act and subject to the civil penalties
15 established in Section 35.

16 (b) An employer who provides any type of paid leave policy
17 that satisfies the minimum amount of leave required by
18 subsection (a) of Section 15 is not required to modify the
19 policy if the policy offers an employee the option, at the
20 employee's discretion, to take paid leave for any reason.
21 Nothing in this Act shall be construed as requiring financial
22 or other reimbursements to an employee from an employer for
23 unused paid leave under this Act. Nothing in this Act shall be
24 construed to discourage an employer from adopting a paid leave
25 policy more generous than the requirements of this Act.

26 (c) For domestic workers, if an employer requires evidence

1 of hours worked for other employers to confirm that the
2 domestic worker has worked or is scheduled to work 8 or more
3 hours in the aggregate for any relevant workweek, a signed
4 statement by the domestic worker stating that he or she has
5 performed or is scheduled to perform domestic work for 8 or
6 more hours in the aggregate for any relevant workweek shall
7 satisfy any documentation requirements of hours worked under
8 the Domestic Workers' Bill of Rights Act and this Act. Such
9 employer shall not require more than one signed statement in a
10 calendar quarter if the hours the domestic worker has
11 performed or is scheduled to perform domestic work have not
12 decreased to less than 8 hours in the aggregate in any relevant
13 workweek in that calendar quarter. An employer that requires
14 evidence of hours worked must give the domestic worker written
15 notice of such request and allow no fewer than 7 days or until
16 the next scheduled workday, whichever is greater, for the
17 domestic worker to comply with the request. The employer may
18 not deny paid leave pending submission of the signed
19 statement.

20 (d) An employer shall post and keep posted in a
21 conspicuous place on the premises of the employer where
22 notices to employees are customarily posted, and include it in
23 a written document, or written employee manual or policy if
24 the employer has one, a notice, to be prepared by the
25 Department, summarizing the requirements of this Act and
26 information pertaining to the filing of a charge upon

1 commencement of an employee's employment or 90 days following
2 the effective date of this Act, whichever is later. If an
3 employer's workforce is comprised of a significant portion of
4 workers who are not literate in English, the employer shall
5 notify the Department and a notice in the appropriate language
6 shall be prepared by the Department. Employees may also
7 request that the Department provide a notice in languages
8 other than English, which the employer must post in accordance
9 with this subsection. An employer who violates this subsection
10 shall be fined a civil penalty of \$500 for the first audit
11 violation and \$1,000 for any subsequent audit violation.

12 (e) No employer shall interfere with, deny, or change an
13 employee's work days or hours to avoid providing eligible paid
14 leave time to an employee.

15 Section 25. Retaliation. It is unlawful for any employer
16 to threaten to take or to take any adverse action against an
17 employee because the employee (1) exercises rights or attempts
18 to exercise rights under this Act, (2) opposes practices which
19 the employee believes to be in violation of this Act, or (3)
20 supports the exercise of rights of another under this Act. It
21 is unlawful for any employer to consider the use of paid leave
22 by an employee as a negative factor in any employment action
23 that involves evaluating, promoting, disciplining, or counting
24 paid leave under a no-fault attendance policy. Such
25 retaliation shall subject an employer to civil penalties

1 pursuant to this Act.

2 An employee who has been unlawfully retaliated against
3 shall also be entitled to recover through a claim filed with
4 the Department, all legal and equitable relief as may be
5 appropriate.

6 Section 30. Department responsibilities.

7 (a) The Department shall administer and enforce this Act.
8 The Department has the powers and the parties have the rights
9 provided in the Illinois Administrative Procedure Act for
10 contested cases.

11 (b) An employee may file a complaint with the Department
12 alleging violations of the Act within 3 years after the
13 alleged violation. An employer that violates this Act is
14 liable to any affected employee for damages in the form of the
15 actual underpayment, compensatory damages, and a penalty of
16 not less than \$500 and no more than \$1,000. Employees shall
17 also be entitled to such equitable relief as may be
18 appropriate, in addition to reasonable attorney's fees;
19 reasonable expert witness fees, and other costs of the action,
20 which shall be paid by the employer to the employee.

21 (c) The Department has the power to conduct investigations
22 in connection with the administration and enforcement of this
23 Act, including the power to conduct depositions and discovery
24 and to issue subpoenas. If the Department finds cause to
25 believe that this Act has been violated, the Department shall

1 notify the parties in writing, and the matter shall be
2 referred to an Administrative Law Judge to schedule a formal
3 hearing in accordance with hearing procedures established by
4 rule. Administrative decisions shall be reviewed under the
5 Administrative Review Law.

6 (d) The Department is authorized to impose civil penalties
7 prescribed in Section 35 for any violation of this Act.

8 (e) The Department is authorized to collect and supervise
9 the payment of any damages awarded pursuant to Section 25 and
10 subsection (b) of this Section to an employee or employees
11 under this Act. Any sums recovered by the Department on behalf
12 of an employee or employees under this Act shall be paid to the
13 employee or employees affected. The Department is not
14 authorized to collect and supervise the payment of any awarded
15 attorney's fees. Those fees shall be subject to collection by
16 the attorney awarded such fees.

17 (f) The Attorney General may bring an action to enforce
18 the collection of any awards made under this Act.

19 (g) The Department shall adopt rules necessary to
20 administer and enforce this Act.

21 Section 35. Penalties and enforcement. An employer that
22 violates this Act or any rule adopted under this Act shall be
23 subject to a civil penalty of \$2,500 for each separate
24 offense. An "offense" means any violation of this Act with the
25 exception of a violation of the notice requirement in

1 subsection (c) of Section 20. Any penalties collected from an
2 employer under this Section or under subsection (d) of Section
3 20 for violations of this Act shall be deposited into the Paid
4 Leave for All Workers Fund, a special fund created in the State
5 treasury that is dedicated to enforcing this Act.

6 Section 90. Home rule. The regulation of employee leave
7 benefits is an exclusive power of the State. A home rule unit
8 may not regulate any type of employee leave benefits. Any
9 county or municipal ordinance in effect on or before the
10 effective date of this Act that regulates any form of employee
11 leave benefits, including paid sick time, is null and void.
12 This Section is a denial and limitation of home rule powers and
13 functions under subsection (h) of Section 6 of Article VII of
14 the Illinois Constitution.

15 Section 95. The State Finance Act is amended by adding
16 Section 5.935 as follows:

17 (30 ILCS 105/5.935 new)

18 Sec. 5.935. The Paid Leave for All Workers Fund.

19 Section 97. Severability. The provisions of this Act are
20 severable under Section 1.31 of the Statute on Statutes.

21 Section 99. Effective date. This Act takes effect January

1 1, 2022.".