

# SB2853



## 103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB2853

Introduced 1/19/2024, by Sen. Ann Gillespie

### SYNOPSIS AS INTRODUCED:

820 ILCS 192/15

Amends the Paid Leave for All Workers Act. Provides that a unit of local government, including a home rule unit, shall not exempt any employee from the scope of a paid leave ordinance unless the employee is excluded from the definition of employee in the Act. Limits home rule powers.

LRB103 37506 SPS 67629 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 Section 5. The Paid Leave for All Workers Act is amended by  
5 changing Section 15 as follows:

6 (820 ILCS 192/15)

7 Sec. 15. Provision of paid leave.

8 (a) An employee who works in Illinois is entitled to earn  
9 and use up to a minimum of 40 hours of paid leave during a  
10 12-month period or a pro rata number of hours of paid leave  
11 under the provisions of subsection (b). The paid leave may be  
12 used by the employee for any purpose as long as the paid leave  
13 is taken in accordance with the provisions of this Act.

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

1 use, however employers may set a reasonable minimum increment  
2 for the use of paid leave not to exceed 2 hours per day. If an  
3 employee's scheduled workday is less than 2 hours per day, the  
4 employee's scheduled workday shall be used to determine the  
5 amount of paid leave.

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

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

1 hours worked, paid leave accrued and taken, and the remaining  
2 paid leave balance.

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

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

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

25 (h) Paid leave under this Act shall be provided upon the  
26 oral or written request of an employee in accordance with the

1 employer's reasonable paid leave policy notification  
2 requirements which may include the following:

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

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

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

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

24 (i) Except as provided in subsection (c), paid leave under  
25 this Act shall carry over annually to the extent not used by  
26 the employee, provided that nothing in this Act shall be

1 construed to require an employer to provide more than 40 hours  
2 of paid leave for an employee in the 12-month period unless the  
3 employer agrees to do so.

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

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

25 (l) Paid leave under this Act shall not be charged or  
26 otherwise credited to an employee's paid time off bank or

1 employee account unless the employer's policy permits such a  
2 credit. If the paid leave under this Act is credited to an  
3 employee's paid time off bank or employee vacation account  
4 then any unused paid leave shall be paid to the employee upon  
5 the employee's termination, resignation, retirement, or other  
6 separation to the same extent as vacation time under existing  
7 Illinois law or rule. Nothing in this Act shall be construed to  
8 waive or otherwise limit an employee's right to final  
9 compensation for promised and earned, but unpaid vacation time  
10 or paid time off, as provided under the Illinois Wage Payment  
11 and Collection Act and rules. Employers shall provide  
12 employees with written notice of changes to the employer's  
13 vacation time, paid time off, or other paid leave policies  
14 that affect an employee's right to final compensation for such  
15 leave.

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

24 (n) Nothing in this Act shall be deemed to interfere with,  
25 impede, or in any way diminish the right of employees to  
26 bargain collectively with their employers through

1 representatives of their own choosing in order to establish  
2 wages or other conditions of work in excess of the applicable  
3 minimum standards established in this Act. The paid leave  
4 requirements of this Act may be waived in a bona fide  
5 collective bargaining agreement, but only if the waiver is set  
6 forth explicitly in such agreement in clear and unambiguous  
7 terms.

8 Nothing in this Act shall be deemed to affect the validity  
9 or change the terms of bona fide collective bargaining  
10 agreements in effect on January 1, 2024. After that date,  
11 requirements of this Act may be waived in a bona fide  
12 collective bargaining agreement, but only if the waiver is set  
13 forth explicitly in such agreement in clear and unambiguous  
14 terms.

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

22 Notwithstanding the provisions of this subsection, nothing  
23 in this Act shall be deemed to affect the validity or change  
24 the terms of a bona fide collective bargaining agreement  
25 applying to an employee who is employed by a State agency that  
26 is in effect on July 1, 2024. After that date, requirements of



1 this Act may be waived in a bona fide collective bargaining  
2 agreement, but only if the waiver is set forth explicitly in  
3 such agreement in clear and unambiguous terms. As used in this  
4 subsection, "State agency" has the same meaning as set forth  
5 in Section 4 of the Forms Notice Act.

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

8 (p) The provisions of this Act shall not apply to any  
9 employer that is covered by a municipal or county ordinance  
10 that is in effect on the effective date of this Act that  
11 requires employers to give any form of paid leave to their  
12 employees, including paid sick leave or paid leave.  
13 Notwithstanding the provisions of this subsection, any  
14 employer that is not required to provide paid leave to its  
15 employees, including paid sick leave or paid leave, under a  
16 municipal or county ordinance that is in effect on the  
17 effective date of this Act shall be subject to the provisions  
18 of this Act if the employer would be required to provide paid  
19 leave under this Act to its employees.

20 Any local ordinance that provides paid leave, including  
21 paid sick leave or paid leave, enacted or amended after the  
22 effective date of this Act must comply with the requirements  
23 of this Act or provide benefits, rights, and remedies that are  
24 greater than or equal to the benefits, rights, and remedies  
25 afforded under this Act.

26 An employer in a municipality or county that enacts or

1 amends a local ordinance that provides paid leave, including  
2 paid sick leave or paid leave, after the effective date of this  
3 Act shall only comply with the local ordinance or ordinances  
4 so long as the benefits, rights, and remedies are greater than  
5 or equal to the benefits, rights, and remedies afforded under  
6 this Act.

7 A unit of local government, including a home rule unit,  
8 shall not exempt any employee from the scope of a paid leave  
9 ordinance unless the employee is excluded from the definition  
10 of employee in this Act. This Section is a denial and  
11 limitation of home rule powers and functions under subsection  
12 (g) of Section 6 of Article VII of the Illinois Constitution.

13 (Source: P.A. 102-1143, eff. 1-1-24; revised 12-22-23.)