



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB3470

Introduced 2/23/2005, by Rep. Julie Hamos - Deborah L. Graham - Larry McKeon

SYNOPSIS AS INTRODUCED:

New Act

Creates the Family Leave Insurance Program Act. Establishes a Family Leave Insurance Program, administered by the Department of Employment Security, to provide paid leave to an employee who is unavailable to work: because the employee has to care for a newborn child or a newly-placed adopted or foster child; because the employee has to care for a family member (a child, spouse, parent, or parent-in-law of the employee or a person with whom the employee has resided in the same household for 6 months or longer) who has a serious health condition; or because of the employee's own serious health condition. Contains provisions regarding: applications and qualifications for benefits, certification by a healthcare provider of the need for leave; confidentiality; notices of intention to take leave; disqualification from benefits; duration of benefits; determination of benefit amounts; deductions from benefits; relationship of the Program to other benefits, programs, and contracts; rights of employees; opting out of participation in the Program; elective coverage under the Program; recordkeeping; successor employers; creation of a FLIP Account in the custody of the State Treasurer; payments by employers and employees; limits on expenditures; adoption of rules; taxation of benefits; discrimination; required postings regarding the Act and information pertaining to the filing of a charge; severability; and other matters. Effective January 1, 2007.

LRB094 08895 WGH 39115 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

1 AN ACT concerning employment.

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

4 Section 1. Short title. This Act may be cited as the Family
5 Leave Insurance Program Act.

6 Section 5. Findings and purpose.

7 (A) Findings. The General Assembly finds:

8 (1) Although family leave laws have helped employees to
9 balance the demands of the workplace with their family
10 responsibilities, more needs to be done to achieve the
11 goals of workforce stability and economic security.

12 (2) Many employees do not have access to family and
13 medical leave, and those who do may not be in a financial
14 position to take leave that is unpaid. Those who are
15 compelled to take leave in spite of financial inability to
16 do so often fall into debt from which it is hard to
17 recover.

18 (3) Most families no longer have one person who is the
19 full-time caregiver and one who is the full-time
20 breadwinner.

21 (4) The majority of mothers with school-age children
22 are in the workforce.

23 (5) It is important for a child's development that
24 mothers and fathers be able to participate in early
25 child-rearing.

26 (6) The average weekly hours of family caregiving for
27 adults amounts to a part-time job.

28 (7) Employer-paid benefits meet only a small part of
29 this need. Benefits are often given to some workers but not
30 all.

31 (8) The working population in Illinois contains a high
32 number of "baby boom" workers approaching retirement age,

1 who are increasingly called upon to care for their own
2 parents, an impaired spouse, or a grandchild. Older workers
3 need time off to care for themselves or rely on care from
4 younger relatives who are in the workforce. The
5 establishment of paid family and medical leave benefits
6 will ease workplace demands and reduce the impact on State
7 income-support programs by increasing the ability of
8 workers to recover from illness or provide caregiving
9 services for family members while maintaining employment.

10 (9) Employers will benefit from the establishment of a
11 family leave insurance program because of higher retention
12 rates and lower costs in turnover and retraining when
13 employees are able to take a leave and return to the job.

14 (10) Employers who could otherwise not afford to offer
15 paid leave will benefit from a paid leave program that does
16 not require them to fund the full costs.

17 (B) Purpose. This Act is enacted to establish a Family
18 Leave Insurance Program to provide limited income support for a
19 reasonable period while an employee is away from work on family
20 leave, a policy which protects the health and safety of
21 Illinois residents and strengthens the Illinois economy.

22 Section 10. Family Leave Insurance Program.

23 (A) Definitions. As used this Act:

24 "Application year" means the 12-month period beginning
25 on the first day of the calendar week in which an employee
26 files an application for FLIP benefits and, thereafter, the
27 12-month period beginning with the first day of the
28 calendar week in which the employee files a subsequent
29 application for FLIP benefits after the expiration of the
30 employee's last preceding application year.

31 "Child" means a person who is a biological, adopted, or
32 foster child, a stepchild, a legal ward, or a child of a
33 person standing in loco parentis, and who is (i) under 18
34 years of age or (ii) 18 years of age or older and incapable
35 of self-care because of a mental or physical disability.

1 "Department" means the Department of Employment
2 Security.

3 "Employer" means one who employs one or more employees,
4 including this State and its political subdivisions.

5 "FLIP leave" means leave taken by an employee who is
6 unavailable to work: because the employee has to care for a
7 newborn child, or a newly-placed adopted or foster child
8 (and leave is completed within 12 months after the birth or
9 the placement of the child for foster care or adoption);
10 because the employee has to care for a family member who
11 has a serious health condition; or because of the
12 employee's own serious health condition.

13 "Family member" means a child, spouse, parent, or
14 parent-in-law of the employee, or a person with whom the
15 employee has resided in the same household for 6 months or
16 longer.

17 "FLIP" means the Family Leave Insurance Program.

18 "Healthcare provider" means: (A) a person who directly
19 treats or supervises the treatment of the serious health
20 condition and: (i) is licensed to practice medicine in all
21 of its branches in Illinois and possesses the degree of
22 doctor of medicine; (ii) is licensed to practice medicine
23 in Illinois and possesses the degree of doctor of
24 osteopathy or osteopathic medicine; or (iii) is licensed to
25 practice medicine in all of its branches or as an
26 osteopathic physician in another state or jurisdiction; or
27 (B) any other person determined by the United States
28 Secretary of Labor to be capable of providing healthcare
29 services under the federal Family and Medical Leave Act.

30 "Parent" means a biological or adoptive parent, a
31 stepparent, or a person who stands in loco parentis to an
32 employee or an employee's spouse.

33 "Premium" means the money payments required by this Act
34 to be made to the Department for the FLIP Account.

35 "Qualifying year" means the first 4 of the last 5
36 completed calendar quarters or the last 4 completed

1 calendar quarters immediately preceding the first day of
2 the employee's application year.

3 "Serious health condition" means an illness, injury,
4 impairment, or physical or mental condition that involves
5 inpatient care in a hospital, hospice, or residential
6 medical care facility, or continuing treatment by a
7 healthcare provider.

8 (B) Applying for FLIP leave benefits.

9 (1) The Department shall establish and administer a
10 FLIP Account, and establish procedures and forms for filing
11 benefit claims. The Department shall notify the employer
12 within 2 business days of a claim being filed.

13 (2) The Department may require that a claim for
14 benefits under this Act be supported by a certification
15 issued by a healthcare provider who is providing care to
16 the employee or the employee's family member, as
17 applicable.

18 (3) Information contained in the files and records
19 pertaining to an employee under this Act are confidential
20 and not open to public inspection, other than to public
21 employees in the performance of their official duties.
22 However, the employee or an authorized representative of an
23 employee may review the records or receive specific
24 information from the records on the presentation of the
25 signed authorization of the employee. An employer or the
26 employer's duly authorized representative may review the
27 records of an employee in connection with a pending claim.
28 At the Department's discretion, other persons may review
29 records when those persons are rendering assistance to the
30 Department at any stage of the proceedings on any matter
31 pertaining to the administration of this Act.

32 (C) Qualifying for FLIP leave benefits. FLIP leave benefits
33 are payable to an employee during a period in which the
34 employee is on FLIP leave if the employee:

35 (1) Files a claim for benefits as required by rules
36 adopted by the Department.

1 (2) Has earned at least \$1,600 and worked at least 6
2 months during the employee's qualifying year for the
3 employer from whom the employee is on FLIP leave.

4 (3) Documents that he or she has provided the employer
5 from whom FLIP leave is to be taken with written notice of
6 his or her intention to take FLIP leave as follows:

7 (a) If the necessity for FLIP leave was foreseeable
8 based on an expected birth, placement, or treatment,
9 notice was given at least 30 days before FLIP leave was
10 to begin, stating the anticipated starting date and
11 ending date of the leave.

12 (b) If the date of birth, placement, or treatment
13 requiring FLIP leave will begin in less than 30 days,
14 as much notice as practicable was given.

15 (c) In the case of medical treatment, the employee
16 made reasonable efforts to schedule the treatment so as
17 not to unduly disrupt the operations of the employer,
18 subject to the approval of the healthcare provider.

19 (d) An employer may require that a request for FLIP
20 leave be supported by certification issued by a
21 healthcare provider of the employee or of the family
22 member for whom the employee is caring. If the employer
23 has reason to doubt the validity of the certification,
24 the employer may require, at the expense of the
25 employer, that the employee obtain the opinion of a
26 second healthcare provider approved by the employer.
27 However, the healthcare provider approved by the
28 employer may not be employed on a regular basis by the
29 employer. If the second opinion differs from the first
30 opinion, the employer may require, at the expense of
31 the employer, that the employee obtain the opinion of a
32 third healthcare provider approved jointly by the
33 employer and the employee. The opinion of the third
34 healthcare provider shall be considered to be final and
35 binding on the employer and employee.

36 (4) Discloses whether or not she or he owes child

1 support obligations.

2 (D) Disqualification from benefits.

3 (1) An employee is disqualified from FLIP benefits
4 beginning with the first day of the calendar week, and
5 continuing for the next 52 consecutive weeks, if the
6 employee:

7 (a) willfully made a false statement or
8 misrepresentation regarding a material fact, or
9 willfully failed to report a material fact, to obtain
10 benefits under this Act; or

11 (b) seeks benefits based on a willful and
12 intentional self-inflicted serious health condition or
13 a serious health condition resulting from the
14 employee's perpetration of a felony.

15 (2) An employee is not disqualified for benefits for
16 any week during which there is a strike or lockout at the
17 factory, establishment, or other premises at which the
18 employee is or was last employed.

19 (E) Duration and amount of benefits.

20 (1) In an application year, FLIP benefits are payable
21 for a maximum of 4 weeks.

22 (2) Payments must be made within 2 weeks of an employee
23 commencing FLIP leave.

24 (3) FLIP benefits shall be paid as follows:

25 (a) Benefits shall be 67% of weekly wages up to a
26 maximum of \$380 per week for an employee who at the
27 time FLIP leave began was regularly working 35 hours or
28 more per week or a pro-rated amount based on the weekly
29 hours regularly worked for an employee regularly
30 working less than 35 hours per week.

31 (b) The Department annually shall calculate to the
32 nearest dollar an adjusted maximum benefit to account
33 for inflation using the consumer price index for urban
34 wage earners and clerical workers (CPI-W) or a
35 successor index.

36 (c) If an employee disclosed that he or she owes

1 child support obligations and the Department
2 determines that the employee is eligible for benefits,
3 the Department shall notify the applicable State or
4 local child support enforcement agency and deduct and
5 withhold from benefits the amount of child support
6 owed, as appropriate.

7 (d) If an employee elects to have federal income
8 tax deducted and withheld from benefits, the
9 Department shall deduct and withhold the amount
10 specified in the federal Internal Revenue Code.

11 (4) If FLIP benefits are paid erroneously or as a
12 result of fraud, or if a claim for benefits is rejected
13 after benefits are paid, the Department shall seek
14 repayment of benefits from the recipient.

15 (5) If an employee dies while on FLIP leave before
16 receiving payment of benefits, the payment shall be made by
17 the Department to the surviving spouse or the child or
18 children if there is no surviving spouse. If there is no
19 surviving spouse and no child or children, the payment
20 shall be made and distributed consistent with the terms of
21 the decedent's will or, if the decedent dies intestate,
22 consistent with the terms of Illinois intestate succession
23 law.

24 (F) Existing benefits not diminished.

25 (1) Nothing in this Act may be construed to limit an
26 employee's right to leave from employment under other laws
27 or employer policy.

28 (2) If an employer provides paid time off or an
29 employee is covered by disability insurance, the employee
30 may elect whether first to use the paid time off or to
31 receive temporary disability benefits. An employee may not
32 be required to use his or her paid time off or disability
33 insurance to which he or she is entitled before receiving
34 benefits under this Act.

35 (3) An employer may require that FLIP leave for which
36 an employee is receiving or received benefits under this

1 Act be taken concurrently with leave under the federal
2 Family and Medical Leave Act or other applicable federal,
3 State, or local law, except that:

4 (a) FLIP leave during which the employee is
5 receiving or received benefits under this Act is in
6 addition to leave from employment during which
7 benefits are paid or are payable under workers'
8 compensation law and that is designated as leave under
9 the federal Family and Medical Leave Act.

10 (b) If an employer requires that FLIP leave for
11 which an employee is receiving or received benefits
12 under this Act be taken concurrently with leave under
13 the federal Family and Medical Leave Act or other
14 applicable federal, State, or local law, the employer
15 must give all employees written notice of the
16 requirement.

17 (4) Benefits under this Act are supplementary to a
18 federal, State, or local law establishing similar
19 entitlement benefits, and if a federal, State, or local law
20 applying to the employee establishes a more favorable right
21 to return to his or her position than is established under
22 this Section, the application of that federal, State, or
23 local law is not affected by this Section.

24 (5) An employee who has received benefits under this
25 Act does not lose any employment benefit, including
26 seniority or pension rights accrued before the date that
27 FLIP leave commenced. However, this Act does not entitle an
28 employee to accrue employment benefits during a period of
29 FLIP leave or to a right, benefit, or position of
30 employment other than a right, benefit, or position to
31 which the employee would have been entitled had the
32 employee not taken FLIP leave.

33 (6) This Act may not be construed to diminish an
34 employer's obligation to comply with a collective
35 bargaining agreement or an employment benefit program or a
36 plan that provides greater benefits to employees than FLIP

1 benefits provided under this Act.

2 (7) An agreement by an employee to waive his or her
3 rights under this Act is void as against public policy. The
4 benefits provided to employees under this Act may not be
5 diminished by a collective bargaining agreement or an
6 employment benefit program or plan entered into or renewed
7 after the effective date of this Act.

8 (G) Election of coverage.

9 (1) An employer may opt out of participation in FLIP
10 under this Act if:

11 (a) the employer is participating in a private plan
12 that meets or exceeds all benefits under FLIP; or

13 (b) the employer provides its own coverage that
14 meets or exceeds all benefits under FLIP.

15 (2) An employer of employees not covered by this Act or
16 a self-employed person may elect coverage under FLIP under
17 this Act for an initial period of not less than 3 years or
18 a subsequent period of not less than one year immediately
19 following another period of coverage. The employer or
20 self-employed person must file a notice of election in
21 writing with the Department. The election becomes
22 effective on the date of filing the notice. The Department
23 shall establish a payment amount for participation in FLIP
24 for self-employed people that is higher than for other
25 employers, to reflect that the self-employed person is both
26 employer and employee for purposes of this Act.

27 (3) An employer or self-employed person who has elected
28 coverage may withdraw from coverage within 30 days after
29 the end of the three-year period of coverage, or at such
30 other times as the Department may prescribe by rule, by
31 filing written notice with the Department. The withdrawal
32 shall take effect not sooner than 30 days after the filing
33 of the notice.

34 (4) The Department may cancel elective coverage if the
35 employer or self-employed person fails to provide required
36 payments or reports. The Department may collect due and

1 unpaid premiums and may levy an additional premium for the
2 remainder of the period of coverage. The cancellation shall
3 be effective no later than 30 days from the date of the
4 notice in writing advising the employer or self-employed
5 person of the cancellation.

6 (H) Records and reports.

7 (1) The Department shall specify the forms and times
8 for employers to provide reports, furnish information, and
9 remit premiums. If the employer is a temporary services
10 agency that provides employees on a temporary basis to its
11 customers, the temporary services agency is considered the
12 employer for purposes of this Section. However, if the
13 temporary services agency fails to remit the required
14 premiums, the customer to whom the employees were provided
15 is liable for paying the premiums.

16 (2) An employer must keep at its place of business a
17 record of employment from which the information needed by
18 the Department for purposes of this Act may be obtained.
19 This record shall at all times be open to the inspection of
20 the Department pursuant to rules promulgated by the
21 Department.

22 (3) Information obtained from employer records under
23 this Act are confidential and not open to public
24 inspection, other than to public employees in the
25 performance of their official duties. However, an
26 interested party shall be supplied with information from
27 employer records to the extent necessary for the proper
28 presentation of the case in question. An employer may
29 authorize inspection of its records by written consent.

30 (I) Disposal of business.

31 (1) When an employer quits business, or sells out,
32 exchanges, or otherwise disposes of the business or stock
33 of goods, any premium payable under this Act is immediately
34 due and payable, and the employer must, within 10 days
35 thereafter, make a return and pay the premium due. Any
36 person who becomes a successor to the business is liable

1 for the full amount of the premium and must withhold from
2 the purchase price a sum sufficient to pay any premium due
3 from the employer until the employer produces a receipt
4 from the Department showing payment in full of any premium
5 due or a certificate that no premium is due and, if the
6 premium is not paid by the employer within 10 days from the
7 date of the sale, exchange, or disposal, the successor is
8 liable for the payment of the full amount of premium. The
9 successor's payment thereof is, to the extent thereof, a
10 payment upon the purchase price, and if the payment is
11 greater in amount than the purchase price, the amount of
12 the difference is a debt due the successor from the
13 employer.

14 (2) A successor is not liable for any premium due from
15 the person from whom the successor has acquired a business
16 or stock of goods if the successor gives written notice to
17 the Department of the acquisition and no assessment is
18 issued by the Department within 180 days of receipt of the
19 notice against the former operator of the business and a
20 copy is mailed to the successor.

21 (J) FLIP Account.

22 (1) The FLIP Account is created in the custody of the
23 State Treasurer. All receipts from the premium or penalties
24 imposed under this Act must be deposited in the account.
25 Expenditures from the account may be used only for the
26 purposes of the FLIP Program.

27 (2) Each employer shall retain from the earnings of
28 each full-time employee a premium in the amount of 75 cents
29 per week or, for part-time employees, an amount pro-rated
30 based on the number of actual hours worked. The employer
31 shall match the amount retained by an equal amount, and the
32 money retained shall be paid to the Department in the
33 manner and at such intervals as the Department directs for
34 deposit in the FLIP Account.

35 (3) The Department shall adjust the amount of the
36 premium from time to time to ensure that the amount is the

1 lowest rate necessary to pay FLIP benefits and
2 administrative costs, and maintain actuarial solvency in
3 accordance with recognized insurance principles.

4 (4) The Department may adopt rules to permit an
5 employee with multiple employers and his or her employers
6 to petition for refunds or credits of amounts paid to the
7 Department for hours in excess of 35 hours per week worked
8 by the employee.

9 (K) Taxation of FLIP benefits. The Department must advise
10 an employee filing a new claim for FLIP benefits, at the time
11 of filing the claim, that:

12 (1) Benefits are subject to federal income tax and
13 State income tax.

14 (2) Requirements exist pertaining to estimated tax
15 payments.

16 (3) The employee may elect to have federal income tax
17 deducted and withheld from the employee's payment of
18 benefits at the amount specified in the Internal Revenue
19 Code.

20 (4) The employee is permitted to change a previously
21 elected withholding status.

22 (L) No discrimination against claimants. An employer,
23 temporary services agency, employment agency, employee
24 organization, or other person may not discharge, expel, or
25 otherwise discriminate or retaliate against a person because he
26 or she has filed or communicated to the employer an intent to
27 file a claim, a complaint, or an appeal, has taken FLIP leave,
28 or has testified or is about to testify or has assisted in any
29 proceeding under this Act.

30 (M) Liability. Any employer who violates this Act is liable
31 to any affected individuals for actual damages with interest
32 and for such equitable relief as may be appropriate. An action
33 may be brought under this Section not later than 3 years after
34 the date of the last event constituting the alleged violation
35 for which the action is brought.

36 (N) No entitlement.

1 (1) FLIP leave benefits are payable under this Act only
2 to the extent that moneys are available in the FLIP Account
3 for this purpose. Neither this State nor the Department is
4 liable for any amount in excess of these limits.

5 (2) This Act does not create a continuing entitlement
6 or contractual right. There is no vested private right of
7 any kind against amendment or repeal of this Act.

8 (O) Notification.

9 (1) Every employer covered by this Act shall post and
10 keep posted, in conspicuous places on the premises of the
11 employer where notices to employers are customarily
12 posted, a notice, to be prepared or approved by the
13 Department, summarizing the requirements of this Act and
14 information pertaining to the filing of a charge.

15 (2) If a FLIP-covered employer has any written guidance
16 to employees concerning employee benefits or leave rights,
17 such as in an employee handbook, information concerning
18 FLIP entitlements and employee obligations under FLIP must
19 be included in the handbook or other document.

20 (3) An employer that willfully violates the
21 requirements in paragraph (1) or (2) of this subsection (N)
22 may be assessed a civil money penalty by the Department not
23 to exceed \$1,000 for each separate offense. Furthermore, an
24 employer that fails to notify according to paragraph (1) or
25 (2) of this subsection (N) may not take any adverse action
26 against an employee, including denying FLIP leave, for
27 failing to furnish the employer with advance notice of a
28 need to take FLIP leave.

29 (4) If an employer's workforce is comprised of a
30 significant portion of workers who are not literate in
31 English, the employer is responsible for providing the
32 notice in a language in which the employees are literate.

33 (P) Rules. The Department may adopt rules as necessary to
34 implement this Act. In adopting rules, the Department shall
35 maintain consistency with the rules adopted to implement the
36 federal Family and Medical Leave Act, to the extent those rules

1 are not in conflict with this Act.

2 Section 95. Severability. The provisions of this Act are
3 severable, and if any phrase, clause, sentence, or provision is
4 declared to be invalid or is preempted by federal law or
5 regulation, the validity of the remainder of this Act is not
6 affected.

7 Section 99. Effective date. This Act takes effect January
8 1, 2007.