

# SB0127



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB0127

Introduced 1/27/2011, by Sen. Martin A. Sandoval

#### 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, except that it applies to a son-in-law, daughter-in-law, father-in-law, mother-in-law, domestic partner, or sibling who has a serious health condition, increases the leave allowed to 16 workweeks, and some of the provisions of the federal law pertaining to federal employees, federal matters, and the 2008 amendments have been omitted or changed. Contains provisions concerning applicability and coordination. Effective 6 months after becoming law.

LRB097 06234 AEK 46309 b

FISCAL NOTE ACT  
MAY APPLY

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

15          (4) Employer.

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

17           (i) means any person who employs 50 or more  
18           employees for each working day during each of 20 or  
19           more calendar workweeks in the current or preceding  
20           calendar year;

21           (ii) includes:

22           (I) any person who acts, directly or  
23           indirectly, in the interest of an employer to any  
24           of the employees of such employer; and

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

26           and

1 (iii) includes any State officer, department, or  
2 agency, any unit of local government, and any school  
3 district.

4 (B) (Blank).

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

14 (6) Health care provider. The term "health care provider"  
15 means:

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

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

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

24 (8) Person. The term "person" has the same meaning given  
25 such term in Section 3(a) of the Fair Labor Standards Act of  
26 1938 (29 U.S.C. 203(a)).

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

4           (10) Director. The term "Director" means the Director of  
5 Labor.

6           (11) Serious health condition. The term "serious health  
7 condition" means an illness, injury, impairment, or physical or  
8 mental condition that involves:

9           (A) inpatient care in a hospital, hospice, or  
10 residential medical care facility; or

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

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

15           (A) under 18 years of age; or

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

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

20           (14) Domestic partner. The term "domestic partner" means a  
21 single, unmarried adult person of the same sex as the employee  
22 who is in a committed, intimate relationship with the employee,  
23 is not a domestic partner to any other person, and who is  
24 designated to the employer by such employee as that employee's  
25 domestic partner.

26           ` (23) Sibling. The term "sibling" means any person who is a

1 son or daughter of an employee's parent.

2 Section 102. Leave requirement.

3 (a) In general.

4 (1) Entitlement to leave. Subject to Section 103, an  
5 eligible employee shall be entitled to a total of 16  
6 workweeks of leave during any 12-month period for one or  
7 more of the following:

8 (A) Because of the birth of a son or daughter of  
9 the employee and in order to care for such son or  
10 daughter.

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

13 (C) In order to care for the spouse, or a son,  
14 daughter, parent, son-in-law, daughter-in-law,  
15 father-in-law, mother-in-law, domestic partner, or  
16 sibling of the employee, if such spouse, son, daughter,  
17 parent, son-in-law, daughter-in-law, father-in-law,  
18 mother-in-law, domestic partner, or sibling has a  
19 serious health condition.

20 (D) Because of a serious health condition that  
21 makes the employee unable to perform the functions of  
22 the position of such employee.

23 (2) Expiration of entitlement. The entitlement to  
24 leave under subparagraphs (A) and (B) of paragraph (1) for  
25 a birth or placement of a son or daughter shall expire at

1 the end of the 12-month period beginning on the date of  
2 such birth or placement.

3 (b) Leave taken intermittently or on a reduced leave  
4 schedule.

5 (1) In general. Leave under subparagraph (A) or (B) of  
6 subsection (a)(1) shall not be taken by an employee  
7 intermittently or on a reduced leave schedule unless the  
8 employee and the employer of the employee agree otherwise.  
9 Subject to paragraph (2), subsection (e)(2), and Section  
10 103(b)(5), leave under subparagraph (C) or (D) of  
11 subsection (a)(1) may be taken intermittently or on a  
12 reduced leave schedule when medically necessary. The  
13 taking of leave intermittently or on a reduced leave  
14 schedule pursuant to this paragraph shall not result in a  
15 reduction in the total amount of leave to which the  
16 employee is entitled under subsection (a) beyond the amount  
17 of leave actually taken.

18 (2) Alternative position. If an employee requests  
19 intermittent leave, or leave on a reduced leave schedule,  
20 under subparagraph (C) or (D) of subsection (a)(1), that is  
21 foreseeable based on planned medical treatment, the  
22 employer may require such employee to transfer temporarily  
23 to an available alternative position offered by the  
24 employer for which the employee is qualified and that:

25 (A) has equivalent pay and benefits; and

26 (B) better accommodates recurring periods of leave

1 than the regular employment position of the employee.

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

10 (d) Relationship to paid leave.

11 (1) Unpaid leave. If an employer provides paid leave  
12 for fewer than 16 workweeks, the additional weeks of leave  
13 necessary to attain the 16 workweeks of leave required  
14 under this Article may be provided without compensation.

15 (2) Substitution of paid leave.

16 (A) In general. An eligible employee may elect, or  
17 an employer may require the employee, to substitute any  
18 of the accrued paid vacation leave, personal leave, or  
19 family leave of the employee for leave provided under  
20 subparagraph (A), (B), or (C) of subsection (a)(1) for  
21 any part of the 16-week period of such leave under such  
22 subsection.

23 (B) Serious health condition. An eligible employee  
24 may elect, or an employer may require the employee, to  
25 substitute any of the accrued paid vacation leave,  
26 personal leave, or medical or sick leave of the



1 employee for leave provided under subparagraph (C) or  
2 (D) of subsection (a)(1) for any part of the 16-week  
3 period of such leave under such subsection, except that  
4 nothing in this Article shall require an employer to  
5 provide paid sick leave or paid medical leave in any  
6 situation in which such employer would not normally  
7 provide any such paid leave.

8 (e) Foreseeable leave.

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

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

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

1 son-in-law, daughter-in-law, father-in-law,  
2 mother-in-law, domestic partner, or sibling of the  
3 employee, as appropriate; and

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

10 (f) Spouses employed by the same employer. In any case in  
11 which a husband and wife entitled to leave under subsection (a)  
12 are employed by the same employer, the aggregate number of  
13 workweeks of leave to which both may be entitled may be limited  
14 to 16 workweeks during any 12-month period, if such leave is  
15 taken:

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

17 or

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

20 Section 103. Certification.

21 (a) In general. An employer may require that a request for  
22 leave under subparagraph (C) or (D) of Section 102(a) (1) be  
23 supported by a certification issued by the health care provider  
24 of the eligible employee or of the son, daughter, spouse,  
25 parent, son-in-law, daughter-in-law, father-in-law,

1 mother-in-law, domestic partner, or sibling of the employee, as  
2 appropriate. The employee shall provide, in a timely manner, a  
3 copy of such certification to the employer.

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

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

8 (2) the probable duration of the condition;

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

11 (4) (A) for purposes of leave under Section  
12 102(a)(1)(C), a statement that the eligible employee is  
13 needed to care for the son, daughter, spouse, parent,  
14 son-in-law, daughter-in-law, father-in-law, mother-in-law,  
15 domestic partner, or sibling and an estimate of the amount  
16 of time that such employee is needed to care for the son,  
17 daughter, spouse, parent, son-in-law, daughter-in-law,  
18 father-in-law, mother-in-law, domestic partner, or  
19 sibling; and

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

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

1           (6) in the case of certification for intermittent  
2           leave, or leave on a reduced leave schedule, under Section  
3           102(a)(1)(D), a statement of the medical necessity for the  
4           intermittent leave or leave on a reduced leave schedule,  
5           and the expected duration of the intermittent leave or  
6           reduced leave schedule; and

7           (7) in the case of certification for intermittent  
8           leave, or leave on a reduced leave schedule, under Section  
9           102(a)(1)(C), a statement that the employee's intermittent  
10          leave or leave on a reduced leave schedule is necessary for  
11          the care of the son, daughter, parent, spouse, son-in-law,  
12          daughter-in-law, father-in-law, mother-in-law, domestic  
13          partner, or sibling who has a serious health condition, or  
14          will assist in their recovery, and the expected duration  
15          and schedule of the intermittent leave or reduced leave  
16          schedule.

17          (c) Second opinion.

18           (1) In general. In any case in which the employer has  
19           reason to doubt the validity of the certification provided  
20           under subsection (a) for leave under subparagraph (C) or  
21           (D) of Section 102(a)(1), the employer may require, at the  
22           expense of the employer, that the eligible employee obtain  
23           the opinion of a second health care provider designated or  
24           approved by the employer concerning any information  
25           certified under subsection (b) for such leave.

26           (2) Limitation. A health care provider designated or

1 approved under paragraph (1) shall not be employed on a  
2 regular basis by the employer.

3 (d) Resolution of conflicting opinions.

4 (1) In general. In any case in which the second opinion  
5 described in subsection (c) differs from the opinion in the  
6 original certification provided under subsection (a), the  
7 employer may require, at the expense of the employer, that  
8 the employee obtain the opinion of a third health care  
9 provider designated or approved jointly by the employer and  
10 the employee concerning the information certified under  
11 subsection (b).

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

16 (e) Subsequent recertification. The employer may require  
17 that the eligible employee obtain subsequent recertifications  
18 on a reasonable basis.

19 Section 104. Employment and benefits protection.

20 (a) Restoration to position.

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

25 (A) to be restored by the employer to the position

1 of employment held by the employee when the leave  
2 commenced; or

3 (B) to be restored to an equivalent position with  
4 equivalent employment benefits, pay, and other terms  
5 and conditions of employment.

6 (2) Loss of benefits. The taking of leave under Section  
7 102 shall not result in the loss of any employment benefit  
8 accrued prior to the date on which the leave commenced.

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

11 (A) the accrual of any seniority or employment  
12 benefits during any period of leave; or

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

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

1           (5) Construction. Nothing in this subsection shall be  
2 construed to prohibit an employer from requiring an  
3 employee on leave under Section 102 to report periodically  
4 to the employer on the status and intention of the employee  
5 to return to work.

6           (b) Exemption concerning certain highly compensated  
7 employees.

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

11           (A) such denial is necessary to prevent  
12 substantial and grievous economic injury to the  
13 operations of the employer;

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

18           (C) in any case in which the leave has commenced,  
19 the employee elects not to return to employment after  
20 receiving such notice.

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

26           (c) Maintenance of health benefits.

1           (1) Coverage. Except as provided in paragraph (2),  
2           during any period that an eligible employee takes leave  
3           under Section 102, the employer shall maintain coverage  
4           under any "group health plan" (as defined in Section  
5           5000(b)(1) of the Internal Revenue Code of 1986) for the  
6           duration of such leave at the level and under the  
7           conditions coverage would have been provided if the  
8           employee had continued in employment continuously for the  
9           duration of such leave.

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

14                (A) the employee fails to return from leave under  
15                Section 102 after the period of leave to which the  
16                employee is entitled has expired; and

17                (B) the employee fails to return to work for a  
18                reason other than:

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

23                       (ii) other circumstances beyond the control of  
24                       the employee.

25          (3) Certification.

26                (A) Issuance. An employer may require that a claim



1 that an employee is unable to return to work because of  
2 the continuation, recurrence, or onset of the serious  
3 health condition described in paragraph (2)(B)(i) be  
4 supported by:

5 (i) a certification issued by the health care  
6 provider of the son, daughter, spouse, parent,  
7 son-in-law, daughter-in-law, father-in-law,  
8 mother-in-law, domestic partner, or sibling of the  
9 employee, as appropriate, in the case of an  
10 employee unable to return to work because of a  
11 condition specified in Section 102(a)(1)(C); or

12 (ii) a certification issued by the health care  
13 provider of the eligible employee, in the case of  
14 an employee unable to return to work because of a  
15 condition specified in Section 102(a)(1)(D).

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, parent,  
6           son-in-law, daughter-in-law, father-in-law,  
7           mother-in-law, domestic partner, or sibling who  
8           has a serious health condition on the date that the  
9           leave of the employee expired.

10           Section 105. Prohibited Acts.

11           (a) Interference with rights.

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

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

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

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

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

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

7           Section 106. Investigative authority.

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

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

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

24          (d) Subpoena powers. For the purposes of any investigation  
25          provided for in this Section, the Director shall have the

1 authority to issue subpoenas.

2 Section 107. Enforcement.

3 (a) Civil action by employees.

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

6 (A) for damages equal to:

7 (i) the amount of:

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

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

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

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

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

19 (A) the employees; or

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

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

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

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

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

17 (b) Action by the Director.

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

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

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

1 Director, directly to each employee affected. Any such sums  
2 not paid to an employee because of inability to do so  
3 within a period of 3 years shall be deposited into the  
4 General Revenue Fund.

5 (c) Limitation.

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

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

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

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

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

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

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

6           (a) Application.

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

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

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

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

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

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

25          (b) Leave does not violate certain other federal laws. A



1 local educational agency and a private elementary or secondary  
2 school shall not be in violation of the Individuals with  
3 Disabilities Education Act (20 U.S.C. 1400 et seq.), Section  
4 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title  
5 VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.),  
6 solely as a result of an eligible employee of such agency or  
7 school exercising the rights of such employee under this  
8 Article.

9 (c) Intermittent leave or leave on a reduced schedule for  
10 instructional employees.

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

21 (A) to take leave for periods of a particular  
22 duration, not to exceed the duration of the planned  
23 medical treatment; or

24 (B) to transfer temporarily to an available  
25 alternative position offered by the employer for which  
26 the employee is qualified, and that:

- 1 (i) has equivalent pay and benefits; and  
2 (ii) better accommodates recurring periods of  
3 leave than the regular employment position of the  
4 employee.

5 (2) Application. The elections described in  
6 subparagraphs (A) and (B) of paragraph (1) shall apply only  
7 with respect to an eligible employee who complies with  
8 Section 102(e)(2).

9 (d) Rules applicable to periods near the conclusion of an  
10 academic term. The following rules shall apply with respect to  
11 periods of leave near the conclusion of an academic term in the  
12 case of any eligible employee employed principally in an  
13 instructional capacity by any such educational agency or  
14 school:

15 (1) Leave more than 5 weeks prior to end of term. If  
16 the eligible employee begins leave under Section 102 more  
17 than 5 weeks prior to the end of the academic term, the  
18 agency or school may require the employee to continue  
19 taking leave until the end of such term, if:

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

21 (B) the return to employment would occur during the  
22 3-week period before the end of such term.

23 (2) Leave less than 5 weeks prior to end of term. If  
24 the eligible employee begins leave under subparagraph (A),  
25 (B), or (C) of Section 102(a)(1) during the period that  
26 commences 5 weeks prior to the end of the academic term,

1 the agency or school may require the employee to continue  
2 taking leave until the end of such term, if:

3 (A) the leave is of greater than 2 weeks duration;  
4 and

5 (B) the return to employment would occur during the  
6 2-week period before the end of such term.

7 (3) Leave less than 3 weeks prior to end of term. If  
8 the eligible employee begins leave under subparagraph (A),  
9 (B), or (C) of Section 102(a)(1) during the period that  
10 commences 3 weeks prior to the end of the academic term and  
11 the duration of the leave is greater than 5 working days,  
12 the agency or school may require the employee to continue  
13 to take leave until the end of such term.

14 (e) Restoration to equivalent employment position. For  
15 purposes of determinations under Section 104(a)(1)(B)  
16 (relating to the restoration of an eligible employee to an  
17 equivalent position), in the case of a local educational agency  
18 or a private elementary or secondary school, such determination  
19 shall be made on the basis of established school board policies  
20 and practices, private school policies and practices, and  
21 collective bargaining agreements.

22 (f) Reduction of the amount of liability. If a local  
23 educational agency or a private elementary or secondary school  
24 that has violated this Article proves to the satisfaction of  
25 the court that the agency, school, or department had reasonable  
26 grounds for believing that the underlying act or omission was

1 not a violation of this Article, such court may, in the  
2 discretion of the court, reduce the amount of the liability  
3 provided for under Section 107(a)(1)(A) to the amount and  
4 interest determined under clauses (i) and (ii), respectively,  
5 of such Section.

6 Section 109. Notice.

7 (a) In general. Each employer shall post and keep posted,  
8 in conspicuous places on the premises of the employer where  
9 notices to employees and applicants for employment are  
10 customarily posted, a notice, to be prepared or approved by the  
11 Director, setting forth excerpts from, or summaries of, the  
12 pertinent provisions of this Article and information  
13 pertaining to the filing of a charge.

14 (b) Penalty. Any employer that willfully violates this  
15 Section may be assessed a civil money penalty not to exceed  
16 \$100 for each separate offense.

17 ARTICLE II. (BLANK)

18 ARTICLE III. (BLANK)

19 ARTICLE IV. MISCELLANEOUS PROVISIONS

20 Section 401. Effect on other laws.

21 (a) Federal and State antidiscrimination laws. Nothing in

1 this Act shall be construed to modify or affect any federal or  
2 State law prohibiting discrimination on the basis of race,  
3 religion, color, national origin, sex, age, or disability.

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

8 Section 402. Effect on existing employment benefits.

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

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

17 Section 403. Encouragement of more generous leave  
18 policies. Nothing in this Act shall be construed to discourage  
19 employers from adopting or retaining leave policies more  
20 generous than any policies that comply with the requirements  
21 under this Act.

22 Section 404. Rules. The Director shall prescribe such  
23 rules as are necessary to carry out this Act not later than 120

1 days after the effective date of this Act.

2 Section 404.1. Applicability; coordination.

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

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

7 (B) the date that occurs 12 months after the effective  
8 date of this Act.

9 (2) Nothing in this Act shall be construed to limit the  
10 applicability of the federal Family and Medical Leave Act of  
11 1993 with regard to employers and employees covered by that  
12 Act.

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

15 (A) the 12-month period during which 16 workweeks of  
16 leave may be taken under this Act shall run concurrently  
17 with the 12-month period under the federal Family and  
18 Medical Leave Act of 1993, and shall commence the date  
19 leave taken under the federal Family and Medical Leave Act  
20 of 1993 commences; and

21 (B) leave taken under this Act shall run concurrently  
22 with leave taken under the federal Family and Medical Leave  
23 Act of 1993.

24 (4) The aggregate amount of leave taken under this Act or  
25 the federal Family and Medical Leave Act of 1993, or both,

1 shall not exceed 16 workweeks in a 12-month period.

2 Section 405. Effective date. This Act takes effect 6 months  
3 after it becomes law.