

SB0128



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB0128

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

SYNOPSIS AS INTRODUCED:

New Act

Creates the Healthy Workplace Act. Requires an employer to provide an employee up to 7 sick days with pay during each 12-month period. Provides that an employee may use the sick days care for physical or mental illness, injury, medical condition, professional medical diagnosis or care, or a medical appointment of the employee or a family member. Contains provisions regarding: accrual; certification; notice; responsibilities of employers; unlawful practices; powers and duties of the Department of Labor; violations; penalties; civil liability; severability; and other matters.

LRB097 06226 AEK 46301 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

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 1. Short title. This Act may be cited as the
5 Healthy Workplace Act.

6 Section 5. Findings and purpose.

7 (a) Findings. The General Assembly finds:

8 (1) Nearly every worker in the State is likely to need
9 time off to attend to his or her own illness or that of a
10 family member, or for routine medical care. Almost half of
11 all private sector workers do not earn a single paid sick
12 day per year, with low-income workers significantly worse
13 off. Nationally, over three-quarters of the poorest
14 families, 77 percent, lack any regular paid sick leave.

15 (2) Of those workers who receive paid sick days, few
16 policies, in both the private and public sectors, allow the
17 worker to use it to care for a family member who is ill.

18 (3) The absence of paid sick days forces workers to
19 make untenable choices between needed income and jobs and
20 caring for their own health and their family's health.

21 (4) When parents are available to care for their
22 children who become sick, the children's recovery is
23 faster, more serious illnesses are prevented, and the

1 children's overall mental and physical health is improved.
2 Parents who cannot afford to miss work must send children
3 with a contagious illness to child care or school,
4 contributing to the high rate of infections in child care
5 centers and schools.

6 (5) The working population in Illinois contains a high
7 number of "baby boom" workers approaching retirement age
8 who are increasingly called upon to care for their parents
9 or an impaired spouse. Older workers need time off to care
10 for themselves as well.

11 (6) Preventive and routine medical care helps avoid
12 illness and injury by detecting illnesses early and
13 shortening the duration of illnesses. Providing employees
14 time off to attend to their own health care needs ensures
15 that they will be healthier and more efficient employees.
16 Routine medical care results in savings by detecting and
17 treating illness and injury early and decreasing the need
18 for emergency care. These savings benefit public and
19 private payers of health insurance, including private
20 businesses. It will also reduce the spread of disease
21 within workplaces when sick employees go to work, a
22 practice known as presenteeism.

23 (7) Public health is jeopardized as many workers who do
24 not have paid sick days have the most frequent contact with
25 the public such as workers in food services, nursing homes,
26 child care centers and retail establishments. The spread of

1 contagious diseases such as the flu cannot be stopped
2 without a universally adopted paid sick days policy.

3 (8) Providing 7 paid sick days per year to employees
4 who earn those days is affordable for employers and good
5 for business. Requiring all employers to provide paid sick
6 days levels the playing field among employers. Employers
7 that provide paid sick days see greater retention and avoid
8 the problems of "presenteeism". Studies have shown that
9 costs from on-the-job productivity losses as a result of
10 presenteeism exceed the costs of absenteeism, medical and
11 disability benefits.

12 (b) Purpose. This Act is enacted to establish the Healthy
13 Workplace Act to provide a minimum time-off standard for paid
14 sick days so that workers can care for their own health and the
15 health of their families while prospering at work.

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

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

22 (b) "Department" means the Illinois Department of Labor.

23 (c) "Employee" means any person who performs services for
24 an employer for wage, remuneration, or other compensation. This
25 includes persons working any number of hours, including a

1 full-time or part-time status.

2 (d) "Employer" means one who employs at least one employee,
3 including but not limited to, this State and its political
4 subdivisions, a temporary services agency, employment agency,
5 or employee organization.

6 (e) "Family member" means a child, spouse, parent, or
7 parent-in-law of the employee, or a person with whom the
8 employee has resided in the same household for 6 months or
9 longer.

10 (f) "Healthcare provider" means:

11 (1) a person who: (i) is licensed to practice medicine
12 in all of its branches in Illinois and possesses the degree
13 of doctor of medicine; (ii) is licensed to practice
14 medicine in Illinois and possesses the degree of doctor of
15 osteopathy or osteopathic medicine; or (iii) is licensed to
16 practice medicine in all of its branches or as an
17 osteopathic physician in another state or jurisdiction; or
18 (iv) any other person determined by Final Rule of The
19 Family and Medical Leave Act of 1993 (29 CFR Part 825 Sec.
20 118); and

21 (2) is not employed by an employer to whom the provider
22 issues certifications under this Act.

23 (g) "Parent" means a biological or adoptive parent, a
24 foster or stepparent, or a person who stands in loco parentis
25 to an employee or an employee's spouse. Parent may also mean a
26 person who is the parent of a child as defined in this section.

1 (h) "Sick day" means a portion of, or a regular workday
2 when an employee is unable to report to work because of a
3 reason described in subsection (b) of Section 15.

4 (i) "Spouse" refers to either member of a married pair as
5 "marriage" is defined by the marriage laws of Illinois.

6 Section 15. Provision of paid sick days.

7 (a) All employees who work in Illinois who are absent from
8 work for the reasons set forth in subsection (b) shall be
9 entitled to earn a maximum of 7 sick days with pay during a
10 12-month period, or a pro rata number of paid sick days or
11 hours under the provisions of subsection (c). The 12-month
12 period for an employee shall be calculated from the
13 date-of-hire or subsequent anniversary date.

14 (b) Paid sick days shall be provided to an employee by an
15 employer to:

16 (1) care for the employee's own physical or mental
17 illness, or injury or medical condition, or professional
18 medical diagnosis, or care; or

19 (2) care for the employee's family member who is
20 suffering from a physical or mental illness, or injury, or
21 medical condition, or professional medical diagnosis or
22 care; or

23 (3) attend a medical appointment for himself or herself
24 or for that of the employee's family member.

25 (c) Paid sick days shall accrue at the rate of one hour of

1 paid sick time for every 30 hours worked up to the maximum of 7
2 paid sick days. Employees who are exempt from overtime
3 requirements of the Federal Fair Labor Standards Act (29 USC
4 Sec. 213 (a)(1)) will be assumed to work 40 hours in each work
5 week for purposes of paid sick day accrual unless their normal
6 work week is less than 40 hours, in which case paid sick days
7 accrue based upon that normal work week. Paid sick days may be
8 used as accrued, or be loaned by the employer, at its
9 discretion, to the employee in advance of such accrual; in such
10 case an employer shall not require an employee to reimburse it
11 for any unearned sick days. For periods of paid sick days that
12 are less than a normal workday, the leave shall be permitted to
13 be used in hourly increments. It is up to the employee to
14 determine how much accrued leave to take under this Act.

15 (d) An employer may require certification of the qualifying
16 illness, injury or health condition when paid sick days cover
17 more than 3 consecutive workdays. Any reasonable documentation
18 signed by a health care provider involved in following or
19 treating the illness, injury or health condition, and
20 indicating the need for the amount of sick days taken, shall be
21 deemed acceptable certification. The certification shall be
22 issued at such time and in such manner that the Department may
23 by regulation require. The employer shall not delay the
24 commencement of leave taken for purposes of subsection (b) or
25 pay for this period on the basis that the employer has not yet
26 received the certification. Nothing in this Act shall be

1 construed to require an employee to provide as certification
2 any information from a healthcare provider that would be in
3 violation of Section 1177 of the Social Security Act or the
4 regulations promulgated pursuant to Section 264(c) of the
5 Health Insurance Portability and Accountability Act, 42 U.S.C.
6 1320d-2 note. If an employer possesses health information about
7 an employee or employee's family member, such information shall
8 be treated as confidential and not disclosed except with the
9 permission of the affected employee.

10 (e) Paid sick days shall be provided upon the oral request
11 of an employee. If the necessity for sick days under this Act
12 is foreseeable, the employee shall provide the employer with
13 not less than 7 days notice before the date the leave is to
14 begin. If the necessity for leave is not foreseeable, the
15 employee shall provide such notice as soon as is practicable
16 after the employee is aware of the necessity of such leave. An
17 employer may not require, as a condition of providing paid sick
18 days under this Act, that the employee search for or find a
19 replacement worker to cover the hours during which the employee
20 is on paid sick days leave.

21 (f) Paid sick days shall carry over annually to the extent
22 not used by the employee, provided that nothing in this Act
23 shall be construed to require an employer to allow accumulation
24 of more than 7 paid sick days for an employee unless an
25 employer agrees to do so.

26 (g) It shall be unlawful for an employer to interfere with,

1 restrain, or deny the exercise of, or the attempt to exercise,
2 any right provided under, or in connection with this Act,
3 including but not limited to using the taking of paid sick days
4 as a negative factor in an employment action such as hiring,
5 termination, evaluation, promotion or a disciplinary action,
6 or counting the paid sick days under a no-fault attendance
7 policy.

8 (h) During any period an employee takes leave under this
9 Act, the employer shall maintain coverage for the employee and
10 any family member under any group health plan for the duration
11 of such leave at at least the level and conditions of coverage
12 as would have been provided if the employee had not taken the
13 leave.

14 (i) Nothing in this section shall be construed as requiring
15 financial or other reimbursement to an employee from an
16 employer upon the employee's termination, resignation,
17 retirement, or other separation from employment for accrued
18 paid sick days that have not been used.

19 Section 20. Related employer responsibilities.

20 (a) An employer subject to any provision of this Act shall
21 make and preserve records documenting hours worked by employees
22 and the amount of paid sick days taken by employees, for a
23 period of not less than 3 years and shall make reports from the
24 records as prescribed by rule or order of the Director of the
25 Department.

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

7 (c) Nothing in this Act shall be construed to discourage
8 employers from adopting or retaining paid sick day policies
9 more generous than policies that comply with the requirements
10 of this Act and nothing in this Act shall be construed to
11 diminish the obligation of an employer to comply with any
12 contract, collective bargaining agreement, or any employment
13 benefit program or plan that provides greater paid sick day
14 rights to employees than the rights established under this Act.

15 (d) Employers who have a paid time off policy that complies
16 with at least the minimum requirements of this Act shall not be
17 required to modify such a policy if such policy offers an
18 employee the option, at the employee's discretion, to take paid
19 sick days that are at least equivalent to the paid sick days
20 described in this Act.

21 (e) Every employer covered by this Act shall post and keep
22 posted, in conspicuous places on the premises of the employer
23 where notices to employees are customarily posted, a notice, to
24 be prepared or approved by the Director of the Department,
25 summarizing the requirements of this Act and information
26 pertaining to the filing of a charge. If an employer's

1 workforce is comprised of a significant portion of workers who
2 are not literate in English, the employer is responsible for
3 providing the notice in a language in which the employees are
4 literate. The Director shall furnish copies of summaries and
5 rules to employers upon request without charge.

6 Section 25. Unlawful employer practices.

7 It shall be unlawful for any employer to take any adverse
8 action against an employee because the employee (1) exercises
9 rights or attempts to exercise rights under this Act, (2)
10 opposes practices which such employee believes to be in
11 violation of this Act, or (3) supports the exercise of rights
12 of another under this Act.

13 Exercising rights under this Act shall include but not be
14 limited to filing an action, or instituting or causing to be
15 instituted any proceeding under or related to this Act;
16 providing or about to provide any information in connection
17 with any inquiry or proceeding relating to any right provided
18 under this Act; or testifying to, or about to testify in any
19 inquiry or proceeding relating to any right provided under this
20 Act.

21 Section 30. Department responsibilities.

22 (a) The Department shall administer and enforce this Act.
23 An employee or employee representative who believes his or her
24 rights under this Act have been violated may, within 1 year

1 after the alleged violation occurs, file a complaint with the
2 Department requesting a review of the alleged violation.

3 (b) The Director of the Department shall adopt rules
4 necessary to administer and enforce this Act in accordance with
5 the Illinois Administrative Procedure Act. The Director shall
6 have the powers and the parties shall have the rights provided
7 in the Illinois Administrative Procedure Act for contested
8 cases, including but not limited to, provisions for
9 depositions, subpoena power and procedures, and discovery.

10 (c) The Director of the Department is authorized to
11 supervise the payment of the unpaid wages owing to the employee
12 or employees under this Act and may bring any legal action
13 necessary to recover the amount of unpaid wages and penalties
14 and the employer shall be required to pay the costs. Any sums
15 recovered by the Department on behalf of an employee under this
16 Act shall be paid to the employee or employees affected.

17 (d) The Department shall develop and implement a
18 multilingual outreach program to inform employees, parents,
19 and persons who are under the care of a healthcare provider
20 about the availability of paid sick days under this Act.

21 (e) The Department shall, subject to appropriation,
22 annually compile information on the following and issue an
23 annual report on:

24 (1) The number of employees who used paid sick days;

25 (2) The number of hours of paid sick days used and the
26 reasons for the use;

1 (3) The demographic characteristics of employees
2 (including by gender, race, age, marital status, job
3 industry and job classification, and full or part-time
4 status) who were eligible for and who used paid sick days
5 (including the number of hours used and the reasons for the
6 use);

7 (4) The cost and benefits to employers and employees of
8 implementing the paid sick days policies.

9 Section 35. Violations and liability.

10 Any employer that violates this Act is liable in a civil
11 action in circuit court to any affected individuals for actual,
12 compensatory, and punitive damages with interest at the
13 prevailing rate and for such equitable relief as may be
14 appropriate. Such action may be brought without first filing an
15 administrative complaint. The court in such an action shall, in
16 addition to any judgment awarded to the plaintiff, allow a
17 reasonable attorney's fee, reasonable expert witness fees, and
18 other costs of the action to be paid by the defendant.
19 Necessary legal action may be brought by the employee or the
20 Department to collect the judgment, and the employer shall be
21 required to pay the costs incurred in collecting the judgment.
22 An action may be brought under this Act no more than 3 years
23 after the date of the last event constituting the alleged
24 violation for which the action is brought. An employer that
25 violates any provision of this Act or any rule adopted under

1 this Act is subject to a civil money penalty not to exceed
2 \$2,500 for each separate offense.

3 Section 40. Severability.

4 If any provision of this Act or the application of such
5 provision to any person or circumstance is preempted by or held
6 to be in violation of Illinois or federal law or regulation,
7 the remainder of the provisions of this Act and the application
8 of those provisions to any person or circumstance shall not be
9 affected.