

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 100.1. Findings and purposes.

9 (a) Findings. The General Assembly finds that:

10 (1) the number of single-parent households and  
11 two-parent households in which the single parent or both  
12 parents work is increasing significantly;

13 (2) it is important for the development of children  
14 and the family unit that fathers and mothers be able to  
15 participate in early childrearing and the care of family  
16 members who have serious health conditions;

17 (3) the lack of employment policies to accommodate  
18 working parents can force individuals to choose between  
19 job security and parenting;

20 (4) there is inadequate job security for employees  
21 who have serious health conditions that prevent them from  
22 working for temporary periods;

23 (5) due to the nature of the roles of men and women  
24 in our society, the primary responsibility for family  
25 caretaking often falls on women, and such responsibility  
26 affects the working lives of women more than it affects  
27 the working lives of men; and

28 (6) employment standards that apply to one gender  
29 only have serious potential for encouraging employers to  
30 discriminate against employees and applicants for

1 employment who are of that gender.

2 (b) Purposes. It is the purpose of this Act:

3 (1) to balance the demands of the workplace with the  
4 needs of families, to promote the stability and economic  
5 security of families, and to promote national interests  
6 in preserving family integrity;

7 (2) to entitle employees to take reasonable leave  
8 for medical reasons, for the birth or adoption of a  
9 child, and for the care of a child, spouse, or parent who  
10 has a serious health condition;

11 (3) to accomplish the purposes described in  
12 paragraphs (1) and (2) in a manner that accommodates the  
13 legitimate interests of employers;

14 (4) to accomplish the purposes described in  
15 paragraphs (1) and (2) in a manner that, consistent with  
16 the Equal Protection Clause of the Fourteenth Amendment,  
17 minimizes the potential for employment discrimination on  
18 the basis of sex by ensuring generally that leave is  
19 available for eligible medical reasons (including  
20 maternity-related disability) and for compelling family  
21 reasons, on a gender-neutral basis; and

22 (5) to promote the goal of equal employment  
23 opportunity for women and men, pursuant to such clause.

24 Section 101. Definitions. As used in this Article:

25 (1) (Blank).

26 (2) Eligible Employee.

27 (A) In General. The term "eligible employee" means  
28 an employee who has been employed:

29 (i) for at least 12 months by the employer with  
30 respect to whom leave is requested under Section  
31 102; and

32 (ii) for at least 1,250 hours of service with  
33 such employer during the previous 12-month period.

1 (B) Exclusions. The term "eligible employee" does  
2 not include:

3 (i) any Federal officer or employee covered  
4 under Subchapter V of Chapter 63 of Title 5, United  
5 States Code; or

6 (ii) any employee of an employer who is  
7 employed at a worksite at which such employer  
8 employs less than 25 employees if the total number  
9 of employees employed by that employer within 75  
10 miles of that worksite is less than 25.

11 (C) Determination. For purposes of determining  
12 whether an employee meets the hours of service  
13 requirement specified in subparagraph (A)(ii), the legal  
14 standards established under Section 7 of the Fair Labor  
15 Standards Act of 1938 (29 U.S.C. 207) shall apply.

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

21 (4) Employer.

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

23 (i) means any person who employs 25 or more  
24 employees for each working day during each of 20 or  
25 more calendar workweeks in the current or preceding  
26 calendar year;

27 (ii) includes:

28 (I) any person who acts, directly or  
29 indirectly, in the interest of an employer to  
30 any of the employees of such employer; and

31 (II) any successor in interest of an  
32 employer; and

33 (iii) includes any State officer, department,  
34 or agency, any unit of local government, and any

1 school district.

2 (B) (Blank).

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

12 (6) Health care provider. The term "health care provider"  
13 means:

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

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

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

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

26 (9) Reduced leave schedule. The term "reduced leave  
27 schedule" means a leave schedule that reduces the usual  
28 number of hours per workweek, or hours per workday, of an  
29 employee.

30 (10) Director. The term "Director" means the Director of  
31 Labor.

32 (11) Serious health condition. The term "serious health  
33 condition" means an illness, injury, impairment, or physical  
34 or mental condition that involves:

1 (A) inpatient care in a hospital, hospice, or  
2 residential medical care facility; or

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

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

8 (A) under 18 years of age; or

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

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

13 Section 102. Leave requirement.

14 (a) In general.

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

19 (A) Because of the birth of a son or daughter  
20 of the employee and in order to care for such son or  
21 daughter.

22 (B) Because of the placement of a son or  
23 daughter with the employee for adoption or foster  
24 care.

25 (C) In order to care for the spouse, or a son,  
26 daughter, or parent, of the employee, if such  
27 spouse, son, daughter, or parent has a serious  
28 health condition.

29 (D) Because of a serious health condition that  
30 makes the employee unable to perform the functions  
31 of the position of such employee.

32 (2) Expiration of entitlement. The entitlement to  
33 leave under subparagraphs (A) and (B) of paragraph (1)

1 for a birth or placement of a son or daughter shall  
2 expire at the end of the 12-month period beginning on the  
3 date of such birth or placement.

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

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

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

27 (A) has equivalent pay and benefits; and

28 (B) better accommodates recurring periods of  
29 leave than the regular employment position of the  
30 employee.

31 (c) Unpaid leave permitted. Except as provided in  
32 subsection (d), leave granted under subsection (a) may  
33 consist of unpaid leave. Where an employee is otherwise  
34 exempt under regulations issued by the Secretary of the U.S.

1 Department of Labor pursuant to Section 13(a)(1) of the Fair  
 2 Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)), the  
 3 compliance of an employer with this Article by providing  
 4 unpaid leave shall not affect the exempt status of the  
 5 employee under such Section.

6 (d) Relationship to paid leave.

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

12 (2) Substitution of paid leave.

13 (A) In general. An eligible employee may elect,  
 14 or an employer may require the employee, to  
 15 substitute any of the accrued paid vacation leave,  
 16 personal leave, or family leave of the employee for  
 17 leave provided under subparagraph (A), (B), or (C)  
 18 of subsection (a)(1) for any part of the 12-week  
 19 period of such leave under such subsection.

20 (B) Serious health condition. An eligible  
 21 employee may elect, or an employer may require the  
 22 employee, to substitute any of the accrued paid  
 23 vacation leave, personal leave, or medical or sick  
 24 leave of the employee for leave provided under  
 25 subparagraph (C) or (D) of subsection (a)(1) for any  
 26 part of the 12-week period of such leave under such  
 27 subsection, except that nothing in this Article  
 28 shall require an employer to provide paid sick leave  
 29 or paid medical leave in any situation in which  
 30 such employer would not normally provide any such  
 31 paid leave.

32 (e) Foreseeable leave.

33 (1) Requirement of notice. In any case in which the  
 34 necessity for leave under subparagraph (A) or (B) of

1 subsection (a)(1) is foreseeable based on an expected  
 2 birth or placement, the employee shall provide the  
 3 employer with not less than 30 days' notice, before the  
 4 date the leave is to begin, of the employee's intention  
 5 to take leave under such subparagraph, except that if the  
 6 date of the birth or placement requires leave to begin  
 7 in less than 30 days, the employee shall provide such  
 8 notice as is practicable.

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

13 (A) shall make a reasonable effort to schedule  
 14 the treatment so as not to disrupt unduly the  
 15 operations of the employer, subject to the approval  
 16 of the health care provider of the employee or the  
 17 health care provider of the son, daughter, spouse,  
 18 or parent of the employee, as appropriate; and

19 (B) shall provide the employer with not less  
 20 than 30 days' notice, before the date the leave is  
 21 to begin, of the employee's intention to take leave  
 22 under such subparagraph, except that if the date of  
 23 the treatment requires leave to begin in less than  
 24 30 days, the employee shall provide such notice as  
 25 is practicable.

26 (f) Spouses employed by the same employer. In any case in  
 27 which a husband and wife entitled to leave under subsection  
 28 (a) are employed by the same employer, the aggregate number  
 29 of workweeks of leave to which both may be entitled may be  
 30 limited to 12 workweeks during any 12-month period, if such  
 31 leave is taken:

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

34 (2) to care for a sick parent under subparagraph (C)



1 of such subsection.

2 Section 103. Certification.

3 (a) In general. An employer may require that a request  
4 for leave under subparagraph (C) or (D) of Section 102(a)(1)  
5 be supported by a certification issued by the health care  
6 provider of the eligible employee or of the son, daughter,  
7 spouse, or parent of the employee, as appropriate. The  
8 employee shall provide, in a timely manner, a copy of such  
9 certification to the employer.

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

12 (1) the date on which the serious health condition  
13 commenced;

14 (2) the probable duration of the condition;

15 (3) the appropriate medical facts within the  
16 knowledge of the health care provider regarding the  
17 condition;

18 (4)(A) for purposes of leave under Section  
19 102(a)(1)(C), a statement that the eligible employee is  
20 needed to care for the son, daughter, spouse, or parent  
21 and an estimate of the amount of time that such employee  
22 is needed to care for the son, daughter, spouse, or  
23 parent; and

24 (B) for purposes of leave under Section  
25 102(a)(1)(D), a statement that the employee is unable to  
26 perform the functions of the position of the employee;

27 (5) in the case of certification for intermittent  
28 leave, or leave on a reduced leave schedule, for planned  
29 medical treatment, the dates on which such treatment is  
30 expected to be given and the duration of such treatment;

31 (6) in the case of certification for intermittent  
32 leave, or leave on a reduced leave schedule, under  
33 Section 102(a)(1)(D), a statement of the medical

1 necessity for the intermittent leave or leave on a  
2 reduced leave schedule, and the expected duration of the  
3 intermittent leave or reduced leave schedule; and

4 (7) in the case of certification for intermittent  
5 leave, or leave on a reduced leave schedule, under  
6 Section 102(a)(1)(C), a statement that the employee's  
7 intermittent leave or leave on a reduced leave schedule  
8 is necessary for the care of the son, daughter, parent,  
9 or spouse who has a serious health condition, or will  
10 assist in their recovery, and the expected duration and  
11 schedule of the intermittent leave or reduced leave  
12 schedule.

13 (c) Second opinion.

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

23 (2) Limitation. A health care provider designated or  
24 approved under paragraph (1) shall not be employed on a  
25 regular basis by the employer.

26 (d) Resolution of conflicting opinions.

27 (1) In general. In any case in which the second  
28 opinion described in subsection (c) differs from the  
29 opinion in the original certification provided under  
30 subsection (a), the employer may require, at the expense  
31 of the employer, that the employee obtain the opinion of  
32 a third health care provider designated or approved  
33 jointly by the employer and the employee concerning the  
34 information certified under subsection (b).

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

5           (e) Subsequent recertification. The employer may require  
 6 that the eligible employee obtain subsequent recertifications  
 7 on a reasonable basis.

8           Section 104. Employment and benefits protection.

9           (a) Restoration to position.

10           (1) In general. Except as provided in subsection  
 11 (b), any eligible employee who takes leave under Section  
 12 102 for the intended purpose of the leave shall be  
 13 entitled, on return from such leave:

14           (A) to be restored by the employer to the  
 15 position of employment held by the employee when the  
 16 leave commenced; or

17           (B) to be restored to an equivalent position  
 18 with equivalent employment benefits, pay, and other  
 19 terms and conditions of employment.

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

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

26           (A) the accrual of any seniority or employment  
 27 benefits during any period of leave; or

28           (B) any right, benefit, or position of  
 29 employment other than any right, benefit, or  
 30 position to which the employee would have been  
 31 entitled had the employee not taken the leave.

32           (4) Certification. As a condition of restoration  
 33 under paragraph (1) for an employee who has taken leave

1 under Section 102(a)(1)(D), the employer may have a  
2 uniformly applied practice or policy that requires each  
3 such employee to receive certification from the health  
4 care provider of the employee that the employee is able  
5 to resume work, except that nothing in this paragraph  
6 shall supersede a valid State or local law or a  
7 collective bargaining agreement that governs the return  
8 to work of such employees.

9 (5) Construction. Nothing in this subsection shall  
10 be construed to prohibit an employer from requiring an  
11 employee on leave under Section 102 to report  
12 periodically to the employer on the status and intention  
13 of the employee to return to work.

14 (b) Exemption concerning certain highly compensated  
15 employees.

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

19 (A) such denial is necessary to prevent  
20 substantial and grievous economic injury to the  
21 operations of the employer;

22 (B) the employer notifies the employee of the  
23 intent of the employer to deny restoration on such  
24 basis at the time the employer determines that such  
25 injury would occur; and

26 (C) in any case in which the leave has  
27 commenced, the employee elects not to return to  
28 employment after receiving such notice.

29 (2) Affected employees. An eligible employee  
30 described in paragraph (1) is a salaried eligible  
31 employee who is among the highest paid 10 percent of the  
32 employees employed by the employer within 75 miles of the  
33 facility at which the employee is employed.

34 (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  
 12           maintaining coverage for the employee under such group  
 13           health plan during any period of unpaid leave under  
 14           Section 102 if:

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

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

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

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

26           (3) Certification.

27                   (A) Issuance. An employer may require that a  
 28                   claim that an employee is unable to return to work  
 29                   because of the continuation, recurrence, or onset of  
 30                   the serious health condition described in paragraph  
 31                   (2)(B)(i) be supported by:

32                           (i) a certification issued by the health  
 33                           care provider of the son, daughter, spouse, or  
 34                           parent of the employee, as appropriate, in the

1 case of an employee unable to return to work  
 2 because of a condition specified in Section  
 3 102(a)(1)(C); or

4 (ii) a certification issued by the health  
 5 care provider of the eligible employee, in the  
 6 case of an employee unable to return to work  
 7 because of a condition specified in Section  
 8 102(a)(1)(D).

9 (B) Copy. The employee shall provide, in a  
 10 timely manner, a copy of such certification to the  
 11 employer.

12 (C) Sufficiency of certification.

13 (i) Leave due to serious health condition  
 14 of employee. The certification described in  
 15 subparagraph (A)(ii) shall be sufficient if the  
 16 certification states that a serious health  
 17 condition prevented the employee from being  
 18 able to perform the functions of the position  
 19 of the employee on the date that the leave of  
 20 the employee expired.

21 (ii) Leave due to serious health condition  
 22 of family member. The certification described  
 23 in subparagraph (A)(i) shall be sufficient if  
 24 the certification states that the employee is  
 25 needed to care for the son, daughter, spouse,  
 26 or parent who has a serious health condition on  
 27 the date that the leave of the employee  
 28 expired.

29 Section 105. Prohibited Acts.

30 (a) Interference with rights.

31 (1) Exercise of rights. It shall be unlawful for any  
 32 employer to interfere with, restrain, or deny the  
 33 exercise of or the attempt to exercise, any right

1 provided under this Article.

2 (2) Discrimination. It shall be unlawful for any  
3 employer to discharge or in any other manner discriminate  
4 against any individual for opposing any practice made  
5 unlawful by this Article.

6 (b) Interference with proceedings or inquiries. It shall  
7 be unlawful for any person to discharge or in any other  
8 manner discriminate against any individual because such  
9 individual:

10 (1) has filed any charge, or has instituted or  
11 caused to be instituted any proceeding, under or related  
12 to this Article;

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

16 (3) has testified, or is about to testify, in any  
17 inquiry or proceeding relating to any right provided  
18 under this Article.

19 Section 106. Investigative authority.

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

24 (b) Obligation to keep and preserve records. Any employer  
25 shall make, keep, and preserve records pertaining to  
26 compliance with this Article in accordance with rules adopted  
27 by the Director.

28 (c) Required submissions generally limited to an annual  
29 basis. The Director shall not under the authority of this  
30 Section require any employer or any plan, fund, or program to  
31 submit to the Director any books or records more than once  
32 during any 12-month period, unless the Director has  
33 reasonable cause to believe there may exist a violation of

1 this Article or any rule or order issued pursuant to this  
2 Article, or is investigating a charge pursuant to Section  
3 107(b).

4 (d) Subpoena powers. For the purposes of any  
5 investigation provided for in this Section, the Director  
6 shall have the authority to issue subpoenas.

7 Section 107. Enforcement.

8 (a) Civil action by employees.

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

11 (A) for damages equal to:

12 (i) the amount of:

13 (I) any wages, salary, employment  
14 benefits, or other compensation denied or  
15 lost to such employee by reason of the  
16 violation; or

17 (II) in a case in which wages,  
18 salary, employment benefits, or other  
19 compensation have not been denied or lost  
20 to the employee, any actual monetary  
21 losses sustained by the employee as a  
22 direct result of the violation, such as  
23 the cost of providing care, up to a sum  
24 equal to 12 weeks of wages or salary for  
25 the employee;

26 (ii) the interest on the amount described  
27 in clause (i) calculated at the rate of  
28 interest on judgments set forth in Section  
29 2-1303 of the Code of Civil Procedure; and

30 (iii) an additional amount as liquidated  
31 damages equal to the sum of the amount  
32 described in clause (i) and the interest  
33 described in clause (ii), except that if an



1            employer who has violated Section 105 proves to  
 2            the satisfaction of the court that the act or  
 3            omission which violated Section 105 was in good  
 4            faith and that the employer had reasonable  
 5            grounds for believing that the act or omission  
 6            was not a violation of Section 105, such court  
 7            may, in the discretion of the court, reduce the  
 8            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,  
 13           and promotion.

14           (2) Right of action. An action to recover the  
 15           damages or equitable relief prescribed in paragraph (1)  
 16           may be maintained against any employer (including a  
 17           public agency) in the circuit court by any one or more  
 18           employees 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  
 23           shall, in addition to any judgment awarded to the  
 24           plaintiff, allow a reasonable attorney's fee, reasonable  
 25           expert witness fees, and other costs of the action to be  
 26           paid by the defendant.

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

30           (A) on the filing of a complaint by the  
 31           Director in an action under subsection (d) in which  
 32           restraint is sought of any further delay in the  
 33           payment of the amount described in paragraph (1)(A)  
 34           to such employee by an employer responsible under

1 paragraph (1) for the payment; or

2 (B) on the filing of a complaint by the  
3 Director in an action under subsection (b) in which  
4 a recovery is sought of the damages described in  
5 paragraph (1)(A) owing to an eligible employee by an  
6 employer liable under paragraph (1), unless the  
7 action described in subparagraph (A) or (B) is  
8 dismissed without prejudice on motion of the  
9 Director.

10 (b) Action by the Director.

11 (1) Administrative action. The Director shall  
12 receive, investigate, and attempt to resolve complaints  
13 of violations of Section 105.

14 (2) Civil action. The Director may bring an action  
15 in the circuit court to recover the damages described in  
16 subsection (a)(1)(A).

17 (3) Sums recovered. Any sums recovered by the  
18 Director pursuant to paragraph (2) shall be held in a  
19 special deposit account and shall be paid, on order of  
20 the Director, directly to each employee affected. Any  
21 such sums not paid to an employee because of inability  
22 to do so within a period of 3 years shall be deposited  
23 into the General Revenue Fund.

24 (c) Limitation.

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

30 (2) Willful violation. In the case of such action  
31 brought for a willful violation of Section 105, such  
32 action may be brought within 3 years of the date of the  
33 last event constituting the alleged violation for which  
34 such action is brought.

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

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

8           (1) to restrain violations of Section 105, including  
 9           the restraint of any withholding of payment of wages,  
 10          salary, employment benefits, or other compensation, plus  
 11          interest, found by the court to be due to eligible  
 12          employees; or

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

16          Section 108. Special rules concerning employees of local  
 17          educational agencies.

18          (a) Application.

19          (1) In general. Except as otherwise provided in this  
 20          Section, the rights (including the rights under Section  
 21          104, which shall extend throughout the period of leave of  
 22          any employee under this Section), remedies, and  
 23          procedures under this Article shall apply to:

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

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

30          (2) Definitions. For purposes of the application  
 31          described in paragraph (1):

32                  (A) Eligible employee. The term "eligible  
 33                  employee" means an eligible employee of an agency or

1 school described in paragraph (1).

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

4 (b) Leave does not violate certain other federal laws. A  
5 local educational agency and a private elementary or  
6 secondary school shall not be in violation of the Individuals  
7 with Disabilities Education Act (20 U.S.C. 1400 et seq.),  
8 Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.  
9 794), or title VI of the Civil Rights Act of 1964 (42 U.S.C.  
10 2000d et seq.), solely as a result of an eligible employee of  
11 such agency or school exercising the rights of such employee  
12 under this Article.

13 (c) Intermittent leave or leave on a reduced schedule for  
14 instructional employees.

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

25 (A) to take leave for periods of a particular  
26 duration, not to exceed the duration of the planned  
27 medical treatment; or

28 (B) to transfer temporarily to an available  
29 alternative position offered by the employer for  
30 which the employee is qualified, and that:

- 31 (i) has equivalent pay and benefits; and
- 32 (ii) better accommodates recurring periods  
33 of leave than the regular employment position  
34 of the employee.

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

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

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

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

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

20           (2) Leave less than 5 weeks prior to end of term. If  
21          the eligible employee begins leave under subparagraph  
22          (A), (B), or (C) of Section 102(a)(1) during the period  
23          that commences 5 weeks prior to the end of the academic  
24          term, the agency or school may require the employee to  
25          continue taking leave until the end of such term, if:

26                   (A) the leave is of greater than 2 weeks  
27          duration; and

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

30           (3) Leave less than 3 weeks prior to end of term. If  
31          the eligible employee begins leave under subparagraph  
32          (A), (B), or (C) of Section 102(a)(1) during the period  
33          that commences 3 weeks prior to the end of the academic  
34          term and the duration of the leave is greater than 5

1 working days, the agency or school may require the  
2 employee to continue to take leave until the end of such  
3 term.

4 (e) Restoration to equivalent employment position. For  
5 purposes of determinations under Section 104(a)(1)(B)  
6 (relating to the restoration of an eligible employee to an  
7 equivalent position), in the case of a local educational  
8 agency or a private elementary or secondary school, such  
9 determination shall be made on the basis of established  
10 school board policies and practices, private school policies  
11 and practices, and collective bargaining agreements.

12 (f) Reduction of the amount of liability. If a local  
13 educational agency or a private elementary or secondary  
14 school that has violated this Article proves to the  
15 satisfaction of the court that the agency, school, or  
16 department had reasonable grounds for believing that the  
17 underlying act or omission was not a violation of this  
18 Article, such court may, in the discretion of the court,  
19 reduce the amount of the liability provided for under Section  
20 107(a)(1)(A) to the amount and interest determined under  
21 clauses (i) and (ii), respectively, of such Section.

22 Section 109. Notice.

23 (a) In general. Each employer shall post and keep posted,  
24 in conspicuous places on the premises of the employer where  
25 notices to employees and applicants for employment are  
26 customarily posted, a notice, to be prepared or approved by  
27 the Director, setting forth excerpts from, or summaries of,  
28 the pertinent provisions of this Article and information  
29 pertaining to the filing of a charge.

30 (b) Penalty. Any employer that willfully violates this  
31 Section may be assessed a civil money penalty not to exceed  
32 \$100 for each separate offense.

1 ARTICLE II. (BLANK)

2 ARTICLE III.(BLANK)

3 ARTICLE IV. MISCELLANEOUS PROVISIONS

4 Section 401. Effect on other laws.

5 (a) Federal and State antidiscrimination laws. Nothing in  
6 this Act shall be construed to modify or affect any Federal  
7 or State law prohibiting discrimination on the basis of  
8 race, religion, color, national origin, sex, age, or  
9 disability.

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

14 Section 402. Effect on existing employment benefits.

15 (a) More protective. Nothing in this Act shall be  
16 construed to diminish the obligation of an employer to comply  
17 with any collective bargaining agreement or any employment  
18 benefit program or plan that provides greater family or  
19 medical leave rights to employees than the rights established  
20 under this Act.

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

25 Section 403. Encouragement of more generous leave  
26 policies. Nothing in this Act shall be construed to  
27 discourage employers from adopting or retaining leave  
28 policies more generous than any policies that comply with the  
29 requirements under this Act.

1           Section 404. Rules. The Director shall prescribe such  
2 rules as are necessary to carry out this Act not later than  
3 120 days after the effective date of this Act.

4           Section 404.1. Applicability.

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

8                   (A) the date of the termination of such agreement;

9                   or

10                   (B) the date that occurs 12 months after the  
11 effective date of this Act.

12           (2) Nothing in this Act shall be construed to limit the  
13 applicability of the federal Family and Medical Leave Act of  
14 1993 with regard to employers and employees covered by that  
15 Act.

16           Section 405. Effective date. This Act shall take effect 6  
17 months after it becomes law.