



Sen. Toi W. Hutchinson

**Filed: 3/28/2017**

10000SB1296sam002

LRB100 08737 JLS 24264 a

1 AMENDMENT TO SENATE BILL 1296

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1296 by replacing  
3 everything after the enacting clause with the following:

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

6 Section 5. Findings and purpose.

7 (a) 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. More than 40% of all private sector workers  
11 in Illinois (over 2,500,000 people) have no right to a paid  
12 sick day. Over three-fourths of the lowest-wage workers do  
13 not receive paid sick days and cannot forfeit a day's work,  
14 so they often come into work sick.

15 (2) Preventive and routine medical care helps avoid  
16 illness and injury by detecting illnesses early on and

1 shortening the duration of illnesses. Providing employees  
2 with time off to attend to their own health care needs  
3 ensures that they will be healthier and more efficient  
4 employees. It will also reduce the spread of disease within  
5 workplaces and to the public, such as customers, when  
6 employees go to work sick, a practice known as  
7 "presenteeism". Routine medical care results in savings by  
8 detecting and treating illness and injury early and  
9 decreasing the need for emergency care. These savings  
10 benefit public and private payers of health insurance.

11 (3) When the school of a worker's child is closed  
12 because of extreme weather, it is often at the last minute  
13 and workers cannot find someone to babysit so they are  
14 forced to stay at home to take care of their children.

15 (4) Nearly one-quarter of American women report  
16 domestic violence and nearly one in 5 women report  
17 experiencing rape at some time during their lives. Many  
18 workers, men and women, need time off to care for their  
19 health after these incidents or to take legal action.  
20 Without paid time off, victims are in danger of losing  
21 their jobs.

22 (5) Employers that provide paid sick days see better  
23 productivity, reduced flu contagion, and lower turnover,  
24 which saves them the costs of replacing and training  
25 workers.

26 (b) This Act is enacted to establish the Healthy Workplace

1 Act to provide at least a minimum time-off standard of paid  
2 sick days for all workers.

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

4 "Child" means a son or daughter who is a biological,  
5 adopted, or foster child, a stepchild, a legal ward, or a child  
6 of a person standing in loco parentis.

7 "Construction industry" means any constructing, altering,  
8 reconstructing, repairing, rehabilitating, refinishing,  
9 refurbishing, remodeling, remediating, renovating, custom  
10 fabricating, maintenance, landscaping, improving, wrecking,  
11 painting, decorating, demolishing, or adding to or subtracting  
12 from any building, structure, highway, roadway, street,  
13 bridge, alley, sewer, ditch, sewage disposal plant,  
14 waterworks, parking facility, railroad, excavation or other  
15 structure, project, development, real property, or  
16 improvement, or to do any part thereof, whether or not the  
17 performance of the work herein described involves the addition  
18 to or fabrication into, any structure, project, development,  
19 real property, or improvement herein described of any material  
20 or article of merchandise. "Construction industry" also  
21 includes moving construction related materials on the job site  
22 or to or from the job site, snow plowing, snow removal, and  
23 refuse collection.

24 "Department" means the Illinois Department of Labor.

25 "Employee" means any person who performs services for an

1 employer for wage, remuneration, or other compensation. This  
2 includes persons working any number of hours, including a  
3 full-time or part-time status.

4 "Employer" means one who employs at least one employee,  
5 including, but not limited to, this State and its political  
6 subdivisions, a temporary services agency, an employment  
7 agency, or an employee organization. "Employer" does not  
8 include school districts organized under the School Code, park  
9 districts organized under the Park District Code, or any City  
10 of Chicago Sister Agency under the Chicago Minimum Wage and  
11 Paid Sick Leave Ordinance as of the effective date of this Act.

12 "Family member" means a child, spouse, parent, the child or  
13 parent of an employee's spouse, a sibling, grandparent,  
14 grandchild, or any other individual related by blood or whose  
15 close association with the employee is the equivalent of a  
16 family relationship.

17 "Healthcare provider" means a person:

18 (1) who is: (i) licensed to practice medicine in all of  
19 its branches in Illinois and possesses the degree of doctor  
20 of medicine; (ii) licensed to practice medicine in all of  
21 its branches in Illinois and possesses the degree of doctor  
22 of osteopathy or osteopathic medicine; (iii) licensed to  
23 practice medicine in all of its branches or as an  
24 osteopathic physician in another state or jurisdiction; or  
25 (iv) any other person determined by final rule under the  
26 Family and Medical Leave Act of 1993; and

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

3           "Paid sick day" means a portion of or a regular workday  
4           when an employee is unable to report to work because of a  
5           reason described in subsection (b) of Section 15.

6           "Parent" means a biological or adoptive parent, a foster or  
7           stepparent, a parent of a legal ward, or a person who stands in  
8           loco parentis to an employee or an employee's spouse.

9           "Spouse" means a party to a marriage or a party to a civil  
10          union as defined by Illinois statute.

11          Section 15. Provision of paid sick days.

12          (a) All employees who work in Illinois who are absent from  
13          work for a reason set forth in subsection (b) shall be entitled  
14          to earn and use a minimum of 5 paid sick days during a 12-month  
15          period or a pro rata number of paid sick days or hours under  
16          the provisions of subsection (c). The 12-month period for an  
17          employee shall be calculated from the date of hire or  
18          subsequent anniversary date.

19          (b) Paid sick days shall be provided to an employee by an  
20          employer to:

21                 (1) care for the employee's own physical or mental  
22                 illness, injury, or health condition, or seek medical  
23                 diagnosis or care;

24                 (2) care for the employee's family member who is  
25                 suffering from a physical or mental illness, injury, or

1 health condition, or seek medical diagnosis or care; or

2 (3) attend a medical appointment for himself or herself  
3 or a medical appointment of the employee's family member;

4 (4) care for a child whose school or place of care has  
5 been closed by order of a public official due to a public  
6 health emergency or to not go in to work because of the  
7 closure of the employee's place of business by order of a  
8 public health official due to a public health emergency; or

9 (5) be off from work because he or she or the  
10 employee's family member is the victim of domestic violence  
11 as defined in Section 103(3) of the Illinois Domestic  
12 Violence Act of 1986 or sexual violence as defined under  
13 Article 11 and Sections 12-7.3, 12-7.4, and 12-7.5 of the  
14 Illinois Criminal Code of 2012.

15 (c) Paid sick days shall accrue at the rate of one hour of  
16 paid sick time for every 40 hours worked up to a minimum of 40  
17 hours of paid sick time unless the employer selects a higher  
18 limit. Employees who are exempt from the overtime requirements  
19 of the federal Fair Labor Standards Act (29 U.S.C. 213(a)(1))  
20 shall be deemed to work 40 hours in each work week for purposes  
21 of paid sick day accrual unless their normal work week is less  
22 than 40 hours, in which case paid sick days accrue based on  
23 that normal work week. Employees shall determine how much paid  
24 sick days they need to use, provided that employers may set a  
25 reasonable minimum increment for the use of a paid sick day not  
26 to exceed 4 hours per day.

1           (d) Employees shall be paid their regular rate of pay for a  
2 paid sick day. However, an employee engaged in an occupation in  
3 which gratuities have customarily and usually constituted and  
4 have been recognized as part of the remuneration for hire  
5 purposes shall be paid by his or her employer at least the full  
6 Illinois minimum wage for a paid sick day taken. Paid sick days  
7 under this Act shall not be charged or otherwise credited to  
8 employee vacation accounts.

9           (e) Paid sick days shall begin to accrue at the  
10 commencement of employment or on the effective date of this  
11 Act, whichever is later. An employee shall be entitled to begin  
12 using a sick day 180 days following commencement of his or her  
13 employment or 180 days following the effective date of this  
14 Act, whichever is later. Nothing in this Section shall be  
15 construed to discourage or prohibit an employer from allowing  
16 the use of paid sick days at an earlier date than this Section  
17 requires. Nothing in this Act shall be construed to discourage  
18 employers from adopting or retaining paid sick day policies  
19 more generous than policies that comply with the requirements  
20 of this Act.

21           (f) An employer may require certification of the qualifying  
22 illness, injury, or health condition when paid sick days cover  
23 more than 3 consecutive workdays. Any reasonable documentation  
24 signed by a healthcare provider involved in following or  
25 treating the illness, injury, or health condition, and  
26 indicating the need for the amount of sick days taken, shall be

1 deemed acceptable certification. Nothing in this Act shall be  
2 construed to require an employee to provide as certification  
3 any information from a healthcare provider that would be in  
4 violation of Section 1177 of the Social Security Act or the  
5 regulations promulgated pursuant to the federal Health  
6 Insurance Portability and Accountability Act of 1996. If an  
7 employer possesses health information about an employee or  
8 employee's family member, such information shall be treated as  
9 confidential and not disclosed except with the permission of  
10 the affected employee. For time used pursuant to subdivision  
11 (b) (5), any one of the following is acceptable documentation,  
12 and only one of the following shall be required: a police  
13 report, court document, or signed statement from an attorney, a  
14 member of the clergy, or a victim services advocate. It is up  
15 to the employee to determine which documentation to submit.

16 The employer shall not delay the commencement of leave  
17 taken for purposes of subsection (b) of this Section nor delay  
18 pay for this period on the basis that the employer has not yet  
19 received the certification.

20 (g) Paid sick days shall be provided upon the oral request  
21 of an employee. If the necessity for paid sick days under this  
22 Act is foreseeable, the employee shall provide the employer  
23 with not less than 7 days' notice before the date the leave is  
24 to begin. If the necessity for leave is not foreseeable, the  
25 employee shall provide such notice as soon as is practicable  
26 after the employee is aware of the necessity of such leave. An



1 employer may not require, as a condition of providing paid sick  
2 days under this Act, that the employee search for or find a  
3 replacement worker to cover the hours during which the employee  
4 is on paid sick days leave.

5 (h) Paid sick days shall carry over annually to the extent  
6 not used by the employee, provided that nothing in this Act  
7 shall be construed to require an employer to allow use of more  
8 than 5 paid sick days for an employee unless an employer agrees  
9 to do so.

10 (i) It shall be unlawful for an employer to interfere with,  
11 restrain, deny, change work days or hours scheduled to avoid  
12 paying sick days, or discipline an employee for the exercise  
13 of, or the attempt to exercise, any right provided under or in  
14 connection with this Act, including considering the use of paid  
15 sick days as a negative factor in an employment action that  
16 involves hiring, terminating, evaluating, promoting,  
17 disciplining, or counting the paid sick days under a no-fault  
18 attendance policy.

19 (j) During any period an employee takes leave under this  
20 Act, the employer shall maintain coverage for the employee and  
21 any family member under any group health plan for the duration  
22 of such leave at at least the level and conditions of coverage  
23 as would have been provided if the employee had not taken the  
24 leave.

25 (k) Nothing in this Section shall be construed as requiring  
26 financial or other reimbursement to an employee from an

1 employer upon the employee's termination, resignation,  
2 retirement, or other separation from employment for accrued  
3 paid sick days that have not been used.

4 (l) Nothing in this Section shall be construed to prohibit  
5 an employer from taking disciplinary action, up to and  
6 including termination, against an employee who uses paid sick  
7 days provided pursuant to this Act for purposes other than  
8 those described in this Section.

9 (m) If an employee is transferred to a separate division,  
10 entity, or location, but remains employed by the same employer,  
11 the employee is entitled to all paid sick days accrued at the  
12 prior division, entity, or location and is entitled to use all  
13 paid sick days as provided in this Section. Where there is a  
14 separation from employment and the employee is rehired within  
15 12 months of separation by the same employer, previously  
16 accrued paid sick days that had not been used shall be  
17 reinstated. Such employee shall be entitled to use accrued paid  
18 sick days at the commencement of employment following a  
19 separation from employment of 12 months or less.

20 (n) Nothing in this Section shall be deemed to interfere  
21 with, impede, or in any way diminish the right of employees to  
22 bargain collectively with their employers through  
23 representatives of their own choosing in order to establish  
24 wages or other conditions of work in excess of the applicable  
25 minimum standards of the provisions of this Act. Nothing in  
26 this Section shall be deemed to affect the validity or change

1 the terms of bona fide collective bargaining agreements in  
2 force on the effective date of this Act. After the effective  
3 date of this Act, requirements of this Section may be waived in  
4 a bona fide collective bargaining agreement, but only if the  
5 waiver is set forth explicitly in such agreement in clear and  
6 unambiguous terms. In no event shall this Section apply to any  
7 employee working in the construction industry who is covered by  
8 a bona fide collective bargaining agreement.

9 Section 20. Related employer responsibilities.

10 (a) An employer subject to any provision of this Act shall  
11 make and preserve records documenting hours worked by employees  
12 and the amount of paid sick days taken by employees for a  
13 period of not less than 3 years and shall allow the Department  
14 access to such records, with appropriate notice and a mutually  
15 agreeable time, to monitor compliance with the requirements of  
16 this Section.

17 (b) An agreement by an employee to waive his or her right  
18 under this Act, except as allowed under subsection (n) of  
19 Section 15, is void as against public policy.

20 (c) Employers who have a paid time off policy that complies  
21 with at least the minimum requirements of this Act shall not be  
22 required to modify such a policy if such policy offers an  
23 employee the option, at the employee's discretion, to take paid  
24 sick days that are at least equivalent to the paid sick days  
25 described in this Act.

1           (d) Employers shall post and keep posted in a conspicuous  
2 place on the premises of the employer where notices to  
3 employees are customarily posted, or include in an employee  
4 manual or policy, a notice, to be prepared by the Department,  
5 summarizing the requirements of this Act and information  
6 pertaining to the filing of a charge. If an employer's  
7 workforce is comprised of a significant portion of workers who  
8 are not literate in English, the employer is responsible for  
9 providing the notice in a language in which the employees are  
10 literate. An employer who willfully violates the notice and  
11 posting requirements of this Section shall be subject to a  
12 civil penalty in an amount not to exceed \$100 for each separate  
13 offense.

14           Section 25. Unlawful employer practices. It is unlawful for  
15 any employer to take any adverse action against an employee  
16 because the employee (1) exercises rights or attempts to  
17 exercise rights under this Act, (2) opposes practices which  
18 such employee believes to be in violation of this Act, or (3)  
19 supports the exercise of rights of another under this Act.

20           Exercising rights under this Act includes filing an action  
21 or instituting or causing to be instituted any proceeding under  
22 or related to this Act; providing or agreeing to provide any  
23 information in connection with any inquiry or proceeding  
24 relating to any right provided under this Act; or testifying to  
25 or agreeing to testify in any inquiry or proceeding relating to

1 any right provided under this Act.

2 Section 30. Department responsibilities.

3 (a) The Department shall administer and enforce this Act  
4 and adopt rules under the Illinois Administrative Procedure Act  
5 for the purpose of this Act. The Department shall have the  
6 powers and the parties shall have the rights provided in the  
7 Illinois Administrative Procedure Act for contested cases. The  
8 Department shall have the power to conduct investigations in  
9 connection with the administration and enforcement of this Act,  
10 including the power to conduct depositions and discovery and to  
11 issue subpoenas. If the Department finds cause to believe that  
12 this Act has been violated, the Department shall notify the  
13 parties in writing and the matter shall be referred to an  
14 Administrative Law Judge to schedule a formal hearing in  
15 accordance with hearing procedures established by rule.

16 (b) The Department is authorized to impose civil penalties  
17 prescribed in Section 35 in administrative proceedings that  
18 comply with the Illinois Administrative Procedure Act and to  
19 supervise the payment of the unpaid wages and damages owing to  
20 the employee or employees under this Act. The Department may  
21 bring any legal action necessary to recover the amount of  
22 unpaid wages, damages, and penalties, and the employer shall be  
23 required to pay the costs. Any sums recovered by the Department  
24 on behalf of an employee under this Act shall be paid to the  
25 employee or employees affected. However, 20% of any penalty

1 collected from the employer for a violation of this Act shall  
2 be deposited into the Healthy Workplace Fund, a special fund  
3 created in the State treasury that is dedicated to enforcing  
4 this Act.

5 (c) The Attorney General may bring an action to enforce the  
6 collection of any civil penalty imposed under this Act.

7 Section 35. Enforcement.

8 (a) An employee who believes his or her rights under this  
9 Act or any rule adopted under this Act have been violated may,  
10 within 3 years after the date of the last event constituting  
11 the alleged violation for which the action is brought, file a  
12 complaint with the Department or file a civil action.

13 (b) Any employer that violates this Act is liable in a  
14 claim filed with the Department or in a civil action in circuit  
15 court to any affected individuals for actual and compensatory  
16 damages, with interest at the prevailing rate, punitive  
17 damages, and such equitable relief as may be appropriate, in  
18 addition to reasonable attorney's fees, reasonable expert  
19 witness fees, and other costs of the action to be paid by the  
20 defendant. A civil action may be brought without first filing  
21 an administrative complaint.

22 (c) Any employer that the Department or a court finds by a  
23 preponderance of the evidence to have knowingly, repeatedly, or  
24 with reckless disregard violated any provision of this Act or  
25 any rule adopted under this Act is subject to a civil money

1 penalty not to exceed \$2,500 for each separate offense.

2 Section 90. The State Finance Act is amended by adding  
3 Section 5.878 as follows:

4 (30 ILCS 105/5.878 new)

5 Sec. 5.878. The Healthy Workplace Fund.

6 Section 97. Severability. The provisions of this Act are  
7 severable under Section 1.31 of the Statute on Statutes.

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law."