



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2343

by Rep. Jehan Gordon-Booth

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.891 new

Creates the Healthy Workplace Act and amends the State Finance Act. Requires employers to provide specified paid sick days to employees. Sets forth the purposes for and manner in which the sick days may be used. Contains provisions regarding employer responsibilities, unlawful employer practices, and other matters. Provides that the Department of Labor shall administer the Act. Authorizes the imposition of civil penalties. Authorizes individuals to file civil actions with respect to violations. Creates the Healthy Workplace Fund as a special fund in the State treasury. Effective immediately.

LRB101 04970 TAE 49979 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 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
17 shortening the duration of illnesses. Providing employees
18 with time off to attend to their own health care needs
19 ensures that they will be healthier and more efficient
20 employees. It will also reduce the spread of disease within
21 workplaces and to the public, such as customers, when
22 employees go to work sick, a practice known as
23 "presenteeism". Routine medical care results in savings by

1 detecting and treating illness and injury early and
2 decreasing the need for emergency care. These savings
3 benefit public and private payers of health insurance.

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

8 (4) Nearly one-quarter of American women report
9 domestic violence and nearly one in 5 women report
10 experiencing rape at some time during their lives. Many
11 workers, men and women, need time off to care for their
12 health after these incidents or to take legal action.
13 Without paid time off, victims are in danger of losing
14 their jobs.

15 (5) Employers that provide paid sick days see better
16 productivity, reduced flu contagion, and lower turnover,
17 which saves them the costs of replacing and training
18 workers.

19 (b) This Act is enacted to establish the Healthy Workplace
20 Act to provide a minimum time-off standard of paid sick days
21 for all workers.

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

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

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

18 "Department" means the Illinois Department of Labor.

19 "Employee" means any person who performs services for an
20 employer for wages, remuneration, or other compensation.
21 "Employee" includes a person working any number of hours at
22 full-time or part-time status. "Employee" does not include any
23 employee of an employer subject to the provisions of Title II
24 of the Railway Labor Act (45 U.S.C. 181 et seq.) or to an
25 employer or employee as defined in either the federal Railroad
26 Unemployment Insurance Act (45 U.S.C. 351 et seq.) or the

1 Federal Employers' Liability Act, United States Code, Title 45,
2 Sections 51 through 60, or other comparable federal law.
3 Nothing in this Section shall hinder or prohibit the ability of
4 an exempted employee from taking non-compensated time off due
5 to an illness.

6 "Employer" means any individual; partnership; association;
7 corporation; limited liability company; business trust;
8 employment and labor placement agency where wages are made
9 directly or indirectly by the agency or business for work
10 undertaken by employees under hire to a third party pursuant to
11 a contract between the business or agency with the third party;
12 the State of Illinois and local governments, or any political
13 subdivision of the State or local government, or State or local
14 government agency; for which one or more persons is gainfully
15 employed, express or implied, whether lawfully or unlawfully
16 employed, who employs a worker or who exercises control over a
17 worker's wages, remuneration, or other compensation, hours of
18 employment, place of employment, or working conditions, or
19 whose agent or any other person or group of persons acting
20 directly or indirectly in the interest of an employer in
21 relation to the employee exercises control over a worker's
22 wages, remuneration, or other compensation, hours of
23 employment, place of employment, or working conditions.
24 "Employer" does not include school districts organized under
25 the School Code, park districts organized under the Park
26 District Code, or any City of Chicago Sister Agency under the

1 Chicago Minimum Wage and Paid Sick Leave Ordinance as of the
2 effective date of this Act.

3 "Family member" means a child, spouse, parent, the child or
4 parent of an employee's spouse, a sibling, grandparent,
5 grandchild, or any other individual related by blood or whose
6 close association with the employee is the equivalent of a
7 family relationship.

8 "Healthcare provider" means a person who is: (i) licensed
9 to practice medicine in all of its branches in Illinois and
10 possesses the degree of doctor of medicine; (ii) licensed to
11 practice medicine in all of its branches in Illinois and
12 possesses the degree of doctor of osteopathy or osteopathic
13 medicine; (iii) licensed to practice medicine in all of its
14 branches or as an osteopathic physician in another state or
15 jurisdiction; (iv) a chiropractic physician licensed under the
16 Medical Practice Act of 1987; or (v) any other person as
17 determined by the final rule under the Family and Medical Leave
18 Act of 1993 in effect as of the effective date of this Act.

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

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

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

1 Section 15. Provision of paid sick days.

2 (a) All employees who work in Illinois who are absent from
3 work for a reason set forth in subsection (b) shall be entitled
4 to earn and use a minimum of 5 paid sick days during a 12-month
5 period or a pro rata number of paid sick days or hours under
6 the provisions of subsection (c). The 12-month period for an
7 employee shall be calculated annually from the date of hire or
8 the effective date of this Act, whichever is later.

9 (b) Paid sick days shall be provided to an employee by an
10 employer to:

11 (1) care for the employee's own physical or mental
12 illness, injury, or health condition, or seek medical
13 diagnosis or care;

14 (2) care for the employee's family member who is
15 suffering from a physical or mental illness, injury, or
16 health condition, or seek medical diagnosis or care; or

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

19 (4) care for a child whose school or place of care has
20 been closed by order of a public official due to a public
21 health emergency or to not go in to work because of the
22 closure of the employee's place of business by order of a
23 public health official due to a public health emergency; or

24 (5) be off from work because he or she or the
25 employee's family member is the victim of domestic violence

1 as defined in Section 103(3) of the Illinois Domestic
2 Violence Act of 1986 or sexual violence as defined under
3 Article 11 and Sections 12-7.3, 12-7.4, and 12-7.5 of the
4 Criminal Code of 2012.

5 (c) Paid sick days shall accrue at the rate of one hour of
6 paid sick time for every 40 hours worked up to a minimum of 40
7 hours of paid sick time unless the employer selects a higher
8 limit. Employees who are exempt from the overtime requirements
9 of the federal Fair Labor Standards Act (29 U.S.C. 213(a)(1))
10 shall be deemed to work 40 hours in each work week for purposes
11 of paid sick day accrual unless their normal work week is less
12 than 40 hours, in which case paid sick days accrue based on
13 that normal work week. Employees shall determine how much paid
14 sick days they need to use, except that employers may set a
15 reasonable minimum increment for the use of a paid sick day not
16 to exceed 4 hours per day.

17 (d) Employees shall be paid their regular rate of pay for a
18 paid sick day. However, an employee engaged in an occupation in
19 which gratuities or commissions have customarily and usually
20 constituted and have been recognized as part or all of the
21 remuneration for hire purposes shall be paid by his or her
22 employer at least the full Illinois minimum wage for a paid
23 sick day taken. Paid sick days under this Act shall not be
24 charged or otherwise credited to employee vacation accounts.

25 (e) Paid sick days shall begin to accrue at the
26 commencement of employment or on the effective date of this

1 Act, whichever is later. An employee shall be entitled to begin
2 using paid sick days 180 days following commencement of his or
3 her employment or 180 days following the effective date of this
4 Act, whichever is later. Nothing in this Section shall be
5 construed to discourage or prohibit an employer from allowing
6 the use of paid sick days at an earlier date than this Section
7 requires. 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.

11 (f) An employer may require certification of the qualifying
12 illness, injury, or health condition when paid sick days cover
13 more than 3 consecutive workdays. Any reasonable documentation
14 signed by a healthcare provider involved in following or
15 treating the illness, injury, or health condition and
16 indicating the need for the amount of sick days taken shall be
17 deemed acceptable certification. Nothing in this Act shall be
18 construed to require an employee to provide as certification
19 any information from a healthcare provider that would be in
20 violation of Section 1177 of the Social Security Act or the
21 regulations promulgated pursuant to the federal Health
22 Insurance Portability and Accountability Act of 1996. If an
23 employer possesses health information about an employee or
24 employee's family member, the information shall be treated as
25 confidential and not disclosed except with the permission of
26 the affected employee. For time used pursuant to subdivision

1 (b) (5), any one of the following is acceptable documentation,
2 and only one of the following shall be required: a police
3 report, court document, or signed statement from an attorney, a
4 member of the clergy, or a victim services advocate. It is up
5 to the employee to determine which documentation to submit.

6 The employer shall not delay the commencement of leave
7 taken for purposes of subsection (b) of this Section nor delay
8 pay for this period on the basis that the employer has not yet
9 received the certification.

10 (g) Paid sick days shall be provided upon the oral request
11 of an employee. If the necessity for paid sick days under this
12 Act is foreseeable, the employee shall provide the employer
13 with not less than 7 days' notice before the date the leave is
14 to begin. If the necessity for leave is not foreseeable, the
15 employee shall provide notice as soon as is practicable after
16 the employee is aware of the necessity of the 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 (h) Paid sick days shall carry over annually to the extent
22 not used by the employee; however, nothing in this Act shall be
23 construed to require an employer to allow use of more than 40
24 hours of paid sick time for an employee unless an employer
25 agrees to do so.

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

1 restrain, deny, change work days or hours scheduled to avoid
2 paying sick days, or discipline an employee for the exercise
3 of, or the attempt to exercise, any right provided under or in
4 connection with this Act, including considering the use of paid
5 sick days as a negative factor in an employment action that
6 involves hiring, terminating, evaluating, promoting,
7 disciplining, or counting the paid sick days under a no-fault
8 attendance policy.

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

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

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

25 (m) If an employee is transferred to a separate division,
26 entity, or location, but remains employed by the same employer,

1 the employee is entitled to all paid sick days accrued at the
2 prior division, entity, or location and is entitled to use all
3 paid sick days as provided in this Section. If there is a
4 separation from employment and the employee is rehired within
5 12 months of separation by the same employer, previously
6 accrued paid sick days that had not been used shall be
7 reinstated. An employee shall be entitled to use accrued paid
8 sick days at the commencement of employment following a
9 separation from employment of 12 months or less.

10 (n) Nothing in this Section shall be deemed to interfere
11 with, impede, or in any way diminish the right of employees to
12 bargain collectively with their employers through
13 representatives of their own choosing in order to establish
14 wages or other conditions of work in excess of the applicable
15 minimum standards of the provisions of this Act. Nothing in
16 this Section shall be deemed to affect the validity or change
17 the terms of bona fide collective bargaining agreements in
18 force on the effective date of this Act. After the effective
19 date of this Act, requirements of this Section may be waived in
20 a bona fide collective bargaining agreement, but only if the
21 waiver is set forth explicitly in the agreement in clear and
22 unambiguous terms. In no event shall this Section apply to any
23 employee working in the construction industry who is covered by
24 a bona fide collective bargaining agreement.

25 Section 20. Related employer responsibilities.

1 (a) An employer subject to any provision of this Act shall
2 make and preserve records documenting hours worked by employees
3 and the amount of paid sick days taken by employees for a
4 period of not less than 3 years and shall allow the Department
5 access to the records, with appropriate notice and a mutually
6 agreeable time, to monitor compliance with the requirements of
7 this Section. In addition, the records shall be preserved for
8 the duration of any claim pending pursuant to Section 35 of
9 this Act.

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

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

19 (d) Employers shall post and keep posted in a conspicuous
20 place on the premises of the employer where notices to
21 employees are customarily posted, or include in an employee
22 manual or policy, a notice, to be prepared by the Department,
23 summarizing the requirements of this Act and information
24 pertaining to the filing of a charge. If an employer's
25 workforce is comprised of a significant portion of workers who
26 are not literate in English, the employer is responsible for

1 providing the notice in a language in which the employees are
2 literate. An employer who willfully violates the notice and
3 posting requirements of this Section shall be subject to a
4 civil penalty in an amount not to exceed \$100 for each separate
5 offense.

6 Section 25. Unlawful employer practices. It is unlawful for
7 any employer to take any adverse action against an employee
8 because the employee (1) exercises rights or attempts to
9 exercise rights under this Act, (2) opposes practices that the
10 employee believes to be in violation of this Act, or (3)
11 supports the exercise of rights of another under this Act.

12 Exercising rights under this Act includes filing an action
13 or instituting or causing to be instituted any proceeding under
14 or related to this Act; providing or agreeing to provide any
15 information in connection with any inquiry or proceeding
16 relating to any right provided under this Act; or testifying to
17 or agreeing to testify in any inquiry or proceeding relating to
18 any right provided under this Act.

19 Section 30. Department responsibilities.

20 (a) The Department shall administer and enforce this Act
21 and adopt rules under the Illinois Administrative Procedure Act
22 for the purpose of this Act. The Department shall have the
23 powers and the parties shall have the rights provided in the
24 Illinois Administrative Procedure Act for contested cases. The

1 Department shall have the power to conduct investigations in
2 connection with the administration and enforcement of this Act,
3 including the power to conduct depositions and discovery and to
4 issue subpoenas. If the Department finds cause to believe that
5 this Act has been violated, the Department shall notify the
6 parties in writing and the matter shall be referred to an
7 Administrative Law Judge to schedule a formal hearing in
8 accordance with hearing procedures established by rule.

9 (b) The Department is authorized to impose civil penalties
10 prescribed in Section 35 in administrative proceedings that
11 comply with the Illinois Administrative Procedure Act and to
12 supervise the payment of the unpaid wages and damages owing to
13 the employee or employees under this Act. The Department may
14 bring any legal action necessary to recover the amount of
15 unpaid wages, damages, and penalties, and the employer shall be
16 required to pay the costs. Any sums recovered by the Department
17 on behalf of an employee under this Act shall be paid to the
18 employee or employees affected. However, 20% of any penalty
19 collected from the employer for a violation of this Act shall
20 be deposited into the Healthy Workplace Fund, a special fund
21 created in the State treasury that is dedicated to enforcing
22 this Act.

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

25 Section 35. Enforcement.

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

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

15 (c) Any employer that the Department or a court finds by a
16 preponderance of the evidence to have knowingly, repeatedly, or
17 with reckless disregard violated any provision of this Act or
18 any rule adopted under this Act is subject to a civil money
19 penalty not to exceed \$2,500 for each separate offense.

20 Section 90. The State Finance Act is amended by adding
21 Section 5.891 as follows:

22 (30 ILCS 105/5.891 new)

23 Sec. 5.891. The Healthy Workplace Fund.

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

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.