

HB3532



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3532

by Rep. Anne Stava-Murray

SYNOPSIS AS INTRODUCED:

New Act

Creates the Family and Medical Leave Act. Sets forth requirements for family and medical leave to be provided to employees in Illinois. Applies to employers employing more than 20 employees. Provides for 16 workweeks of family leave for the birth of a child, placement of a child for adoption or foster care, or the care of a family member who has a serious health condition. Provides for administration by the Department of Labor. Authorizes enforcement by the Attorney General. Effective July 1, 2020.

LRB101 10634 JLS 55740 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 Family
5 and Medical Leave Act.

6 Section 5. Definitions: In this Act:

7 "Department" means the Department of Labor.

8 "Employee" means any individual who has been employed by
9 the same employer for one year without a break in service
10 except for regular holiday, sick, or personal leave granted by
11 the employer and has worked at least 1000 hours during the
12 12-month period immediately preceding the request for family or
13 medical leave.

14 "Employer" means an individual, partnership, corporation,
15 association, business, trust, person, or entity for whom
16 employees are gainfully employed in Illinois and includes the
17 State of Illinois, any State officer, department, or agency,
18 any unit of local government, and any school district.

19 "Employment benefit" means any benefit, other than salary
20 or wages, provided or made available to an employee by an
21 employer, including, but not limited to, group life, health,
22 and disability insurance, sick and annual leave, and
23 educational and pension benefits, regardless of whether the

1 benefit is provided by a policy or practice of an employer or
2 by an employee welfare benefit plan as defined in Title 1,
3 subtitle A, Section 3(3) of the Employee Retirement Income
4 Security Act of 1974, 88 Stat. 833; 29 U.S.C. 1002(1).

5 "Family member" means:

6 (A) A person to whom the employee is related by blood,
7 legal custody, or marriage;

8 (B) A child who lives with an employee and for whom the
9 employee permanently assumes and discharges parental
10 responsibility;

11 (C) A person with whom the employee shares or has
12 shared, within the last year, a mutual residence and with
13 whom the employee maintains a committed relationship; or

14 (D) A foster child.

15 "Health care provider" means any person licensed under
16 federal, state, or District law to provide health care
17 services.

18 "Reduced leave schedule" means leave scheduled for a fewer
19 number of hours than an employee usually works during each
20 workweek or workday.

21 "Serious health condition" means a physical or mental
22 illness, injury, or impairment that involves:

23 (A) Inpatient care in a hospital, hospice, or
24 residential health care facility; or

25 (B) Continuing treatment or supervision at home by a
26 health care provider or other competent individual.

1 Section 10. Family leave requirement.

2 (a) An employee shall be entitled to a total of 16
3 workweeks of family leave during any 24-month period for:

4 (1) The birth of a child of the employee;

5 (2) The placement of a child with the employee for
6 adoption or foster care;

7 (3) The placement of a child with the employee for whom
8 the employee permanently assumes and discharges parental
9 responsibility; or

10 (4) The care of a family member of the employee who has
11 a serious health condition.

12 (b) The entitlement to family leave under paragraphs (1)
13 through (3) of subsection (a) shall expire 12 months after the
14 birth of the child or placement of the child with the employee.

15 (c) Subject to the requirements of subsection (h), in the
16 case of a family member who has a serious health condition, the
17 family leave may be taken intermittently when medically
18 necessary.

19 (d) Upon agreement between the employer and the employee,
20 family leave may be taken on a reduced leave schedule, during
21 which the 16 workweeks of family leave may be taken over a
22 period not to exceed 24 consecutive workweeks.

23 (e) (1) Except as provided in paragraphs (2) and (3) of this
24 subsection, family leave may consist of unpaid leave.

25 (2) Any paid family, vacation, personal, or

1 compensatory leave provided by an employer that the
2 employee elects to use for family leave shall count against
3 the 16 workweeks of allowable family leave provided in this
4 Act.

5 (3) If an employer has a program that allows an
6 employee to use the paid leave of another employee under
7 certain conditions, and the conditions have been met, the
8 employee may use the paid leave as family leave and the
9 leave shall count against the 16 workweeks of family leave
10 provided in this Act.

11 (4) Nothing in this Section shall require an employer
12 to provide paid family leave.

13 (f) If the necessity for leave under this Section is
14 foreseeable based on an expected birth or placement of a child
15 with an employee, the employee shall provide the employer with
16 reasonable prior notice of the expected birth or placement of a
17 child with the employee.

18 (g) If the necessity for family leave under this Section is
19 foreseeable based on planned medical treatment or supervision,
20 an employee shall:

21 (1) provide the employer with reasonable prior notice
22 of the medical treatment or supervision; and

23 (2) make a reasonable effort to schedule the medical
24 treatment or supervision, subject to the approval of the
25 health care provider of the employee or family member, in a
26 manner that does not disrupt unduly the operations of the

1 employer.

2 (h) (1) If 2 family members are employees of the same
3 employer:

4 (A) the employer may limit to 16 workweeks during a
5 24-month period the aggregate number of family leave
6 workweeks to which the family members are entitled; and

7 (B) the employer may limit to 4 workweeks during a
8 24-month period the aggregate number of family leave
9 workweeks to which the family members are entitled to
10 take simultaneously.

11 (2) In this subsection, the term "same employer"
12 includes an office, division, subdivision, or other
13 organizational Section of an employer in which both
14 employees have the same or interrelated duties and the
15 absence of both employees would disrupt unduly the conduct
16 of the employer's business.

17 (i) (1) Information that an employee gives to an employer
18 regarding a family relationship, pursuant to which the employee
19 seeks to take family leave under this Section, shall be used
20 only to make a decision in regard to the provisions of this
21 Act. An employer shall keep any information regarding the
22 family relationship confidential.

23 (2) Any employer who willfully violates this
24 subsection shall be assessed a civil penalty of \$1,000 for
25 each offense.

1 Section 15. Medical leave requirement.

2 (a) Subject to the provisions of Section 20, any employee
3 who becomes unable to perform the functions of the employee's
4 position because of a serious health condition shall be
5 entitled to medical leave for as long as the employee is unable
6 to perform the functions, except that the medical leave shall
7 not exceed 16 workweeks during any 24-month period. The medical
8 leave may be taken intermittently when medically necessary.

9 (b) (1) Except as provided in paragraphs (2) through (4) of
10 this subsection, medical leave may consist of unpaid leave.

11 (2) Any paid medical or sick leave provided by an
12 employer that the employee elects to use for medical leave
13 shall count against the 16 workweeks of allowable medical
14 leave under this Act.

15 (3) If an employer and employee agree that an employee
16 may use paid vacation, personal, or compensatory leave as
17 medical leave, the paid vacation, personal, or
18 compensatory leave shall count against the 16 workweeks of
19 medical leave provided in this Act.

20 (4) If an employer has a program that allows an
21 employee to use the paid leave of another employee under
22 certain conditions, and the conditions have been met, the
23 employee may use the paid leave as medical leave and the
24 leave shall count against the 16 workweeks of medical leave
25 provided in this Act.

26 (c) If the need for medical leave is foreseeable based on

1 planned medical treatment or supervision, the employee shall:

2 (1) Provide the employer with prior reasonable notice
3 of the medical treatment or supervision; and

4 (2) Make a reasonable effort to schedule the medical
5 treatment or supervision, subject to the approval of the
6 health care provider of the employee, in a manner that does
7 not disrupt unduly the operations of the employer.

8 Section 20. Certification.

9 (a) An employer may require that a request for family leave
10 under item (4) of subsection (a) of Section 10 of medical leave
11 under Section 15 be supported by a certification issued by the
12 health care provider of the employee or family member. The
13 employee shall provide a copy of the certification to the
14 employer.

15 (b) The certification provided by the employee to the
16 employer shall state:

17 (1) The date on which the serious health condition
18 commenced;

19 (2) The probable duration of the condition;

20 (3) The appropriate medical facts within the knowledge
21 of the health care provider that would entitle the employee
22 to take leave under this Act; and

23 (4) (A) For purposes of medical leave under Section 15,
24 a statement that the employee is unable to perform the
25 functions of the employee's position; or

1 (B) For purposes of family leave under items (4) of
2 subsection (a) of Section 10, an estimate of the amount
3 of time that the employee is needed to care for the
4 family member.

5 (c) For the purposes of subsection (c) of Section 25, the
6 employer may request that certification issued in any case
7 involving medical leave under Section 15 include an explanation
8 of the extent to which the employee is unable to perform the
9 functions of the employee's position.

10 (d) (1) If the employer has reason to doubt the validity of
11 the certification provided under subsection (a), the employer
12 may require that the employee obtain, at the expense of the
13 employer, the opinion of a second health care provider approved
14 by the employer, in regard to any information required to be
15 certified under subsection (b).

16 (2) (A) If the second opinion provided under this
17 subsection differs from the original certification
18 provided under subsection (a), the employee may obtain the
19 opinion of a third health care provider mutually agreed
20 upon by the employer and the employee, in regard to any
21 information required to be certified under subsection (b).
22 The employer shall pay the cost of the opinion of the third
23 health care provider.

24 (B) The opinion of the third health care provider
25 in regard to the information certified under
26 subsection (b) shall be final and binding on the

1 employer and employee.

2 (e) Any health care provider approved or mutually agreed
3 upon under items (1) or (2) of subsection (d) may not be
4 retained on a regular basis by the employer or employee or
5 otherwise bear a close relationship to the employer or employee
6 that would give the appearance that the certification is
7 biased.

8 (f) The employer may require that the employee obtain
9 subsequent recertifications on a reasonable basis.

10 (g) (1) Certification information requested under this
11 Section shall be used only to make a decision in regard to the
12 provisions of this Act. An employer shall keep any medical
13 information obtained from a certification request
14 confidential.

15 (2) Any employer who willfully violates this
16 subsection shall be assessed a civil penalty of \$1,000 for
17 each offense.

18 Section 25. Employment and benefits protection.

19 (a) Any employee who takes family or medical leave under
20 this Act shall not lose any employment benefit or seniority
21 accrued before the date on which the family or medical leave
22 commenced.

23 (b) (1) During any period in which an employee takes family
24 or medical leave under Section 10 or Section 15, the employer
25 shall maintain coverage under any group health plan, as defined

1 in Section 5000(b) of the Internal Revenue Code of 1986, except
2 that for the purposes of this Act, the term "group health plan"
3 shall include a group health plan provided by the State of
4 Illinois, any State officer, department, or agency, any unit of
5 local government, and any school district. The employer shall
6 maintain coverage for the duration of the family or medical
7 leave at the same level and under the same conditions that
8 coverage would have been provided if the employee had continued
9 in employment from the date the employee commenced the family
10 or medical leave until the date the employee was restored to
11 employment pursuant to subsection (d).

12 (2) An employer may require the employee to continue to
13 make any contribution to a group health plan that the
14 employee would have made if the employee had not taken
15 family or medical leave. If an employee is unable or
16 refuses to make the contribution to the group health plan,
17 the employee shall forfeit the health plan benefit until
18 the employee is restored to employment pursuant to
19 subsection (d) and resumes payment to the plan.

20 (c)(1) Nothing in this Act shall prohibit an employer and
21 an employee with a serious health condition from agreeing
22 mutually to alternative employment for the employee throughout
23 the duration of the serious health condition of the employee.
24 Any period of alternative employment shall not cause a
25 reduction in the amount of family or medical leave to which the
26 employee is entitled under Section 10 or Section 15.

1 (2) When the employee who agreed to alternative
2 employment is able to perform the functions of the
3 employee's original position, the employee shall be
4 restored to the original position pursuant to subsection
5 (d).

6 (d) Except as provided in subsection (f), upon return from
7 family or medical leave taken pursuant to Section 10 or Section
8 15, the employee shall be:

9 (1) restored by the employer to the position of
10 employment held by the employee when the family or medical
11 leave commenced; or

12 (2) restored to a position of employment equivalent to
13 the position held by the employee when the family or
14 medical leave commenced that includes equivalent
15 employment benefits, pay, seniority, and other terms and
16 conditions of employment.

17 (e) Except as provided in subsection (b), nothing in this
18 Section shall entitle an employee restored by an employer to a
19 position of employment to:

20 (1) the accrual of any seniority or employment benefit
21 during any period of family or medical leave; or

22 (2) any right, employment benefit, or position of
23 employment other than any right, employment benefit, or
24 position of employment to which the employee would have
25 been entitled had the employee not taken the family or
26 medical leave.

1 (f) (1) Except as provided in paragraph (2) of this
2 subsection, an employer in Illinois may deny restoration of
3 employment to a salaried employee if the employee is among the
4 5 highest paid employees of an employer of fewer than 50
5 persons or among the highest paid 10% of employees of an
6 employer of 50 or more persons and the following conditions are
7 met:

8 (A) the employer demonstrates that denial of
9 restoration of employment is necessary to prevent
10 substantial economic injury to the employer's
11 operations and the injury is not directly related to
12 the leave that the employee took pursuant to this Act;
13 and

14 (B) the employer notifies the employee of the
15 intent to deny restoration of employment and the basis
16 for the decision at the time the employer determines
17 denial of restoration of employment is necessary.

18 (2) The condition in paragraph (1) of this subsection
19 shall not apply if the following conditions have been met:

20 (A) the employer is under a contract to provide
21 work or services and the absence of the employee
22 prohibits the employer from completing the contract in
23 accordance with the terms of the contract;

24 (B) failure to complete the contract will cause
25 substantial economic injury to the employer; and

26 (C) after the employer made reasonable attempts,

1 the employer failed to find a temporary replacement for
2 the employee.

3 Section 30. School employees.

4 (a) If the conditions in subsection (b) are met, a school
5 district or private elementary or secondary school ("school")
6 may require an employee who is employed principally in an
7 instructional capacity to elect to:

8 (1) take the family or medical leave for periods of
9 particular duration not to exceed the planned medical
10 treatment or supervision; or

11 (2) transfer temporarily to an available alternative
12 position offered by the school for which the employee is
13 qualified, which has equivalent pay and benefits, and
14 better accommodates the recurring periods of leave than the
15 employee's regular employment position.

16 (b) The provisions of subsection (a) shall apply if the
17 employee described in subsection (a):

18 (1) elects to take family leave pursuant to item (4) of
19 subsection (a) of Section 10 or medical leave pursuant to
20 Section 15 that is foreseeable based on planned medical
21 treatment or supervision;

22 (2) would be on leave for greater than 20% of the total
23 number of working days in the period during which leave
24 would extend; and

25 (3) complies with subsection (g) of Section 10 or

1 subsection (c) of Section 15.

2 (c)(1) If an employee of a school who is employed
3 principally in an instructional capacity begins family or
4 medical leave more than 5 weeks before the end of the academic
5 term, the school may require the employee to continue to take
6 leave until the end of the term if:

7 (A) the leave is at least 3 weeks in duration; and

8 (B) the return to employment would occur during the
9 3-week period before the end of the academic term

10 (2) If the employee described in paragraph (1) of this
11 subsection begins leave under Section 10 or Section 15
12 during the period that commences from more than 3 weeks and
13 up to and including 5 weeks before the end of the academic
14 term, the school may require the employee to continue to
15 take leave until the end of the term if:

16 (A) the leave is greater than 2 weeks in duration;
17 and

18 (B) the return to employment would occur during the
19 2-week period before the end of the academic term.

20 (3) If the employee described in paragraph (1) of this
21 subsection begins leave under Section 10 or Section 15
22 during the period that commences 3 weeks or less before the
23 end of the academic term and the duration of the leave is
24 greater than 5 working days, the school may require the
25 employee to continue to take leave until the end of the
26 term.

1 (d) For purposes of a restoration of employment
2 determination under item (2) of subsection (d) of Section 25,
3 in the case of an school, the determination shall be made on
4 the basis of established school board or private school
5 policies and practices and collective bargaining agreements.

6 Section 35. Prohibited acts.

7 (a) It is be unlawful for any person to interfere with,
8 restrain, or deny the exercise of or the attempt to exercise
9 any right provided by this Act.

10 (b) It is unlawful for an employer to discharge or
11 discriminate in any manner against any person because the
12 person:

13 (1) opposes any practice made unlawful by this Act;

14 (2) pursuant or related to this Act:

15 (A) files or attempts to file a charge;

16 (B) institutes or attempts to institute a
17 proceeding; or

18 (C) facilitates the institution of a proceeding;

19 or

20 (3) gives any information or testimony in connection
21 with an inquiry or proceeding related to this Act.

22 Section 40. Investigative authority.

23 (a) An employer shall develop, maintain, and make available
24 to the Department records regarding the employer's activities

1 related to this Act that the Department may prescribe by rule.

2 (b) To ensure compliance with the provisions of this Act,
3 the Department, may:

4 (1) investigate and gather data regarding any wage,
5 hour, condition, or practice of employment related to this
6 Act; and

7 (2) enter or inspect any place of employment or record
8 required by this Act.

9 (c) For the purpose of any investigation provided for in
10 this Section, the Department may issue subpoenas.

11 Section 45. Administrative enforcement procedure; relief.

12 (a) The Department shall provide an administrative
13 procedure pursuant to which a person claimed to be aggrieved
14 under this Act may file a complaint against an employer alleged
15 to have violated this Act. A complaint shall be filed within
16 one year after the occurrence or discovery of the alleged
17 violation of this Act.

18 (b) The administrative procedure shall include, but not be
19 limited to:

20 (1) an investigation of the complaint and an attempt to
21 resolve the complaint by conference, conciliation, or
22 persuasion;

23 (2) if the complaint is not resolved, a determination
24 on the existence of probable cause to believe a violation
25 of this Act has occurred;

1 (3) if there is a determination that probable cause
2 exists, the issuance and service of a written notice and a
3 copy of the complaint to the employer alleged to have
4 committed the violation that requires the employer to
5 answer the charges of the complaint at a formal hearing;

6 (4) a hearing conducted in accordance with Illinois
7 Administrative Procedure Act;

8 (5) a decision and order accompanied by findings of
9 fact and conclusions of law;

10 (6) if there is a determination that an employer
11 committed a violation of this Act, the issuance of an order
12 that requires the employer to pay the employee damages in
13 an amount equal to:

14 (A) any wages, salary, employment benefits, or
15 other compensation denied or lost to the employee due
16 to the violation plus interest on the amount calculated
17 at the rate prescribed in the Code of Civil Procedure
18 for judgments; and

19 (B) an amount equal to the greater of:

20 (i) the amount determined under subparagraph
21 (A) of this paragraph; or

22 (ii) consequential damages not to exceed an
23 amount equal to 3 times the amount determined under
24 subparagraph (A) of this paragraph plus any
25 medical expenses not covered by the health
26 insurance of the employee; or

1 (C) a reduction in damages, within the discretion
2 of the trier of fact, for an employer who violates this
3 Act and proves that the violation occurred in good
4 faith and that the employer had reasonable grounds to
5 believe that the employer's action or omission was not
6 in violation of this Act; and

7 (7) a provision that authorizes the award of costs and
8 reasonable attorney's fees to the prevailing party in
9 addition to other relief awarded under this Act.

10 (c) Any person who is adversely affected or aggrieved by an
11 order or decision issued pursuant to subsection (b) is entitled
12 to judicial review of the order or decision in accordance with
13 the Administrative Review Law.

14 (d) (1) If the Department determines that the employer has
15 not complied with an order after 20 days following service of
16 the order, the Department shall certify the matter to the
17 Attorney General for enforcement.

18 (2) The Attorney General shall institute, in the name
19 of the Department, a civil proceeding that may include
20 seeking injunctive relief, as is necessary to obtain
21 complete compliance with the order.

22 (3) An enforcement action shall not be instituted
23 pending judicial review as provided in subsection (c).

24 (e) The entire administrative enforcement procedure
25 outlined in subsections (a) and (b), including the formal
26 hearing, shall take no longer than 150 days to complete from

1 the date the complaint is filed. If the Department fails to
2 make a reasonable effort to comply with the deadline
3 requirements of the administrative enforcement provisions
4 prescribed by this subsection and the rules promulgated by the
5 Department, the person who initiated the administrative
6 enforcement procedure against the employer may file a civil
7 action against the employer pursuant to Section 50.

8 Section 50. Enforcement by civil action.

9 (a) Subject to the provisions in subsection (b), an
10 employee or the Department may bring a civil action against any
11 employer to enforce the provisions of this Act in circuit
12 court.

13 (b) No civil action may be commenced more than one year
14 after the occurrence or discovery of the alleged violation of
15 this Act.

16 (c) If a court determines that an employer violated any
17 provision of this Act, the damages provision prescribed in
18 items (6) and (7) of subsection (b) of Section 45.

19 Section 55. Notice.

20 (a) The Department shall devise, and an employer shall post
21 and maintain in a conspicuous place, a notice that sets forth
22 excerpts from or summaries of the pertinent provisions of this
23 Act and information that pertains to the filing of a complaint
24 under this Act.

1 (b) An employer who willfully violates this Section shall
2 be assessed a civil penalty not to exceed \$100 for each day
3 that employer fails to post the notice.

4 Section 60. Effect on other laws. Nothing in this Act shall
5 supersede any provision of law that provides greater employee
6 family or medical leave rights than the family or medical
7 rights established under this Act.

8 Section 65. Effect on existing employment benefits.

9 (a) Nothing in this Act shall diminish an employer's
10 obligation to comply with any collective bargaining agreement
11 or any employment benefit program or plan that provides greater
12 family or medical leave rights to an employee than the family
13 or medical leave rights provided under this Act.

14 (b) The rights provided to an employee under this Act may
15 not be diminished by any collective bargaining agreement or any
16 employment benefit program or plan, except that this Act shall
17 not supersede any clause on family or medical leave in any
18 collective bargaining agreement in force on the effective date
19 of this Act, for the time that the collective bargaining
20 agreement is in effect.

21 (c) The rights provided to an employee under this Act may
22 be suspended temporarily for an employee of a public safety
23 agency if the employee is required by rules of the agency or by
24 the provisions of a collective bargaining agreement to return

1 to duty because of an emergency declared by the agency head or
2 the Department.

3 Section 70. Encouragement of more generous leave policies.
4 Nothing in this Act shall be construed to discourage an
5 employer from the adoption or retention of a family and medical
6 leave policy more generous than the family and medical leave
7 required by this Act.

8 Section 75. Applicability. The rights and responsibilities
9 established by this Act shall apply beginning 180 days after
10 the effective date of this Act to any employer that employs 20
11 or more persons in Illinois.

12 Section 80. Rules.

13 (a) The Department shall adopt rules to implement the
14 provisions of this Act.

15 (b) The proposed rules shall include standards for:

16 (1) the definition of the term "family member";

17 (2) the reasonable notice that an employee who seeks to
18 take family or medical leave shall give to an employer; and

19 (3) the administrative enforcement procedure.

20 Section 999. Effective date. This Act takes effect July 1,
21 2020.