



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1723

Introduced 2/15/2019, by Sen. Ram Villivalam

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.891 new

Creates the Family Leave Insurance Program Act. Requires the Department of Labor to establish and administer a Family Leave Insurance Program that provides family leave insurance benefits to eligible employees who take unpaid family leave to care for a newborn child, a newly adopted or newly placed foster child, or a family member with a serious health condition. Sets forth eligibility requirements for benefits under the Act including that the employee must (i) establish that he or she has been employed for at least 680 hours in employment during the employee's qualifying year and (ii) document that he or she has provided the employer with written notice of the employee's intention to take family leave. Defines "employer" to mean (a) any person, partnership, corporation, association, or other business entity that employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the year in which the leave is to be taken or in the year immediately preceding the year in which the leave is to be taken; and (b) the State of Illinois and any other unit of local government. Contains provisions concerning disqualification from benefits; premium payments; the amount and duration of benefits; the recovery of erroneous payments; hearings; defaulted premium payments; elective coverage; employment protection; coordination of family leave; defined terms; and other matters. Amends the State Finance Act. Creates the Family Leave Insurance Account Fund. Provides phase-in periods for collection of moneys and claims for benefits under the Act. Effective January 1, 2020.

LRB101 08318 JLS 53387 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 Insurance Act.

6 Section 5. Declaration of policy and intent.

7 (a) Many workers do not have access to family and medical
8 leave programs, and those who do may not be in a financial
9 position to take family or medical leave that is unpaid, and
10 employer-paid benefits meet only a relatively small part of
11 this need. It is the public policy of this State to protect
12 working families against the economic hardship caused by the
13 need to take time off from work to care for themselves or
14 family members who are suffering from a serious illness or to
15 care for a newborn or a newly adopted child.

16 Moreover, many women are single mothers or the primary
17 breadwinners for their families. If any of these women take an
18 unpaid maternity leave, her whole family, and Illinois,
19 suffers.

20 The United States is the only industrialized nation in the
21 world that does not have a mandatory workplace-based program
22 for such income support.

23 It is therefore desirable and necessary to develop systems

1 that help families adapt to the competing interests of work and
2 home which not only benefit workers, but also benefit employers
3 by reducing employee turnover and increasing worker
4 productivity.

5 (b) It is the intent of the General Assembly to create a
6 family and medical leave program to relieve the serious menace
7 to health, morals, and welfare of Illinois families, to
8 increase workplace productivity, and to alleviate the enormous
9 and growing stress on working families of balancing the demands
10 of work and family needs.

11 Section 10. Definitions. In this Act:

12 (1) "Average weekly wage" means the amount derived by
13 dividing by 12 an employee's total wages, including gratuities
14 and commissions that constitute remuneration, earned during
15 the 12 weeks preceding application for family and medical leave
16 benefits, or the most recent 12 weeks of employment if the
17 individual is not currently employed.

18 (2) "Base hours" means the hours of work for which an
19 employee receives compensation. "Base hours" includes overtime
20 hours for which the employee is paid additional or overtime
21 compensation and hours for which the employee receives workers'
22 compensation benefits. "Base hours" also includes hours an
23 employee would have worked except for having been in military
24 service. "Base hours" also includes hours for which the
25 employee receives other types of compensation, such as

1 administrative, personal leave, vacation or sick leave, or paid
2 time off.

3 (3) "Care" includes, but is not limited to, physical care,
4 emotional support, visitation, arranging for a change in care,
5 assistance with essential daily living matters, and personal
6 attendant services.

7 (4) "Child" means a biological, adopted, or foster child,
8 stepchild, or legal ward of an employee, or a child for whom an
9 employee is standing in loco parentis, a child of the spouse of
10 an employee, or a child of a party to a civil union, or any
11 other individual whose close association with the employee is
12 the equivalent of a child.

13 (5) "Civil union" means a civil union as defined in the
14 Illinois Religious Freedom Protection and Civil Union Act.

15 (6) "Consecutive leave" means leave that is taken without
16 interruption based upon an employee's regular work schedule and
17 does not include breaks in employment in which an employee is
18 not regularly scheduled to work. For example, when an employee
19 is normally scheduled to work from September through June and
20 is not scheduled to work during July and August, a leave taken
21 continuously during May, June, and September shall be
22 considered a consecutive leave.

23 (7) "Covered employee" means (a) an individual employed by
24 the same employer, as defined in paragraph (12), in the State
25 of Illinois for 12 weeks or more who has worked 240 or more
26 base hours. This threshold must be met annually, however, once

1 the annual threshold is met, the covered employee shall be able
2 to use family and medical leave. A covered employee is
3 considered to be employed in the State of Illinois if (i) the
4 individual works in Illinois; (ii) the individual performs some
5 work in Illinois and the employer's base of operations or the
6 place from which the work is directed and controlled is in
7 Illinois; or (iii) the base of operations or place from which
8 the work is directed or controlled is not in any state in which
9 some part of the work is performed, but the individual's
10 residence is in this state.

11 (8) "Department" means the Department of Employment
12 Security.

13 (9) "Director" means the Director of Employment Security
14 and any transaction or exercise of authority by the Director
15 shall be deemed to be performed by the Department.

16 (10) "Employ" means to suffer or permit to work.

17 (11) "Employee" means any person who works for an employer
18 for wage, remuneration, or other compensation. This includes
19 persons working any number of hours, including full-time or
20 part-time status. "Employee" does not include any person who
21 the employer establishes:

22 (A) has been and will continue to be free from control
23 and direction over the performance of their work, both
24 under a contract of service and in fact;

25 (B) is engaged in an independently established trade,
26 occupation, profession or business; or

1 (C) is deemed a legitimate sole proprietor or
2 partnership. A sole proprietor or partnership shall be
3 deemed to be legitimate if the employer establishes that:

4 (i) the sole proprietor or partnership is
5 performing the service free from the direction or
6 control over the means and manner of providing the
7 service, subject only to the right of the employer for
8 whom the service is provided to specify the desired
9 result;

10 (ii) the sole proprietor or partnership is not
11 subject to cancellation or destruction upon severance
12 of the relationship with the employer;

13 (iii) the sole proprietor or partnership has a
14 substantial investment of capital in the sole
15 proprietorship or partnership beyond the ordinary
16 tools and equipment and a personal vehicle;

17 (iv) the sole proprietor or partnership owns the
18 capital goods and gains the profits and bears the
19 losses of the sole proprietorship or partnership;

20 (v) the sole proprietor or partnership makes its
21 services available to the general public on a
22 continuing basis;

23 (vi) the sole proprietor or partnership includes
24 services rendered on a federal Income Tax Schedule as
25 an independent business or profession;

26 (vii) the sole proprietor or partnership performs

1 services for the contractor under the sole proprietor
2 or partnership's name;

3 (viii) when the services being provided require a
4 license or permit, the sole proprietor or partnership
5 obtains and pays for the license or permit in the sole
6 proprietorship's or partnership's name;

7 (ix) the sole proprietor or partnership furnishes
8 the tools and equipment necessary to provide the
9 service;

10 (x) if necessary, the sole proprietor or
11 partnership hires its own employees without approval
12 of the employer, pays the employees without
13 reimbursement from the employer and reports the
14 employees' income to the Internal Revenue Service;

15 (xi) the employer does not represent the sole
16 proprietorship or partnership as an employee of the
17 employer to the public; and

18 (xii) the sole proprietor or partnership has the
19 right to perform similar services for others on
20 whatever basis and whenever it chooses.

21 (12) "Employer" means any individual, person, partnership,
22 association, limited liability company, trust, estate,
23 joint-stock company, insurance company, employment and labor
24 placement agency, or business where wages are made directly or
25 indirectly by the agency or business for work undertaken by the
26 employee under hire to a third party pursuant to a contract

1 between the agency or business with the third party, or
2 corporation, whether domestic or foreign, or the receiver,
3 trustee in bankruptcy, trustee, or person that has in its
4 employ one or more employees performing services for it as a
5 covered employee. "Employer" also includes any employer
6 subject to the Unemployment Insurance Act, except the State,
7 its political subdivisions, and any instrumentality of the
8 State. All employees performing services within this State for
9 any employing unit that maintains 2 or more separate
10 establishments within this State shall be deemed to be employed
11 by a single employing unit for all purposes of this Act.

12 (13) "Family member" means an employee's child, spouse,
13 party to a civil union, parent, or any other individual related
14 by blood or whose close relationship with the employee is the
15 equivalent of a family relationship, as determined by the
16 employee.

17 (14) "Family and medical leave" means leave taken by a
18 covered employee from work with an employer:

19 (A) to participate in the providing of care, including
20 physical or psychological care, for a family member of the
21 covered employee made necessary by a serious health
22 condition of the family member;

23 (B) to be with a child during the first 12 months after
24 the child's birth, if the employee, the employee's spouse,
25 or the party to a civil union with the employee, is a
26 biological parent of the child, or the first 12 months

1 after the placement of the child for adoption or foster
2 care with the employee, the first 12 months after the child
3 becomes the legal ward of the employee, the employee's
4 spouse, or the party to a civil union with the employee, or
5 the first 12 months after the employee, the employee's
6 spouse, or the party to a civil union with the employee
7 acquires loco parentis status of the child;

8 (C) for the employee's own serious health condition;

9 (D) because of any qualifying exigency as interpreted
10 under the Family and Medical Leave Act of 1993 (29 U.S.C.
11 2612(a)(1)(E) and 29 CFR) as of the effective date of this
12 Act arising out of the fact that the spouse, party to a
13 civil union, child, parent of the employee, or any other
14 individual related by blood or whose close relationship
15 with the employee is equivalent to a family relationship is
16 on active duty (or has been notified of an impending call
17 or order to active duty) in the armed forces as of the
18 United States; or

19 (E) because the employee or the employee's family
20 member is the victim of domestic violence as defined in
21 Section 103(3) of the Illinois Domestic Violence Act of
22 1986, or sexual violence, which means: (1) any conduct
23 proscribed by Article 11 of the Criminal Code of 2012
24 except Sections 11-35 and 11-45; (ii) Sections 12-7.3,
25 12-7.4, and 12-7.5 of the Illinois Criminal Code of 2012;
26 or (iii) a similar provision of the Criminal Code of 1961.

1 "Family and medical leave" does not include any period of
2 time during which an employee is paid benefits pursuant to
3 the Workers' Compensation Act because the employee is
4 unable to perform the duties of the employee's employment
5 due to the employee's own disability, or paid benefits
6 pursuant to the Unemployment Insurance Act. Act because the
7 employee is unable to perform the duties of the employee's
8 employment due to the employee's own disability.

9 (15) "Family and medical leave benefits" means any payments
10 that are payable to a covered employee for all or part of a
11 period of family and medical leave.

12 (16) "Health care provider" means any person licensed under
13 federal, State, or local law or the laws of a foreign nation to
14 provide health care services or any other person who has been
15 authorized to provide health care by a licensed health care
16 provider.

17 (17) "Intermittent leave" means a non-consecutive leave
18 consisting of intervals, each of which is at least one, but
19 fewer than 12, weeks within a consecutive 12-month period.

20 (18) "Parent" means a biological parent, foster parent,
21 adoptive parent, or stepparent of the employee or a person who
22 was a legal guardian of, or who stood in loco parentis to, the
23 employee when the employee was a child, or any other individual
24 whose close association with the employee is the equivalent of
25 a parent.

26 (19) "Placement for adoption" means the time when an

1 employee adopts a child or becomes responsible for a child
2 pending adoption by the eligible employee.

3 (20) "Serious health condition" means an illness, injury,
4 impairment, or physical or mental condition that requires
5 inpatient care in a hospital, hospice, or residential medical
6 care facility or continuing medical treatment or continuing
7 supervision by a health care provider.

8 (21) "12-month period" means, with respect to an employee
9 who establishes a valid claim for family and medical leave
10 benefits during a period of family and medical leave, the 365
11 consecutive days that begin with the first day that the
12 employee first establishes the claim.

13 (22) "Victim services organization" means a nonprofit,
14 nongovernmental organization that provides assistance to
15 victims of domestic or sexual violence, including rape crisis
16 centers, organizations carrying out a domestic violence
17 program, organizations operating a shelter or providing
18 counseling services, or a legal services organization or other
19 organization providing assistance through the legal process.

20 Section 15. Family and medical leave insurance program.

21 (a) The Department shall establish and administer a family
22 and medical leave insurance program.

23 (b) The Department shall establish procedures and forms for
24 filing claims for benefits under this Act.

25 (c) The Department shall use information sharing and

1 integration technology to facilitate the disclosure of
2 relevant information or records by the Department.

3 (d) Information contained in the files and records
4 pertaining to an employee under this Act is confidential and
5 not open to public inspection, other than to public employees
6 in the performance of their official duties. However, the
7 employee or an authorized representative of an employee may
8 review the records or receive specific information from the
9 records on the presentation of the signed authorization of the
10 employee. An employer or the employer's duly authorized
11 representative may review the records of an employee employed
12 by the employer in connection with a pending claim. At the
13 Department's discretion, other persons may review records when
14 such persons are rendering assistance to the Department at any
15 stage of the proceedings on any matter pertaining to the
16 administration of this Act.

17 An employer must keep at its place of business records of
18 employment from which the information needed by the Department
19 for purposes of this Act may be obtained. The records shall at
20 all times be open to the inspection of the Department pursuant
21 to rules adopted by the Department.

22 (e) The Department shall develop and implement an outreach
23 program to ensure that individuals who may be eligible to
24 receive family and medical leave benefits under this Act are
25 made aware of these benefits. Outreach information shall
26 explain, in an easy to understand format, eligibility

1 requirements, the claims process, weekly benefit amounts,
2 maximum benefits payable, notice requirements, reinstatement
3 and nondiscrimination rights, confidentiality, and
4 coordination of leave under this Act and other laws, collective
5 bargaining agreements, and employer policies. Outreach
6 information shall be available in English and in languages
7 other than English that are spoken as a primary language by a
8 significant portion of the State's population, as determined by
9 the Department.

10 (d) A covered employee may make a claim for benefits under
11 this Act on and after January 1 of the year one year after the
12 Department begins collecting employee payroll premium
13 deductions and employer premium contributions under this Act.

14 Section 20. Eligibility for benefits.

15 (a) The Department may require that a claim for family and
16 medical leave benefits under this Act be supported by a
17 certification. For a claim for family and medical leave under
18 paragraph (A), (B), or (C) of item (14) of Section 10, the
19 certification shall be issued by a health care provider of the
20 employee's choosing who is providing care to the employee or
21 the employee's family member if applicable. For a claim for
22 family and medical leave under paragraph (E) of item (14) of
23 Section 10, any one of the following is acceptable for
24 certification, and only one of the following documents shall be
25 required: a police report, court document, document issued by a

1 healthcare provider, or a signed statement from an attorney, a
2 member of the clergy, or a victim services organization or
3 advocate. It is up to the employee to determine which
4 documentation to submit. If a document has been submitted, the
5 Department or the employer shall not request or require any
6 other document if the reason for the initial or subsequent
7 claims for family and medical leave is related to the same
8 incident of violence or the same perpetrator of the violence.

9 (b) The eligibility of an employee for benefits is not
10 affected by a strike or lockout at the factory, establishment,
11 or other premises at which the employee is or was last
12 employed.

13 (c) An employee who has received benefits under this Act
14 may not lose any other employment benefits, including seniority
15 or pension rights, accrued before the date that family and
16 medical leave commenced. The employer shall maintain during any
17 period of family and medical leave taken the health benefits of
18 the employee and, if applicable, the employee's dependents, in
19 force at the time a request for family and medical leave was
20 made, for the duration of such leave as if the employee had
21 continued to work from the date the employee commenced the
22 family and medical leave until the date the employee returns to
23 work. However, this Section does not entitle an employee to
24 accrue employment benefits during a period of family and
25 medical leave or to a right, benefit, or position of employment
26 other than a right, benefit, or position to which the employee

1 would have been entitled had the employee not taken family and
2 medical leave.

3 (d) This Act does not diminish an employer's obligation to
4 comply with a collective bargaining agreement or an employment
5 benefits program or plan that provides greater benefits to
6 employees than the benefits provided under this Section.

7 (e) An agreement by an employee to waive the employee's
8 rights under this Section is void as contrary to public policy.
9 The benefits under this Act may not be diminished by a
10 collective bargaining agreement or another employment benefits
11 program or plan entered into or renewed after the effective
12 date of this Act.

13 (f) Nothing in this Act shall be deemed to affect the
14 validity or change the terms of bona fide collective bargaining
15 agreements in force on the effective date of this Act. After
16 that date, requirements of this Act may be waived in a bona
17 fide collective bargaining agreement, but only if the waiver is
18 set forth explicitly in such agreement in clear and unambiguous
19 terms.

20 Section 25. Elective coverage; self-employed.

21 (a) For benefits payable beginning January 1, 2021, any
22 self-employed person, including a sole proprietor, independent
23 contractor, partner, or joint venturer, who has
24 self-employment income for work performed in Illinois in
25 accordance with the definition of covered employee under item

1 (7) of Section 10 may elect coverage for an initial period of
2 not less than 3 years and subsequent periods of not less than
3 one year immediately following a period of coverage. Those
4 electing coverage under this Act are responsible for payment of
5 100% of all premiums assessed to any employee and employer
6 under this Act. The self-employed person must file a notice of
7 election in writing with the Department, in a manner as
8 required by the Department in rule. The self-employed person is
9 eligible for family and medical leave benefits after working at
10 least 12 weeks in the state following the date of filing the
11 notice.

12 (b) A self-employed person who has elected coverage may
13 withdraw from coverage within 30 days after the end of each
14 period of coverage, or at such other times as the Department
15 may adopt by rule, by filing a notice of withdrawal in writing
16 with the Department, such withdrawal to take effect not sooner
17 than 30 days after the filing the notice with the Department.

18 (c) The Department may cancel elective coverage if the
19 self-employed person fails to make required payments or file
20 reports. The Department may collect due and unpaid premiums and
21 may levy additional premium for the remainder of the period of
22 coverage. The cancellation shall be effective no later than 30
23 days from the date of the notice in writing advising the
24 self-employed person of the cancellation.

25 (d) Those electing coverage are considered employees or
26 employers where the context dictates so.

1 (e) In this Section, "independent contractor" means an
2 individual excluded from employment under the definition of
3 "employee" under Section 10 of this Act.

4 Section 30. Disqualification from benefits.

5 (a) An employee is disqualified from family and medical
6 leave benefits under this Act if the employee:

7 (1) willfully makes a false statement or
8 misrepresentation regarding a material fact, or willfully
9 fails to disclose a material fact, to obtain benefits;

10 (2) seeks benefits based on a serious health condition
11 that resulted from the employee's commission of a felony.

12 (b) A disqualification for family and medical leave
13 benefits is for a period of 2 years, and commences on the first
14 day of the calendar week in which the employee filed a claim
15 for benefits under this Act. An employee who is disqualified
16 for benefits is liable to the Department for a penalty in an
17 amount equal to 15% of the amount of benefits received by the
18 employee.

19 Section 35. Family and Medical Leave Insurance Fund.

20 (a) The Family and Medical Leave Insurance Fund is created
21 as a special fund in the State treasury. Moneys in the Fund may
22 be used for the payment of family and medical leave benefits
23 and for the administration of this Act. All interest and other
24 earnings that accrue from investment of moneys in the Fund

1 shall be credited to the Fund.

2 (b) An employer shall retain from all employees a payroll
3 premium deduction in the amount of 0.15% of wages as defined in
4 Section 235 of the Unemployment Insurance Act. An employer
5 shall pay an amount equal to the payroll premium deduction,
6 known as the employer's premium contribution. The Department
7 shall by rule provide for the collection of this payroll
8 premium deduction and the employer's premium contribution.

9 The amount of the payroll premium deduction and the
10 employer's premium contribution imposed under this Section,
11 less refunds authorized by this Act, and all assessments and
12 penalties collected under this Act shall be deposited into and
13 credited to the Fund.

14 (c) A separate account, to be known as the Family and
15 Medical Leave Insurance Administration Account, shall be
16 maintained in the Fund. An amount determined by the Department
17 sufficient for proper administration, not to exceed, however,
18 0.05% of additional payroll premium deductions and of employer
19 premium contributions as defined in this Section, shall be
20 collected and credited to the Administration Account. The
21 expenses of the Department in administering the Fund and its
22 accounts shall be charged against the Administration Account.
23 The costs of administration of this Act shall be charged to the
24 Administration Account.

25 (d) A separate account, to be known as the Family and
26 Medical Leave Benefits Account, shall be maintained in the

1 Fund. The account shall be charged with all benefit payments.
2 Prior to July 1 of each calendar year, the Department shall
3 determine the average rate of interest and other earnings on
4 all investments of the Fund for the preceding calendar year. If
5 there is an accumulated deficit in the Family and Medical Leave
6 Benefits Account in excess of \$200,000 at the end of any
7 calendar year after interest and other earnings have been
8 credited as provided in this Section, the Department shall
9 determine the ratio of the deficit to the total of all taxable
10 wages paid during the preceding calendar year and shall make an
11 assessment against all employers in an amount equal to the
12 taxable wages paid by them during the preceding calendar year
13 to employees, multiplied by the ratio, but in no event shall
14 any such assessment exceed 0.1% of such wages. The amounts
15 shall be collectible by the Department in the same manner as
16 provided for the collection of employer contributions under the
17 Unemployment Insurance Act. In making this assessment, the
18 Department shall furnish to each affected employer a brief
19 summary of the determination of the assessment. The amount of
20 such assessments collected by the Department shall be credited
21 to the Family and Medical Leave Benefits Account. As used in
22 this Section, "wages" means wages as provided in Section 235 of
23 the Unemployment Insurance Act.

24 (e) A board of trustees, consisting of the State Treasurer,
25 the Secretary of State, the Director of Labor, the Director of
26 Employment Security, and the State Comptroller, is hereby

1 created. The board shall invest and reinvest all moneys in the
2 Fund in excess of its cash requirements in obligations legal
3 for savings banks.

4 (f) The Department may adjust rates, not to exceed the
5 amount established in subsection (b) of this Section, for the
6 collection of premiums pursuant to subsection (b) of this
7 Section. The Department shall set rates for premiums in a
8 manner that minimizes the volatility of the rates assessed and
9 so that at the end of the period for which the rates are
10 effective, the cash balance shall be an amount approximating 12
11 months of projected expenditures from the Fund, considering the
12 functions and duties of the Department under this Act.

13 (g) An employer required to make employee premium
14 deductions and pay employer premium contributions under this
15 Section shall make and file a report of employee hours worked
16 and amounts due under this Section upon a combined report form
17 prescribed by the Department. The report shall be filed with
18 the Department at the times and in the manner prescribed by the
19 Department.

20 (h) If the employer is a temporary employment agency that
21 provides employees on a temporary basis to its customers, the
22 temporary employment agency is considered the employer for
23 purposes of this Act.

24 (i) When an employer goes out of business or sells out,
25 exchanges, or otherwise disposes of the business or stock of
26 goods, any premiums payable under this Section are immediately

1 due and payable, and the employer shall, within 10 days
2 thereafter, pay the premiums due. A person who becomes a
3 successor to the business is liable for the full amount of the
4 premiums and shall withhold from the purchase price a sum
5 sufficient to pay any premiums due from the employer until the
6 employer produces a receipt from the Department showing payment
7 in full of any premiums due or a certificate that no premium is
8 due. If the premiums are not paid by the employer within 10
9 days after the date of the sale, exchange, or disposal, the
10 successor is liable for the payment of the full amount of the
11 premiums. The successor's payment of the premiums are, to the
12 extent of the payment, a payment upon the purchase price, and
13 if the payment is greater in amount than the purchase price,
14 the amount of the difference is a debt due the successor from
15 the employer.

16 A successor is not liable for any premiums due from the
17 person from whom the successor has acquired a business or stock
18 of goods if the successor gives written notice to the
19 Department of the acquisition and no assessment is issued by
20 the Department within one year after receipt of the notice
21 against the former operator of the business.

22 (j) This Section is inoperative before January 1 of the
23 year after this Act becomes law. At that time, the Department
24 shall collect the amounts due under this Section.

25 Section 40. Compensation for family and medical leave.

1 (a) An individual's weekly benefit rate shall be determined
2 as follows: if the employee's average weekly wage is (a) 50% or
3 less of the statewide average weekly wage, the employee's
4 weekly benefit is 90% of the employee's average weekly wage or
5 (b) greater than 50% of the statewide average weekly wage, the
6 employee's weekly benefit is the sum of (i) 90% of the
7 employee's average weekly wage up to 50% of the statewide
8 average weekly wage; and (ii) 50% of the statewide average
9 weekly wage that is greater than 50% of the employee's average
10 weekly wage. The individual's benefit rate shall be computed to
11 the next lower multiple of \$1 if not already a multiple
12 thereof. The amount of benefits for each day of family and
13 medical leave for which benefits are payable shall be
14 one-seventh of the corresponding weekly benefit amount;
15 provided that the total benefits for a fractional part of a
16 week shall be computed to the next lower multiple of \$1 if not
17 already a multiple thereof.

18 (b) The maximum weekly benefit for family and medical leave
19 shall be \$1,000, adjusted annually after the first year to 90%
20 of the statewide average weekly wage.

21 (c) With respect to any period of family and medical leave
22 taken by a covered employee, family and medical leave benefits
23 not in excess of the employee's maximum benefits shall be
24 payable with respect to the first day of family and medical
25 leave taken after a waiting period consisting of the first 7
26 calendar days of family and medical leave following the

1 commencement of the period of family and medical leave and each
2 subsequent day of family and medical leave during that period
3 of family and medical leave; and if benefits become payable on
4 any day after the first 3 weeks in which leave is taken, then
5 benefits shall also be payable with respect to any leave taken
6 during the first one-week period in which leave is taken. The
7 waiting period need only be served once every application year.
8 The maximum total benefits payable to any covered employee
9 commencing on or after the effective date of this Act shall be
10 12 times the employee's weekly benefit amount, provided that
11 the maximum amount shall be computed in the next lower multiple
12 of \$1 if not already a multiple thereof.

13 (d) The first payment of benefits must be made to an
14 employee within 14 calendar days after the claim is filed and
15 subsequent payments must be made no later than semi-monthly
16 thereafter. If the employer contests an initial application for
17 family and medical leave benefits, the employer must notify the
18 employee and the Department in a manner prescribed by the
19 Director within 10 calendar days of receipt of notice from the
20 Department of the employee's filing of an application for
21 benefits.

22 Nothing in this Act shall be construed to prohibit the
23 establishment by an employer, without approval by the
24 Department, of a supplementary plan or plans providing for the
25 payment to employees, or to any class or classes of employees,
26 of benefits in addition to the benefits provided by this Act.

1 The rights, duties, and responsibilities of all interested
2 parties under the supplementary plans shall be unaffected by
3 any provision of this Act.

4 Section 45. Family and medical leave; duration. A covered
5 employee may take up to 12 weeks of family and medical leave
6 within any 12-month period in order to provide care made
7 necessary by reasons identified in Section 10. A covered
8 employee may take family and medical leave on an intermittent
9 schedule in which all of the leave authorized under this Act is
10 not taken sequentially.

11 Section 50. Annual reports; contents.

12 (a) The Department shall issue and make available to the
13 public, not later than July 1, 2023 and July 1 of each
14 subsequent year, annual reports providing data on family and
15 medical leave benefits claims including separate data for each
16 of the following categories of claims: the employee's own
17 serious illness; care of newborn children; care of newly
18 adopted children; care of seriously ill family members, because
19 of family members on active duty in the armed forces of the
20 U.S.; and for domestic or sexual violence The reports shall
21 include, for each category of claims, the number of workers
22 receiving the benefits, the amount of benefits paid, the
23 average duration of benefits, the average weekly benefit, and
24 any reported amount of sick leave, vacation, or other fully

1 paid time which resulted in reduced benefit duration. The
2 report shall provide data by gender and by any other
3 demographic factors determined to be relevant by the
4 Department. The reports shall also provide, for all family and
5 medical leave benefits, the total costs of benefits and the
6 total cost of administration, the portion of benefits for
7 claims during family and medical leave, and the total revenues
8 from employer assessments, where applicable; employee
9 assessments; and other sources.

10 (b) The Department may, in its discretion, conduct surveys
11 and other research regarding, and include in the annual reports
12 descriptions and evaluations of the impact and potential future
13 impact of the costs and benefits resulting from the provisions
14 of this Act for:

15 (1) employees and their families, including surveys
16 and evaluations of what portion of the total number of
17 employees taking family and medical leave would not have
18 taken leave, or would have taken less leave, without the
19 availability of benefits; what portion of employees return
20 to work after receiving benefits and what portion are not
21 permitted to return to work; and what portion of employees
22 who are eligible for benefits do not claim or receive them
23 and why they do not;

24 (2) employers, including benefits such as reduced
25 training and other costs related to reduced turnover of
26 personnel, and increased affordability of family and

1 medical leave through the State, with special attention
2 given to small businesses; and

3 (3) the public, including savings caused by any
4 reduction in the number of people receiving public
5 assistance.

6 (c) The total amount of any expenses that the Department
7 determines are necessary to carry out its duties pursuant to
8 this Section shall be charged to the Administration Account of
9 the Fund.

10 Section 55. Prohibited acts; enforcement.

11 (a) No employer, temporary employment agency, employment
12 agency, employee organization, or other person shall
13 discharge, expel, or otherwise retaliate or discriminate
14 against a person because the person has requested family and
15 medical leave, attempted to claim family and medical leave
16 benefits, taken family and medical leave, filed or communicated
17 to the employer an intent to file a claim, a complaint, or an
18 appeal, or has testified or is about to testify or has assisted
19 in any proceeding, under this Act, at any time.

20 (b) Any person who violates subsection (a) shall be liable
21 to the individual employed by such a person who is affected by
22 the violation for damages equal to the sum of:

23 (1) the amount of:

24 (A) any wages, salary, employment benefits, or
25 other compensation denied or lost to such individual by

1 reason of the violation; or

2 (B) in a case in which wages, salary, employment
3 benefits, or other compensation have not been denied or
4 lost to the individual, any actual monetary losses
5 sustained by the individual as a direct violation, such
6 as the cost of providing care, up to a sum equal to 60
7 calendar days of wages or salary for the individual;
8 and

9 (2) the interest on the amount described under item (A)
10 calculated at the prevailing rate; and

11 (3) an additional amount as liquidated damages equal to
12 the sum of the amount described in item (1) and the
13 interest described in item (2), except if a person who has
14 violated subsection (a) proves to the satisfaction of the
15 court that the act or omission was in good faith and that
16 the person had reasonable grounds for believing that the
17 act or omission was not a violation of subsection (a), the
18 court may, in the discretion of the court, reduce the
19 amount of the liability to the amount and interest
20 determined under item (A) and (B), respectively.

21 In addition, a court may order such equitable relief as may
22 be appropriate, including employment, reinstatement, and
23 promotion.

24 (c) An action to recover the damages or obtain equitable
25 relief subsection (a) may be maintained against any person in
26 any court on behalf of:

1 (1) the individual; or

2 (2) the individual or other individuals similarly
3 situated.

4 (d) The court in such an action shall, in addition to any
5 judgment awarded to the plaintiff, allow a reasonable
6 attorney's fee, reasonable expert witness fees, and other costs
7 of the action to be paid by the defendant.

8 (e) The right under subsection (c) to bring an action by or
9 on behalf of any individual shall terminate:

10 (1) on the filing of a complaint by the Department in
11 an action in which restraint is sought of any further delay
12 in the payment of the amount described in item (1) of
13 subsection (b) to such individual by the person responsible
14 under subsection (a) for the payment; or

15 (2) on the filing of a complaint by the Department in
16 an action under subsection (f) in which a recovery is
17 sought of the damages described in item (1) of subsection
18 (b) owing to an individual by a person liable under
19 subsection (a).

20 (f) Action by the Department.

21 (1) The Department may bring an action in any court to
22 recover the damages described in item (1) of subsection
23 (b).

24 (2) Any sums recovered pursuant to item (1) of this
25 subsection shall be held in a special deposit account and
26 shall be paid, on order of the Department, directly to each

1 individual affected. Any such sums not paid to an
2 individual because of inability to do so within a period of
3 3 years shall be deposited into the Fund.

4 (3) An action may be brought under this subsection not
5 later than 3 years after the date of the last event
6 constituting the alleged violation for which the action is
7 brought.

8 (4) An action brought by the Department under this
9 subsection shall be considered to be commenced on the date
10 when the complaint is filed.

11 (5) The Department may bring an action to restrain
12 violations of subsection (a), including the restraint of
13 any withholding of payment of wages, salary, employment
14 benefits, or other compensation, plus interest, found by
15 the court to be due to the individual, or to award such
16 other equitable relief as may be appropriate, including
17 employment, reinstatement, and promotion.

18 (g) A person aggrieved by a decision of the Department
19 under this Act may request a hearing. The Department shall
20 adopt rules governing hearings and the issuance of final orders
21 under this Act in accordance with the provisions of the
22 Illinois Administrative Procedure Act. All final
23 administrative decisions of the Department under this Act are
24 subject to judicial review under the Administrative Review Law.

25 Section 60. Penalties.

1 (a) Persons who make a false statement or representation,
2 knowing it to be false, or knowingly fails to disclose a
3 material fact to obtain or increase any family and medical
4 leave benefit during a period of family and medical leave,
5 either for themselves or for any other person, shall be liable
6 for a civil penalty of \$250 to be paid to the Fund. Each such
7 false statement or representation or failure to disclose a
8 material fact shall constitute a separate offense. Upon refusal
9 to pay such civil penalty, the civil penalty shall be recovered
10 in a civil action by the Attorney General on behalf the
11 Department in the name of the State of Illinois. If, in any
12 case in which liability for the payment of a civil penalty has
13 been determined, any person who has received any benefits under
14 this Act by reason of the making of such false statements or
15 representations or failure to disclose a material fact shall
16 not be entitled to any benefits under this Act for any leave
17 occurring prior to the time he or she has discharged his or her
18 liability to pay the civil penalty.

19 (b) A person who willfully violates any provision of this
20 Act or any rule adopted under this Act for which a civil
21 penalty is neither prescribed in this Act nor provided by any
22 other applicable law shall be subject to a civil penalty of
23 \$500 to be paid to the Fund. Upon the refusal to pay such civil
24 penalty, the civil penalty shall be recovered in a civil action
25 by the Attorney General on behalf of the Department in the name
26 of the State of Illinois.

1 (c) A person, employing unit, employer, or entity violating
2 any provision of this Section with intent to defraud the
3 Department is guilty of a Class C misdemeanor. The fine upon
4 conviction shall be payable to the Fund. Any penalties imposed
5 by this subsection shall be in addition to those otherwise
6 prescribed in this Section.

7 Section 65. Leave and employment protection.

8 (a) During a period in which an employee receives family
9 leave benefits under this Act, the employee is entitled to
10 family leave and, at the established ending date of leave, to
11 be restored to a position of employment with the employer from
12 whom leave was taken as provided under subsection (b).

13 (b) Except as provided in subsection (f), an employee who
14 receives family and medical leave benefits under this Act for
15 the intended purpose of the family and medical leave is
16 entitled, on return from the leave:

17 (1) to be restored by the employer to the position of
18 employment held by the employee when the family and medical
19 leave commenced; or

20 (2) to be restored to an equivalent position with
21 equivalent employment benefits, pay, and other terms and
22 conditions of employment at a workplace within 5 miles of
23 the employee's workplace when the family and medical leave
24 commenced.

25 (c) The taking of family and medical leave under this Act

1 may not result in the loss of any employment benefits accrued
2 before the date on which the family and medical leave
3 commenced.

4 (d) Nothing in this Section entitles a restored employee
5 to:

6 (1) the accrual of any seniority or employment benefits
7 during any period of family and medical leave; or

8 (2) any right, benefit, or position of employment other
9 than any right, benefit, or position to which the employee
10 would have been entitled to had the employee not taken the
11 family and medical leave.

12 (e) Nothing in this Section prohibits an employer from
13 requiring an employee on family and medical leave to report
14 periodically to the employer on the status and intention of the
15 employee to return to work.

16 (f) An employer may deny restoration under subsection (b)
17 to a salaried employee who is among the highest paid 10% of the
18 employees employed by the employer within 75 miles of the
19 facility at which the employee is employed if:

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

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

25 (3) the family and medical leave has commenced and the
26 employee elects not to return to employment after receiving

1 the notice.

2 Section 70. Notice to employer.

3 (a) If the necessity for family and medical leave for the
4 birth or placement of a child or for any other reason under
5 item (14) of Section 10 is foreseeable, the employee shall
6 provide the employer with not less than 30 days' notice, before
7 the date the leave is to begin, of the employee's intention to
8 take leave for the birth or placement of a child or for any
9 other reason under item (14) of Section 10, except that if the
10 expected date requires leave to begin in less than 30 days, the
11 employee shall provide such notice as is practical.

12 Section 75. Employment by same employer. If spouses or
13 parties to a civil union who are entitled to leave under this
14 Act are employed by the same employer, the employer may not
15 require that spouses or parties to a civil union not take such
16 leave concurrently.

17 Section 80. Coordination of leave.

18 (a) Family and medical leave taken under this Act must be
19 taken concurrently with any leave taken under the federal
20 Family and Medical Leave Act of 1993.

21 (b) An employer may require that family and medical leave
22 taken under this Act be taken concurrently with leave allowed
23 under the terms of a collective bargaining agreement or

1 employer policy. The employer must give employees written
2 notice of this requirement.

3 Section 85. Rules. The Department may adopt any rules
4 necessary to implement the provisions of this Act. In adopting
5 rules, the Department shall maintain consistency with the
6 regulations adopted to implement the Federal Family and Medical
7 Leave Act of 1993 as of the effective date of this Act to the
8 extent such regulations are not in conflict with this Act.

9 Section 90. Authority to contract. The Department may
10 contract or enter into interagency agreements with other State
11 agencies for the initial administration of the Family and
12 Medical Leave Insurance Act

13 Section 175. Severability. The provisions of this Act are
14 severable under Section 1.31 of the Statute on Statutes.

15 Section 900. The State Finance Act is amended by adding
16 Section 5.891 as follows:

17 (30 ILCS 105/5.891 new)

18 Sec. 5.891. The Family and Medical Leave Insurance Fund.

19 Section 999. Effective date. This Act takes effect January
20 1, 2020.