



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB1972

Introduced 2/15/2019, by Sen. Toi W. Hutchinson

#### 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 an employee who works in the State who is absent from work for specified reasons is entitled to earn and use a minimum of 40 hours of paid sick time during a 12-month period or a pro rata number of hours of paid sick time under the provisions of the Act. Provides that it is unlawful for an employer to interfere with, restrain, deny, change work days or hours scheduled to avoid paying sick time, or discipline an employee for the exercise of, or the attempt to exercise, any right provided under or in connection with the Act, including considering the use of paid sick time as a negative factor in an employment action that involves hiring, terminating, evaluating, promoting, disciplining, or counting the paid sick time under a no-fault attendance policy. Provides that any employer that the Department of Labor or a court finds by a preponderance of the evidence to have knowingly, repeatedly, or with reckless disregard violated any provision of the Act or any rule adopted under the Act is subject to a civil money penalty to be paid to the employee not to exceed \$2,500 for each separate offense. Provides that the Department of Labor shall administer the Act. 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 08180 JLS 53246 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 30% of all private sector workers  
11 in Illinois (almost 2,000,000 people) have no right to a  
12 paid sick day. Over three-fourths of the lowest-wage  
13 workers do not receive paid sick time and cannot forfeit a  
14 day's work, 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) Employed individuals who have court appointments,  
16 sentencing hearings, probation, conditional discharge,  
17 parole, or mandatory supervised release requirements, or  
18 are visiting a family member in jail or prison need paid  
19 time off work so that their families do not fall further  
20 into economic jeopardy and so that they are not further  
21 penalized, as these court-related events are frequently  
22 scheduled during work hours.

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

1           (b) This Act is enacted to establish the Healthy Workplace  
2 Act to provide at least a minimum time-off standard of paid  
3 sick time for all workers.

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

5           "Child" means a son or daughter who is a biological,  
6 adopted, or foster child, a stepchild, a legal ward, a child of  
7 a person standing in loco parentis, or any other individual  
8 whose close association with the employee is the equivalent of  
9 a child.

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

24          "Construction industry" also includes moving construction  
25 related materials on the job site or to or from the job site,

1 snow plowing, snow removal, and refuse collection.

2 "Department" means the Illinois Department of Labor.

3 "Employ" means to suffer or permit to work.

4 "Employee" means any person who performs services for an  
5 employer for wage, remuneration, or other compensation. This  
6 includes persons working any number of hours, including a  
7 full-time or part-time status.

8 "Employee" does not include any person who the employer  
9 establishes:

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

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

15 (C) is deemed a legitimate sole proprietor or  
16 partnership.

17 A sole proprietor or partnership shall be deemed to be  
18 legitimate if the employer establishes that:

19 (1) the sole proprietor or partnership is performing  
20 the service free from the direction or control over the  
21 means and manner of providing the service, subject only to  
22 the right of the employer for whom the service is provided  
23 to specify the desired result;

24 (2) the sole proprietor or partnership is not subject  
25 to cancellation or destruction upon severance of the  
26 relationship with the employer;

1           (3) the sole proprietor or partnership has a  
2 substantial investment of capital in the sole  
3 proprietorship or partnership beyond the ordinary tools  
4 and equipment and a personal vehicle;

5           (4) the sole proprietor or partnership owns the capital  
6 goods and gains the profits and bears the losses of the  
7 sole proprietorship or partnership;

8           (5) the sole proprietor or partnership makes its  
9 services available to the general public on a continuing  
10 basis;

11           (6) the sole proprietor or partnership includes  
12 services rendered on a Federal Income Tax Schedule as an  
13 independent business or profession;

14           (7) the sole proprietor or partnership performs  
15 services for the contractor under the sole proprietor's or  
16 partnership's name;

17           (8) when the services being provided require a license  
18 or permit, the sole proprietor or partnership obtains and  
19 pays for the license or permit in the sole proprietorship's  
20 or partnership's name;

21           (9) the sole proprietor or partnership furnishes the  
22 tools and equipment necessary to provide the service;

23           (10) if necessary, the sole proprietor or partnership  
24 hires its own employees without approval of the employer,  
25 pays the employees without reimbursement from the employer  
26 and reports the employees' income to the Internal Revenue

1 Service;

2 (11) the employer does not represent the sole  
3 proprietorship or partnership as an employee of the  
4 employer to the public; and

5 (12) the sole proprietor or partnership has the right  
6 to perform similar services for others on whatever basis  
7 and whenever it chooses.

8 Nothing in this Act shall hinder or prohibit the ability of  
9 any employee, including those as defined in the federal  
10 Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.)  
11 from taking uncompensated time off due to any reason for leave  
12 allowable for paid sick time under Section 15 of this Act.

13 "Employer" means any individual; person; partnership;  
14 association; corporation; limited liability company; business  
15 trust; employment or labor placement agency or business where  
16 wages are made directly or indirectly by the agency or business  
17 for work undertaken by the employee under hire to a third party  
18 pursuant to a contract between the agency or business with the  
19 third party; the State of Illinois and local governments; or  
20 any political subdivision of the State or local government, or  
21 State or local government agency; for which one or more persons  
22 is gainfully employed, express or implied, whether lawfully or  
23 unlawfully employed, who employs a worker or who employs a  
24 worker not excluded as an employee pursuant to the definition  
25 of "employee". "Employer" does not include school districts  
26 organized under the School Code, park districts organized under

1 the Park District Code, or any City of Chicago Sister Agency  
2 under the Chicago Minimum Wage and Paid Sick Leave Ordinance as  
3 of the effective date of this Act.

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

9 "Health care provider" means a person:

10 (1) who is:

11 (A) licensed to practice medicine in all of its  
12 branches in Illinois and possesses the degree of doctor  
13 of medicine;

14 (B) licensed to practice medicine in all of its  
15 branches in Illinois and possesses the degree of doctor  
16 of osteopathy or osteopathic medicine;

17 (C) licensed to practice medicine in all of its  
18 branches or as an osteopathic physician in another  
19 state or jurisdiction;

20 (D) a chiropractic physician licensed under the  
21 Medical Practice Act of 1987; or

22 (E) any other person determined by final rule as of  
23 the date this Act becomes law under the Family and  
24 Medical Leave Act of 1993; and

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



1 "Paid sick time" means a portion of or an entire scheduled  
2 or regular workday when an employee is unable to report to work  
3 because of a reason described in subsection (b) of Section 15.

4 "Parent" means a biological, adoptive, or foster parent, a  
5 stepparent, a parent of a legal ward, a person who stands in  
6 loco parentis to an employee or an employee's spouse, or any  
7 other individual whose close association with the employee is  
8 the equivalent of a parent.

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

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

18 Section 15. Provision of paid sick time.

19 (a) An employee who works in Illinois who is absent from  
20 work for a reason set forth in subsection (b) is entitled to  
21 earn and use a minimum of 40 hours of paid sick time during a  
22 12-month period or a pro rata number of hours of paid sick time  
23 under the provisions of subsection (c). The 12-month period for  
24 an employee shall be calculated annually from the date of hire  
25 or the effective date of this Act, whichever is later.

1 (b) Paid sick time shall be provided to an employee by an  
2 employer to:

3 (1) care for the employee's own physical or mental  
4 illness, injury, or health condition, or seek medical  
5 diagnosis or care, or attend a medical appointment,  
6 provided the employee is not an employee as defined in the  
7 federal Railroad Unemployment Insurance Act (45 U.S.C. 351  
8 et seq.);

9 (2) care for the employee's family member who is  
10 suffering from a physical or mental illness, injury, or  
11 health condition, or seek medical diagnosis or care, or  
12 attend a medical appointment;

13 (3) care for a child whose school or place of care has  
14 been closed by order of a public official due to a public  
15 health emergency or to not go in to work because of the  
16 closure of the employee's place of business by order of a  
17 public official due to a public health emergency;

18 (4) be absent from work because the employee or the  
19 employee's family member is the victim of:

20 (A) domestic violence as defined in Section 103(3)  
21 of the Illinois Domestic Violence Act of 1986; or

22 (B) sexual violence, which means:

23 (i) any conduct proscribed by Article 11 of the  
24 Criminal Code of 2012 except Sections 11-35 and  
25 11-45;

26 (ii) Sections 12-7.3, 12-7.4, and 12-7.5 of

1           the Criminal Code of 2012, or  
2                   (iii) a similar provision of the Criminal Code  
3           of 1961; or

4           (5) be absent from work to visit the employee's family  
5           member who is in jail or prison, for the employee to attend  
6           his or her own or his or her family member's appointment  
7           regarding court sentencing, probation, conditional  
8           discharge, parole, or mandatory supervised release  
9           requirements, or any other court hearing or trial.

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

22          (d) Employees shall be paid their regular rate of pay for  
23          paid sick time. However, employees engaged in an occupation in  
24          which gratuities or commissions have customarily and usually  
25          constituted and have been recognized as part of the  
26          remuneration for hire purposes shall be paid by their employer

1 at least the full minimum wage in the jurisdiction in which  
2 they are employed when paid sick time is taken. Paid sick time  
3 under this Act shall not be charged or otherwise credited to  
4 employee vacation accounts.

5 (e) Paid sick time shall begin to accrue at the  
6 commencement of employment or on the effective date of this  
7 Act, whichever is later. Employees shall be entitled to begin  
8 using paid sick time 180 days following commencement of their  
9 employment or 180 days following the effective date of this  
10 Act, whichever is later. Nothing in this Section shall be  
11 construed to discourage or prohibit an employer from allowing  
12 the use of paid sick time at an earlier date than this Section  
13 requires. Nothing in this Act shall be construed to discourage  
14 employers from adopting or retaining paid sick time policies  
15 more generous than policies that comply with the requirements  
16 of this Act.

17 (f) An employer may require certification of the qualifying  
18 illness, injury, or health condition, or for time used pursuant  
19 to item (4) of subsection (b), when paid sick time used covers  
20 more than 3 consecutive workdays. Any reasonable documentation  
21 signed by a health care provider of the employee's choice  
22 involved in following or treating the illness, injury, or  
23 health condition, and indicating the need for the amount of  
24 sick time taken, shall be deemed acceptable certification.  
25 Nothing in this Act shall be construed to require an employee  
26 to provide as certification any information from a health care

1 provider that would be a disclosure in violation of Section  
2 1177 of the Social Security Act or the regulations promulgated  
3 pursuant to the federal Health Insurance Portability and  
4 Accountability Act of 1996. If an employer possesses health  
5 information or any information related to domestic or sexual  
6 violence about an employee or employee's family member, the  
7 information shall be treated as confidential and not disclosed  
8 except with the permission of the affected employee. For paid  
9 sick time used pursuant to item (4) of subsection (b), any one  
10 of the following is acceptable documentation, and only one of  
11 the following shall be required: a police report, court  
12 document, any reasonable documentation signed by a health care  
13 provider, or signed statement from an attorney, a member of the  
14 clergy, a victim services organization or advocate, or the  
15 employee. It is up to the employee to determine which  
16 documentation to submit. If a document has been submitted, the  
17 employer shall not request or require any other document if the  
18 reason for the sick time is related to the same incident of  
19 violence or the same perpetrator of the violence. The employer  
20 shall not delay the commencement of leave taken for purposes of  
21 subsection (b) nor delay pay for this period on the basis that  
22 the employer has not yet received the certification.

23 (g) Paid sick time shall be provided upon the oral request  
24 of an employee. If the necessity for paid sick time under this  
25 Act is foreseeable, the employee shall provide the employer  
26 with not less than 7 days' notice before the date the leave is

1 to begin. If the necessity for leave is not foreseeable, the  
2 employee shall provide such notice as soon as is practical  
3 after the employee is aware of the necessity of the leave. An  
4 employer may not require, as a condition of providing paid sick  
5 time under this Act, that the employee search for or find a  
6 replacement worker to cover the hours during which the employee  
7 is on paid sick time leave.

8 (h) Paid sick time shall carry over annually to the extent  
9 not used by the employee, provided that nothing in this Act  
10 shall be construed to require an employer to allow use of more  
11 than 40 hours of paid sick time for an employee unless the  
12 employer agrees to do so.

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

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

1 leave.

2 (k) Nothing in this Section shall be construed as requiring  
3 financial or other payment to an employee from an employer upon  
4 the employee's termination, resignation, retirement, or other  
5 separation from employment for accrued paid sick time that has  
6 not been used.

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

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

23 (n) Nothing in this Section shall be deemed to interfere  
24 with, impede, or in any way diminish the right of employees to  
25 bargain collectively with their employers through  
26 representatives of their own choosing in order to establish

1 wages or other conditions of work in excess of the applicable  
2 minimum standards of the provisions of this Act. Nothing in  
3 this Section shall be deemed to affect the validity or change  
4 the terms of bona fide collective bargaining agreements in  
5 force on the effective date of this Act. After the effective  
6 date of this Act, requirements of this Section may be waived in  
7 a bona fide collective bargaining agreement, but only if the  
8 waiver is set forth explicitly in such agreement in clear and  
9 unambiguous terms. In no event shall this Section apply to any  
10 employee working in the construction industry who is covered by  
11 a bona fide collective bargaining agreement.

12 Section 20. Related employer responsibilities.

13 (a) An employer subject to any provision of this Act shall  
14 make and preserve records documenting hours worked by employees  
15 and the amount of paid sick time taken by employees for a  
16 period of not less than 3 years and shall allow the Department  
17 access to such records, with appropriate notice and a mutually  
18 agreeable time, to monitor compliance with the requirements of  
19 this Section. In addition, the records shall be preserved for  
20 the duration of any claim pending pursuant to Section 35 of  
21 this Act.

22 (b) An agreement by employees to waive their rights under  
23 this Act, except as allowed under subsection (n) of Section 15,  
24 is void as against public policy.

25 (c) Employers who have a paid time off policy that complies



1 with the requirements of this Act are not required to modify  
2 the a policy if such policy offers an employee the option, at  
3 the employee's discretion, to take paid sick time that is at  
4 least equivalent to the paid sick time described in this Act.

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

18 Section 25. Unlawful employer practices. It is unlawful for  
19 any employer to take any adverse action against an employee  
20 because the employee (1) exercises rights or attempts to  
21 exercise rights under this Act, (2) opposes practices which  
22 such employee believes to be in violation of this Act, or (3)  
23 supports the exercise of rights of another under this Act. Such  
24 unlawful employer practices include, but are not limited to,  
25 any reference to the employee's or any of the employee's family

1 members' citizenship or immigration status, or any threat to  
2 contact or actual contact with any local, State, or federal  
3 government entities regarding the employee's or any of the  
4 employee's family members' citizenship or immigration status,  
5 or sexual harassment. Exercising rights under this Act includes  
6 filing an action or instituting or causing to be instituted any  
7 proceeding under or related to this Act; providing or agreeing  
8 to provide any information in connection with any inquiry or  
9 proceeding relating to any right provided under this Act; or  
10 testifying to or agreeing to testify in any inquiry or  
11 proceeding relating to any right provided under this Act.

12 Section 30. Department responsibilities.

13 (a) The Department shall administer and enforce this Act  
14 and adopt rules under the Illinois Administrative Procedure Act  
15 for the purpose of this Act. The Department shall have the  
16 powers and the parties shall have the rights provided in the  
17 Illinois Administrative Procedure Act for contested cases. The  
18 Department shall have the power to conduct investigations in  
19 connection with the administration and enforcement of this Act,  
20 including the power to conduct depositions and discovery and to  
21 issue subpoenas. If the Department finds cause to believe that  
22 this Act has been violated, the Department shall notify the  
23 parties in writing and the matter shall be referred to an  
24 Administrative Law Judge to schedule a formal hearing in  
25 accordance with hearing procedures established by rule.

1 Administrative decisions shall be reviewed under the  
2 Administrative Review Law.

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

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

19 Section 35. Enforcement.

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

25 (b) Any employer that violates this Act is liable in a

1 claim filed with the Department or in a civil action in circuit  
2 court to any affected individuals for actual and compensatory  
3 damages, with interest at the prevailing rate, punitive  
4 damages, and such equitable relief as may be appropriate, in  
5 addition to reasonable attorney's fees, reasonable expert  
6 witness fees, and other costs of the action to be paid by the  
7 defendant. A civil action may be brought without first filing a  
8 complaint with the Department. Administrative decisions are  
9 reviewable under the Administrative Review Law.

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

16 Section 90. The State Finance Act is amended by adding  
17 Section 5.891 as follows:

18 (30 ILCS 105/5.891 new)

19 Sec. 5.891. The Healthy Workplace Fund.

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

22 Section 99. Effective date. This Act takes effect upon  
23 becoming law.