



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB1683

Introduced 2/22/2007, by Rep. Julie Hamos - Barbara Flynn Currie

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Family Leave Insurance Program Act. Establishes a Family Leave Insurance Program, administered by the Department of Employment Security, to provide paid leave to an employee who is unavailable to work: because the employee has to care for a newborn child or a newly-placed adopted or foster child; because the employee has to care for a family member (a child, spouse, parent, or parent-in-law of the employee or a person with whom the employee has resided in the same household for 6 months or longer) who has a serious health condition; or because of the employee's own serious health condition. Contains provisions regarding: applications and qualifications for benefits, certification by a healthcare provider of the need for leave; confidentiality; notices of intention to take leave; disqualification from benefits; duration of benefits; determination of benefit amounts; deductions from benefits; relationship of the Program to other benefits, programs, and contracts; rights of employees; opting out of participation in the Program; elective coverage under the Program; recordkeeping; successor employers; creation of a FLIP Account in the custody of the State Treasurer; payments by employers and employees; limits on expenditures; adoption of rules; taxation of benefits; discrimination; required postings regarding the Act and information pertaining to the filing of a charge; severability; and other matters. Effective January 1, 2008.

LRB095 08267 RLC 28439 b

FISCAL NOTE ACT  
MAY APPLY

STATE MANDATES  
ACT MAY REQUIRE  
REIMBURSEMENT

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 Leave Insurance Program Act.

6 Section 5. Findings and purpose.

7 (A) Findings. The General Assembly finds:

8 (1) Although family leave laws have helped employees to  
9 balance the demands of the workplace with their family  
10 responsibilities, more needs to be done to achieve the  
11 goals of workforce stability and economic security.

12 (2) Many employees do not have access to family and  
13 medical leave, and those who do may not be in a financial  
14 position to take leave that is unpaid. Those who are  
15 compelled to take leave in spite of financial inability to  
16 do so often fall into debt from which it is hard to  
17 recover.

18 (3) Most families no longer have one person who is the  
19 full-time caregiver and one who is the full-time  
20 breadwinner.

21 (4) The majority of mothers with school-age children  
22 are in the workforce.

23 (5) It is important for a child's development that

1 mothers and fathers be able to participate in early  
2 child-rearing.

3 (6) The average weekly hours of family caregiving for  
4 adults amounts to a part-time job.

5 (7) Employer-paid benefits meet only a small part of  
6 this need. Benefits are often given to some workers but not  
7 all.

8 (8) The working population in Illinois contains a high  
9 number of "baby boom" workers approaching retirement age,  
10 who are increasingly called upon to care for their own  
11 parents, an impaired spouse, or a grandchild. Older workers  
12 need time off to care for themselves or rely on care from  
13 younger relatives who are in the workforce. The  
14 establishment of paid family and medical leave benefits  
15 will ease workplace demands and reduce the impact on State  
16 income-support programs by increasing the ability of  
17 workers to recover from illness or provide caregiving  
18 services for family members while maintaining employment.

19 (9) Employers will benefit from the establishment of a  
20 family leave insurance program because of higher retention  
21 rates and lower costs in turnover and retraining when  
22 employees are able to take a leave and return to the job.

23 (10) Employers who could otherwise not afford to offer  
24 paid leave will benefit from a paid leave program that does  
25 not require them to fund the full costs.

26 (B) Purpose. This Act is enacted to establish a Family

1 Leave Insurance Program to provide limited income support for a  
2 reasonable period while an employee is away from work on family  
3 leave, a policy which protects the health and safety of  
4 Illinois residents and strengthens the Illinois economy.

5 Section 10. Family Leave Insurance Program.

6 (A) Definitions. As used this Act:

7 "Application year" means the 12-month period beginning  
8 on the first day of the calendar week in which an employee  
9 files an application for FLIP benefits and, thereafter, the  
10 12-month period beginning with the first day of the  
11 calendar week in which the employee files a subsequent  
12 application for FLIP benefits after the expiration of the  
13 employee's last preceding application year.

14 "Child" means a person who is a biological, adopted, or  
15 foster child, a stepchild, a legal ward, or a child of a  
16 person standing in loco parentis, and who is (i) under 18  
17 years of age or (ii) 18 years of age or older and incapable  
18 of self-care because of a mental or physical disability.

19 "Department" means the Department of Employment  
20 Security.

21 "Employer" means one who employs one or more employees,  
22 including this State and its political subdivisions.

23 "FLIP leave" means leave taken by an employee who is  
24 unavailable to work: because the employee has to care for a  
25 newborn child, or a newly-placed adopted or foster child

1 (and leave is completed within 12 months after the birth or  
2 the placement of the child for foster care or adoption);  
3 because the employee has to care for a family member who  
4 has a serious health condition; or because of the  
5 employee's own serious health condition.

6 "Family member" means a child, spouse, parent, or  
7 parent-in-law of the employee, or a person with whom the  
8 employee has resided in the same household for 6 months or  
9 longer.

10 "FLIP" means the Family Leave Insurance Program.

11 "Healthcare provider" means: (A) a person who directly  
12 treats or supervises the treatment of the serious health  
13 condition and: (i) is licensed to practice medicine in all  
14 of its branches in Illinois and possesses the degree of  
15 doctor of medicine; (ii) is licensed to practice medicine  
16 in Illinois and possesses the degree of doctor of  
17 osteopathy or osteopathic medicine; or (iii) is licensed to  
18 practice medicine in all of its branches or as an  
19 osteopathic physician in another state or jurisdiction; or  
20 (B) any other person determined by the United States  
21 Secretary of Labor to be capable of providing healthcare  
22 services under the federal Family and Medical Leave Act.

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

26 "Premium" means the money payments required by this Act

1 to be made to the Department for the FLIP Account.

2 "Qualifying year" means the first 4 of the last 5  
3 completed calendar quarters or the last 4 completed  
4 calendar quarters immediately preceding the first day of  
5 the employee's application year.

6 "Serious health condition" means an illness, injury,  
7 impairment, or physical or mental condition that involves  
8 inpatient care in a hospital, hospice, or residential  
9 medical care facility, or continuing treatment by a  
10 healthcare provider.

11 (B) Applying for FLIP leave benefits.

12 (1) The Department shall establish and administer a  
13 FLIP Account, and establish procedures and forms for filing  
14 benefit claims. The Department shall notify the employer  
15 within 2 business days of a claim being filed.

16 (2) The Department may require that a claim for  
17 benefits under this Act be supported by a certification  
18 issued by a healthcare provider who is providing care to  
19 the employee or the employee's family member, as  
20 applicable.

21 (3) Information contained in the files and records  
22 pertaining to an employee under this Act are confidential  
23 and not open to public inspection, other than to public  
24 employees in the performance of their official duties.  
25 However, the employee or an authorized representative of an  
26 employee may review the records or receive specific

1 information from the records on the presentation of the  
2 signed authorization of the employee. An employer or the  
3 employer's duly authorized representative may review the  
4 records of an employee in connection with a pending claim.  
5 At the Department's discretion, other persons may review  
6 records when those persons are rendering assistance to the  
7 Department at any stage of the proceedings on any matter  
8 pertaining to the administration of this Act.

9 (C) Qualifying for FLIP leave benefits. FLIP leave benefits  
10 are payable to an employee during a period in which the  
11 employee is on FLIP leave if the employee:

12 (1) Files a claim for benefits as required by rules  
13 adopted by the Department.

14 (2) Has earned at least \$1,600 and worked at least 6  
15 months during the employee's qualifying year for the  
16 employer from whom the employee is on FLIP leave.

17 (3) Documents that he or she has provided the employer  
18 from whom FLIP leave is to be taken with written notice of  
19 his or her intention to take FLIP leave as follows:

20 (a) If the necessity for FLIP leave was foreseeable  
21 based on an expected birth, placement, or treatment,  
22 notice was given at least 30 days before FLIP leave was  
23 to begin, stating the anticipated starting date and  
24 ending date of the leave.

25 (b) If the date of birth, placement, or treatment  
26 requiring FLIP leave will begin in less than 30 days,

1 as much notice as practicable was given.

2 (c) In the case of medical treatment, the employee  
3 made reasonable efforts to schedule the treatment so as  
4 not to unduly disrupt the operations of the employer,  
5 subject to the approval of the healthcare provider.

6 (d) An employer may require that a request for FLIP  
7 leave be supported by certification issued by a  
8 healthcare provider of the employee or of the family  
9 member for whom the employee is caring. If the employer  
10 has reason to doubt the validity of the certification,  
11 the employer may require, at the expense of the  
12 employer, that the employee obtain the opinion of a  
13 second healthcare provider approved by the employer.  
14 However, the healthcare provider approved by the  
15 employer may not be employed on a regular basis by the  
16 employer. If the second opinion differs from the first  
17 opinion, the employer may require, at the expense of  
18 the employer, that the employee obtain the opinion of a  
19 third healthcare provider approved jointly by the  
20 employer and the employee. The opinion of the third  
21 healthcare provider shall be considered to be final and  
22 binding on the employer and employee.

23 (4) Discloses whether or not she or he owes child  
24 support obligations.

25 (D) Disqualification from benefits.

26 (1) An employee is disqualified from FLIP benefits



1 beginning with the first day of the calendar week, and  
2 continuing for the next 52 consecutive weeks, if the  
3 employee:

4 (a) willfully made a false statement or  
5 misrepresentation regarding a material fact, or  
6 willfully failed to report a material fact, to obtain  
7 benefits under this Act; or

8 (b) seeks benefits based on a willful and  
9 intentional self-inflicted serious health condition or  
10 a serious health condition resulting from the  
11 employee's perpetration of a felony.

12 (2) An employee is not disqualified for benefits for  
13 any week during which there is a strike or lockout at the  
14 factory, establishment, or other premises at which the  
15 employee is or was last employed.

16 (E) Duration and amount of benefits.

17 (1) In an application year, FLIP benefits are payable  
18 for a maximum of 4 weeks.

19 (2) Payments must be made within 2 weeks of an employee  
20 commencing FLIP leave.

21 (3) FLIP benefits shall be paid as follows:

22 (a) Benefits shall be 67% of weekly wages up to a  
23 maximum of \$380 per week for an employee who at the  
24 time FLIP leave began was regularly working 35 hours or  
25 more per week or a pro-rated amount based on the weekly  
26 hours regularly worked for an employee regularly

1 working less than 35 hours per week.

2 (b) The Department annually shall calculate to the  
3 nearest dollar an adjusted maximum benefit to account  
4 for inflation using the consumer price index for urban  
5 wage earners and clerical workers (CPI-W) or a  
6 successor index.

7 (c) If an employee disclosed that he or she owes  
8 child support obligations and the Department  
9 determines that the employee is eligible for benefits,  
10 the Department shall notify the applicable State or  
11 local child support enforcement agency and deduct and  
12 withhold from benefits the amount of child support  
13 owed, as appropriate.

14 (d) If an employee elects to have federal income  
15 tax deducted and withheld from benefits, the  
16 Department shall deduct and withhold the amount  
17 specified in the federal Internal Revenue Code.

18 (4) If FLIP benefits are paid erroneously or as a  
19 result of fraud, or if a claim for benefits is rejected  
20 after benefits are paid, the Department shall seek  
21 repayment of benefits from the recipient.

22 (5) If an employee dies while on FLIP leave before  
23 receiving payment of benefits, the payment shall be made by  
24 the Department to the surviving spouse or the child or  
25 children if there is no surviving spouse. If there is no  
26 surviving spouse and no child or children, the payment

1 shall be made and distributed consistent with the terms of  
2 the decedent's will or, if the decedent dies intestate,  
3 consistent with the terms of Illinois intestate succession  
4 law.

5 (F) Existing benefits not diminished.

6 (1) Nothing in this Act may be construed to limit an  
7 employee's right to leave from employment under other laws  
8 or employer policy.

9 (2) If an employer provides paid time off or an  
10 employee is covered by disability insurance, the employee  
11 may elect whether first to use the paid time off or to  
12 receive temporary disability benefits. An employee may not  
13 be required to use his or her paid time off or disability  
14 insurance to which he or she is entitled before receiving  
15 benefits under this Act.

16 (3) An employer may require that FLIP leave for which  
17 an employee is receiving or received benefits under this  
18 Act be taken concurrently with leave under the federal  
19 Family and Medical Leave Act or other applicable federal,  
20 State, or local law, except that:

21 (a) FLIP leave during which the employee is  
22 receiving or received benefits under this Act is in  
23 addition to leave from employment during which  
24 benefits are paid or are payable under workers'  
25 compensation law and that is designated as leave under  
26 the federal Family and Medical Leave Act.

1           (b) If an employer requires that FLIP leave for  
2           which an employee is receiving or received benefits  
3           under this Act be taken concurrently with leave under  
4           the federal Family and Medical Leave Act or other  
5           applicable federal, State, or local law, the employer  
6           must give all employees written notice of the  
7           requirement.

8           (4) Benefits under this Act are supplementary to a  
9           federal, State, or local law establishing similar  
10          entitlement benefits, and if a federal, State, or local law  
11          applying to the employee establishes a more favorable right  
12          to return to his or her position than is established under  
13          this Section, the application of that federal, State, or  
14          local law is not affected by this Section.

15          (5) An employee who has received benefits under this  
16          Act does not lose any employment benefit, including  
17          seniority or pension rights accrued before the date that  
18          FLIP leave commenced. However, this Act does not entitle an  
19          employee to accrue employment benefits during a period of  
20          FLIP leave or to a right, benefit, or position of  
21          employment other than a right, benefit, or position to  
22          which the employee would have been entitled had the  
23          employee not taken FLIP leave.

24          (6) This Act may not be construed to diminish an  
25          employer's obligation to comply with a collective  
26          bargaining agreement or an employment benefit program or a

1 plan that provides greater benefits to employees than FLIP  
2 benefits provided under this Act.

3 (7) An agreement by an employee to waive his or her  
4 rights under this Act is void as against public policy. The  
5 benefits provided to employees under this Act may not be  
6 diminished by a collective bargaining agreement or an  
7 employment benefit program or plan entered into or renewed  
8 after the effective date of this Act.

9 (G) Election of coverage.

10 (1) An employer may opt out of participation in FLIP  
11 under this Act if:

12 (a) the employer is participating in a private plan  
13 that meets or exceeds all benefits under FLIP; or

14 (b) the employer provides its own coverage that  
15 meets or exceeds all benefits under FLIP.

16 (2) An employer of employees not covered by this Act or  
17 a self-employed person may elect coverage under FLIP under  
18 this Act for an initial period of not less than 3 years or  
19 a subsequent period of not less than one year immediately  
20 following another period of coverage. The employer or  
21 self-employed person must file a notice of election in  
22 writing with the Department. The election becomes  
23 effective on the date of filing the notice. The Department  
24 shall establish a payment amount for participation in FLIP  
25 for self-employed people that is higher than for other  
26 employers, to reflect that the self-employed person is both

1 employer and employee for purposes of this Act.

2 (3) An employer or self-employed person who has elected  
3 coverage may withdraw from coverage within 30 days after  
4 the end of the three-year period of coverage, or at such  
5 other times as the Department may prescribe by rule, by  
6 filing written notice with the Department. The withdrawal  
7 shall take effect not sooner than 30 days after the filing  
8 of the notice.

9 (4) The Department may cancel elective coverage if the  
10 employer or self-employed person fails to provide required  
11 payments or reports. The Department may collect due and  
12 unpaid premiums and may levy an additional premium for the  
13 remainder of the period of coverage. The cancellation shall  
14 be effective no later than 30 days from the date of the  
15 notice in writing advising the employer or self-employed  
16 person of the cancellation.

17 (H) Records and reports.

18 (1) The Department shall specify the forms and times  
19 for employers to provide reports, furnish information, and  
20 remit premiums. If the employer is a temporary services  
21 agency that provides employees on a temporary basis to its  
22 customers, the temporary services agency is considered the  
23 employer for purposes of this Section. However, if the  
24 temporary services agency fails to remit the required  
25 premiums, the customer to whom the employees were provided  
26 is liable for paying the premiums.

1           (2) An employer must keep at its place of business a  
2 record of employment from which the information needed by  
3 the Department for purposes of this Act may be obtained.  
4 This record shall at all times be open to the inspection of  
5 the Department pursuant to rules promulgated by the  
6 Department.

7           (3) Information obtained from employer records under  
8 this Act are confidential and not open to public  
9 inspection, other than to public employees in the  
10 performance of their official duties. However, an  
11 interested party shall be supplied with information from  
12 employer records to the extent necessary for the proper  
13 presentation of the case in question. An employer may  
14 authorize inspection of its records by written consent.

15       (I) Disposal of business.

16           (1) When an employer quits business, or sells out,  
17 exchanges, or otherwise disposes of the business or stock  
18 of goods, any premium payable under this Act is immediately  
19 due and payable, and the employer must, within 10 days  
20 thereafter, make a return and pay the premium due. Any  
21 person who becomes a successor to the business is liable  
22 for the full amount of the premium and must withhold from  
23 the purchase price a sum sufficient to pay any premium due  
24 from the employer until the employer produces a receipt  
25 from the Department showing payment in full of any premium  
26 due or a certificate that no premium is due and, if the

1 premium is not paid by the employer within 10 days from the  
2 date of the sale, exchange, or disposal, the successor is  
3 liable for the payment of the full amount of premium. The  
4 successor's payment thereof is, to the extent thereof, a  
5 payment upon the purchase price, and if the payment is  
6 greater in amount than the purchase price, the amount of  
7 the difference is a debt due the successor from the  
8 employer.

9 (2) A successor is not liable for any premium due from  
10 the person from whom the successor has acquired a business  
11 or stock of goods if the successor gives written notice to  
12 the Department of the acquisition and no assessment is  
13 issued by the Department within 180 days of receipt of the  
14 notice against the former operator of the business and a  
15 copy is mailed to the successor.

16 (J) FLIP Account.

17 (1) The FLIP Account is created in the custody of the  
18 State Treasurer. All receipts from the premium or penalties  
19 imposed under this Act must be deposited in the account.  
20 Expenditures from the account may be used only for the  
21 purposes of the FLIP Program.

22 (2) Each employer shall retain from the earnings of  
23 each full-time employee a premium in the amount of 75 cents  
24 per week or, for part-time employees, an amount pro-rated  
25 based on the number of actual hours worked. The employer  
26 shall match the amount retained by an equal amount, and the



1 money retained shall be paid to the Department in the  
2 manner and at such intervals as the Department directs for  
3 deposit in the FLIP Account.

4 (3) The Department shall adjust the amount of the  
5 premium from time to time to ensure that the amount is the  
6 lowest rate necessary to pay FLIP benefits and  
7 administrative costs, and maintain actuarial solvency in  
8 accordance with recognized insurance principles.

9 (4) The Department may adopt rules to permit an  
10 employee with multiple employers and his or her employers  
11 to petition for refunds or credits of amounts paid to the  
12 Department for hours in excess of 35 hours per week worked  
13 by the employee.

14 (K) Taxation of FLIP benefits. The Department must advise  
15 an employee filing a new claim for FLIP benefits, at the time  
16 of filing the claim, that:

17 (1) Benefits are subject to federal income tax and  
18 State income tax.

19 (2) Requirements exist pertaining to estimated tax  
20 payments.

21 (3) The employee may elect to have federal income tax  
22 deducted and withheld from the employee's payment of  
23 benefits at the amount specified in the Internal Revenue  
24 Code.

25 (4) The employee is permitted to change a previously  
26 elected withholding status.

1 (L) No discrimination against claimants. An employer,  
2 temporary services agency, employment agency, employee  
3 organization, or other person may not discharge, expel, or  
4 otherwise discriminate or retaliate against a person because he  
5 or she has filed or communicated to the employer an intent to  
6 file a claim, a complaint, or an appeal, has taken FLIP leave,  
7 or has testified or is about to testify or has assisted in any  
8 proceeding under this Act.

9 (M) Liability. Any employer who violates this Act is liable  
10 to any affected individuals for damages with interest and for  
11 such equitable relief as may be appropriate. The court in such  
12 an action shall, in addition to any judgment awarded to the  
13 plaintiff, allow a reasonable attorney's fee and other costs of  
14 the action to be paid by the defendant. An action may be  
15 brought under this Section not later than 3 years after the  
16 date of the last event constituting the alleged violation for  
17 which the action is brought.

18 (N) No entitlement.

19 (1) FLIP leave benefits are payable under this Act only  
20 to the extent that moneys are available in the FLIP Account  
21 for this purpose. Neither this State nor the Department is  
22 liable for any amount in excess of these limits.

23 (2) This Act does not create a continuing entitlement  
24 or contractual right. There is no vested private right of  
25 any kind against amendment or repeal of this Act.

26 (O) Notification.

1           (1) Every employer covered by this Act shall post and  
2 keep posted, in conspicuous places on the premises of the  
3 employer where notices to employers are customarily  
4 posted, a notice, to be prepared or approved by the  
5 Department, summarizing the requirements of this Act and  
6 information pertaining to the filing of a charge.

7           (2) If a FLIP-covered employer has any written guidance  
8 to employees concerning employee benefits or leave rights,  
9 such as in an employee handbook, information concerning  
10 FLIP entitlements and employee obligations under FLIP must  
11 be included in the handbook or other document.

12           (3) An employer that willfully violates the  
13 requirements in paragraph (1) or (2) of this subsection (N)  
14 may be assessed a civil money penalty by the Department not  
15 to exceed \$1,000 for each separate offense. Furthermore, an  
16 employer that fails to notify according to paragraph (1) or  
17 (2) of this subsection (N) may not take any adverse action  
18 against an employee, including denying FLIP leave, for  
19 failing to furnish the employer with advance notice of a  
20 need to take FLIP leave.

21           (4) If an employer's workforce is comprised of a  
22 significant portion of workers who are not literate in  
23 English, the employer is responsible for providing the  
24 notice in a language in which the employees are literate.

25           (P) Outreach and education efforts. The Department shall  
26 conduct ongoing outreach and education efforts concerning this

1 Act targeted toward employers, labor organizations, and other  
2 appropriate organizations.

3 (Q) Rules. The Department may adopt rules as necessary to  
4 implement this Act. In adopting rules, the Department shall  
5 maintain consistency with the rules adopted to implement the  
6 federal Family and Medical Leave Act, to the extent those rules  
7 are not in conflict with this Act.

8 Section 95. Severability. The provisions of this Act are  
9 severable, and if any phrase, clause, sentence, or provision is  
10 declared to be invalid or is preempted by federal law or  
11 regulation, the validity of the remainder of this Act is not  
12 affected.

13 Section 99. Effective date. This Act takes effect January  
14 1, 2008.