

**SB3835**



**96TH GENERAL ASSEMBLY**

**State of Illinois**

**2009 and 2010**

**SB3835**

Introduced 2/16/2010, by Sen. Martin A. Sandoval

**SYNOPSIS AS INTRODUCED:**

New Act

Creates the Healthy Workplace Act. Requires an employer to provide an employee up to 7 sick days with pay during each 12-month period. Provides that an employee may use the sick days care for physical or mental illness, injury, medical condition, professional medical diagnosis or care, or a medical appointment of the employee or a family member. Contains provisions regarding: accrual; certification; notice; responsibilities of employers; unlawful practices; powers and duties of the Department of Labor; violations; penalties; civil liability; severability; and other matters.

LRB096 20794 RLC 36552 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  
5 Healthy Workplace Act.

6 Section 5. Findings and purpose.

7 (a) Findings. 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, or for routine medical care. Almost half of  
11 all private sector workers do not earn a single paid sick  
12 day per year, with low-income workers significantly worse  
13 off. Nationally, over three-quarters of the poorest  
14 families, 77 percent, lack any regular paid sick leave.

15 (2) Of those workers who receive paid sick days, few  
16 policies, in both the private and public sectors, allow the  
17 worker to use it to care for a family member who is ill.

18 (3) The absence of paid sick days forces workers to  
19 make untenable choices between needed income and jobs and  
20 caring for their own health and their family's health.

21 (4) When parents are available to care for their  
22 children who become sick, the children's recovery is  
23 faster, more serious illnesses are prevented, and the

1 children's overall mental and physical health is improved.  
2 Parents who cannot afford to miss work must send children  
3 with a contagious illness to child care or school,  
4 contributing to the high rate of infections in child care  
5 centers and schools.

6 (5) The working population in Illinois contains a high  
7 number of "baby boom" workers approaching retirement age  
8 who are increasingly called upon to care for their parents  
9 or an impaired spouse. Older workers need time off to care  
10 for themselves as well.

11 (6) Preventive and routine medical care helps avoid  
12 illness and injury by detecting illnesses early and  
13 shortening the duration of illnesses. Providing employees  
14 time off to attend to their own health care needs ensures  
15 that they will be healthier and more efficient employees.  
16 Routine medical care results in savings by detecting and  
17 treating illness and injury early and decreasing the need  
18 for emergency care. These savings benefit public and  
19 private payers of health insurance, including private  
20 businesses. It will also reduce the spread of disease  
21 within workplaces when sick employees go to work, a  
22 practice known as presenteeism.

23 (7) Public health is jeopardized as many workers who do  
24 not have paid sick days have the most frequent contact with  
25 the public such as workers in food services, nursing homes,  
26 child care centers and retail establishments. The spread of

1 contagious diseases such as the flu cannot be stopped  
2 without a universally adopted paid sick days policy.

3 (8) Providing 7 paid sick days per year to employees  
4 who earn those days is affordable for employers and good  
5 for business. Requiring all employers to provide paid sick  
6 days levels the playing field among employers. Employers  
7 that provide paid sick days see greater retention and avoid  
8 the problems of "presenteeism". Studies have shown that  
9 costs from on-the-job productivity losses as a result of  
10 presenteeism exceed the costs of absenteeism, medical and  
11 disability benefits.

12 (b) Purpose. This Act is enacted to establish the Healthy  
13 Workplace Act to provide a minimum time-off standard for paid  
14 sick days so that workers can care for their own health and the  
15 health of their families while prospering at work.

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

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

22 (b) "Department" means the Illinois Department of Labor.

23 (c) "Employee" means any person who performs services for  
24 an employer for wage, remuneration, or other compensation. This  
25 includes persons working any number of hours, including a

1 full-time or part-time status.

2 (d) "Employer" (i) means any person who employs 50 or more  
3 employees for each working day during each of 20 or more  
4 calendar workweeks in the current or preceding calendar year;  
5 (ii) includes: (I) any person who acts, directly or indirectly,  
6 in the interest of an employer to any of the employees of such  
7 employer; and (II) any successor in interest of an employer;  
8 and (iii) includes any State officer, department, or agency,  
9 any unit of local government, and any school district.

10 (e) "Family member" means a child, spouse, parent, or  
11 parent-in-law of the employee, or a person with whom the  
12 employee has resided in the same household for 6 months or  
13 longer.

14 (f) "Healthcare provider" means:

15 (1) a person who: (i) is licensed to practice medicine  
16 in all of its branches in Illinois and possesses the degree  
17 of doctor of medicine; (ii) is licensed to practice  
18 medicine in Illinois and possesses the degree of doctor of  
19 osteopathy or osteopathic medicine; or (iii) is licensed to  
20 practice medicine in all of its branches or as an  
21 osteopathic physician in another state or jurisdiction; or  
22 (iv) any other person determined by Final Rule of The  
23 Family and Medical Leave Act of 1993 (29 CFR Part 825 Sec.  
24 118); and

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

1 (g) "Parent" means a biological or adoptive parent, a  
2 foster or stepparent, or a person who stands in loco parentis  
3 to an employee or an employee's spouse. Parent may also mean a  
4 person who is the parent of a child as defined in this section.

5 (h) "Sick day" means a portion of, or a regular workday  
6 when an employee is unable to report to work because of a  
7 reason described in subsection (b) of Section 15.

8 (i) "Spouse" refers to either member of a married pair as  
9 "marriage" is defined by the marriage laws of Illinois.

10 Section 15. Provision of paid sick days.

11 (a) All employees who work in Illinois who are absent from  
12 work for the reasons set forth in subsection (b) shall be  
13 entitled to earn a maximum of 7 sick days with pay during a  
14 12-month period, or a pro rata number of paid sick days or  
15 hours under the provisions of subsection (c). The 12-month  
16 period for an employee shall be calculated from the  
17 date-of-hire or subsequent anniversary date.

18 (b) Paid sick days shall be provided to an employee by an  
19 employer to:

20 (1) care for the employee's own physical or mental  
21 illness, or injury or medical condition, or professional  
22 medical diagnosis, or care; or

23 (2) care for the employee's family member who is  
24 suffering from a physical or mental illness, or injury, or  
25 medical condition, or professional medical diagnosis or

1 care; or

2 (3) attend a medical appointment for himself or herself  
3 or for that of the employee's family member.

4 (c) Paid sick days shall accrue at the rate of one hour of  
5 paid sick time for every 30 hours worked up to the maximum of 7  
6 paid sick days. Employees who are exempt from overtime  
7 requirements of the Federal Fair Labor Standards Act (29 USC  
8 Sec. 213 (a) (1)) will be assumed to work 40 hours in each work  
9 week for purposes of paid sick day accrual unless their normal  
10 work week is less than 40 hours, in which case paid sick days  
11 accrue based upon that normal work week. Paid sick days may be  
12 used as accrued, or be loaned by the employer, at its  
13 discretion, to the employee in advance of such accrual; in such  
14 case an employer shall not require an employee to reimburse it  
15 for any unearned sick days. For periods of paid sick days that  
16 are less than a normal workday, the leave shall be permitted to  
17 be used in hourly increments. It is up to the employee to  
18 determine how much accrued leave to take under this Act.

19 (d) An employer may require certification of the qualifying  
20 illness, injury or health condition when paid sick days cover  
21 more than 3 consecutive workdays. Any reasonable documentation  
22 signed by a health care provider involved in following or  
23 treating the illness, injury or health condition, and  
24 indicating the need for the amount of sick days taken, shall be  
25 deemed acceptable certification. The certification shall be  
26 issued at such time and in such manner that the Department may

1 by regulation require. The employer shall not delay the  
2 commencement of leave taken for purposes of subsection (b) or  
3 pay for this period on the basis that the employer has not yet  
4 received the certification. Nothing in this Act shall be  
5 construed to require an employee to provide as certification  
6 any information from a healthcare provider that would be in  
7 violation of Section 1177 of the Social Security Act or the  
8 regulations promulgated pursuant to Section 264(c) of the  
9 Health Insurance Portability and Accountability Act, 42 U.S.C.  
10 1320d-2 note. If an employer possesses health information about  
11 an employee or employee's family member, such information shall  
12 be treated as confidential and not disclosed except with the  
13 permission of the affected employee.

14 (e) Paid sick days shall be provided upon the oral request  
15 of an employee. If the necessity for sick days under this Act  
16 is foreseeable, the employee shall provide the employer with  
17 not less than 7 days notice before the date the leave is to  
18 begin. If the necessity for leave is not foreseeable, the  
19 employee shall provide such notice as soon as is practicable  
20 after the employee is aware of the necessity of such leave. An  
21 employer may not require, as a condition of providing paid sick  
22 days under this Act, that the employee search for or find a  
23 replacement worker to cover the hours during which the employee  
24 is on paid sick days leave.

25 (f) Paid sick days shall carry over annually to the extent  
26 not used by the employee, provided that nothing in this Act



1 shall be construed to require an employer to allow accumulation  
2 of more than 7 paid sick days for an employee unless an  
3 employer agrees to do so.

4 (g) It shall be unlawful for an employer to interfere with,  
5 restrain, or deny the exercise of, or the attempt to exercise,  
6 any right provided under, or in connection with this Act,  
7 including but not limited to using the taking of paid sick days  
8 as a negative factor in an employment action such as hiring,  
9 termination, evaluation, promotion or a disciplinary action,  
10 or counting the paid sick days under a no-fault attendance  
11 policy.

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

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

23 Section 20. Related employer responsibilities.

24 (a) An employer subject to any provision of this Act shall  
25 make and preserve records documenting hours worked by employees

1 and the amount of paid sick days taken by employees, for a  
2 period of not less than 3 years and shall make reports from the  
3 records as prescribed by rule or order of the Director of the  
4 Department.

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

11 (c) Nothing in this Act shall be construed to discourage  
12 employers from adopting or retaining paid sick day policies  
13 more generous than policies that comply with the requirements  
14 of this Act and nothing in this Act shall be construed to  
15 diminish the obligation of an employer to comply with any  
16 contract, collective bargaining agreement, or any employment  
17 benefit program or plan that provides greater paid sick day  
18 rights to employees than the rights established under this Act.

19 (d) Employers who have a paid time off policy that complies  
20 with at least the minimum requirements of this Act shall not be  
21 required to modify such a policy if such policy offers an  
22 employee the option, at the employee's discretion, to take paid  
23 sick days that are at least equivalent to the paid sick days  
24 described in this Act.

25 (e) Every employer covered by this Act shall post and keep  
26 posted, in conspicuous places on the premises of the employer

1 where notices to employees are customarily posted, a notice, to  
2 be prepared or approved by the Director of the Department,  
3 summarizing the requirements of this Act and information  
4 pertaining to the filing of a charge. If an employer's  
5 workforce is comprised of a significant portion of workers who  
6 are not literate in English, the employer is responsible for  
7 providing the notice in a language in which the employees are  
8 literate. The Director shall furnish copies of summaries and  
9 rules to employers upon request without charge.

10 Section 25. Unlawful employer practices.

11 It shall be unlawful for any employer to take any adverse  
12 action against an employee because the employee (1) exercises  
13 rights or attempts to exercise rights under this Act, (2)  
14 opposes practices which such employee believes to be in  
15 violation of this Act, or (3) supports the exercise of rights  
16 of another under this Act.

17 Exercising rights under this Act shall include but not be  
18 limited to filing an action, or instituting or causing to be  
19 instituted any proceeding under or related to this Act;  
20 providing or about to provide any information in connection  
21 with any inquiry or proceeding relating to any right provided  
22 under this Act; or testifying to, or about to testify in any  
23 inquiry or proceeding relating to any right provided under this  
24 Act.

1 Section 30. Department responsibilities.

2 (a) The Department shall administer and enforce this Act.  
3 An employee or employee representative who believes his or her  
4 rights under this Act have been violated may, within 1 year  
5 after the alleged violation occurs, file a complaint with the  
6 Department requesting a review of the alleged violation.

7 (b) The Director of the Department shall adopt rules  
8 necessary to administer and enforce this Act in accordance with  
9 the Illinois Administrative Procedure Act. The Director shall  
10 have the powers and the parties shall have the rights provided  
11 in the Illinois Administrative Procedure Act for contested  
12 cases, including but not limited to, provisions for  
13 depositions, subpoena power and procedures, and discovery.

14 (c) The Director of the Department is authorized to  
15 supervise the payment of the unpaid wages owing to the employee  
16 or employees under this Act and may bring any legal action  
17 necessary to recover the amount of unpaid wages and penalties  
18 and the employer shall be required to pay the costs. Any sums  
19 recovered by the Department on behalf of an employee under this  
20 Act shall be paid to the employee or employees affected.

21 (d) The Department shall develop and implement a  
22 multilingual outreach program to inform employees, parents,  
23 and persons who are under the care of a healthcare provider  
24 about the availability of paid sick days under this Act.

25 (e) The Department shall, subject to appropriation,  
26 annually compile information on the following and issue an

1 annual report on:

2 (1) The number of employees who used paid sick days;

3 (2) The number of hours of paid sick days used and the  
4 reasons for the use;

5 (3) The demographic characteristics of employees  
6 (including by gender, race, age, marital status, job  
7 industry and job classification, and full or part-time  
8 status) who were eligible for and who used paid sick days  
9 (including the number of hours used and the reasons for the  
10 use);

11 (4) The cost and benefits to employers and employees of  
12 implementing the paid sick days policies.

13 Section 35. Violations and liability.

14 Any employer that violates this Act is liable in a civil  
15 action in circuit court to any affected individuals for actual,  
16 compensatory, and punitive damages with interest at the  
17 prevailing rate and for such equitable relief as may be  
18 appropriate. Such action may be brought without first filing an  
19 administrative complaint. The court in such an action shall, in  
20 addition to any judgment awarded to the plaintiff, allow a  
21 reasonable attorney's fee, reasonable expert witness fees, and  
22 other costs of the action to be paid by the defendant.  
23 Necessary legal action may be brought by the employee or the  
24 Department to collect the judgment, and the employer shall be  
25 required to pay the costs incurred in collecting the judgment.

1 An action may be brought under this Act no more than 3 years  
2 after the date of the last event constituting the alleged  
3 violation for which the action is brought. An employer that  
4 violates any provision of this Act or any rule adopted under  
5 this Act is subject to a civil money penalty not to exceed  
6 \$2,500 for each separate offense.

7 Section 40. Severability.

8 If any provision of this Act or the application of such  
9 provision to any person or circumstance is preempted by or held  
10 to be in violation of Illinois or federal law or regulation,  
11 the remainder of the provisions of this Act and the application  
12 of those provisions to any person or circumstance shall not be  
13 affected.