



Sen. Martin A. Sandoval

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1 AMENDMENT TO SENATE BILL 128

2 AMENDMENT NO. _____. Amend Senate Bill 128 by replacing
3 everything after the enacting clause with the following:

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

1 worker to use it to care for a family member who is ill.

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

5 (4) When parents are available to care for their
6 children who become sick, the children's recovery is
7 faster, more serious illnesses are prevented, and the
8 children's overall mental and physical health is improved.
9 Parents who cannot afford to miss work must send children
10 with a contagious illness to child care or school,
11 contributing to the high rate of infections in child care
12 centers and schools.

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

18 (6) Preventive and routine medical care helps avoid
19 illness and injury by detecting illnesses early and
20 shortening the duration of illnesses. Providing employees
21 time off to attend to their own health care needs ensures
22 that they will be healthier and more efficient employees.
23 Routine medical care results in savings by detecting and
24 treating illness and injury early and decreasing the need
25 for emergency care. These savings benefit public and
26 private payers of health insurance, including private

1 businesses. It will also reduce the spread of disease
2 within workplaces when sick employees go to work, a
3 practice known as presenteeism.

4 (7) Public health is jeopardized as many workers who do
5 not have paid sick days have the most frequent contact with
6 the public such as workers in food services, nursing homes,
7 child care centers and retail establishments. The spread of
8 contagious diseases such as the flu cannot be stopped
9 without a universally adopted paid sick days policy.

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

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

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

24 (a) "Child" means a person who is a biological, adopted, or
25 foster child, a stepchild, a legal ward, or a child of a person

1 standing in loco parentis, and who is (i) under 18 years of age
2 or (ii) 18 years of age or older and incapable of self-care
3 because of a mental or physical disability.

4 (b) "Employee" means any person who performs services for
5 an 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 (c) "Employer" means one who employs at least one employee,
9 including but not limited to, this State and its political
10 subdivisions, a temporary services agency, employment agency,
11 or employee organization.

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

16 (e) "Healthcare provider" means:

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

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

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

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

10 (h) "Spouse" refers to either member of a married pair as
11 "marriage" is defined by the marriage laws of Illinois.

12 Section 15. Provision of paid sick days.

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

20 (b) Paid sick days shall be provided to an employee by an
21 employer to:

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

25 (2) care for the employee's family member who is

1 suffering from a physical or mental illness, or injury, or
2 medical condition, or professional medical diagnosis or
3 care; or

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

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

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

1 deemed acceptable certification. The employer shall not delay
2 the commencement of leave taken for purposes of subsection (b)
3 or pay for this period on the basis that the employer has not
4 yet 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.

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

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

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

23 Section 25. Unlawful employer practices.

24 It shall be unlawful for any employer to take any adverse
25 action against an employee because the employee (1) exercises

1 rights or attempts to exercise rights under this Act, (2)
2 opposes practices which such employee believes to be in
3 violation of this Act, or (3) supports the exercise of rights
4 of another under this Act.

5 Exercising rights under this Act shall include but not be
6 limited to filing an action, or instituting or causing to be
7 instituted any proceeding under or related to this Act;
8 providing or about to provide any information in connection
9 with any inquiry or proceeding relating to any right provided
10 under this Act; or testifying to, or about to testify in any
11 inquiry or proceeding relating to any right provided under this
12 Act.

13 Section 30. 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. The court in such an action shall, in addition to
19 any judgment awarded to the plaintiff, allow a reasonable
20 attorney's fee, reasonable expert witness fees, and other costs
21 of the action to be paid by the defendant. Necessary legal
22 action may be brought by the employee to collect the judgment,
23 and the employer shall be required to pay the costs incurred in
24 collecting the judgment. An action may be brought under this
25 Act no more than 3 years after the date of the last event

1 constituting the alleged violation for which the action is
2 brought. An employer that violates any provision of this Act or
3 any rule adopted under this Act is subject to a civil money
4 penalty not to exceed \$2,500 for each separate offense.

5 Section 40. Severability.

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