



Rep. Christian L. Mitchell

Filed: 3/18/2015

09900HB3297ham001

LRB099 07119 JLS 32451 a

1 AMENDMENT TO HOUSE BILL 3297

2 AMENDMENT NO. _____. Amend House Bill 3297 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Employee Paid Health Care Time 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 40% of all private sector workers
11 in Illinois (over 2,500,000 people) have no right to paid
12 health care time. Over three-fourths of the lowest-wage
13 workers do not receive paid health care time and cannot
14 forfeit a day's work, so they often come into work sick.

15 (2) Of those workers who receive paid health care time,
16 few policies, in both the private and public sectors, allow

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

3 (3) Preventive and routine medical care helps avoid
4 illness and injury by detecting illnesses early on and
5 shortening the duration of illnesses. Providing employees
6 with time off to attend to their own health care needs
7 ensures that they will be healthier and more efficient
8 employees. It will also reduce the spread of disease within
9 workplaces and to the public, such as customers, when
10 employees go to work sick, a practice known as
11 "presenteeism". Routine medical care results in savings by
12 detecting and treating illness and injury early and
13 decreasing the need for emergency care. These savings
14 benefit public and private payers of health insurance.

15 (4) When the school of a worker's child is closed
16 because of extreme weather, it is often at the last minute
17 and workers cannot find someone to babysit so they are
18 forced to stay at home to take care of their children.

19 (5) Nearly one-quarter of American women report
20 domestic violence and nearly one in 5 women report
21 experiencing rape at some time during their lives. Many
22 workers, men and women, need time off to care for their
23 health after these incidents or to take legal action.
24 Without paid time off, victims are in danger of losing
25 their jobs.

26 (6) Employers that provide paid health care time see

1 better productivity, reduced flu contagion, and lower
2 turnover, which saves them the costs of replacing and
3 training workers.

4 (b) This Act is enacted to establish the Employee Paid
5 Health Care Time Act to provide at least a minimum time-off
6 standard of paid health care time for all workers.

7 Section 10. Definitions. In this Act:

8 "Department" means the Department of Labor.

9 "Director" means the Director of Labor.

10 "Employee" means an individual permitted to work by an
11 employer, including a part-time employee.

12 "Employer" means an individual, organization, governmental
13 body, partnership, association, corporation, limited liability
14 company, temporary service agency, employment agency, or other
15 entity doing business in or operating within this State that
16 employs one or more individuals.

17 "Healthcare provider" means a person:

18 (1) who is: (i) licensed to practice medicine in all of
19 its branches in Illinois and possesses the degree of doctor
20 of medicine; (ii) licensed to practice medicine in all of
21 its branches in Illinois and possesses the degree of doctor
22 of osteopathy or osteopathic medicine; (iii) licensed to
23 practice medicine in all of its branches or as an
24 osteopathic physician in another state or jurisdiction; or
25 (iv) any other person determined by final rule under the

1 Family and Medical Leave Act of 1993; and

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

4 Section 15. Paid health care time.

5 (a) A full-time or part-time employee of an employer with
6 50 or more employees shall accrue not less than one hour of
7 paid health care time for every 22 hours worked. A full-time or
8 part-time employee of an employer with fewer than 50 employees
9 shall accrue not less than one hour of paid health care time
10 for every 40 hours worked. In the absence of a more generous
11 paid health care time plan, an employer may:

12 (1) limit the amount of paid health care time used to a
13 maximum of 56 hours in a 12-month period calculated from
14 the date of hire or subsequent anniversary date;

15 (2) limit to 40 hours the number of hours in the
16 workweek for which full-time employees not subject to the
17 overtime provisions of the Federal Fair Labor Standards Act
18 (29 U.S.C. 213(a)(1)) may accrue paid health care time; or

19 (3) incorporate paid health care time within a
20 complement of paid leave for its employees that provides no
21 less than the minimum required by this Section.

22 (b) Paid health care time shall be compensated at the same
23 hourly rate and with the same benefits, including health care
24 benefits, as the employee normally earns for hours worked.
25 Service or tipped employees shall be compensated at an amount

1 that is not less than the minimum wage required for non-service
2 or non-tipped employees under the Minimum Wage Law.

3 (c) An employee may use paid health care time for any of
4 the following reasons:

5 (1) The employee is ill or injured.

6 (2) The employee obtains professional diagnostic,
7 preventive, routine, or therapeutic health care.

8 (3) The employee cares for a sick or injured child,
9 parent, parent-in-law, grandparent, spouse, domestic
10 partner, stepchild, adopted child, foster child,
11 grandchild, or ward of the employee who lives with the
12 employee, including helping that individual obtain
13 diagnostic, preventive, routine, or therapeutic health
14 treatment.

15 (4) The employee cares for a child whose school or
16 place of care has been closed by order of a public official
17 due to a public health emergency or to not go in to work
18 because of the closure of the employee's place of business
19 by order of a public health official due to a public health
20 emergency.

21 (5) The employee needs to be off from work because he
22 or she or the employee's family member is the victim of
23 domestic violence as defined in Section 103(3) of the
24 Illinois Domestic Violence Act of 1986 or sexual violence
25 as defined under Article 11 and Sections 12-7.3, 12-7.4,
26 and 12-7.5 of the Illinois Criminal Code of 2012.

1 (d) Paid health care time shall begin to accrue at the
2 commencement of employment or on the effective date of this
3 Act, whichever is later. An employee shall be entitled to begin
4 using health care time 120 days following commencement of his
5 or her employment or 120 days following the effective date of
6 this Act, whichever is later.

7 (e) Unless an employer and its employees agree to paid
8 health care time provisions more generous to employees with
9 respect to accrual rates and maximum hours:

10 (1) An employee shall determine how much paid health
11 care time he or she needs to use, however, the employer may
12 set a reasonable minimum increment for the use of paid
13 health care time not to exceed 2 hours per day.

14 (2) Paid health care time that is accrued but unused
15 shall be carried over to the next year, but an employee may
16 use no more than 56 hours of paid health care in any one
17 year, unless the employer provides a more generous
18 allotment.

19 (3) Upon separation from employment, an employee shall
20 not be entitled to payment for unused paid health care time
21 unless agreed upon by the employer.

22 (4) At the employer's discretion, an employee may
23 borrow paid health care time before the time is actually
24 accrued.

25 (5) An employee who is rehired by the same employer
26 within 12 months after a separation from employment shall

1 retain paid health care time accrued but unused at the time
2 of separation.

3 (f) An employer with a paid health care time policy that is
4 comparable to or more generous than the paid health care time
5 provided under this Section that complies with the provisions
6 of this Act is not required to provide additional paid health
7 care time.

8 (g) An employer may not require an employee to look for or
9 provide a replacement worker for the time during which the
10 employee uses or is expected to use paid health care time.

11 (h) An employer may require an employee planning to take
12 paid health care time to notify the employer as soon as
13 practical by providing an explanation of the reason for taking
14 paid health care time and for the expected duration of the
15 employee's absence.

16 (i) An employer may require certification of the qualifying
17 illness, injury, or health condition when paid health care time
18 covers more than 3 consecutive workdays. Any reasonable
19 documentation signed by a healthcare provider involved in
20 following or treating the illness, injury, or health condition,
21 and indicating the need for the amount of health care time
22 taken, shall be deemed acceptable certification. Nothing in
23 this Act shall be construed to require an employer to provide
24 as certification any information from a healthcare provider
25 that would be in violation of Section 1177 of the Social
26 Security Act or the regulations promulgated pursuant to the

1 federal Health Insurance Portability and Accountability Act of
2 1996. If an employer possesses health information about an
3 employee or employee's family member, such information shall be
4 treated as confidential and not disclosed except with the
5 permission of the affected employee. For time used pursuant to
6 subdivision (b)(5), any one of the following is acceptable
7 documentation, and only one of the following shall be required:
8 a police report, court document, or signed statement from an
9 attorney, a member of the clergy, or a victim services
10 advocate. It is up to the employee to determine which
11 documentation to submit.

12 The employer shall not delay the commencement of leave
13 taken for purposes of subsection (b) of this Section nor delay
14 pay for this period on the basis that the employer has not yet
15 received the certification.

16 The employee shall provide the certification no later than
17 30 days after it is requested by the employer. The employer
18 shall pay the cost of or reimburse the employee for any
19 out-of-pocket costs related to providing this certification.

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

26 (k) Nothing in this Section shall be construed to prohibit

1 an employer from taking disciplinary action, up to and
2 including termination, against an employee who uses paid health
3 care time provided pursuant to this Act for purposes other than
4 those described in this Section.

5 (l) All or any portion of the applicable requirement in
6 this Section shall not apply to any employee covered by a bona
7 fide collective bargaining agreement to the extent that such
8 requirements are expressly waived in the collective bargaining
9 agreement in clear and unambiguous language.

10 (m) An employer shall post notice of the provisions of this
11 Act including information pertaining to the filing of a charge.
12 This notice shall be provided by the Director and put in a
13 place conspicuous to employees at the employer's place of
14 business.

15 (n) An employer subject to any provision of this Act shall
16 make and preserve records documenting hours worked by employees
17 and the amount of paid health care time taken by employees.

18 (o) An agreement by an employee to waive his or her rights
19 under this Act, except as allowed under subsection (l) of
20 Section 15, is void as against public policy.

21 Section 20. Department responsibilities.

22 (a) The Department shall administer and enforce this Act
23 and adopt rules under the Illinois Administrative Procedure Act
24 for the purpose of this Act. The Department shall have the
25 powers and the parties shall have the rights provided in the

1 Illinois Administrative Procedure Act for contested cases. The
2 Department shall have the power to conduct investigations in
3 connection with the administration and enforcement of this Act,
4 including the power to conduct depositions and discovery and to
5 issue subpoenas. If the Department finds cause to believe that
6 this Act has been violated, the Department shall notify the
7 parties in writing and the matter shall be referred to an
8 Administrative Law Judge to schedule a formal hearing in
9 accordance with hearing procedures established by rule.

10 (b) The Department is authorized to impose civil penalties
11 prescribed in Section 25 in administrative proceedings that
12 comply with the Illinois Administrative Procedure Act and to
13 supervise the payment of the unpaid wages and damages owing to
14 the employee or employees under this Act. The Department may
15 bring any legal action necessary to recover the amount of
16 unpaid wages, damages, and penalties, and the employer shall be
17 required to pay the costs. Any sums recovered by the Department
18 on behalf of an employee under this Act shall be paid to the
19 employee or employees affected. However, 20% of any penalty
20 collected from the employer for a violation of this Act shall
21 be deposited in the Healthy Workplace Fund, a special fund
22 created in the State treasury that is dedicated to enforcing
23 this Act.

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

1 Section 25. Enforcement.

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

7 (b) Any employer that violates this Act is liable in a
8 claim filed with the Department or in a civil action in circuit
9 court to any affected individuals for actual and compensatory
10 damages, with interest at the prevailing rate, punitive
11 damages, and such equitable relief as may be appropriate, in
12 addition to reasonable attorney's fees, reasonable expert
13 witness fees, and other costs of the action to be paid by the
14 defendant. A civil action may be brought without first filing
15 an administrative complaint.

16 (c) Any employer that the Department or a court finds by a
17 preponderance of the evidence to have knowingly, repeatedly, or
18 with reckless disregard violated any provision of this Act or
19 any rule adopted under this Act is subject to a civil money
20 penalty not to exceed \$2,500 for each separate offense.

21 Section 95. Severability. The provisions of this Act are
22 severable under Section 1.31 of the Statute on Statutes.

23 Section 97. The State Finance Act is amended by adding
24 Section 5.866 as follows:

1 (30 ILCS 105/5.866 new)

2 Sec. 5.866. The Healthy Workplace Fund.

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.".