

1 AN ACT concerning employment.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 ARTICLE I. SHORT TITLE, FINDINGS AND PURPOSES, GENERAL
5 REQUIREMENTS FOR LEAVE

6 Section 100. Short title. This Act may be cited as the
7 Illinois Family and Medical Leave Act.

8 Section 100.1. Findings and purposes.

9 (a) Findings. The General Assembly finds that:

10 (1) the number of single-parent households and
11 two-parent households in which the single parent or both
12 parents work is increasing significantly;

13 (2) it is important for the development of children
14 and the family unit that fathers and mothers be able to
15 participate in early child rearing and the care of family
16 members who have serious health conditions;

17 (3) the lack of employment policies to accommodate
18 working parents can force individuals to choose between
19 job security and parenting;

20 (4) there is inadequate job security for employees
21 who have serious health conditions that prevent them from
22 working for temporary periods;

23 (5) due to the nature of the roles of men and women
24 in our society, the primary responsibility for family
25 caretaking often falls on women, and such responsibility
26 affects the working lives of women more than it affects
27 the working lives of men; and

28 (6) employment standards that apply to one gender
29 only have serious potential for encouraging employers to
30 discriminate against employees and applicants for

1 employment who are of that gender.

2 (b) Purposes. It is the purpose of this Act:

3 (1) to balance the demands of the workplace with the
4 needs of families, to promote the stability and economic
5 security of families, and to promote national interests
6 in preserving family integrity;

7 (2) to entitle employees to take reasonable leave
8 for medical reasons, for the birth or adoption of a
9 child, and for the care of a child, spouse, parent,
10 son-in-law, daughter-in-law, father-in-law, or
11 mother-in-law who has a serious health condition;

12 (3) to accomplish the purposes described in
13 paragraphs (1) and (2) in a manner that accommodates the
14 legitimate interests of employers;

15 (4) to accomplish the purposes described in
16 paragraphs (1) and (2) in a manner that, consistent with
17 the Equal Protection Clause of the Fourteenth Amendment,
18 minimizes the potential for employment discrimination on
19 the basis of sex by ensuring generally that leave is
20 available for eligible medical reasons (including
21 maternity-related disability) and for compelling family
22 reasons, on a gender-neutral basis; and

23 (5) to promote the goal of equal employment
24 opportunity for women and men, pursuant to such clause.

25 Section 101. Definitions. As used in this Article:

26 (1) (Blank).

27 (2) Eligible Employee.

28 (A) In General. The term "eligible employee" means
29 an employee who has been employed:

30 (i) for at least 12 months by the employer with
31 respect to whom leave is requested under Section
32 102; and

33 (ii) for at least 1,250 hours of service with

1 such employer during the previous 12-month period.

2 (B) Exclusions. The term "eligible employee" does
3 not include:

4 (i) any Federal officer or employee covered
5 under Subchapter V of Chapter 63 of Title 5, United
6 States Code; or

7 (ii) any employee of an employer who is
8 employed at a work site at which such employer
9 employs less than 50 employees if the total number
10 of employees employed by that employer within 75
11 miles of that work site is less than 50.

12 (C) Determination. For purposes of determining
13 whether an employee meets the hours of service
14 requirement specified in subparagraph (A)(ii), the legal
15 standards established under Section 7 of the Fair Labor
16 Standards Act of 1938 (29 U.S.C. 207) shall apply.

17 (3) Employ; Employee; State. The terms "employ",
18 "employee", and "State" have the same meanings given such
19 terms in subsections (c), (e), and (g) of Section 3 of the
20 Fair Labor Standards Act of 1938 (29 U.S.C. 203 (c), (e), and
21 (g)).

22 (4) Employer.

23 (A) In general. The term "employer":

24 (i) means any person who employs 50 or more
25 employees for each working day during each of 20 or
26 more calendar workweeks in the current or preceding
27 calendar year;

28 (ii) includes:

29 (I) any person who acts, directly or
30 indirectly, in the interest of an employer to
31 any of the employees of such employer; and

32 (II) any successor in interest of an
33 employer; and

34 (iii) includes any State officer, department,

1 or agency, any unit of local government, and any
2 school district.

3 (B) (Blank).

4 (5) Employment benefits. The term "employment benefits"
5 means all benefits provided or made available to employees by
6 an employer, including group life insurance, health
7 insurance, disability insurance, sick leave, annual leave,
8 educational benefits, and pensions, regardless of whether
9 such benefits are provided by a practice or written policy of
10 an employer or through an "employee benefit plan", as defined
11 in Section 3(3) of the Employee Retirement Income Security
12 Act of 1974 (29 U.S.C. 1002(3)).

13 (6) Health care provider. The term "health care provider"
14 means:

15 (A) a doctor of medicine or osteopathy who is
16 authorized to practice medicine or surgery (as
17 appropriate) by the State in which the doctor practices;
18 or

19 (B) any other person determined by the Director to
20 be capable of providing health care services.

21 (7) Parent. The term "parent" means the biological parent
22 of an employee or an individual who stood in loco parentis to
23 an employee when the employee was a son or daughter.

24 (8) Person. The term "person" has the same meaning given
25 such term in Section 3(a) of the Fair Labor Standards Act of
26 1938 (29 U.S.C. 203(a)).

27 (9) Reduced leave schedule. The term "reduced leave
28 schedule" means a leave schedule that reduces the usual
29 number of hours per workweek, or hours per workday, of an
30 employee.

31 (10) Director. The term "Director" means the Director of
32 Labor.

33 (11) Serious health condition. The term "serious health
34 condition" means an illness, injury, impairment, or physical

1 or mental condition that involves:

2 (A) inpatient care in a hospital, hospice, or
3 residential medical care facility; or

4 (B) continuing treatment by a health care provider.

5 (12) Son or daughter. The term "son or daughter" means a
6 biological, adopted, or foster child, a stepchild, a legal
7 ward, or a child of a person standing in loco parentis, who
8 is:

9 (A) under 18 years of age; or

10 (B) 18 years of age or older and incapable of
11 self-care because of a mental or physical disability.

12 (13) Spouse. The term "spouse" means a husband or wife,
13 as the case may be.

14 Section 102. Leave requirement.

15 (a) In general.

16 (1) Entitlement to leave. Subject to Section 103, an
17 eligible employee shall be entitled to a total of 12
18 workweeks of leave during any 12-month period for one or
19 more of the following:

20 (A) Because of the birth of a son or daughter
21 of the employee and in order to care for such son or
22 daughter.

23 (B) Because of the placement of a son or
24 daughter with the employee for adoption or foster
25 care.

26 (C) In order to care for the spouse, or a son,
27 daughter, parent, son-in-law, daughter-in-law,
28 father-in-law, or mother-in-law of the employee, if
29 such spouse, son, daughter, parent, son-in-law,
30 daughter-in-law, father-in-law, or mother-in-law has
31 a serious health condition.

32 (D) Because of a serious health condition that
33 makes the employee unable to perform the functions

1 of the position of such employee.

2 (2) Expiration of entitlement. The entitlement to
3 leave under subparagraphs (A) and (B) of paragraph (1)
4 for a birth or placement of a son or daughter shall
5 expire at the end of the 12-month period beginning on the
6 date of such birth or placement.

7 (b) Leave taken intermittently or on a reduced leave
8 schedule.

9 (1) In general. Leave under subparagraph (A) or (B)
10 of subsection (a)(1) shall not be taken by an employee
11 intermittently or on a reduced leave schedule unless the
12 employee and the employer of the employee agree
13 otherwise. Subject to paragraph (2), subsection (e)(2),
14 and Section 103(b)(5), leave under subparagraph (C) or
15 (D) of subsection (a)(1) may be taken intermittently or
16 on a reduced leave schedule when medically necessary. The
17 taking of leave intermittently or on a reduced leave
18 schedule pursuant to this paragraph shall not result in a
19 reduction in the total amount of leave to which the
20 employee is entitled under subsection (a) beyond the
21 amount of leave actually taken.

22 (2) Alternative position. If an employee requests
23 intermittent leave, or leave on a reduced leave schedule,
24 under subparagraph (C) or (D) of subsection (a)(1), that
25 is foreseeable based on planned medical treatment, the
26 employer may require such employee to transfer
27 temporarily to an available alternative position offered
28 by the employer for which the employee is qualified and
29 that:

30 (A) has equivalent pay and benefits; and

31 (B) better accommodates recurring periods of
32 leave than the regular employment position of the
33 employee.

34 (c) Unpaid leave permitted. Except as provided in

1 subsection (d), leave granted under subsection (a) may
2 consist of unpaid leave. Where an employee is otherwise
3 exempt under regulations issued by the Secretary of the U.S.
4 Department of Labor pursuant to Section 13(a)(1) of the Fair
5 Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)), the
6 compliance of an employer with this Article by providing
7 unpaid leave shall not affect the exempt status of the
8 employee under such Section.

9 (d) Relationship to paid leave.

10 (1) Unpaid leave. If an employer provides paid leave
11 for fewer than 12 workweeks, the additional weeks of
12 leave necessary to attain the 12 workweeks of leave
13 required under this Article may be provided without
14 compensation.

15 (2) Substitution of paid leave.

16 (A) In general. An eligible employee may elect,
17 or an employer may require the employee, to
18 substitute any of the accrued paid vacation leave,
19 personal leave, or family leave of the employee for
20 leave provided under subparagraph (A), (B), or (C)
21 of subsection (a)(1) for any part of the 12-week
22 period of such leave under such subsection.

23 (B) Serious health condition. An eligible
24 employee may elect, or an employer may require the
25 employee, to substitute any of the accrued paid
26 vacation leave, personal leave, or medical or sick
27 leave of the employee for leave provided under
28 subparagraph (C) or (D) of subsection (a)(1) for any
29 part of the 12-week period of such leave under such
30 subsection, except that nothing in this Article
31 shall require an employer to provide paid sick leave
32 or paid medical leave in any situation in which
33 such employer would not normally provide any such
34 paid leave.

1 (e) Foreseeable leave.

2 (1) Requirement of notice. In any case in which the
3 necessity for leave under subparagraph (A) or (B) of
4 subsection (a)(1) is foreseeable based on an expected
5 birth or placement, the employee shall provide the
6 employer with not less than 30 days' notice, before the
7 date the leave is to begin, of the employee's intention
8 to take leave under such subparagraph, except that if the
9 date of the birth or placement requires leave to begin
10 in less than 30 days, the employee shall provide such
11 notice as is practicable.

12 (2) Duties of employee. In any case in which the
13 necessity for leave under subparagraph (C) or (D) of
14 subsection (a)(1) is foreseeable based on planned medical
15 treatment, the employee:

16 (A) shall make a reasonable effort to schedule
17 the treatment so as not to disrupt unduly the
18 operations of the employer, subject to the approval
19 of the health care provider of the employee or the
20 health care provider of the son, daughter, spouse,
21 parent, son-in-law, daughter-in-law, father-in-law,
22 or mother-in-law of the employee, as appropriate;
23 and

24 (B) shall provide the employer with not less
25 than 30 days' notice, before the date the leave is
26 to begin, of the employee's intention to take leave
27 under such subparagraph, except that if the date of
28 the treatment requires leave to begin in less than
29 30 days, the employee shall provide such notice as
30 is practicable.

31 (f) Spouses employed by the same employer. In any case in
32 which a husband and wife entitled to leave under subsection
33 (a) are employed by the same employer, the aggregate number
34 of workweeks of leave to which both may be entitled may be

1 limited to 12 workweeks during any 12-month period, if such
2 leave is taken:

3 (1) under subparagraph (A) or (B) of subsection
4 (a)(1); or

5 (2) to care for a sick parent under subparagraph (C)
6 of such subsection.

7 Section 103. Certification.

8 (a) In general. An employer may require that a request
9 for leave under subparagraph (C) or (D) of Section 102(a)(1)
10 be supported by a certification issued by the health care
11 provider of the eligible employee or of the son, daughter,
12 spouse, parent, son-in-law, daughter-in-law, father-in-law,
13 or mother-in-law of the employee, as appropriate. The
14 employee shall provide, in a timely manner, a copy of such
15 certification to the employer.

16 (b) Sufficient certification. Certification provided
17 under subsection (a) shall be sufficient if it states:

18 (1) the date on which the serious health condition
19 commenced;

20 (2) the probable duration of the condition;

21 (3) the appropriate medical facts within the
22 knowledge of the health care provider regarding the
23 condition;

24 (4)(A) for purposes of leave under Section
25 102(a)(1)(C), a statement that the eligible employee is
26 needed to care for the son, daughter, spouse, parent,
27 son-in-law, daughter-in-law, father-in-law, or
28 mother-in-law and an estimate of the amount of time that
29 such employee is needed to care for the son, daughter,
30 spouse, parent, son-in-law, daughter-in-law,
31 father-in-law, or mother-in-law; and

32 (B) for purposes of leave under Section
33 102(a)(1)(D), a statement that the employee is unable to

1 perform the functions of the position of the employee;

2 (5) in the case of certification for intermittent
3 leave, or leave on a reduced leave schedule, for planned
4 medical treatment, the dates on which such treatment is
5 expected to be given and the duration of such treatment;

6 (6) in the case of certification for intermittent
7 leave, or leave on a reduced leave schedule, under
8 Section 102(a)(1)(D), a statement of the medical
9 necessity for the intermittent leave or leave on a
10 reduced leave schedule, and the expected duration of the
11 intermittent leave or reduced leave schedule; and

12 (7) in the case of certification for intermittent
13 leave, or leave on a reduced leave schedule, under
14 Section 102(a)(1)(C), a statement that the employee's
15 intermittent leave or leave on a reduced leave schedule
16 is necessary for the care of the son, daughter, parent,
17 spouse, son-in-law, daughter-in-law, father-in-law, or
18 mother-in-law who has a serious health condition, or will
19 assist in their recovery, and the expected duration and
20 schedule of the intermittent leave or reduced leave
21 schedule.

22 (c) Second opinion.

23 (1) In general. In any case in which the employer
24 has reason to doubt the validity of the certification
25 provided under subsection (a) for leave under
26 subparagraph (C) or (D) of Section 102(a)(1), the
27 employer may require, at the expense of the employer,
28 that the eligible employee obtain the opinion of a second
29 health care provider designated or approved by the
30 employer concerning any information certified under
31 subsection (b) for such leave.

32 (2) Limitation. A health care provider designated or
33 approved under paragraph (1) shall not be employed on a
34 regular basis by the employer.

1 (d) Resolution of conflicting opinions.

2 (1) In general. In any case in which the second
3 opinion described in subsection (c) differs from the
4 opinion in the original certification provided under
5 subsection (a), the employer may require, at the expense
6 of the employer, that the employee obtain the opinion of
7 a third health care provider designated or approved
8 jointly by the employer and the employee concerning the
9 information certified under subsection (b).

10 (2) Finality. The opinion of the third health care
11 provider concerning the information certified under
12 subsection (b) shall be considered to be final and shall
13 be binding on the employer and the employee.

14 (e) Subsequent recertification. The employer may require
15 that the eligible employee obtain subsequent recertifications
16 on a reasonable basis.

17 Section 104. Employment and benefits protection.

18 (a) Restoration to position.

19 (1) In general. Except as provided in subsection
20 (b), any eligible employee who takes leave under Section
21 102 for the intended purpose of the leave shall be
22 entitled, on return from such leave:

23 (A) to be restored by the employer to the
24 position of employment held by the employee when the
25 leave commenced; or

26 (B) to be restored to an equivalent position
27 with equivalent employment benefits, pay, and other
28 terms and conditions of employment.

29 (2) Loss of benefits. The taking of leave under
30 Section 102 shall not result in the loss of any
31 employment benefit accrued prior to the date on which the
32 leave commenced.

33 (3) Limitations. Nothing in this Section shall be

1 construed to entitle any restored employee to:

2 (A) the accrual of any seniority or employment
3 benefits during any period of leave; or

4 (B) any right, benefit, or position of
5 employment other than any right, benefit, or
6 position to which the employee would have been
7 entitled had the employee not taken the leave.

8 (4) Certification. As a condition of restoration
9 under paragraph (1) for an employee who has taken leave
10 under Section 102(a)(1)(D), the employer may have a
11 uniformly applied practice or policy that requires each
12 such employee to receive certification from the health
13 care provider of the employee that the employee is able
14 to resume work, except that nothing in this paragraph
15 shall supersede a valid State or local law or a
16 collective bargaining agreement that governs the return
17 to work of such employees.

18 (5) Construction. Nothing in this subsection shall
19 be construed to prohibit an employer from requiring an
20 employee on leave under Section 102 to report
21 periodically to the employer on the status and intention
22 of the employee to return to work.

23 (b) Exemption concerning certain highly compensated
24 employees.

25 (1) Denial of restoration. An employer may deny
26 restoration under subsection (a) to any eligible employee
27 described in paragraph (2) if:

28 (A) such denial is necessary to prevent
29 substantial and grievous economic injury to the
30 operations of the employer;

31 (B) the employer notifies the employee of the
32 intent of the employer to deny restoration on such
33 basis at the time the employer determines that such
34 injury would occur; and

1 (C) in any case in which the leave has
2 commenced, the employee elects not to return to
3 employment after receiving such notice.

4 (2) Affected employees. An eligible employee
5 described in paragraph (1) is a salaried eligible
6 employee who is among the highest paid 10 percent of the
7 employees employed by the employer within 75 miles of the
8 facility at which the employee is employed.

9 (c) Maintenance of health benefits.

10 (1) Coverage. Except as provided in paragraph (2),
11 during any period that an eligible employee takes leave
12 under Section 102, the employer shall maintain coverage
13 under any "group health plan" (as defined in Section
14 5000(b)(1) of the Internal Revenue Code of 1986) for the
15 duration of such leave at the level and under the
16 conditions coverage would have been provided if the
17 employee had continued in employment continuously for the
18 duration of such leave.

19 (2) Failure to return from leave. The employer may
20 recover the premium that the employer paid for
21 maintaining coverage for the employee under such group
22 health plan during any period of unpaid leave under
23 Section 102 if:

24 (A) the employee fails to return from leave
25 under Section 102 after the period of leave to which
26 the employee is entitled has expired; and

27 (B) the employee fails to return to work for a
28 reason other than:

29 (i) the continuation, recurrence, or onset
30 of a serious health condition that entitles the
31 employee to leave under subparagraph (C) or (D)
32 of Section 102(a)(1); or

33 (ii) other circumstances beyond the
34 control of the employee.

1 (3) Certification.

2 (A) Issuance. An employer may require that a
3 claim that an employee is unable to return to work
4 because of the continuation, recurrence, or onset of
5 the serious health condition described in paragraph
6 (2)(B)(i) be supported by:

7 (i) a certification issued by the health
8 care provider of the son, daughter, spouse,
9 parent, son-in-law, daughter-in-law,
10 father-in-law, or mother-in-law of the
11 employee, as appropriate, in the case of an
12 employee unable to return to work because of a
13 condition specified in Section 102(a)(1)(C); or

14 (ii) a certification issued by the health
15 care provider of the eligible employee, in the
16 case of an employee unable to return to work
17 because of a condition specified in Section
18 102(a)(1)(D).

19 (B) Copy. The employee shall provide, in a
20 timely manner, a copy of such certification to the
21 employer.

22 (C) Sufficiency of certification.

23 (i) Leave due to serious health condition
24 of employee. The certification described in
25 subparagraph (A)(ii) shall be sufficient if the
26 certification states that a serious health
27 condition prevented the employee from being
28 able to perform the functions of the position
29 of the employee on the date that the leave of
30 the employee expired.

31 (ii) Leave due to serious health condition
32 of family member. The certification described
33 in subparagraph (A)(i) shall be sufficient if
34 the certification states that the employee is

1 needed to care for the son, daughter, spouse,
2 parent, son-in-law, daughter-in-law,
3 father-in-law, or mother-in-law who has a
4 serious health condition on the date that the
5 leave of the employee expired.

6 Section 105. Prohibited Acts.

7 (a) Interference with rights.

8 (1) Exercise of rights. It shall be unlawful for any
9 employer to interfere with, restrain, or deny the
10 exercise of or the attempt to exercise, any right
11 provided under this Article.

12 (2) Discrimination. It shall be unlawful for any
13 employer to discharge or in any other manner discriminate
14 against any individual for opposing any practice made
15 unlawful by this Article.

16 (b) Interference with proceedings or inquiries. It shall
17 be unlawful for any person to discharge or in any other
18 manner discriminate against any individual because such
19 individual:

20 (1) has filed any charge, or has instituted or
21 caused to be instituted any proceeding, under or related
22 to this Article;

23 (2) has given, or is about to give, any information
24 in connection with any inquiry or proceeding relating to
25 any right provided under this Article; or

26 (3) has testified, or is about to testify, in any
27 inquiry or proceeding relating to any right provided
28 under this Article.

29 Section 106. Investigative authority.

30 (a) In general. To ensure compliance with the provisions
31 of this Article, or any rule or order issued under this
32 Article, the Director shall have, subject to subsection (c),

1 the authority to investigate complaints.

2 (b) Obligation to keep and preserve records. Any employer
3 shall make, keep, and preserve records pertaining to
4 compliance with this Article in accordance with rules adopted
5 by the Director.

6 (c) Required submissions generally limited to an annual
7 basis. The Director shall not under the authority of this
8 Section require any employer or any plan, fund, or program to
9 submit to the Director any books or records more than once
10 during any 12-month period, unless the Director has
11 reasonable cause to believe there may exist a violation of
12 this Article or any rule or order issued pursuant to this
13 Article, or is investigating a charge pursuant to Section
14 107(b).

15 (d) Subpoena powers. For the purposes of any
16 investigation provided for in this Section, the Director
17 shall have the authority to issue subpoenas.

18 Section 107. Enforcement.

19 (a) Civil action by employees.

20 (1) Liability. Any employer who violates Section 105
21 shall be liable to any eligible employee affected:

22 (A) for damages equal to:

23 (i) the amount of:

24 (I) any wages, salary, employment
25 benefits, or other compensation denied or
26 lost to such employee by reason of the
27 violation; or

28 (II) in a case in which wages,
29 salary, employment benefits, or other
30 compensation have not been denied or lost
31 to the employee, any actual monetary
32 losses sustained by the employee as a
33 direct result of the violation, such as

1 the cost of providing care, up to a sum
2 equal to 12 weeks of wages or salary for
3 the employee;

4 (ii) the interest on the amount described
5 in clause (i) calculated at the rate of
6 interest on judgments set forth in Section
7 2-1303 of the Code of Civil Procedure; and

8 (iii) an additional amount as liquidated
9 damages equal to the sum of the amount
10 described in clause (i) and the interest
11 described in clause (ii), except that if an
12 employer who has violated Section 105 proves to
13 the satisfaction of the court that the act or
14 omission which violated Section 105 was in good
15 faith and that the employer had reasonable
16 grounds for believing that the act or omission
17 was not a violation of Section 105, such court
18 may, in the discretion of the court, reduce the
19 amount of the liability to the amount and
20 interest determined under clauses (i) and (ii),
21 respectively; and

22 (B) for such equitable relief as may be
23 appropriate, including employment, reinstatement,
24 and promotion.

25 (2) Right of action. An action to recover the
26 damages or equitable relief prescribed in paragraph (1)
27 may be maintained against any employer (including a
28 public agency) in the circuit court by any one or more
29 employees for and in behalf of:

30 (A) the employees; or

31 (B) the employees and other employees similarly
32 situated.

33 (3) Fees and costs. The court in such an action
34 shall, in addition to any judgment awarded to the

1 plaintiff, allow a reasonable attorney's fee, reasonable
2 expert witness fees, and other costs of the action to be
3 paid by the defendant.

4 (4) Limitations. The right provided by paragraph (2)
5 to bring an action by or on behalf of any employee shall
6 terminate:

7 (A) on the filing of a complaint by the
8 Director in an action under subsection (d) in which
9 restraint is sought of any further delay in the
10 payment of the amount described in paragraph (1)(A)
11 to such employee by an employer responsible under
12 paragraph (1) for the payment; or

13 (B) on the filing of a complaint by the
14 Director in an action under subsection (b) in which
15 a recovery is sought of the damages described in
16 paragraph (1)(A) owing to an eligible employee by an
17 employer liable under paragraph (1), unless the
18 action described in subparagraph (A) or (B) is
19 dismissed without prejudice on motion of the
20 Director.

21 (b) Action by the Director.

22 (1) Administrative action. The Director shall
23 receive, investigate, and attempt to resolve complaints
24 of violations of Section 105.

25 (2) Civil action. The Director may bring an action
26 in the circuit court to recover the damages described in
27 subsection (a)(1)(A).

28 (3) Sums recovered. Any sums recovered by the
29 Director pursuant to paragraph (2) shall be held in a
30 special deposit account and shall be paid, on order of
31 the Director, directly to each employee affected. Any
32 such sums not paid to an employee because of inability
33 to do so within a period of 3 years shall be deposited
34 into the General Revenue Fund.

1 (c) Limitation.

2 (1) In general. Except as provided in paragraph (2),
3 an action may be brought under this Section not later
4 than 2 years after the date of the last event
5 constituting the alleged violation for which the action
6 is brought.

7 (2) Willful violation. In the case of such action
8 brought for a willful violation of Section 105, such
9 action may be brought within 3 years of the date of the
10 last event constituting the alleged violation for which
11 such action is brought.

12 (3) Commencement. In determining when an action is
13 commenced by the Director under this Section for the
14 purposes of this subsection, it shall be considered to be
15 commenced on the date when the complaint is filed.

16 (d) Action for injunction by Director. The circuit court
17 shall have jurisdiction, for cause shown, in an action
18 brought by the Director:

19 (1) to restrain violations of Section 105, including
20 the restraint of any withholding of payment of wages,
21 salary, employment benefits, or other compensation, plus
22 interest, found by the court to be due to eligible
23 employees; or

24 (2) to award such other equitable relief as may be
25 appropriate, including employment, reinstatement, and
26 promotion.

27 Section 108. Special rules concerning employees of local
28 educational agencies.

29 (a) Application.

30 (1) In general. Except as otherwise provided in this
31 Section, the rights (including the rights under Section
32 104, which shall extend throughout the period of leave of
33 any employee under this Section), remedies, and

1 procedures under this Article shall apply to:

2 (A) any "local educational agency" (as defined
3 in Section 1471(12) of the Elementary and Secondary
4 Education Act of 1965 (20 U.S.C. 2891(12)) and an
5 eligible employee of the agency; and

6 (B) any private elementary or secondary school
7 and an eligible employee of the school.

8 (2) Definitions. For purposes of the application
9 described in paragraph (1):

10 (A) Eligible employee. The term "eligible
11 employee" means an eligible employee of an agency or
12 school described in paragraph (1).

13 (B) Employer. The term "employer" means an
14 agency or school described in paragraph (1).

15 (b) Leave does not violate certain other federal laws. A
16 local educational agency and a private elementary or
17 secondary school shall not be in violation of the Individuals
18 with Disabilities Education Act (20 U.S.C. 1400 et seq.),
19 Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.
20 794), or title VI of the Civil Rights Act of 1964 (42 U.S.C.
21 2000d et seq.), solely as a result of an eligible employee of
22 such agency or school exercising the rights of such employee
23 under this Article.

24 (c) Intermittent leave or leave on a reduced schedule for
25 instructional employees.

26 (1) In general. Subject to paragraph (2), in any
27 case in which an eligible employee employed principally
28 in an instructional capacity by any such educational
29 agency or school requests leave under subparagraph (C) or
30 (D) of Section 102(a)(1) that is foreseeable based on
31 planned medical treatment and the employee would be on
32 leave for greater than 20 percent of the total number of
33 working days in the period during which the leave would
34 extend, the agency or school may require that such

1 employee elect either:

2 (A) to take leave for periods of a particular
3 duration, not to exceed the duration of the planned
4 medical treatment; or

5 (B) to transfer temporarily to an available
6 alternative position offered by the employer for
7 which the employee is qualified, and that:

8 (i) has equivalent pay and benefits; and

9 (ii) better accommodates recurring periods
10 of leave than the regular employment position
11 of the employee.

12 (2) Application. The elections described in
13 subparagraphs (A) and (B) of paragraph (1) shall apply
14 only with respect to an eligible employee who complies
15 with Section 102(e)(2).

16 (d) Rules applicable to periods near the conclusion of an
17 academic term. The following rules shall apply with respect
18 to periods of leave near the conclusion of an academic term
19 in the case of any eligible employee employed principally in
20 an instructional capacity by any such educational agency or
21 school:

22 (1) Leave more than 5 weeks prior to end of term. If
23 the eligible employee begins leave under Section 102 more
24 than 5 weeks prior to the end of the academic term, the
25 agency or school may require the employee to continue
26 taking leave until the end of such term, if:

27 (A) the leave is of at least 3 weeks duration;
28 and

29 (B) the return to employment would occur during
30 the 3-week period before the end of such term.

31 (2) Leave less than 5 weeks prior to end of term. If
32 the eligible employee begins leave under subparagraph
33 (A), (B), or (C) of Section 102(a)(1) during the period
34 that commences 5 weeks prior to the end of the academic

1 term, the agency or school may require the employee to
2 continue taking leave until the end of such term, if:

3 (A) the leave is of greater than 2 weeks
4 duration; and

5 (B) the return to employment would occur during
6 the 2-week period before the end of such term.

7 (3) Leave less than 3 weeks prior to end of term. If
8 the eligible employee begins leave under subparagraph
9 (A), (B), or (C) of Section 102(a)(1) during the period
10 that commences 3 weeks prior to the end of the academic
11 term and the duration of the leave is greater than 5
12 working days, the agency or school may require the
13 employee to continue to take leave until the end of such
14 term.

15 (e) Restoration to equivalent employment position. For
16 purposes of determinations under Section 104(a)(1)(B)
17 (relating to the restoration of an eligible employee to an
18 equivalent position), in the case of a local educational
19 agency or a private elementary or secondary school, such
20 determination shall be made on the basis of established
21 school board policies and practices, private school policies
22 and practices, and collective bargaining agreements.

23 (f) Reduction of the amount of liability. If a local
24 educational agency or a private elementary or secondary
25 school that has violated this Article proves to the
26 satisfaction of the court that the agency, school, or
27 department had reasonable grounds for believing that the
28 underlying act or omission was not a violation of this
29 Article, such court may, in the discretion of the court,
30 reduce the amount of the liability provided for under Section
31 107(a)(1)(A) to the amount and interest determined under
32 clauses (i) and (ii), respectively, of such Section.

33 Section 109. Notice.

1 (a) In general. Each employer shall post and keep posted,
 2 in conspicuous places on the premises of the employer where
 3 notices to employees and applicants for employment are
 4 customarily posted, a notice, to be prepared or approved by
 5 the Director, setting forth excerpts from, or summaries of,
 6 the pertinent provisions of this Article and information
 7 pertaining to the filing of a charge.

8 (b) Penalty. Any employer that willfully violates this
 9 Section may be assessed a civil money penalty not to exceed
 10 \$100 for each separate offense.

11 ARTICLE II. (BLANK)

12 ARTICLE III. (BLANK)

13 ARTICLE IV. MISCELLANEOUS PROVISIONS

14 Section 401. Effect on other laws.

15 (a) Federal and State antidiscrimination laws. Nothing in
 16 this Act shall be construed to modify or affect any Federal
 17 or State law prohibiting discrimination on the basis of
 18 race, religion, color, national origin, sex, age, or
 19 disability.

20 (b) State and local laws. Nothing in this Act shall be
 21 construed to supersede any provision of any State or local
 22 law that provides greater family or medical leave rights than
 23 the rights established under this Act.

24 Section 402. Effect on existing employment benefits.

25 (a) More protective. Nothing in this Act shall be
 26 construed to diminish the obligation of an employer to comply
 27 with any collective bargaining agreement or any employment
 28 benefit program or plan that provides greater family or
 29 medical leave rights to employees than the rights established

1 under this Act.

2 (b) Less protective. The rights established for employees
3 under this Act shall not be diminished by any collective
4 bargaining agreement or any employment benefit program or
5 plan.

6 Section 403. Encouragement of more generous leave
7 policies. Nothing in this Act shall be construed to
8 discourage employers from adopting or retaining leave
9 policies more generous than any policies that comply with the
10 requirements under this Act.

11 Section 404. Rules. The Director shall prescribe such
12 rules as are necessary to carry out this Act not later than
13 120 days after the effective date of of this Act.

14 Section 404.1. Applicability.

15 (1) In the case of a collective bargaining agreement in
16 effect on the effective date of this Act, Article I shall
17 apply on the earlier of:

18 (A) the date of the termination of such agreement;
19 or

20 (B) the date that occurs 12 months after the
21 effective date of this Act.

22 (2) Nothing in this Act shall be construed to limit the
23 applicability of the federal Family and Medical Leave Act of
24 1993 with regard to employers and employees covered by that
25 Act.

26 Section 405. Effective date. This Act shall take effect 6
27 months after it becomes law.