



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5409

by Rep. Robyn Gabel

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.855 new

Creates the Family Leave Insurance Program Act to establish a fund to provide income support for men and women who are temporarily unable to work due to their own serious illness or their need to provide care to a newborn, newly adopted or newly placed foster child, or to a seriously ill family member. Provides for administration by the Department of Employment Security. Provides for an assessment upon employees and employers. Authorizes civil penalties. Effective January 1, 2015.

LRB098 18387 JLS 55471 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

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) The General Assembly finds:

8 (1) Although family leave laws have assisted employees
9 to 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. Employees that 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 childrearing.

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 care-giving
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) This Act is enacted to establish a Family Leave

1 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. Definitions. In this Act, the following terms
6 have the following meanings:

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

17 (1) under 18 years of age; or

18 (2) eighteen years of age or older and incapable of
19 self-care because of a mental or physical disability.

20 "Department" means the Department of Employment Security.

21 "Employer" means one who employs 10 or more employees,
22 including the State and its political subdivisions.

23 "Family leave" means leave taken by an employee who is
24 temporarily disabled or unavailable to work because she or he
25 has to care for a newborn child, or a newly-placed adopted or

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

7 "Family member" means a child, spouse, grandchild,
8 grandparent, step grandparent, parent or parent-in-law of the
9 employee, or persons jointly residing in the same household.

10 "FLIP" means the Family Leave Insurance Program.

11 "FLIP trust fund" means the trust fund created under
12 Section 45 of this Act.

13 "Healthcare provider" means a person licensed as a
14 physician under the Medical Practice Act of 1987.

15 "Parent" means a biological or adoptive parent, a
16 stepparent, or a person who stands in loco parentis to an
17 employee or an employee's spouse.

18 "Premium" means the money payments required by this Act to
19 be made to the Department for the FLIP trust fund.

20 "Qualifying year" means the first 4 of the last 5 completed
21 calendar quarters or the last 4 completed calendar quarters
22 immediately preceding the first day of the employee's
23 application year.

24 "Serious health condition" means an illness, injury,
25 impairment, or physical or mental condition, that involves
26 inpatient care in a hospital, hospice, or residential medical

1 care facility or continuing treatment by a healthcare provider.

2 Section 15. Family leave benefits.

3 (a) The Department shall establish and administer a FLIP
4 program and establish procedures and forms for filing benefit
5 claims. The Department shall notify the employer within 2
6 business days of a claim being filed.

7 (b) Family leave benefits are payable to an employee during
8 a period in which the employee is on FLIP leave if the
9 employee:

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

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

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

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

23 (ii) If the date of birth, placement, or treatment
24 requiring FLIP leave will begin in less than 30 days,
25 as much notice as practical was given.

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

6 (c) An employee is disqualified from FLIP benefits
7 beginning with the first day of the calendar week and
8 continuing for the next 52 consecutive weeks, if the employee:

9 (1) willfully made a false statement or
10 misrepresentation regarding a material fact, or willfully
11 failed to report a material fact, to obtain benefits under
12 this Act; or

13 (2) seeks benefits based on a willful and intentional
14 self-inflicted serious health condition or a serious
15 health condition resulting from the employee's
16 perpetration of a felony.

17 An employee is not disqualified for benefits for any week
18 when there is a strike or lockout at the factory,
19 establishment, or other premises at which the employee is or
20 was last employed.

21 Section 20. Duration and amount of benefits.

22 (a) In an application year, FLIP benefits are payable for a
23 maximum of 4 weeks. Payments must be made within 2 weeks after
24 an employee begins FLIP leave.

25 (b) FLIP benefits shall be paid as follows:

1 (1) Benefits shall be 67% of weekly wages up to a
2 maximum of \$380 per week for an employee who at the time
3 FLIP leave began was regularly working 35 hours or more per
4 week or a prorated amount based on the weekly hours
5 regularly worked for an employee regularly working less
6 than 35 hours per week.

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

11 (3) If an employee disclosed that he or she owes child
12 support obligations and the Department determines that the
13 employee is eligible for benefits, the Department shall
14 notify the applicable State or local child support
15 enforcement agency and deduct and withhold an amount from
16 benefits.

17 (4) If an employee elects to have income tax deducted
18 and withheld from benefits, the Department shall deduct and
19 withhold the amount specified under the federal Internal
20 Revenue Code and under the Illinois Income Tax Act.

21 (c) If FLIP benefits are paid erroneously or as a result of
22 fraud or if a claim for benefits is rejected after benefits are
23 paid, the Department shall seek repayment of benefits from the
24 recipient.

25 (d) If an employee dies while on FLIP leave before
26 receiving payment of benefits, the payment shall be made by the

1 Department to the surviving spouse or the child or children if
2 there is no surviving spouse. If there is no surviving spouse
3 and no child or children, the payment shall be made and
4 distributed consistent with the terms of the decedent's will
5 or, if the decedent dies intestate, consistent with the terms
6 of the Probate Act of 1975.

7 Section 25. Existing benefits not diminished.

8 (a) Nothing in this Act shall be construed to limit an
9 employee's right to leave from employment under other laws or
10 employer policy.

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

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

22 (1) FLIP leave during which the employee is receiving
23 or received benefits under this Act is in addition to leave
24 from employment during which benefits are paid or are
25 payable under the Workers' Compensation Act and that is

1 designated as leave under the federal Family and Medical
2 Leave Act.

3 (2) An employee who is receiving or received FLIP
4 benefits under this Act may not be required to concurrently
5 take leave under the federal Family and Medical Leave Act,
6 or other applicable federal, State, or local law.

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

13 (e) This Act is not to be construed to diminish an
14 employer's obligation to comply with a collective bargaining
15 agreement or an employment benefit program or plan that
16 provides greater benefits to employees than FLIP benefits
17 provided under this Act.

18 (f) An agreement by an employee to waive his or her rights
19 under this Act is void as against public policy. The benefits
20 provided to employees under this Act may not be diminished by a
21 collective bargaining agreement or an employment benefit
22 program or plan entered into or renewed after the effective
23 date of this Act.

24 Section 30. Election of coverage.

25 (a) An employer can opt out of participation in the FLIP

1 under this Act if:

2 (1) the employer is participating in a private plan
3 that meets or exceeds all benefits under the FLIP, or

4 (2) the employer provides its own coverage that meets
5 or exceeds all benefits under the FLIP.

6 (b) An employer of employees not covered by this Act or a
7 self-employed person may elect coverage under the FLIP under
8 this Act for an initial period of not less than 3 years or a
9 subsequent period of not less than one year immediately
10 following another period of coverage. The employer or
11 self-employed person must file a notice of election in writing
12 with the Department. The election takes effect on the date of
13 filing the notice.

14 (c) An employer or self-employed person who has elected
15 coverage may withdraw from coverage within 30 days after the
16 end of the 3-year period of coverage, or at other times as the
17 Department may prescribe by rule, by filing written notice with
18 the Department. The withdrawal shall take effect not sooner
19 than 30 days after the filing of the notice.

20 (d) The Department may cancel elective coverage if the
21 employer or self-employed person fails to provide required
22 payments or reports. The Department may collect due and unpaid
23 premiums and may levy an additional premium for the remainder
24 of the period of coverage. The cancellation shall be effective
25 no later than 30 days after the date of the notice in writing
26 advising the employer or self-employed person of the

1 cancellation.

2 Section 35. Records and reports.

3 (a) The Department shall specify the forms and times for
4 employers to provide reports, furnish information, and remit
5 premiums. If the employer is a temporary services agency that
6 provides employees on a temporary basis to its customers, the
7 temporary services agency is considered the employer for
8 purposes of this Section. However, if the temporary services
9 agency fails to remit the required premiums, the customer to
10 whom the employees were provided is liable for paying the
11 premiums.

12 (b) An employer must keep at its place of business a record
13 of employment from which the information needed by the
14 Department for purposes of this Act may be obtained. This
15 record shall at all times be open to the inspection of the
16 Department pursuant to rules adopted by the Department.

17 (c) Information obtained from employer records under this
18 Act is confidential and not open to public inspection other
19 than to public employees in the performance of their official
20 duties. An interested party, however, shall be supplied with
21 information from employer records to the extent necessary for
22 the proper presentation of the case in question. An employer
23 may authorize inspection of its records by written consent.

24 Section 40. Disposal of business.

1 (a) When an employer ceases business or sells out,
2 exchanges, or otherwise disposes of the business or stock of
3 goods, any premium payable under this Act is immediately due
4 and payable, and the employer must, within 10 days thereafter,
5 make a return and pay the premium due. A person who becomes a
6 successor to the business is liable for the full amount of the
7 premium and must withhold from the purchase price a sum
8 sufficient to pay any premium due from the employer until the
9 employer produces a receipt from the Department showing payment
10 in full of any premium due or a certificate that no premium is
11 due and, if the premium is not paid by the employer within 10
12 days from the date of the sale, exchange, or disposal, the
13 successor is liable for the payment of the full amount of
14 premium. The successor's payment thereof is, to the extent
15 thereof, a payment upon the purchase price, and if the payment
16 is greater in amount than the purchase price, the amount of the
17 difference is a debt due the successor from the employer.

18 (b) A successor is not liable for any premium due from the
19 person from whom the successor has acquired a business or stock
20 of goods if the successor gives written notice to the
21 Department of the acquisition and no assessment is issued by
22 the Department within 180 days after receipt of the notice
23 against the former operator of the business and a copy is
24 mailed to the successor.

25 Section 45. FLIP Trust Fund.

1 (a) The FLIP Trust Fund is created as a special fund in the
2 State treasury. The fund shall be administered by the
3 Department. The moneys in this fund shall be used, pursuant to
4 appropriation, by the Department only for the purposes of the
5 FLIP Program. All moneys received pursuant to this Act shall be
6 deposited into the fund.

7 (b) An employer shall deduct from the earnings of each
8 full-time employee a premium in the amount of \$1.50 per week
9 and from the earnings of each part-time employee an amount
10 pro-rated based on the number of actual hours worked. The
11 employer shall match the amount deducted by an equal amount,
12 and those amounts shall be paid to the Department in the manner
13 and at the times as the Department directs for deposit in the
14 FLIP Trust Fund.

15 (c) The Department shall adjust the amount of the premium
16 from time to time to ensure that the amount is the lowest rate
17 necessary to pay FLIP benefits and administrative costs and
18 maintain actuarial solvency in accordance with recognized
19 insurance principles.

20 (d) The Department may adopt rules to permit an employee
21 with multiple employers and his or her employers to petition
22 for refunds or credits of amounts paid to the Department for
23 hours in excess of 35 hours per week worked by the employee.

24 Section 50. Taxation of FLIP benefits; notice. The
25 Department must advise an employee filing a new claim for FLIP

1 benefits, at the time of filing such claim, that:

2 (1) benefits are subject to federal income tax and
3 state income tax;

4 (2) requirements exist pertaining to estimated tax
5 payments;

6 (3) the employee may elect to have income tax deducted
7 and withheld from the employee's payment of benefits as
8 provided under the Internal Revenue Code or the Illinois
9 Income Tax Act; and

10 (4) an employee may change a previously elected
11 withholding status.

12 Section 55. Discrimination against claimants prohibited.

13 (a) An employer, temporary services agency, employment
14 agency, employee organization, or other person may not
15 discharge, expel, or otherwise discriminate or retaliate
16 against a person because he or she has filed or communicated to
17 the employer an intent to file a claim, a complaint, or an
18 appeal, has taken FLIP leave, or has testified or is about to
19 testify or has assisted in any proceeding under this Act.

20 (b) An employer who violates this Act shall be liable to
21 any affected individuals for actual damages with interest and
22 for such equitable relief as may be appropriate. An action may
23 be brought under this Section not later than 3 years after the
24 date of the last event constituting the alleged violation for
25 which the action is brought.

1 Section 60. No entitlement created.

2 (a) Family leave benefits are payable under this Act only
3 to the extent that moneys are available in the FLIP Trust Fund
4 for this purpose. Neither the State nor the Department is
5 liable for any amount in excess of these limits.

6 (b) This Act does not create a continuing entitlement or
7 contractual right. There is no vested private right of any kind
8 against amendment or repeal of this Act.

9 Section 65. Notices to employees required.

10 (a) An employer covered by this Act shall post and keep
11 posted, in conspicuous places on the premises of the employer
12 where notices to employees are customarily posted, a notice,
13 prepared or approved by the Department, summarizing the
14 requirements of this Act and information pertaining to the
15 filing of a charge.

16 (b) If a FLIP-covered employer has any written guidance to
17 employees concerning employee benefits or leave rights, such as
18 in an employee handbook, information concerning FLIP
19 entitlements and employee obligations under the FLIP must be
20 included in the handbook or other document.

21 (c) An employer that willfully violates the requirements of
22 subsection (a) or (b) may be assessed a civil money penalty by
23 the Department not to exceed \$1000 for each separate offense.
24 In addition, an employer that fails to provide notice as

1 required under subsection (a) or (b) may not take any adverse
2 action against an employee, including denying FLIP leave, for
3 failing to furnish the employer with advance notice of a need
4 to take FLIP leave.

5 (d) When an employer's workforce is comprised of a
6 significant portion of workers who are not literate in English,
7 the employer shall be responsible for providing the notice in a
8 language in which the employees are literate.

9 Section 70. Rules. The Department may adopt rules as
10 necessary to implement this Act. In adopting rules, the
11 Department shall maintain consistency with the rules adopted to
12 implement the federal Family and Medical Leave Act, to the
13 extent those rules are not in conflict with this Act.

14 Section 97. Severability. The provisions of this Act are
15 severable under Section 1.31 of the Statute on Statutes.

16 Section 98. The State Finance Act is amended by adding
17 Section 5.855 as follows:

18 (30 ILCS 105/5.855 new)

19 Sec. 5.855. The FLIP Trust Fund.

20 Section 99. Effective date. This Act takes effect January
21 1, 2015.