

SB2789



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB2789

Introduced 1/30/2014, by Sen. Antonio Muñoz

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 805/8.38 new

Creates the Earned Sick Time Act. Provides that all employers that employ 20 or more employees shall provide paid sick time to their employees. Requires all employers to provide a minimum of one hour of paid sick time for every 40 hours worked by an employee, regardless of whether the employee is full-time or part-time, with a minimum of 2 days of paid sick time per calendar year. Provides for administration by the Department of Labor. Provides enforcement provisions and sets penalties. Amends the State Mandates Act to require implementation without reimbursement. Effective immediately.

LRB098 19505 OMW 54680 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

1 AN ACT concerning labor.

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 Earned
5 Sick Time Act.

6 Section 5. Findings and purpose. The General Assembly finds
7 that:

8 (a) Nearly every worker at some time during each year will
9 need time off from work to take care of his or her health needs
10 or the health needs of family members.

11 (b) Providing the right to earned sick time will therefore
12 have a positive effect on the public health of Illinois and
13 lessen the spread of and exposure to diseases.

14 (c) Supporting a healthy workforce will foster greater
15 employee retention and productivity. Responsible businesses
16 that already have policies that allow time off that amounts to
17 at least the minimum requirements under this Act, and that can
18 be taken for the same reasons and under the same conditions as
19 enumerated in this Act, will not be required to provide
20 additional sick time.

21 (d) More than 40% of all workers in Illinois - over 2.5
22 million people - have no right to a single earned sick day.

23 (e) 75% of low-wage workers do not receive paid sick days

1 and cannot forfeit a day's work, including 78% of working
2 mothers with school-age children.

3 (f) Providing sick time to workers at a time when the
4 economy is improving, and ensuring that workers' jobs are
5 protected when they need to take a sick day, strikes the right
6 balance and will result in a more prosperous, safe, and healthy
7 State.

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

9 "Calendar year" means a consecutive 12-month period, as
10 determined by an employer.

11 "Child" means a biological, adopted, or foster child, a
12 legal ward, or a child of an employee standing in loco
13 parentis.

14 "Department" means the Department of Labor.

15 "Director" means the Director of Labor.

16 "Employee" means any person who performs services for an
17 employer for wage, remuneration, or other compensation.

18 "Employee" includes persons working any number of hours,
19 regardless of full-time or part-time status.

20 "Employer" means one who employs at least one employee,
21 including but not limited to, this State and its political
22 subdivisions, a temporary services agency, employment agency,
23 or employee organization.

24 "Family member" means an employee's spouse, child, parent,
25 or the child or parent of an employee's spouse.

1 "Parent" means a biological or adoptive parent, a foster or
2 stepparent, or a person who stands in loco parentis to an
3 employee or an employee's spouse. "Parent" includes a person
4 who is the parent of a child as defined in this Section.

5 "Spouse" means a party to a marriage or a party to a civil
6 union.

7 Section 15. Earned sick time.

8 (a) Beginning on January 1, 2015, all employers that employ
9 20 or more employees shall provide paid sick time to their
10 employees in accordance with the provisions of this Act.
11 Beginning on January 1, 2016, all employers that employ 15 or
12 more employees shall provide unpaid sick time in accordance
13 with this Act.

14 (b) All employers shall provide a minimum of one hour of
15 paid sick time for every 40 hours worked by an employee, with a
16 minimum of 2 days per calendar year. Nothing in this Section
17 shall be construed to discourage or prohibit an employer from
18 allowing the accrual of sick time at a faster rate than this
19 Section requires.

20 (c) Paid sick time shall accrue in one hour unit
21 increments.

22 (d) Paid sick time shall begin to accrue at the
23 commencement of employment.

24 (e) Employees shall be entitled to use accrued paid sick
25 time beginning 6 months following commencement of their

1 employment. Upon completing 6 months of employment, employees
2 may use sick time as such time is accrued. Nothing in this
3 Section shall be construed to discourage or prohibit an
4 employer from allowing the use of sick time at an earlier date
5 than this Section requires.

6 (f) Unused paid sick time accrued under this Section shall
7 be carried over to the following calendar year. Nothing in this
8 Section shall be construed to discourage or prohibit an
9 employer from allowing paid sick time to be carried over into
10 additional calendar years.

11 (g) Nothing in this Section shall be construed as requiring
12 financial or other reimbursement to an employee from an
13 employer upon the employee's termination, resignation,
14 retirement, or other separation from employment for accrued
15 paid sick time that has not been used.

16 (h) If an employee is transferred to a separate division,
17 entity, or location, but remains employed by the same employer,
18 the employee is entitled to all paid sick time accrued at the
19 prior division, entity, or location and is entitled to use all
20 paid sick time as provided in this Section. When there is a
21 separation from employment and the employee is rehired within 6
22 months of separation by the same employer, previously accrued
23 paid sick time that had not been used shall be reinstated. Such
24 employee shall be entitled to use accrued paid sick time at the
25 commencement of employment following a separation from
26 employment of 6 months or less.

1 (i) Use of paid sick time.

2 (1) An employer shall permit an employee to use paid
3 sick time for absence from work due to:

4 (A) an employee's mental or physical illness,
5 injury or health condition or need for medical
6 diagnosis, care, or treatment of a mental or physical
7 illness, injury or health condition or need for
8 preventive medical care;

9 (B) care of a family member with a mental or
10 physical illness, injury, or health condition who
11 needs medical diagnosis, care, or treatment of a mental
12 or physical illness, injury, or health condition or who
13 needs preventive medical care; or

14 (C) closure of the employee's place of business by
15 order of a public official due to a public health
16 emergency or an employee's need to care for a child
17 whose school or place of care has been closed by order
18 of a public official due to a public health emergency.

19 (2) An employer may require reasonable notice of the
20 need to use paid sick time. Where such need is foreseeable,
21 an employer may require advance notice of the intention to
22 use such paid sick time, not to exceed 7 days before the
23 date such paid sick time is to begin. Where such need is
24 not foreseeable, an employer may require an employee to
25 provide notice of the need for the use of paid sick time as
26 soon as practicable.

1 (3) For leave of more than 3 consecutive days, an
2 employer may require reasonable documentation that the
3 paid sick time is covered by paragraph (1) of this
4 subsection (i). For paid sick time used pursuant to items
5 (A) or (B) of paragraph (1) of this subsection (i),
6 documentation signed by a licensed health care provider
7 indicating the need for the number of paid sick time days
8 shall be considered reasonable documentation.

9 (4) An employer may not require, as a condition of an
10 employee's use of paid sick time, that such employee search
11 for or find a replacement worker to cover the hours during
12 which the employee is using paid sick time.

13 Section 20. Retaliation prohibited.

14 (a) It is unlawful for an employer or any other person to
15 interfere with, restrain, or deny the exercise of, or the
16 attempt to exercise, any right protected under this Act.

17 (b) An employer may not take retaliatory personnel action
18 or discriminate against an employee because the employee has
19 exercised rights protected under this Act. Such rights include
20 but are not limited to: the right to use paid sick time under
21 this Act, the right to file a complaint or inform any person
22 about any employer's alleged violation of this Act, the right
23 to cooperate with the Department in its investigations of
24 alleged violations of this Act, and the right to inform any
25 person of his or her potential rights under this Act.

1 (c) It is unlawful for an employer's absence control policy
2 to count paid sick time taken under this section as an absence
3 that may lead to or result in discipline, discharge, demotion,
4 suspension, or any other adverse action; however, the
5 protections of this Section are not meant to interfere with
6 employer disciplinary procedures.

7 (d) The protections of this Act apply to any person who
8 mistakenly but in good faith alleges violations of this Act.

9 (e) Notice and posting.

10 (1) Employers shall give notice that employees are
11 entitled to paid sick time, the amount of paid sick time,
12 and the terms of its use guaranteed under this Section,
13 that retaliation against employees who request or use paid
14 sick time is prohibited, and that each employee has the
15 right to file a complaint or bring a civil action if sick
16 time as required by this Section is denied by the employer
17 or the employee is retaliated against for requesting or
18 taking paid sick time.

19 (2) Employers shall comply with the requirements of
20 this subsection (e) by:

21 (A) supplying each of their employees with a notice
22 in English and in any language that is the first
23 language spoken by at least 5% of the employer's
24 workforce that contains the information required in
25 paragraph (1) of this subsection (e) and by adding the
26 information contained in paragraph (1) of this

1 subsection (e) to any personnel policies or manuals
2 maintained by the employer and any orientation
3 materials supplied to new employees; or

4 (B) displaying a poster or posters in places
5 conspicuous and accessible to all employees in each
6 establishment where such employees are employed which
7 contains in English and in any language that is the
8 first language spoken by at least 5% of the employer's
9 workforce, all information required under paragraph
10 (1) of this subsection (e); however, any employer that
11 does not have and maintain written personnel policies
12 or manuals for employees shall display such poster or
13 posters pursuant to the requirements of this item (B).

14 (3) The Department shall create and make available to
15 employers posters that contain the information required
16 under paragraph (1) of this subsection (e) for their use in
17 complying with the notice provisions of this subsection
18 (e). Such posters shall be available from the Department in
19 person or in a downloadable format from the website of the
20 Department in English and any other language determined by
21 the Department.

22 (f) Employer records. Employers shall retain records
23 documenting hours worked by employees and paid sick time
24 accrued and taken by employees for a period of 3 years unless
25 otherwise required pursuant to any other law, rules, or
26 regulations and shall allow the Department access to such

1 records, with appropriate notice and at a mutually agreeable
2 time, to monitor compliance with the requirements of this
3 subsection. An employer is not required to modify its record
4 keeping policies to comply with this subsection if such
5 employer's records reasonably indicate employee hours worked,
6 paid sick time accrued, and paid sick time taken. When an issue
7 arises as to an employee's entitlement to paid sick time under
8 this Section, if the employer does not maintain or retain
9 adequate records documenting hours worked by the employee and
10 paid sick time taken by the employee or does not allow the
11 Department reasonable access to such records, it shall be
12 presumed that the employer has violated this subsection, absent
13 clear and convincing evidence otherwise.

14 (g) Rules. The Department shall administer and enforce this
15 Act and adopt rules under the Illinois Administrative Procedure
16 Act for the purposes of this Act. Such rules shall permit an
17 employer with a paid leave policy, such as a paid time off
18 policy, that makes available an amount of paid leave sufficient
19 to meet the accrual requirements of this Act, that may be used
20 for the same purposes and under the same conditions as paid
21 sick time under this Act, to maintain its existing timekeeping
22 practices.

23 (h) Confidentiality and nondisclosure. An employer may not
24 require disclosure of details relating to an employee's medical
25 condition as a condition of providing paid sick time under this
26 Section. If an employer possesses health information about an

1 employee or employee's family member, such information shall be
2 treated as confidential and may not be disclosed except to the
3 affected employee or with the permission of the affected
4 employee.

5 (i) Encouragement of more generous policies; no effect on
6 more generous policies.

7 (1) Nothing in this Act shall be construed to
8 discourage or prohibit an employer from the adoption or
9 retention of a paid sick time policy or paid time off
10 policy more generous than the one required in this Act.

11 (2) Nothing in this Act shall be construed as
12 diminishing the obligation of an employer to comply with
13 any contract, collective bargaining agreement, employment
14 benefit plan or other agreement providing more generous
15 sick time to an employee than required in this Act.

16 (3) Nothing in this Act shall be construed as
17 diminishing the rights of public employees regarding paid
18 sick time as provided in federal or State law or practice,
19 or in local ordinance.

20 Section 25. Enforcement.

21 (a) An employer found to be in violation of this Act is
22 liable for a civil penalty of not less than \$500 for each
23 violation.

24 (b) Penalties imposed under this Section shall not affect
25 any right or remedy available or civil or criminal penalty

1 applicable under law to any individual or entity, or in any way
2 diminish or reduce the remedy or damages recoverable in any
3 action in a court.

4 (c) Upon a determination that a violation of this Act has
5 occurred, the court may award any appropriate equitable relief
6 to secure compliance with this Act and may award reasonable
7 attorney's fees and costs incurred in maintaining the action to
8 any prevailing complaining party.

9 (d) Any proceeding to recover a civil penalty authorized
10 under this Section shall be commenced by the service of a
11 notice of violation which shall be returnable to the
12 Department. The Director or his or her designee, shall, after
13 due notice and an opportunity for a hearing, be authorized to
14 impose the civil penalties prescribed by this Section. The
15 decision to impose such penalties shall be a final
16 administrative decision for purposes of review under the
17 Administrative Review Law.

18 (e) The Department shall take appropriate action to enforce
19 this Section, including, but not limited to, establishing a
20 system to receive complaints from any person charging that a
21 violation of this Act has occurred, investigating any such
22 complaints received, and making findings of violations and
23 civil penalties in accordance with this Section.

24 (f) Any action or proceeding that may be appropriate or
25 necessary for the correction of any violation issued under this
26 Section including, but not limited to, actions to secure

1 permanent injunctions, enjoining any acts or practices which
2 constitute such violation, mandating compliance with this Act,
3 or such other relief as may be appropriate, may be initiated in
4 the circuit court by the Attorney General on behalf of the
5 Department.

6 (g) The Department and any aggrieved employee may bring an
7 action in the circuit court against an employer for a violation
8 of this Act within 3 years of the date the alleged violation
9 occurred. Upon a determination that a violation of this Act has
10 occurred, a court may award damages to the aggrieved employee
11 and any other appropriate relief including but not limited to
12 reinstatement of employment and may award reasonable
13 attorney's fees and costs incurred in maintaining the action to
14 any prevailing party.

15 Section 30. Other provisions.

16 (a) This Act provides minimum requirements pertaining to
17 paid sick time and shall not be construed to preempt, limit, or
18 otherwise affect the applicability of any other law,
19 regulation, requirement, policy, or standard that provides for
20 greater accrual or use by employees of sick leave or time,
21 whether paid or unpaid, or that extends other protections to
22 employees.

23 (b) Nothing in this Act shall be construed as creating or
24 imposing any requirement in conflict with any federal law,
25 rule, or regulation, nor shall anything in this Act be

1 construed to diminish or impair the rights of an employee or
2 employer under any valid collective bargaining agreement.

3 Section 900. The State Mandates Act is amended by adding
4 Section 8.38 as follows:

5 (30 ILCS 805/8.38 new)

6 Sec. 8.38. Exempt mandate. Notwithstanding Sections 6 and 8
7 of this Act, no reimbursement by the State is required for the
8 implementation of any mandate created by this amendatory Act of
9 the 98th General Assembly.

10 Section 997. Severability. The provisions of this Act are
11 severable under Section 1.31 of the Statute on Statutes.

12 Section 999. Effective date. This Act takes effect upon
13 becoming law.