



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3898

Introduced 2/22/2021, by Rep. Jehan Gordon-Booth

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.935 new

Creates the Healthy Workplace Act and amends the State Finance Act. Requires employers to provide specified paid sick days to employees. Sets forth the purposes for and manner in which the sick days may be used. Contains provisions regarding employer responsibilities, unlawful employer practices, and other matters. Provides that an employee who works in the State who is absent from work for specified reasons is entitled to earn and use a minimum of 40 hours of paid sick time during a 12-month period or a pro rata number of hours of paid sick time under the provisions of the Act. Provides that it is unlawful for an employer to interfere with, restrain, deny, change work days or hours scheduled to avoid paying sick time, or discipline an employee for the exercise of, or the attempt to exercise, any right provided under or in connection with the Act, including considering the use of paid sick time as a negative factor in an employment action that involves hiring, terminating, evaluating, promoting, disciplining, or counting the paid sick time under a no-fault attendance policy. Provides that any employer that the Department of Labor or a court finds by a preponderance of the evidence to have knowingly, repeatedly, or with reckless disregard violated any provision of the Act or any rule adopted under the Act is subject to a civil money penalty to be paid to the employee not to exceed \$2,500 for each separate offense. Provides that the Department of Labor shall administer the Act. Authorizes individuals to file civil actions with respect to violations. Creates the Healthy Workplace Fund as a special fund in the State treasury. Effective July 1, 2021.

LRB102 10889 JLS 16219 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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
5 Healthy Workplace 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 30% of all private sector workers
11 in Illinois (almost 2,000,000 people) have no right to a
12 paid sick day. Over three-fourths of the lowest-wage
13 workers do not receive paid sick time and cannot forfeit a
14 day's work, so they often come into work sick.

15 (2) Preventive and routine medical care helps avoid
16 illness and injury by detecting illnesses early on and
17 shortening the duration of illnesses. Providing employees
18 with time off to attend to their own health care needs
19 ensures that they will be healthier and more efficient
20 employees. It will also reduce the spread of disease
21 within workplaces and to the public, such as customers,
22 when employees go to work sick, a practice known as
23 "presenteeism". Routine medical care results in savings by

1 detecting and treating illness and injury early and
2 decreasing the need for emergency care. These savings
3 benefit public and private payers of health insurance.

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

8 (4) Nearly one-quarter of American women report
9 domestic violence and nearly one in 5 women report
10 experiencing rape at some time during their lives. Many
11 workers, men and women, need time off to care for their
12 health after these incidents or to take legal action.
13 Without paid time off, victims are in danger of losing
14 their jobs.

15 (5) Employed individuals who have court appointments,
16 sentencing hearings, probation, conditional discharge,
17 parole, or mandatory supervised release requirements, or
18 are visiting a family member in jail or prison need paid
19 time off work so that their families do not fall further
20 into economic jeopardy and so that they are not further
21 penalized, as these court-related events are frequently
22 scheduled during work hours.

23 (6) Employers that provide paid sick time see better
24 productivity, reduced flu contagion, and lower turnover,
25 which saves them the costs of replacing and training
26 workers.

1 (b) This Act is enacted to establish the Healthy Workplace
2 Act to provide at least a minimum time-off standard of paid
3 sick time for all workers.

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

5 "Child" means a son or daughter who is a biological,
6 adopted, or foster child, a stepchild, a legal ward, a child of
7 a person standing in loco parentis, or any other individual
8 whose close association with the employee is the equivalent of
9 a child.

10 "Construction industry" means any constructing, altering,
11 reconstructing, repairing, rehabilitating, refinishing,
12 refurbishing, remodeling, remediating, renovating, custom
13 fabricating, maintenance, landscaping, improving, wrecking,
14 painting, decorating, demolishing, or adding to or subtracting
15 from any building, structure, highway, roadway, street,
16 bridge, alley, sewer, ditch, sewage disposal plant,
17 waterworks, parking facility, railroad, excavation or other
18 structure, project, development, real property, or
19 improvement, or to do any part thereof, whether or not the
20 performance of the work herein described involves the addition
21 to or fabrication into, any structure, project, development,
22 real property, or improvement herein described of any material
23 or article of merchandise.

24 "Construction industry" also includes moving construction
25 related materials on the job site or to or from the job site,

1 snow plowing, snow removal, and refuse collection.

2 "Department" means the Illinois Department of Labor.

3 "Employ" means to suffer or permit to work.

4 "Employee" means any person who performs services for an
5 employer for wage, remuneration, or other compensation. This
6 includes persons working any number of hours, including a
7 full-time or part-time status.

8 "Employee" does not include any person who the employer
9 establishes:

10 (A) has been and will continue to be free from
11 control and direction over the performance of their
12 work, both under a contract of service and in fact;

13 (B) is engaged in an independently established
14 trade, occupation, profession or business; or

15 (C) is deemed a legitimate sole proprietor or
16 partnership.

17 A sole proprietor or partnership shall be deemed to be
18 legitimate if the employer establishes that:

19 (1) the sole proprietor or partnership is performing
20 the service free from the direction or control over the
21 means and manner of providing the service, subject only to
22 the right of the employer for whom the service is provided
23 to specify the desired result;

24 (2) the sole proprietor or partnership is not subject
25 to cancellation or destruction upon severance of the
26 relationship with the employer;

1 (3) the sole proprietor or partnership has a
2 substantial investment of capital in the sole
3 proprietorship or partnership beyond the ordinary tools
4 and equipment and a personal vehicle;

5 (4) the sole proprietor or partnership owns the
6 capital goods and gains the profits and bears the losses
7 of the sole proprietorship or partnership;

8 (5) the sole proprietor or partnership makes its
9 services available to the general public on a continuing
10 basis;

11 (6) the sole proprietor or partnership includes
12 services rendered on a Federal Income Tax Schedule as an
13 independent business or profession;

14 (7) the sole proprietor or partnership performs
15 services for the contractor under the sole proprietor's or
16 partnership's name;

17 (8) when the services being provided require a license
18 or permit, the sole proprietor or partnership obtains and
19 pays for the license or permit in the sole
20 proprietorship's or partnership's name;

21 (9) the sole proprietor or partnership furnishes the
22 tools and equipment necessary to provide the service;

23 (10) if necessary, the sole proprietor or partnership
24 hires its own employees without approval of the employer,
25 pays the employees without reimbursement from the employer
26 and reports the employees' income to the Internal Revenue

1 Service;

2 (11) the employer does not represent the sole
3 proprietorship or partnership as an employee of the
4 employer to the public; and

5 (12) the sole proprietor or partnership has the right
6 to perform similar services for others on whatever basis
7 and whenever it chooses.

8 Nothing in this Act shall hinder or prohibit the ability
9 of any employee, including those as defined in the federal
10 Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.)
11 from taking uncompensated time off due to any reason for leave
12 allowable for paid sick time under Section 15 of this Act.

13 "Employer" means any individual; person; partnership;
14 association; corporation; limited liability company; business
15 trust; employment or labor placement agency or business where
16 wages are made directly or indirectly by the agency or
17 business for work undertaken by the employee under hire to a
18 third party pursuant to a contract between the agency or
19 business with the third party; the State of Illinois and local
20 governments; or any political subdivision of the State or
21 local government, or State or local government agency; for
22 which one or more persons is gainfully employed, express or
23 implied, whether lawfully or unlawfully employed, who employs
24 a worker or who employs a worker not excluded as an employee
25 pursuant to the definition of "employee" or, notwithstanding
26 any other law, who is the employer or joint employer for

1 collective bargaining purposes of a bargaining unit of
2 employees. "Employer" does not include school districts
3 organized under the School Code, park districts organized
4 under the Park District Code, or any City of Chicago Sister
5 Agency under the Chicago Minimum Wage and Paid Sick Leave
6 Ordinance as of the effective date of this Act.

7 "Family member" means a child, spouse, parent, child or
8 parent of an employee's spouse, sibling, grandparent,
9 grandchild, or any other individual related by blood or whose
10 close association with the employee is the equivalent of a
11 family relationship.

12 "Health care provider" means a person:

13 (1) who is:

14 (A) licensed to practice medicine in all of its
15 branches in Illinois and possesses the degree of
16 doctor of medicine;

17 (B) licensed to practice medicine in all of its
18 branches in Illinois and possesses the degree of
19 doctor of osteopathy or osteopathic medicine;

20 (C) licensed to practice medicine in all of its
21 branches or as an osteopathic physician in another
22 state or jurisdiction;

23 (D) a chiropractic physician licensed under the
24 Medical Practice Act of 1987; or

25 (E) any other person determined by final rule as
26 of the date this Act becomes law under the Family and

1 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 "Paid sick time" means a portion of or an entire scheduled
5 or regular workday when an employee is unable to report to work
6 because of a reason described in subsection (b) of Section 15.

7 "Parent" means a biological, adoptive, or foster parent, a
8 stepparent, a parent of a legal ward, a person who stands in
9 loco parentis to an employee or an employee's spouse, or any
10 other individual whose close association with the employee is
11 the equivalent of a parent.

12 "Spouse" means a party to a marriage or a party to a civil
13 union as defined by law.

14 "Victim services organization" means a nonprofit,
15 nongovernmental organization that provides assistance to
16 victims of domestic or sexual violence, including rape crisis
17 centers, organizations carrying out a domestic violence
18 program, organizations operating a shelter or providing
19 counseling services, and a legal services organization or
20 other organization providing assistance through the legal
21 process.

22 Section 15. Provision of paid sick time.

23 (a) An employee who works in Illinois who is absent from
24 work for a reason set forth in subsection (b) is entitled to
25 earn and use a minimum of 40 hours of paid sick time during a

1 12-month period or a pro rata number of hours of paid sick time
2 under the provisions of subsection (c). The 12-month period
3 for an employee shall be calculated annually from the date of
4 hire or the effective date of this Act, whichever is later.

5 (b) Paid sick time shall be provided to an employee by an
6 employer to:

7 (1) care for the employee's own physical or mental
8 illness, injury, or health condition, or seek medical
9 diagnosis or care, or attend a medical appointment,
10 provided the employee is not an employee as defined in the
11 federal Railroad Unemployment Insurance Act (45 U.S.C. 351
12 et seq.);

13 (2) care for the employee's family member who is
14 suffering from a physical or mental illness, injury, or
15 health condition, or seek medical diagnosis or care, or
16 attend a medical appointment;

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

22 (4) be absent from work because the employee or the
23 employee's family member is the victim of:

24 (A) domestic violence as defined in Section 103(3)
25 of the Illinois Domestic Violence Act of 1986; or

26 (B) sexual violence, which means:

1 (i) any conduct proscribed by Article 11 of
2 the Criminal Code of 2012 except Sections 11-35
3 and 11-45;

4 (ii) Sections 12-7.3, 12-7.4, and 12-7.5 of
5 the Criminal Code of 2012, or

6 (iii) a similar provision of the Criminal Code
7 of 1961;

8 (5) be absent from work to visit the employee's family
9 member who is in jail or prison, for the employee to attend
10 his or her own or his or her family member's appointment
11 regarding court sentencing, probation, conditional
12 discharge, parole, or mandatory supervised release
13 requirements, or any other civil or criminal court hearing
14 or trial; or

15 (6) care for the employee's own illness or the
16 employee's family member who is suffering from an illness,
17 injury, or health condition, or seek medical diagnosis or
18 care, or attend a medical appointment arising out of
19 exposure to COVID-19.

20 (c) Paid sick time shall accrue at the rate of one hour of
21 paid sick time for every 40 hours worked up to a minimum of 40
22 hours of paid sick time unless the employer selects a higher
23 limit. Employees who are exempt from the overtime requirements
24 of the federal Fair Labor Standards Act (29 U.S.C. 213(a)(1))
25 shall be deemed to work 40 hours in each work week for purposes
26 of paid sick time accrual unless their normal work week is less

1 than 40 hours, in which case paid sick time accrues based on
2 that normal work week. Employees shall determine how much paid
3 sick time they need to use, provided that employers may set a
4 reasonable minimum increment for the use of paid sick time not
5 to exceed 4 hours per day.

6 (d) Employees shall be paid their regular rate of pay for
7 paid sick time. However, employees engaged in an occupation in
8 which gratuities or commissions have customarily and usually
9 constituted and have been recognized as part of the
10 remuneration for hire purposes shall be paid by their employer
11 at least the full minimum wage in the jurisdiction in which
12 they are employed when paid sick time is taken. Paid sick time
13 under this Act shall not be charged or otherwise credited to
14 employee vacation accounts.

15 (e) Paid sick time shall begin to accrue at the
16 commencement of employment or on the effective date of this
17 Act, whichever is later. Employees shall be entitled to begin
18 using paid sick time 180 days following commencement of their
19 employment or 180 days following the effective date of this
20 Act, whichever is later. Nothing in this Section shall be
21 construed to discourage or prohibit an employer from allowing
22 the use of paid sick time at an earlier date than this Section
23 requires. Nothing in this Act shall be construed to discourage
24 employers from adopting or retaining paid sick time policies
25 more generous than policies that comply with the requirements
26 of this Act.

1 (f) An employer may require certification of the
2 qualifying illness, injury, or health condition, or for time
3 used pursuant to item (1) or (2) of subsection (b), when paid
4 sick time used covers more than 3 consecutive workdays. Any
5 reasonable documentation signed by a health care provider of
6 the employee's choice involved in following or treating the
7 illness, injury, or health condition, and indicating the need
8 for the amount of sick time taken, shall be deemed acceptable
9 certification. Nothing in this Act shall be construed to
10 require an employee to provide as certification any
11 information from a health care provider that would be a
12 disclosure in violation of Section 1177 of the Social Security
13 Act or the regulations promulgated pursuant to the federal
14 Health Insurance Portability and Accountability Act of 1996.
15 If an employer possesses health information or any information
16 related to domestic or sexual violence about an employee or
17 employee's family member, the information shall be treated as
18 confidential and not disclosed except with the permission of
19 the affected employee. For paid sick time used pursuant to
20 item (4) of subsection (b), any one of the following is
21 acceptable documentation, and only one of the following shall
22 be required: a police report, court document, any reasonable
23 documentation signed by a health care provider, or signed
24 statement from an attorney, a member of the clergy, a victim
25 services organization or advocate, or the employee. It is up
26 to the employee to determine which documentation to submit. If

1 a document has been submitted, the employer shall not request
2 or require any other document if the reason for the sick time
3 is related to the same incident of violence or the same
4 perpetrator of the violence. The employer shall not delay the
5 commencement of leave taken for purposes of subsection (b) nor
6 delay pay for this period on the basis that the employer has
7 not yet received the certification.

8 (g) Paid sick time shall be provided upon the oral request
9 of an employee. If the necessity for paid sick time under this
10 Act is foreseeable, the employee shall provide the employer
11 with not less than 7 days' notice before the date the leave is
12 to begin. If the necessity for leave is not foreseeable, the
13 employee shall provide such notice as soon as is practical
14 after the employee is aware of the necessity of the leave. An
15 employer may not require, as a condition of providing paid
16 sick time under this Act, that the employee search for or find
17 a replacement worker to cover the hours during which the
18 employee is on paid sick time leave.

19 (h) Paid sick time shall carry over annually to the extent
20 not used by the employee, provided that nothing in this Act
21 shall be construed to require an employer to allow use of more
22 than 40 hours of paid sick time for an employee unless the
23 employer agrees to do so.

24 (i) It is unlawful for an employer to interfere with,
25 restrain, deny, change work days or hours scheduled to avoid
26 paying sick time, or discipline an employee for the exercise

1 of, or the attempt to exercise, any right provided under or in
2 connection with this Act, including considering the use of
3 paid sick time as a negative factor in an employment action
4 that involves hiring, terminating, evaluating, promoting,
5 disciplining, or counting the paid sick time under a no-fault
6 attendance policy.

7 (j) During any period an employee takes leave under this
8 Act, the employer shall maintain coverage for the employee and
9 any family member under any group health plan for the duration
10 of such leave at least the level and conditions of coverage as
11 would have been provided if the employee had not taken the
12 leave.

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

18 (l) Nothing in this Section shall be construed to prohibit
19 an employer from taking disciplinary action, up to and
20 including termination, against an employee who uses paid sick
21 time provided pursuant to this Act for purposes other than
22 those described in this Section.

23 (m) If an employee is transferred to a separate division,
24 entity, or location, but remains employed by the same
25 employer, the employee is entitled to all paid sick time
26 accrued at the prior division, entity, or location and is

1 entitled to use all paid sick time as provided in this Section.
2 If there is a separation from employment and the employee is
3 rehired within 12 months of separation by the same employer,
4 previously accrued paid sick time that had not been used shall
5 be reinstated. The employee shall be entitled to use accrued
6 paid sick time at the commencement of employment following a
7 separation from employment of 12 months or less.

8 (n) Nothing in this Section shall be deemed to interfere
9 with, impede, or in any way diminish the right of employees to
10 bargain collectively with their employers through
11 representatives of their own choosing in order to establish
12 wages or other conditions of work in excess of the applicable
13 minimum standards of the provisions of this Act. Nothing in
14 this Section shall be deemed to affect the validity or change
15 the terms of bona fide collective bargaining agreements in
16 force on the effective date of this Act. After the effective
17 date of this Act, requirements of this Section may be waived in
18 a bona fide collective bargaining agreement, but only if the
19 waiver is set forth explicitly in such agreement in clear and
20 unambiguous terms. In no event shall this Section apply to any
21 employee working in the construction industry who is covered
22 by a bona fide collective bargaining agreement.

23 Section 20. Related employer responsibilities.

24 (a) An employer subject to any provision of this Act shall
25 make and preserve records documenting hours worked by

1 employees and the amount of paid sick time taken by employees
2 for a period of not less than 3 years and shall allow the
3 Department access to such records, with appropriate notice and
4 a mutually agreeable time, to monitor compliance with the
5 requirements of this Section. In addition, the records shall
6 be preserved for the duration of any claim pending pursuant to
7 Section 35 of this Act.

8 (b) An agreement by employees to waive their rights under
9 this Act, except as allowed under subsection (n) of Section
10 15, is void as against public policy.

11 (c) Employers who have a paid time off policy that
12 complies with the requirements of this Act are not required to
13 modify the policy if such policy offers an employee the
14 option, at the employee's discretion, to take paid sick time
15 that is at least equivalent to the paid sick time described in
16 this Act.

17 (d) An employer shall post and keep posted in a
18 conspicuous place on the premises of the employer where
19 notices to employees are customarily posted, and include in an
20 employee manual or policy if the employer has one, a notice, to
21 be prepared by the Department, summarizing the requirements of
22 this Act and information pertaining to the filing of a charge.
23 If an employer's workforce is comprised of a significant
24 portion of workers who are not literate in English, the
25 employer is responsible for providing the notice in a language
26 in which the employees are literate. An employer who willfully

1 violates the notice and posting requirements of this Section
2 shall be subject to a civil penalty to be paid to the employee
3 in an amount not to exceed \$100 for each separate offense.

4 Section 25. Unlawful employer practices. It is unlawful
5 for any employer to retaliate or otherwise take any adverse
6 action against an employee because the employee (1) exercises
7 rights or attempts to exercise rights under this Act, (2)
8 opposes practices which such employee believes to be in
9 violation of this Act, or (3) supports the exercise of rights
10 of another under this Act. Such unlawful employer practices
11 include, but are not limited to, any reference to the
12 employee's or any of the employee's family members'
13 citizenship or immigration status, or any threat to contact or
14 actual contact with any local, State, or federal government
15 entities regarding the employee's or any of the employee's
16 family members' citizenship or immigration status, or sexual
17 harassment. Exercising rights under this Act includes filing
18 an action or instituting or causing to be instituted any
19 proceeding under or related to this Act; providing or agreeing
20 to provide any information in connection with any inquiry or
21 proceeding relating to any right provided under this Act; or
22 testifying to or agreeing to testify in any inquiry or
23 proceeding relating to any right provided under this Act.

24 Section 30. Department responsibilities.

1 (a) The Department shall administer and enforce this Act
2 and adopt rules under the Illinois Administrative Procedure
3 Act for the purpose of this Act. The Department shall have the
4 powers and the parties shall have the rights provided in the
5 Illinois Administrative Procedure Act for contested cases. The
6 Department shall have the power to conduct investigations in
7 connection with the administration and enforcement of this
8 Act, including the power to conduct depositions and discovery
9 and to issue subpoenas. If the Department finds cause to
10 believe that this Act has been violated, the Department shall
11 notify the parties in writing and the matter shall be referred
12 to an Administrative Law Judge to schedule a formal hearing in
13 accordance with hearing procedures established by rule.
14 Administrative decisions shall be reviewed under the
15 Administrative Review Law.

16 (b) The Department is authorized to impose civil penalties
17 prescribed in Section 35 in administrative proceedings that
18 comply with the Illinois Administrative Procedure Act and to
19 supervise the payment of the unpaid wages and damages owing to
20 the employee or employees under this Act. The Department may
21 bring any legal action necessary to recover the amount of
22 unpaid wages, damages, and penalties, and the employer shall
23 be required to pay the costs. Any sums recovered by the
24 Department on behalf of an employee under this Act shall be
25 paid to the employee or employees affected. However, 20% of
26 any penalty collected from the employer for a violation of

1 this Act shall be deposited into the Healthy Workplace Fund, a
2 special fund created in the State treasury that is dedicated
3 to enforcing this Act.

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

6 Section 35. Enforcement.

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

12 (b) Any employer that violates this Act is liable in a
13 claim filed with the Department or in a civil action in circuit
14 court to any affected individuals for actual and compensatory
15 damages, with interest at the prevailing rate, punitive
16 damages, and such equitable relief as may be appropriate, in
17 addition to reasonable attorney's fees, reasonable expert
18 witness fees, and other costs of the action to be paid by the
19 defendant. A civil action may be brought without first filing
20 a complaint with the Department. Administrative decisions are
21 reviewable under the Administrative Review Law.

22 (c) Any employer that the Department or a court finds by a
23 preponderance of the evidence to have knowingly, repeatedly,
24 or with reckless disregard violated any provision of this Act
25 or any rule adopted under this Act is subject to a civil money

1 penalty to be paid to the employee not to exceed \$2,500 for
2 each separate offense.

3 Section 90. The State Finance Act is amended by adding
4 Section 5.935 as follows:

5 (30 ILCS 105/5.935 new)

6 Sec. 5.935. The Healthy Workplace Fund.

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

9 Section 99. Effective date. This Act takes effect July 1,
10 2021.