



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

SB2635

Introduced 11/6/2023, by Sen. Cristina Castro

#### SYNOPSIS AS INTRODUCED:

820 ILCS 192/10  
820 ILCS 192/15

Amends the Paid Leave for All Workers Act. Provides that the definition of "employee" does not include: (1) an employee who is employed by an institution of higher education (i) for less than 2 consecutive calendar quarters during a calendar year and who does not have a reasonable expectation that he or she will be rehired by the same employer of the same service in a subsequent calendar year or (ii) as a temporary appointment as described in the State Universities Civil Service Act; (2) higher education faculty and instructors who have teaching, research, and extension faculty contracts or appointments of less than 12 consecutive months of the year; or (3) an employee employed by a public community college or other public institution of higher education in the State of Illinois whose position is covered by a bona fide collective bargaining agreement. Provides that the definition of "employer" does not include laboratory schools as defined in the School Code. Makes conforming changes. Effective January 1, 2024.

LRB103 35119 SPS 65078 b

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 5. The Paid Leave for All Workers Act is amended by  
5 changing Sections 10 and 15 as follows:

6 (820 ILCS 192/10)

7 (This Section may contain text from a Public Act with a  
8 delayed effective date)

9 Sec. 10. Definitions. As used in this Act:

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.

1 "Construction industry" also includes moving construction  
2 related materials on the job site or to or from the job site,  
3 snow plowing, snow removal, and refuse collection.

4 "Department" means the Illinois Department of Labor.

5 "Domestic work" and "domestic worker" have the same  
6 meanings as defined in Section 10 of the Domestic Workers'  
7 Bill of Rights Act, except that "domestic worker" also  
8 includes independent contractors, sole proprietors, and  
9 partnerships.

10 "Employee" has the same application and meaning as that  
11 provided in Sections 1 and 2 of the Illinois Wage Payment and  
12 Collection Act. "Employee" also includes all domestic workers,  
13 and, for the purposes of this Act, domestic workers shall not  
14 be excluded as employees under the provisions of item (1),  
15 (2), or (3) of Section 2 of the Illinois Wage Payment and  
16 Collection Act. "Employee" does not include:

17 (1) an employee as defined in the federal Railroad  
18 Unemployment Insurance Act (45 U.S.C. 351 et seq.) or the  
19 Railway Labor Act;

20 (2) a student enrolled in and regularly attending  
21 classes in a college or university that is also the  
22 student's employer, and who is employed on a temporary  
23 basis at less than full time at the college or university,  
24 but this exclusion applies only to work performed for that  
25 college or university; ~~or~~

26 (3) an ~~a short term~~ employee who is employed by an

1 institution of higher education (i) for less than 2  
2 consecutive calendar quarters during a calendar year and  
3 who does not have a reasonable expectation that he or she  
4 ~~they~~ will be rehired by the same employer of the same  
5 service in a subsequent calendar year or (ii) as a  
6 temporary appointment as described in Section 36m of the  
7 State Universities Civil Service Act and 80 Ill. Adm. Code  
8 250.70; -

9 (4) higher education faculty and instructors who have  
10 teaching, research, and extension faculty contracts or  
11 appointments of less than 12 consecutive months of the  
12 year; or

13 (5) an employee employed by a public community college  
14 or other public institution of higher education in the  
15 State of Illinois whose position is covered by a bona fide  
16 collective bargaining agreement.

17 "Employer" has the same application and meaning as that  
18 provided in Sections 1 and 2 of the Illinois Wage Payment and  
19 Collection Act, except that for purposes of this Act,  
20 "employer" also means the State and units of local government,  
21 any political subdivision of the State or units of local  
22 government, or any State or local government agency.

23 "Employer" does not include school districts organized  
24 under the School Code, ~~or~~ park districts organized under the  
25 Park District Code, or laboratory school as defined in Section  
26 18-8.15 of the School Code.

1 "Writing" or "written" means a printed or printable  
2 communication in physical or electronic format, including a  
3 communication that is transmitted through electronic mail,  
4 text message, or a computer system or is otherwise sent or  
5 stored electronically.

6 (Source: P.A. 102-1143, eff. 1-1-24.)

7 (820 ILCS 192/15)

8 (This Section may contain text from a Public Act with a  
9 delayed effective date)

10 Sec. 15. Provision of paid leave.

11 (a) An employee who works in Illinois is entitled to earn  
12 and use up to a minimum of 40 hours of paid leave during a  
13 12-month period or a pro rata number of hours of paid leave  
14 under the provisions of subsection (b). The paid leave may be  
15 used by the employee for any purpose as long as the paid leave  
16 is taken in accordance with the provisions of this Act.

17 (b) Paid leave under this Act shall accrue at the rate of  
18 one hour of paid leave for every 40 hours worked up to a  
19 minimum of 40 hours of paid leave or such greater amount if the  
20 employer provides more than 40 hours. Employees who are exempt  
21 from the overtime requirements of the federal Fair Labor  
22 Standards Act (29 U.S.C. 213(a)(1)) shall be deemed to work 40  
23 hours in each workweek for purposes of paid leave accrual  
24 unless their regular workweek is less than 40 hours, in which  
25 case paid leave accrues based on that regular workweek.

1 Employees shall determine how much paid leave they need to  
2 use, however employers may set a reasonable minimum increment  
3 for the use of paid leave not to exceed 2 hours per day. If an  
4 employee's scheduled workday is less than 2 hours per day, the  
5 employee's scheduled workday shall be used to determine the  
6 amount of paid leave.

7 (c) An employer may make available the minimum number of  
8 hours of paid leave, subject to pro rata requirements provided  
9 in subsection (b), to an employee on the first day of  
10 employment or the first day of the 12-month period. Employers  
11 that provide the minimum number of hours of paid leave to an  
12 employee on the first day of employment or the first day of the  
13 12-month period are not required to carryover paid leave from  
14 12-month period to 12-month period and may require employees  
15 to use all paid leave prior to the end of the benefit period or  
16 forfeit the unused paid leave. However, under no circumstances  
17 shall an employee be credited with paid leave that is less than  
18 what the employee would have accrued under subsections (a) and  
19 (g) of this Section.

20 (d) The 12-month period may be any consecutive 12-month  
21 period designated by the employer in writing at the time of  
22 hire. Changes to the 12-month period may be made by the  
23 employer if notice is given to employees in writing prior to  
24 the change and the change does not reduce the eligible accrual  
25 rate and paid leave available to the employee. If the employer  
26 changes the designated 12-month period, the employer shall

1 provide the employee with documentation of the balance of  
2 hours worked, paid leave accrued and taken, and the remaining  
3 paid leave balance.

4 (e) Paid leave under this Act may be taken by an employee  
5 for any reason of the employee's choosing. An employee is not  
6 required to provide an employer a reason for the leave and may  
7 not be required to provide documentation or certification as  
8 proof or in support of the leave. An employee may choose  
9 whether to use paid leave provided under this Act prior to  
10 using any other leave provided by the employer or State law.

11 (f) Employees shall be paid their hourly rate of pay for  
12 paid leave. However, employees engaged in an occupation in  
13 which gratuities or commissions have customarily and usually  
14 constituted and have been recognized as part of the  
15 remuneration for hire purposes shall be paid by their employer  
16 at least the full minimum wage in the jurisdiction in which  
17 they are employed when paid leave is taken. This wage shall be  
18 treated as the employee's regular rate of pay for purposes of  
19 this Act.

20 (g) Paid leave under this Act shall begin to accrue at the  
21 commencement of employment or on the effective date of this  
22 Act, whichever is later. Employees shall be entitled to begin  
23 using paid leave 90 days following commencement of their  
24 employment or 90 days following the effective date of this  
25 Act, whichever is later.

26 (h) Paid leave under this Act shall be provided upon the

1 oral or written request of an employee in accordance with the  
2 employer's reasonable paid leave policy notification  
3 requirements which may include the following:

4 (1) If use of paid leave under this Act is  
5 foreseeable, the employer may require the employee to  
6 provide 7 calendar days' notice before the date the leave  
7 is to begin.

8 (2) If paid leave under this Act is not foreseeable,  
9 the employee shall provide such notice as soon as is  
10 practicable after the employee is aware of the necessity  
11 of the leave. An employer that requires notice of paid  
12 leave under this Act when the leave is not foreseeable  
13 shall provide a written policy that contains procedures  
14 for the employee to provide notice.

15 (3) Employers shall provide employees with written  
16 notice of the paid leave policy notification requirements  
17 in this Section in the manner provided in Section 20 for  
18 notice and posting and within 5 calendar days of any  
19 change to the employer's reasonable paid leave policy  
20 notification requirements.

21 (4) An employer may not require, as a condition of  
22 providing paid leave under this Act, that the employee  
23 search for or find a replacement worker to cover the hours  
24 during which the employee takes paid leave.

25 (i) Except as provided in subsection (c), paid leave under  
26 this Act shall carry over annually to the extent not used by



1 the employee, provided that nothing in this Act shall be  
2 construed to require an employer to provide more than 40 hours  
3 of paid leave for an employee in the 12-month period unless the  
4 employer agrees to do so.

5 (j) Nothing in this Section or any other Illinois law or  
6 rule shall be construed as requiring financial or other  
7 payment to an employee from an employer upon the employee's  
8 termination, resignation, retirement, or other separation from  
9 employment for paid leave accrued under this Act that has not  
10 been used. Nothing in this Section or any other Illinois law or  
11 rule shall be construed as requiring financial or other  
12 reimbursements to an employee from an employer for unused paid  
13 leave under this Act at the end of the benefit year or any  
14 other time.

15 (k) If an employee is transferred to a separate division,  
16 entity, or location, but remains employed by the same  
17 employer, the employee is entitled to all paid leave accrued  
18 at the prior division, entity, or location and is entitled to  
19 use all paid leave as provided in this Section. If there is a  
20 separation from employment and the employee is rehired within  
21 12 months of separation by the same employer, previously  
22 accrued paid leave that had not been used by the employee shall  
23 be reinstated. The employee shall be entitled to use accrued  
24 paid leave at the commencement of employment following a  
25 separation from employment of 12 months or less.

26 (l) Paid leave under this Act shall not be charged or

1 otherwise credited to an employee's paid time off bank or  
2 employee account unless the employer's policy permits such a  
3 credit. If the paid leave under this Act is credited to an  
4 employee's paid time off bank or employee vacation account  
5 then any unused paid leave shall be paid to the employee upon  
6 the employee's termination, resignation, retirement, or other  
7 separation to the same extent as vacation time under existing  
8 Illinois law or rule. Nothing in this Act shall be construed to  
9 waive or otherwise limit an employee's right to final  
10 compensation for promised and earned, but unpaid vacation time  
11 or paid time off, as provided under the Illinois Wage Payment  
12 and Collection Act and rules. Employers shall provide  
13 employees with written notice of changes to the employer's  
14 vacation time, paid time off, or other paid leave policies  
15 that affect an employee's right to final compensation for such  
16 leave.

17 (m) During any period an employee takes leave under this  
18 Act, the employer shall maintain coverage for the employee and  
19 any family member under any group health plan for the duration  
20 of such leave at no less than the level and conditions of  
21 coverage that would have been provided if the employee had not  
22 taken the leave. The employer shall notify the employee that  
23 the employee is still responsible for paying the employee's  
24 share of the cost of the health care coverage, if any.

25 (n) Nothing in this Act shall be deemed to interfere with,  
26 impede, or in any way diminish the right of employees to

1 bargain collectively with their employers through  
2 representatives of their own choosing in order to establish  
3 wages or other conditions of work in excess of the applicable  
4 minimum standards established in this Act. The paid leave  
5 requirements of this Act may be waived in a bona fide  
6 collective bargaining agreement, but only if the waiver is set  
7 forth explicitly in such agreement in clear and unambiguous  
8 terms.

9 Nothing in this Act shall be deemed to affect the validity  
10 or change the terms of bona fide collective bargaining  
11 agreements in effect on January 1, 2024. After that date,  
12 requirements of this Act may be waived in a bona fide  
13 collective bargaining agreement, but only if the waiver is set  
14 forth explicitly in such agreement in clear and unambiguous  
15 terms.

16 In no event shall this Act apply to any employee working in  
17 the construction industry who is covered by a bona fide  
18 collective bargaining agreement, nor shall this Act apply to  
19 any employee who is covered by a bona fide collective  
20 bargaining agreement with an employer that provides services  
21 nationally and internationally of delivery, pickup, and  
22 transportation of parcels, documents, and freight. This Act  
23 shall also not apply to any employee employed by a public  
24 community college or other public institution of higher  
25 education in the State of Illinois whose position is covered  
26 by a bona fide collective bargaining agreement.

1           Notwithstanding the provisions of this subsection, nothing  
2 in this Act shall be deemed to affect the validity or change  
3 the terms of a bona fide collective bargaining agreement  
4 applying to an employee who is employed by a State agency that  
5 is in effect on July 1, 2024. After that date, requirements of  
6 this Act may be waived in a bona fide collective bargaining  
7 agreement, but only if the waiver is set forth explicitly in  
8 such agreement in clear and unambiguous terms. As used in this  
9 subsection, "State agency" has the same meaning as set forth  
10 in Section 4 of the Forms Notice Act.

11           (o) An agreement by an employee to waive his or her rights  
12 under this Act is void as against public policy.

13           (p) The provisions of this Act shall not apply to any  
14 employer that is covered by a municipal or county ordinance  
15 that is in effect on the effective date of this Act that  
16 requires employers to give any form of paid leave to their  
17 employees, including paid sick leave or paid leave.  
18 Notwithstanding the provisions of this subsection, any  
19 employer that is not required to provide paid leave to its  
20 employees, including paid sick leave or paid leave, under a  
21 municipal or county ordinance that is in effect on the  
22 effective date of this Act shall be subject to the provisions  
23 of this Act if the employer would be required to provide paid  
24 leave under this Act to its employees.

25           Any local ordinance that provides paid leave, including  
26 paid sick leave or paid leave, enacted or amended after the

1 effective date of this Act must comply with the requirements  
2 of this Act or provide benefits, rights, and remedies that are  
3 greater than or equal to the benefits, rights, and remedies  
4 afforded under this Act.

5 An employer in a municipality or county that enacts or  
6 amends a local ordinance that provides paid leave, including  
7 paid sick leave or paid leave, after the effective date of this  
8 Act shall only comply with the local ordinance or ordinances  
9 so long as the benefits, rights, and remedies are greater than  
10 or equal to the benefits, rights, and remedies afforded under  
11 this Act.

12 (Source: P.A. 102-1143, eff. 1-1-24; revised 3-16-23.)

13 Section 99. Effective date. This Act takes effect January  
14 1, 2024.