



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0659

Introduced 1/28/2005, by Rep. Jack D. Franks

SYNOPSIS AS INTRODUCED:

New Act

Creates the Illinois Family and Medical Leave Act. Contains provisions similar to those in the federal Family and Medical Leave Act of 1993, except that it applies to a son-in-law, daughter-in-law, father-in-law, or mother-in-law who has a serious health condition, and some of the provisions of the federal law pertaining to federal employees and federal matters have been deleted or changed. Effective 6 months after becoming law.

LRB094 06093 WGH 36156 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 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 and
14 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 job
19 security and parenting;

20 (4) there is inadequate job security for employees who
21 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 in
24 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 the
27 working lives of men; and

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

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

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

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

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

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

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

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

25 (1) (Blank).

26 (2) Eligible Employee.

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

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

32 (ii) for at least 1,250 hours of service with such
33 employer during the previous 12-month period.

34 (B) Exclusions. The term "eligible employee" does not
35 include:

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

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

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

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

18 (4) Employer.

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

20 (i) means any person who employs 50 or more
21 employees for each working day during each of 20 or
22 more calendar workweeks in the current or preceding
23 calendar year;

24 (ii) includes:

25 (I) any person who acts, directly or
26 indirectly, in the interest of an employer to any
27 of the employees of such employer; and

28 (II) any successor in interest of an employer;

29 and

30 (iii) includes any State officer, department, or
31 agency, any unit of local government, and any school
32 district.

33 (B) (Blank).

34 (5) Employment benefits. The term "employment benefits"
35 means all benefits provided or made available to employees by
36 an employer, including group life insurance, health insurance,

1 disability insurance, sick leave, annual leave, educational
2 benefits, and pensions, regardless of whether such benefits are
3 provided by a practice or written policy of an employer or
4 through an "employee benefit plan", as defined in Section 3(3)
5 of the Employee Retirement Income Security Act of 1974 (29
6 U.S.C. 1002(3)).

7 (6) Health care provider. The term "health care provider"
8 means:

9 (A) a doctor of medicine or osteopathy who is
10 authorized to practice medicine or surgery (as
11 appropriate) by the State in which the doctor practices; or

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

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

17 (8) Person. The term "person" has the same meaning given
18 such term in Section 3(a) of the Fair Labor Standards Act of
19 1938 (29 U.S.C. 203(a)).

20 (9) Reduced leave schedule. The term "reduced leave
21 schedule" means a leave schedule that reduces the usual number
22 of hours per workweek, or hours per workday, of an employee.

23 (10) Director. The term "Director" means the Director of
24 Labor.

25 (11) Serious health condition. The term "serious health
26 condition" means an illness, injury, impairment, or physical or
27 mental condition that involves:

28 (A) inpatient care in a hospital, hospice, or
29 residential medical care facility; or

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

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

34 (A) under 18 years of age; or

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

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

3 Section 102. Leave requirement.

4 (a) In general.

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

9 (A) Because of the birth of a son or daughter of
10 the employee and in order to care for such son or
11 daughter.

12 (B) Because of the placement of a son or daughter
13 with the employee for adoption or foster care.

14 (C) In order to care for the spouse, or a son,
15 daughter, parent, son-in-law, daughter-in-law,
16 father-in-law, or mother-in-law of the employee, if
17 such spouse, son, daughter, parent, son-in-law,
18 daughter-in-law, father-in-law, or mother-in-law has a
19 serious health condition.

20 (D) Because of a serious health condition that
21 makes the employee unable to perform the functions of
22 the position of such employee.

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

28 (b) Leave taken intermittently or on a reduced leave
29 schedule.

30 (1) In general. Leave under subparagraph (A) or (B) of
31 subsection (a)(1) shall not be taken by an employee
32 intermittently or on a reduced leave schedule unless the
33 employee and the employer of the employee agree otherwise.
34 Subject to paragraph (2), subsection (e)(2), and Section
35 103(b)(5), leave under subparagraph (C) or (D) of

1 subsection (a)(1) may be taken intermittently or on a
2 reduced leave schedule when medically necessary. The
3 taking of leave intermittently or on a reduced leave
4 schedule pursuant to this paragraph shall not result in a
5 reduction in the total amount of leave to which the
6 employee is entitled under subsection (a) beyond the amount
7 of leave actually taken.

8 (2) Alternative position. If an employee requests
9 intermittent leave, or leave on a reduced leave schedule,
10 under subparagraph (C) or (D) of subsection (a)(1), that is
11 foreseeable based on planned medical treatment, the
12 employer may require such employee to transfer temporarily
13 to an available alternative position offered by the
14 employer for which the employee is qualified and that:

15 (A) has equivalent pay and benefits; and

16 (B) better accommodates recurring periods of leave
17 than the regular employment position of the employee.

18 (c) Unpaid leave permitted. Except as provided in
19 subsection (d), leave granted under subsection (a) may consist
20 of unpaid leave. Where an employee is otherwise exempt under
21 regulations issued by the Secretary of the U.S. Department of
22 Labor pursuant to Section 13(a)(1) of the Fair Labor Standards
23 Act of 1938 (29 U.S.C. 213(a)(1)), the compliance of an
24 employer with this Article by providing unpaid leave shall not
25 affect the exempt status of the employee under such Section.

26 (d) Relationship to paid leave.

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

31 (2) Substitution of paid leave.

32 (A) In general. An eligible employee may elect, or
33 an employer may require the employee, to substitute any
34 of the accrued paid vacation leave, personal leave, or
35 family leave of the employee for leave provided under
36 subparagraph (A), (B), or (C) of subsection (a)(1) for

1 any part of the 12-week period of such leave under such
2 subsection.

3 (B) Serious health condition. An eligible employee
4 may elect, or an employer may require the employee, to
5 substitute any of the accrued paid vacation leave,
6 personal leave, or medical or sick leave of the
7 employee for leave provided under subparagraph (C) or
8 (D) of subsection (a)(1) for any part of the 12-week
9 period of such leave under such subsection, except that
10 nothing in this Article shall require an employer to
11 provide paid sick leave or paid medical leave in any
12 situation in which such employer would not normally
13 provide any such paid leave.

14 (e) Foreseeable leave.

15 (1) Requirement of notice. In any case in which the
16 necessity for leave under subparagraph (A) or (B) of
17 subsection (a)(1) is foreseeable based on an expected birth
18 or placement, the employee shall provide the employer with
19 not less than 30 days' notice, before the date the leave is
20 to begin, of the employee's intention to take leave under
21 such subparagraph, except that if the date of the birth or
22 placement requires leave to begin in less than 30 days, the
23 employee shall provide such notice as is practicable.

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

28 (A) shall make a reasonable effort to schedule the
29 treatment so as not to disrupt unduly the operations of
30 the employer, subject to the approval of the health
31 care provider of the employee or the health care
32 provider of the son, daughter, spouse, parent,
33 son-in-law, daughter-in-law, father-in-law, or
34 mother-in-law of the employee, as appropriate; and

35 (B) shall provide the employer with not less than
36 30 days' notice, before the date the leave is to begin,

1 of the employee's intention to take leave under such
2 subparagraph, except that if the date of the treatment
3 requires leave to begin in less than 30 days, the
4 employee shall provide such notice as is practicable.

5 (f) Spouses employed by the same employer. In any case in
6 which a husband and wife entitled to leave under subsection (a)
7 are employed by the same employer, the aggregate number of
8 workweeks of leave to which both may be entitled may be limited
9 to 12 workweeks during any 12-month period, if such leave is
10 taken:

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

12 or

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

15 Section 103. Certification.

16 (a) In general. An employer may require that a request for
17 leave under subparagraph (C) or (D) of Section 102(a)(1) be
18 supported by a certification issued by the health care provider
19 of the eligible employee or of the son, daughter, spouse,
20 parent, son-in-law, daughter-in-law, father-in-law, or
21 mother-in-law of the employee, as appropriate. The employee
22 shall provide, in a timely manner, a copy of such certification
23 to the employer.

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

26 (1) the date on which the serious health condition
27 commenced;

28 (2) the probable duration of the condition;

29 (3) the appropriate medical facts within the knowledge
30 of the health care provider regarding the condition;

31 (4) (A) for purposes of leave under Section
32 102(a)(1)(C), a statement that the eligible employee is
33 needed to care for the son, daughter, spouse, parent,
34 son-in-law, daughter-in-law, father-in-law, or
35 mother-in-law and an estimate of the amount of time that

1 such employee is needed to care for the son, daughter,
2 spouse, parent, son-in-law, daughter-in-law,
3 father-in-law, or mother-in-law; and

4 (B) for purposes of leave under Section 102(a)(1)(D), a
5 statement that the employee is unable to perform the
6 functions of the position of the employee;

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

11 (6) in the case of certification for intermittent
12 leave, or leave on a reduced leave schedule, under Section
13 102(a)(1)(D), a statement of the medical necessity for the
14 intermittent leave or leave on a reduced leave schedule,
15 and the expected duration of the intermittent leave or
16 reduced leave schedule; and

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

26 (c) Second opinion.

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

35 (2) Limitation. A health care provider designated or
36 approved under paragraph (1) shall not be employed on a

1 regular basis by the employer.

2 (d) Resolution of conflicting opinions.

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

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

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

18 Section 104. Employment and benefits protection.

19 (a) Restoration to position.

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

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

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

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

33 (3) Limitations. Nothing in this Section shall be
34 construed to entitle any restored employee to:

35 (A) the accrual of any seniority or employment

1 benefits during any period of leave; or

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

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

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

21 (b) Exemption concerning certain highly compensated
22 employees.

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

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

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

33 (C) in any case in which the leave has commenced,
34 the employee elects not to return to employment after
35 receiving such notice.

36 (2) Affected employees. An eligible employee described

1 in paragraph (1) is a salaried eligible employee who is
2 among the highest paid 10 percent of the employees employed
3 by the employer within 75 miles of the facility at which
4 the employee is employed.

5 (c) Maintenance of health benefits.

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

15 (2) Failure to return from leave. The employer may
16 recover the premium that the employer paid for maintaining
17 coverage for the employee under such group health plan
18 during any period of unpaid leave under Section 102 if:

19 (A) the employee fails to return from leave under
20 Section 102 after the period of leave to which the
21 employee is entitled has expired; and

22 (B) the employee fails to return to work for a
23 reason other than:

24 (i) the continuation, recurrence, or onset of
25 a serious health condition that entitles the
26 employee to leave under subparagraph (C) or (D) of
27 Section 102(a)(1); or

28 (ii) other circumstances beyond the control of
29 the employee.

30 (3) Certification.

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

36 (i) a certification issued by the health care

1 provider of the son, daughter, spouse, parent,
2 son-in-law, daughter-in-law, father-in-law, or
3 mother-in-law of the employee, as appropriate, in
4 the case of an employee unable to return to work
5 because of a condition specified in Section
6 102(a)(1)(C); or

7 (ii) a certification issued by the health care
8 provider of the eligible employee, in the case of
9 an employee unable to return to work because of a
10 condition specified in Section 102(a)(1)(D).

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

13 (C) Sufficiency of certification.

14 (i) Leave due to serious health condition of
15 employee. The certification described in
16 subparagraph (A)(ii) shall be sufficient if the
17 certification states that a serious health
18 condition prevented the employee from being able
19 to perform the functions of the position of the
20 employee on the date that the leave of the employee
21 expired.

22 (ii) Leave due to serious health condition of
23 family member. The certification described in
24 subparagraph (A)(i) shall be sufficient if the
25 certification states that the employee is needed
26 to care for the son, daughter, spouse, parent,
27 son-in-law, daughter-in-law, father-in-law, or
28 mother-in-law who has a serious health condition
29 on the date that the leave of the employee expired.

30 Section 105. Prohibited Acts.

31 (a) Interference with rights.

32 (1) Exercise of rights. It shall be unlawful for any
33 employer to interfere with, restrain, or deny the exercise
34 of or the attempt to exercise, any right provided under
35 this Article.

1 (2) Discrimination. It shall be unlawful for any
2 employer to discharge or in any other manner discriminate
3 against any individual for opposing any practice made
4 unlawful by this Article.

5 (b) Interference with proceedings or inquiries. It shall be
6 unlawful for any person to discharge or in any other manner
7 discriminate against any individual because such individual:

8 (1) has filed any charge, or has instituted or caused
9 to be instituted any proceeding, under or related to this
10 Article;

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

14 (3) has testified, or is about to testify, in any
15 inquiry or proceeding relating to any right provided under
16 this Article.

17 Section 106. Investigative authority.

18 (a) In general. To ensure compliance with the provisions of
19 this Article, or any rule or order issued under this Article,
20 the Director shall have, subject to subsection (c), the
21 authority to investigate complaints.

22 (b) Obligation to keep and preserve records. Any employer
23 shall make, keep, and preserve records pertaining to compliance
24 with this Article in accordance with rules adopted by the
25 Director.

26 (c) Required submissions generally limited to an annual
27 basis. The Director shall not under the authority of this
28 Section require any employer or any plan, fund, or program to
29 submit to the Director any books or records more than once
30 during any 12-month period, unless the Director has reasonable
31 cause to believe there may exist a violation of this Article or
32 any rule or order issued pursuant to this Article, or is
33 investigating a charge pursuant to Section 107(b).

34 (d) Subpoena powers. For the purposes of any investigation
35 provided for in this Section, the Director shall have the

1 authority to issue subpoenas.

2 Section 107. Enforcement.

3 (a) Civil action by employees.

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

6 (A) for damages equal to:

7 (i) the amount of:

8 (I) any wages, salary, employment
9 benefits, or other compensation denied or lost
10 to such employee by reason of the violation; or

11 (II) in a case in which wages, salary,
12 employment benefits, or other compensation
13 have not been denied or lost to the employee,
14 any actual monetary losses sustained by the
15 employee as a direct result of the violation,
16 such as the cost of providing care, up to a sum
17 equal to 12 weeks of wages or salary for the
18 employee;

19 (ii) the interest on the amount described in
20 clause (i) calculated at the rate of interest on
21 judgments set forth in Section 2-1303 of the Code
22 of Civil Procedure; and

23 (iii) an additional amount as liquidated
24 damages equal to the sum of the amount described in
25 clause (i) and the interest described in clause
26 (ii), except that if an employer who has violated
27 Section 105 proves to the satisfaction of the court
28 that the act or omission which violated Section 105
29 was in good faith and that the employer had
30 reasonable grounds for believing that the act or
31 omission was not a violation of Section 105, such
32 court may, in the discretion of the court, reduce
33 the amount of the liability to the amount and
34 interest determined under clauses (i) and (ii),
35 respectively; and

1 (B) for such equitable relief as may be
2 appropriate, including employment, reinstatement, and
3 promotion.

4 (2) Right of action. An action to recover the damages
5 or equitable relief prescribed in paragraph (1) may be
6 maintained against any employer (including a public
7 agency) in the circuit court by any one or more employees
8 for and in behalf of:

9 (A) the employees; or

10 (B) the employees and other employees similarly
11 situated.

12 (3) Fees and costs. The court in such an action shall,
13 in addition to any judgment awarded to the plaintiff, allow
14 a reasonable attorney's fee, reasonable expert witness
15 fees, and other costs of the action to be paid by the
16 defendant.

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

20 (A) on the filing of a complaint by the Director in
21 an action under subsection (d) in which restraint is
22 sought of any further delay in the payment of the
23 amount described in paragraph (1)(A) to such employee
24 by an employer responsible under paragraph (1) for the
25 payment; or

26 (B) on the filing of a complaint by the Director in
27 an action under subsection (b) in which a recovery is
28 sought of the damages described in paragraph (1)(A)
29 owing to an eligible employee by an employer liable
30 under paragraph (1), unless the action described in
31 subparagraph (A) or (B) is dismissed without prejudice
32 on motion of the Director.

33 (b) Action by the Director.

34 (1) Administrative action. The Director shall receive,
35 investigate, and attempt to resolve complaints of
36 violations of Section 105.

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

4 (3) Sums recovered. Any sums recovered by the Director
5 pursuant to paragraph (2) shall be held in a special
6 deposit account and shall be paid, on order of the
7 Director, directly to each employee affected. Any such sums
8 not paid to an employee because of inability to do so
9 within a period of 3 years shall be deposited into the
10 General Revenue Fund.

11 (c) Limitation.

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

16 (2) Willful violation. In the case of such action
17 brought for a willful violation of Section 105, such action
18 may be brought within 3 years of the date of the last event
19 constituting the alleged violation for which such action is
20 brought.

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

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

28 (1) to restrain violations of Section 105, including
29 the restraint of any withholding of payment of wages,
30 salary, employment benefits, or other compensation, plus
31 interest, found by the court to be due to eligible
32 employees; or

33 (2) to award such other equitable relief as may be
34 appropriate, including employment, reinstatement, and
35 promotion.

1 Section 108. Special rules concerning employees of local
2 educational agencies.

3 (a) Application.

4 (1) In general. Except as otherwise provided in this
5 Section, the rights (including the rights under Section
6 104, which shall extend throughout the period of leave of
7 any employee under this Section), remedies, and procedures
8 under this Article shall apply to:

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

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

15 (2) Definitions. For purposes of the application
16 described in paragraph (1):

17 (A) Eligible employee. The term "eligible
18 employee" means an eligible employee of an agency or
19 school described in paragraph (1).

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

22 (b) Leave does not violate certain other federal laws. A
23 local educational agency and a private elementary or secondary
24 school shall not be in violation of the Individuals with
25 Disabilities Education Act (20 U.S.C. 1400 et seq.), Section
26 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title
27 VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.),
28 solely as a result of an eligible employee of such agency or
29 school exercising the rights of such employee under this
30 Article.

31 (c) Intermittent leave or leave on a reduced schedule for
32 instructional employees.

33 (1) In general. Subject to paragraph (2), in any case
34 in which an eligible employee employed principally in an
35 instructional capacity by any such educational agency or
36 school requests leave under subparagraph (C) or (D) of

1 Section 102(a)(1) that is foreseeable based on planned
2 medical treatment and the employee would be on leave for
3 greater than 20 percent of the total number of working days
4 in the period during which the leave would extend, the
5 agency or school may require that such employee elect
6 either:

7 (A) to take leave for periods of a particular
8 duration, not to exceed the duration of the planned
9 medical treatment; or

10 (B) to transfer temporarily to an available
11 alternative position offered by the employer for which
12 the employee is qualified, and that:

13 (i) has equivalent pay and benefits; and

14 (ii) better accommodates recurring periods of
15 leave than the regular employment position of the
16 employee.

17 (2) Application. The elections described in
18 subparagraphs (A) and (B) of paragraph (1) shall apply only
19 with respect to an eligible employee who complies with
20 Section 102(e)(2).

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

27 (1) Leave more than 5 weeks prior to end of term. If
28 the eligible employee begins leave under Section 102 more
29 than 5 weeks prior to the end of the academic term, the
30 agency or school may require the employee to continue
31 taking leave until the end of such term, if:

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

33 (B) the return to employment would occur during the
34 3-week period before the end of such term.

35 (2) Leave less than 5 weeks prior to end of term. If
36 the eligible employee begins leave under subparagraph (A),

1 (B), or (C) of Section 102(a)(1) during the period that
2 commences 5 weeks prior to the end of the academic term,
3 the agency or school may require the employee to continue
4 taking leave until the end of such term, if:

5 (A) the leave is of greater than 2 weeks duration;

6 and

7 (B) the return to employment would occur during the
8 2-week period before the end of such term.

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

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

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

34 Section 109. Notice.

35 (a) In general. Each employer shall post and keep posted,

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

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

10 ARTICLE II. (BLANK)

11 ARTICLE III. (BLANK)

12 ARTICLE IV. MISCELLANEOUS PROVISIONS

13 Section 401. Effect on other laws.

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

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

22 Section 402. Effect on existing employment benefits.

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

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

1 Section 403. Encouragement of more generous leave
2 policies. Nothing in this Act shall be construed to discourage
3 employers from adopting or retaining leave policies more
4 generous than any policies that comply with the requirements
5 under this Act.

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

9 Section 404.1. Applicability.

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

13 (A) the date of the termination of such agreement; or

14 (B) the date that occurs 12 months after the effective
15 date of this Act.

16 (2) Nothing in this Act shall be construed to limit the
17 applicability of the federal Family and Medical Leave Act of
18 1993 with regard to employers and employees covered by that
19 Act.

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