

HB0374



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB0374

Introduced 1/26/2007, 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.

LRB095 05244 WGH 25321 b

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 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;

1 (5) due to the nature of the roles of men and women in
2 our society, the primary responsibility for family
3 caretaking often falls on women, and such responsibility
4 affects the working lives of women more than it affects the
5 working lives of men; and

6 (6) employment standards that apply to one gender only
7 have serious potential for encouraging employers to
8 discriminate against employees and applicants for
9 employment who are of that gender.

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

11 (1) to balance the demands of the workplace with the
12 needs of families, to promote the stability and economic
13 security of families, and to promote national interests in
14 preserving family integrity;

15 (2) to entitle employees to take reasonable leave for
16 medical reasons, for the birth or adoption of a child, and
17 for the care of a child, spouse, parent, son-in-law,
18 daughter-in-law, father-in-law, or mother-in-law who has a
19 serious health condition;

20 (3) to accomplish the purposes described in paragraphs
21 (1) and (2) in a manner that accommodates the legitimate
22 interests of employers;

23 (4) to accomplish the purposes described in paragraphs
24 (1) and (2) in a manner that, consistent with the Equal
25 Protection Clause of the Fourteenth Amendment, minimizes
26 the potential for employment discrimination on the basis of

1 sex by ensuring generally that leave is available for
2 eligible medical reasons (including maternity-related
3 disability) and for compelling family reasons, on a
4 gender-neutral basis; and

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

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

8 (1) (Blank).

9 (2) Eligible Employee.

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

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

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

17 (B) Exclusions. The term "eligible employee" does not
18 include:

19 (i) any Federal officer or employee covered under
20 Subchapter V of Chapter 63 of Title 5, United States
21 Code; or

22 (ii) any employee of an employer who is employed at
23 a work site at which such employer employs less than 50
24 employees if the total number of employees employed by
25 that employer within 75 miles of that work site is less

1 than 50.

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

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

11 (4) Employer.

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

13 (i) means any person who employs 50 or more
14 employees for each working day during each of 20 or
15 more calendar workweeks in the current or preceding
16 calendar year;

17 (ii) includes:

18 (I) any person who acts, directly or
19 indirectly, in the interest of an employer to any
20 of the employees of such employer; and

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

22 and

23 (iii) includes any State officer, department, or
24 agency, any unit of local government, and any school
25 district.

26 (B) (Blank).

1 (5) Employment benefits. The term "employment benefits"
2 means all benefits provided or made available to employees by
3 an employer, including group life insurance, health insurance,
4 disability insurance, sick leave, annual leave, educational
5 benefits, and pensions, regardless of whether such benefits are
6 provided by a practice or written policy of an employer or
7 through an "employee benefit plan", as defined in Section 3(3)
8 of the Employee Retirement Income Security Act of 1974 (29
9 U.S.C. 1002(3)).

10 (6) Health care provider. The term "health care provider"
11 means:

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

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

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

20 (8) Person. The term "person" has the same meaning given
21 such term in Section 3(a) of the Fair Labor Standards Act of
22 1938 (29 U.S.C. 203(a)).

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

26 (10) Director. The term "Director" means the Director of

1 Labor.

2 (11) Serious health condition. The term "serious health
3 condition" means an illness, injury, impairment, or physical or
4 mental condition that involves:

5 (A) inpatient care in a hospital, hospice, or
6 residential medical care facility; or

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

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

11 (A) under 18 years of age; or

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

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

16 Section 102. Leave requirement.

17 (a) In general.

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

22 (A) Because of the birth of a son or daughter of
23 the employee and in order to care for such son or
24 daughter.

25 (B) Because of the placement of a son or daughter

1 with the employee for adoption or foster care.

2 (C) In order to care for the spouse, or a son,
3 daughter, parent, son-in-law, daughter-in-law,
4 father-in-law, or mother-in-law of the employee, if
5 such spouse, son, daughter, parent, son-in-law,
6 daughter-in-law, father-in-law, or mother-in-law has a
7 serious health condition.

8 (D) Because of a serious health condition that
9 makes the employee unable to perform the functions of
10 the position of such employee.

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

16 (b) Leave taken intermittently or on a reduced leave
17 schedule.

18 (1) In general. Leave under subparagraph (A) or (B) of
19 subsection (a)(1) shall not be taken by an employee
20 intermittently or on a reduced leave schedule unless the
21 employee and the employer of the employee agree otherwise.
22 Subject to paragraph (2), subsection (e)(2), and Section
23 103(b)(5), leave under subparagraph (C) or (D) of
24 subsection (a)(1) may be taken intermittently or on a
25 reduced leave schedule when medically necessary. The
26 taking of leave intermittently or on a reduced leave

1 schedule pursuant to this paragraph shall not result in a
2 reduction in the total amount of leave to which the
3 employee is entitled under subsection (a) beyond the amount
4 of leave actually taken.

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

12 (A) has equivalent pay and benefits; and

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

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

23 (d) Relationship to paid leave.

24 (1) Unpaid leave. If an employer provides paid leave
25 for fewer than 12 workweeks, the additional weeks of leave
26 necessary to attain the 12 workweeks of leave required

1 under this Article may be provided without compensation.

2 (2) Substitution of paid leave.

3 (A) In general. An eligible employee may elect, or
4 an employer may require the employee, to substitute any
5 of the accrued paid vacation leave, personal leave, or
6 family leave of the employee for leave provided under
7 subparagraph (A), (B), or (C) of subsection (a)(1) for
8 any part of the 12-week period of such leave under such
9 subsection.

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

21 (e) Foreseeable leave.

22 (1) Requirement of notice. In any case in which the
23 necessity for leave under subparagraph (A) or (B) of
24 subsection (a)(1) is foreseeable based on an expected birth
25 or placement, the employee shall provide the employer with
26 not less than 30 days' notice, before the date the leave is

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

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

9 (A) shall make a reasonable effort to schedule the
10 treatment so as not to disrupt unduly the operations of
11 the employer, subject to the approval of the health
12 care provider of the employee or the health care
13 provider of the son, daughter, spouse, parent,
14 son-in-law, daughter-in-law, father-in-law, or
15 mother-in-law of the employee, as appropriate; and

16 (B) shall provide the employer with not less than
17 30 days' notice, before the date the leave is to begin,
18 of the employee's intention to take leave under such
19 subparagraph, except that if the date of the treatment
20 requires leave to begin in less than 30 days, the
21 employee shall provide such notice as is practicable.

22 (f) Spouses employed by the same employer. In any case in
23 which a husband and wife entitled to leave under subsection (a)
24 are employed by the same employer, the aggregate number of
25 workweeks of leave to which both may be entitled may be limited
26 to 12 workweeks during any 12-month period, if such leave is

1 taken:

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

3 or

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

6 Section 103. Certification.

7 (a) In general. An employer may require that a request for
8 leave under subparagraph (C) or (D) of Section 102(a)(1) be
9 supported by a certification issued by the health care provider
10 of the eligible employee or of the son, daughter, spouse,
11 parent, son-in-law, daughter-in-law, father-in-law, or
12 mother-in-law of the employee, as appropriate. The employee
13 shall provide, in a timely manner, a copy of such certification
14 to the employer.

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

17 (1) the date on which the serious health condition
18 commenced;

19 (2) the probable duration of the condition;

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

22 (4) (A) for purposes of leave under Section
23 102(a)(1)(C), a statement that the eligible employee is
24 needed to care for the son, daughter, spouse, parent,
25 son-in-law, daughter-in-law, father-in-law, or

1 mother-in-law and an estimate of the amount of time that
2 such employee is needed to care for the son, daughter,
3 spouse, parent, son-in-law, daughter-in-law,
4 father-in-law, or mother-in-law; and

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

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

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

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

1 (c) Second opinion.

2 (1) In general. In any case in which the employer has
3 reason to doubt the validity of the certification provided
4 under subsection (a) for leave under subparagraph (C) or
5 (D) of Section 102(a)(1), the employer may require, at the
6 expense of the employer, that the eligible employee obtain
7 the opinion of a second health care provider designated or
8 approved by the employer concerning any information
9 certified under subsection (b) for such leave.

10 (2) Limitation. A health care provider designated or
11 approved under paragraph (1) shall not be employed on a
12 regular basis by the employer.

13 (d) Resolution of conflicting opinions.

14 (1) In general. In any case in which the second opinion
15 described in subsection (c) differs from the opinion in the
16 original certification provided under subsection (a), the
17 employer may require, at the expense of the employer, that
18 the employee obtain the opinion of a third health care
19 provider designated or approved jointly by the employer and
20 the employee concerning the information certified under
21 subsection (b).

22 (2) Finality. The opinion of the third health care
23 provider concerning the information certified under
24 subsection (b) shall be considered to be final and shall be
25 binding on the employer and the employee.

26 (e) Subsequent recertification. The employer may require

1 that the eligible employee obtain subsequent recertifications
2 on a reasonable basis.

3 Section 104. Employment and benefits protection.

4 (a) Restoration to position.

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

9 (A) to be restored by the employer to the position
10 of employment held by the employee when the leave
11 commenced; or

12 (B) to be restored to an equivalent position with
13 equivalent employment benefits, pay, and other terms
14 and conditions of employment.

15 (2) Loss of benefits. The taking of leave under Section
16 102 shall not result in the loss of any employment benefit
17 accrued prior to the date on which the leave commenced.

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

20 (A) the accrual of any seniority or employment
21 benefits during any period of leave; or

22 (B) any right, benefit, or position of employment
23 other than any right, benefit, or position to which the
24 employee would have been entitled had the employee not
25 taken the leave.

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

11 (5) Construction. Nothing in this subsection shall be
12 construed to prohibit an employer from requiring an
13 employee on leave under Section 102 to report periodically
14 to the employer on the status and intention of the employee
15 to return to work.

16 (b) Exemption concerning certain highly compensated
17 employees.

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

21 (A) such denial is necessary to prevent
22 substantial and grievous economic injury to the
23 operations of the employer;

24 (B) the employer notifies the employee of the
25 intent of the employer to deny restoration on such
26 basis at the time the employer determines that such

1 injury would occur; and

2 (C) in any case in which the leave has commenced,
3 the employee elects not to return to employment after
4 receiving such notice.

5 (2) Affected employees. An eligible employee described
6 in paragraph (1) is a salaried eligible employee who is
7 among the highest paid 10 percent of the employees employed
8 by the employer within 75 miles of the facility at which
9 the employee is employed.

10 (c) Maintenance of health benefits.

11 (1) Coverage. Except as provided in paragraph (2),
12 during any period that an eligible employee takes leave
13 under Section 102, the employer shall maintain coverage
14 under any "group health plan" (as defined in Section
15 5000(b)(1) of the Internal Revenue Code of 1986) for the
16 duration of such leave at the level and under the
17 conditions coverage would have been provided if the
18 employee had continued in employment continuously for the
19 duration of such leave.

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

24 (A) the employee fails to return from leave under
25 Section 102 after the period of leave to which the
26 employee is entitled has expired; and

1 (B) the employee fails to return to work for a
2 reason other than:

3 (i) the continuation, recurrence, or onset of
4 a serious health condition that entitles the
5 employee to leave under subparagraph (C) or (D) of
6 Section 102(a)(1); or

7 (ii) other circumstances beyond the control of
8 the employee.

9 (3) Certification.

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

15 (i) a certification issued by the health care
16 provider of the son, daughter, spouse, parent,
17 son-in-law, daughter-in-law, father-in-law, or
18 mother-in-law of the employee, as appropriate, in
19 the case of an employee unable to return to work
20 because of a condition specified in Section
21 102(a)(1)(C); or

22 (ii) a certification issued by the health care
23 provider of the eligible employee, in the case of
24 an employee unable to return to work because of a
25 condition specified in Section 102(a)(1)(D).

26 (B) Copy. The employee shall provide, in a timely

1 manner, a copy of such certification to the employer.

2 (C) Sufficiency of certification.

3 (i) Leave due to serious health condition of
4 employee. The certification described in
5 subparagraph (A)(ii) shall be sufficient if the
6 certification states that a serious health
7 condition prevented the employee from being able
8 to perform the functions of the position of the
9 employee on the date that the leave of the employee
10 expired.

11 (ii) Leave due to serious health condition of
12 family member. The certification described in
13 subparagraph (A)(i) shall be sufficient if the
14 certification states that the employee is needed
15 to care for the son, daughter, spouse, parent,
16 son-in-law, daughter-in-law, father-in-law, or
17 mother-in-law who has a serious health condition
18 on the date that the leave of the employee expired.

19 Section 105. Prohibited Acts.

20 (a) Interference with rights.

21 (1) Exercise of rights. It shall be unlawful for any
22 employer to interfere with, restrain, or deny the exercise
23 of or the attempt to exercise, any right provided under
24 this Article.

25 (2) Discrimination. It shall be unlawful for any

1 employer to discharge or in any other manner discriminate
2 against any individual for opposing any practice made
3 unlawful by this Article.

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

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

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

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

16 Section 106. Investigative authority.

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

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

25 (c) Required submissions generally limited to an annual

1 basis. The Director shall not under the authority of this
2 Section require any employer or any plan, fund, or program to
3 submit to the Director any books or records more than once
4 during any 12-month period, unless the Director has reasonable
5 cause to believe there may exist a violation of this Article or
6 any rule or order issued pursuant to this Article, or is
7 investigating a charge pursuant to Section 107(b).

8 (d) Subpoena powers. For the purposes of any investigation
9 provided for in this Section, the Director shall have the
10 authority to issue subpoenas.

11 Section 107. Enforcement.

12 (a) Civil action by employees.

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

15 (A) for damages equal to:

16 (i) the amount of:

17 (I) any wages, salary, employment
18 benefits, or other compensation denied or lost
19 to such employee by reason of the violation; or

20 (II) in a case in which wages, salary,
21 employment benefits, or other compensation
22 have not been denied or lost to the employee,
23 any actual monetary losses sustained by the
24 employee as a direct result of the violation,
25 such as the cost of providing care, up to a sum

1 equal to 12 weeks of wages or salary for the
2 employee;

3 (ii) the interest on the amount described in
4 clause (i) calculated at the rate of interest on
5 judgments set forth in Section 2-1303 of the Code
6 of Civil Procedure; and

7 (iii) an additional amount as liquidated
8 damages equal to the sum of the amount described in
9 clause (i) and the interest described in clause
10 (ii), except that if an employer who has violated
11 Section 105 proves to the satisfaction of the court
12 that the act or omission which violated Section 105
13 was in good faith and that the employer had
14 reasonable grounds for believing that the act or
15 omission was not a violation of Section 105, such
16 court may, in the discretion of the court, reduce
17 the amount of the liability to the amount and
18 interest determined under clauses (i) and (ii),
19 respectively; and

20 (B) for such equitable relief as may be
21 appropriate, including employment, reinstatement, and
22 promotion.

23 (2) Right of action. An action to recover the damages
24 or equitable relief prescribed in paragraph (1) may be
25 maintained against any employer (including a public
26 agency) in the circuit court by any one or more employees

1 for and in behalf of:

2 (A) the employees; or

3 (B) the employees and other employees similarly
4 situated.

5 (3) Fees and costs. The court in such an action shall,
6 in addition to any judgment awarded to the plaintiff, allow
7 a reasonable attorney's fee, reasonable expert witness
8 fees, and other costs of the action to be paid by the
9 defendant.

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

13 (A) on the filing of a complaint by the Director in
14 an action under subsection (d) in which restraint is
15 sought of any further delay in the payment of the
16 amount described in paragraph (1)(A) to such employee
17 by an employer responsible under paragraph (1) for the
18 payment; or

19 (B) on the filing of a complaint by the Director in
20 an action under subsection (b) in which a recovery is
21 sought of the damages described in paragraph (1)(A)
22 owing to an eligible employee by an employer liable
23 under paragraph (1), unless the action described in
24 subparagraph (A) or (B) is dismissed without prejudice
25 on motion of the Director.

26 (b) Action by the Director.

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

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

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

14 (c) Limitation.

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

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

24 (3) Commencement. In determining when an action is
25 commenced by the Director under this Section for the
26 purposes of this subsection, it shall be considered to be

1 commenced on the date when the complaint is filed.

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

5 (1) to restrain violations of Section 105, including
6 the restraint of any withholding of payment of wages,
7 salary, employment benefits, or other compensation, plus
8 interest, found by the court to be due to eligible
9 employees; or

10 (2) to award such other equitable relief as may be
11 appropriate, including employment, reinstatement, and
12 promotion.

13 Section 108. Special rules concerning employees of local
14 educational agencies.

15 (a) Application.

16 (1) In general. Except as otherwise provided in this
17 Section, the rights (including the rights under Section
18 104, which shall extend throughout the period of leave of
19 any employee under this Section), remedies, and procedures
20 under this Article shall apply to:

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

25 (B) any private elementary or secondary school and

1 an eligible employee of the school.

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

4 (A) Eligible employee. The term "eligible
5 employee" means an eligible employee of an agency or
6 school described in paragraph (1).

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

9 (b) Leave does not violate certain other federal laws. A
10 local educational agency and a private elementary or secondary
11 school shall not be in violation of the Individuals with
12 Disabilities Education Act (20 U.S.C. 1400 et seq.), Section
13 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title
14 VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.),
15 solely as a result of an eligible employee of such agency or
16 school exercising the rights of such employee under this
17 Article.

18 (c) Intermittent leave or leave on a reduced schedule for
19 instructional employees.

20 (1) In general. Subject to paragraph (2), in any case
21 in which an eligible employee employed principally in an
22 instructional capacity by any such educational agency or
23 school requests leave under subparagraph (C) or (D) of
24 Section 102(a)(1) that is foreseeable based on planned
25 medical treatment and the employee would be on leave for
26 greater than 20 percent of the total number of working days

1 in the period during which the leave would extend, the
2 agency or school may require that such employee elect
3 either:

4 (A) to take leave for periods of a particular
5 duration, not to exceed the duration of the planned
6 medical treatment; or

7 (B) to transfer temporarily to an available
8 alternative position offered by the employer for which
9 the employee is qualified, and that:

10 (i) has equivalent pay and benefits; and

11 (ii) better accommodates recurring periods of
12 leave than the regular employment position of the
13 employee.

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

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

24 (1) Leave more than 5 weeks prior to end of term. If
25 the eligible employee begins leave under Section 102 more
26 than 5 weeks prior to the end of the academic term, the

1 agency or school may require the employee to continue
2 taking leave until the end of such term, if:

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

4 (B) the return to employment would occur during the
5 3-week period before the end of such term.

6 (2) Leave less than 5 weeks prior to end of term. If
7 the eligible employee begins leave under subparagraph (A),
8 (B), or (C) of Section 102(a)(1) during the period that
9 commences 5 weeks prior to the end of the academic term,
10 the agency or school may require the employee to continue
11 taking leave until the end of such term, if:

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

13 and

14 (B) the return to employment would occur during the
15 2-week period before the end of such term.

16 (3) Leave less than 3 weeks prior to end of term. If
17 the eligible employee begins leave under subparagraph (A),
18 (B), or (C) of Section 102(a)(1) during the period that
19 commences 3 weeks prior to the end of the academic term and
20 the duration of the leave is greater than 5 working days,
21 the agency or school may require the employee to continue
22 to take leave until the end of such term.

23 (e) Restoration to equivalent employment position. For
24 purposes of determinations under Section 104(a)(1)(B)
25 (relating to the restoration of an eligible employee to an
26 equivalent position), in the case of a local educational agency

1 or a private elementary or secondary school, such determination
2 shall be made on the basis of established school board policies
3 and practices, private school policies and practices, and
4 collective bargaining agreements.

5 (f) Reduction of the amount of liability. If a local
6 educational agency or a private elementary or secondary school
7 that has violated this Article proves to the satisfaction of
8 the court that the agency, school, or department had reasonable
9 grounds for believing that the underlying act or omission was
10 not a violation of this Article, such court may, in the
11 discretion of the court, reduce the amount of the liability
12 provided for under Section 107(a)(1)(A) to the amount and
13 interest determined under clauses (i) and (ii), respectively,
14 of such Section.

15 Section 109. Notice.

16 (a) In general. Each employer shall post and keep posted,
17 in conspicuous places on the premises of the employer where
18 notices to employees and applicants for employment are
19 customarily posted, a notice, to be prepared or approved by the
20 Director, setting forth excerpts from, or summaries of, the
21 pertinent provisions of this Article and information
22 pertaining to the filing of a charge.

23 (b) Penalty. Any employer that willfully violates this
24 Section may be assessed a civil money penalty not to exceed
25 \$100 for each separate offense.

1 ARTICLE II. (BLANK)

2 ARTICLE III. (BLANK)

3 ARTICLE IV. MISCELLANEOUS PROVISIONS

4 Section 401. Effect on other laws.

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

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

13 Section 402. Effect on existing employment benefits.

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

19 (b) Less protective. The rights established for employees
20 under this Act shall not be diminished by any collective
21 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 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.