



Rep. Jehan Gordon-Booth

**Filed: 3/22/2019**

10100HB2343ham001

LRB101 04970 JLS 58003 a

1 AMENDMENT TO HOUSE BILL 2343

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2343 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the  
5 Healthy Workplace Act.

6 Section 5. Findings and purpose.

7 (a) The General Assembly finds:

8 (1) Nearly every worker in the State is likely to need  
9 time off to attend to his or her own illness or that of a  
10 family member. More than 30% of all private sector workers  
11 in Illinois (almost 2,000,000 people) have no right to a  
12 paid sick day. Over three-fourths of the lowest-wage  
13 workers do not receive paid sick time and cannot forfeit a  
14 day's work, so they often come into work sick.

15 (2) Preventive and routine medical care helps avoid  
16 illness and injury by detecting illnesses early on and

1 shortening the duration of illnesses. Providing employees  
2 with time off to attend to their own health care needs  
3 ensures that they will be healthier and more efficient  
4 employees. It will also reduce the spread of disease within  
5 workplaces and to the public, such as customers, when  
6 employees go to work sick, a practice known as  
7 "presenteeism". Routine medical care results in savings by  
8 detecting and treating illness and injury early and  
9 decreasing the need for emergency care. These savings  
10 benefit public and private payers of health insurance.

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

15 (4) Nearly one-quarter of American women report  
16 domestic violence and nearly one in 5 women report  
17 experiencing rape at some time during their lives. Many  
18 workers, men and women, need time off to care for their  
19 health after these incidents or to take legal action.  
20 Without paid time off, victims are in danger of losing  
21 their jobs.

22 (5) Employed individuals who have court appointments,  
23 sentencing hearings, probation, conditional discharge,  
24 parole, or mandatory supervised release requirements, or  
25 are visiting a family member in jail or prison need paid  
26 time off work so that their families do not fall further

1 into economic jeopardy and so that they are not further  
2 penalized, as these court-related events are frequently  
3 scheduled during work hours.

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

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

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

12 "Child" means a son or daughter who is a biological,  
13 adopted, or foster child, a stepchild, a legal ward, a child of  
14 a person standing in loco parentis, or any other individual  
15 whose close association with the employee is the equivalent of  
16 a child.

17 "Construction industry" means any constructing, altering,  
18 reconstructing, repairing, rehabilitating, refinishing,  
19 refurbishing, remodeling, remediating, renovating, custom  
20 fabricating, maintenance, landscaping, improving, wrecking,  
21 painting, decorating, demolishing, or adding to or subtracting  
22 from any building, structure, highway, roadway, street,  
23 bridge, alley, sewer, ditch, sewage disposal plant,  
24 waterworks, parking facility, railroad, excavation or other  
25 structure, project, development, real property, or

1 improvement, or to do any part thereof, whether or not the  
2 performance of the work herein described involves the addition  
3 to or fabrication into, any structure, project, development,  
4 real property, or improvement herein described of any material  
5 or article of merchandise.

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

9 "Department" means the Illinois Department of Labor.

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

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

15 "Employee" does not include any person who the employer  
16 establishes:

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

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

22 (C) is deemed a legitimate sole proprietor or  
23 partnership.

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

26 (1) the sole proprietor or partnership is performing

1 the service free from the direction or control over the  
2 means and manner of providing the service, subject only to  
3 the right of the employer for whom the service is provided  
4 to specify the desired result;

5 (2) the sole proprietor or partnership is not subject  
6 to cancellation or destruction upon severance of the  
7 relationship with the employer;

8 (3) the sole proprietor or partnership has a  
9 substantial investment of capital in the sole  
10 proprietorship or partnership beyond the ordinary tools  
11 and equipment and a personal vehicle;

12 (4) the sole proprietor or partnership owns the capital  
13 goods and gains the profits and bears the losses of the  
14 sole proprietorship or partnership;

15 (5) the sole proprietor or partnership makes its  
16 services available to the general public on a continuing  
17 basis;

18 (6) the sole proprietor or partnership includes  
19 services rendered on a Federal Income Tax Schedule as an  
20 independent business or profession;

21 (7) the sole proprietor or partnership performs  
22 services for the contractor under the sole proprietor's or  
23 partnership's name;

24 (8) when the services being provided require a license  
25 or permit, the sole proprietor or partnership obtains and  
26 pays for the license or permit in the sole proprietorship's

1 or partnership's name;

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

4 (10) if necessary, the sole proprietor or partnership  
5 hires its own employees without approval of the employer,  
6 pays the employees without reimbursement from the employer  
7 and reports the employees' income to the Internal Revenue  
8 Service;

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

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

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

20 "Employer" means any individual; person; partnership;  
21 association; corporation; limited liability company; business  
22 trust; employment or labor placement agency or business where  
23 wages are made directly or indirectly by the agency or business  
24 for work undertaken by the employee under hire to a third party  
25 pursuant to a contract between the agency or business with the  
26 third party; the State of Illinois and local governments; or

1 any political subdivision of the State or local government, or  
2 State or local government agency; for which one or more persons  
3 is gainfully employed, express or implied, whether lawfully or  
4 unlawfully employed, who employs a worker or who employs a  
5 worker not excluded as an employee pursuant to the definition  
6 of "employee" or, notwithstanding any other law, who is the  
7 employer or joint employer for collective bargaining purposes  
8 of a bargaining unit of employees. "Employer" does not include  
9 school districts organized under the School Code, park  
10 districts organized under the Park District Code, or any City  
11 of Chicago Sister Agency under the Chicago Minimum Wage and  
12 Paid Sick Leave Ordinance as of the effective date of this Act.

13 "Family member" means a child, spouse, parent, child or  
14 parent of an employee's spouse, sibling, grandparent,  
15 grandchild, or any other individual related by blood or whose  
16 close association with the employee is the equivalent of a  
17 family relationship.

18 "Health care provider" means a person:

19 (1) who is:

20 (A) licensed to practice medicine in all of its  
21 branches in Illinois and possesses the degree of doctor  
22 of medicine;

23 (B) licensed to practice medicine in all of its  
24 branches in Illinois and possesses the degree of doctor  
25 of osteopathy or osteopathic medicine;

26 (C) licensed to practice medicine in all of its

1 branches or as an osteopathic physician in another  
2 state or jurisdiction;

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

5 (E) any other person determined by final rule as of  
6 the date this Act becomes law under the Family and  
7 Medical Leave Act of 1993; and

8 (2) who is not employed by an employer to whom the  
9 provider issues certifications under this Act.

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

13 "Parent" means a biological, adoptive, or foster parent, a  
14 stepparent, a parent of a legal ward, a person who stands in  
15 loco parentis to an employee or an employee's spouse, or any  
16 other individual whose close association with the employee is  
17 the equivalent of a parent.

18 "Spouse" means a party to a marriage or a party to a civil  
19 union as defined by law.

20 "Victim services organization" means a nonprofit,  
21 nongovernmental organization that provides assistance to  
22 victims of domestic or sexual violence, including rape crisis  
23 centers, organizations carrying out a domestic violence  
24 program, organizations operating a shelter or providing  
25 counseling services, and a legal services organization or other  
26 organization providing assistance through the legal process.



1 Section 15. Provision of paid sick time.

2 (a) An employee who works in Illinois who is absent from  
3 work for a reason set forth in subsection (b) is entitled to  
4 earn and use a minimum of 40 hours of paid sick time during a  
5 12-month period or a pro rata number of hours of paid sick time  
6 under the provisions of subsection (c). The 12-month period for  
7 an employee shall be calculated annually from the date of hire  
8 or the effective date of this Act, whichever is later.

9 (b) Paid sick time shall be provided to an employee by an  
10 employer to:

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

17 (2) care for the employee's family member who is  
18 suffering from a physical or mental illness, injury, or  
19 health condition, or seek medical diagnosis or care, or  
20 attend a medical appointment;

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

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

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

5           (B) sexual violence, which means:

6           (i) any conduct proscribed by Article 11 of the  
7 Criminal Code of 2012 except Sections 11-35 and  
8 11-45;

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

11           (iii) a similar provision of the Criminal Code  
12 of 1961; or

13           (5) be absent from work to visit the employee's family  
14 member who is in jail or prison, for the employee to attend  
15 his or her own or his or her family member's appointment  
16 regarding court sentencing, probation, conditional  
17 discharge, parole, or mandatory supervised release  
18 requirements, or any other civil or criminal court hearing  
19 or trial.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 Section 20. Related employer responsibilities.

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

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

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

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

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



1 shall be subject to a civil penalty to be paid to the employee  
2 in an amount not to exceed \$100 for each separate offense.

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

22 Section 30. Department responsibilities.

23 (a) The Department shall administer and enforce this Act  
24 and adopt rules under the Illinois Administrative Procedure Act

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

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

1 this Act.

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

4 Section 35. Enforcement.

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

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

20 (c) Any employer that the Department or a court finds by a  
21 preponderance of the evidence to have knowingly, repeatedly, or  
22 with reckless disregard violated any provision of this Act or  
23 any rule adopted under this Act is subject to a civil money  
24 penalty to be paid to the employee not to exceed \$2,500 for  
25 each separate offense.

1           Section 90. The State Finance Act is amended by adding  
2           Section 5.891 as follows:

3           (30 ILCS 105/5.891 new)

4           Sec. 5.891. The Healthy Workplace Fund.

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

7           Section 99. Effective date. This Act takes effect upon  
8           becoming law.".