

New Illinois Statutes Affect Employers



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A TRIO OF NEW STATUTES MAY HAVE AN IMPACT ON ILLINOIS EMPLOYERS. The Illinois Child Bereavement Leave Act became effective July 29, 2016, while the Employee Sick Leave Act and Illinois Freedom to Work Act will take effect on January 1, 2017.

ILLINOIS CHILD BEREAVEMENT LEAVE ACT

Under the Illinois Child Bereavement Leave Act, Public Act 099-0703, a “child” is an employee’s son or daughter who is a biological, adopted or foster child, a stepchild, or legal ward. An “employee” is an eligible employee, as defined by the Family and Medical Leave Act, and in turn, an “employer” is as defined by the FMLA. An eligible employee is entitled to use a maximum of two weeks (10 work days) of unpaid bereavement leave to:

1. Attend the funeral or alternative to a funeral of a child;
2. Make arrangements necessitated by the death of the child; or
3. Grieve the death of the child.

Bereavement leave must be completed within 60 days of the date on which the employee receives notice of the child’s death. The employer must receive at least 48 hours’ advance notice of the employee’s intention to take bereavement leave—unless providing such notice is not reasonable and practicable. In addition, the employer may require reasonable documentation.

In the event of the death of more than one child in a 12-month period, the employee is entitled to up to a total of six weeks of bereavement leave during that period. The Act does not create a right for an employee to take unpaid leave that exceeds the unpaid leave time allowed under the FMLA. An employee who is entitled to take paid or unpaid leave (including family, medical, sick, annual, personal or similar leave) may elect to substitute any period of such paid leave.

An employer may not take any adverse action against an employee because the employee: (1) exercises rights or attempts to exercise rights under this Act; (2) opposes practices which such employee believes to be in violation of this Act; or (3) supports the exercise of rights of another under this Act.

An employee who believes his or her rights were violated may file a complaint with the Department of Labor or file a civil action. Employers who violate the Act are subject to a civil penalty for each employee affected as follows:

1. First offense: a civil penalty not to exceed \$500;
2. Second or subsequent offense: a civil penalty not to exceed \$1,000.

A circuit court may enjoin any act or practice that violates the Act and may order any other equitable relief that is appropriate.

EMPLOYEE SICK LEAVE ACT

Under the Employee Sick Leave Act, Public Act 099-0841, “personal sick leave benefits” means time accrued and available to an employee to be used as a result of absence from work due to personal illness, injury or medical appointment—but does not include absences from work for which compensation is provided through an employer’s plan.

An employee may use personal sick leave benefits provided by the employer for absences due to an illness, injury or medical appointment of the employee’s child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent or stepparent, for reasonable periods of time as the employee’s attendance may be necessary, on the same terms upon which the employee is able to use sick leave benefits for the employee’s own illness or injury.

An employer may limit the use of personal sick leave benefits for absences due to an illness, injury or medical appointment of the employee’s family member to an amount not less than the personal sick leave that would be accrued during six months at the employee’s then-current rate of entitlement.

The Act does not extend the maximum period of leave to which an employee is entitled under the FMLA, regardless of whether the employee receives sick leave compensation during that leave.

An employer may not deny an employee the right to use personal sick leave benefits or discriminate against an employee for using personal sick leave benefits, attempting to exercise the right to use personal sick leave benefits, filing a complaint with the Department of Labor or alleging a violation of this Act, cooperating in an investigation or prosecution of an alleged violation of this Act, or opposing any policy, practice or act that is prohibited by this Act.

ILLINOIS FREEDOM TO WORK ACT

Finally, under the Illinois Freedom to Work Act, Public Act 099-0860, no employer may enter into a covenant not to compete with any low-wage employee of the employer. A “low-wage employee” is an employee who earns the greater of: (1) the hourly rate equal to the minimum wage required by the applicable federal, state or local minimum wage law; or (2) \$13 per hour.

A covenant not to compete entered into between an employer and a low-wage employee is illegal and void. **iBi**

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