

City of Chicago Enacts Paid Leave and Paid Sick and Safe Leave Ordinance

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November 22, 2023

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Employers with employees working in Chicago are required by a new law to provide employees paid sick leave and a new, separate bank of leave that employees can use for any reason at all. The Paid Leave and Paid Sick and Safe Leave Ordinance significantly amends the City's current Paid Sick Leave Ordinance and will take effect on December 31, 2023.

The amendment provides that covered employees are entitled to take up to 40 hours of paid sick leave per year and another 40 hours of paid leave to use for any reason. The Department of Business Affairs and Consumer Protection may impose fines for violations and aggrieved employees may bring a private action.

Covered Employers and Employees

The new law defines an "employer" as a person who gainfully employs at least one employee. It will apply to "covered employees" who, in any two-week period, perform at least two hours of work for an employer while physically present within the geographic boundaries of the City of Chicago, regardless of where the employer is located.

The new law will not affect collective bargaining agreements in force on January 1, 2024. After that date, the law's requirements may be waived only in a collective bargaining agreement if the waiver is expressly in the agreement in clear and unambiguous terms.

Accrual of Paid Leave

Covered employees will accrue one hour of paid leave for any reason and one hour of paid sick leave for every 35 hours worked. Employees who are exempt from overtime will be assumed to work 40 hours in each workweek for purposes of accrual. If the employee's normal workweek is less than 40 hours, however, paid time off will accrue based on that normal workweek. If an employer provides paid leave under an accrual method, employees will be allowed to carry over up to 16 hours of paid leave for any reason and 80 hours of paid sick leave from one 12-month period to the next.

Employers can frontload 40 hours of paid leave and 40 hours of paid sick leave on the first day of employment or the first day of the 12-month period. If paid leave is frontloaded, no carryover is required by the Ordinance.

Employers must allow employees to use accrued paid sick leave 30 days after the start of their employment and must allow employees to use accrued paid leave for any reason 90 days after the start of employment. Employers also may set a minimum-increment requirement of four hours of paid leave for any reason per day and two hours of paid sick leave per day.

Payout of Paid Leave for Any Reason and Paid Sick Leave

Employers with more than 100 employees must pay out all unused, accrued paid leave for any reason as part of an employee's final compensation upon separation from employment or whenever an employee no longer meets the definition of "covered employee" as a result of transfer outside of the geographic boundaries of Chicago.

"Medium employers" with 51–100 employees are required to pay out a maximum of 16 hours of unused, accrued paid leave for any reason upon separation or transfer out of Chicago through December 31, 2024. Starting on January 1, 2025, such employers must pay out all unused, accrued paid leave for any reason upon an employee's separation or transfer out of Chicago.

"Small employers" with 1–50 employees are not required to pay out any unused, accrued paid leave for any reason upon separation or transfer out of Chicago.

Employees who are entitled to payouts of paid leave for any reason may request payout of their unused, accrued paid leave after not receiving a work assignment for 60 days.

Regardless of how many employees they have, employers are not required to pay out unused, accrued paid sick leave upon an employee's separation or transfer out of Chicago.

Responding to Requests for Paid Leave and Paid Sick Leave

An employer may establish reasonable policies for the use of paid leave for any reason to:

1. Require an employee to give reasonable notice, which may not exceed seven days before using such paid leave; and
2. Require an employee to obtain reasonable approval from the employer before using paid leave to maintain continuity of employer operations, subject to rules that will be promulgated by the City of Chicago's Office of Labor Standards.

If an employee's need for paid sick leave is reasonably foreseeable, an employer may require up to seven days' notice before leave is taken. If the need for paid sick leave is not reasonably foreseeable, an employer may require an employee to give notice as soon as is practicable on the day the employee intends to take paid sick leave.

"Reasonably foreseeable" needs for paid sick leave include, but are not limited to, prescheduled appointments with healthcare providers for the employee or for a family member and court dates in domestic violence cases. Where an employee is absent for more than three consecutive workdays, the employer may require certification that the use of paid sick leave was authorized by the Ordinance.

Notice and Accounting

Employers must post a notice advising covered employees of their right to paid time off in a conspicuous place at each facility where any covered employee works in Chicago. Employers also must provide a notice advising covered employees of their right to paid time off with the first paycheck issued and annually with a paycheck issued within 30 days of July 1. Additionally, each time wages are paid, employers must provide covered employees written notification stating an updated amount of paid leave for any reason and paid sick leave available for use, along with the accrual rates of the paid leave for any reason and paid sick leave provided to the employee. Employers may provide this

information on each pay stub or an online system where covered employees can access the information. Employers also must provide employees written notice of the employer's paid time off policy at the commencement of employment and within five days before any change to the policy.

Interaction With Illinois Paid Leave for All Workers Act

The Illinois Paid Leave for All Workers Act, which will take effect on January 1, 2024, does not apply to any employer located in a municipality or county where the employer is required by local law or ordinance to provide paid leave time, including paid sick leave, to its employees. Accordingly, employers located within Chicago will be subject only to the requirements of the Ordinance. However, an Illinois employer located outside of Chicago that has employees who work in Chicago for at least two hours over any two-week period will have to comply with the Paid Leave for All Workers Act for its employees who do not work in Chicago and comply with the Ordinance for its employees who work in Chicago.

For more information about the Ordinance, the Illinois Paid Leave for All Workers Act, or other paid leave laws that may impact your organization, please contact a Jackson Lewis attorney.

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