

Illinois' Cook County Amends Paid Leave Rules: It's Time for Employer Policy Review

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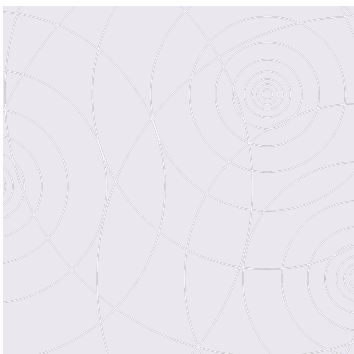


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Takeaways

- Just as employers thought their policies were in order, amendments to the rules governing the Cook County Paid Leave Ordinance were approved and became effective immediately.
- There are five notable changes in the amended rules, including a requirement that Ordinance-provided paid leave continues to accrue while employees use paid leave.
- Employers should update policies and practices to comply with the amended rules.

Article

Employers in Cook County, Illinois face additional requirements now that amendments to the Final Interpretive and Procedural Rules governing the Cook County Paid Leave Ordinance were approved by the Cook County Board of Commissioners and became effective immediately. The amended rules include a unique new requirement that Ordinance-provided paid leave continues to accrue while employees use paid leave.

The Ordinance requires most employers to provide employees working in Cook County (outside of Chicago) with up to 40 hours of paid leave that can be used for any reason and became effective on Dec. 31, 2023.

Paid Leave Accrues During Paid Leave

Amended Section 400.300(C) provides that paid leave continues to accrue *while using accrued paid leave*. Notwithstanding this change, paid leave is still not considered “hours worked” for purposes of overtime calculations.

Previously, covered employees accrued paid leave hours only when engaged in work for the employer (including while training).

Employers Must Maintain and Distribute a Written Paid Leave Policy

Section 700.200 of the amended rules requires employers to maintain a “written policy, which advises each Employee of their leave benefits and rights.” The written policy must be provided to employees at the start of employment (or the date of initial accrual) and annually thereafter.

The policy must include:

- A summary of the Paid Leave Ordinance;
- A description of the benefits the employer offers;
- Coverage;
- The rate of accrual;

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- Permissible uses;
- Prohibited employer practices;
- Contact information for the Cook County Commission on Human Rights (the agency responsible for enforcement); and
- An explanation of how employees can file a complaint with the Commission.

Remote Workers Must Receive Notice of Rights

Section 700.100 of the amended rules clarifies that employers must provide a copy of the County-issued Workplace Poster, which notifies employees of their rights, to all remote employees through their “normal method of communicating.” This method could include email, online portal, or company intranet.

Paid Leave Calculation for Employees with Multiple Job Codes

Section 500.500 of the amended rules clarifies that paid leave for employees who work for various rates under multiple job functions or job codes should be calculated by choosing (a) the average of that employee’s various hourly rates or (b) the greater of the minimum wage or the employee’s lowest rate.

FMLA Regulations Supersede Ordinance Rules

Under Section 500.300(H) of the amended rules, federal Family and Medical Leave Act (FMLA) rules and regulations, including notification requirements, take precedence over the Ordinance. With this welcome change, employers may require FMLA-eligible employees in Cook County to exhaust all accrued paid leave entitlements before taking unpaid FMLA leave. If an employer does not establish such a policy, then an FMLA-eligible employee taking leave may choose between taking accrued paid leave or unpaid FMLA leave (if the employee qualifies for the latter).

Previously, like its state and local counterparts, the Ordinance and Final Rules prohibited employers from requiring employees to exhaust their accrued paid leave entitlements before taking other unpaid leave.

If you have any questions or need assistance updating your policies and practices to comply with the amended rules, please contact the Jackson Lewis attorney with whom you regularly work.

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