

Chicago City Council Passes COVID-19 Anti-Retaliation Ordinance

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Chicago's City Council has passed an ordinance to protect employees from retaliation by their employers if they obey public health orders or orders of a healthcare provider to stay at home because of the COVID-19 pandemic. The ordinance was passed by the City Council on May 20, 2020.

Employers Covered

The new ordinance incorporates the definitions from the City of Chicago's Paid Sick Leave Ordinance. Accordingly, covered employers include individuals and companies that maintain a business facility within the geographic boundaries of the City of Chicago or who are subject to at least one of the City's licensing requirements.

With limited exceptions, a "covered employee" is an employee who, in any particular two-week period, performs at least two hours of work for a covered employer while physically present within the geographic boundaries of the City.

Retaliation Prohibited

In general, the ordinance provides protection against retaliation for employees who:

1. Stay at home to obey public health orders;
2. Comply with a healthcare provider's order to stay home; or
3. Stay at home to care for individuals who have been ordered to stay at home.

Accordingly, under the new ordinance, an employer is prohibited from taking any adverse action against an employee if the employee obeys an order issued by the Mayor, the Governor of Illinois, or the Chicago Department of Public Health to:

- Stay at home to minimize the transmission of COVID-19;
- Remain at home while experiencing COVID-19 symptoms or sick with COVID-19;
- Obey a quarantine order issued to the employee;
- Obey an isolation order issued to the employee; or
- Obey an order issued by the Commissioner of Health regarding the duties of hospitals and other congregate facilities.

In addition, the ordinance prohibits employers from taking any adverse action against an employee if the employee follows a healthcare provider's order to:

- Remain at home while experiencing COVID-19 symptoms or sick with COVID-19;
- Obey a quarantine order issued to the employee; or
- Obey an isolation order issued to the employee.

Finally, the ordinance prohibits employers from taking adverse action against an employee if the employee is caring for an individual who is subject to an order requiring the individual to:

- Stay at home to minimize the transmission of COVID-19;
- Remain at home while experiencing COVID-19 symptoms or sick with COVID-19; or
- Obey a quarantine order issued to the individual.

Employer's Right to Cure

The ordinance allows an employer to avoid liability if the employer can show that it:

1. Relied on a reasonable interpretation of an order; and
2. Cured the violation within 30 days of learning about it.

Penalties Include Private Right of Action

If an employer retaliates against an employee for obeying orders covered by the ordinance, the Commissioner of the City's Department of Business Affairs and Consumer Protection may take action against the employer to cure the violation, including bringing an action in an administrative hearing or a court of law.

In addition, the aggrieved employee may bring a civil action and seek reinstatement to the same or equivalent position the employee held before the retaliatory action, damages equal to three times the full amount of wages that would have been owed had the retaliatory action not taken place, actual damages caused by the retaliatory conduct, costs, and attorneys' fees.

Jackson Lewis attorneys are available to answer inquiries regarding the new ordinance and assist employers.

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