

Chicago Paid Leave and Paid Sick Leave Ordinance Act Set to Take Effect on December 31

By Michael Brohman

On December 31, 2023, the City of Chicago's Paid Leave and Paid Sick Leave Ordinance will take effect. This Act will require Chicago employers to provide each of their employees, including domestic workers, up to 40 hours of Paid Leave for Any Reason **and** up to 40 hours of Paid Sick Leave (for a total of up to 80 hours of Paid/Sick Leave) every 12-month period. Covered employees include all employees who, in any two-week period, perform at least two hours of work while physically present within the geographic boundaries of the City of Chicago, regardless of where the employer is located.

Existing employees acquire rights under the Ordinance beginning January 2, 2024. New employees acquire their rights when their employment begins. Employees will accrue one hour of Paid Any Reason Leave for every 35 hours worked and one hour of Paid Sick Leave for every 35 hours worked. For purposes of accrual determinations, employees who are exempt from overtime (for instance, salaried employees) will be assumed to work 40 hours in each workweek. Other employees will accrue time based on the hours they actually work each week.

Importantly, if employers already have leave policies at least as generous as the leave rights granted under the Ordinance, those policies can remain in place and employees will get no additional benefits. The rights given to covered employees under the Ordinance supersede the rights such employees may have under the Illinois Paid Leave for All Workers Act, so the employers of such employees need only comply with the Chicago Ordinance.

Employees may begin using accrued Paid Sick Leave after they have completed 30 days of employment, and they may begin using accrued Paid Any Reason Leave after completing 90 days. Employers may set a minimum increment of hours of leave that can be used per day. However, the minimum increment that employers can set for Paid Sick Leave is two hours and the minimum that can be set for Paid Any Reason Leave is four hours. So, if employers want to bar an employee from using one hour of paid leave to go to a doctor's appointment, they can do so. But employers cannot bar an employee from using any length of time after two (Paid Sick Leave) or four hours (Paid Any Reason Leave) for such an appointment.

When either type of paid leave is foreseeable, employers may require their employees to provide seven calendar days' notice before the start of the leave. Also, to enable continuity of company operations, employers can require employees to obtain reasonable approval before using their leaves. When Paid Sick Leaves are not foreseeable, employees must provide notice as soon as practicable after they become aware of the necessity for the leave. The notice requirement for Paid Sick Leaves will not apply if the employee is unable to give notice because the employee is unconscious or otherwise incapacitated.

Employees are not required to document the reasons needed for a Paid Any Reason Leave. Documentation is required for Paid Sick Leaves. Employees are eligible for Paid Sick Leaves if, among other reasons, they are ill, injured or receiving professional care; they are caring for an ill, injured, or

quarantined family member; they or a family member under their care is the victim of domestic violence, a sex offense or trafficking; or they are obeying an order issued by a public official.

The Ordinance allows employers to choose one of two means for the accrual of paid leave hours. Employers can simply front load all 80 hours of paid leave at the start of the 12-month period. If employers choose this method, then they can enforce a “use it or lose it” policy which will require employees to use all 40 hours of Paid Any Reason Leave during the 12-month period or lose whatever is unused at the end of the period unless the employers deny the employees with meaningful access to the leave. Even if employers front load all 80 hours of paid leave, employees are able to carry over each year up to 80 hours of Paid Sick Leave.

Alternatively, employers can have their employees accrue paid leave hours as they work during the year. If this method is used, employees can carry to the next year up to 80 hours of Paid Sick Leave and up to 16 hours of Paid Any Reason Leave.

When employees terminate their employment, employers are not required to pay employees for unused accrued Paid Sick Leave time. Whether employers must pay for unused accrued Paid Any Reason Leave will depend on the size of the employer. Employers with one to 50 employees are not required to pay for any unused accrued Paid Any Reason Leave time. For the year 2024, employers with 51 to 100 employees are required to pay up to 16 hours of any unused accrued Paid Any Reason Leave time, but they will have to pay all unused accrued Paid Any Reason Leave time starting in the year 2025 and continuing thereafter. Effective in 2024 and continuing thereafter, employers with over 100 employees are required to pay all unused accrued Paid Any Reason Leave time.

The Ordinance requires employers to keep accurate records of paid leave hours accrued and taken. It also requires employers to post notices itemizing the requirements of the Ordinance. These notices can be acquired from the City of Chicago Department of Business Affairs and Consumer Protection.

If employers violate the Ordinance, they can be fined from \$500 to \$3000, depending on the violation. Employees can also recover damages under the Ordinance, which could equal three times the full amount of any leave denied or lost, plus attorneys’ fees.

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