

Two New Laws Every Illinois Employer Needs to Know

By Lee Levin & Delaney Perl

EFFECTIVE January 1, 2023:

The law requiring that employers whose employees are scheduled to work at least 7-1/2 hours in a particular day must be provided with an unpaid meal break of at least 20 minutes no later than 5 hours into the workday has been amended, effective January 1, 2023. The law, which is part of the One Day of Rest in Seven Act, now requires employers to provide additional 20-minute meal breaks for each additional 4-1/2 hours the employee is to work for the day. There are limited exceptions to this law, which would apply to very few, if any, of our firm's clients.

Unlike the initial provision in the law which mandated that the break occur no later than 5 hours into the day, the new provision does not mandate that the break must be taken by a specific time, the Illinois Department of Labor takes the position that the second break must start after 5 and within 10 hours from the start of the work day.

An additional change to this law is the implementation of an expanded set of penalties for non-compliance. The law previously set a penalty of between \$25 and \$100 for each offense. With the amendments to the law, the penalties are now up to \$250 per offense for employers with fewer than 25 employees and a fine of up to \$250 paid to the Department of Labor. For employers with 25 or more employees, the penalties double to up to \$500 per offense.

Each offense means each day an employer fails to give the employee these breaks.

The employer is required to notify its employees of these rights, which can be met by the conspicuous posting of a notice at their office and made available electronically to their remote worker. When posting the notice, make sure the information is accurate. The Department of Labor, on its website, has a summary of the law which delineates between employers with under 25 employees and employers with over 25 employees, when the actual provision in the law indicates that the second category is 25 or more employees.

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Illinois recently became just the third state in the country to adopt a mandatory paid time off law. The law does not apply to contractors, railway workers and those employees under a collective bargaining agreement. The law also does not apply to employers who maintain a policy regarding leave that provides a more generous benefit than the law, though it is unclear what would constitute a more generous policy under the law. For example, if an employer provided more time off but no carryover, it is unclear whether the employer's policy would be considered "more generous".

The law also does not apply to Chicago or Cook County employees who fall under the current sick leave ordinances, though there is a bit of confusion under that provision of the law. The text of the law says exactly that-employers under either of these ordinances are exempt. However, several commentators have indicated that the exemption only applies if employers allow the sick leave required under those ordinances to be used for any purpose.

While the new law, the Paid Leave for All Worker Act, does not take effect until January 1, 2024, the law applies to all employers with very limited exceptions and can apply to an employer's part-time workers.

The law requires employers to provide one hour of paid time off, which can be used for any reason including vacation and sick leave, for every 40 hours worked. This law requires such an accrual for any employee and not just full-time employees.

Employees can earn a maximum of 40 hours of paid time off each year and are permitted to carry over up to 40 hours per year to the next year unless the employer awards the 40 hours at the beginning of the year and does not require it to accumulate over time.

While the employee does not have to give the employer the reason for taking leave granted under this law, if the leave is foreseeable, the employer can require the employee to provide seven calendar days' notice before using the leave. An employer can require the employee to wait 90 days from the start of the year before using any accrued leave.

Another bit of confusion in the law is that one section says that this new law is not to interfere with an employee's right to receive their final compensation upon termination of employment (e.g. accrued pay and the value of unused paid time off), but another section of the law says that employers are not required to cash out the unused paid leave accrued under the law. Until the Illinois Department of Labor clarifies this disconnect, employers may wonder whether they could alter their time off policy to shift part of the time off award to meet the requirements of the law and part to be more generous. As an example that will need to be addressed, theoretically, employers who provided two weeks of PTO time could change their policy to provide one week of PTO and an additional one week (40) hours to accrue under the new law. If an employee is terminated using none of the two weeks, it would appear under the ambiguity in the law that the employer could argue that the employee will only be entitled to cash out one week and not two as their historical right provided. Complicating matters further, the law provides the employee with the right to designate whether the leave they are taking is the leave provided by law or the extra leave.

If you have any questions or concerns, please contact any of the listed Roetzel attorneys.

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