

# Paid Leave for All Workers Act Set to Take Effect on January 1, 2024

By Michael Brohman

On January 1, 2024, the Paid Leave for All Workers Act will take effect in Illinois. This Act will require Illinois employers to provide each of their employees, including part-time employees and domestic workers, up to 40 hours of paid leave for every 12-month period. Such employees will accrue one hour of paid leave for every 40 hours worked. The Act requires paid leave for **all** employees, with the exception of employees who come within the definition of “employee” under the federal Railroad Unemployment Insurance Act, school district or park district employees, college or university students providing temporary services for their college or university, short-term employees of institutions of higher education, and construction, delivery, pickup, transportation and state agency employees who are working under a bona fide collective bargaining agreement.

Importantly, if an employer already provides all its employees with at least 40 hours of paid leave per 12-month period, the Act does not require the employer to provide additional hours of paid leave. Moreover, the Act is not applicable to an employer that is already governed by and complying with the Cook County or City of Chicago Sick Leave Ordinances that have been in place since 2017.

For employees covered by the Act, they will begin to accrue paid leave at the commencement of their employment, or on the January 1, 2024 effective date of the Act (“Effective Date”), whichever is later. Such employees may begin using accrued paid leave 90 days following the commencement of their employment or 90 days following the Effective Date, whichever is later. Paid leave may be taken by an employee for any reason of the employee’s choosing. Moreover, employees are entitled to determine how many hours of accrued paid leave they are using at any point in time. While an employer may set a minimum increment of hours of leave that can be used per day, that increment cannot exceed two hours per day. So, if an employer wants to bar an employee from using one hour of paid leave to go to a doctor’s appointment, it can do so, but the employer cannot bar an employee from using any length of time after two hours for such an appointment.

For paid leaves that are foreseeable, an employer may require their employees to provide seven calendar days’ notice before the start of the leave. When paid leaves are not foreseeable, employees must provide notice as soon as practicable after they become aware of the necessity for the leave. The procedures that employees must follow to give such notice are to be contained in a written policy that the employer must provide to its employees.

The Act allows employers to choose one of two means for the accrual of paid leave hours. The employer can simply front load all 40 hours of paid leave at the start of the 12-month period. If an employer chooses this method, then it can enforce a “use it or lose it” policy which will require employees to use all 40 hours of paid leave during the 12-month period or lose whatever is unused at the end of the period. Alternatively, the employer can have its employees accrue paid leave hours as they work during the year. If this method is used, employees can carry over unused paid leave to the following year. However, even under this approach, employees cannot use more than 40 hours of paid leave over the course of one 12-month period.

Employees are to be paid their normal hourly rate for paid leave. For employees who generate income based on tips or commissions, they are to be paid at least the minimum wage in their jurisdiction of employment. Under normal circumstances, employees are not entitled to unused paid leave upon the termination of their employment. However, if an employer applies paid leave under the Act to an employee's paid time off bank or employee vacation account, then unused paid leave shall be paid at employment termination.

The Act 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 Act. These notices can be acquired from the Illinois Department of Labor ("IDOL").

If an employer violates the Act, it can be sued by employees in proceedings before the IDOL, where the employer may be required to pay underpayments due to employees, compensatory damages, and penalties of between \$500 and \$1000. Additionally, the IDOL can seek to recover a civil penalty of \$2,500 for each separate offense of the employer.

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