

Employee Benefit ■ Plan Review

Chicago Expands Paid Sick Leave Ordinance to Mandate Additional Paid General Leave for Employees

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Beginning in 2024, Chicago¹ joins Illinois, Maine, and Nevada in mandating paid leave for employees. While employees in Chicago have been entitled to paid sick leave since 2017, with the Chicago City Council's passage of the Chicago Paid Leave and Paid Sick and Safe Leave Ordinance² (the Ordinance), Chicago employees are entitled to up to 80 hours of paid time off in a 12-month period, with 40 hours allocated to paid sick leave and 40 hours allocated to general paid leave. The Ordinance officially goes into effect on July 1, 2024, and replaces Chicago's current paid sick leave ordinance.³

The Ordinance comes eight months after the Illinois legislature's enactment of the Illinois Paid Leave for All Workers Act (PLAWA),⁴ which went into effect on January 1, 2024 and guarantees that Illinois workers can earn or accrue up to 40 hours of paid leave per year that may be used for any reason. Although Chicago employers covered by the Ordinance are exempt from PLAWA,⁵ the Ordinance adopts PLAWA's purpose of providing general paid leave to employees while preserving the paid sick leave entitlement.

While the Ordinance was passed in November 2023, the Chicago City Council passed an amendment in December (the

Amendment), shortly before the January 1, 2024 original effective date to delay enforcement until July 1, 2024 and to modify certain provisions. This article discusses the current version of the Ordinance as amended.

WHO IS A COVERED EMPLOYEE NOW?

Employees in Chicago with at least one employee are subject to the provisions of the Ordinance. A "covered employee" was initially defined as an employee who works at least two hours for a Chicago employer in any particular two-week period. The Amendment substantially modified the definition of a "covered employee" by increasing the threshold for coverage. Under the Amendment, only employees who perform at least 80 hours of work for a covered employer within any 120-day period while physically present within the geographic boundaries of the city will be considered covered employees, which is a significant increase from the two-hour requirement under the Ordinance as originally passed.

Specifically, employees that satisfy the threshold remain covered employees for the remainder of the time that they are employed by the employer regardless of the number of hours they work.

METHOD FOR ACCRUAL, CARRYOVER, AND FRONTLOADING

The Ordinance provides that a covered employee will accrue one hour of general paid leave and one hour of paid sick leave for every 35 hours worked. Both general paid leave and paid sick leave are accrued in hourly increments and the total accrual for both forms of leave is capped at 40 hours in a 12-month period. At the end of the 12-month period, covered employees are allowed to carryover up to 16 hours of general paid leave and up to 80 hours of paid sick leave to the subsequent 12-month period. Chicago employers may also choose to “front-load,” or grant, 40 hours of paid leave or 40 hours of paid sick leave (or both) on the first day of employment or on the first day of the 12-month period. If an employer elects to front-load general paid leave hours, the employer is not required to allow employees to carry over unused general paid leave hours to the following 12-month period. However, employers must allow employees to carry over up to 80 hours of paid sick leave into the next 12-month period even if the leave is front-loaded.

USE OF LEAVE

Employers must allow covered employees to use accrued paid sick leave after completing 30 days of employment, and use accrued general paid leave after completing 90 days of employment. An employer may set a reasonable usage minimum increment, not to exceed four hours per day for paid leave or two hours per day for paid sick leave. If a covered employee’s scheduled workday is less than such minimum increments, then the minimum increment of time cannot exceed the covered employee’s regular scheduled workday.

Similar to the PLAWA, general paid leave under the Ordinance may be used for any reason and employees cannot be required to provide a reason for or documentation to

support the leave. Paid sick leave may be used for the same reasons set forth under the current Chicago paid sick leave ordinance, including:

- For illness or injury, or for the purpose of receiving professional care, which includes preventive care, diagnosis, or treatment for medical, mental, or behavioral issues, including substance use disorders;
- For a family member’s illness, injury, or order to quarantine, or to care for a family member receiving professional care;
- For domestic violence, or if a covered employee’s family is the victim of domestic violence;
- If the covered employee’s place of business is closed by order of a public official due to a public health emergency, or the employee needs to care for a family member whose school, class, or place of care has been closed; or
- For the covered employee to obey an order issued by the mayor, the governor of Illinois, the Chicago Department of Public Health, or a treating healthcare provider requiring the employee to stay at home to minimize the transmission of a communicable disease; to remain at home while experiencing symptoms or sick with a communicable disease; and to obey a quarantine order or an isolation order issued to the employee.

REQUESTING LEAVE

For general paid leave, an employer may require a covered employee to provide reasonable notice not to exceed seven days prior to the need for leave and may require preapproval to ensure continuity of business operations.⁶ An employer may also require seven days’ notice for paid sick leave. If the need for paid sick leave is not reasonably foreseeable, an employer may require a covered employee to give notice

as soon as is practicable by notifying the employer by phone, email, or other means. The Ordinance defines “reasonably foreseeable” as including, but not limited to, prescheduled appointments with health care providers and court dates in domestic violence cases.

If a covered employee uses paid sick leave to be absent for more than three consecutive work days, the employer may require certification that the paid sick leave was used for a qualifying purpose. For health-related paid sick leave, this certification can be documentation signed by a licensed health care provider. For domestic violence-related paid sick leave this certification can be a police report, court document, or a signed statement from a lawyer, a member of the clergy, or a victim services advocate. An employer may not delay the commencement of paid sick leave or delay payment of wages based on not receiving the required documentation or certification. However, an employer can take disciplinary action, up to and including termination, against a covered employee who uses paid sick leave for purposes other than those described in the Ordinance.

PAYMENT OF PAID LEAVE AND PAID SICK LEAVE

The Ordinance sets forth general requirements relating to the payment of general paid leave and paid sick leave. General paid leave and paid sick leave must be compensated at the employee’s regular rate of pay, including health care benefits. The regular rate of pay for nonexempt or hourly employees is calculated by dividing the employee’s total wages by total hours worked in full pay periods of the prior 90 days of employment. Wages do not include overtime pay, premium pay, gratuities, or commissions. Employers must pay an employee for their general paid leave and paid sick leave by the next regular payroll period after the time off was taken.

PAYMENT OF PAID LEAVE UPON TERMINATION

Under the Ordinance as amended, an employer with 50 covered employees or less is not required to pay out any accrued, unused general paid leave upon termination. An employer with 51 to 100 covered employees (Medium Employer) must pay out accrued, unused general paid leave, up to 16 hours, until July 1, 2025. On or after July 1, 2025, a Medium Employer must pay all accrued, unused paid general leave upon an employee’s termination for any reason. Unless otherwise provided in a collective bargaining agreement, an employer cannot enforce a contract or a policy that requires the employee to forfeit any earned general paid leave upon separation from employment. Employers are not required to pay out accrued, unused paid sick leave.

Further, all unused paid sick leave and paid general leave is retained by the covered employee if the employer sells, transfers, or assigns the business to another employer and the employee continues to work in the city of Chicago.

EXISTING LEAVE POLICIES AND UNLIMITED PAID TIME OFF PROGRAMS

If a covered employee accrues paid sick leave before 1 January 2024 and the employer’s existing paid time off policy does not comply with the Ordinance, then on 1 January 2024, any paid sick leave that the covered employee is entitled to will roll over to the next 12-month period.

For employers that have recently adopted “unlimited paid time off policies,” the Ordinance provides that employers may offer unlimited paid time off policies and so long as the covered employer provides unlimited paid time off at the beginning of employment or the start of a 12-month period, there is no requirement to permit carryover of unused general paid leave to the next year. However, employees must still be allowed to carry over

up to 80 hours of paid sick leave. Although the covered employer may still require reasonable notice for both foreseeable and unforeseeable reasons for leave, it may not require preapproval for such leave. Further, if the employer has an unlimited paid time off policy, upon separation from employment (or transfer outside of the city of Chicago’s boundaries), employers must pay the monetary equivalent of 40 hours of general paid leave less the amount of general paid leave used by the covered employee during the prior 12-month period preceding separation of employment (or transfer outside of the city of Chicago’s boundaries). Finally, employers must still comply with the other requirements in the Ordinance related to the administration of general paid leave and paid sick leave.

NOTICE AND RECORDKEEPING REQUIREMENTS

Similar to the current Chicago paid sick leave ordinance, a covered employer must post in a conspicuous place a notice advising covered employees of their right to paid time off. The Ordinance also sets the following requirements:

1. The employer must provide the same notice to the covered employee with the first paycheck issued to the employee, as well as on an annual basis with a paycheck issued within 30 days of 1 July.
2. In every pay stub or wage statement to the covered employee, the employer must provide a written notification stating the updated amount of paid leave and paid sick leave available to the employee.
3. The employer must notify employees at least five calendar days before any changes to the employer’s paid time off policy are made.
4. The employer must provide employees with a 14-day written

- notice of changes to its paid time off policies that affect the employees’ final wages.
5. The employer must notify the covered employee in writing that the employee may request payout of their accrued, unused paid leave time when the employee has not been offered a work assignment for 60 days.

Under the Ordinance, employers are required to maintain records relating to a covered employee’s hours worked, pay rate, number of paid time off hours earned for each year, and the dates on which paid time off hours were taken and paid. Significantly, the Amendment now extends these recordkeeping requirements to any employee “whose regular work duties take place within the geographical boundaries of Chicago” regardless of whether they are entitled to paid leave under the Ordinance.

Finally, as set forth in the Amendment, covered employers were required to satisfy certain notice requirements by December 31, 2023, including:

- Providing any written paid time off policy to each covered employee in the employee’s primary language;
- Providing workers whose regular work duties take place within the geographical boundaries of Chicago with copies of any employment policies in the primary language of the respective worker; and
- Providing workers with a 14-day notice prior to implementing changes to any employment policy.

PENALTIES FOR VIOLATION, DAMAGES, AND PRIVATE CAUSE OF ACTION

Any employer who violates the Ordinance may be subject to fines between US\$1,000 and US\$3,000 for

each separate offense. If the employer violates the notice requirements, then the employer may be fined US\$500 for the first violation and US\$1,000 for any subsequent violation. Each day a violation occurs constitutes a separate and distinct offense.

Further, an employer who violates the Ordinance may be liable to the affected employee for damages equal to three times the full amount of any leave denied or lost by reason of the violation, plus interest, costs, and reasonable lawyer's fees paid by the employer to the covered employee. The Ordinance also provides for a private right of action, which is available to covered employees on July 1, 2024 for violations related to paid sick leave and July 1, 2025 for violations related to general paid leave. With the Amendment, prior to July 1, 2026, a covered employee must wait to initiate a private right of action until after: (1) an alleged violation occurs, and (2) the payday for the next regular payroll period

or 16 days after the alleged violation occurred passes, whichever is shorter. Although this form of "cure period" may assist employers in addressing violations before a covered employee may bring a private action, there is no requirement that the covered employee notify the employer of the violation in advance.

Chicago employers should review their current paid time off policies and payroll systems for compliance, and should consider consulting their labor and employment lawyers for assistance in developing a policy that meets the requirements of the Ordinance, as amended. 🌟

NOTES

1. While this article discusses paid leave within the city of Chicago, employers in Cook County, Illinois, may be covered by the recently enacted Cook County Paid Leave Ordinance, available at <https://www.cookcountyil.gov/sites/g/files/yywepo161/files/documents/2024-01/24-0583%20Certified%20Full%20Text%20.pdf>, which supersedes the Cook County Earned Sick Leave Ordinance

and which largely mirrors the paid leave entitlement of PLAWA.

2. Chi., Ill., Mun. C. Chi. § 6-130 (2023), available at <https://ocprod-storage1.blob.core.usgovcloudapi.net/matterattachmentspublic/1bb386dd-2bf3-4210-9880-a7ae4401d5b6.pdf>.
3. Chi, Ill., Mun. C. Chi. § 6-105 (2023), available at https://www.chicago.gov/city/en/depts/bacp/supp_info/paidsickleaveinfo.html.
4. Paid Leave for All Workers Act, Pub. Act No. 102-1143 (Jan. 1, 2024).
5. Employers covered by local paid sick leave ordinances, such as the Ordinance, are exempt from PLAWA so long as such municipality has an ordinance in place on January 1, 2024. See 820 ILCS § 192/15(p).
6. The Ordinance provides that the Office of Labor Standards will promulgate rules to address the preapproval process.

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