

Illinois to Implement Guaranteed Paid Leave for All Workers

On March 13, 2023, Illinois Governor J.B. Pritzker signed the Paid Leave for All Workers Act (the Act) two months after it passed through the Illinois Legislature. While Chicago and Cook County employers are sure to be familiar with mandatory leave laws, the Act marks the first statewide legislation requiring paid time off for any reason in Illinois. Employers statewide who do not currently offer paid leaves equal to or in excess of 40 hours per year should make appropriate preparations to comply with the new law and should speak with counsel to ensure compliance.

The Basics

The Act goes into effect on January 1, 2024 and applies, as the name implies, to nearly all employers and employees in Illinois with limited exceptions, including for employers who already must provide paid sick leave pursuant to the Chicago Paid Sick Leave Ordinance, the Cook County Earned Sick Leave Ordinance, or any other municipal or county sick leave ordinances. The Act also does not apply to any employers who already provide paid leave in amounts that meet or exceed the requirements of the Act. So, if an employer already offers employees over 40 hours of paid vacation time per year, no additional leave is owed after the Act's effective date.

Covered employers must provide all employees with a minimum of 40 hours of paid leave during a 12-month period (the 12-month period may be designated freely by the employer) or – for employees beginning mid-year or for part-time employees – a pro-rata amount of paid leave accruing at a rate of at least one hour per every 40 hours worked. The leave must be made available for employees to use for any reason, and employers may not require that employees disclose the reason or provide any documentation for any leave taken under the Act.

In crafting compliant policies, employers have the ability to choose whether they will “frontload” the paid leave or if leave will be earned on an accrual basis. If choosing to frontload, employers will make all 40 hours of leave available immediately at the beginning of the year (or otherwise designated 12-month period), which can be used at any time throughout the year. Under a frontloading method, employers need not allow for any leave to carry over at the end of the year and can mandate that any hours not used in a year will expire at the end of the year.

If using an accrual method, leave must accrue at a rate no less than one hour per every 40 hours worked. Under an accrual method, leave not used at the end of the year must be rolled over into the next year. However, even though leave may roll over into a new year, employers are not required to allow employees to take more than 40 hours of leave in any 12-month period.

Employees are eligible to begin using leave after their 90th day of employment or on March 31, 2024, whichever date is later. Employers may create a policy, which must be distributed to employees, that requires employees to provide a reasonable notification of the intent to take leave as long as the policy follows the following guidelines:

- If the leave is foreseeable, an employer can require that notice be provided up to seven calendar days before the leave is expected to begin.
- If the leave is unforeseeable, the employer can only require the employee to provide as much notice as “practicable” after the need for leave becomes clear.
- The employer cannot require the employee to find or search for a replacement to cover any hours the employee will be on leave.

The Nuance

Payment at Separation



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The Act does not require employers to pay out any accrued but unused paid leave upon termination of employment so long as the leave is not credited to the employee's paid time off (PTO) or vacation bank. If leave under the Act is stored in a PTO or vacation leave bank, then it will have to be paid out at termination based on statutory requirements of the Illinois Wage Payment and Collection Act.

Employee Notice

All covered employers will be required to post and keep posted a notice to all employees, which will be prepared by the Illinois Department of Labor.

Re-Hire and Transfers

Employees transferred to other divisions or entities of the same employer must be allowed to keep any accrued but unused time. Similarly, if an employee's employment ends, but the employee is re-hired within a 12-month period, the employer is required to reinstate any previously accrued but unused paid leave.

Non-Retaliation

Employees are protected from retaliation for exercising their rights to take leave pursuant to the Act as well as for opposing any practice they believe is in violation of the Act. Employees who believe they have been retaliated against in violation of the Act shall be entitled to bring a claim with the Illinois Department of Labor and may recover "all legal and equitable relief as may be appropriate."

What is Next?

Employers should begin preparations for the new law now by auditing their current leave policies, which should include a review of both paid sick leave allowances as well as vacation/PTO policies. If your policy does not guarantee an employee at least 40 hours of PTO/vacation or other leave **for any purpose**, then you should begin the process of drafting a compliant paid leave policy to ensure appropriate implementation by January 1, 2024. As always, to avoid noncompliance and further legal consequences, employers should consult with counsel to ensure all elements of this new law are followed.
