

## Paid Sick Leave Likely Coming to Chicago Employees

JUNE 23, 2016

On June 22, 2016, the Chicago City Council, voting 48-0, approved a Paid Sick Leave Ordinance (Ordinance), which will provide Chicago employees with up to 40 hours of paid sick leave per year. Chicago Mayor Rahm Emanuel is expected to sign the Ordinance, which would take effect July 1, 2017. With the Ordinance's passage, Chicago will become the 28th city to enact legislation regarding paid sick time. In addition to Chicago, in the last few months, new or expanded paid sick days protections have passed in Minneapolis, Los Angeles, and San Diego. Those cities join a long list that also includes San Francisco, Washington, D.C., Seattle, New York City, and Philadelphia. A list of the 33 jurisdictions (five states, 27 cities, and one county) across the country that have enacted paid sick laws before Chicago added its requirement is available [here](#).

Additionally, both houses in Illinois recently passed the Employee Sick Leave Act (House Bill 6162) (Act), which requires employers who have voluntarily provided sick days to their employees to expand the benefit so that employees can take the time to care for other family members. The Act is currently before Illinois Governor Bruce Rauner for his consideration. If enacted, it would take effect January 1, 2017.

A summary of the primary requirements of both the Chicago Ordinance and the Illinois Act follows below.

### Chicago Paid Sick Leave Ordinance

#### Covered Employers

The Ordinance applies to all employers who (1) employ at least one eligible employee in Chicago, and (2) maintain a business facility within the geographic boundaries of Chicago and/or are subject to one or more of the license requirements in Title 4 of the Chicago Municipal Code.

#### Covered Employees

The Ordinance defines "employee" similarly to the definition of the term in the Minimum Wage Law, with a few minor caveats. The Ordinance would cover most individuals, with certain exceptions, who work in Chicago for at least 80 hours in any 120-day period. Construction industry employees covered by a collective bargaining agreement are exempt.

## **Accrual & Carry-Over**

Employees begin accruing paid sick leave on the later of (1) the first calendar day following the start of their employment, or (2) July 1, 2017. Covered employees must be allowed to use accrued paid sick leave no later than the 180th day of employment.

Employers must allow covered employees to accrue at least one hour of paid sick leave for every 40 hours of work, up to a maximum of 40 hours per 12-month period. In general (see exception below), the Ordinance provides that covered employees are limited to usage of no more than 40 hours of paid sick leave per 12 month period. Employers may choose to set a higher limit for the maximum hours employees can accrue and use.

Employees can carry over up to half of their accrued, unused paid sick leave, up to a maximum of 20 hours, to the next year. In addition, the Ordinance provides that if an employer is subject to the Family and Medical Leave Act (FMLA), eligible employees will be allowed to carry over up to 40 hours of accrued, unused sick leave at the end of the accrual period to use exclusively for FMLA covered purposes. Assuming a covered employee carries over 40 hours of accrued paid sick leave for FMLA leave, then the employee may use no more than an additional 20 hours of paid sick leave in the same period, unless the employer sets a higher limit.

## **Usage**

Covered employees can use paid sick leave for the following reasons:

- He or she, or a covered family member, is ill or injured, or is receiving medical diagnosis, care, or treatment, or preventive medical or health care;
- He or she, or a covered family member, requires absence related to his/her status as a victim of domestic violence or “a sex offense” as defined in the Illinois Criminal Code of 2012; or,
- Closure of the employee’s place of business or the employee’s child’s school or place of care by order of a public official due to a public health emergency.

If the need for paid sick leave is reasonably foreseeable (such as medical appointments or court dates in domestic violence cases), employers can require employees give up to seven-days notice before taking leave. If the need is not reasonably foreseeable, employers can require employees give notice as soon as is practicable through phone, email, or text.

Where a covered employee is absent for more than three consecutive workdays, the employer may require certification that the employee used leave for a permitted purpose only. Such certification includes documentation signed by a licensed health care provider, or where an employee is absent to care for a victim of domestic violence or covered sex offenses, a police report; court document; a signed statement from an attorney, a member of the clergy, or a victim services advocate; or any other evidence that supports the employee’s claim, including a written statement from him or her, or any other person who has knowledge of the circumstances. However, even if an employee has not yet submitted the required documentation, employers may not delay employees from taking paid sick leave or paying wages.

Employees using paid sick leave, under the Ordinance, would be paid at the same rate and with the same benefits, including health care benefits, that the employee regularly earns during hours worked. Employers may set a “reasonable minimum increment requirement” to limit use of paid sick leave, not to exceed four hours per day. Finally, employers do not need to provide reimbursement for unused paid sick leave upon the employee’s termination, resignation, or retirement.

## **Notice & Posting**

Covered employers would be required to post a notice advising employees of their paid sick leave rights in a conspicuous place at any workplace facility located within the geographic boundaries of Chicago. In addition, every covered employer must provide a notice advising eligible employees of their rights under the Ordinance when his

or her first paycheck that is subject to the Ordinance is issued. Although no timeline was included, the Ordinance provides that the Chicago commissioner of business affairs and consumer protection will prepare model notices.

### **Retaliation**

The Ordinance also prohibits employers from retaliating against employees for exercising or attempting to exercise paid sick leave rights. Additionally, employers cannot discharge, deny a promotion, or otherwise discriminate against employees for using paid sick leave benefits.

### **Causes of Action**

If an employer pays a covered employee less than the amount they are entitled to under the Ordinance, the employee can recover three times the amount underpaid and any costs the court allows. If an employer otherwise violates any provision of the ordinance, the affected employee can recover three times the full amount of any unpaid sick time denied or lost, interest on that amount, as well as any costs the court allows.

## **Illinois Employee Sick Leave Act**

Additionally, both the Illinois House and Senate have passed legislation ([House Bill 6162](#)) creating the Employee Sick Leave Act (Act).

### **Usage**

If enacted, Illinois employers would be required to provide employees the ability to use employer-provided personal sick leave benefits for absences of a reasonable amount of time due to illness, injury, or medical appointments of their immediate family, parents-in-law, grandchildren, or grandparents. Employees may use the leave on the same terms upon which the employees are able to use sick leave benefits for the employee's own illness or injury.

Under the Act, an employer can limit the use of such benefits to an amount not less than the personal sick leave that would be accrued during six months at the employee's then current rate of entitlement. Additionally, employees cannot use such benefits for absences for which the employer's plan already compensates the employee. The rights and remedies specified in the Act are in addition to any other rights or remedies afforded by contract or law. The Act does not extend the maximum period of leave under the FMLA, regardless of whether the employee receives sick leave compensation during that leave. Moreover, an employer may provide greater sick leave benefits than required under the Act.

Notably, employers who already have a paid time off policy that would otherwise provide benefits as required under the Act are not required to modify such policy.

### **Retaliation**

The Act also includes a provision prohibiting retaliation for use of rights under the Act. Employers cannot deny an employee the right to use personal sick leave benefits. Furthermore, they cannot discharge, suspend, or discriminate against an employee for using their personal sick leave benefits in accordance with the Act.

Employers should review policies, procedures, and training materials to ensure compliance with applicable paid time off laws. In particular, Chicago employers should review sick days, sick leave, or paid time off policies and procedures to ensure compliance with, at least, the minimum requirements of the new Ordinance. Employers should also take care to comply with the Ordinance's posting and notification requirements. The Chicago commissioner of business affairs and consumer protection website available [here](#) should be posting template notices prior to July 1, 2017.

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