

CLIENT ALERT



New Ordinance Requires Employers To Provide Up To 10 Days of Paid Time Off To All Chicago Employees

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Beginning on December 31, 2023, Chicago employees will be able to earn up to 40 hours of paid leave annually to use for any reason, in addition to earning up to 40 hours of paid sick leave annually. The new Chicago Paid Leave and Paid Sick and Safe Leave Ordinance, which will replace the previous Chicago ordinance that provided paid sick time, goes beyond the new statewide law set to go into effect on January 1, 2024. While the statewide Paid Leave for All Workers Act will provide employees outside Chicago up to 40 hours of paid leave to use for any reason, the new Chicago ordinance will provide city employees with up to 80 total hours of paid leave, which accrues at a faster rate than under the state law.

All employees who physically work within Chicago for at least two hours in a two-week period will earn one hour of paid leave for any reason and one hour of paid sick leave for every 35 hours of work, up to a total of 40 hours of each type of leave per year. Employers may choose to provide the leave as employees accrue it throughout the year, or they may choose to front-load 40 hours of each type of leave on the first day of each 12-month accrual period.

PAID LEAVE FOR ANY REASON

Employees are eligible to use earned paid leave for any reason after 90 days of employment. Employers may require that employees seeking to use this leave provide advance notice of up to seven days, unless the need for the leave is unforeseeable.

If an employer uses the front-loading method to provide paid leave for any reason, then it is not required to allow employees to carry over any unused paid leave to the next year, whereas employers implementing the accrual method must allow employees to carry over up to 16 hours of accrued and unused paid leave for any reason to the next year. As there is no usage cap in the new ordinance, an employee who carries over 16 hours must be permitted to take all 56 hours of earned paid leave for any reason in a single year.

Upon termination of employment or the transfer (voluntary or involuntary) of an employee outside Chicago, employers may be required to pay out unused paid leave as part of the departing employee's final compensation, depending on the size of the employer:

- Large employers (defined as those employing more than 100 Chicago employees) must pay out all unused paid leave for any reason beginning on January 1, 2024.
- Medium employers (defined as those employing 51 to 100 Chicago employees) are required to pay out up to 16 hours of unused paid leave for any reason in calendar year 2024 and then must begin paying out all unused paid leave on January 1, 2025.
- Small employers (defined as those employers with 50 or fewer Chicago employees) are not required to pay out unused paid leave.

Employees who have not been offered a work assignment for 60 days or more must be notified in writing that they may request a payout of their accrued paid leave.

WHAT ABOUT EMPLOYERS WITH MORE GENEROUS PAID LEAVE POLICIES?

For those employers with vacation or other paid time off policies that provide the same or more paid leave that can be used for any reason, the new Chicago ordinance permits those employers to maintain their policies, provided the employers are complying with all aspects of the new ordinance. In particular, employers providing benefits greater than what is specified in the new Chicago ordinance must be sure to comply with requirements regarding carryover, payout, and coverage, including applying the policy to all employees, including part-time and seasonal employees.

At the same time, employers need not apply the ordinance's requirements to any leave that the employer may choose to provide beyond the amount required by the ordinance. For example, if an employer chooses to provide 120 hours of paid leave for any reason (as well as separate paid sick leave), that employer must only comply with the ordinance's requirements pertaining to carryover and payout with respect to the first 40 hours.

WHAT ABOUT EMPLOYERS WITH UNLIMITED PAID TIME OFF POLICIES?

Employers with unlimited paid time off policies are not immune from the new ordinance's payout-upon-termination requirement. An employer providing unlimited paid time off would need to pay a departing employee who took less than 40 hours of paid leave the difference between 40 hours and the number of hours of paid leave the departing employee took in their final year of employment. For example, if the employee took 30 hours of paid vacation time, the employer would need to pay them for 10 hours of paid leave in their final compensation.

PAID SICK LEAVE

Employees are eligible to use their earned paid sick leave, which employers must allow employees to take in minimum increments of two hours, after 30 days of employment. Paid sick leave may only be used for specific reasons, which are the same reasons under the current Chicago Paid Sick Leave Ordinance and include caring for the employee's own illness or injury; caring for the employee's family member's illness or injury; addressing issues involving domestic violence, sex offenses, or trafficking of an employee or their family member; public-health closures of an employee's business or a family member's school or place of care; and staying home in compliance with an order concerning the transmission of an illness.

Employers may require that employees provide advance notice of up to seven days, unless the need for the leave is unforeseeable. Employers may also require certification that the leave was used for a permissible reason if an employee is absent for more than three consecutive workdays.

Regardless of whether an employer uses an accrual method or a front-loading method, all employees are entitled to carry over up to 80 hours of paid sick leave to the next year. Upon termination of employment or the transfer of an employee outside Chicago, whether voluntary or involuntary, employers are not required to pay out unused paid sick leave.

The previous Chicago ordinance allowed for a usage cap for paid sick leave each year; however, no such cap is included in the new ordinance. As a result, an employee with accrued sick leave may use all of it, which could be up to 120 hours, in one year.

Employers may maintain their current sick leave policies if they meet all the requirements of the new ordinance, including the requirement that employees be permitted to carry over up to 80 hours of unused paid sick leave from year to year. Unlimited paid time off policies are compliant with the ordinance's requirements relating to paid sick leave.

OTHER ISSUES

For nonexempt employees, the regular rate of pay to be used for all leave will be calculated by dividing the employee's total wages by the total hours worked in full pay periods in the prior 90 days of employment. These wages do not include overtime pay, premium pay, tips or gratuities, or commissions, but an employee's hourly rate of pay for leave cannot be less than the employee's base hourly wage or the applicable minimum wage.

The ordinance includes notice and recordkeeping requirements: posting a notice to be provided by the city in a conspicuous place in all required languages, providing employees with a written notification of the paid time off policies, providing a notice of rights with each employee's first paycheck and then on an annual basis beginning in July 2024, providing written notice with each paystub of the employee's accruals and usage, and retaining applicable records for five years.

Employees working in the construction industry who are part of a collective bargaining agreement are exempt from this ordinance. Collective bargaining agreements in other industries that are in place as of January 1, 2024, may remain in effect. After that date, however, new collective bargaining agreements can only waive the requirements of the ordinance if the waiver is contained in the agreement in clear and unambiguous terms.

Employers may not maintain an absence management system that counts paid time off as an absence that triggers discipline or any other adverse action.

Violation of the ordinance will subject employers to fines of up to \$3,000 for each offense. Additionally, employers are liable to affected employees for damages that include three times the full amount of any leave to which they were entitled but did not receive, as well as interest and attorney's fees.

NEXT STEPS FOR EMPLOYERS

Employers should immediately assess their current paid time off and sick leave policies for all employees who work, even partially, in Chicago. If an employer's existing sick leave policies do not comply with the new ordinance, then up to 80 hours of accrued, unused paid sick leave must carry over to the next year on January 1, 2024. Employers should also ensure that they are compliant with all posting and pay stub notification requirements.

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