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Chicago Enacts New Paid Leave and Paid Sick and Safe Leave Ordinance



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On November 9, 2023, the Chicago City Council passed the Chicago Paid Leave and Paid Sick and Safe Leave Ordinance (the Ordinance), **which takes effect on December 31, 2023**. The Ordinance will replace Chicago's current Paid Sick Leave Ordinance (the Old Ordinance), which provided for up to 40 hours of paid sick leave.

The Ordinance requires employers with employees working in Chicago to provide up to 80 hours of paid leave per year, as follows:

- Up to 40 hours of leave usable for any purpose (called Paid Leave), and
- Up to 40 hours of leave for illness, injury or medical appointments (called Paid Sick Leave).

The changes for employers with employees in Chicago are significant and may impact existing paid leave, paid sick leave and "unlimited" paid time off policies. Following is a summary of the new Ordinance's requirements:

Covered Employers

An Employer is defined under the Ordinance as any person who employs at least one employee.

Covered Employees

A Covered Employee is an employee (including part-time employees) who, in any particular two-week period, performs at least two (2) hours of work for an Employer while physically present in Chicago. Time spent traveling in Chicago is compensated time, including, but not limited to, deliveries, sales calls and travel related to business activity. Domestic workers, regardless of employment classification as an employee or independent contractor, are also Covered Employees.

Note: There is no eligibility requirement that a Covered Employee must work at least 80 hours for an Employer within a 120-day period (like under the Old Ordinance).

Accrual

Beginning January 1, 2024 (or on the first calendar day of a Covered Employee's employment thereafter), a Covered Employee accrues the following in each successive 12-month period:

- 1 hour of Paid Leave for every 35 hours worked, up to 40 hours of Paid Leave, and
- 1 hour of Paid Sick Leave for every 35 hours worked, up to 40 hours of Paid Sick Leave.

Covered Employees who are exempt from overtime requirements are assumed to work 40 hours per week for accrual purposes, unless the Covered Employee's normal work week is under 40 hours, in which case the accrual is based on that normal work week.

Leave must accrue only in hourly, and not fractional, increments.

Note: *Employers must have a written policy explaining accrual rate .*

Use of Paid Leave and Paid Sick Leave

A Covered Employee may use Paid Leave for any reason.

A Covered Employee may use Paid Sick Leave under the same circumstances as under the Old Ordinance, including when:

1. The Covered Employee of their family member is ill, injured, or receiving Professional Care (which includes preventative care, diagnosis, or treatment for medical, mental, or behavioral issues, including substance use disorders);
2. A Covered Employee's family member is ordered to quarantine, or the Covered Employee must care for a family member receiving Professional Care;
3. The Covered Employee or their family member is a victim of domestic violence, a sex offense, or human trafficking;
4. The Covered Employee's place of business is ordered closed by a public official due to a public health emergency;
5. The Covered Employee needs to care for a family member whose school, class, or place of care has been closed;
6. The Covered Employee obeys an order issued by the Mayor, the Governor of Illinois, the Chicago Department of Health, or a treating health care provider, requiring the Covered Employee to:
 1. Stay at home to minimize the transmission of a communicable disease;
 2. Remain at home while sick or experiencing symptoms of a communicable disease;
 3. Obey a quarantine order issued to the Covered Employee;
 4. Obey an isolation order issued to the Covered Employee.

Although regulations may be forthcoming, the Ordinance does not define "family member."

Carryover

At the end of their 12-month accrual period, Covered Employees may carryover accrued but unused paid leave as follows:

- Up to 16 hours of Paid Leave, *and*
- Up to 80 hours of Paid Sick Leave.

The Employer does not need to pay the Covered Employee for any unused, accrued Paid Leave/Paid Sick Leave lost because it could not be carried over (unless a Covered Employee did not have "meaningful ... access" to use such time).

Timing of Use

Employees must be allowed to use accrued paid leave as follows:

- Paid Sick Leave: no later than their 30th calendar day of employment
- Paid Leave: no later than their 90th calendar day of employment

Unless obligated by other law or ordinance, a Covered Employee may choose whether to use Paid Sick Leave or Paid Leave before using any other leave provided by the Employer, or by law or ordinance.

Minimum Increments

Employers may set reasonable minimum increments for use of leave that may not exceed:

- 4-hour increments for Paid Leave

- 2-hour increments for Paid Sick Leave

If a Covered Employee's scheduled workday is less than the minimum increment, the minimum increment cannot exceed the Covered Employee's regular scheduled workday.

Notice of Need for Paid Leave and Paid Sick Leave

For Paid Leave, an Employer can require reasonable notice, which may not exceed 7 days, before using Paid Leave. An Employer can also require a Covered Employee to obtain reasonable preapproval so that it can maintain the continuity of its operations. Rules regarding such reasonable preapproval (which seems inconsistent with the max of 7 days' notice) should be forthcoming.

For Paid Sick Leave, if a Covered Employee's need for Paid Sick Leave is reasonably foreseeable, an Employer may require up to 7 days' notice before leave is taken. If such leave is not reasonably foreseeable, an Employer may require the Covered Employee to give notice as soon as practicable on the day on which leave is intended by notifying the Employer, including by telephone, e-mail, or other means. Like with the Old Ordinance, Employers maintain the right to request documentation for use of Paid Sick Leave when the Covered Employee is absent *for more than three consecutive workdays*.

Rate of Pay and Continuation of Health Insurance

Paid Leave and Paid Sick Leave are compensated at the same rate that the Covered Employee regularly earns during hours worked. For non-exempt Covered Employees, their rate is calculated by dividing the Covered Employee's total wages by their total hours worked in full pay periods of the prior 90 days of employment. Wages, for purposes of this calculation, exclude overtime pay, premium pay, gratuities and commissions, but the rate must be at least the highest applicable minimum wage.

Employers must maintain health insurance coverage for the Covered Employee (and any covered family members) for the duration of the leave.

Note: Employers must notify Covered Employees if they will still be responsible for paying the Covered Employee's share of the cost of health care coverage while on Paid Leave/Paid Sick Leave.

Timing of Payment

Employers must provide payment for Paid Leave and Paid Sick Leave no later than the next regular payroll period after the paid time off was taken.

No-Fault Attendance Policies

The Ordinance prohibits employers from counting the use of Paid Leave/Paid Sick Leave under an attendance-control policy (such as a no-fault attendance policy).

Payout of Paid Leave at Termination of Employment or Transfer Out of Chicago

Unless otherwise provided in a collective bargaining agreement, when a Covered Employee's employment terminates (or when a Covered Employee is transferred outside of Chicago), the Employer must pay the monetary equivalent of all unused, accrued Paid Leave (but not Paid Sick Leave, which need not be paid out) as part of the Covered Employee's final compensation at the Covered Employee's final rate of pay.

However, a Small Employer (less than 50 employees) shall not be required to pay out unused Paid Leave upon termination/transfer. A Medium Employer (51-100 employees) must pay out unused Paid Leave up to a maximum of 16 hours until December 31, 2024, at which time they must begin paying out all unused, accrued Paid Leave.

Existing Leave Policies

An Employer whose existing paid leave policy(ies) grant(s) Covered Employees Paid Leave and Paid Sick Leave “in an amount and a manner that meets or exceeds” the Ordinance’s requirements is not required to provide any additional Paid Leave/Paid Sick Leave. The meaning of “a manner” is not defined in the Ordinance and may be subject to a future regulation. At a minimum, the amount of leave must be at least 40 hours of vacation and 40 hours of sick leave (or 80 hours of PTO) per year and be usable for the reasons in the Ordinance.

Note, the Ordinance states that if a Covered Employee accrued Paid Sick Leave before January 1, 2024, and the Employer’s existing paid time off policy does not comply with the Ordinance’s requirements, then on January 1, 2024, the Paid Sick Leave that the Covered Employee is entitled to will roll over to the next 12-month period.

Frontloading

Employers may opt out of accruing Paid Leave and Paid Sick Leave by granting employees 40 hours of Paid Leave and 40 hours of Paid Sick Leave on their first day of employment or the first day of their 12-month accrual period. The Ordinance states that the Employer need not carryover unused Paid Leave to a subsequent 12-month period if it frontloads Paid Leave. There is no mention of carryover of Paid Sick Leave in this section, so presumably it must still be carried over.

Unlimited Paid Time Off (PTO) Policies

Some employers use unlimited paid time off (PTO) policies. If the Employer grants such unlimited PTO on the first day of employment, then it does not have to accrue Paid Leave/Paid Sick Leave nor allow it to be carried over.

However, unless otherwise provided in a collective bargaining agreement, upon a Covered Employee’s termination of employment or transfer out of Chicago, an Employer with an unlimited PTO policy must pay the employee the difference between the monetary equivalent of 40 hours of PTO less the PTO the employee has taken in the last 12-month period prior to termination/transfer. Also, if a Covered Employee has used more than 40 hours of PTO in the last 12-month period prior to termination of employment, they cannot be required to repay any PTO.

Application to Collective Bargaining Agreements

The Ordinance does not apply to construction industry employees covered by bona fide collective bargaining agreements. The Ordinance also does not apply to employees covered by bona fide collective bargaining agreements in effect on January 1, 2024. After that date, the Ordinance’s requirements may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in the agreement in clear and unambiguous terms.

Notice and Posting

There are a number of notice/posting requirements under the Ordinance:

- Posting: Employers must post in a conspicuous place at each facility where any Covered Employee works a notice advising of their right to paid time off under the Ordinance (a form will be provided by the City). Employers who do not maintain a worksite within Chicago and households that serve as a worksite for domestic workers are exempt from the posting requirements.
- Notice on Hiring: Employers must provide Covered Employees with written notice of the Employer’s leave policy, including notification requirements, at the commencement of employment or within five calendar days prior to any change in the policy requirements. Employers must provide Covered Employees with a 14-day written notice of changes to a policy that affects a Covered Employee’s right to final compensation for such leave.
- Notice with First Paycheck and in July: With the first paycheck to a Covered Employee and annually with a paycheck issued in July, every Employer must provide a notice advising a Covered Employee of their right to paid time off under the Ordinance. The above-mentioned form from the City will satisfy this requirement.
- Each Paycheck: Each time wages are paid, an Employer must provide a Covered Employee written notification stating the updated amount of Paid Leave and Paid Sick Leave available to the Covered Employee, as well as the accrual rates for each leave. Employers that credit the applicable leave on a monthly basis may provide such notice on a monthly basis as long as it

includes the accrued paid time off since the last notification, reduced paid time off since the last notification and any unused paid time off available for use. Employers may choose a reasonable system for providing this notice, including but not limited to, listing available leave on each pay stub or developing an online system accessible to Covered Employees.

Violations and Private Cause of Action

Fines: Employers who violate the Ordinance or related regulations will be fined between \$1,000 and \$3,000 for each offense (posting and annual notice violations carry fines of \$500 for the first offense and \$1,000 for subsequent violations). Employers are also liable to Covered Employees for three times the amount of any leave denied or lost due to a violation.

Private Right of Action: Employers who violate the Ordinance are liable to the Covered Employee for damages three times the amount of leave denied or lost due to a violation, along with interest on that amount at the prevailing rate, as well as costs and reasonable attorney's fees. Covered Employees may sue in private action to recover such damages, plus interest, costs and reasonable attorney's fees.

Retention of Records

Employers must maintain the following for at least five years, or for the duration of any claim, civil action or investigation pending pursuant to the Ordinance, whichever is longer:

- A record of each Covered Employee's name and addresses;
- Hours worked;
- Pay rate;
- Wage agreement;
- Number of paid time off hours earned for each year and the dates on which paid time off hours were taken and paid; and
- Records necessary to demonstrate compliance with the Ordinance.

Employers must also provide each Covered Employee a copy of their records upon request.

Interaction with Illinois Paid Leave for All Workers Act

As a reminder, the Illinois Paid Leave for All Workers Act (the Act) – which requires employers to provide 40 hours of paid leave annually – becomes effective on January 1, 2024. The Act states that its provisions do not apply to any employer that is covered by a municipal or county ordinance that is in effect on January 1, 2024, and which requires employers to give any form of paid leave to their employees. Accordingly, Employers covered by the Chicago Ordinance – which is effective on December 31, 2023 – will not be covered by the Act.

The Upshot

To prepare for the Ordinance's December 31, 2023, effective date, employers should consider reviewing:

- Existing paid leave, paid sick leave, and "unlimited" paid time off policies for compliance with the Ordinance
- Pay rates for calculating paid time off for Chicago employees to comply with the Ordinance
- Payroll or other systems to ensure identification of compliant paid time off balances
- Employee Handbooks for accurate policies and procedures under the Ordinance

If you have any questions about the new Chicago Paid Leave and Paid Sick and Safe Leave Ordinance or your company's obligations under the Ordinance, please contact a member of Gould & Ratner's Human Resources and Employment Law Practice.