



May 26, 2020

# Chicago Passes COVID-19 Anti-Retaliation Ordinance

Human Resources & Employment

Last week, the Chicago City Council passed the COVID-19 Anti-Retaliation Ordinance, which aims to protect covered employees who remain at home if they have symptoms of COVID-19 or are following a stay-at-home or isolation order.

Effective immediately, employers may not terminate, demote or take any other adverse action against a covered employee for obeying an order issued by the Mayor, Governor of Illinois, Chicago Department of Public Health or, where applicable, a treating healthcare provider that requires the employee to:

1. Stay at home to minimize the transmission of COVID-19;
2. Remain at home while experiencing COVID-19 symptoms or sick with COVID-19;
3. Obey a quarantine order issued to the employee;
4. Obey an isolation order issued to the employee; or
5. Obey an order issued by the Commission of Health regarding the duties of hospitals and other congregate facilities.

While most of Illinois will move to Phase 3 of the state's re-opening plan on May 29, 2020, Chicago will not be re-opening on the same timeline. Accordingly, this ordinance could affect covered employees in Chicago who work at a business deemed non-essential by Illinois' stay-at-home order and have been asked to do more than minimum basic activities.

Employers are also prevented from taking adverse action against employees that stay home to care for an individual subject to 1, 2 or 3 above.

The ordinance uses the definition of "covered employee" found in Chicago's Minimum Wage and Paid Sick Leave Ordinance. Thus, with few exceptions, any employee who performs at least two hours of work for an employer within a two-week period while physically present within the City of Chicago is protected by the ordinance.

Employers who violate the ordinance may be subject to an action brought by the Commissioner of Business Affairs and Consumer Protection. Covered employees may also bring a civil action against an employer and may be entitled to damages equal to three times the full amount of wages that would have been owed had the retaliatory action not taken place, as well as any other actual damages caused by the retaliatory action and costs and attorney's fees. Wrongfully terminated employees may also seek reinstatement to the same or an equivalent position.

Under the ordinance, it is an affirmative defense that an employer relied on a reasonable interpretation of an order and cured any violation within 30 days.

The Anti-Retaliation Ordinance will remain in effect until the Commissioner of Public Health "makes a written determination that the threat to public health posed by COVID-19 has diminished to the point" where the ordinance can be safely repealed.