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# Cook County's New Paid Sick Leave Ordinance to Replace Earned Sick Leave



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Effective December 31, 2023, Cook County's new Paid Leave Ordinance (the Ordinance) will require employers to provide 40 hours of paid leave (i.e., leave that can be used for any reason) during a 12-month period. The Ordinance replaces the Cook County Earned Sick Leave Ordinance, which required employers to provide 40 hours of paid sick leave (i.e., leave which could only be used for illness, medical care, or in the event of domestic violence or a public health emergency).

The Ordinance applies to most employees working in Cook County, including domestic workers. It does not apply to independent contractors. Notably, several municipalities opted out of the Earned Sick Leave Ordinance. However, the Illinois Paid Leave for All Workers Act (PLAWA) states that municipalities opting out of local paid leave ordinances must comply with PLAWA's minimum requirements. Therefore, Cook County employers must comply with PLAWA if they do not comply with the Ordinance.

### 12-Month Period

The 12-month period may be any consecutive 12-month period designated by the employer in writing at the time of hire. Employers may change the designated 12-month period if advance written notice is given and the change does not reduce the eligible accrual rate and paid leave available to the employee.

### Accrual

Under the Ordinance, paid leave accrues at the rate of one hour for every 40 hours worked up to a minimum of 40 hours of paid leave. Employers may offer more than 40 hours of paid leave, but must maintain this minimum accrual rate. Exempt employees are deemed to work 40 hours in each workweek for accrual purposes unless their regular workweek is less than 40 hours (in which case paid leave accrues based on that regular workweek).

Employers may set a reasonable minimum increment for the use of paid leave not to exceed two hours per day.

### Frontloading

Employers may frontload 40 hours of paid leave, or a prorated amount based on a regular workweek, on the first day of an employee's employment or the first day of the applicable 12-month period. If an employer frontloads paid leave under the Ordinance, the employer is not required to carry over paid leave from one 12-month period to the next and may require employees to use all paid leave before the end of the benefit period or forfeit it.

### Carryover

If not frontloaded, accrued and unused paid leave carries over annually. However, employers may cap the actual use of paid leave at 40 hours in the 12-month period.

### **No Reason or Documentation Needed**

Employees may take paid leave under the Ordinance for any reason and do not need to give the employer a reason for leave or any documentation or proof to support the leave. Employees may also choose whether to use paid leave under the Ordinance before using any other leave provided by the employer or Illinois law.

### **Rate of Pay**

During paid leave, employees must be paid their hourly rate of pay. Employees who work jobs in which they are customarily and usually paid gratuities and commissions as part of their pay must be paid at least the applicable minimum wage during leave.

### **Start of Accrual**

Paid leave starts to accrue at the beginning of employment or on December 31, 2023, whichever is later. Employees may begin using their paid leave 90 days after the beginning of employment or 90 days after December 31, 2023 (i.e., March 30, 2024), whichever is later.

### **Notice of Leave**

Employees may provide oral or written requests in accordance with the employer's reasonable paid leave notice policy, which may include:

- If use of paid leave is foreseeable, the employer may require 7 calendar days' notice.
- If use of paid leave is not foreseeable, the employee must provide notice as soon as practicable after becoming aware of the need to take leave. Employers requiring written notice of unforeseeable leave must provide a written policy that contains procedures for employees to provide the written notice.

Employers may not require employees to search for or find a replacement worker to cover the hours during which the employee takes paid leave.

### **Posting Requirements for Employers**

Employers must post the employees' paid leave rights and information regarding filing a charge under the Ordinance in a conspicuous place where notices to employees are customarily posted at each site within Cook County where an employee works by December 31, 2023. The Cook County Commission on Human Rights (the Agency) will make available a form notice that satisfies the posting requirements. At the beginning of employment, employers must also provide employees with written notice advising them of their paid leave rights under the Ordinance.

Employers that offer paid leave on an accrual basis must provide notice of the amount of accrued or used paid leave upon an employee's request in accordance with the employer's reasonable paid leave notification policy.

### **Recordkeeping and Preservation**

Employers must make and preserve records documenting hours worked, paid leave accrued and taken, and remaining paid leave balance for each employee for a period of at least three years and must allow the Agency access to these records at reasonable times during business hours to monitor compliance with these requirements.

### **Existing Leave Policies and Unused, Accrued Leave**

Employers who provide any type of paid leave policy that satisfies the minimum amount of leave required by the Ordinance are not required to modify their policies if the policies offer employees the choice to take paid leave for any reason.

Unused, accrued paid leave under the Ordinance does not need to be paid out to employees at separation from employment. However, unless otherwise provided in a collective bargaining agreement (CBA), the Ordinance does not waive or limit an

employee's right to be paid out unused, accrued time off under the terms of an employment contract or policy, per the Illinois Wage Payment and Collection Act.

Thus, if an employer's paid leave policy merely reflects the Ordinance's requirements, unused, accrued leave does not need to be paid out at separation. But voluntary vacation and PTO policies will still need to meet existing payout at separation requirements.

### **Application to Collective Bargaining Agreements**

The Ordinance does not impact any CBA in effect until January 1, 2024, but after that date, the Ordinance's requirements may only be waived if done so explicitly in the CBA in clear and unambiguous language. The Ordinance does not apply to any employee in the construction industry covered by a CBA.

### **Enforcement and Penalties**

Employees may bring civil actions in court or file an administrative complaint with the Agency. The statute of limitations for such suits or complaints is three years from the date of the last violation for which the action is brought. In court, employees may recover damages equivalent to three times the full amount of any unpaid paid leave denied or lost due to an employer's violation of the Ordinance, interest on the damages at the prevailing rate, and costs and reasonable attorney's fees. When complaints are filed with the Agency, employers in violation of the Ordinance are liable to the affected employee for the actual damages of underpayment, compensatory damages and a penalty between \$500 and \$1000.

Beginning January 31, 2024, the Agency may also impose civil penalties for any violation of the Ordinance, including \$2,500 for each separate offense.

### **The Upshot**

Employers covered by the Ordinance should review their leave policies to ensure compliance. Over the coming months, the Agency is expected to propose and enact regulations related to the Ordinance that may necessitate further updates to employment policies. Employers should keep apprised of any updated notice or guidance from the Agency.

*For more information about Cook County's new Paid Leave Ordinance, please contact a member of Gould & Ratner's Human Resources and Employment Law Practice.*