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Illinois Enacts New Paid Leave Law



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On March 13, 2023, Illinois became only the third state to mandate paid time off for all workers in the state when it enacted the Paid Leave for All Workers Act. The act is effective January 1, 2024.

Under the act, covered employers must provide employees with up to 40 hours of paid leave during a 12-month period. The act applies to all private sector employers, regardless of size, but it excepts from coverage seasonal workers and college students working temporary jobs for their universities. In addition, employees who are covered under the Chicago or Cook County paid sick leave ordinances will continue to be covered by those existing laws rather than the act. *Importantly, for employers with existing paid leave programs (such as a PTO policy), that existing leave program will satisfy the requirements of the act if (1) employees have at least 40 hours of paid time off in a 12-month period and (2) can take leave for any reason.*

In a statement, Gov. J.B. Pritzker said, “Employers benefit from allowing employees to tend to the urgent personal matters of their lives. Workers’ productivity increases, and they often gain greater passion for their job when they can manage the stresses they face outside work. I’m exceptionally proud that labor and business came together to recognize the value of this requirement to employees and employers alike.” The governor’s office also stated that “approximately 1.5 million workers will begin earning paid time off starting in 2024.”

Accrual, Front-Loading and Carry Over

Under the act, employees must accrue at least one hour of paid leave for every 40 hours worked, up to a total of 40 hours in a designated 12-month period (for employees exempt under the FLSA, they are deemed to work 40 hours each week). Accrual of leave must start on the first day of employment or the effective date of the act, whichever is later.

While any unused paid leave at the end of the 12-month period must be carried over into the next 12-month period, employers do have the option to provide all 40 hours of leave on at the beginning of the 12-month period (called “front-loading”). If an employer “front-loads” the full 40 hours of paid leave at the beginning of the 12-month period, then it does not need to carry over accrued but unused paid leave to the next 12-month period.

In no event is an employer required to provide more than 40 hours of paid leave in a year (such that paid leave which has been carried over would only be available for use if the employee did not accrue a full 40 hours of paid leave in the applicable 12-month period).

Use of Paid Leave

Employees can use paid leave for any reason, do not have to explain the reason for their absence and cannot be required to provide documentation or certification as proof or for support. Employers must permit employees to begin using their accrued paid time off

no later than 90 days following commencement of their employment or 90 days following the effective date of the act, whichever is later. Employers can determine the minimum increment in which such leave can be taken, as long as the minimum increment is not larger than two hours.

Notice of Leave

If the use of paid leave is foreseeable, employers may require employees to provide at least seven days' notice of the intent to use leave. If leave is not foreseeable, then employees must provide notice as soon as practicable and to comply with the employer's written notice procedure. Employers cannot require employees to find replacements for their leave.

Pay for Leave

Employers must pay employees their regular hourly rate of pay while on leave (tipped workers must be paid at least the minimum wage in their respective locale) but are not required to pay employees for accrued but unused paid leave upon termination of employment. *However, if an employer is using an existing PTO policy to cover the act's requirements, then the employee would be entitled to be paid for any accrued but unused PTO upon termination of employment in accordance with the Illinois Wage Payment and Collection Act.*

Adopting New or Updating Existing Leave Policies

The act effectively mandates that all Illinois employers review their existing leave policies to ensure compliance (or adopt a paid leave policy if none exists). For example, an employer must have a policy outlining the applicable 12-month period, the minimum increment for use of paid leave, the call-off procedures for unforeseeable leave and whether paid leave under the act is being "charged or credited to" the employer's existing leave policy (such as PTO). Employers must also post the poster that will be issued by the Illinois Department of Labor.

If you would like more information or want to discuss these issues further, please contact a member of Gould & Ratner's [Human Resources and Employment Law Practice](#).