

August 23, 2021

What Employers Need to Know About Updated Mandated Sick Leave Policies for Illinois and Chicago

Human Resources & Employment

Chicago and Illinois employers should be aware of three recent changes affecting mandated sick leave benefits for employees. In April, Gov. J.B. Pritzker signed into law an amendment to the Employee Sick Leave Act. The amendment, which took effect immediately, expanded coverage for employees. Additionally, as of July, Chicago's Paid Sick Leave Ordinance now includes an action for wage theft. Finally, on August 1, coverage for employees expanded under Chicago's Paid Sick Leave Ordinance.

Illinois Employee Sick Leave Act (ESLA)

Who must comply?

All Illinois employers (with some exceptions).

What does the law require?

Where sick leave benefits are provided by the employer, the employer must permit the use of that sick leave for "absences due to an illness, injury, or medical appointment of the employee's child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent, or for personal care of a covered family member on the same terms upon which the employee is able to use personal sick leave benefits for the employee's own illness or injury."

What changes were made?

The ESLA, which has been law since 2017, already provided that sick leave could be used for a family member's illness. The amendment expands usage to include "personal care" as well. "Personal care" is defined as "activities to ensure that a covered family member's basic medical, hygiene, nutritional, or safety needs are met, or to provide transportation to medical appointments, for a covered family member who is unable to meet those needs himself or herself. Personal care also means being physically present to provide emotional support to a covered family member with a serious health condition who is receiving inpatient or home care."

Note that employers may limit the use of sick leave for the purpose of taking care of a family member to an amount "not less than the personal sick leave that would be earned or accrued

during 6 months at the employee's then current rate of entitlement." As an example, if an employer offered 40 hours of accrued paid sick leave per year, it could limit paid sick leave to tend to the illness, injury or personal care of a family member to 20 hours per year.

Chicago Paid Sick Leave Ordinance (PSLO)

Who must comply?

All employers who employ an individual who, in any particular two-week period, performs at least two hours of work for the employer while physically present in Chicago (with some exceptions).

What does the law require?

Unlike the ESLA, the PSLO *requires* covered employers to offer *paid* sick leave (or an equivalent policy that is as generous or more generous) to covered employees who work at least 80 hours within any 120-day period. Paid sick leave must accrue at a minimum rate of 1 hour per 40 hours worked, with a cap at 40 hours in a 12-month period (a carry-over of up to 20 hours of unused accrued paid sick leave is also permitted).

What changes were made?

The PSLO created a new avenue of relief for covered employees alleging wage theft under the statute. As of July 5, 2021, employees may file a claim with the Chicago Office of Labor Standards or in state court. Employers found in violation of the PSLO will owe the amount underpaid as well as an additional penalty.

Additionally, the PSLO also expanded coverage for employees. As of August 1, 2021, paid sick leave for covered and eligible employees now may be used for the employee (or family member's) mental or behavioral care and substance abuse disorders. Leave for victims of domestic violence is now expanded to cover trafficking survivors.

Also, in response to the ongoing COVID-19 pandemic, employees may use paid sick leave to care for a family member who is quarantined or to stay home themselves, where "the governor, the Chicago Department of Public Health, or a treating healthcare provider" requires the employee to stay at home, quarantine or isolate. Where the employee's workplace is closed by order of a public official due to a public health emergency, or where the covered employee needs to care for a family member whose school, class or place of care has been closed, paid sick leave may also be used.

Tips for Employers

Illinois and Chicago employers may have obligations under the ESLA or PSLO, including requirements triggered by the COVID-19 pandemic's effects. Employers should revisit their sick leave policies, including any PTO or hybrid policies, to ensure compliance.

For more information about sick leave policies or HR impacts of COVID-19, contact a member of Gould & Ratner's [Human Resources & Employment Law Practice](#).