

City of Chicago Significantly Expands Paid Leave Requirements Starting December 31, 2023

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On November 9, 2023, the Chicago City Council passed the Paid Leave and Paid Sick and Safe Leave Ordinance (Ordinance). This new Ordinance replaces the prior Chicago Paid Sick Leave Ordinance. The Ordinance provides covered employees with at least 40 hours of paid leave and 40 hours of paid sick leave. Employers will be expected to abide by the new requirements beginning December 31, 2023, and could be subject to daily fines for noncompliance.

Which employees are covered by the Ordinance?

The Ordinance encompasses all employees that perform at least two hours of work within the boundaries of the city of Chicago, regardless of the size or location of the employer.

What are the general requirements of the Ordinance?

Under the Ordinance, employers must provide at least 40 hours of paid sick leave and 40 hours of paid leave to covered employees. Employers that already provide paid leave and paid sick leave in an amount that meets or exceeds the requirements of the Ordinance do not need to provide any additional paid leave and paid sick leave but must otherwise conform the terms of their policies to the requirements of the Ordinance.

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Practice Areas

ERISA, Disability and Leave
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What is the rate of pay used by the Ordinance for calculating paid time off?

The rate of pay used by the Ordinance for determining the paid leave is the employee's regular rate of pay. Paid leave and paid sick leave for non-exempt employees must be calculated by dividing the employee's total wages by their total hours worked in the full pay periods of the prior 90 days of employment. Wages do not include overtime pay, premium pay, gratuities or commissions, but must be at least the highest applicable minimum wage among federal, state, and City minimum wage requirements.

What are the accrual and carry over requirements?

An employee accrues one hour of paid sick leave and one hour of paid leave for every 35 hours worked. Accrual for both paid leave and paid sick leave is capped at 40 hours in a 12-month period; however, employers can provide more time if they wish. Leave must accrue in one hour increments and may not accrue fractionally. Employers may set minimum increments for use of leave – up to 4-hour increments for paid leave and up to 2-hour increments for paid sick leave

Although less clear from the Ordinance, the 12-month period appears to begin on January 1, 2024, for current employees, while for employees hired after January 1, 2024, the 12-month period would begin on their hire date.

Employers must allow workers to use any accrued paid sick leave beginning 30 days after their first day of employment and any accrued paid leave beginning 90 days after their first day of employment. At the end of the 12-month period, employers must also allow employees to carry over up to 80 hours of sick leave and 16 hours of paid leave.

However, if employers deny employees the use of paid leave or paid sick leave in a way that deprives them of "meaningfully having access" to such time, despite employees' compliance with the employer's policy, then employers must allow employees to increase their carryover to account for such denied time off.

Can employers front load their paid leave policies?

Yes, rather than using the accrual method, employers may choose to front load their paid leave policies by making the 40 hours of paid leave and 40 hours of paid sick leave immediately available to workers at the beginning of the 12-month period. If employers front load their paid leave or have unlimited paid leave, then the employers are not required to allow the employee to carryover any unused paid leave hours.

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Note: Regardless of whether an employer front loads paid sick leave, covered employees must be allowed to carry over up to 80 hours of accrued, unused paid sick leave to the next 12-month period.

How may the paid leave and paid sick leave be used?

For paid leave, employees may use paid leave for any purpose. Employers may not require employees to give a reason for using paid leave or submit any documentation for such leave.

For paid sick leave, employees may use paid sick leave for the reasons set forth in the original Chicago Paid Sick Leave ordinance, which include:

- The employee is ill or injured, or for the purpose of receiving professional care, including preventive care, diagnosis, or treatment, for medical, mental, or behavioral issues, including substance use disorders;
- The employee's family member is ill, injured, or ordered to quarantine, or to care for a family member receiving professional care, including preventive care, diagnosis, or treatment, for medical, mental, or behavioral issues, including substance use disorders;
- The employee, or employee's family member, is the victim of domestic violence, or a sex offense, or trafficking in persons
- The employee's place of business is closed by order of a public official due to a public health emergency, or the employee needs to care for a family member whose school, class, or place of care has been closed.
- An employee obeys an order issued by the Mayor, the Governor of Illinois, the Chicago Department of Public Health, or a treating healthcare provider, requiring the employee to:
 - Stay at home to minimize the transmission of a communicable disease;
 - Remain at home while sick or experiencing symptoms of a communicable disease;
 - Obey a quarantine order issued to the employee; or
 - Obey an isolation order issued to the employee.

If the paid sick leave lasts longer than three consecutive work days, the employer may request documentation from the employee regarding the use of the paid sick leave.

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Do employees have to provide notice to employers before using the leave?

For paid leave, employers may require employees to give reasonable notice, which may not exceed 7 days, and may require “reasonable preapproval” for the use of paid leave for business continuity purposes, subject to certain limitations.

For paid sick leave, if an employee’s need for paid sick leave is foreseeable, an employer can require that the employee provide up to 7 days’ notice for such leave. If the need for paid sick leave is not reasonably foreseeable, an employee must give notice as soon as practicable on the day the employee intends to take paid sick leave.

What are the notification obligations of employers under the Ordinance?

Employers must have a written paid leave and paid sick leave policy and notify employees of the following each time wages are paid:

- The amount of paid leave/paid sick leave available,
- The time the employee has used, and
- The accrual rates.

An employer can opt to comply with this provision by making this information available for an employee to access through an online system or portal.

Written paid leave policies must be provided to employees at the start of employment and a notice of any changes to paid leave policies must be provided within 5 days *in advance* of the change taking effect. Also, required posters to be provided by the City will need to be placed in a conspicuous location once available by the City. Employers who do not maintain a worksite in Chicago are exempt from the posting requirement.

Does the Ordinance require employers to pay out unused accrued time?

Regarding paid sick leave, employers are not required to pay out any accrued sick leave time at the end of employment.

Regarding paid leave, the Ordinance requires that employers with more than 100 employees pay their workers for any unused paid leave available under the Ordinance at the end of the worker’s employment, even when a worker is terminated from employment for cause. Employers with 51 to 100 employees will be

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required to pay out up to sixteen hours, or 2 days, of accrued paid leave in 2024; however, in 2025 these employers will be required to pay out all unused and accrued paid leave available under the Ordinance. Under the Ordinance, there is no pay out requirement for employers with 50 or fewer employees.

Employers are not required to pay out any leave time that is forfeited because it could not be rolled over to the next 12-month period.

However, the Ordinance does not change the application of the Illinois Wage Payment and Collection Act, which requires accrued but unused paid vacation and paid leave to be paid upon termination of employment.

Does the Ordinance apply to collective bargaining agreements?

The Ordinance does not apply to an employee working in the construction industry who is covered by a bona fide collective bargaining agreement. For other unionized employees, the Ordinance does not apply if the collective bargaining agreement is in effect on January 1, 2024. Thereafter, the Ordinance's requirements may be waived if the agreement contains an explicit waiver in clear and unambiguous terms.

Other than through a collective bargaining agreement, employees may not waive their rights under the Ordinance.

Are there penalties for noncompliance?

Yes. If found in violation of the Ordinance, employers could be fined \$500 to \$3,000 for each offense, with each day of violation constituting a separate offense.

Additionally, the Ordinance provides for a private cause of action against employers that violate the Ordinance. Under the Ordinance, violating employers will be liable for damages to the affected covered employee equal to three times the full amount of any leave denied or lost by reason of the violation, with interest, as well as reasonable attorney's fees. For violations of the paid sick leave provisions, such right to private cause of action shall be available on December 31, 2023. For paid leave provisions, a private cause of action shall not be available until January 1, 2025.

What steps should my company take to comply with the Ordinance?

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As this Ordinance goes into effect in less than two months, on December 31, 2023, employers with workers in Chicago should consider taking the following action steps:

- Review and update paid leave and paid sick leave policies to determine whether they meet or exceed the Ordinance requirements.
- Update payroll practices to conform with the notification requirements of the Ordinance.
- Review rate of pay calculations to ensure that employees are receiving the proper amount of compensation during their paid leave.

To reduce the risk of a violation, please consult with your Laner Muchin attorney to ensure your policies and practices are in line with this Ordinance.