CLIENT ALERTS & INSIGHTS

# Chicago Employers Take Note: Draft Rules for Chicago's Expansive Paid Leave and Paid Sick Leave Ordinance Published

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In mid-November, the City of Chicago passed the broadest, most expansive leave law in the country. As previously highlighted by Benesch, the Chicago Paid Leave and Paid Sick and Safe Leave Ordinance (the "Ordinance") allows employees working within the City of Chicago to accrue (1) 40 hours of paid sick leave per 12-month accrual period ("Paid Sick Leave"); and (2) 40 hours of paid leave usable for any reason per 12-month accrual period ("Paid Leave"). Further, despite being passed in mid-November, the Ordinance takes effect on December 31, 2023, giving employers just weeks to ensure compliance with the Ordinance's new, considerably broad requirements.

The Ordinance's passage left employers with more questions than answers, especially in light of the December 31 effective date. In early December, however, the Chicago Department of Business Affairs and Consumer Protection published proposed rules regarding the Ordinance. These proposed rules do not answer every question, but they do provide additional clarification in the weeks leading up to the Ordinance's effective date. Below, please see a summary of the proposed rules' most pertinent provisions.

**Accrual**

First, the proposed rules establish that only hours actually worked within the City of Chicago count toward accrual of Paid Leave. The Ordinance itself applies only to employees who work at least two hours in any two-week period within the City of Chicago, but the proposed rules now make clear that only those hours actually worked in the City of Chicago are counted for purposes of accruing Paid Leave (notably, the proposed rules are silent on which hours are counted for accrual of Paid *Sick* Leave).

Next, the proposed rules explain that employers can choose to immediately frontload Paid Leave and/or Paid Sick Leave at the beginning of employment or benefit year. An employer may do this by granting 40 hours of Paid Leave and/or Paid Sick Leave no later than 90 days after a covered employee begins working for the employer and at the same time each following year. If an employer chooses to frontload these hours, then the employer does not have to follow the requirements of accrual and carryover.

**Carryover**

First, if an employer does not frontload, the employer must allow covered employees to carry over up to 16 hours of unused, accrued Paid Leave into the next benefit year. Similarly, if an employer does not frontload, the employer must allow covered employees to carry over up to 80 hours of unused, accrued Paid Sick Leave into the next benefit year.

Next, if an employee carries over Paid Leave and/or Paid Sick Leave to a new year, accrual of such leave in the new year is in addition to the hours accrued in the previous year. For example, if an employee carries over 16 hours of Paid Leave to a new year, that employee can still accrue 40 hours of Paid Leave in that new year, accruing up to 56 hours of Paid Leave in a single year.

**Usage**

Employees are eligible to use Paid Leave by the 90$^{th}$calendar day following the commencement of employment and are eligible to use Paid Sick Leave by the 30$^{th}$calendar day following commencement of employment. This applies regardless of whether the employer allows employees to accrue such leave or frontloads the leave.

**Payment of Paid Leave and Paid Sick Leave**

Upon termination of employment, an employer is not required to pay out accrued, unused Paid Sick Leave.

However, employers might be required to pay out accrued, unused Paid Leave depending on the size of the employer:

- Small employers (1-50 covered employees) are not required to pay out unused Paid Leave upon termination.
- Medium employers (51-100 covered employees) are required to pay out up to 16 hours of Paid Leave upon termination through December 31, 2024. On or after January 1, 2025, medium employers must pay out all unused Paid Leave upon termination.
- Large employers (over 100 covered employees) must pay out all accrued, unused Paid Leave upon termination.

**Company Policy**

Under the Ordinance, any policies made in accordance with the Paid Leave and/or Paid Sick Leave requirements should be made available in English and in any additional language spoken by covered employees. These policies should appear in an employee handbook, manual, or separate document.

An employer's Paid Leave policy may require a covered employee to give reasonable notice of use of Paid Leave, but it may not exceed seven days before use of Paid Leave. Further the Paid Leave policy may require a covered employee to obtain reasonable pre-approval from the employer before using Paid Leave.

An employer's Paid Sick Leave policy may require a covered employee to provide certification for the use of Paid Sick Leave if the covered employee is absent for more than three consecutive

workdays. But, an employer may not delay the use of Paid Sick Leave nor the payment of accrued Paid Sick Leave wages, on the basis that the employer has not received certification.

**Employee Records**

Per the proposed rules, employers must maintain employee records containing specific information for a period of not less than five years, and such records must be made available for inspection upon request by the Department. For purposes of the Ordinance, the relevant information to include is:

1. Date each covered employee was eligible to use Paid Time Off;
2. Date each covered employee was eligible to use Paid Sick Leave and Safe Leave;
3. Number of hours of Paid Time Off accrued by or awarded to each covered employee;
4. Number of hours of Paid Sick Leave and Safe Leave accrued by or awarded to each covered employee;
5. Date and number of hours each covered employee used Paid Time Off;
6. Dates and number of hours each covered employee used Paid Sick Leave and Safe Leave.

**Notice and Posting**

There are several notice and posting requirements addressed by the proposed rules. First, employers must post a notice prepared by the Department through the employer's usual methods of communication for such notices (either electronically or with paper). If posting on a paper, the notice must be printed on and scaled to fill a sheet of paper that measures 11 x 17 inches. All such notices must be posted in English and other languages if a significant portion of workers are not literate in English. **Note: the Department has yet to provide this required posting online.**

Next, the notice that employers provide to employees with covered employees' first paycheck, which advises employees of their rights under the Ordinance, must be printed on and scaled to fit a sheet of paper that measures 8.5 x 11 inches. But, if an employee is enrolled in direct deposit and does not receive a physical paycheck, the notice can be provided through email or other internal channels. This notice should be provided on an annual basis with the first paycheck on or following July 1.

**Additional Guidance**

Finally, the proposed rules offer some additional guidance on various other issues.

First, the Ordinance's requirements do not apply if they are explicitly waived, in clear and unambiguous terms, in a bona fide collective bargaining agreement. If a collective bargaining agreement is silent, then the Ordinance controls.

Second, day laborers are considered "employees" for purposes of the Ordinance. Thus, day laborers who perform at least two hours of work for an employer within the City of Chicago are covered employees under the Ordinance.

Lastly, employers are not required to allow the use of Paid Leave or Paid Sick Leave when a covered employee has been suspended or placed on leave for disciplinary reasons.

Although the proposed rules address some questions and ambiguities, employers will likely have to make many changes in the weeks leading up to the Ordinance's effective date of December 31, 2023. Benesch attorneys are prepared to assist employers as they prepare to navigate and undertake the Ordinance's requirements.

**For more information, contact a member of the firm's Labor & Employment Practice Group.**

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