CLIENT ALERTS & INSIGHTS

Chicago Enacts New Paid Leave Ordinance for 2024, Taking Effect Alongside the Illinois Paid Leave for All Workers Act

NOVEMBER 15, 2023

Authors: Margo Wolf O'Donnell, Charles B. Leuin, Elsa Schulz

Illinois and Chicago employers should prepare for new leave laws going into effect imminently. As previously highlighted by Benesch, Governor J.B. Pritzker signed the Paid Leave for All Workers Act back in March 2023, giving employers some time to prepare for its January 1, 2024 effective date. The Chicago Paid Leave and Paid Sick and Safe Leave Ordinance (the "Chicago Ordinance"), however, was just passed by the Chicago City Council on November 9, 2023 and has an effective date of December 31, 2023.

Before the passage of the Chicago Ordinance, Chicago-based employers did not have to consider any changes in leave requirements for 2024, as the Illinois Paid Leave for All Workers Act exempted employers from the City of Chicago. However, because the City of Chicago has passed a new leave ordinance of its own, Chicago-based employers must now update their leave policies on or before December 31, 2023.

Both the Illinois Paid Leave for All Workers Act and the Chicago Paid Leave and Paid Sick and Safe Leave Ordinance are discussed below.

Illinois Paid Leave for All Workers Act

As noted above, the Illinois Paid Leave for All Workers Act goes into effect January 1, 2024. Under this Act, Illinois employees can earn up to 40 hours of paid leave per year that can be used for any reason.

Under the Act, Illinois employees may begin using their paid leave 90 days following the commencement of their employment. This means that employees who are employed as of January 1, 2024 would be able to begin using their leave under the Act on March 31, 2024. Illinois employees may use the paid leave for any purpose and without fear of retaliation, and they do not need to provide a reason or documentation for the leave to employers. Further, Illinois employees can elect to use this paid leave prior to using any other employer-provided leave or other leave required by law.

Leave under the Act accrues at a rate of one hour for every 40 hours worked. Illinois employees may carry over unused leave from year-to-year, but they cannot accrue over 40 hours of such leave. In lieu of requiring employees to accrue leave under the Act, employers may "front-load" the 40 hours of leave on an employee's first day of employment or on the first day of a 12-month period.

Employers are not required to compensate employees for any unused paid leave upon termination of employment.

Employers must post a notice in physical and electronic format that summarizes the requirements of the Act. The Illinois Department of Labor will provide a copy of the required notice "by the end of 2023."

Employers that provide employees with paid sick leave in compliance with City of Chicago or Cook County ordinances will not be required to provide an additional 40 hours of paid leave. However, the Act does apply to employers with Chicago or Cook County-based employees who are not currently covered by those ordinances, including employers in cities that have opted out of the Cook County Ordinance. The Act also exempts employees covered by a collective bargaining agreement in effect as of January 1, 2024, if the parties agree to waive compliance with the Act. Finally, the Act also does not apply to (1) employees subject to coverage under the federal Railway Labor Act; (2) students enrolled in and regularly attending classes in a college or university that is also the students' employer on a temporary, part-time basis; or (3) short-term employees, employed by an institution of higher education for less than two calendar quarters and who do not have a reasonable expectation of being rehired in a subsequent year.

Employers that fail to post the required notice will be subject to a $500 fine for the first violation and a $1,000 fine for any subsequent violation. Employers that otherwise violate the Act will be subject to a fine of $2,500 for each separate violation.

Benesch attorneys are ready to assist employers as they prepare to undertake the requirements of the Illinois Act.

Chicago Paid Leave and Paid Sick and Safe Leave Ordinance

On November 9, 2023, the Chicago City Council passed the Chicago Paid Leave and Paid Sick and Safe Leave Ordinance (the "Chicago Ordinance"), which officially takes effect on December 31, 2023. The new Chicago Ordinance *replaces* Chicago's Paid Sick Leave Ordinance. The Chicago Ordinance covers employees who, in any two-week period, perform at least two hours of work within the boundaries of Chicago. Importantly, Chicago-based employees are not subject to the Illinois Act discussed above.

The Chicago Ordinance is one of the most generous paid time off laws in the country, entitling employees to (1) 40 hours of paid sick leave per 12-month accrual period ("Paid Sick Leave") to be used for the same reasons identified in the Chicago Paid Sick Leave Ordinance; and (2) 40 hours of paid leave-usable for any reason-per 12-month accrual period ("Paid Leave"). Employees may not use their Paid Sick Leave until they have completed 30 days of employment, and they may not use their Paid Leave until they have completed 90 days of employment.

Starting January 1, 2024 (or on an employee's first day of employment), employees will accrue one hour of Paid Sick Leave and one hour of Paid Leave for any reason for every 35 hours worked. In other words, for every 35 hours worked, an employee will accrue one hour of Paid Sick Leave *and* one hour of Paid Leave. For purposes of accrual under the Chicago Ordinance, exempt employees are presumed to work 40 hours per workweek.

From one 12-month accrual period to the next, employees can carry over up to 80 hours of Paid Sick Leave and up to 16 hours of Paid Leave. Employers may frontload up to 40 hours of Paid Sick Leave and up to 40 hours of Paid Leave on the first day of the 12-month accrual period. If the full 40 hours of Paid Leave are frontloaded at the beginning of the 12-month accrual period, unused Paid Leave time does not carry over from one accrual period to the next year However, the Chicago Ordinance does not address whether frontloading precludes the year-end carryover for Paid Sick Leave.

Because employees can accrue up to 40 hours of Paid Sick Leave per year, and may carry over up to 80 hours of Paid Sick Leave per year, this means that an employee could be entitled to use up to 120 hours of Paid Sick Leave. Similarly, because employees can accrue up to 40 hours of Paid Leave per year, and may carry over up to 16 hours of Paid Leave per year, this means that an employee could be entitled to use up to 56 hours of Paid Leave.

Employers are not required to pay out Paid Sick Leave upon termination of employment or upon transfer outside of the geographic limits of the City of Chicago. But, depending on an employer's size, it might have to pay out unused, accrued Paid Leave:

- Small employers (1-50 covered employees) are not required to pay out unused Paid Leave upon termination or transfer.
- Medium employers (51-100 covered employees) are required to pay out up to 16 hours of Paid Leave upon termination or transfer through December 31, 2024. Starting on January 1, 2025, these medium employers will be required to pay out all unused Paid Leave upon termination or transfer.
- Large employers (100+ covered employees) must pay out all unused Paid Leave upon termination or transfer.

If an employer provides "unlimited PTO," the employer does not need to track carryover of unused time. But, in the event of a termination or transfer, depending on the employer's size, it must pay the employees the monetary equivalent of 40 hours of paid time off less any amount actually used by the employee.

Employers must post a notice of employees' rights under the Chicago Ordinance in a conspicuous place, at each of their facilities within the City of Chicago. The Department of Business Affairs and Consumer Protection (the "Department") will provide a sample notice before the end of 2023. Further, employers must provide a notice of employees' rights on every covered employee's first paycheck and on an annual basis thereafter (within 30 days of July 1 every year). The Department will issue a sample notice.

Further, each time wages are paid, employers must provide employees with written notification that includes the amount of Paid Sick Leave and Paid Leave available for use under the Chicago Ordinance, as well as the accrual rates for each. This notice must also contain the amount of each type of leave accrued since the last notification and the amount of leave used since the last notification.

Under the Chicago Ordinance, employers may require up to seven days' advance notice of a foreseeable need for Paid Leave or Paid Sick Leave. If, however, the need for Paid Sick Leave is unforeseeable, employers may instead require notice as soon as practicable. This requirement will be waived if the employee is unable to give notice due to unconsciousness or incapacitation.

Employers may not require documentation for the use of Paid Leave. However, employers may require certification that Paid Sick Leave was used for a permissible reason for absences of more than three consecutive workdays. Some examples of reasonable documentation include:

- A document signed by a licensed healthcare provider;
- A court document;
- A police report;
- A signed statement from an attorney, member of the clergy, or a victim services advocate; or
- Any other document or evidence that supports the employee's claim.

Employers found to be in violation of the Chicago Ordinance will be liable to affected employees for damages, including three times the full amount of any leave denied or lost by reason of an employer violation, as well as interest at the prevailing rate and reasonable attorneys' fees. Employers found in violation will also be subject to a $1,000-$3,000 fine for each separate offense. Employers will be subject to a $500 fine for the first notice or posting violation and $1,000 for each subsequent notice or posting violation. Each day that a violation continues is considered a separate offense.

The Chicago Ordinance will likely require Chicago-based employers to make considerable changes to their leave policies-and soon. Chicago-based employers should seek legal counsel to ensure compliance with the Chicago Ordinance, which goes into effect on December 31, 2023. Benesch attorneys are ready to assist employers as they prepare to undertake the requirements of the Chicago Ordinance.

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

Margo Wolf O'Donnell at modonnell@beneschlaw.com or 312.212.4982.

Charles B. Leuin at cleuin@beneschlaw.com or 312.624.6344.

Elsa Schulz at eschulz@beneschlaw.com or 312.506.3423.