

LEGAL UPDATES

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Updated: Making Sense of Chicago's Paid Leave Ordinance

PRESSING PAUSE: CHICAGO EMPLOYERS GET AN ADDITIONAL SIX MONTHS TO MAKE SENSE OF CHICAGO'S PAID LEAVE ORDINANCE

In the late night hours of November 9, 2023, the City of Chicago passed the Chicago Paid Leave and Paid Sick and Safe Leave Ordinance, a first-of-its-kind piece of legislation requiring employers to provide up to 40 hours of “Paid Leave” and 40 hours of “Paid Sick Leave” per 12-month period.

Employers with Chicago-based employees are currently subject to the Chicago Paid Sick Leave Ordinance, requiring employers to provide up to 40 hours of paid sick leave to their covered employees. However, in addition to offering paid leave, this new ordinance fully replaces the current sick leave law, adding requirements for employers about how the leave shall be granted, carried over, and documented.

This ordinance will go into effect on December 31, 2023 and employers need to be ready. So, what’s new?

Eligibility

Currently: Under Chicago’s Paid Sick Leave Ordinance, a “covered employee” is defined as an employee who, in any two-week period, works at least two hours while physically present within the City of Chicago. Domestic workers are exempt.

New ordinance: Under the new ordinance, “covered employee” explicitly includes domestic workers, regardless of whether they are classified as employees, independent contractors, sole proprietors, or partnerships.

Accrual

Currently: Under Chicago’s Paid Sick Leave Ordinance, employees earn one hour of paid sick leave for every 40 hours worked.



New ordinance: Under the new ordinance, for every *35 hours* worked, an employee earns one hour of paid sick leave *and* one hour of paid leave. Employees are entitled to accrue time beginning on the employee’s first day of work. Employees may accrue up to 40 hours of paid leave and 40 hours of paid sick leave per 12-month period.



Carryover

Currently: Under Chicago's Paid Sick Leave Ordinance, employees may carry over half of the accrued, unused paid sick leave, up to a maximum of 20 hours.

New ordinance: Under the new ordinance, employees are allowed to carry over up to 16 hours of paid leave and up to 80 hours of paid sick leave.

Frontloading

Currently: Employers may frontload paid sick time, or in other words, grant employees all hours an employee is eligible to earn annually on their first day of work or at the beginning of a new 12-month period.

Under the current law, if an employer chooses to grant all 40 hours of benefit time on the first day of employment or the first day of the 12-month period, it is not required to provide any additional paid time off. This means carryover or additional accrual is not required (i.e., the maximum benefit time balance that an employee may have is 40 hours).

New ordinance: Under the new ordinance, employers may still choose to frontload these benefit hours. If an employer frontloads all 40 hours of paid leave, it is not required to provide any additional paid time off via carryover or additional accrual. Therefore, the maximum number of hours of paid

leave that an employee may have is 40 hours.

Employers who choose to frontload paid sick leave are still subject to the requirements of carryover. An employee with 80 hours in their paid sick leave balance is entitled to carry over that balance and receive the frontloaded grant of 40 hours (i.e., the maximum paid sick leave balance that an employee may have is 120 hours). The employee would only be allowed to carry over up to 80 hours to the next 12-month period.

Waiting time

Currently: Employees must wait 180 days to begin using their paid sick leave.

New ordinance: Under the new ordinance, employees are only required to wait 30 days to begin using their paid sick leave and 90 days to begin using their paid leave.

Use

Using paid sick leave: The qualifying reasons for an employee's use of paid sick leave will remain the same as the qualifying uses under the current law.

Using paid leave: Under the new ordinance, employees may use their paid leave for any reason. The employee does not need to provide a reason for their leave, nor provide any documentation as proof to support the need for leave. An employer may draft reasonable policies that:

Require an employee to give reasonable notice, not to exceed seven days; and

Require an employee to obtain reasonable preapproval from the employer for the purpose of maintaining continuity of employer operations.

Minimum increments: Under the new ordinance, employees may use their paid sick leave in minimum increments of two hours per day (down from four hours) and paid leave may be used in minimum increments of four hours. However, if an employee's scheduled shift is less than the minimum increment, the employee may use their time for the entire scheduled shift.

Payout on separation

Paid sick leave: Employers are not required to payout unused paid sick leave.

Paid leave: Under the new ordinance, employers must pay the monetary equivalent of all unused paid leave as part of an employee's final compensation or when they cease eligibility under the

ordinance, unless the employer has 50 or fewer eligible employees. Employers that have between 50 and 100 employees may phase-in the payout of earned unused paid leave by limiting the payout to a maximum of 16 hours until December 31, 2024. Beginning January 1, 2025, all employers with 51 or more eligible employees must pay out all earned unused paid leave upon separation.

Unlimited paid time off policies: Under the new ordinance, if an employer has an unlimited paid time off policy, the employer must pay out separating employees the monetary equivalent of 40 hours of paid time off, minus the hours of paid time off the employee used in the last 12-month period.

Wage statement and paystubs

Under the new ordinance, employers must provide a written statement including an updated accounting of the employee's available paid leave and paid sick leave and the applicable accrual rates. This statement must include paid time off earned since the last notification, reduced paid time off since the last notification, and any unused time available for use. This notice may be provided via paystub or available through an online system that employees can access.

Penalties

Currently: Employees have a private right of action to pursue damages up to three times the full amount of any unpaid sick time denied or lost, plus interest, costs, and reasonable attorneys' fees.

New ordinance: Under the new ordinance, employees will be able to bring an action for violations related to paid sick leave immediately. Employees will be able to bring an action for violations related to paid leave beginning January 1, 2025. Employers may also be subject to penalties from the Chicago Department of Business Affairs and Consumer Protection, including fines between \$1,000 and \$3,000 for each offense.

What this means to you

To be ready for the ordinance, employers should:

1. Update their policies, with specific attention to

Establishing a reasonable notice period for taking paid leave of up to seven days

Establish a procedure for an employee to obtain reasonable preapproval for their paid leave.

When updating applicable policies, employers must be cognizant that Illinois also recently enacted the Paid Leave for All Workers Act effective January 1, 2024.

2. Update their payroll systems to adjust accruals/frontloading, carryover, and minimum use increments.
3. Train managers and supervisors about appropriate uses of paid sick leave and when it is appropriate to request documentation for use of paid sick leave.

Contact us

Contact Sarah Quinn, Jennifer Ralph, Julie Garabedian or your Husch Blackwell attorney if you have questions regarding the Chicago Paid Leave and Paid Sick and Safe Leave Ordinance and how it might impact your organization.