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シカゴ市の新条例、従業員の有給休暇を大幅に増加

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Practices: 雇用／労働法／福利厚生

Executive Summary

- On November 9, 2023, the Chicago City Council passed the new Chicago Paid Leave and Paid Sick Leave Ordinance (the “Ordinance”).
- Under the Ordinance, employees will be entitled to 40 hours of paid leave for any purpose and 40 hours of paid sick leave per year.
- The Ordinance applies to Illinois employers with at least one employee and covers all employees who perform at least two hours of work in any particular two-week period while physically present in the geographic boundaries of Chicago.
- Depending on employer size, paid leave may need to be paid out upon an employee’s separation.
- The Ordinance becomes effective on December 31, 2023

The Chicago City Council passed the referenced Ordinance on November 9, 2023, replacing the existing Chicago Paid Sick Leave Ordinance. Like the existing ordinance, Chicago employers will be required to provide eligible employees with up to forty hours of paid sick leave that can be used for specified purposes (“Paid Sick Leave”). However, the new Ordinance significantly expands paid leave requirements for Chicago employers by requiring covered employers to provide eligible employees with an additional forty hours of paid leave that can be used for any purpose (“Paid Leave”).

Covered Employers and Employees

The Ordinance broadly defines “Employer” as “a person who gainfully employs at least one employee.” The Ordinance covers employees who, in any two-week period, perform at least two hours of work while physically present within the geographic boundaries of Chicago. Notably, for purposes of determining eligibility, time spent traveling in Chicago that is compensated time, including sales calls, deliveries, and travel related to business activities, is counted towards this requirement. Domestic workers, regardless of whether they work as employees or independent contractors, are also covered by the Ordinance. Unlike the existing law, the Ordinance does not require covered employees to work at least 80 hours for an employer within a 120-day period in order to be eligible for paid time off.

Accrual, Frontloading, and Carryover

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Paid Leave under the Ordinance may either be accrued by an eligible employee or granted (i.e., front-loaded) by the employer.

Accrual

Beginning January 1, 2024, or on the first day of employment, whichever is later, covered employees will accrue one hour of Paid Sick Leave **and** one hour of Paid Leave for every 35 hours worked. Leave must accrue in one-hour increments and may not accrue fractionally. However, employers with more generous policies can maintain a monthly accrual.

Employees are entitled to accrue up to 40 hours of Paid Sick Leave and 40 hours of Paid Leave in a 12-month accrual period.

Importantly, employers electing the accrual method under the Ordinance must allow employees to carry over up to 80 hours of Paid Sick Leave **and** up to 16 hours of Paid Leave from one 12-month accrual period to the next. As of now, there are no express caps on annual accrual amounts or use. In other words, employees can accrue up to an additional 80 combined hours of paid time off on top of is carried leave that is carried over from the prior year, for a combined total of up to 176 hours of paid time off in a given year.

Granting/Frontloading

Alternatively, employers can choose to grant or frontload 40 hours of Paid Sick Leave and 40 hours of Paid Leave on the first day of employment or the first day of the designated twelve-month period. Importantly, if the full 40 hours of Paid Leave are frontloaded at the beginning of the 12-month period, any unused Paid Leave does **not** carry over from one 12-month period to the next.

While employers are able to avoid carryover requirements for Paid Leave by meeting the minimum frontloading obligations, such is not the case for Paid Sick Leave. It is important to note that frontloading 40 hours of Paid Sick Leave ***does not*** eliminate an employer's obligation to allow carryover of up to 80 hours of unused Paid Sick Leave from one 12-month accrual period to the next.

Use and Limitations

Paid Sick Leave

Employees may not use their Paid Sick Leave until they have completed 30 days of employment. Employers may set a reasonable minimum increment for use of Paid Sick Leave, not to exceed two hours.

Employers may require up to seven days' notice for the use of Paid Sick Leave if the need for such leave is reasonably foreseeable, or as soon as practicable when the need for such leave is not foreseeable.

The covered reasons for use of Paid Sick Leave under the Ordinance are consistent with the existing ordinance. Namely, a covered employee may use Paid Sick Leave when:

- The employee is ill or injured, or for the purpose of receiving professional care, including preventative care, diagnosis, or treatment, for medical, mental, or behavioral issues, including substance use disorders;

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- The employee's family member is ill, injured, or ordered to quarantine, or to care for a family member receiving professional care, including preventative care, diagnosis, or treatment, for medical, mental, or behavioral issues, including substance use disorders;
- The employee or family member is the victim of domestic violence, a sex offense, or trafficking;
- 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; or
- The employee obeys an order issued by the mayor, the governor of Illinois, the Chicago Department of Public Health, or a treating health care provider, requiring the employee to:
    - Stay at home to minimize the transmission of a communicable disease,
    - Remain at home while experiencing symptoms or sick with a communicable disease, or
    - Obey a quarantine order or isolation order issued to the employee.

Employers may require certification that Paid Sick Leave falls within one of the above authorized reasons only when an employee's absence exceeds three consecutive workdays. Records of leave use, which must include certain employee identification information, must be maintained by employers for five years.

Paid Leave

Employees may not use their Paid Leave until they have completed 90 days of employment. Employers may also set a reasonable minimum increment for use of Paid Leave, not to exceed four hours.

Similar to the Illinois Paid Leave for All Workers Act ("PLFWA") set to take effect on January 1, 2024, employees may take Paid Leave under the Ordinance for any reason at the employee's discretion. Employers will not be permitted to require any documentation or certification for the need to take Paid Leave. Employers may, however, implement reasonable polices for the use of Paid Leave to:

- Require employees to give reasonable notice (which may not exceed seven days).
- Require employees to obtain reasonable preapproval prior to using Paid Leave for the purpose of maintaining continuity of operations.
- Adopt rules specific to interns and certain city-employed staff, which are classes of employees the ordinance specifically excludes from coverage.

Payout of Unused Paid Leave Upon Separation of Employment

Unlike the PLFAWA, the Ordinance expressly requires certain employers pay out earned, unused Paid Leave when an employee is terminated, resigns, retires, otherwise separates from employment, or is transferred outside of the geographic limits of the City. Certain employers, based on their size, must pay the monetary equivalent of all unused, accrued Paid Leave (not Paid Sick Leave) as part of the employee's final compensation.

Notably, small employers (defined as employers with 50 or fewer covered employees) are exempt from the payout requirements altogether. Medium employers (defined as employers with 51 to 100 covered employees) are required to pay out up to 16 hours of Paid Leave on separation or transfer through December 31, 2024. On or after January 1, 2025, medium employers will be required to pay out all unused Paid Leave on separation or

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transfer. Large employers (defined as employers with over 100 covered employees) must pay out all unused Paid Leave upon separation or transfer effective January 1, 2024.

Employer Notice and Recordkeeping Requirements

Employers have several obligations to provide employees with notice of their rights under the Ordinance. Employers must post a general notice advising eligible employees of their rights to Paid Leave and Paid Sick Leave. The City of Chicago will issue a form notice that satisfies the posting requirements at a future date. If the employer's workforce has a significant number of non-English speakers, the employer must also post a notice in other language(s), a model of which will be issued. Employers who do not maintain a worksite in Chicago are exempt from the posting requirement.

In addition, the Ordinance requires that employers provide a notice to employees of their right to Paid Leave and Paid Sick Leave (i) with the first paycheck issued to the employee, and (ii) annually with a paycheck issued within 30 days of July 1.

Furthermore, employers must provide notice of employees' Paid Leave and Paid Sick Leave balances with each paycheck, including the accrued paid time off used since the last notification, the used paid time off since the last notification, and any unused paid time off available for use. This may be done on paystubs or through an online system where employees can access their paid leave information.

The Ordinance also requires that employers provide employees with written notification of their paid time off policy, including accrual rates and any paid time off notification requirements at the start of employment. Any change to the employer's paid time off policy requirements must be provided to employees at least five days before the change take effect, and at least 14 days ahead of time if the change will affect the employee's final compensation.

Employers must retain records for five years, or for the duration of a claim, civil action, or investigation, whichever is longer. Records retained must include employee names, addresses, hours worked, pay rates, wage agreements, number of Paid Sick Leave and Paid Leave hours earned each year, dates on which Paid Sick Leave and Paid Leave was used and paid, and any other records necessary to demonstrate compliance with the Ordinance. Employers must provide a copy of the records to employees upon request.

Existing Leave Policies

Employers may use their existing paid leave policies for compliance. If an employer has a policy that grants Paid Leave or Paid Sick Leave in an amount and manner that meets or exceeds the requirements of the Ordinance, the employer is not required to provide additional Paid Leave or Paid Sick Leave. However, the existing policy will need to be modified to comply with all other aspects of the Ordinance. If an employer's current paid sick leave policy does not comply with the requirements of the new Ordinance, any Paid Sick Leave the employee is entitled to roll over from one 12-month accrual period to the next must be transferred to Paid Sick Leave under the new Ordinance.

Enforcement and Penalties

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Any employer that violates the Paid Leave and Paid Sick Leave provisions of the Ordinance may be fined between $1,000 and $3,000 for each separate offense. For violations of the posting requirement, employers may be fined $500 for the first violation and up to $1,000 for subsequent offenses.

The Ordinance creates a private right of action in which employees may recover damages including three times the full amount of any leave denied or lost by reason of employer violation, interest at the prevailing rate, and reasonable attorney's fees. The private right of action for alleged violations of the Paid Sick Leave provisions will be available December 31, 2023. The private right of action for alleged violations of the Paid Leave provisions will not be available until January 1, 2025.

Key Takeaways and Next Steps for Employers

The generous benefits employers will soon be required to provide under the Ordinance are likely to have a significant practical and administrative impact for many Chicago employers. Given the fast-approaching December 31, 2023 effective date, Chicago employers should immediately address any compliance gaps in their current policies. Employers with Chicago-based employees who had only minimum threshold sick leave policies to comply with the existing Chicago ordinance should prepare to offer Paid Leave in compliance with the Ordinance.

In addition, employers with eligible employees should review their handbooks and existing leave policies to ensure employees are accruing one hour of paid leave and paid sick leave every thirty-five hours worked and further ensure that requirements imposed on leave use are reasonable under the Ordinance. Employers should also prepare the required notices and ensure that their payroll or other such systems are capable of identifying employees' paid time off balances, as required by the Ordinance.

For additional information regarding this Ordinance and how to prepare your workplace, please contact Naureen Amjad, Kevin S. Borozan or any other member of Masuda Funai's Employment, Labor and Benefits Group.

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