

Chicago City Council Passes Sweeping Paid Time and Paid Sick Leave Ordinance – Effective January 1, 2024

Labor & Employment Law Update

By Julie Proscia on November 13, 2023

Happy holidays...Not really. On November 9, 2023, the Chicago City Council passed the **Paid Leave and Paid Sick and Safe Leave Ordinance**. The new ordinance creates a confusing set of requirements for employers to navigate.

Beginning on January 1, 2024, the ordinance requires that all employers, with one or more employee, provide employees with 10 paid leave days. The new law is not only applicable to employers that are located in Chicago but also covers any employee that spends two or more hours performing work or traveling for work in the city. The traveling time must be compensable working time, and does not include commuting time.

The Paid Leave and Paid Sick and Safe Leave Ordinance amends the previous sick leave ordinance to give employees an opportunity to earn up to ten paid days off in a 12-month period in two separate categories of paid time off. To add to the complexity, the categories both come with different requirements for notice, usage and payout. The first category is a general paid leave category and the second category is paid sick leave category. Employees accrue 1 hour of paid sick leave and 1 hour of paid leave for every 35 hours that they work. Salary exempt employees are presumed to work 40 hours per week. Accrual begins on January 1, 2024 or on their first day of employment, whichever is later. However, after this the two leave laws begin to diverge. As such, a breakdown of each is the only way to parse any logic out of a confusing act.

Paid Sick Leave (“PSL”)

Paid Sick Leave can be taken for the treatment of both an employee as well as a family member’s illness or injury. The PSL also allows the employee to use their time to seek treatment, protections and services if they or their family members are a victim of domestic violence. The Paid Sick Leave can also be taken under certain emergent public health situations relating to mandated closures etc.

Employees are eligible to use their PSL on the 30th calendar day after January 1 or the start of their employment, whichever is later. PSL may be taken in as little as 2 hour increments and employees are allowed to carryover up

to 80 hours of PSL. The PSL time is not required to be paid out at the time of separation.

If an employee's need for PSL is reasonably foreseeable, an employer may require up to seven days' notice before the leave is taken. If the need for PSL is not reasonably foreseeable, an employer may require an employee to give notice as soon as is practicable. Employees cannot be forced to find a replacement worker or provide documentation regarding their absence unless the employee is absent for more than three consecutive work days.

Paid Leave Days ("PLD")

Paid Leave Days are like vacation days, and the employee can take the PLD for any reason. Unlike the PSL, employees are eligible to use their PLD time after 90 days of employment. PLD may be taken in as little as 4 hour increments and employees can carryover up to 16 hours of paid leave time. Employers can require an employee to give reasonable notice, which may not exceed seven days before using a PLD. Just like the PSL, employees cannot be forced to find a replacement worker or give information as to why they are requesting the PLD.

After separation of employment, an employee may be entitled to a payout of unused PLD time. The ordinance has a sliding scale for such a payout:

Small businesses (50 or less employees)

No Payout

Medium businesses (51-100 employees) (2 year phased approach)

Phase 1: 12/31/2023-12/31/2024

Up to 16 hours of PLD

Phase 2: 1/1/2025 and thereafter

All unused paid time off

Large businesses (101 plus employees)

Payout any unused, accrued PLD effective 1/1/24

As If the new ordinance is not complex enough, the law allows, similar to the state's Paid Leave for All Workers Act (PLFAW) provisions, employers to avoid the carryover requirements if they have a frontloading policy. The new Chicago Ordinance also recognizes an unlimited PTO option that also allows for circumvention of the carryover requirements. However, the ordinance presumes that an employee who is under an "unlimited" amount of PTO policy, they will be entitled to receive 40 hours of PTO upon termination unless there is a record of

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actual use of at least 40 hours in the 12-month period prior to employment separation.

The **Paid Leave and Paid Sick and Safe Leave Ordinance** has notification requirements that go beyond postings and impact the information required on an employee's paychecks. Compliance with the **Paid Leave and Paid Sick and Safe Leave Ordinance will be enforced through the city, as well as, a private right of action.** Likely due to the complexity of the ordinance, there is a 1-year delay (until January 1, 2025) of enforcement of the private right of action. However, the delay in private enforcement should not mean a delay in action. Employers need to review and revise their policies to ensure compliance. While this is not the holiday present employers were hoping for, it is the one that we received, now the best thing that we can do is to unwrap it and try and make the tiniest diamond out of the lump of coal.

Upcoming Webcast

Join Julie and Heather Bailey for a webcast, "**New Year's Resolutions for Employers – Chicago's New Leave Laws Effective 1/1/2024,**" on November 29th to learn even more about this confusing new law and what employers need to be aware of come January 1.

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