

Chicago's City Council Introduces Proposed Legislation Eliminating the Tip Credit and Expanding Paid Time Off for Chicago Employees

Labor & Employment Law Update

By Heather Bailey and Kevin Kleine on August 15, 2023

Tip Credit:

On Wednesday July 19, 2023, the Chicago City Council introduced legislation to eliminate the city's "tip credit" over a two-year period (if passed), in an effort to raise the city's current hourly minimum wage rate for tipped employees to equal the city's hourly minimum wage rate for non-tipped employees, which is currently \$15.80 for employees of large employers (employers with 21 or more employees) and \$15.00 for employees of small employers (employers with 4 to 20 employees). The city's current hourly minimum wage rate for tipped employees is \$9.48 for employees of large employers and \$9.00 for employees of small employers. Put another way, tipped employees in the City of Chicago currently earn 40% of the standard hourly minimum wage rate for non-tipped employees. If this proposed legislation is passed by the city council, the hourly minimum wage rate increases for tipped employees would begin, and take effect on July 1, 2024. Though, it's unclear if or when the city council will vote on this proposed legislation.

What is the tip credit?

Employers of employees that receive tips, such as servers, waiters or bartenders, can credit or include the tips the employee earns and receives in the employee's hourly minimum wage calculation. Employers in Chicago must pay their tipped employees at least the city's hourly tipped employees' minimum wage rate (\$9.48 or \$9.00) in addition to the tips they earn. If a tipped employee fails to earn the hourly minimum wage rate for non-tipped employees with the tips they earn, the employer is required to pay the employee the difference to ensure the tipped employee earns at least the hourly minimum wage rate for non-tipped employees. Chicago is one of many cities (and Illinois is one of many states) that offers the tip credit to employers of tipped employees, meaning it doesn't require

them to pay tipped employees the hourly minimum wage rate for standard, non-tipped employees.

If passed, employers in the City of Chicago would be required to pay, and tipped employees would earn the same hourly minimum wage rate as non-tipped employees — in addition to the tips they earn once the hourly minimum wage rate for tipped employees reaches and equals the hourly minimum wage rate for non-tipped employees two years after the legislation is passed into law.

While some establishments embrace this change and have even started implementation on their own, if this legislation is passed, it would have an immediate and significant impact on the other businesses in these industries that rely on tipped employees (and hence the tip credit) like restaurants and bars. This legislation would not only affect employers and employees in these industries and their respective rights and obligations, but also consumers. Restaurants and bars have struggled to retain and hire employees since the beginning of the COVID-19 pandemic, and this legislation could make circumstances more difficult and dire on already struggling businesses. This legislation could lead to, among other issues, layoffs for tipped employees, a reduction in the availability of serving and bartending jobs, longer wait times for customers in restaurants and bars, increased food and beverage costs for customers, a reduction in the amount of tips earned by tipped employees, service charges placed on consumers' checks, and even the closing of such establishments.

Paid Sick Leave:

In July of 2017, the Chicago City Council passed legislation requiring all employers within the City of Chicago to provide eligible employees with paid sick leave for among other reasons, to deal with their own, or a family members' mental or physical illness, injury or health condition, or to seek a medical diagnosis, treatment, or preventative care. Under Chicago's current Paid Sick Leave Ordinance, employees accrue one hour of paid sick time for every forty (40) hours worked up to a total or maximum of forty (40) hours of paid sick leave during each 12-month period. This allows employees to take a total of up to five paid days off per year. Employers who are subject to the Family and Medical Leave Act must allow eligible employees to carry over up to 40 hours of the employee's unused accrued paid sick leave to use exclusively for Family and Medical Leave Act eligible purposes.

On July 19, 2023, the Chicago City Council introduced legislation to amend its current Paid Sick Leave Ordinance to expand employee rights to allow employees to accrue one hour of "paid time off" for every 15 hours worked, to be used *regardless of the reason*. Essentially, this would allow full-time employees to take a total of 15 paid days off per year for any reason. The proposed amendments would allow employees to carry over an unlimited number of paid time off days to a following year and requires employers to pay employees for any unused

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paid time off if an employee quits voluntarily or is terminated. Though, it's unclear if or when the City Council will vote on this proposed legislation.

The amendments proposed by the Chicago City Council on July 19, 2023 to its existing Paid Sick Leave Ordinance are similar to the paid leave legislation that Governor Pritzker signed into law in March of 2023. On March 13, 2023, Governor Pritzker signed into law the Paid Leave for All Workers Act which takes effect in Illinois on January 1, 2024. Under the Paid Leave for All Workers Act, employees accrue one hour of paid leave for every 40 hours worked up to a total or maximum of 40 hours of paid leave during a 12-month period, regardless of the reason.

While there is nothing for employers to do just yet (except confirm your paid sick leave policies are in line with IL's Paid Leave for All Workers Act which does go into effect January 1), stay tuned here as we will update you if the Chicago City Council's proposed efforts get any legs.

If anyone is interested, the Illinois Restaurant Association is conducting a survey on this subject.

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