

Illinois Paid Leave for All Workers Act – Brand New Guidance Ahead of the 1/1/24 Effective Date

Labor & Employment Law Update

By Sara Zorich and Beverly Alfon on October 19, 2023

With the January 1, 2024, effective date of the Illinois Paid Leave for All Workers Act (IPLAWA) quickly approaching, employers need to ensure they are analyzing their existing paid leave policies to determine what changes need to be made before the end of 2023.

The Illinois Department of Labor (IDOL) has begun to provide information regarding the rules of the IPLAWA. They held two information webinars for stakeholders to date with two more upcoming. Further, on October 18th, the IDOL published updated FAQ's related to the IPLAWA. After attending the IDOL webinar, there are a couple "key" takeaways from the IDOL's FAQ's and presentation for employers to note:

1. *If you like your paid leave policy, you can keep it:* If you have a current paid time off policy that provides at least 40 hours of paid leave that can be used for any reason per your designated 12 month period -- you can keep it -- and do not need to abide by all other provisions set forth in the IPLAWA. (See FAQ No. 3.) However, you must ensure it is in place before 1/1/24 and identifies that the leave under the policy may be credited against any paid leave entitlement the employee may have under the IPLAWA.
2. *Employers can deny leave under the IPLAWA based on operational needs:* The IDOL stated during their webinar that employers can set parameters for use of IPLAWA leave and provide LIMITED reasons the leave can be denied for operational needs (i.e. seasonal, too many people off on the same day, minimum staffing requirements for operations, etc.). If you are going to deny an employee's request for leave under the IPLAWA, then you MUST include in the written policy what factors will be considered and under what circumstances leave may be denied based on operational needs. The policy should be distributed ahead of the effective date. We expect the IDOL to provide further clarification in their FAQ's on this issue.

With regard to remote and traveling employees and whether or not they are covered by the IPLAWA, the IDOL acknowledges that many factual scenarios exist (e.g., employees who live in IL, but commute to IN every day or on a hybrid basis,

or vice versa), so that there is no one-size-fits all answer. At the most, the IDOL was willing to state, "IDOL has traditionally found that Illinois workplace protections apply to employees who *primarily perform work in Illinois* for a company that does business in Illinois" (emphasis added). However, the IDOL also confirmed that we can expect that in the forthcoming rulemaking, they will be including specific factors to be considered in determining coverage of remote and traveling workers.

The IDOL has indicated their first notice of administrative rulemaking on the IPLAWA will be published by the end of 2023 as will the required employer poster.

The IDOL confirmed that there will be further updates to its FAQs based on some the questions received during today's webinar. It is imperative that companies with employees in Illinois turn their attention to this law before the end of the year and work with employment counsel to ensure any necessary changes to existing policies, or that new policies are drafted to comply before the effective date.

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