

Is Your Company Ready For the Chicago and Cook County Sick Leave Ordinances Effective July 1, 2017?

Labor & Employment Law Update

By Beverly Alfon and Sara Zorich on May 3, 2017

The July 1st effective date of the Cook County and Chicago Sick Leave Ordinances is quickly approaching and employers must review their paid time off, sick and vacation policies now to ensure compliance with the new ordinances. Some of the key similarities and differences of the ordinances' provisions are highlighted below:

Similarities:

- **Covered Employee** – An employee who: (1) works for an employer at least 80 hours within any 120-day period; and (2) performs at least 2 hours of work in Cook County (or the City of Chicago depending on the ordinance being applied) during any 2 week period — including driving through county (or city) for business purposes.
- **Accrual Rate** – Employees earn 1 hour of earned sick leave for every 40 hours they work.
- **Cap** – Employees can earn up to 40 hours of paid sick time per 12 month period.
- **Carryover** – 20 hours for non-FMLA employers but if the employee is FMLA eligible, an additional 40 hours may be carried over for FMLA purposes only.
- **Permitted Use** – Employee's own or family member's illness, injury, medical treatment or diagnosis, preventative care; also domestic violence or sexual assault, or public health emergency closure related to child's school or care facility.
- **Family Member Definition** – Employee's child, legal guardian or ward, spouse, domestic partner, parent, spouse or domestic partner's parent, sibling, grandparent, grandchild, including step and foster relationships, or any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.

- **Restriction on Use** – Generally, only 40 hours of paid sick leave may be used per 12 month period. However, if the employee is eligible to carry over additional paid sick leave hours for FMLA purposes, up to 40 hours can be used for FMLA purposes only, and an additional 20 hours can be used for other purposes – for a total of 60 hours.
- **Employee Notice to Company** – Employers can require the employee to give up to 7 days notice if need for leave is reasonably foreseeable (e.g., prescheduled appointments, court dates). Otherwise, the employee may give the employer notice of the need for leave as soon as practicable via phone, email or text message.
- **Payout** – No payout at termination.
- **Posting Requirements** – Both written notice with first paycheck after 7/1/17 and poster (to be created by the enforcing agency).
- **Documentation** – An employee may be required to provide documentation to support absence of **more than** 3 consecutive work days.
- **Retaliation** – No retaliation for using accrued sick leave under the ordinance.

Differences:

- Employer coverage is only required if you have a “place of business” in Cook County, whereas in Chicago an employer is subject to the ordinance if they “maintain a business facility” in Chicago or are subject to Chicago’s business licensing requirements. This means that more employers outside of Chicago may be subject to the ordinance solely because they have a Chicago business license.

Key Issues to Consider

Employers must take the time to carefully review their existing policies to determine if their policies are compliant with the new ordinances or if changes need to be made. Issues for the company to consider include:

- Do you have a paid time off or sick leave policy?
- Have attendance and administrative processes been updated to reflect the requirements of the law (e.g., receiving notice of unforeseeable leave by phone, email, or text message)?
- Are federal or local disability laws implicated by an employee requesting or taking leave, or returning to work from leave?
- What procedures are in place to engage in the reasonable accommodation interactive process?
- Have employment policies been vetted by experienced employment counsel?

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Along with these general issues, there are some “tricky situations” employers with multiple locations must consider:

- Will the company change its sick policy or create a new policy for all Illinois employees?
- How to address and track when an employee triggers accrual when that employee’s normal business location is not in Cook County or Chicago?

The Cook County Commission on Human Rights has issued its proposed regulations governing the Ordinance which can be found under downloads on the Cook County website. Any entity can submit comments to the Cook County Commission on Human Rights by mail and/or email (human.rights@cookcountyil.gov) by May 8th. Amundsen Davis is working on its submission to the commission for clarification of some of the proposed regulations.

It should be noted that certain municipalities have opted out of the requirements of the Cook County ordinance: Barrington, Bedford Park, Elmwood Park, Mount Prospect, Oak Forest, River Forest, Rosemont, Schaumburg and Tinley Park. More municipalities are expected to opt out prior to July 1.

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