

# Paid Sick Leave Requirements Expand to Cook County Suburbs

## Labor & Employment Law Update

By Beverly Alfon on October 11, 2016

Last week, the Cook County Board passed a paid sick leave ordinance that requires most employers in Cook County to provide paid sick leave for their employees. It will take effect on July 1, 2017 and basically mirrors the requirements of a City of Chicago paid sick leave ordinance that passed earlier this year.

The county ordinance requires a *covered employer* to provide to eligible employees up to 40 hours (5 work days) of paid sick leave in a 12-month period. The 12-month period begins as soon as the *covered employee* begins employment or July 1, 2017, whichever is later.

### Coverage

A *covered employer* is any individual, group of persons or entity that employs at least one "covered employee" and has its principal place of business within Cook County.

A *covered employee* is any individual who performs at least 2 hours of work for your company within Cook County, during any two-week period, including time that you pay the employee while s/he is traveling within Cook County for business purposes (e.g., deliveries, sales calls, service calls, etc.).

### Eligibility

The employee must work at least 80 hours for your company within any 120-day period.

### Accrual

Accrual of paid sick leave for an eligible employee is capped at 40 hours of paid sick leave in each 12-month period, which is calculated from the beginning of either the 1<sup>st</sup> calendar day after the start of the employee's employment or July 1, 2017, whichever is later.

Employees will accrue 1 hour of paid sick leave for every 40 hours worked. For employees who are exempt from overtime requirements, the ordinance assumes a 40-hour work week; however, if the exempt employee works less, the accrual will be based on the employee's normal week.

### Usage

The earned sick leave time may be used for recovering from illness or injury, medical treatment, diagnosis or preventative care for the employee or the employee's child, parent, spouse, domestic partner, sibling, grandparent, grandchild, including step and foster relationships, and "anyone whose close association with the employee is the equivalent of a family relationship."

It may also be used for matters related to domestic violence or sexual assault; and, when an employee must care for a child due to a public health emergency closure related to the child's school or care facility.

An employee must be able to start using earned sick leave by at least the 180th day following his/her first day of employment. Usage of earned sick leave is also generally *capped at 40 hours for each 12-month period* of employment (calculated from the date the employee began to accrue the sick leave), unless an employer sets a higher limit. All eligible employees can carry over *up to 20 hours* of their unused paid sick leave to the next 12-month period.

If an employee is also eligible for leave under the Family and Medical Leave Act, the employee can carry over the standard 20 hours, *plus up to 40 hours* of his/her unused sick leave to use exclusively for FMLA purposes. This means that an employer has a potential burden of providing 60 paid sick leave hours in a 12-month period!

A minimum increment requirement can be set by the employer, but it cannot exceed 4 hours per day. If an employee's sick leave absence is 3 or more consecutive work days, an employer may also require employees to provide certification or documentation to support the reason for the leave.

Unlike earned vacation, there is no payout requirement for earned but unused paid sick leave time upon separation from employment.

### Posting and Notice Requirements

Employers will be required to issue written notice to new employees and display a poster notifying employees of their rights under the ordinance. The notice and poster will be created and made available by the Cook County Commission on Human Rights.

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## Employee Recourse

The ordinance contains non-retaliation/non-discrimination language with respect to any employee's good faith exercise of rights under the ordinance. It also prohibits an employer from using an attendance policy to discipline, discharge, or take any other adverse action against an employee for any bona fide use of the paid sick leave time.

For any alleged violations of the ordinance, employees may pursue civil court actions against employers to recover the value of up to three times the amount of unpaid sick time denied or lost, plus interest and attorneys' fees and costs. Claims are subject to a 3-year statute of limitations.

## Exceptions

The ordinance does not affect existing collective bargaining agreements. Once the collective bargaining agreements expire, however, the ordinance will apply to a covered employer unless the union and employer clearly and explicitly waive the ordinance requirements. With or without a waiver, however, the ordinance will not apply to any employee who works in the construction industry and is covered by a collective bargaining agreement.

## Existing Paid Time Off (PTO) Policy

The ordinance provides that an employer has an existing PTO policy that grants covered employees paid leave "in an amount and manner" that meets the ordinance's requirements, the employer does not need to provide additional paid leave. However, a broad reading of this language suggests that *even if you have a PTO policy that provides for at least 5 days' leave*, you must ensure that how the leave can be used and carry over minimum requirements are up to par.

If an employer's PTO policy provides a full bank of 40 hours immediately upon eligibility (versus an accrual system), then the employer must provide each covered employee at least 40 hours of PTO within one calendar year of his/her date of eligibility. In other words, regardless of the accrual rules, the covered employee must get to use at least 40 hours of paid sick leave within each 12-month period.

## Next steps

Determine if you are a "covered employer" and which of your employees are covered under this ordinance. If you are a covered employer, then:

- Review your PTO, sick leave and attendance policies for compliance and need for modification.
- Train your human resources personnel and supervisors regarding the requirements and prohibitions under the ordinance, especially if they are

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involved in monitoring attendance and issuing related discipline.

For those employers who are NOT covered by the Chicago or Cook County ordinances, be mindful of the Illinois Sick Leave Act, effective January 1, 2017, which requires certain flexibility with respect to employee use of sick time.

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