

Time is Running Out on Illinois Employers -- Better Have Your PAID LEAVE Policy in Place by 12-31-23!

Labor & Employment Law Update

By Jeffrey Risch on December 18, 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 been providing more information regarding the "rules" for the IPLAWA. The IDOL has published additional guidance through FAQs --- which are not law, but should nonetheless be taken into consideration and reviewed carefully when finalizing paid leave policies for the purpose of complying with the new mandates. The IDOL has also proposed rules interpreting the IPLAWA. Be assured that business interest groups are doing all they can to ensure the IDOL's guidance and its final rules are in line with the actual law and the legislative intent (we'll see...).

The IDOL's updated FAQs as of December 5 are included here: <https://labor.illinois.gov/faqs/paidleavefaq.html>

As the clock clicks down on 2023, here are some "things" that Illinois employers need to know and note related to the IPLAWA, at this time:

1. *If you like your paid leave policy, you can keep it (mostly):* If you have a current paid time off policy that provides all employees the ability to earn and use at least 40 hours of paid leave for any reason per your designated 12 month period -- you can keep it -- and do not need to abide by all of the other "micro-managing" provisions set forth in the IPLAWA. However, you must ensure it is in place before 1/1/24 (to be safe) and expressly identifies that the leave under the policy is 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:* Use of IPLAWA leave can be denied due to operational necessity (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.

3. *Employers can also require and implement advance notification policies:* While any policy must take into consideration unforeseeable situations and permit leave when circumstances arise unexpectedly that prevents advance notification, employers can still publish reasonable notification policies and manage “improper” notice under reasonable time and attendance and related call-off policies.
4. *You can tweak your current paid leave policy (keep it, see #1 above) for certain workers (i.e. full-time) and adopt a policy in lock-step with the IPLAWA for other workers (i.e. part-time):* Keep in mind that you can “slice and dice” and implement paid leave policies for segments of workers based on legitimate or otherwise lawful reasons. What works for your full-time workers may not work for your part-time workers or seasonal help. What works for your factory employees in Effingham may not play well for your office employees in Peoria.
5. *Paid leave earned but unused under the IPLAWA need not be paid out upon employment separation:* However, you need to expressly include that in the IPLAWA policy. But, for those tweaking any current policy (see #1 above) for the purpose of compliance, they must pay out earned but unused paid leave at employment separation – in accordance with the IL Wage Payment & Collection Act.
6. *If you have workers covered by the Chicago or Cook County paid leave ordinance, then you can simply follow that ordinance:* Of course, if you also have employees not covered by these local ordinances, then you must ensure those workers have access to paid leave that otherwise will meet the new IL mandates.

It is imperative that employees in Illinois get on with finalizing their paid leave policies (like yesterday). Also, employers covered by the City of Chicago or Cook County ordinances should pay close attention to new mandates coming in 2024. While the City of Chicago changes coming on July 1, 2024 are really straight-up bananas, the Cook County changes (in effect on December 31, 2023) seem to simply emphasize that paid leave can be used by the employee for any reason and tracks much of the new mandates and “rules” under the IPLAWA.

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