

Paid Leave for Any Reason Coming to Illinois

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On January 10, 2023, the Illinois legislature passed the [Paid Leave for All Workers \(PLFAW\) Act](#), making Illinois just the third state in the country (after [Maine](#) and Nevada) to require private employers to provide earned paid leave to employees to be used for any reason. Governor Pritzker has [announced](#) he will sign the legislation.

The PLFAW Act will take effect on January 1, 2024, and, once enacted, will provide nearly all Illinois workers with a minimum of 40 hours of paid leave, or a pro rata number of hours, during a designated twelve-month period. Employers can choose to frontload the leave on the first day of employment or the first day of a designated twelve-month period, or use an accrual method. Under the act, leave accrues at the rate of one hour of paid leave for every forty hours worked. The law will deem exempt employees to have worked 40 hours in each workweek for purposes of PLFAW Act accrual, unless their regular workweeks are less than 40 hours. Once enacted, the law will permit employees to use the PLFAW Act leave after 90 days on the job, unless an employer allows them to utilize leave earlier. Employees may determine how much leave to use, but employers may set a reasonable minimum of increment of no less than two hours per day.

The law will not require employees to give a reason for taking leave, and employers will not be permitted to require any documentation or certification of the need to take leave. Employers may require up to seven calendar days' notice of foreseeable leave if they have a written policy provided to employees outlining notice requirements and procedures. If the leave is not foreseeable, employees must provide notice as soon as practicable.

Additional PLFAW Act's Requirements

Rate of Pay

Leave under the law will be paid at the employee's hourly rate of pay for the hours of paid leave he or she takes. An employee who is paid gratuities and commissions must be paid at least the full minimum wage for the jurisdiction, or their hourly rate, whichever is greater.

Carry-over

Unused accrued PLFAW Act leave will carry over annually, but the employer will not be required to provide more than 40 hours of paid leave for an employee in the designated twelve-month period. Employers that choose to frontload the 40 hours will not be required to carry over unused paid leave to the next twelve-month period.

Termination of Employment

While the Illinois Wage Payment and Collection Act requires employers to pay out earned vacation time at the end of the employment relationship, the PLFAW Act expressly states that employers will not need to pay unused paid leave under the PLFAW Act at the end of the benefit year or any other time, provided the employer has not credited PLFAW Act leave to an employee's paid time off bank or employee vacation account. The law, once enacted, will require employers to restore the PLFAW Act leave of employees who leave their employers but return to the same employer within twelve months.

Records

The law will require employers to create records documenting hours worked, leave accrued and taken, and remaining paid leave balances. Such records must be maintained for at least three years, and employers must allow the Illinois Department of Labor (IDOL) access to the records. Employers that provide PLFAW Act leave on an accrual basis must provide notice of the amount of leave accrued or used by an employee upon request. Failure to comply with the recordkeeping requirements subjects employers to a penalty of \$2,500 per offense.

Posting Requirement

The law will require employers to post, where other notices are customarily posted, a notice (that IDOL will prepare) summarizing the requirements of the act and giving information on filing a charge. Employers that have workforces comprised of a significant portion of workers who do not read English will be required to request a notice in the appropriate language from IDOL. Violations of the posting requirements would subject employers to a penalty of \$500 for the first violation and \$1,000 for each subsequent violation.

Retaliation

The PLFAW Act, once enacted, will prohibit employers from taking adverse action against employees for:

- Exercising their rights under the PLFAW Act;
- Opposing practices the employee believes to be in violation of the PLFAW Act; or
- Supporting others' exercise of rights under the PLFAW Act.

In addition, the law prohibits employers from considering the use of leave under the PLFAW Act in making discipline, promotion, or evaluation decisions.

Remedies

The IDOL is responsible for administering and enforcing the PLFAW Act. Employees may file complaints with the IDOL within three years of the alleged violation. Employers found to violate the PLFAW Act are subject to actual damages, compensatory damages, attorneys' fees/costs, and civil penalties, as well as being subject to equitable relief. The IDOL can conduct investigations and refer matters to hearing. The state attorney general may enforce the collection of awards.

Exclusions

The act does not affect the validity or change the terms of bona fide collective bargaining agreements in effect on January 1, 2024. After January 1, 2024, the requirements may be waived by a collective bargaining agreement only if the agreement includes a clear and unambiguous waiver. The law does not apply to:

- school districts or park districts;
- students employed on a part-time, temporary basis by the college or university they attend;
- short-term employees of higher education institutions who are employed for less than two consecutive calendar quarters during a calendar year without a reasonable expectation that they will be rehired in a subsequent calendar year;
- employees working in the construction industry covered by a bona fide collective bargaining agreement;
- employees covered by a bona fide collective bargaining agreement with an employer that provides national or international services of delivery, pickup, and transportation of parcels, documents, and freight; or
- employers covered by municipal or county ordinances in effect on January 1, 2024, that provide for paid leave or paid sick leave. After January 1, 2024, any municipal or county ordinance enacted or amended must comply with the act or give greater protections to employees.

Next Steps for Employers

While employers have nearly a year to prepare for the PLFAW Act to take effect, employers may want to consider thinking through processes and policies now. While employers that already have paid leave policies that provide at least forty hours of leave per year are not required to modify their policies as long as the leave can be taken for any reason, employers may want to consider creating a policy specifically addressing the PLFAW Act and may want to change existing accrual policies.

Ogletree Deakins will continue to monitor and report on developments with to the PLFAW Act and will post updates on the firm's [Illinois](#) and [Leaves of Absence](#) blogs as additional information becomes available. Important information for employers is also available via the firm's [webinar](#) and [podcast](#) programs.