



Legal Update Article

## Is Your Business Ready for Chicago's Paid Leave and Paid Sick and Safe Leave Ordinance?

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The [Chicago Paid Leave and Paid Sick and Safe Leave Ordinance](#) is set to take effect on July 1, 2024, and the City's Department of Business Affairs and Consumer Protection has published its long-awaited interpretive [rules](#). These final rules provide guidance on several questions unanswered by the Ordinance, such as its application to remote workers, requirements for written leave policies, permissible restrictions on an employee's ability to take leave, and recordkeeping requirements.

### **Covered Employees**

The Ordinance defines covered employees as any employee working at least 80 hours for an employer within any 120-day period while physically present within the geographic boundaries of the City.

The final rules explain that remote workers and telecommuters are covered by the Ordinance if they meet this definition, even if the employer is located outside of the geographic boundaries of the City. Remote workers and telecommuters, however, will not accrue paid leave or paid sick leave for worked hours outside of the geographical bounds of the City, even if the employer is located within the geographical bounds of the City.

Additionally, the rules clarify the Ordinance's applicability to day laborers and undocumented workers.

## Carryover

The Ordinance entitles covered employees to accrue at least 40 hours of paid leave that employees can use for any reason and 40 hours of paid sick leave in a 12-month period.

The final rules provide clarification on how many unused hours employees may carryover from one 12-month period to the next. Employers can frontload paid leave and paid sick leave hours or use an accrual method. If an employer uses the accrual method, then employees are permitted to carryover 16 hours of paid leave and 80 hours of paid sick leave to the next 12-month period. When an employer chooses to frontload hours, then it is not required to permit carryover of an employee's unused paid leave hours, but the final rules clarify that employers must still allow carryover of 80 hours of paid sick leave (frontloading does not prevent employees from carrying over paid sick leave).

## New and Preexisting Paid Leave Policies

Under the Ordinance, companies must adopt written leave policies.

The final rules utilize a “reasonable” standard for evaluating whether these written policies are legally compliant and provide a list of factors to consider. These factors cover various topics, including:

- In what languages an employer must offer the policy;
- How much notice an employer may require of an employee before taking paid leave;
- What methods an employee can use to provide notice of taking leave;
- What methods an employer can use to keep employees updated about their remaining paid leave hours;
- Under what circumstances an employer can deny a paid leave request;
- What steps an employer must follow to deny a paid leave request; and
- When an employer can require certification for the use of paid sick leave.

Policies must meet or exceed the Ordinance's three main requirements related to accrual and grant of hours, carryover, and usage. Employers are at liberty to go above the minimum standards required by the Ordinance, and employers whose paid time off policies meet or exceed the three main requirements are not required to provide additional leave.

The final rules explain that employers can elect to offer 80 hours of paid leave that can be used for any reason, instead of 40 hours of paid leave and 40 hours of paid

sick leave, but covered employees must be eligible to use any accrued paid leave by the 30th calendar day following the start of employment.

## **Restrictions on Employee's Ability to Take Leave**

Since employees can use their paid leave for any purpose, the final rules also provide guidance on measures employers can take to reduce the impact covered-employee absences will have on business operations. A leave policy may require employees to obtain "reasonable pre-approval" for purposes of maintaining continuity of operations. If an employer denies a leave request because of operational needs, the rules provide several factors an employer should consider. These factors include the impact an absence has on business operations; whether the provided service is critical to health, safety, or welfare of the people of Chicago; whether similarly situated employees are treated the same for the purposes of reviewing, approving, and denying paid leave; and whether the employee has meaningful access to use all paid leave in a given year. In addition to denying leave for operational needs, the rules also provide that employers can restrict the use of paid leave or paid sick leave to the covered employee's regular workweek.

Jackson Lewis attorneys are available to assist employers with any questions related to the Ordinance, the final rules, and revising current leave policies. With July 1 approaching, employers should finalize steps for compliance now, including applicable notice, posting, and recordkeeping requirements.

Keep an eye out for our upcoming podcast discussing Illinois paid leave entitlements.

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