

Changes to Chicago's Paid Leave Ordinance May Prove Challenging for Chicago Businesses

Newsletter

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As the year comes to an end, the City of Chicago is expanding the requirements on employers to provide paid leave. As of January 1, 2024, local employers will have additional legal obligations to provide time off for their Chicago based employees.

Chicago's Paid Leave and Paid Sick and Safe Leave Ordinance (effective December 31, 2023)

The Chicago City Council has passed new paid leave ordinance requiring all Chicago employers to provide employees with 10 paid leave days. The new law alters the existing city sick leave requirement creating two separate categories for required paid time off- five general paid leave days and five paid sick leave days. Adding complications for employers, the varying types of leave will have different rules for initial eligibility, minimum usage, rollover and payout upon termination. The council passed the ordinance on November 9, 2023 and Mayor Johnson, whose office was reportedly involved in the negotiations over the language, has already indicated his approval. Under the new ordinance both types of leave will accrue at a rate of 1 hour for every 35 hours worked, disallow leave specific rates of pay, and prohibit employers from requiring workers to find a replacement for their missed hours. Like many similar ordinances that have passed on the subject recently, there are exemptions from the requirement of

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both types of leave for employers covered by existing collective bargaining agreements, but those employers will need to obtain clear and unambiguous waiver of rights under this ordinance in future CBA's to avoid being subject to the law. The law includes other exclusions to certain requirements if also set forth in a CBA, such as forfeiture of time at the end of employment.

Paid Leave Days (“PLD”)

Employees will become eligible to use their PLD time after 90 days of employment. Employers may continue to require pre-approval for use of PLD days to ensure continuity of business operations, but employees are entitled to take leave for any reason and employers may not require an employee to provide documentation. Employers are still entitled to deny PLD requests if their business needs cannot accommodate such a leave. Employees may only use PLD in 4 hour increments. Employees may be entitled to rollover up to 2 days of PLD, unless PLD is frontloaded.

Paid Sick Leave

If the need for sick leave is foreseeable, employees may be required to provide up to 7 days' notice or as soon as the employee becomes aware of the need for leave. If an employee uses three consecutive days of sick leave, an employer may require documentation from a doctor. Sick leave may be taken to recover from illness, care for a family member, address domestic violence, and in response to public health emergencies. Employees are eligible to take paid sick leave after 30 days of employment. Sick leave may be taken in 2 hours increments. Employees will be allowed to rollover up to 10 sick days.

Payout Upon Separation of Employment (Only for PLD)

After termination of employment, an employee may be entitled to a payout of unused PLD. For businesses with 50 or less employees, the employer will not be required to payout unused paid time off. Businesses with 51-100 employees will see a two-year phase in for payouts. This means employers will be required to pay out a maximum of

2 days (16 hours) of unused paid time off by December 31, 2024, and all unused paid time off (maximum of 7 days or 56 hours) starting January 1, 2025. Employers with more than 100 employees will be required to pay out any unused, accrued paid time off when an employee leaves as soon as the Ordinance goes into effect. Unused paid sick leave does not need to be paid out, regardless of business size. Somewhat unique for these type of laws the ordinance also requires payout when an employee no longer qualifies as a covered employee under the law. The law does not clarify whether this requirement still remains in effect if the employee remains with the same employer retains all accrued but unused benefits, but just happens to work outside of Chicago.

Additional Carryover for Denial of Use

In a somewhat unique formulation, the law also requires that while employers can require employees to forfeit accrued but unused time that exceeds the law's carry over requirements, in situations where an employer denies an Employee approval to use either PTO or Paid Sick Leave "in a manner that prohibits [the Employee] from meaningfully having access to such paid time off, despite such Employee complying with applicable Employer policies" the employer must increase the permissible carryover amount.

Avoid Carryover

Employers can meet the laws carryover requirements either via front loading or an unlimited Paid Time Off ("PTO") policy.

Employers are able to avoid carryover requirements by meeting minimum front loading obligations of 40 hours for each type of leave. They are not mandated to front load both types of leave in order to meet that individual manner of leave's obligations.

Regarding unlimited PTO, if this benefit is granted on the first day of employment or first day of an accrual period, employers are likewise exempted from carryover requirements. However, the law explicitly clarifies that such a policy does not exempt employers from payout of time

off upon termination. The law specifically regulates that upon separation of employment or when the employee ceases to meet the definition of a "Covered Employee" by transfer out the city, they should be paid out the monetary equivalent of 40 hours pay minus hours used in the last 12 months. However, an employer utilizing an unlimited PTO policy may not deduct wages for PTO used in excess of 40 hours in the prior twelve months.

Enforcement

A private right of action is retained under the existing Paid Sick Leave ordinance for violations prior to December 31, 2023. There is a 1-year delay (until January 1, 2025) of enforcement through a private right of action while businesses learn to implement new PTO requirements, but employers should act soon. Employers found to be non-compliant could face fines between \$1,000-\$3,000 for each separated offense. This will be enforced by the Office of Labor Standards upon effective date for both PTO and paid sick leave.

Existing Policies

Critically, like the prior sick leave ordinance, the law explicitly provides that if an employer has an existing policy that meets or exceeds the requirements of the Paid Leave and Sick Leave created by the ordinance, that is sufficient for compliance.

Action Items

For employers with Chicago based employees who only had minimum threshold policies to comply with the prior Chicago Sick Leave Ordinance, you should prepare to offer PLD in compliance with the law. For employers with existing sick, vacation, or PTO policies they should be assessed against the laws' new requirements for compliance.

Even employers without Chicago based employees should remember to be prepared for the new Illinois Paid Leave for All Workers Act, which also takes effect on the first of the year.

For more information compliance with city or state leave requirements and how they may impact your business, please contact your local Quarles attorney or:

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Law Clerk Rucha Shastri assisted in drafting this client alert.

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