Cooley

New Paid Time Off Benefits for Chicago Employees Effective July 1, 2024

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Effective July 1, 2024, most Chicago employees are eligible to accrue paid leave and paid sick and safe leave. While an increasing number of state and local jurisdictions require certain employers to provide their employees with paid sick leave for specified purposes, the new Chicago Paid Leave and Paid Sick and Safe Leave Ordinance (Chicago Paid Leave Ordinance) is among the most comprehensive of any major city in the country. This alert reviews the main requirements and highlights key considerations of the Chicago Paid Leave Ordinance.

Overview

The Chicago Paid Leave Ordinance allows eligible Chicago employees to accrue and use paid time off hours for any reason of the employee's choosing (paid leave) and to take care of various health and safety issues, such as the employee's illness or injury, a family member's illness or injury, or if the employee or a family member is the victim of domestic abuse or a sex offense (paid sick leave). Effective July 1, 2024, most Chicago employees are eligible to accrue up to 40 hours of paid leave and 40 hours of paid sick leave in a 12-month period.

Eligibility for paid leave benefits

The Chicago Paid Leave Ordinance will reach nearly all employees in Chicago. Any employee who works at least 80 hours for an employer within any 120-day period while physically present within the geographic boundaries of Chicago is eligible for paid time off benefits under the ordinance. Properly classified independent contractors are not eligible for paid time off benefits under the Chicago Paid Leave Ordinance.

Uncompensated commuting time in the City of Chicago does not count to determine eligibility, but compensated time travelling in the city (e.g., deliveries, sales calls and other business travel) does count. Once the hours threshold is met, the employee will remain eligible for benefits for the remainder of the time that the employee works for the employer.

Accrual and carryover

Employees are eligible to accrue up to 40 hours of paid leave and 40 hours of paid sick leave in a 12-month period. The 12-month period starts when the employee first starts to accrue paid leave and paid sick leave.

Paid leave and paid sick leave each accrue at a rate of one hour for every 35 hours worked. Covered employees begin accruing both paid leave and paid sick leave on July 1, 2024, or the first calendar day of the employee's employment, whichever is later. Only hours worked within the City of Chicago count toward accrual of paid leave and paid sick leave.

For covered employees who already accrued paid sick leave prior to July 1, 2024, those hours carry forward, but the rate of accrual changes from one hour earned for every 40 hours worked to one hour earned for every 35 hours worked.

An employer may front-load either or both paid leave and/or paid sick leave by giving an employee the full 40-hour paid leave or paid sick leave benefit upfront.

Unless an employer front-loads paid leave hours, employees are allowed to carry over unused, accrued paid leave from one year to the next. Employees are allowed to carry over up to 16 hours of accrued but unused paid

leave. Employees are allowed to carry over unused, accrued paid sick leave from one year to the next regardless of whether the time is front-loaded or accrued. Employees are allowed to carry over up to 80 hours of paid sick leave. Employees must be allowed to use their carryover time in addition to accrued time in a new year.

Using paid leave

Employers must allow eligible employees to use accrued paid leave no later than on the 90th calendar day following the employee's start date. Employees may use paid leave for any reason, and an employer may not require the employee to provide documentation or certification of the need for use of paid leave.

Employees may use paid leave in a minimum of four-hour increments, but employers can allow employees to use paid leave in smaller increments. Employers can establish preapproval procedures for the use of paid leave to ensure business continuity. Employers also can require that an employee provide reasonable notice of paid leave, which may not exceed seven days' notice. These procedures should be distributed to employees in writing. An employer that denies a paid leave request must do so in writing and must state the preestablished policy rationale for the denial.

Using paid sick leave

Employers must allow eligible employees to use accrued paid sick leave no later than on the 30th calendar day following the employee's start date. Employees may use paid sick leave for their own illness or injury, or if they are a victim of domestic violence or a sex offense. A covered employee also may use paid sick leave for certain family matters – to care for a family member who is ill or injured, or who is receiving medical care, treatment, diagnosis or preventative care; to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; and if a family member is the victim of domestic violence or a sex offense.

For the purposes of paid sick leave, a "family member" means a covered employee's child, legal guardian or ward, spouse under the laws of any state, domestic partner, parent, spouse or domestic partner's parent, sibling, grandparent, grandchild, or any other individual related by blood or whose close association with the covered employee is the equivalent of a family relationship. A "child" includes not only a biological relationship, but also a relationship resulting from an adoption, step-relationship or foster care relationship, or a child to whom the covered employee stands in loco parentis. A "parent" includes a biological, foster, step or adoptive parent or legal guardian of a covered employee, or a person who stood in loco parentis when the covered employee was a minor child.

Employees may use paid sick leave in a minimum of two-hour increments, but employers can allow employees to use paid sick leave in smaller increments. Employers may require a covered employee to confirm in writing that the employee used paid sick leave for permitted purposes. Additionally, an employer may require certification from a medical or service provider of the need for leave after a covered employee uses three consecutive workdays of paid sick leave (but not before three consecutive workdays have elapsed).

When foreseeable, an employer can require that a covered employee provide at least seven days' notice of the intent to use paid sick leave. When the need for leave is unforeseeable, an employer may require that a covered employee provide notice as soon as practicable on the day the employee intends to take paid sick leave.

Payout

Unused paid sick leave does not have to be paid out on an employee's separation from employment. However, the Chicago Paid Leave Ordinance requires paid leave to be paid out, depending on the size of the employer.

- **Small employers (i.e., employers with 1 – 50 covered employees)** are not required to pay out accrued but unused paid leave.
- **Medium employers (i.e., employers with 51 – 100 covered employees)** are required, until July 1, 2025, to pay out up to 16 hours of unused paid leave under the Chicago Paid Leave Ordinance upon an employee's separation from

employment. On and after July 1, 2025, medium employers will be required to pay out all accrued and unused paid leave under the ordinance.

- **Large employers (i.e., employers with 101+ covered employees)** are required to pay out all accrued and unused paid leave under the Chicago Paid Leave Ordinance upon an employee's separation from employment.

For purposes of determining employer size, the number of covered employees will be aggregated if such employees are employed by members of a single unitary business group as defined for Illinois income tax purposes.

Illinois law, however, prohibits the forfeiture of earned vacation time on separation. If paid leave is credited to an employee's paid time off bank or employee vacation account, then any unused paid leave must be paid to the employee upon separation to the same extent as vacation time under existing Illinois law, which requires the monetary equivalent of all earned vacation to be paid as part of final compensation.

Notices, postings and policies

Employers must provide notice of rights under the Chicago Paid Leave Ordinance to all covered employees as supplied by the Chicago Office of Labor Standards.

Notice must be provided with a covered employee's first paycheck and annually with a paycheck issued within 30 days of July 1 of each subsequent year. In addition, notice must be posted in communal areas at the workplace or on an employer's intranet. Employers that do not maintain a business location within the City of Chicago are exempt from the posting requirements. Employers may be fined $500 for their first violation of the foregoing requirements and $1,000 for any subsequent violation.

Each time wages are paid an employer must provide covered employees with written notice stating an updated amount of paid leave and paid sick leave available to the employee, along with the paid leave and paid sick leave accrual rates. However, employers that credit the applicable paid leave and paid sick leave time on a monthly basis may make this notice available on a monthly basis. The updated amount must include accrued paid time off since the last notice, reduced paid time off since the last notice and any unused paid time off available for use. Employers can choose a reasonable system for providing this information – such as listing available paid time off on each pay stub or developing an online system where employees can access their own paid leave and paid sick leave information.

Additionally, employers are required to establish and adopt a paid leave and paid sick leave policy. This policy may be incorporated into an employer manual, employer handbook or within a separate document. Employers must provide employees written notice of these policies at the start of employment and within five calendar days before any change to the policy requirements. Employers must provide employees with a 14-day written notice of changes to the policies that affect an employee's right to final compensation for leave.

Penalties

For all violations of the Chicago Paid Leave Ordinance (other than a violation of the posting requirement or requirement to provide annual notice with a paycheck discussed above), employers may be fined between $1,000 and $3,000 for each separate offense.

Additionally, covered employees have a private right of action and may file a complaint with the Office of Labor Standards for violations of the Chicago Paid Leave Ordinance. Beginning on July 1, 2024, for violations of the paid sick leave requirements, and beginning on July 1, 2025, for violations of the paid leave requirements, employees who prevail in a civil suit against their employer may recover:

- Treble damages for unpaid or denied leave.
- Interest at the prevailing rate.
- Reasonable attorneys' fees and costs.

Illinois Paid Leave for All Workers Act

As detailed in this March 2023 Cooley alert, the Illinois Paid Leave for All Workers Act went into effect on January 1, 2024. The Illinois Paid Leave for All Workers Act requires Illinois employers to provide up to 40 hours of paid time off to nearly all employees in Illinois.

However, the Illinois Paid Leave for All Workers Act does not apply to employers covered under a municipal or county ordinance in effect requiring employers to give any form of paid time off to their employees, including paid sick leave. Therefore, an employer covered under the Chicago Paid Leave Ordinance does not have to separately grant paid leave under the Illinois Paid Leave for All Workers Act.

Unlimited paid time off policies

An unlimited paid time off policy can comply with the leave requirements under the Chicago Paid Leave Ordinance. Factors considered when assessing compliance include:

- Reasonable access and ability to utilize at least 80 hours of paid time off per year.
- The rate of pay for the paid time off.
- Notification and approval policies for the use of paid time off under the unlimited paid time off policy.

Even when using an unlimited paid time off policy, upon a separation from employment, an employer is required to pay the monetary equivalent of 40 hours of paid time off minus the hours of paid time off used by the covered employee in the previous 12-month period before the covered employee's date of separation from employment as part of the covered employee's final compensation at the covered employee's final rate of pay.

Next steps

Chicago employers should review their paid time off and sick leave policies to ensure compliance with the Chicago Paid Leave Ordinance as soon as possible. Although some employers may already have paid time off policies that provide at least 40 hours of paid leave, as well as paid sick time policies that provide at least 40 hours of paid sick time, employers should consider whether the accrual, carryover, notice and payout upon separation terms of such policies comply with those required by the ordinance. Additionally, employers with existing paid time off and paid sick leave policies may instead consider creating tailored policies to address the requirements of the Chicago Paid Leave Ordinance.

We expect further guidance from the Office of Labor Standards and will continue to monitor developments. If you have questions about or related to the Chicago Paid Leave Ordinance, please reach out to a member of the Cooley labor and employment team.

Cooley summer associate Maya Arora also contributed to this alert.

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