

## Paid Leave for Nearly All Illinois Employees Coming Soon

March 15, 2023

Paid leave for any reason is coming to Illinois. On March 13, 2023, Gov. JB Pritzker signed the [Paid Leave for All Workers Act](#) (Paid Leave Act), which requires employers to provide up to 40 hours of paid leave to nearly all employees in Illinois. The Paid Leave Act becomes effective on January 1, 2024.

While an increasing number of state and local jurisdictions require certain employers to provide their employees with paid sick leave for specified purposes, the Paid Leave Act requires employers to provide paid leave for any reason. The Paid Leave Act will make Illinois the third state in the US – following Maine and Nevada – to require private employers to provide paid leave to employees to be used for any reason.

This alert reviews the main Paid Leave Act requirements and highlights key considerations.

### Covered employers and employees

The Paid Leave Act will reach nearly all employees in Illinois and has no exceptions based on business size.

Employers with one or more employees are covered under the Paid Leave Act, including certain employment and labor placement agencies and any person acting directly or indirectly in the interest of an employer in relation to an employee. This also includes state and local government employers (except certain school and park districts).

Notably, however, the Paid Leave Act does not apply to employers covered under a municipal or county ordinance in effect on January 1, 2024, requiring employers to give any form of paid leave to their employees, including paid sick leave. So, an employer covered by the Cook County Earned Sick Leave Ordinance and/or the Chicago Minimum Wage and Paid Sick Leave Ordinance does not have to grant paid leave under the Paid Leave Act.

All employees working in Illinois are covered under the Paid Leave Act, including domestic workers, with some limited exceptions:

- Students employed on a part-time, temporary basis by a college or university they attend (with respect to work performed by the student for the college or university).
- Short-term employees of higher education institutions employed for fewer 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 who are covered by a bona fide collective bargaining agreement.
- Employees who are covered by a bona fide collective bargaining agreement with an employer that provides – nationally and internationally – services of delivery, pickup and transportation of parcels, documents and freight.
- Employees as defined in the federal Railroad Unemployment Insurance Act or the Railway Labor Act.

Properly classified independent contractors are not eligible for paid leave under the Paid Leave Act.

The paid leave requirements also do not impact the terms of bona fide collective bargaining agreements in effect on January 1, 2024. After that date, the paid leave requirements may be waived in a bona fide collective bargaining agreement.

## **Accrual and carryover**

An employee who works in Illinois is entitled to earn and use up to 40 hours of paid leave during a 12-month period, or a pro rata number of hours of paid leave. The 12-month period may be any consecutive 12-month period designated by the employer in writing at the time of hire.

Beginning January 1, 2024, or at the start of employment (whichever is later), paid leave accrues at the rate of one hour of paid leave for every 40 hours worked up to a minimum of 40 hours of paid leave (or such greater amount if the employer provides more than 40 hours).

Overtime-exempt employees under the federal Fair Labor Standards Act are presumed to work 40 hours per workweek for the purposes of accrual, unless their regular workweek is less than 40 hours, in which case paid leave accrues based on that regular workweek.

Instead of this accrual method, employers can frontload paid leave by making at least the minimum number of paid leave hours available to an employee on the first day of employment or on the first day of the 12-month period.

For employees who accrue paid leave under the Paid Leave Act, unused paid leave carries over annually, but the Paid Leave Act does not require employers to provide more than 40 hours of paid leave for an employee in the 12-month period. Employers that frontload paid leave are not required to carry over unused paid leave.

## **Using paid leave**

Paid leave under the Paid Leave Act may be used by the employee for any reason. An employee is not required to provide a reason for the leave and cannot be required to provide documentation to support the leave.

Employees must be allowed to begin using paid leave 90 days following the start of their employment or 90 days following the effective date of the Paid Leave Act, whichever is later.

Employers can set a reasonable minimum increment for the use of paid leave not to exceed two hours per day. If an employee's scheduled workday is less than two hours per day, the employee's scheduled workday must be used to determine the amount of paid leave.

Employers can require up to seven days' notice of any foreseeable need for paid leave. However, if the leave is unforeseeable, an employee must provide notice as soon as practicable after the employee is aware of the need for leave. Any employer that requires notice of the need for leave must provide employees with written notice of the notification requirements. If requiring notice of unforeseeable leave, the employer must implement a written policy containing procedures by which an employee can provide notice to the employer.

Employers cannot require an employee to search for a replacement worker to cover their paid leave.

## **Separation from or change in employment**

Upon separation from employment, employers are not required to pay out accrued but unused paid leave under the Paid Leave

Act. However, if the paid leave under the Paid Leave Act 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.

If an employee is rehired within 12 months of separation, unused and accrued paid leave must be reinstated and made available for use. Additionally, any employee transferred to a separate division, entity or location will retain their accrued paid leave time.

## **Notice and posting**

Employers will be required to post a notice on the Paid Leave Act provided by the Illinois Department of Labor and include a copy in a written document, which can include a written employee manual or employee policy, upon commencement of an employee's employment or 90 days following the effective date of the Paid Leave Act, whichever is later. An employer that violates these requirements will be subject to a \$500 civil penalty for the first violation and a \$1,000 civil penalty for any subsequent violation.

## **Recordkeeping**

Employers must make and keep records for each employee documenting hours worked, paid leave accrued and used, and the balance of accrued paid leave. Employers are required to retain these records for at least three years. Additionally, employers must provide these records for inspection to the Illinois Department of Labor upon request.

## **Protection against retaliation**

The Paid Leave Act prohibits employers from taking adverse action against employees for:

- Exercising their rights under the Paid Leave Act.
- Opposing practices that the employee believes to be in violation of the Paid Leave Act.
- Supporting others in their exercise of rights under the Paid Leave Act.

In addition, employers cannot consider the use of leave under the Paid Leave Act when evaluating employees or making decisions about employee discipline or promotion.

## **Penalties**

Employees may file a complaint with the Illinois Department of Labor alleging violations of the Paid Leave Act within three years of any alleged violation. If an employer is found to have violated the Paid Leave Act, the employer will be liable to any affected employees for damages and a penalty of \$500 to \$1,000. Employees also are entitled to appropriate equitable relief, in addition to fees and costs. In addition, the Illinois Department of Labor will impose a civil penalty of \$2,500 for each separate offense.

## **Next steps**

While employers will have until January 1, 2024, to come into compliance with the Paid Leave Act, we encourage employers to review their current leave processes and policies now. Although some employers may already have paid leave policies that provide at least 40 hours of paid leave per year and, therefore, may not be required to modify their paid leave policies if leave can be taken for any reason, employers should consider creating a tailored policy to address the requirements of the Paid Leave Act. Employers also may want to modify their existing accrual policies or notice requirements to prevent abuse of the leave entitlements created

under the Paid Leave Act.

We expect further guidance from the Illinois Department of Labor on the Paid Leave Act and will continue to monitor developments. If you have any questions about or related to the Paid Leave Act, please reach out to a member of the Cooley employment team.

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