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Insights

Understanding the Chicago Paid Leave and Paid Sick and Safe Leave Ordinance and Its Interaction with Other Leave Laws

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By: David R. Buetow, Elizabeth M. Roberson, and Nicole M. Firlej

In the eight months that the Chicago Paid Leave and Paid Sick and Safe Leave Ordinance ("Chicago Paid Leave Ordinance") has been in effect, it has impacted countless businesses with employees working in Chicago[1]. While the new ordinance may not have changed the allotment of leave for businesses that already had a robust paid time off policy, its notice requirements and how it interacts with other leave laws have likely caused other impacts. This alert will break down the Chicago Paid Leave Rules and also explain how this leave is applied when other laws and ordinances may also apply.

1. The Chicago Paid Leave and Paid Sick and Safe Leave Rules.

On June 24, 2024, the Commissioner of Business Affairs and Consumer Protection enacted rules outlining the requirements of Chicago Paid Leave Ordinance. These rules help explain how to maintain compliance with the ordinance.

A. Which employees does the Chicago Paid Leave Ordinance apply to?

The Chicago Paid Leave Ordinance applies to employees who work at least 80 hours within any 120-day period for an employer while physically present in Chicago. This means that it does not apply to employees who work outside Chicago, including those employees whose employer is in Chicago but who work remotely in a location outside of Chicago.

B. What notice and/or posting is required under the Chicago Paid Leave Ordinance?

Employers with physical locations within Chicago are required to post a standard notice prepared by the Chicago Office of Labor Standards. The required notice is included in the current Chicago Labor Laws poster to be displayed by Chicago employers. Employers must display this poster through their usual methods of communication for such notices (either by paper posting or via electronic dissemination). In addition to the posting requirement, employers are required to provide written notice of the ordinance to employees with their first paycheck or prior to employment. The best practice would be for an employer to include the notice within its employee handbook that is accessible to all employees. If 5% or more of workers understand best in another language, the employer must also meet the posting and notice requirements in those languages as well.

C. What records must an employer keep in compliance with the Chicago Paid Leave Ordinance?

The Chicago Paid Leave Ordinance requires employers to maintain the following records of covered employees for at least five years: (i) name; (ii) mailing address, telephone number, and email address; (iii)

occupation and job title (including whether they are tipped); (iv) date(s) eligible or paid leave or paid sick leave; (v) number of hours of paid leave/paid sick leave accrued; (vi) dates and number of hours used of paid leave and paid sick leave used; (vii) rates of pay; (viii) hours worked each day and workweek; (ix) type of payment; and (x) dates of payment of each pay period. The Commissioner of the Business Affairs and Consumer Protection Division may bring an enforcement action against any employer he/she believes is in violation of this recordkeeping requirement. Failure to maintain these records shall create a presumption, rebuttable only by clear and convincing evidence, that the Employer violated the Chicago Paid Leave Ordinance, which carries a penalty of between $1,000 and $3,000 for each separate offense.

D. How much leave must an employer provide and what are the rules regarding usage, accrual, and carryover?

Under the Chicago Paid Leave Ordinance, employees must earn at least one hour for every 35 hours worked (up to 40 hours) in a 12-month period of both paid leave and sick leave. An employer can choose to allow an employee to accrue this leave incrementally as they work or front load the leave to avoid the administrative burden. Paid leave can be used in increments of four hours for any reason and can be requested 90 days after the start of employment. If employers do not front load at least 40 hours of paid leave within the first 90 days of employment, an employee must be permitted to carry over 16 hours of paid leave. Upon termination of employment, employers are required to pay out paid leave in varying amounts, depending on the size of the employer:

(a) Employers with over 101 employees are required to pay out all accrued but unused paid leave;
(b) Employers with between 51 to 101 employees are required to pay out up to 16 hours of accrued but unused paid leave until July 1, 2025 and thereafter must pay out all accrued but unused paid leave; and
(c) Employers with less than 50 employees are not required to pay out paid leave.

Sick leave can be used in increments of two hours to recover from an illness, care for a family member, address domestic violence, or for public health emergencies. Sick leave can be used after 30 days of employment, and employers can require certification for the use of paid sick leave if an employee is absent for three or more consecutive workdays. Employers must allow employees to carry over up to 80 hours of paid sick leave but are not required to pay out this leave upon termination of employment.

The Chicago Paid Leave Ordinance adds administrative burdens on employers. In addition to the requirements discussed above, employers must also have a written policy detailing their compliance with this ordinance. Businesses must keep abreast of new changes to the Chicago Paid Leave Ordinance, as violations may result in penalties of $1,000 to $3,000 for each separate offense and damages equal to three times the leave amount plus attorneys' fees for any employee who is denied leave under the ordinance.

2. Additional Illinois Paid Leave Ordinances.

The Chicago Paid Leave Ordinance supersedes other Illinois Statutes regarding paid leave for employees physically working in Chicago. The Chicago Paid Leave Ordinance provides employees with a more comprehensive paid leave policy by providing separate "paid leave" for any reason and "paid sick leave" accrual, while also allowing Illinois employees outside of Chicago to utilize the statewide Paid Leave for All Workers Act ("PWLA") for their paid leave needs.

A. The Illinois Paid Leave for All Workers Act.

The PWLA, effective January 1, 2024, applies to all individuals who perform work in Illinois for an employer that does business in Illinois. Under the PWLA, employees accrue one hour of paid leave for every 40 hours of work, up to 40 hours for a 12-month period. Employees may use paid leave for any reason without providing justification to the employer, including for personal needs, family matters, or health concerns. Employers are

permitted to cap accrued leave at 40 hours annually but must allow accrued, unused leave to carry over from year to year. Alternatively, employers have the option of frontloading the leave annually in lieu of an accrual system. If an employer chooses to front load the annual leave, they must provide written notice to employees at the start of the year, and need not allow unused paid leave to carry over to the next calendar year.

B. Cook County Paid Leave Ordinance.

The Cook County Board of Commissioners adopted the Cook County Paid Leave Ordinance, effective December 31, 2023, in an effort to mirror the requirements of the Illinois PLWA. The Cook County Paid Leave Ordinance applies to employees in all municipalities within Cook County, except Chicago or municipalities that have opted into the Illinois PWLA. The Cook County Paid Leave Ordinance covers Illinois employees who physically work in Cook County, and/or their employer has a place of business in Cook County.

The Cook County Paid Leave Ordinance establishes the minimum amount of paid time off for employees working in Cook County. The Cook County Paid Leave Ordinance requires that all employers with employees in Cook County provide employees with at least one hour of paid leave for every 40 hours worked which can be used for any reason.

On March 14, 2024, the Board of Cook County Commissioners for the Cook County Commission on Human Rights issued amendments to the Interpretive and Procedural Rules Governing the Cook County Paid Leave Ordinance. While a handful relevant rules are summarized below, employers subject to the Cook County Paid Leave Ordinance are encouraged to engage an employment attorney to assist them in navigating the nuances of the Ordinance.

(i) *Accruing Leave.* Employees may accrue one hour of paid leave for every 40 hours worked, and they continue to accrue additional hours even when they are using previously accrued paid leave. Prior to this amendment, employees only accrued paid leave hours when engaging in non-leave work for the employer.

(ii) *Notice.* Employers are required to maintain a written policy advising each employee of their leave benefits and rights, which must be provided to employees at the start of employment (or the date of initial accrual) and annually thereafter. The policy must include: (i) a summary of the Cook County Paid Leave Ordinance; (ii) a description of all benefits offered; (iii) a description of all policies coverage; (iv) rate of accrual of paid leave; (v) permissible uses for paid leave; (vi) prohibited employer practices; (vii) contact information for the Cook County Commission on Human Rights (the “Commission”), and (viii) details on how an employee can file a complaint with the Commission. Remote workers must be provided a copy of the Cook County Workplace Poster.

(iii) *Interaction with Federal Family Leave and Medical Act.* Employers are permitted to require Family Medical Leave Act (“FMLA”) eligible employees to use their accrued paid leave under the Cook County Paid Leave Ordinance prior to taking unpaid FMLA Leave. Previously, the Cook County Paid Leave Ordinance prohibited employers from requiring employees to exhaust their accrued paid leave before taking other unpaid leave provided by the employer or state law. This is significant, as the Cook County Paid Leave Ordinance may be used for any purpose, whereas the FMLA is used for only specific purposes, such as an employee’s or family member’s serious health condition or birth and care or placement for adoption of a child.

Given the complexity that the various leave laws and ordinances have created for employers in or around the Chicagoland area, it is important to ensure that your businesses’ policies and procedures for administering leave are compliant. The Chicago Office of Labor Standards has developed a comparison chart of the three ordinances to assist Illinois employers in determining what rules apply to them.

Our attorneys are ready to assist your business in navigating the nuances of Illinois and Chicago-area paid leave and other employment compliance matters. We are pleased to offer flat-fee audits designed to evaluate the compliance landscape and identify compliance gaps for Illinois and Chicago-area businesses. If you have questions about how the various leave laws and ordinances interact and affect your business or need assistance in compliance with these new requirements, please contact David R. Buetow Elizabeth M. Roberson, Nicole M. Firlej, or another member of Krieg DeVault's Labor and Employment Practice.

[1] This ordinance covers the geographical boundaries of the City of Chicago. References to "Chicago" herein indicate those geographical boundaries.

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