



Alerts

Paid Sick Leave Is Coming to Chicago: Mark Your Calendars for July 1, 2017

June 23, 2016

Employment Practices Alert

An ordinance mandating paid sick leave for Chicago employees, first introduced in April, passed before the City Council on Wednesday, June 22, 2016. Chicago will now join the growing list of cities with similar laws on the books. The ordinance is the result of the work of the aptly named "Earned Sick Time Chicago" coalition, which is comprised of a number of local unions and social justice organizations.

Here are the basics of what you will need to know about the ordinance that will amend the Chicago Minimum Wage Ordinance:

Who Is Entitled to Paid Sick Leave?

Everyone. A Covered Employee who works at least 80 hours for an Employer within any 120 day period, shall be eligible for Paid Sick Leave as provided for under the ordinance. (Keep this in mind for your summer seasonal employees.) The Paid Sick Leave Ordinance will apply to all employers, regardless of size. However, the exclusions from the definition of Employee under the Illinois Minimum Wage Act for outside sales persons, a religious corporation/organization, and qualifying agriculture operations, among others, appear to remain in place for purposes of the ordinance. This definition will have an impact on whether existing exclusions in PTO policies for temporary, part-time or seasonal employees will be valid.

What Will Be Required In Terms of Accrual?

Employees will begin to accrue sick time immediately upon the start of employment. Beginning on the first calendar day after the start of employment (or the first calendar date after the effective date of the ordinance, for existing employees), employees will earn one hour of paid sick leave time for every 40 hours worked.

The time will accrue only in hourly increments, as fractional accruals are not permitted. Exempt employees will be assumed to work forty hours each week for purposes of this ordinance, unless the employee's normal work week is less than forty hours, in which case the accrual of paid sick time will be based on that employee's normal work week. Practically speaking, that means an exempt employee will not accrue extra paid sick time under the ordinance for any hours worked over 40 hours per week.

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An accrual cap would be permitted, but that cap for covered employees is 40 hours of paid sick leave per twelve month period, the timing of which is based on the date the employee began to accrue time. So the minimum cap employers can enforce is five days or forty hours of paid sick leave time in a year from the date the employee began to accrue time (not a calendar year). A higher cap would be allowed, of course.

An employee must be permitted to carry over unused accrued sick leave time up to a maximum 20 hours of accrued time. However, if you are an employer subject to the Family Medical Leave Act (i.e., an employer with fifty or more employees), your employees must be permitted to carry over up to 40 hours of accrued but unused paid sick time under the ordinance (in addition to the twenty hours mentioned) to use exclusively for FMLA eligible leave purposes.

The question that remains is how the carry over time impacts what an employee can accrue in the new year. For example, an employee who only used half of her accrued time in a year would carry over the remaining twenty hours, but would she be eligible to accrue another 40 hours of paid sick time in the coming twelve month period, for a total of 60 hours? Or would she only be able to accrue an additional 20 hours to reach a 40 hour cap? The ordinance does not appear to directly address this question in the accrual, cap and carry over provisions drafted. Perhaps the answer can be found in the "Use of Paid Sick Leave" provision, which states that an employee is entitled to use no more than 40 hours of paid sick leave per twelve month period, absent a higher limit set by the employer.

If an employer currently has a paid sick leave policy or, more likely, has a paid time off (PTO) policy that meets the accrual and carry over standards, no additional paid sick leave is required. If your PTO or paid sick leave currently front loads the available time off (as opposed to an accrual method), you must be sure to award eligible employees 40 hours of paid time off within one calendar year of the employee's date of eligibility.

What Will Be Required in Terms of Use of Accrued Time?

Covered Employees have to be permitted to begin using accrued time no later than the 180th calendar day following the start of employment. Though an employee must begin to accrue paid time off virtually the moment employment begins, employers will have the ability to restrict a new employee's use of that time until they have been employed for six months.

An employee is permitted to use the accrued sick time when:

- the employee is ill or injured
- the employee's family member is ill or injured, or to care for a family member receiving medical case/treatment/preventative care
- the employee or a member of the employee's family is a victim of domestic violence (as defined by Illinois law)
- the employee's place of business is closed by a public health official due to a public health emergency or the employee needs to care for a child whose school or place of care has been similarly closed.

Employers may be permitted to require up to seven days advance notice of the need for leave if the need is reasonably foreseeable, as defined under the Ordinance. Where the need to take accrued sick leave is not reasonably foreseeable, the employer can only require notice "as soon as practicable" on the day the employee intends to take the leave by notifying the employer via phone, e-mail or text message. With this language, an employer's policies requiring direct communication via phone in order to report an absence would effectively have to be expanded to comply with this provision.

What Documentation Can the Employer Require?

If the employee's paid sick leave absence is for more than three consecutive days, the employer may require certification that the use of paid sick leave was authorized under one of the allowable reasons and "documentation signed by a licensed health care provider shall satisfy this requirement." However, employer's cannot require that the documentation in question specify the nature of the employee's (or family member's) injury, illness or condition, except as may be otherwise permitted by law (think FMLA or the Americans with Disabilities Act). Whatever the documentation an employer is allowed



to obtain under the various grounds for leave, an employer will not be able to delay the taking of the leave nor payment of wages for the leave on the grounds that the required certification has not yet been obtained.

Limited Exclusions

Consistent with Chicago's Minimum Wage increases, this proposed new ordinance does not apply to collective bargaining agreements (contracts between employers and unions) currently in place on the effective date of the ordinance. After the ordinance is effective, going forward, the requirements of this Act may be waived in a collective bargaining agreement if the waiver is clear, unambiguous and explicit in the agreement. Additionally, this ordinance will not apply to any employee in the construction industry covered by a collective bargaining agreement.

Make Room on the Bulletin Board

The list of mandatory notices an employer needs to provide in a "conspicuous place" for employees is ever-growing and this ordinance creates one more requirement. So make room among your other state and federal mandated notices to now include notice to the employees of their rights under this ordinance. The Act states that the Commissioner will prepare and make available a form notice that will comply with the Act, so that will be something to keep an eye out for as the effective date of the Ordinance draws near (not expected to be until July 1, 2017). In addition to the general notice requirement, once the Ordinance is effective, a direct notice must be sent to each employee with the first paycheck issued following the effective date. Again, a form notice that meets these requirements is expected to be issued from the commissioner.

The Extras

Also included in the Ordinance is an anti-retaliation provision, as well as a civil right of action. That latter point means employees will be able to file a civil lawsuit against an employer for failure to comply with the provisions, and in doing so, seek three times the amount of underpayment, the interest on that amount, along with costs and reasonable attorney's fees.

What Should Employers Be Doing Now to Prepare?

This is an overview of the key provisions of the new ordinance, which will have an effective date of July 1, 2017. There is certainly time to prepare for compliance, and you should revisit your current vacation and PTO policies to assess what changes may need to be made, including whether to move to a PTO policy rather than a separate vacation and sick time policy as a potential alternative. There are implications for such a move under the Illinois Wage Payment and Collection Act, which would mandate payment of accrued but unused PTO upon termination of employment. As currently drafted, the Ordinance does not require payment of accrued but unused paid sick leave time upon termination absent a provision in a collective bargaining agreement to the contrary.

For more information, please contact [Aimee E. Delaney](#) or your regular [Hinshaw attorney](#).

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