

# TOP 5 QUESTIONS FOR ILLINOIS EMPLOYERS AS YOU PREPARE FOR NEW PAID LEAVE REQUIREMENTS

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Private employers in Illinois will soon be required to provide their employees with earned paid leave that can be used for any reason. While some municipalities in Illinois already require employers to provide paid leave, the Paid Leave for All Workers Act expands such benefits to Illinois workers throughout the state. Illinois lawmakers passed the bill on January 10, and Governor Pritzker said he is looking forward to signing it. What do employers need to know about these upcoming changes before they take effect in January 2024? Here are the answers to your top five questions.

## New Requirements for Employers

### *1. How Many Hours Are Required Under the Act and How are They Accrued?*

The act will require employers to provide their Illinois employees with an annual minimum of 40 hours of paid leave. Employers can choose to have employees accrue one hour of leave for every 40 hours worked or have employees receive 40 frontloaded hours. Importantly, for workers who are classified as exempt, they are generally assumed to work 40 hours per week, thereby earning one hour of paid leave per week under the accrual method. Employees must be able to **accrue** such leave (or be granted such leave) from the beginning of their employment, but there are some restrictions as to when employees can start **using** this leave.

### *2. How Can Employees Use Leave Under the Act?*

## Related People



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Under the act, employers must allow employees to use their accrued leave starting 90 days from when employment begins or 90 days following January 1, 2024, whichever is later. However, an employer may choose to allow employees to use their leave earlier. Generally, employees can use leave under the act freely, though employers may set a minimum usage increment not to exceed two hours per day. Employees are permitted to use up to 40 hours of leave per year.

Other than the minimum usage increment and annual usage cap, the act allows employers to set very few restrictions on the leave. Employees may take leave under the act without giving a reason. However, while employers cannot require employees to provide documentation or certification to prove their need for leave, employers may require up to seven calendar days' notice for **foreseeable leave**, provided such notice requirements are pursuant to a written policy and procedures. For **unforeseeable leave**, employees must provide notice as soon as practicable after they are aware of the need for such leave.

Under the act, leave is paid at the employee's regular hourly rate of pay for each hour of leave taken. Employees who are paid tips and/or commissions must be paid at least the full minimum wage for the jurisdiction or their regular hourly rate.

### *3. Is Unused Leave Under the Act Carried Over?*

The amount of carryover from year to year is contingent upon whether an employer implements an accrual method or frontloading method. Under an accrual method, unused accrued leave will carry over annually, but the employer is not required to provide (and an employee is not required to be able to use) more than 40 hours of paid leave during the designated 12-month period. Essentially, this allows you to cap employees' leave banks at 40 hours, including any leave employees rollover at the end of the designated 12-month period. Of course, you may choose to set your own higher cap. If you choose the frontloading method, however, and provide the full 40 hours of leave at the beginning of each designated 12-month period, you are not required to carry over unused leave to the next period.

### *4. What Happens at the End of Employment?*

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Under the act, employers are not required to pay out unused leave at the end of the designated 12-month period, at the termination of employment, or any other time when unused leave may exist. However, you need to be cautious because Illinois otherwise requires employers to pay out earned vacation time at the separation of employment along with an employee's final wages. So, you should separate and define which leave is designated under the act and which leave is vacation or general paid time off. As such, leave under the act should be tracked separately from vacation time.

### *5. How Do Employers Comply with Records and Posting Requirements?*

Employers are required to document hours worked, leave accrued and used, and remaining balances of leave under the act. Such records are to be maintained for at least three years, and the Illinois Department of Labor must have access to such records. Further, upon request by employees, employers that use an accrual method must provide notice of the amount of accrued leave and/or leave used. Employers that fail to comply with the recordkeeping requirements are subject to a \$2,500 penalty per offense.

The act also requires employers to post a notice in a conspicuous place in the workplace where notices are customarily posted summarizing the act's requirements and providing information on filing a charge. Employers must also include such notice in their written policies or employee manuals. The Illinois Department of Labor will prepare and provide such notice for employers to post. Employers that fail to comply with the posting requirements are subject to a \$500 penalty for the first violation and a \$1,000 penalty for each subsequent violation.

### **Next Steps for Employers**

Employers should review the [Paid Leave for All Workers Act](#) and ensure their policies, notices, recordkeeping, and other practices comply with the upcoming requirements starting January 1, 2024. While this article outlines many of the key requirements of the act, employers should consult with appropriate legal counsel as to all business adjustments that may be necessary. The new statute contains various anti-retaliation provisions, so employers' familiarity and compliance with the act are a must.

We will continue to monitor any further developments and provide updates on these and other labor and employment issues affecting employers, so make sure you are subscribed to [Fisher Phillips' Insights](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Chicago office](#).