

PREPARING FOR CHICAGO'S NEW PAID LEAVE REQUIREMENTS: ANSWERS TO YOUR TOP 5 QUESTIONS

Insights
Nov 17, 2023

Employers don't have much time to comply with a new paid leave ordinance in Chicago — which is one of the most generous paid time off laws in the country — so you should start planning now. The ordinance will require businesses to provide employees who work in Chicago with up to 40 hours of paid sick leave each benefit year *and* up to 40 hours of paid leave to be used for any reason. The City of Chicago passed the new Paid Leave and Paid Sick and Safe Leave Ordinance on November 9, and it will take effect on December 31, replacing the city's current paid sick leave law. You should note that the new ordinance applies to all employees who perform at least two hours of work in a two-week period while physically present the City of Chicago. What do you need to know about this new ordinance? Here are the answers to your top five questions.

[Editor's Note: The Chicago City Council voted to delay the city's new paid leave ordinance, which is now scheduled to take effect on July 1, 2024. [You can read more about this delay here.](#)]

New Requirements for Chicago Employers

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

Beginning January 1, 2024, or when employment begins, whichever is later, covered employees will accrue: (1) one hour of paid sick leave (PSL) and (2) one hour of paid leave for any reason (PLFAR) for every 35 hours worked. Time is accrued in full-hour increments and not in fractions of an

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hour. Employers who have a more generous paid leave policy can maintain monthly accrual rates.

Employees are entitled to accrue up to 40 hours of paid sick leave and 40 hours of paid leave for any reason in a 12-month benefit period. Exempt employees are assumed to work 40 hours per workweek for purposes of accrual, unless the employee's normal workweek is less than 40 hours, in which case paid leave accrues based on that workweek.

2. How Can Employees Use Leave Under the Act?

Employees are eligible to begin using their PSL after they have completed 30 days of employment and are eligible to begin using their PLFAR after they have completed 90 days of employment. Employees may choose to use paid sick leave or paid leave for any reason before using other leave provided by the employer.

Employers may set reasonable minimum increments for using leave of up to two-hour increments for PSL and four-hour increments for PLFAR. If an employee's shift is less than the minimum increment, the minimum increment will be the length of the employee's scheduled shift.

Rate of Pay

Employees must receive their regular rate of pay when using PSL and PLFAR. For non-exempt employees, wages are calculated by dividing the employee's total wages by their total hours worked in full pay periods of the prior 90 days of employment. Wages do not include overtime pay, premium pay, gratuities, or commissions, but must be at least the highest applicable minimum wage or the employee's base hourly wage.

Reasons for Use

Employees may use PLFAR for any purpose. Employers may not require employees to give a reason for using their PLFAR or submit documentation for using such leave. However, employers can require employees to give reasonable notice (up to seven days of notice) and obtain reasonable preapproval. In addition, an employer may require documentation or certification that PSL was used for a covered reason if the absence is more than three consecutive workdays.

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Employees may use PSL for the same reasons under the existing ordinance:

- The employee is ill or injured, or for the purpose of receiving professional care, including preventative care, diagnosis or treatment for medical, mental, or behavioral issues, including substance use disorders;
- The employee's family member is ill, injured, or ordered to quarantine, or the employee is caring for a family member receiving professional care, diagnosis, or treatment for medical, mental, or behavioral issues, including substance use disorders;
- The employee or family member is the victim of domestic violence, a sex offense, or trafficking;
- The employee's place of business is closed by order of a public official due to a public health emergency or the employee needs to care for a family member whose school, class, or place of care has been closed; or
- The employee is obeying an order issued by the mayor, the governor of Illinois, the Chicago Department of Public Health, or a treating health care provider, requiring the employee to:
 - Stay at home to minimize the transmission of a communicable disease;
 - Remain at home while sick or experiencing symptoms of a communicable disease;
 - Obey a quarantine order issued to the employee; or
 - Obey an isolation order issued to the employee.

3. Is Unused Leave Under the Act Carried Over?

Carryover of leave under the ordinance depends on the type of leave(whether it's PSL or PLFAR) and whether the employer implements an accrual method or frontloading method.

If an employer implements an accrual method, employees are entitled to carry over up to 80 hours of PSL and up to 16 hours of PLFAR from one 12-month benefit period to the next.

If an employer frontloads all 40 hours of PSL and 40 hours of PLFAR on the first day of each 12-month benefit period, employees are still entitled to carry over up to 80 hours of unused PSL. However, any unused PLFAR may be forfeited unless the employer denies them of “meaningfully having access” to the leave.

In lieu of the accrual or frontload methods, the ordinance explicitly allows employers to use unlimited paid time off policies for compliance. If an employer provides unlimited paid time off on the employee’s first date of employment, and continues such policy for each subsequent benefit period, no carryover is required. However, employers that provide an unlimited paid time off policy are still required to pay employees the monetary equivalent of 40 hours of PLFAR less the hours of PLFAR used in the 12-month benefit period upon an employee’s separation from employment or transfer outside of the geographic limits of Chicago.

4. What Happens at the End of Employment?

Employers are not required to pay out PSL upon separation of employment or transfer outside of the geographic limits of Chicago. However, certain employers are required to pay out PLFAR upon separation of employment or transfer outside of the geographic limits of Chicago depending on the size of the employer. You should be aware of these key provisions:

- Employees working outside Chicago are not counted towards these employee thresholds.
- Employers with 1-50 covered employees are not required to pay out unused PLFAR upon separation of employment or transfer.
- Employers with 51-100 covered employees are required to pay out up to 16 hours of unused PLFAR on separation of employment or transfer through December 21, 2024. Starting January 1, 2025, these same size employers, 51-100 covered employees, will be required to pay out all PLFAR on separation of employment or transfer.
- Employers with more than 100 covered employees must pay out all unused PLFAR upon separation of employment or transfer.

5. How Can Employers Comply with Records and Posting Requirements?

Written Policy and Notice

Starting December 31, employers are required to have a written policy and must provide written notice of the policy to employees at the start of employment and within five calendar days before any changes are made to the policy. In addition, employers must provide notice of any change to the policy at least 14 days ahead of time if the change will affect an employee's final compensation. Among other requirements, the policy must provide the accrual rate of PSL and PLFAR and the employer's notification requirements.

The ordinance also requires employers to provide a notice of employees' rights to the leave both (1) with the employee's first paycheck and (2) annually with a paycheck issued within 30 days of July 1. A sample notice will be provided by the Department of Business Affairs and Consumer Protection. Additionally, employers must provide written notification of an employee's amount of leave available for use, accrual rates for each type of leave, the amount of each leave accrued since the last notification, and the amount of each leave used since the last notification for each time wages are paid. This notification may be done on paystubs or through an online system where employees can access their paid leave information. Employers should review the ordinance or consult with appropriate legal counsel regarding additional policy and notification requirements.

Postings

In addition to a written policy and notice requirement, employers must also post a notice (to be provided by the Department of Business Affairs and Consumer Protection) advising employees of their right to paid time off under the ordinance. The notice must be posted in a conspicuous place at each facility within the geographic boundaries of Chicago. If your workforce includes a significant portion of non-English speaking workers, you will also be required to post a notice in other languages, a model of which will be provided. Employers that do not maintain a business facility in Chicago are exempt from the posting requirement.

Recordkeeping

Finally, employers must retain records for five years or the duration of a claim, civil action, or investigation, whichever is longer. Records must include employee names, addresses,

hours worked, pay rates, wage agreements, number of PSL and PLFAR hours, and dates on which PSL and PLFAR was used and paid. Employers must provide a copy of the records to employees upon request.

Next Steps for Employers

You should review the new ordinance now and ensure your policies, notices, recordkeeping, and other practices comply with the upcoming requirements effective December 31. You should also note that the new ordinance contains various anti-retaliation provisions and consider training relevant staff on compliance. While this article outlines many of the key requirements of the ordinance, you should consult with appropriate legal counsel as to all business adjustments that may be necessary.

Businesses with employees in Illinois (both within and outside the City of Chicago) should further ensure compliance with Illinois Paid Leave for All Workers Act requirements, which are set to take effect January 1, 2024 (more details can be found [here](#)).

Conclusion

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' Insight System](#) 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](#).