

NEW NICU LEAVE FOR ILLINOIS WORKERS STARTS JUNE 1: IS YOUR BUSINESS PREPARED?

Insights
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Businesses operating in Illinois will soon have to provide unpaid, job protected leave to employees with children in a neonatal intensive care unit under a new state law. Illinois employers with 16 or more employees should start to prepare now for The Family Neonatal Intensive Care Leave Act, which is set to take effect on June 1. Employees at covered businesses will be entitled to up to 20 days of unpaid time off to care for a child in the NICU under the new law, in addition to other state and federal family leave requirements. This Insight will cover everything you need to know ahead of the June 1 compliance date and offer you five steps to help prepare.

Who's Covered By The Law?

- Illinois employers with 16 to 50 employees must provide **up to 10 days** of leave for workers with "any child" who is a patient in a neonatal intensive care unit.
- Employers with 51 or more employees must provide **up to 20 days** of this leave.

The law defines "child" broadly to include a "son or daughter who is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis."

Employees in the state are eligible for this leave as soon as they start working, and the law covers full-time and part-

Related People



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time workers. The law doesn't apply to businesses with 15 or fewer employees.

Intersection With Paid Leave + Federal Laws

While leave taken under Illinois' NICU leave law doesn't have to be paid, employees may **choose** to substitute unpaid leave with any paid leave available, according to the state's labor department. Illinois has paid leave requirements and certain rules around employer sick leave policies, so be sure to consult with legal counsel to ensure you're compliant.

Employers should also be aware that IL NICU leave is provided in addition to the unpaid, job-protected leave taken under the Family Medical Leave Act (FMLA) – although eligibility for the FMLA is stricter than the state NICU law.

Employees who are eligible for the FMLA can take up to 12 workweeks of leave in a 12-month period to care for a newborn child or to care for a child with a serious health condition.

Business Requirements + Penalties

Policies surrounding sensitive family emergencies, such as approving leave under the new NICU law, should be uniform and clear. The law does permit employers to request verification of the NICU stay, but businesses that choose to require such documentation should keep these inquiries limited and reasonable. Retaliation against workers who request or take NICU leave is prohibited.

While on NICU leave, the business must maintain the employee's insurance coverage. When the leave ends, the employee must go back to their previous position or a substantially equivalent one.

Violations can trigger investigations and penalties from the Illinois Department of Labor. An employer that violates the act can face civil penalties of up to \$5,000 per affected employee, and employees may also file complaints or civil actions within 60 days of the last alleged violation. Employers should always respond promptly to NICU leave requests and document decisions carefully.

Next Steps Ahead Of June 1

1. Audit your Illinois employee headcount so you know whether you fall in the 16–50 or 51+ tier.

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2. Update handbooks, leave policies, and internal request forms before June 1 to reflect the availability of the new leave and how it may combine with other coverage.
3. Train managers and supervisors on how to handle NICU leave requests in a manner that avoids retaliation and preserves employee privacy.
4. Coordinate new NICU leave with existing PTO, FMLA, and other leave policies so employees receive the right benefit without conflicting procedures.
5. Consult with your FP counsel to ensure your policies follow the paid leave obligations under state law, as well as the overlapping unpaid leave rules under state and federal laws.

Conclusion

Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information on compliance with Illinois' NICU leave requirements. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our Chicago office](#) or on our [Employee Leaves and Accommodations Team](#).