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New Chicago Paid Leave Ordinance Takes Effect Soon

On November 9, 2023, Chicago passed a new Paid Leave and Paid Sick Leave Ordinance that takes effect on December 31, 2023. This new ordinance replaces the current ordinance in effect. Under the new ordinance, every 12-month accrual period, Covered Employees will be able to accrue:

- 40 hours of Paid Sick Leave
- 40 hours of Paid Leave usable for any purpose

The ordinance applies to all employers with employees in Illinois. Covered Employees are employees who, within any two-week period, perform two hours or more of work while physically present within the geographic boundaries of Chicago (“the City”). The 40 hours of Paid Leave usable for any purpose is similar to the Illinois Paid Leave for All Workers Act which takes effect January 1, 2024.

■ Accruing and Using Leave

Covered Employees will accrue one hour of Paid Sick Leave and one hour of Paid Leave for every 35 hours worked. The ordinance requires that the time accrued be in whole-hour increments and no fractions. Exempt or non-hourly employees accrue time based upon the presumption that they work 40 hours per work week unless their regular work week schedule is less than 40 hours. If the work week is less than 40 hours, then the accrual is based upon the hours of the employee’s regular work week. Nothing in the ordinance impacts an employer’s policy that is more generous.

In lieu of calculating accruals, employers can front-load the 40 hours of Sick Leave and 40 hours of Paid Leave. If the full hours of Paid Leave are front-loaded at the beginning of the 12-month accrual period, then any unused time does not carry over to the next period. However, if the employer implements policies or denies access to the Paid Leave hours that prevents the employee from having meaningful access, then those denied hours must carry over. Front-loading the Paid Sick Leave never eliminates the employer’s obligation to carry over up to 80 hours of unused Paid Sick Leave from one accrual period to the next.

If the employer has an unlimited paid time off policy and this policy is available immediately on an employee's first date of employment or at the beginning of each 12-month accrual period, the employer does not need to track any unused time to carry over. Additionally, employers with these policies may not require preapproval for the paid time off. An unlimited paid time off policy does not exempt an employer from paying out 40 hours of paid time off minus the hours used in the 12-month accrual period after a termination, resignation, retirement, separation, or transfer outside geographic limits of the City (see discussion below).

The ordinance requires that if a Covered Employee has accrued Paid Sick Leave prior to January 1, 2024, and the employer's current policy does not comply with the new ordinance, the Covered Employee is entitled to roll over Paid Sick Leave from one 12-month accrual period to the next.

Covered Employees can begin using Paid Sick Leave by the 30th day of employment (or 30 days from the effective date of the ordinance) and Paid Leave by the 90th day of employment. An employer cannot set a policy with greater restrictions as to when employees can begin using leave. However, an employer can set minimum hour requirements as long as those requirements do not exceed four hours for Paid Leave or two hours for Paid Sick Leave per day.

■ Requesting Leave and Requirements and Restrictions on Leave

Paid Leave may be used for any reason and an employer cannot require the employee to provide a reason for the leave or request document or proof in support of the leave. An employer may require an employee to provide reasonable notice of Paid Leave, but not to exceed seven days' notice prior to the leave and may require reasonable preapproval to maintain continuity of operations for the employer.

An employee can use Paid Sick Leave for:

- When the employee is sick, injured or receiving professional or diagnostic care;
- When a family member is sick, injured, ordered to quarantine or receiving professional or diagnostic care;
- When the employee or a family member is a victim of domestic violence;
- When the employee's place of business is closed due to a public health emergency or an employee's family member's school or place of care has been closed;
- When an employee is following an order issued by the Mayor, Governor, Chicago Department of Public Health or a treating healthcare provider to remain at home or quarantine.

Employers may require notice, up to seven days in advance, if the Paid Sick Leave is foreseeable. Otherwise, employers may require notice as soon as possible on the day the employee intends to use the Sick Leave. However, any requirement for advance notice will be waived if the employee is unable to provide notice due to being unconscious or otherwise medically incapacitated. If there is an absence of more than three consecutive days with the use of Paid Sick Leave, then the employer may require reasonable documentation or certification that the leave was used for a permitted purpose.

The employee, not the employer, gets to choose which documentation to provide if requested or required by the employer. An employer cannot require more than one document per incident. Additionally, the employer cannot delay the use of the Paid Sick Leave or the employee's wages until the employer receives certification or documentation.

Noteworthy is that the ordinance requires that any unused Paid Sick Leave and Paid Leave be “...retained by the Covered Employee if the Employer sells, transfers, or otherwise assigns the business to another Employer and the Employee continues to work in the City.”

Upon a termination, resignation, retirement or other separation from the employer, the employer must pay the monetary equivalent for all unused, accrued Paid Leave as part of the employee’s final compensation. There is limited relief from this requirement for small and medium sized employers:

- **Small employers (50 or fewer Covered Employees)** are not required to pay out Paid Leave when there is a termination, resignation, retirement, or separation or if the employee ceases to meet the definition of a Covered Employee.
- **Medium employers (51 to 100 Covered Employees)**, the maximum of 16 hours of Paid Leave will be paid out until December 31, 2024, unless the medium employer sets a higher limit. On or after January 1, 2025, medium employers will be required to pay out the monetary equivalent of all unused and accrued Paid Leave.

The ordinance does not require that any Paid Sick Leave be paid out upon an employee’s termination, resignation, retirement, or other separation from the employer unless the terms of an applicable collective bargaining agreement specify otherwise.

■ Employer Action

Given the approaching deadline, employers should:

- Assess current paid time off and sick leave policies to determine compliance with the new ordinance;
- Determine if any hours accrued need to be carried over;
- Review and update any postings and pay stub notification requirements;
- Update handbooks as necessary; and
- Train staff regarding new requirements and updated policies.

While further guidance is expected from the City, affected employers should work with their employment counsel or other advisors to comply with these new requirements.