

## Chicago City Council Passes Paid Sick Leave Ordinance

By Jody Kahn Mason and Kathryn Montgomery Moran

June 27, 2016

Effective July 1, 2017, an amendment to the Chicago Minimum Wage Ordinance (2-25-050) requires employers in the City of Chicago to provide eligible employees up to 40 hours of paid sick leave in each 12-month period of their employment. The Chicago City Council passed the amendment on June 22, 2016.

### Paid Sick Leave Requirements

#### *Who is Covered?*

Individuals are entitled to benefits under the Ordinance if they meet the following requirements:

1. they perform at least two hours of work for a covered employer while physically present within the geographic boundaries of the City in any particular two-week period; and
2. they work at least 80 hours for a covered employer in any 120-day period.

Time spent traveling in the City that is compensated time, including making deliveries, making sales calls, and travel related to other business activity taking place in the City, can count toward the two-hour requirement. However, uncompensated time spent traveling in the City for purposes of commuting will not be counted in determining whether an employee conducted two hours of work within the City.

Covered employers include individuals and companies that maintain a business facility within the geographic boundaries of the City of Chicago or who are subject to one or more of the City's licensing requirements. The Ordinance applies to all employers, regardless of the number of employees. The Ordinance explicitly provides that it applies to domestic workers, even those who are employed by employers with fewer than four employees.

The Ordinance provides an exemption for workers subject to a bona fide collective bargaining agreement.

#### *What if my company already provides employees with paid time off?*

If an employer has a policy that grants employees paid time off in an amount and a manner that meets the requirements of the new Ordinance, the employer is not required to provide additional paid leave. However, it is important that any policy providing for paid time off and already in place meet each requirement of the Ordinance in order for an employer to qualify for this exemption, including the reasons for which the time off may be used.

#### *When do employees begin to accrue paid sick leave?*

Employees begin to accrue paid sick leave on the first calendar day after the start of their employment or July 1, 2017, whichever is later.

#### *How much sick leave is required and can employers limit the amount used?*

Employees will accrue one hour of paid sick leave for every 40 hours worked. With respect to exempt employees, for purposes of calculating accruals, the Ordinance assumes that they work 40 hours per work week, unless their normal work week is less than 40 hours, in which case the accrual of paid sick leave will be based upon the number of hours in their normal workweek.

Accrual and usage of paid sick leave is capped at 40 hours for each 12-month period, unless an employer sets a higher limit. Employees are permitted to carry over half of their unused paid sick leave (up to 20 hours) to the next 12-month period. Additionally, if an employer is subject to the Family and Medical Leave Act, employees are entitled to carry over up to 40 hours of accrued, unused paid sick leave (in addition to the standard carryover) to use exclusively for FMLA-eligible purposes.

#### *When can employees start using paid sick leave?*

### Meet the Authors



Jody Kahn Mason

Principal  
Chicago 312-803-2535  
Email



Kathryn Montgomery Moran

Principal and Office Litigation Manager  
Chicago 312-803-2511  
Email

### Practices

Disability, Leave and Health Management

New employees can begin using accrued paid sick leave no later than the 180th day following the commencement of employment. It is unclear from the Ordinance how the 180-day waiting period will apply to current employees who were hired prior to July 1, 2017.

***For what reasons can an employee use paid sick leave?***

Employees may use paid sick leave for their own illness, injuries, or medical care (including preventive care) or for the illness, injuries, or medical care of certain covered family members. The Ordinance defines “family member” broadly to include a child, legal guardian or ward, spouse under the laws of any state, domestic partner, parent, the parent of a spouse or domestic partner, sibling, grandparent, grandchild, or any other individual related by blood or whose close association with the employee is the equivalent of a family relationship. The definition of “family member” also includes step- and foster relationships.

Further, employees can use paid sick leave if either the employee or a family member is a victim of domestic violence or a sex offense.

Finally, employees are entitled to use paid sick leave if his or her place of business or the child care facility of his or her child has been closed by an order of a public official due to a public health emergency.

***Can employers set restrictions on the use of paid sick leave?***

Employers are entitled to set reasonable minimum increments for the use of paid sick leave. A minimum increment may not exceed four hours per day.

***What notice must be provided by employees who need to use paid sick leave?***

If the need for paid sick leave is foreseeable, employers may require that employees provide seven days’ advance notice. If the need for leave is unforeseeable, employees must provide as much notice as is practical. The Ordinance explicitly provides that employees may notify their employers of the need for leave by phone, email, or text message.

Employers also may require employees using paid sick leave for more than three consecutive work days provide certification that the use of the leave was for a qualifying purpose. However, employers cannot require that the certification specify the nature of the medical issue that necessitated the need for leave.

***Do employers have to pay out unused, accrued paid leave upon termination?***

Unless a collective bargaining agreement provides otherwise, unused, accrued sick leave is not required to be paid out upon termination or separation of employment.

***What are the posting and notice requirements?***

Employers must post a notice of employees’ rights under the Ordinance along with postings related to the Chicago Minimum Wage. The posting must be located in a conspicuous place at each facility where any covered employee works that is located within the geographic boundaries of the City.

In addition, the existing requirement that employers provide employees with a notice advising them of the current minimum wage along with the first paycheck subject to the Ordinance has been extended to require notice of employees’ rights with respect to paid sick leave.

## Implementation and Enforcement

The Ordinance provides a private right of action for employees who are denied their rights to request or use paid sick leave. Employers who violate the provisions of the Ordinance may be subject to damages equal to three times the amount of any unpaid sick time denied or lost as a result of the violation, along with interest, costs, and reasonable attorneys’ fees.

## Anti-Retaliation

Employers are prohibited from discriminating against or taking any adverse action against covered employees in retaliation for requesting or using paid sick leave. Additionally, an employee’s use of paid sick leave under the Ordinance cannot be counted for purposes of determining discipline, discharge, demotion, suspension, or any other adverse activity under an employer’s absence-control policy.

\*\*\*

Employers with operations in the City of Chicago should carefully review the Ordinance and their policies and practices related to paid sick leave.

Employers should regularly review their policies and practices with employment counsel to ensure they effectively address specific organizational needs and comply with all applicable laws. Please contact Jackson Lewis attorneys with any questions about the Ordinance.

©2016 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 950+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.

---

©2021 Jackson Lewis P.C. All rights reserved. Attorney Advertising. Prior results do not guarantee a similar outcome. No client-lawyer relationship has been established by the posting or viewing of information on this website.

\*The National Operations Center serves as the firm's central administration hub and houses the firm's Facilities, Finance, Human Resources and Technology departments.