

Cook County, Illinois, Enacts Paid Sick Leave Ordinance

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October 10, 2016

The Cook County “Earned Sick Leave” Ordinance mandates that employers in Cook County, Illinois, allow eligible employees to accrue up to 40 hours of paid sick leave in each 12-month period of their employment. The Ordinance, passed on October 5, 2016, becomes effective on July 1, 2017.

The Ordinance is similar to amendments to the Chicago Minimum Wage Ordinance providing for paid sick leave, also going into effect on July 1. Chicago is part of Cook County.

Paid Sick Leave Requirements

Who is covered?

Individuals are entitled to benefits under the Ordinance if they:

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

Compensated time spent traveling in Cook County, including for deliveries and sales calls and for travel related to other business activity taking place in the County, can count toward the two-hour requirement. However, uncompensated commuting time in the County will not be counted. Certain railroad employees are not covered by the Act.

Covered employers include individuals and companies with a place of business within the County that gainfully employ at least one covered employee. Government entities and Indian tribes are not covered employers under the Ordinance.

The Ordinance does not apply to collective bargaining agreements in force on July 1, 2017. After that date, the Ordinance may be waived in a *bona fide* CBA if the waiver is explicit and unambiguous. In addition, the Ordinance does not apply to any covered employee in the construction industry who is covered by a *bona fide* CBA.

What if my company already provides employees with paid time off (PTO)?

If an employer has a policy that grants employees PTO 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, any existing PTO policy must meet each requirement of the Ordinance, including the reasons for which the time off may be used, to qualify for this exemption.

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. For purposes of calculating accruals, the Ordinance assumes exempt employees work 40 hours per workweek, unless their normal workweek is less, in which case the accrual 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. Employees may carry over half of their unused paid sick leave (up to 20 hours) to the next 12-month period. The Ordinance also provides for additional carryover and usage for employers covered by the Family and

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Medical Leave Act that can be used exclusively for FMLA-eligible purposes.

When can employees start using paid sick leave?

New employees can begin using accrued paid sick leave no later than the 180th day following the commencement of employment. The Ordinance is unclear as to 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. "Family member" is defined broadly to include a child, legal guardian, or ward, spouse under the laws of any state, domestic partner, parent, 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 or a family relationship. "Family member" also includes step- and foster relationships.

Employees also 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 their place of business or the child care facility or school of their 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, not to exceed four hours a day.

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

Employers may require that employees provide up to seven days' advance notice if the need for paid sick leave is foreseeable. Scheduled medical appointments and court dates for domestic violence will be considered reasonably foreseeable. If the need for leave is unforeseeable, employees must provide as much notice as is practical. The Ordinance expressly provides that employees may notify their employers of the need for leave by phone, email, or text message. Employers may adopt notification policies if they notify covered employees in writing of such policies and the policy is not unreasonably burdensome. If leave is covered by the FMLA, notice must be in accordance with the FMLA. Employees need not give notice if they are unconscious or medically incapacitated.

Employers also may require that employees using paid sick leave for more than three consecutive workdays provide certification that the leave was for a qualifying purpose. However, employers cannot require that certification specify the nature of the medical issue necessitating the need for leave, except as required by law. Employers cannot delay commencement of Earned Sick Leave or delay payment of wages because they have not received the required certification.

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

Unlike PTO and vacation pay, unless a collective bargaining agreement provides otherwise, unused, accrued sick leave need not be paid out upon termination or separation of employment.

What are the posting and notice requirements?

Employers must post notice of employees' rights in a conspicuous place at each facility where any covered employee works that is located within the geographic boundaries of the County.

In addition, at the commencement of employment, employers must provide each covered employee written notice advising of his or her rights to Earned Sick Leave under the Ordinance. The Cook County Commission on Human Rights will publish a form notice.

Implementation and Enforcement

The Ordinance provides a private right of action for employees who believe they are denied their right to request or use paid sick leave. Employers who violate 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 exercising, or attempting in good faith to exercise, any right under the

Ordinance, including disclosing, reporting, or testifying about any violation of the Ordinance or regulations promulgated thereunder, or 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 Cook County, Illinois, should review the Ordinance and their policies and practices related to paid sick leave carefully.

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

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