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Illinois Moves Toward Paid Leave for Any Reason

The Illinois legislature, on January 10, 2023, passed the Paid Leave for All Workers Act (PLFAW), which Governor Pritzker announced he will sign into law. Should the bill be enacted, Illinois would become the third state (after Maine and Nevada) to require private employers to provide employees with earned paid leave to use for any reason.

Overview

The PLFAW Act is currently slated to take effect on January 1, 2024. It will provide nearly all Illinois workers with a minimum of 40 hours of paid leave, or a pro rata number of hours, during a designated 12-month period. Employees may not be required to give a reason for taking leave, and employers will not be permitted to require any documentation or certification of the need to take leave. Employers may require up to seven calendar days' notice of foreseeable leave if they have a written policy provided to employees outlining notice requirements and procedures. If the leave is not foreseeable, employees must provide notice as soon as practicable.

The bill further provides the following:

- The leave can be frontloaded or accrued over time at the rate of one hour of paid leave for every 40 hours worked.
- Employees may use PLFAW Act leave after 90 days on the job unless an employer allows them to utilize leave earlier.
- Employees may determine how much leave to use, but employers may set a reasonable minimum increment of no fewer than two hours per day.
- Leave will be paid at the employee's hourly rate of pay. An employee who is paid gratuities and commissions must be compensated at least the full minimum wage for the jurisdiction, or their hourly rate, whichever is greater.
- Unused accrued PLFAW Act leave will carry over annually, but the employer will not be required to provide more than 40 hours of paid leave for an employee in the designated 12-month period. Employers that choose to frontload the 40 hours will not be required to carry over unused paid leave to the next 12-month period.
- Employers will not need to pay unused paid leave under the PLFAW Act at the end of the benefit year or any other time provided the employer has not credited PLFAW Act leave to an employee's paid time off bank (PTO) or employee vacation account.
- Employers must restore the PLFAW Act leave of employees who leave their employer but return to the same employer within 12 months.
- Record retention and notice posting requirements are required.
- Retaliation for exercising rights under the PLFAW Act, supporting others' exercise of rights, or opposing practices believed to violate the PLFAW Act is prohibited. Relatedly, employers may not consider the use of leave under the PLFAW Act in making discipline, promotion, or evaluation decisions.

PLFAW Exclusions

The PLFAW Act explicitly excludes the following from its requirements:

- School districts or park districts.
- Students employed on a part-time and temporary basis by their college or university.
- Short-term employees of higher education institutions who are employed for fewer than two consecutive calendar quarters during a calendar year without a reasonable expectation that they will be rehired in a subsequent calendar year.
- Employees working in the construction industry covered by a bona fide collective bargaining agreement.
- Employees covered by a bona fide collective bargaining agreement with an employer that provides national or international services of delivery, pickup, and transportation of parcels, documents, and freight.
- Employers covered by municipal or county ordinances in effect on January 1, 2024, that provide for paid leave or paid sick leave. After January 1, 2024, any municipal or county ordinance enacted or amended must comply with the act or give greater protections to employees.

The PLFAW Act does not affect the validity or change the terms of any bona fide collective bargaining agreement in effect on January 1, 2024. After that date, the law's requirements may be waived by a collective bargaining agreement only if the agreement includes a clear and unambiguous waiver.

Finally, the Illinois Department of Labor (IDOL) will enforce the PLFAW Act. Employees may file complaints with the IDOL within three years of an alleged violation and may receive actual damages, compensatory damages, attorneys' fees/costs, civil penalties, and equitable relief. The IDOL can conduct investigations and refer matters to hearing. The state attorney general may enforce the collection of awards.

Perkins Coie will continue to monitor these legislative developments and provide additional guidance if/when the law is enacted. In the meantime, employers should begin to prepare for this likely change to the Illinois employment landscape.

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