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December 14, 2023

Welcome News: Chicago Amends Paid Leave Ordinance



In welcome news for employers, the Chicago City Council passed an amendment (the Amendment) to the new [Chicago Paid Leave and Paid Sick and Safe Leave Ordinance](#) (the Ordinance), which will delay implementation of paid leave requirements from December 31, 2023, to July 1, 2024.

As [previously reported](#), the Ordinance significantly expands paid leave requirements for Chicago employers and includes some of the harshest penalties in the country for violations of its paid leave provisions. To avoid these penalties, many employers have been rushing to modify their paid time off (PTO) policies since the passage of the Ordinance on November 9, 2023, to meet that December 31 deadline. Fortunately for employers, the Amendment provides them with some breathing room to make required changes.

The Amendment delays implementation of most of the provisions of the Ordinance until July 1, 2024. Specifically, the Amendment revises the Ordinance as follows:

- **Paid leave accrual.** Accrual of paid leave for any reason (paid leave) does not begin until July 1, 2024.
- **Paid sick leave accrual rate and carryover.** The new paid sick leave accrual rate of one hour for every 35 hours worked and the new 80-hour carryover requirement will not take effect until July 1, 2024. Thus, the current accrual rate of one hour for every 40 hours worked and existing carryover requirements will remain in effect until June 30, 2024.
- **Medium employer partial payout extended.** The Ordinance requires certain employers, depending on the number of covered employees, to pay out the monetary equivalent of any accrued but unused paid leave upon an employee's termination, resignation, retirement, other separation, or transfer outside of the geographic limits of the city (qualifying separation event). Medium employers (51-100 covered employees) would have been required to pay out up to 16 hours of accrued but unused paid leave for any qualifying separation event through December 31, 2024, and then pay out all accrued but unused paid leave for any qualifying separation event on or after January 1, 2025. The Amendment extends that 16-hour payout window, providing that medium employers are required to pay out up to 16 hours of accrued

but unused paid leave for any qualifying separation event from July 1, 2024, until July 1, 2025. After July 1, 2025, medium employers must pay out all accrued but unused paid leave for any qualifying separation event.

- **Private right of action.** The Amendment delays the Ordinance's private right of action until July 1, 2024, for paid sick leave violations and until July 1, 2025, for paid leave violations. Additionally, the Amendment provides that an employee may only initiate a private right of action for paid leave violations after (1) an alleged violation occurs and (2) the payday for the next regular payroll period or 16 days after the alleged violation occurred passes, whichever is shorter. This requirement may give employers the opportunity to cure a violation prior to facing a private right of action. Notably, however, it does not require employees to bring the violation to the employer's attention. This private right of action prerequisite will automatically sunset on July 1, 2026.
- **Revised definition of covered employee.** The Amendment significantly revises the definition of a "covered employee" entitled to paid leave and paid sick leave under the Ordinance. Originally, a covered employee included any employee that performs at least *two hours* of work for an employer in any particular *two-week period* while physically present within the geographic boundaries of the city. The threshold for coverage now requires performing at least *80 hours* of work for an employer within any *120-day period* while physically present within the geographic boundaries of the city. Significantly, the Amendment also provides that once the 80-hour threshold is reached for coverage, the individual will remain a "covered employee" for the remainder of the time that the employee works for the employer.
- **Written policy.** The Amendment requires employers to provide written paid time off policies to each covered employee in the covered employee's primary language. Additionally, effective **December 31, 2023**, employers must provide a copy of their employment policies (not just paid leave policies) to any workers whose regular work duties take place within the geographical boundaries of Chicago and provide such workers with a 14-day notice of any changes to the employment policies. The employment policies must be provided in the primary language of each worker.
- **Recordkeeping requirements.** The Amendment establishes that the Ordinance's recordkeeping requirement is applicable to employees "whose regular work duties take place within the geographical boundaries of Chicago." This requirement exists even if they do not meet the standard for a "covered employee" and, consequently, are not entitled to paid leave or paid sick leave.
- **Collective bargaining agreements.** The Amendment provides that the Ordinance does not affect the validity or require changes to the terms of a sick leave or PTO policy contained in a valid collective bargaining agreement (CBA) in effect on July 1, 2024. However, any CBAs made subsequent to July 1, 2024, may only waive the requirements of the Ordinance if the waiver is set forth explicitly in clear and unambiguous terms.

The City of Chicago Office of Labor Standards (OLS) has published proposed rules on the new Ordinance and is accepting public comments until December 20, 2023. OLS is in the process of preparing guidance and other resources and materials to educate employees and assist employers with compliance. Employers are encouraged to monitor the [Office of Labor Standards website](#) for ongoing updates.

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