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December 19, 2023

Cook County Amends Paid Leave Ordinance



Following Chicago's [last-minute changes](#) to its much-discussed [Paid Leave Ordinance](#), Cook County has joined the recent flurry of legislating in Illinois to amend its own leave requirements.

On December 14, 2023, the Cook County Board of Commissioners passed the Cook County Paid Leave Ordinance (the Ordinance), which amends the prior Cook County Earned Sick Leave Ordinance to require Cook County employers to provide general paid leave to employees located in Cook County.

The new Ordinance, which is modeled after the Illinois [Paid Leave for All Workers Act](#) (the Act), takes effect on December 31, 2023. Below, we provide a breakdown of the various changes made under the new Ordinance:

- **Use and accrual of paid leave.** Like the Act, the new Ordinance requires employers to provide employees paid leave for any reason, doing away with the prior Cook County Earned Sick Leave Ordinance's specified list of covered activities.
- **Covered employees.** The new Ordinance covers all employees who work in Cook County with the following exclusions:
 - Individuals defined as employees in the federal Railroad Unemployment Insurance Act.
 - Students attending a college or university who are employed by that college or university on a temporary basis.
 - Employees who work at institutions of higher education for fewer than two consecutive calendar quarters during a calendar year and do not expect to be rehired.
 - Employees who are covered by a bona fide collective bargaining agreement and work in the construction industry.
- **Paid leave accrual and carryover.** The new Ordinance continues the prior rate of accrual of one hour of paid leave for every 40 hours worked, although employers may provide a more generous accrual rate. The new Ordinance clarifies that Fair Labor Standards Act (FLSA) exempt employees shall be deemed to work 40 hours in each workweek. Employers must allow carryover of unused time from one year to the next

unless they opt to frontload paid leave (discussed below).

- **Paid leave payout.** The Ordinance, like the Act, does not require payout of accrued but unused paid leave. However, if an employer's policy is drafted as a general paid time off (PTO) policy, payout may still be required under the Illinois Wage Payment and Collection Act upon separation. Employers are encouraged to consult counsel to ensure that their paid leave policy properly accounts for all Illinois laws regarding payout.
- **Increments of use.** Employers are entitled to set a minimum increment of use for paid leave, although this minimum increment cannot exceed two hours per day.
- **Frontloading paid leave.** Although carryover is generally required under the Ordinance, employers may avoid the Ordinance's carryover requirements by opting to frontload paid leave. To benefit from the frontloading exception, employers must make at least 40 hours of paid leave available on the first day of the benefit year and at the start of employment.
- **Waiting period.** Employers may require employees to wait until their 90th day of employment to use paid leave. Additionally, unless an employer opts for a more generous paid leave policy, employers are not required to offer access to paid leave until 90 days following the Ordinance's effective date.
- **Foreseeable notice.** Employers may require up to seven days' advance notice when the use of paid leave is foreseeable. When the use of paid leave is not foreseeable, employers may require employees to provide notice as soon as practicable.
- **Documenting paid leave.** Like the statewide Act, employers may not require employees to provide documentation for use of paid leave.
- **Required postings.** Employers will be required to post the Cook County Paid Leave Ordinance notice provided by the Cook County Commission on Human Rights (the Commission) at each facility in the county. Where the workforce comprises a large proportion of non-English speaking employees, the notice must be posted in additional languages as well. This notice must also be provided at the commencement of employment. Additionally, if paid leave under the Ordinance is provided pursuant to a general PTO policy, employees must be provided notice of any changes to the PTO policy.
- **Damages.** Employees may recover damages equal to three times the full amount of paid leave denied or lost as a result of a violation of the Ordinance. Additionally, employees are entitled to interest calculated at the prevailing rate, reasonable attorneys fees, and a penalty of not less than \$500 but no more than \$1,000 for an employer's violation of the Ordinance. Employees may file a private civil action or file a complaint with the Commission.
- **Interactions with other paid leave laws.** Because the Ordinance goes into effect prior to Illinois's Paid Leave for All Workers Act, and the Act does not apply to municipalities with existing paid leave ordinances at the time the Act goes into effect, municipalities covered by the Ordinance will continue to be excluded from coverage under the Act. However, because requirements under the Act and the Ordinance are strikingly similar, this is largely a mere technicality. On the other hand, it is unclear how the Ordinance will interact with other existing paid leave ordinances within Cook County, such as the recently passed Chicago Paid Leave Ordinance. Further guidance from the Commission is expected to clarify such interactions.

Next Steps for Illinois Employers

Formal rulemaking from the Commission is anticipated over the coming months, but employers are advised to monitor the [Commission's website](#) for updated notices and informal guidance prior to the Ordinance's effective date. With less than two weeks left in the calendar year before these changes take effect, Cook County employers are also encouraged to consult outside counsel to ensure that their paid leave policies comply with the new requirements under the Ordinance.

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