Proskauer

Effective July 1, 2024: Chicago Paid Leave and Paid Sick and Safe Leave Ordinance

Law and the Workplace on **July 5, 2024**

Effective July 1, 2024, the Chicago Paid Leave and Paid Sick and Safe Leave Ordinance ("Ordinance") will entitle eligible employees to accrue up to 40 hours of Paid Leave and up to 40 hours of Paid Sick Leave in a 12-month period and carryover certain leave into the next year. Eligible employees will begin to accrue 1 hour of Paid Leave and 1 hour of Paid Sick Leave for every 35 hours worked after July 1, 2024, or their first day of employment, whichever is later. Alternatively, employers may choose to frontload the leave. Finally, employers who violate the Ordinance may be subject to fines, monetary damages, and private causes of action by affected employees.

The key provisions of the Ordinance are the following:

Covered Employers

The Ordinance applies to all employers in Chicago who employ at least one employee.

Covered Employees

The Ordinance applies to all employees who perform at least 80 hours of work for an employer within any 120-day period while physically present within the geographic boundaries of Chicago.

Leave Usage

Paid Leave: Covered employees may begin to use Paid Leave on their 90th calendar day of employment. Employers may set a 4-hour minimum increment for use of Paid Leave.

Paid Sick Leave: Covered employees may begin to use Paid Sick Leave on their 30th calendar day of employment. Employers may set a 2-hour minimum increment for use of Paid Sick Leave.

Accrual, Frontloading, and Carryover of Leave

Accrual: A covered employee's Paid Leave and Paid Sick Leave will start to accrue on July 1, 2024, or on the first calendar day of a covered employee's employment, whichever is later. For every 35 hours worked after leave begins to accrue, a covered employee shall accrue: (i) 1 hour of Paid Sick Leave; and (ii) 1 hour of Paid Leave. Leave may only accrue in one-hour increments.

For each covered employee, there is an accrual cap of 40 hours of Paid Sick Leave and 40 hours of Paid Leave per 12-month period, unless the employer sets a higher limit.

Frontloading: Employers may choose to forego the accrual method and grant covered employees 40 hours of Paid Leave and/or 40 hours of Paid Sick Leave on the first day of employment or the first day of the 12-month accrual period.

If an employer chooses to grant covered employees 40 hours of Paid Leave on the first day of employment or the first day of the 12-month accrual period, the employer is not required to carryover the covered employee's unused Paid Leave hours, discussed below. However, covered employees would still be permitted to carryover unused Paid Sick Leave.

Carryover: At the end of their 12-month accrual period, covered employees may carryover up to: (1) up to 16 hours of Paid Leave; and (ii) up to 80 hours of Paid Sick Leave. Employers are not required to pay covered employees for any unused Paid Leave or Paid Sick Leave for any unused time that is not carried over at the end of the 12-month accrual period. As noted above, the Paid Leave carryover obligation does not apply to employers who frontload Paid Leave.

Rate of Pay

Paid Leave and Paid Sick Leave must be compensated at the same rate that the covered employee regularly earns during their hours worked. Employers must provide payment for Paid Leave and Paid Sick Leave used by a covered employee no later than the payday for the next regular payroll period after the paid time off was taken.

Unlimited Paid Time Off

On the first day of employment or the first day of the 12-month accrual period, employers may grant covered employees unlimited hours of paid time off that may be used for any reason. If an employer chooses to grant unlimited paid time off, the employer is not required to carryover the covered employee's unused paid time off.

Payout at Separation

Upon a covered employee's termination, resignation, retirement, transfer outside of Chicago, or separation, the Ordinance requires employers to pay the monetary equivalent of all unused, accrued Paid Leave as part of the covered employee's final compensation at the covered employee's final rate of pay.

For small employers, defined under the Ordinance as employers with 50 or fewer covered employees, the above payout requirements do not apply. For medium employers, defined as employers with 51-100 covered employees, the payout of unused Paid Leave upon termination, resignation, retirement, transfer outside of Chicago, or separation is limited to a maximum of 16 hours until July 1, 2025, unless the medium employer sets a higher limit. After that date, medium employers will be required to pay the monetary equivalent of all unused, accrued Paid Leave as part of the covered employee's final compensation at the covered employee's final rate of pay.

Employers with unlimited paid time off policies must pay the monetary equivalent of 40 hours of paid time off minus the hours of paid time off used by the covered employee in the last 12-month period before the covered employee's date of separation of employment as part of the covered employee's final compensation.

There is no requirement under the Ordinance for employers to payout Paid Sick Leave.

Reasons for Use and Employee Notice

Paid Leave: Covered employees may use Paid Leave for any purpose. Employers may not require employees to provide a reason or submit documentation for the use of Paid Leave but may require employees to: (i) give reasonable notice, not exceeding 7 days before using such Paid Leave; and (ii) obtain reasonable pre-approval before using Paid Leave for the purpose of maintaining continuity of the employer's business operations.

Paid Sick Leave: Covered employees may use Paid Sick Leave for certain specified reasons. If any employee's need for Paid Sick Leave is foreseeable, employers may require up to seven days' notice before such leave is taken. If the need for leave is unforeseeable, employers may require employees to give notice as soon as is practicable on the day the employee intends to take leave. Under the Ordinance, "reasonably foreseeable" includes, but is not limited to, prescheduled appointments with health care providers for the covered employee or for a family member, and court dates in domestic violence cases.

Recordkeeping

Employers are required to maintain records documenting hours worked, pay rate, wage agreement, number of paid time off hours earned for each year and the dates on which paid time off hours were taken and paid. Employers must also provide covered employees with copies of their respective records upon request.

Written Policy, Notice, and Posting Requirements

Written Policy: Employers must provide covered employees with a written paid time off policy, which includes the employer's paid time off notification requirements and an explanation of the rate of Paid Leave and Paid Sick Leave accrual. The written paid time off policy must be provided to covered employees in their primary language.

Posting: Employers must post in a conspicuous place a notice advising covered employees of their right to paid time off under the Ordinance.

Notice: The Ordinance also requires employers to provide a notice to covered employees advising them of their right to paid time off both with: (i) the covered employee's first issued paycheck or as part of the covered employee's onboarding process; and (ii) annually with a paycheck issued within 30 days of July 1, 2024.

Employers must also provide notice to covered employees within each paycheck their Paid Leave and Paid Sick Leave balances, including the accrued paid time off used since the last notification, the used paid time off since the last notification, and any unused paid time off available for use. Employers may choose to provide this notice via paystubs or on an online system that employees may access.

Under the Final Rules, an employer who chooses to frontload Paid Leave and Paid Sick Leave must make written notification of the frontloading and the availability of hours to a covered employee at the beginning of the 12-month period.

Penalties

Employers who violate provisions of the Ordinance may face fines between $1,000 and $3,000 for each offense. However, employers who violate the notice provisions of the Ordinance may face fines of $500 for the first offense, and $1,000 for each subsequent offense.

Covered employees may also recover in a private right of action civil damages equal to three times the full amount of leave denied or lost by reason of the employer's violation, with interest, and reasonable attorney's fees. A private right of action concerning Paid Sick Leave violations is available starting July 1, 2024, and a private right of action concerning Paid Leave violations is available starting July 1, 2025.

Conclusion

Employers with operations in Chicago should review their current leave policies for compliance with the Ordinance.

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