

Beginning July 1, 2017, Chicago and Cook County Employers Must Provide Paid Sick Leave

The Bottom Line

- *Employers with workers in Chicago and/or Cook County should review their existing paid sick leave and paid time off policies to ensure compliance with the applicable Ordinance(s) and begin preparing to comply with their accrual, carryover and notice obligations by July 1, 2017 if no such existing policies are in place.*
- *Covered employers should also decide whether they want to set a minimum use increment for the use of paid sick leave and if so, prepare and distribute a written policy to this effect.*
- *Finally, employers should consider whether it makes sense to track FMLA-eligible paid sick leave separately from paid sick leave used for more general purposes.*

Last year, the City of Chicago passed the Chicago Minimum Wage and Paid Sick Leave Ordinance (the Chicago Ordinance) and joined an ever-growing list of jurisdictions throughout the United States in requiring employers to provide paid sick time.

The Chicago Ordinance requires covered employers to provide eligible employees with at least 40 hours of paid sick leave in a 12-month period. Shortly thereafter, Cook County, where Chicago is located, followed suit with a nearly identical ordinance, extending paid sick leave requirements to employers with a “place of business” within the county (the Cook County Ordinance). Both the Chicago and Cook County Ordinances (the Ordinances) go into effect on July 1, 2017.

Covered Employers

An employer is covered under the Chicago Ordinance if it employs at least one covered employee in Chicago and either:

1. maintains a business facility within the geographic boundaries of the city; and/or
2. is subject to one or more of the city’s business license requirements.

Therefore, an employer based outside of Chicago may be subject to the Chicago Ordinance simply by virtue of the fact that it has a license to do business in Chicago. Under the Cook County Ordinance, a covered employer is defined as an individual or company that employs at least one covered employee with a place of business within Cook County.

Covered Employees

Under the Ordinances, an employee is eligible for paid sick leave if he or she:

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

Part-time employees and domestic workers are both covered by the Ordinances.

The Ordinances will not impact employees covered by a collective bargaining agreement in force on the date the Ordinances go into effect. Upon the expiration of such an agreement, the Ordinance(s)' requirements may be waived in a collective bargaining agreement, provided such waiver is explicit and is set forth in the agreement in clear and unambiguous terms.

Permissible Uses of Paid Sick Leave

The Ordinances permit eligible employees to use paid sick leave when the:

- employee or the employee's family member is ill, injured or is receiving medical care, treatment, diagnosis or preventative medical care;
- employee or the employee's family member is the victim of domestic violence or a sex offense (as defined under Illinois law); or
- employee's place of business is closed by order of a public official due to a public health emergency, or the employee needs to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency

Both Ordinances define a "family member" to include a child, legal guardian or ward, spouse, domestic partner, parent, spouse or domestic partner's parent, sibling, grandparent, grandchild or any other individual by blood or whose close association with the employee is the equivalent of a family relationship.

Accrual of Paid Sick Leave

Pursuant to the Ordinances, eligible employees begin accruing paid sick leave on their first day of employment or on July 1, 2017, whichever is later, but may not use the leave until their 180th day of employment. Paid sick leave accrues at the rate of one hour for every 40 hours worked. Employers may limit the amount of paid sick leave accrued to 40 hours, or set a higher limit, in a 12-month period beginning on the date the employee begins accruing leave.

At the end of the 12-month accrual period, the employee may carry over half of his or her accrued but unused paid sick leave, up to a maximum of 20 hours. However, if the employer is also subject to the federal Family and Medical Leave Act (FMLA), the employee may carry over up to 40 additional hours of accrued but unused paid sick leave, to be used only for FMLA purposes.

As an alternative to the accrual format described above, a covered employer may also comply with the Ordinances by "frontloading," i.e., granting the employee all hours of paid sick leave to which he or she is entitled immediately upon the date of eligibility of each 12-month period. Furthermore, if the employer's existing paid time off policies meet or exceed the requirements of the Ordinances, it is not required to provide any additional paid leave.

Use of Paid Sick Leave

A covered employee is generally not entitled to use more than 40 hours of paid sick leave in a 12-month period, unless the employer sets a higher limit – with one exception: if the employee has carried over 40 hours of paid sick leave to be used for FMLA purposes and exhausts such leave, the employee may use an additional 20 hours of accrued paid sick leave in the 12-month period.

The employee is allowed to decide how much accrued paid sick leave he or she needs to use at any given time but is not required, as a condition of using paid sick leave, to find a replacement worker to cover the hours during which he or she uses paid sick leave.

However, the employer may:

- establish a policy setting forth a minimum use increment of four hours or less per day;
- require up to seven days' advance notice if the need for such leave is reasonably foreseeable, including events such as prescheduled appointments with a health care provider and court dates (for domestic violence cases);
- require, if the need for paid sick leave is not reasonably foreseeable, that the employee give notice as soon as possible;
- require certification, such as signed documentation from a healthcare provider, for paid sick leave that spans more than three consecutive work days, but may not delay use of paid sick leave or the payment of wages on the grounds that the employer has not yet received the required certification; and
- discipline an employee (up to and including termination of employment) for use of paid sick leave for purposes other than those allowed in the Ordinances.

Notice Requirements

Employers are required to post a notice advising employees of their rights to paid sick leave under the Ordinances. This notice must be posted in a conspicuous place at each facility where any covered employee works. Employers that do not maintain a facility in the city/county and households that serve as worksites for domestic workers are exempt from this requirement. Employers are also required to provide a notice of rights to employees with their first paycheck. Form notices satisfying the Ordinances' requirements are available [here](#) (Chicago), and [here](#) (Cook County).

Enforcement

Employers are prohibited from discriminating or retaliating against any employee who exercises or attempts to exercise his or her rights under the Ordinances, including by reporting or testifying about any violations of same. Additionally, employers are prohibited from counting paid sick leave as an absence that triggers discipline, discharge or any other adverse action under any absence control policy.

Employees have the right to bring a civil action against any employer who violates the Ordinances and may recover up to three times the amount of any underpayment resulting from such violation, in addition to interest, reasonable attorneys' fees and costs.

Regulations

The final regulations for the Cook County Ordinance have been issued and can be found [here](#). Last month, the City of Chicago issued proposed regulations to the Chicago Ordinance for review and comment, which can be found [here](#).

There are several differences between the two sets of regulations, including with respect to how many hours of paid sick leave employers are required to frontload in order to comply with the Ordinances' requirements and how to calculate the number of hours the employee is permitted to carryover from one accrual period to the next. Now that the comment period for the Chicago Ordinance regulations has closed, it remains to be seen whether the city will revise its proposed regulations to address these discrepancies. Accordingly, employers should consult legal counsel if an issue arises that is not addressed in the Ordinances themselves.

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