

Illinois Paid Leave Law and Amendments to California Paid Sick Leave Law Take Effect January 1, 2024

The Bottom Line

- On January 1, 2024, new leave requirements will go into effect in Illinois and California.
- In light of these changes, employers with Illinois and/or California employees should review their existing paid time off and paid sick leave policies to ensure that they are in compliance with the new requirements.
- Illinois and California employers should also ensure they are in compliance with the leave law notice requirements.

Illinois Paid Leave Law

Earlier this year, the [Illinois Paid Leave for All Workers Act](#) (the Act) was signed into law by Illinois Governor J. B. Pritzker. The Act goes into effect on January 1, 2024 and will require covered employers to provide paid leave “for any reason” to covered employees.

Coverage

Under the Act, covered employees generally include all individuals who perform work for an employer in Illinois, with a few discrete exceptions (including bona fide independent contractors, certain college or university employees and employees in certain industries who are covered by a collective bargaining agreement).

Notably, the Act does not apply to any employer already covered by a municipal or county ordinance that requires employers to provide any form of paid leave - including paid sick leave - to its employees. Therefore, the Act does not apply to employers who are subject to the Chicago Minimum Wage and Paid Sick Leave Ordinance or the Cook County Earned Sick Leave Ordinance. Illinois employers who already provide employees with paid sick leave in accordance with those two ordinances are not required to provide additional paid leave under the Act. As a reminder, the Cook County ordinance permits municipalities in Cook County to opt out of the ordinance and therefore employers located in municipalities that have opted out will be required to comply with the Act.

Furthermore, covered employers with existing leave policies that provide the minimum amount of paid leave required by the Act (i.e., at least 40 hours) are not required to modify their policies or provide additional paid leave as long as their policy permits employees to take such paid leave for any reason, at the employee's discretion.

Accrual, Use and Carryover of Paid Leave

Paid leave provided under the Act may be used for any purpose. Covered employees are entitled to accrue one hour of paid leave for every 40 hours worked, up to a maximum of 40 hours in any 12-month period designated by the employer. Employees classified as exempt from overtime are generally considered to work 40 hours per work week.

Paid leave can be provided on an accrual basis or via a frontloading system (i.e., all 40 hours provided on the first day of the year). Employers that use an accrual system must allow employees to carry over all unused paid leave from one year to the next; however, an employer is not required to allow an employee to use more than 40 hours of paid leave per year. Conversely, employers who use a frontloading system are not required to carry over unused paid leave from year-to-year and may enforce "use it or lose it" policies under which unused paid leave is forfeited at year-end.

Employees are eligible to use paid leave after 90 days of employment, or 90 days after January 1, 2024, whichever is later. Employees can decide when and how much paid leave to use, but employers may set a reasonable minimum increment for use of no more than two hours per day.

There is no requirement for employers to pay out unused paid leave upon an employee's separation unless any paid leave taken under the Act was "credited" to an employee's paid time off or vacation allotment; under such circumstances, the usual Illinois laws requiring the payout of unused paid time off or vacation upon an employee's termination shall apply.

Employer Notice and Recordkeeping Requirements

Covered employers will be required to post in a conspicuous place at the workplace a notice summarizing the requirements of the Act and outlining how to file a complaint, and include such notice in their employee handbook. This notice will be prepared and provided by the Illinois Department of Labor (IDOL). Employers must also maintain records for each employee that includes:

1. The number of hours worked,
2. The number of paid leave hours accrued and taken, and
3. The employee's remaining paid leave balance.

If employees are required to notify the employer of their need to use paid leave under the Act, these notification requirements must be included in a written policy and distributed to employees.

Enforcement

An employee may file a complaint with the IDOL for violations of the Act within three years after the alleged violation. If an employer is found to have violated the Act, it may be liable for compensatory damages, a penalty of \$500 to \$1,000 payable to the employee, a civil penalty of up to \$2,500, and reasonable attorneys' and/or expert witness fees, among other remedies.

Amendments to California's Paid Sick Leave Law

On October 4, 2023, California Governor Gavin Newsom signed into law [amendments](#) to California's existing statewide paid sick leave law that take effect on January 1, 2024.

Amount of Sick Leave

Under existing law, California employees can accrue paid sick leave at a rate of one hour for every 30 hours worked, up to a maximum rolling accrual cap of 48 hours or six days. Any unused time must be carried over at year-end. Additionally, employers are not required to permit employees to use more than 24 hours or three days of paid sick time in a year. Alternatively, employers may frontload 24 hours or three days of paid sick time at the beginning of each year without having to comply with the law's carryover obligations.

The amendments change the accrual cap to an 80 hour or 10 day rolling accrual cap. In addition, employees must be permitted to use up to 40 hours (or five days) of paid sick time per year. For employers that wish to forgo carryover obligations at year-end, they must frontload 40 hours (or five days) of paid sick time at the beginning of each year.

California employers in cities with local sick leave ordinances should still be mindful of complying with both the state and local sick leave laws. For example, under some local laws, frontloading paid sick time does not eliminate carryover obligations and/or the local ordinance may impose a higher annual usage limit (if any at all). Employers should be mindful to comply with the more stringent accrual cap, annual usage limit and carryover requirements at the state and local level.

Preemption of Certain Aspects of Local Laws

As a general matter, the California statewide paid sick leave law does not preempt local paid sick leave ordinances. However, the amended statewide paid sick leave law now preempts any local ordinance with respect to the following requirements:

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- Employers are not required to provide compensation to employees for accrued, unused paid sick time upon termination or other separation from employment. However, if an employee is re-hired within one year of a separation, unless the employer paid out accrued unused paid sick time when the employee separated, such time must be reinstated and the employee is entitled to accrual of additional paid sick time upon re-hire, subject to the law's accrual and use limitations.
- Employers may lend paid sick time to employees in advance of accrual at the employer's discretion and with proper documentation.
- Employers must provide employees with written notice listing the employee's sick leave balance (or paid time off balance if PTO is provided in lieu of sick leave). This notice must be included on the employee's itemized wage statement or in a separate writing on the designated pay date with the employee's payment of wages. Employers that provide unlimited paid sick leave or paid time off to employees to satisfy sick leave requirements can satisfy this requirement by indicating "unlimited" on the pay statement or the separate writing.
- The state paid sick leave law's requirements for: (a) calculating the rate of pay when an employee uses paid sick leave, (b) employee's provision of notice when using paid sick leave and (c) the timing for when sick leave must be paid to employees.

For More Information

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