The Chicago City Council recently passed the Chicago Paid Sick Leave Ordinance which allows workers in Chicago to earn up to 40 hours of paid sick time per year. The ordinance, which takes effect July 1, 2017, applies to employers of all sizes and provides that eligible employees earn one hour of sick time for every 40 hours worked.

Paid sick time is capped at 40 hours per applicable 12-month period (beginning July 1, 2017, or the first day an employee begins work, whichever is later), but workers will also have the right to carry 20 hours of unused paid sick time over to the following 12-month period. If an employer is subject to the Family and Medical Leave Act (FMLA), employees may carry over up to 40 hours of unused paid sick time, in addition to the 20 hours otherwise allowed, to use for FMLA-eligible purposes only.

Under the new ordinance, employers will be required to provide employees with paid sick leave for absences relating to personal illness, family member illness, certain absences relating to domestic violence or sexual abuse, and public health

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emergencies. Covered “family members” include individuals related by blood or whose close association with the employee is the equivalent of a family relationship.

Employers that maintain a business facility in the City of Chicago must post a notice that advises eligible employees of their right to paid sick leave under the new ordinance, in a conspicuous place, at each facility where eligible employees work. Employers must also provide notice advising eligible employees of the law and employees’ right to paid sick leave with the first paycheck subject to this law. The City Commissioner is expected to provide the appropriate posting and notification materials prior to the effective date of the new ordinance.

What Chicago Employers Can Do To Prepare:

- Review the FAQ document provided with this Alert to understand the detailed changes in the new sick leave ordinance.

- Evaluate existing policies and practices using the information provided in this Alert to ensure compliance with the new requirements.

- Obtain the posting and notice materials from the City Commissioner when they become available.

- Be on the lookout for additional information provided by the City Commissioner.

- Start planning for tracking accrual and use of paid sick time.

For questions or further information on this topic, please speak to your Bryan Cave contact or a member of our Labor & Employment Client Service Group.

Frequently Asked Questions Regarding the Changes:

Coverage

Who is subject to the new ordinance?

- The ordinance adds paid sick leave provisions to the current Chicago Minimum Wage Ordinance and applies to the following employers and employees who are covered under the Minimum Wage Ordinance:
• Employers (including individuals and business entities) that employ at least one covered employee, that maintain a business facility within the geographic boundaries of the City of Chicago, and/or that are subject to at least one of Chicago’s licensing requirements.

• Employees who work at least two hours during any two-week time period in the City of Chicago (including time travelling for deliveries or sales calls but not including uncompensated commuting time). Domestic workers are covered if they otherwise fit under this description.

Who is eligible for paid sick leave?

• Chicago employees who are covered under the new ordinance must work at least 80 hours within a 120-day period to be eligible to earn paid sick leave under the new ordinance.

Existing Paid Leave Policies

My company already provides at least 40 hours per year of paid leave that can be used as sick leave; do I have to be concerned with this new ordinance?

• Even if your policy provides for the same or greater amount of sick leave, the policy also must comply with other aspects of the new ordinance. For example, unlike other forms of paid leave that your company may provide, employees will have a legal right to take paid sick leave under the ordinance and may not be retaliated against for having done so. At a minimum, ensure that your paid leave policy includes the applicable information located in the following FAQ sections:

  • Amount of Paid Sick Time;
  • Paid Sick Leave Carryover;
  • Limits on Paid Sick Leave Use; and
  • Requirements for Using Paid Sick Time.
When does my policy need to be in compliance with the new ordinance?

- You will need to ensure that your paid leave policies meet the requirements of the new ordinance by or before July 1, 2017.

What if my existing policy is more generous than the requirements in the new ordinance?

- Employers are permitted to be more generous, but are not required to provide additional paid sick leave.

What if my existing policy awards paid time off to employees in a lump sum, immediately upon their eligibility, rather than through an accrual method?

- An award of paid time off that occurs in a lump sum upon eligibility is sufficient under the new ordinance as long as the policy awards at least 40 hours of paid time off within one calendar year of an employee’s eligibility.

What if my existing paid sick time policy is set up on a calendar year basis, instead of based on an employee’s hire date?

- The ordinance is vague regarding this subject. Watch for clarification before the effective date of the ordinance.

**Amount of Paid Sick Time**

How much paid sick time do eligible employees receive?

- Eligible employees are entitled to accrue one hour of sick pay for every 40 hours worked (in full hour increments only, not fractions).

Is there an accrual cap?

- Employers must provide at least 40 hours of paid leave during each 12-month period, starting from the date accrual began, but can provide more if desired.
When must employees begin to receive paid sick leave?

- Paid sick leave begins to accrue on July 1, 2017, or the first day an employee begins work, whichever is later.

**Paid Sick Leave Carryover**

**How much sick time can an employee carry over to the next year?**

- After the 12-month accrual period ends, an employee may carry 20 hours of unused sick time over to the following 12-month period.

- If an employer is subject to the Family and Medical Leave Act (FMLA), each of its employees may carry over up to 40 hours of unused sick time to the following 12-month period, in addition to the 20 hours otherwise allowed, to use for FMLA-eligible purposes only.

**Why is carry-over permitted, if employees may only accrue and use 40 hours of paid sick leave (or 40 hours of carried FMLA-related sick leave plus 20 additional hours) during each 12-month period?**

- Carry over permits employees to use accrued, carried-over sick time in the new 12-month period even if they haven’t yet accrued additional sick time in the new year.

**Limits on Paid Sick Time Use**

**When may an employee begin to use accrued sick time?**

- Eligible employees may begin to use paid sick time 180 days after they are hired, or sooner if permitted by the employer.

- Although not expressly stated in the law, presumably employees who have been with an employer for more than 180 days on the effective date of the ordinance can begin to use paid sick time as soon as they accrue it.
How much paid sick time can an employee use each year?

- Subject to the FMLA-related provisions below, employees are limited to using 40 hours of paid sick time per 12-month period (calculated as of the date it began to accrue), regardless of any amount carried over, unless the employer sets a higher limit.

- However, if an employee works for an employer that is subject to the FMLA and that employee carried over 40 hours of unused sick leave time to use for FMLA purposes only, the employee may use that time for FMLA leave and use up to an additional 20 hours of accrued paid sick time (either accrued during that period or carried over) in the same 12-month period (i.e., up to 60 hours). Employees may use more accrued paid sick time if the employer sets a higher limit.

Who determines how much paid sick time an employee should use at any one time?

- The employee generally determines how much paid sick time to use at any one time (e.g., a single day vs. multiple, consecutive days), subject to the rules set forth above. Employers may, however, set a reasonable minimum increment usage requirement not to exceed four hours per day.

Requirements for Using Paid Sick Time

For what reasons may an employee use paid sick time?

- An eligible employee may use paid sick leave when:

1. **Illness/Medical Care**—he or she is ill or injured, or for the purpose of receiving medical care, treatment, diagnosis, or preventive medical care;

2. **Family Illness/Medical Care**—a member of his or her family is ill or injured, or to care for a family member receiving medical care, treatment, diagnosis, or preventive medical care;

3. **Victim of Domestic Violence or Sex Offense**—he or she, or a member of his or her family, is the victim of domestic violence, as defined in Section 103 of the Illinois Domestic Violence
Act of 1986 or a sex offense, as defined in Article 11 and Sections 12-7.3, 12-7.4 and 12-7.5 of the Illinois Criminal Code of 2012; or

4. **Public Health Emergency**-his or her place of business is closed by order of a public official due to a public health emergency, or he or she 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.

May an employer require that an employee provide documentation to use paid sick leave?

- An employer can require an employee to provide certification that the use of paid sick time was for an authorized reason when the employee is absent for more than three consecutive work days.

- Certification that paid sick time was authorized may include:

  - **Illness/Medical Care** or **Family Illness/Medical Care**-documentation signed by a licensed health care provider; no requirement that the documentation specify the nature of the injury, illness, or condition, unless required by law; or

  - **Victim of Domestic Violence or Sex Offense**-eligible employee’s choice of no more than one of the following per leave related to the same incident of violence or perpetrator: a police report, court document, a signed statement from an attorney, a member of the clergy, or a victim services advocate, or any other evidence that supports the employee’s claim, including a written statement from him or her, or any other person who has knowledge of the circumstances.

May an employer withhold or delay paid sick leave or payment of sick time due to failing to receive the required certification?

- If an employee takes or requests paid sick leave for a reason authorized under the law, the employer cannot delay its commencement or payment of wages for not receiving the required certification.
• If an employee uses paid sick leave for a reason that is not authorized under the ordinance, including the use of paid sick leave without ever providing the required certification, an employer may take disciplinary action (such as counting the absence against an employee under the employer’s attendance policy), up to and including termination, against the employee.

**May an employer require that the employee find a replacement before taking paid sick time?**

• An employer cannot condition an employee taking sick time on finding a replacement worker for the leave.

**May an employer require that the employee give notice before taking paid sick time?**

• If an employee’s need for paid sick time is reasonably foreseeable, an employer may require the employee to give up to seven days’ notice before taking the leave. If the need is not reasonably foreseeable, an employer may require that the employee give notice as soon as is practicable by notifying the employer via phone, e-mail, or text message.

• Reasonably foreseeable includes, but is not limited to, prescheduled appointments with health care providers for the employee or a family member, and court dates in domestic violence cases. Notice is not required in the event an employee is unconscious or otherwise medically incapacitated.

**Requirements Upon Termination or Separation**

**Is an employer required to pay out accrued, unused sick time upon an employee’s termination or separation from employment?**

• Unless an applicable collective bargaining agreement provides otherwise, an employer is not required to provide financial or other reimbursement for unused paid sick leave upon an employee’s termination, resignation, retirement, or other separation from employment.

**Application in Miscellaneous Situations**
How do the changes apply to tipped employees?

- Employees in positions that customarily receive tips who are eligible for paid sick leave must be paid for sick leave at a rate equivalent or greater to the full Chicago minimum wage.

How do the changes apply to exempt employees?

- Employees who are exempt from overtime requirements under Chicago’s minimum wage ordinance should accrue paid sick leave based on a 40 hour work week unless their normal work schedule is less than 40 hours a week, in which case accrual should be based on their normal work week.

How do the changes apply to employees covered under a collective bargaining agreement?

- The changes in the law do not affect the validity, or change the terms of, a bona fide collective bargaining agreement in force on the effective date of the changes. After the effective date of the changes, the requirements in the new ordinance may be waived under a subsequent bona fide collective bargaining agreement if done so explicitly in clear and unambiguous terms.

- The changes in the law do not apply to any employees working in the construction industry who are covered by a bona fide collective bargaining agreement.

Penalties and Disciplinary Action

What if an employee uses sick pay dishonestly?

- An employer may take disciplinary action, up to and including termination, against an eligible employee who uses paid sick leave for purposes other than those described in the law.

Can an employer make an agreement with an employee that allows for the employee to receive less paid sick leave that allowed under the law?
• Such an agreement between an employer and employee is not a defense to a civil action.

What if an employer is subject to a more strict law or policy?

• This law provides minimum paid sick leave requirements and does not affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater benefits.

What if an employer fails to abide by the changes in the law?

• An employee who is not paid sick pay wages he or she is entitled to may recover in a civil action three times the amount of any such underpayment, and interest, together with costs and such reasonable attorney's fees as the court allows.

Are there are non-discrimination and/or anti-retaliation provisions in the law?

• An employer may not discriminate or retaliate against an employee who, in good faith, exercises or attempts to exercise his or her rights under the new ordinance. Nor may an employer taken adverse action against employees for using paid sick leave.
  • Prohibited adverse actions include, but are not limited to, unjustified termination, unjustified denial of promotion, unjustified negative evaluations, punitive schedule changes, punitive decreases in the desirability of work assignments, and other acts of harassment shown to be linked to such exercise of rights.
  • For example, employees cannot be disciplined under an attendance policy for absences taken as paid sick leave under the ordinance.

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