

FEBRUARY 10, 2023 | STATE & LOCAL TRENDS

Illinois Set to Become the Third State with a Mandatory Paid Leave Law

The Illinois Paid Leave for All Workers Act ([Senate Bill 208](#)), which will provide paid leave to virtually all Illinois employees, was passed by the Illinois legislature on January 10, 2023 and was sent to the Governor J.B. Pritzker for signature on January 30, 2023. Governor Pritzker has publicly supported this bill and it is expected he will sign the bill into law soon. Illinois is set to join Nevada and Maine as the only three states in the country with a mandatory paid leave law- requiring nearly all Illinois employers to provide employees up to 40 hours of paid leave per year for “any purpose.” This will have significant impact on Illinois employers, and it is imperative for employers to take proactive steps to review existing leave policies and prepare to implement the Act’s requirements when it goes into effect on January 1, 2024.



Scope of the Act

The Act will apply to all Illinois employers except school districts organized under the School Code and park districts organized under the Park District Code. Furthermore, all Illinois employees will be covered with a few limited exceptions:

- employees under the federal Railroad Unemployment Insurance Act or the Railway Labor Act;
- students employed by a college or university for less than 2 consecutive calendar quarters during a calendar year with no reasonable expectation of being rehired by the same employer of the same service in a subsequent calendar year;
- employees working in the construction industry who are covered by a collective bargaining agreement (“CBA”); and
- employees covered by a collective CBA with an employer that provides services nationally and internationally of delivery, pickup, and transportation of parcels, documents, and freight.

The Act will not impact the validity or otherwise modify the terms of a CBA in effect on January 1, 2024. The Act’s requirements can be waived in a bona fide CBA as long as the waiver is set forth explicitly in the agreement in clear and unambiguous terms.

The Act also exempts those employers that are covered by a municipal or county law in effect on Jan. 1, 2024, such as the Chicago Minimum Wage and Paid Sick Leave Ordinance and the Cook County Earned Sick Leave Ordinance. For any municipal or county ordinances enacted or amended on or after January 1, 2024, employers

are only required to comply with the provisions of the local ordinance to the extent that it provides greater benefits, rights, and remedies to employees than those provided under the Act.

Accrual and Use of 40 hours of Leave in 12-Month Period

Beginning on January 1, 2024, covered employees will accrue one hour of paid leave for every 40 hours worked. However, employees cannot use their paid leave until they have completed 90 calendar days of employment, or until March 31, 2024, whichever is later.

Employees are eligible to accrue and use a maximum of 40 hours of paid leave in a 12-month period, which can be any 12-month period designating by the employer in writing at the time an employee is hired. Covered employees may also carry over paid leave to the following 12-month period, but employees are only eligible to use 40 hours of leave during any 12-month period regardless of how many hours they have accrued.

Instead of using an accrual method, employers also have the option of frontloading 40 hours of paid leave to employees on the first day of the 12-month period. If employers opt to manage the paid leave in this manner, employers are not required to allow employees to carry over unused paid leave hours. In other words, any unused leave will be forfeited and the employer does not need to pay-out any unused leave at the end of the 12-month period.

Employers are not required to pay-out unused leave at termination either. However, employers need to be careful how they credit this leave and avoid crediting or combining it with other leave categories, such as vacation leave. Employers who credit leave under this law to another paid time off or vacation account are required to pay out such unused time consistent with Illinois's wage and hour law.

Employee Use of Leave, Pay Rate, and Documentation Issues

Employers may set a reasonable minimum increment in which employees are required to use paid leave, but the Act does set some rather strict limitations. Specifically, the minimum increment that employers can require employees to use is not to exceed 2 hours per day.

Employers must pay employees their regular hourly rate of pay when taking paid leave, but that does not include any commissions or gratuities. Thus, employees receiving a tip credit must receive at least the applicable minimum wage in the jurisdiction in which they are employed when paid leave is taken.

Notice Provisions

The Act has rather employee-friendly notice provisions, but there are some limitations. Employers may require up to seven (7) days advance notice of the need for paid leave in cases where the leave is foreseeable. For leave that is unforeseeable, employees must provide notice as soon as practicable.

While notice must be provided, employees do not have to provide a reason for the leave to an employer, and employers are prohibited from asking for documentation or certification to support the use of leave. This can certainly result in disruption to employer operations, especially since employees are able to use as little as two hours of leave at a time.

Recordkeeping Requirements

The Act requires employers to preserve records that show:

1. hours worked,
2. leave accrued,
3. leave taken, and
4. the remaining balance of available leave.

These records must be preserved for at least three years and made available to the Illinois Department of Labor ("IDOL") upon request. Employers must also post a notice, which will be prepared by IDOL, in a conspicuous place in the workplace describing the law's requirements and procedures for filing a charge.

Enforcement and Civil Penalties

The IDOL is responsible for the administration and enforcement of the Act. The Act's anti-discrimination provision prohibits employers from considering the use of paid leave as a negative factor in any employment action, including evaluations, promotions, discipline or counting paid leave under a no-fault attendance policy. While there is no private right of action, employers who are found to have violated the law are subject to damages, including compensatory damages, attorneys' fees and costs, a civil penalty of up to \$1,000 per employee and paid to each affected employee, a civil penalty of \$2,500 per violation paid to IDOL, and equitable relief. Furthermore, if an employer fails to post the required notice, employers can be subject to a \$500 fine for the first violation and \$1,000 for any subsequent violation.

Key Takeaways for Employers

The Act significantly shifts Illinois employers' paid leave policies, and it is best to plan ahead. For employers that already have an existing paid leave policy, employers should begin reviewing these policies and prepare to update them to conform with the Act's minimum requirements. Employers should carefully review all of their leave paid policies and consider creating a separate policy that specifically addresses the paid leave requirements under the Act. The IDOL is anticipated to issue additional guidance prior to Act's effective date of January 1, 2024 to address some outstanding questions, such as the application of the policy to remote workers, discipline for misuse of leave, and managing the frontload of leave for part-time employees.

If you have any questions about this new law or need assistance reviewing existing leave policies, Conn Maciel Carey's Labor and Employment team is here to help.