

Chicago's Paid Leave and Paid Sick and Safe Leave Ordinance Ushers in Some of the Nation's Most Generous Employee Leave Entitlements

Article By:

Katherine H. Oblak

Hope Harriman

Chicago's recent enactment of its Paid Leave and Paid Sick and Safe Leave Ordinance ("Ordinance") marks some of the country's most progressive paid time off legislation and also imposes robust requirements upon Chicago employers. On November 9, 2023, Chicago's City Council passed the Ordinance, effective December 31, 2023, touting it as a benefit to low-wage workers previously lacking vacation time.

Although Chicago already mandated employees receive five days of paid sick leave annually, the [Ordinance](#) broadens the law's scope and has critical distinctions from its predecessor. Notably, the Ordinance creates two separate categories for required paid time off: five general Paid Leave days and five Paid Sick days. In keeping with the Ordinance's liberal policy, its reach is expansive, applying to *any* employers (inside or outside of Chicago) who employ at least one employee and to *any* employees who perform at least two hours of work within the Chicago city limits in a two-week period, subject to collective bargaining agreements for unionized employees.

There are also critical distinctions between the Paid Sick and Paid Leave provisions which govern covered employers' requirements in rolling out each to its workforces.

Important Distinctions Between Paid Sick and Paid Leaves

Reasons for Leave

Paid Sick Leave

Employees may use Paid Sick Leave for virtually any health-related (physical or mental) reason. For instance, employees who are ill or injured, or who seek to receive professional care, including preventive care, diagnosis, or treatment for medical, mental, or behavioral issues, including substance use disorders and domestic violence complications may avail themselves of this leave.

Employees also may utilize Paid Sick Leave if their family members are ill, injured, or ordered to quarantine, or to care for a family member receiving professional care, including preventive care, diagnosis, or treatment, or for medical, mental, or behavioral issues, including substance use disorders.

Only when an employee uses three consecutive days of sick leave, an employer may also require documentation from a doctor.

Paid Leave

Unlike Paid Sick Leave, employees may use Paid Leave for any reason at all. To that end, an employer may not require employees to provide a reason for such leave and may not require them to provide documentation or certification as proof of the leave.

Employee Eligibility

Paid Sick Leave

Employees are eligible to take Paid Sick Leave after thirty (30) calendar days of employment.

Paid Leave

In contrast, employees are eligible to use Paid Leave after ninety (90) calendar days of employment.

Notice Requirements

Paid Sick Leave

Employers may impose reasonable notice requirements for employees to use Paid Sick Leave. For instance, if the employee's need for Paid Sick Leave is foreseeable, employers may require employees to provide up to seven days' notice or, alternatively, as soon as the employee learns of the need for leave.

Paid Leave

Employers similarly are not without recourse to enact reasonable policies regarding employees' use of Paid Leave. For instance, an employer may require: (1) employees provide up to seven days' reasonable notice and (2) employees obtain employer pre-approval for the purpose of reasonably maintaining continuity of employer operations.

Increments of Leaves

Paid Sick Leave

Employees may take Paid Sick Leave in two-hour windows.

Paid Leave

On the contrary, employees may take Paid Leave in four-hour increments.

*Note: If the employee's scheduled workday is less than these minimum increments, the minimum increment shall not exceed the length of the employee's regular workday.

Leave Carryover

Paid Sick Leave

Each year, employees may rollover up to eighty (80) hours of Paid Sick Leave, or ten (10) sick days.

Paid Leave

In contrast, employees can carry over up to sixteen (16) hours, or two (2) days, of Paid Leave to the next year, unless the employer frontloads Paid Leave.

Commonalities Between the Leaves

Although there are various distinctions between Paid Sick and Paid Leaves under the Ordinance, there are requirements that apply to both with equal force.

Leave Accrual

Beginning January 1, 2024, employees will accrue one hour of Paid Leave and Paid Sick Leave for every thirty-five (35) hours worked. Although the Ordinance espouses an accrual framework, employers have the option to immediately grant workers forty (40)

hours each of both Paid Sick Leave and Paid Leave at the start of their employment or the first day of the 12-month accrual period.

The Ordinance also provides an annual accrual cap. Employees may not accrue more than 40 hours of Paid Sick Leave and 40 hours of Paid Leave per 12-month period, unless the employer sets a higher limit. The accrual period begins on January 1, 2024 or on the employee's first day of employment, whichever is sooner.

Upon employees' separation of employment, there are various requirements imposed on employers depending on their sizes. For instance, small employers (1-50 covered employees) are not required to pay out unused Paid Leave upon separation or transfer outside of the geographic limits of the City. However, medium employers (51-100 covered employees) are required to pay out up to sixteen (16) hours of Paid Leave on separation or transfer through December 31, 2024. On or after January 1, 2025, the requirements are bolstered, mandating medium employers pay out all unused Paid Leave on separation or transfer. Large employers (>100 covered employees) must pay out all unused Paid Leave upon separation or transfer effective January 1, 2024. Importantly, employees working outside Chicago or in other states are not counted toward these thresholds.

Option for Unlimited PTO

Instead of following an accrual model, an employer may choose to provide unlimited hours of PTO that may be used for any reason while maintaining the other requirements and benefits of the Paid Sick Leave and Paid Leave mandates and the different frameworks imposed under each. Notably, if an employer grants unlimited PTO on the first day of employment or the first day of the twelve (12)-month accrual period, the employer is **not** required to carry

over an employee's unused PTO to the subsequent 12-month period.

For those employers providing unlimited PTO, there are stringent payout requirements. Upon separation of employment, employers must pay the monetary equivalent of 40 hours of paid time off, minus the hours of paid time off used by the employee in the last 12-month period before the employee's date of separation. Notably, and in keeping with the Ordinance's liberal policy, if the employee uses more than 40 hours of paid time off in the last 12-month period before the employee's date of separation from employment, the employee will **not** owe the employer compensation. Moreover, employers cannot provide for forfeiture of earned paid time off upon separation from employment in any employment contract or policy.

Rate of Pay and Benefits

While using Paid Sick Leave or Paid Leave, employees must be compensated at the same rates of pay and with the same benefits as they normally receive. Importantly, nonexempt employees must be compensated at their regular rate of pay when using their Paid Sick Leave or Paid Leave. To calculate the regular rate of pay for nonexempt employees for purposes of paying Paid Sick Leave or Paid Leave, employers must divide the employee's total wages by total hours worked in full pay periods of the prior 90 days of employment. Significantly, the wages used for this calculation do *not* include overtime pay, premium pay, tips or gratuities, or commissions. An employee's hourly rate of pay while on leave cannot dip below the employee's base hourly wage, the federal minimum wage, the state minimum wage, or the Chicago minimum wage – whichever rate is higher.

Notice

Employers must provide employees with written notice of the Paid Sick and Paid Leave under the Ordinance with the first paycheck issued to an employee, and annually with a paycheck issued within 30 days of July 1 of each calendar year. The Commissioner will make available a form notice that satisfies the Ordinance's requirements. Additionally, each time wages are paid, employers must provide employees with written notification stating an updated amount of Paid Leave and Paid Sick Leave available for the employees' use as well as the accrual rates of the Paid Leave and Paid Sick Leave. In addition to notifying employees of the Paid Sick Leave and Paid Leave provisions under the Ordinance, employers also must provide the employer's PTO policy at the commencement of employment and within five calendar days before any change to such policy.

Penalties and Takeaways

Unsurprisingly, and another common thread between both leave allowances, the Ordinance provides stiff penalties for non-compliance. Violators may be subject to fines up to \$3,000, plus damages equal to three times the amount of leave denied or lost, plus interest and attorney's fees.

Although the Ordinance suspended enforcement through a private right of action until January 1, 2025, time is of the essence.

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National Law Review, Volumess XIII, Number 325

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