



Illinois Set to Further Expand Employee Rights with the Illinois Paid Leave for All Workers Act

By Julieta Kosiba and Tara Kuchar on March 7, 2023
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Governor Pritzker is expected to sign the Illinois Paid Leave for All Workers Act (“Paid Leave Act”)—the latest expansion of employee rights in Illinois—in the near future. The Paid Leave Act will require employers to provide workers in Illinois with at least 40 hours of paid leave in a 12-month period. While this core requirement may seem straightforward, there is much more to the Act. With this in mind, employers should start preparing for the Paid Leave Act now and not wait until its January 1, 2024, effective date. Indeed, compliance is critical. The Act creates an enforcement scheme that includes compensation to employees and the potential for civil money penalties for noncompliance. Below is a summary of the Paid Leave Act’s terms, including to whom it applies, what employers may and must do to comply, and the consequences for non-compliance.

The Paid Leave Act’s Purpose

The purpose of the Paid Leave Act is to set a minimum standard for paid time off for workers, to provide security for employees who take paid leave, and to generally ensure that working people in Illinois can take paid leave from work for any reason they choose. Indeed, the terms of the Paid Leave Act are to be liberally construed in favor of providing workers with the greatest amount of paid time off and employment security. Indeed, employers should be mindful of this purpose as they craft leave policies.

To Whom the Paid Leave Act Applies

All employers who employ at least one person—except for the federal government, school districts organized under the School Code, and park districts organized under the Park District Code—are subject to the Paid Leave Act’s requirements, unless they are covered by a municipal or county ordinance (in effect at the time that the Act becomes effective) to give any form of paid leave to their employees.

The provisions of the Act apply to nearly all employees in Illinois, including domestic workers’ employers. However, the following employees are excluded from the Paid Leave Act’s coverage: employees covered by the federal Railroad Unemployment Insurance Act or the Railway Labor Act; certain student workers; certain short-term employees at institutions of higher learning; and employees who are covered by collective bargaining agreements and employed by a State agency, the construction industry, or an employer that provides delivery, pickup, and transportation of parcels, documents, and freight services nationally and internationally.

The Paid Leave Act's Leave Requirement

Beginning January 1, 2024, employees are entitled to a minimum of 40 hours of paid leave for a 12-month period. The paid leave accrues at a rate of one hour for every 40 hours worked. Employees who are exempt from overtime under the Fair Labor Standards Act are deemed to work 40 hours in each workweek unless their regular workweek is less than 40 hours, in which case paid leave accrues based on that regular workweek.

The Paid Leave Act does not dictate how employers must calculate the 12-month period, but the selection must be communicated to an employee in writing at the time of the employee's hire. The 12-month period may be changed subject to the Act's notice, documentation requirements, and limitation on reducing eligible accrual.

Employees may take paid leave for any reason, and employers cannot require that the employee give them a reason or any substantiating documentation/certification for using the leave. Nor can employees be required to find another worker to cover for them for the period that they take leave. However, employers are allowed to implement notice requirements as part of their reasonable paid leave policy. Employers may require an employee whose leave is foreseeable to give the employer seven calendar days' notice before the paid leave starts. If the use of leave is unforeseeable, the employer may still require employees to provide notice as soon as practicable. If an employer requires notice for unforeseeable leave, that notification process must be part of a written policy that outlines the procedure employees should use to provide that notice. Employers must also provide proper notice and post any such policy notification requirements.

Further, employees must be allowed to determine how much accrued leave they want to use at any given time, although employers may set a reasonable minimum increment of 2 hours per day (unless the employee's scheduled work day is less than 2 hours). Likewise, under the Act, employees are entitled to choose whether to use paid leave under the Act prior to using any other leave provided by the employer or state law.

When an employee takes paid leave, they must be paid their hourly rate of pay. If the employee's occupation is one in which gratuities or commissions are part of their usual and customary pay, the employee must be paid at least the minimum wage in the applicable jurisdiction where the paid leave is taken. In addition, both the employer and the employee's obligations regarding the employee's health coverage must be continued during the employee's paid leave.

The Paid Leave Act also requires that employees be allowed to use all accrued, unused leave when they transfer to a different division, entity, or location within the same company and when they leave and are rehired within 12 months. Specifically, transferring employees are entitled to use all paid leave accrued while working in the prior division, entity, or location. Additionally, employees who are rehired within 12 months of their departure are entitled to their previously accrued, unused paid leave and can use it at the commencement of their rehire.

Choosing How to Provide Paid Leave

According to the Act, employers who already provide any type of paid leave policy that satisfies the minimum amount of leave required by the Act are not required to modify their policy if the existing policy offers an employee the option, at the employee's discretion, to take paid leave for any reason.

All other employers will need to decide how they'll make the paid leave available to employees. In particular, employers will need to determine whether they want to make the 40 hours available to employees as a lump sum at the beginning of the first day of employment (or the first day of the 12-month period thereafter) or whether they will make it available on a pro rata basis. Employers who make the leave available up front may prohibit employees from carrying over any unused leave into the following 12-month period, thus adopting a "use it or lose" policy. Otherwise, if leave is made available on a pro rata basis, it must carry over annually, although the employer is still not required to provide more than 40 hours of paid leave to an employee in any 12-month period unless it has agreed to do so.

Employers with existing paid time off policies that plan to provide paid leave under the Act will need to decide whether they want to aggregate paid leave under the Act with the other paid time off or whether they will want to keep them separate. If the employer credits leave under the Paid Leave Act to an employee's existing paid time off bank or employee vacation account, then any unused paid leave will need to be paid out to the employee upon the employee's termination, resignation, retirement, or other separation to the same extent as vacation time under current Illinois law. Otherwise, employers are not required under the Act to provide any financial or other payment for unused, accrued time off when the employee is terminated, resigns, retires, or otherwise leaves.

Regardless of how employers choose to provide the paid leave, employees must begin to accrue paid leave at either the time of hire or January 1, 2024, whichever is later. They also must be allowed to start using the accrued leave no later than 90 days thereafter. Employers may not interfere with, deny, or alter an employee's work schedule to avoid providing eligible time off to an employee.

Importantly, employers cannot ask employees to waive their right to paid leave under the Act. Such agreements are void as violating the public policy of Illinois. However, the Paid Leave Act does not impact the validity or change the terms of bona fide collective bargaining agreements that are in effect on January 1, 2024. In addition, the requirements of the Act may be waived in a collective bargaining agreement that is effective after January 1, 2024.

Recordkeeping and Notice Under the Paid Leave Act

The Paid Leave Act also imposes recordkeeping requirements on employers. Employers must keep records documenting hours worked, paid leave accrued and taken, and paid leave balances for each employee for at least three years. The records must also be preserved while any administrative process is pending within the Illinois Department of Labor (IDOL) related to alleged violations of the Paid Leave Act. Further, employers who provide paid leave on an accrual basis must give an employee information about the amount of paid leave accrued and/or used by that employee when requested. Failure to do so is a violation of the Paid Leave Act and will leave the employer subject to civil money penalties.

Employers must also conspicuously display IDOL's notice of the Paid Leave Act's requirements and information about how to file a charge with IDOL alleging a violation of the Act. If a significant number of employees are not literate in English, employers must notify IDOL, and IDOL will provide a notice in the appropriate language. The notice must be posted on the premises and included in any employee manual or policy that the employer may have. Failure to provide notice as required is a violation of the Paid Leave Act and will carry a civil penalty in the amount of \$500 for the first audit violation and \$1,000 for any subsequent violations.

The Paid Leave Act's Anti-Retaliation Provision

The Paid Leave Act prohibits employers from retaliating against employees by taking or threatening to take any adverse action against employees who exercise their rights under the Act, oppose practices they believe violate the Act, or support another's exercise of rights under the Act. It is also unlawful for an employer to use an employee's use of paid leave as a negative factor in any employment decision. Such retaliation will subject the employer to civil penalties and potential suit by the employee.

Penalties and Damages Under the Paid Leave Act

Employees may file a claim with IDOL within three years of an alleged violation. Employers who violate the Paid Leave Act are liable for damages to the employee in the form of actual underpayment, compensatory damages, and a penalty of at least \$500 but not more than \$1,000. Employees are also entitled to equitable relief (including attorneys' fees, expert witness fees, and other costs), which the employer shall pay to the employee. In addition, an employer who violates the act is subject to a civil penalty of \$2,500 for each separate offense, excluding violations related to notice as specified above.

The Takeaway

All covered employers in Illinois should pay attention to the new Paid Leave Act. Unquestionably, covered employers who do not currently allow their employees to take paid time off will need to start preparing now for its requirements. All other covered employers will also need to consider the Paid Leave Act's requirements and whether their paid time-off policies will need to be modified.

HeplerBroom's Employment & Labor attorneys can assist you with this process and any other questions you may have about employment and labor laws.

Tags: Illinois Paid Leave for All Workers Act, Paid Time Off