

## **Chicago Joins Other Jurisdictions in Mandating Paid Sick Leave**

**By: Kimberly Ross**

On June 22, 2016, the Chicago City Council passed a new ordinance, which will take effect on July 1, 2017, requiring employers to provide paid sick leave to employees. In doing so, Chicago joins 25 other cities and five states (and counting) with similar paid sick leave laws. Under the Ordinance, employees in Chicago, with a few exceptions discussed below, would earn one hour of sick leave for every 40 hours worked, with a cap of 40 hours in a 12 month period (counted from the date accrual begins), unless the employer sets a higher limit.

The Ordinance applies to employers who maintain a business facility in Chicago and/or who are required to obtain a business license to operate in the City. For employees to be eligible, they must work at least 80 hours for an employer in any 120-day period of time; thus most part-time, non-seasonal workers will qualify. Because of the way in which the Ordinance was drafted, edited and combined with the Chicago Minimum Wage Ordinance, it is not clear at this time whether employees must also work in Chicago (at least two hours in a two week period) to be eligible. Hopefully, this will be clarified before the law goes into effect.

Employees will begin to accrue the leave time on their first day of employment (or on July 1, 2017 if already employed) but can be required to wait up to 180 days after their start date to actually begin taking the leave. Employers can set minimum increments of sick leave use, but not more than four hours per day. Employees who are “exempt” under the Fair Labor Standards Act will be presumed to work 40 hours per week.

### **Use of Sick Leave**

The sick leave can obviously be for an employee’s illness or injury (including medical care, treatment and diagnosis), but it can also be used for:

- Preventative medical care
- Caring for an ill or injured family member or family member receiving preventative care
- Victims of domestic violence or a sex offense (the employee or employee’s family member)
- Caring for a child whose school has been closed due to a public health emergency; or if the employee’s place of business has been closed for the same reason

Family members include the employee’s child (biological, adopted, step, and foster), spouse, domestic partner, parent (including biological, foster, stepparent, or adoptive parent), sibling, grandparent, grandchild or other blood relative, or any person whose close association with the employee is the equivalent of a family relationship.

Employers will be allowed to require up to seven days of leave notice where feasible, such as for a pre-planned medical appointment. Where the notice is not reasonably foreseeable, the employer can require an employee to give notice as soon as practicable

(via phone, e-mail or text message). The Ordinance states that employers may require certification (such as a note from a licensed health care provider) that the use of paid sick leave was for reasons allowed under the Ordinance when the absence is for three or more consecutive days. It does not specify whether an employer may ask for such certifications for absences of less than three days. The Ordinance also allows an employer to discipline an employee for use of paid sick leave in a manner inconsistent with the allowable reasons.

### **Carry-Over, FMLA, and Treatment at Termination**

Unless otherwise provided by a collective bargaining agreement or other written policy, the Ordinance does not require employers to pay out unpaid sick leave upon termination of employment (voluntary or involuntary), which is consistent with current State regulations set out by the Illinois Department of Labor for sick leave.

On the other hand, employees will be allowed to carry over half of any unused sick time into the next year, up to 20 hours. The ordinance further provides that if an employer is subject to the Family and Medical Leave Act (i.e. with 50 or more employees), then the employee shall also be allowed to carry over up to 40 hours (instead of only 20) of unused accrued paid sick leave to use exclusively for FMLA-eligible purposes. If the employee uses the 40 hours for an FMLA leave, he will be limited to only 20 additional hours of paid sick leave for other qualifying reasons for the rest of the one-year period. As currently written, the law is unclear whether an employee would first need to use up all 40 hours of carried-over paid sick leave for an FMLA leave before he would be able to take any of the additional 20 hours for non-FMLA reasons. The Ordinance is silent, and there have been no public discussions, about employer policies that require employees to first exhaust accrued paid leave when taking an FMLA leave and whether this 40-hour carry over provision would prohibit such policies.

### **Exceptions and Variances**

- The Ordinance will not apply to construction industry workers who are covered by a bona fide collective bargaining agreement.
- The Ordinance will not require unions and employers to immediately re-negotiate collective bargaining agreements and instead, they can wait until the next contract period. The parties to a CBA can also decide to explicitly waive the City's minimum sick leave requirements.
- Employees in occupations in which tips have customarily constituted part of their pay must be compensated for sick time at a rate at least equal to the Chicago minimum wage (\$11 by the time the Ordinance goes into effect).

Employers who already provide paid time off in at least an amount and manner that meets the requirements of the City's paid sick leave do not have to provide additional paid leave.

### **Notices**

The Ordinance also requires notice to be provided to employees of their rights under the ordinance, both via posting with other legally-required employment notices (i.e. in a conspicuous place at each facility within the City), as well as providing a notice to

employees in their first paycheck (once the Ordinance is in effect). Because this Ordinance is being combined with the Chicago Minimum Wage Ordinance, the paycheck notice will need to include a statement not only regarding the employee's right to paid sick leave, but also of the City's current minimum wage.

### **Violations**

Employees will have the right to file private civil actions for violations of the Ordinance. If the employee prevails, the penalties for failing to provide paid sick leave include triple the amount of any non-payment or underpayment (with interest), as well as attorneys' fees and costs to the prevailing employee in his or her private cause of action.

### **What Now?**

Employers who are not currently providing sick leave to employees in an amount at least equal to the new Ordinance should begin drafting policies consistent with the new law. Employers also need to begin taking steps to determine the best way to track the accrual and use of paid sick leave, and ensuring that the proper notices will be in place and provided in a timely manner. We are available to assist employers with this process.