

Brian M. Wacker
The Cook Group, PLLC
(314) 882-9869
BWacker@CookGrouplegal.com



ILLINOIS PAID LEAVE FOR ALL WORKERS ACT

Live Stream of  COLES Together event
at the Hilton Garden Inn, Mattoon, IL

THURSDAY
JULY 27, 2023
10:00 A.M.



Register for live stream at
ILBUSINESSNAVIGATORS.COM



PRESENTER:
BRIAN WACKER, PARTNER



Illinois Paid Leave For All Workers Act

Purpose

Legislative

- For Employees, paid leave is crucial to overall health, happiness and family responsibilities.
- Addresses perceived gap in paid leave availability to certain workers.
- Intended to promote fairness, inclusivity and healthy work-life balance.
- Attracts new employee talent to state.
- Not designed to discourage employers from adopting and enacting additional leave policies.

Governor Pritzker

- Purpose of law is “alleviate working family burdens.”
- Employers will ultimately benefit from increased productivity.
- Employees will “gain a greater passion for their job when they can manage the stresses they face outside of work.”

Industry Opinions

- Provides “consistency and simplicity” for employers.
-Rob Karr, Illinois Retail Merchants Association
- “Strikes the right balance” between ensuring time off to employees and giving businesses flexibility
-Mark Denzler, CEO of Illinois Manufacturers Association
- Endorsed by major labor groups:
 - AFL-CIO
 - SEIU Healthcare
 - Shriver Center on Poverty Law



But

Not **EVERYONE** loves it

- Mandated benefits “**could have a detrimental effect**” on small businesses “in an already unfriendly business climate”
-Illinois House Republican Leader Tony McCombie
- “Imposes a **one-size fits all** mandate on all employers. ... The message from Illinois lawmakers is loud and clear: **Your business isn’t essential.**”
-National Federation of Independent Businesses

Illinois Law

Prior to January 1st, 2024

- Statewide, employees are not guaranteed pay when taking time off for:
 - sick leave;
 - childcare;
 - mental health reasons;
 - medical appointments;
 - vacation; or
 - ... any other reason.

Key Provisions Overview

Amount of Leave

- “An employee who works in Illinois is entitled to earn and use up to a minimum of 40 hours of paid leave during a 12-month period or a pro rata number of hours of paid leave under the provisions of subsection.”
- “The paid leave may be used by the employee for any purpose as long as the paid leave is taken in accordance with the provisions of this Act.”

Employer Responsibilities

- Provide and maintain records of employees’ leave entitlement and usage.
- Properly notify employees about their rights under the Act.
- Avoid retaliation against employees exercising their rights.

Employee Rights and Protections

- Non-retaliation provision:
 - Employers cannot penalize or discriminate against employees for taking paid leave.
 - Remedy for violations: Employees have the right to file complaints and seek remedies for violations of their rights under the Act.



Who is covered?

 **THE COOK** GROUP

Who **IS** Covered

- Applies to ALL private employers in Illinois.
- Every single employer in the state – 1 to 1,000,000 employees.
- **No exception** based on size of employer (unlike Federal law)
- Applies to all state and local government units.

Collective Bargaining Agreements

- If **in effect** on January 1, 2024, this does not affect its validity.
- If CBA is **entered into after January 1, 2024**, the paid leave requirements of the Act can only be waived if there is a specific waiver in clear and unambiguous terms.

Who is **NOT** covered

- **School districts** organized under School Code
- **Park districts** organized under Park Code
- **Railroad employees**
- Temporary college and **university student employees**
- **Construction workers** employed under a *bona fide* collective bargaining agreement
- Workers employed under a *bona fide* collective bargaining agreement for companies who provide **national and international delivery, pickup, parcel delivery and freight services**

Accrual and Duration of Leave

Accrual

- Non-Exempt Employees accrue one hour of paid leave for every 40 hours worked.
- Exempt employees who work 40 hours a week accrue paid leave in accordance with their regular workweek.
- Employees must be permitted to earn up to 40 hours during a 12-month period.
 - 12-month may be any consecutive period that the employer designates in writing at the time of hire.
 - Changes to this period can only be made:
 - if employer gives employee **written notice prior to the changes**; and
 - the change to the period does not **reduce the eligible accrual rate** and the paid leave ultimately available to the employee
- Employees cannot accrue **more than 40 hours** at any given time
- Employees can **carry over unused**, accrued leave

How much is paid during leave?

- Non-tipped Employee paid at full regular wage while on leave.
- Tipped Employees paid at minimum wage in respective locale while on leave.



“Front Loading”

- Act does permit employer to “front-load”:
 - An employer may make available the minimum number of hours of paid leave, subject to pro rata requirements ... to an employee on the first day of employment or the first day of the 12-month period.
 - Employers that provide the minimum number of hours of paid leave to an employee on the first day of employment or the first day of the 12-month period are not required to carryover paid leave from 12-month period to 12-month period and may require employees to use all paid leave prior to the end of the benefit period or forfeit the unused paid leave.
 - However, under no circumstances shall an employee be credited with paid leave that is less than what the employee would have accrued ...

“Front Loading”

- No requirement that the employer credit the employee’s existing “bank” of PTO.
- However, if employer chooses to credit the PTO bank, then any unused paid leave does need to be paid to the employee upon termination, as required by the Wage Payment and Collection Act.

Accrual vs. Frontloading

Two Essential Options:

- Under the accrual system, paid leave time gradually builds to a minimum of 40 hours over the course of a 12-month period. If an employer opts for the accrual system, it must allow employees to carry over all unused paid leave from one 12-month period to the next. 820 ILCS 192/15(b).
- Under front-loading system, employees are provided with 40 hours of paid leave on the first day of the 12-month period and does *not* require carryover from year to year.
- Employers that choose this system may enforce "use it or lose it" policies that require unused paid leave to be forfeited at the end of the 12-month period. 820 ILCS 192/15(c).

Additional Rules

Employer cannot “interfere with, deny or change an employee’s work days or hours to avoid providing eligible paid leave time to an employee.”

Employers cannot negotiate with employees to waive the requirements

- An agreement to waive employee’s rights under the Act is void, as it is against Illinois public policy.



Transfer to new divisions, entities or locations by same employer cannot affect amount of paid leave employee is entitled to.

- If it is the same employer, then the accrued PTO moves with the employee.

No requirement to compensate employee for unused paid leave upon termination, separation, or retirement

- However, if employee is rehired within 12 months, employer must reinstate the employee’s previously accrued but unused paid leave.

Even More Rules

- Employees may elect to use paid leave under the act before using other employer-provided leave or other leave required under State law.
- Employer may set a “reasonable minimum increment” for use of the paid leave under the Act:
 - may require no less than two hours per day;
 - may require up to seven days’ notice for “foreseeable” paid leave days off requests;
 - if leave is foreseeable, request can be oral or in writing; but
 - you cannot ask why it is being taken – because it can be taken for any reason
- If leave request is not foreseeable – i.e., sudden illness, family emergency, etc. – and not requested within seven days, employer may put a formal notification policy in place
 - can ask why;
 - can require that request be in writing; but
 - cannot require documentation or certification from employee regarding need for leave; and
 - cannot require that the employee find a replacement or substitute for his shift while on leave

When does it start?

- March 31, 2024 (90 days after January 1, 2023) or 90 days after hire, whichever is later.
- Once eligible, employees must be permitted to determine when and how much to use:
 - ... but employer can put reasonable minimum increments on usage.

In other words... Be ready to accommodate leave on March 31, 2024.



Effect on Existing Policies

- Employers who already have paid leave policies in place that satisfy the Act's requirements, i.e., 40 hours a year, are not required to change or alter their policies.
 - But only if that existing policy allows for employees to take leave:
 - for any reason and
 - at their discretion.

Anti-Retaliation

Act expressly prohibits employers from retaliating against employees for:

- Exercising rights under the Act
- Opposing employer's practices under the Act
- Supporting other employees exercising their rights under the Act

What is retaliation?

- It is unlawful for any employer to consider the use of paid leave by an employee as a negative factor in any employment action that involves evaluating, promoting, disciplining, or counting paid leave under a no-fault attendance policy.
 - Such retaliation shall subject an employer to civil penalties pursuant to this Act.
- Any adverse employment action taken against employee affecting the employee's employment, which is related to the employee's use of paid leave under the Act. This includes:
 - Promotions
 - Demotions
 - Discipline
 - Evaluations
 - Change in position
 - Change in responsibilities
 - Suspension
 - Termination

Notice Requirements

- Required to post a physical or electronic notice to all employees summarizing Act's requirements
 - DOL will be preparing this, which will be available for download
 - Failure to post the Notice can result in a \$500 fine for first violation and \$1,000 fine for additional violations



Recordkeeping Requirements

- An employer subject to this Act shall make and preserve records documenting hours worked, paid leave accrued and taken, and remaining paid leave balance for each employee for a period of not less than 3 years and shall allow the Department access to such records, at reasonable times during business hours, to monitor compliance with the requirements of this Act.
- “Records shall be preserved for the duration of any claim
- Employers required to provide notice of the amount of paid leave accrued or used by an employee upon request by the employee in accordance with the paid leave policy.

Enforcement

- Subject to DOL enforcement:
 - Conducts investigations of employers – both in response to complaint and randomly.
- Provides employees avenue to file complaint with DOL for noncompliance:
 - DOL conducts investigation, provides written notice and can refer to administrative judge to impose penalties.
 - Can take depositions, take discovery and run up your legal bills.
 - Employees have three years to file claim after violation.
- Employee can recover actual underpayment, compensatory damages and penalties:
 - Substantial penalties paid to each employee for non-compliance
 - 1st Violation - \$500.
 - Subsequent violations - \$1,000.
 - Also permits “appropriate equitable relief”.
 - Not specifically listed, but can include reasonable attorneys’ fees.
- Employer also subject to civil penalties:
 - \$2,500 for each offense to be deposited into a Paid Leave Workers Fund, which is used to enforce the Act.
- Violations of Act:
 - Can be anything that does not comply with Act... except failure to post notice.

What do we do now?

- Review and revise your existing policies before January 1, 2024:
 - If you do not have a paid leave policy in place, you should get one.
 - Speak with an experienced labor and employment attorney to assist.
 - CALL ME!
 - If you do have paid leave, PTO or vacation policies in place, you should review to make sure that they meet the Act's minimum requirements.
 - If it does, you're good. No revisions are needed.
 - Otherwise, it needs to be revised.
- Train your HR department, benefits managers and supervisors on Act's requirements, particularly the non-retaliation protections for workers.
- Look for forthcoming guidance from DOL on implementation and enforcement regulations.
- Post and circulate required notice to all current employees
 - Provide written notice to all new employees going forward

Questions?

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