



Responses from Brian Wacker to Virtual Attendees Questions, July 27, 2023
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Note from Presenter, Brian Wacker, Partner – The Cook Group

When reviewing these responses recognize this is new legislation without any practical guidance yet posted from the DOL or any court authority interpreting it. Further, because many of the questions are based on incomplete information provided by the questioner, this is not intended to take the form of legal advice. If anyone has further questions before making changes, I do strongly recommend that they hire an experienced labor and employment attorney to assist.

- Our current contract period runs from 5/01/19 – 5/01/24. The current PTO policy in this contract does NOT comply with the IL Paid Leave requirements. Am I understanding the law correctly that since our contract is already in place, and even though it doesn't comply, we are not mandated to provide this leave to our union employees? **Yes. But you are still required to honor what is in your CBA.** At contract renewal on 5/01/24, we have the option of incorporating it then, or the option to waive it with explicit language? **Yes. And the language needs to be clear and unambiguous in its terms.**
- How does this law affect remote employees who live outside of Illinois? If we are an Illinois employer, do we have to provide this leave to an employee living and working in another state (other than NV or ME)? **This is not addressed by the Act. The Act refers to and uses the definition of "employee" in the Illinois Wage Payment and Protection Act. If the employee has no connection to Illinois – neither living nor working there – then you may be able to avoid providing him/her PTO. However, I would await further guidance from the DOL on this before making the determination to do so.**
- It seems like the specific requirements for this law (such as putting the unused accruals back if rehired in 12 months) makes it more complicated to keep track if it were to be incorporated into our existing policy. For example, we provide both PTO and VAC for our employees, but they have different rules for pay upon termination, exempt vs. non-exempt, etc. Therefore, it makes sense to me to keep this as a separate 3rd accrual in addition to our PTO and VAC so that the rules can be applied only to this leave as required and not interfere with our other leave. Your recommendation on that? **Without knowing more about your specific situation and policies, I cannot say. However, if you already provide PTO to your employees such that the current policy satisfies the minimum requirements of the Act, then you would not need a separate third accrual.**

- If, assuming an employer were to add this as a completely separate policy even if their current policies meet the requirements (as indicated in #3 above), are you finding that other employers are now, in fact, reducing their current leave policies in place to “accommodate” the need to include this leave? **See answer to #3 above. Further, given that the new law is not yet in effect, it’s a bit too early to comment on trends with employers and how they are complying.**
- If we hire an intern during the summer, typically our internship program is a 9 week program and less than 90 days. If they are not employed with our company for 90 days, then would we have to provide the paid leave? **Yes, from day 1, they need to earn PTO at least at the minimum rate required by the statute, regardless of how long they are employed. Seasonal employees like interns are specifically provided for in the Act.**
- Next question, if we happen to extend the internship into the fall semester, at that time would we need to provide the 40 hours of paid leave? **From day 1, they should be earning PTO at least at the minimum rate required by the statute.**
- Similar question but in regard to temporary workers. We typically go through an employment agency for our temporary workers, but there may be instances in which we employ them directly. Would we need to supply paid leave to temporary workers if our company is the employer? **This is not directly addressed by the new law, but if your company is the employer, yes. If workers are employed by a temporary agency, then the agency should be providing them the PTO. I know this is a question that has been posed to the DOL for additional guidance, but I have yet to see any response published.**
- Since the hours for the new act can be used for anything, can managers still deny the request if there is a staff shortage or others have requested time off during the same time frame if the employee has complied with the foreseeable requirements? **Short answer, no, the request cannot be denied if the employee has complied with the Act’s requirements and the company’s policy.**
- We currently have a maximum number of PTO hours that someone can accrue and we pay vacation upon separation. If we go with our existing PTO policy, does the leave for any reason requirement apply to all PTO, even over the 40 hour cap? **No. As the Act is written, employees are only entitled to earn up to 40 hours of PTO, which can be used for any reason. If you want to impose separate requirements on the use of PTO for hour #41 and beyond, that would be compliant.**
- Is Paid Leave for All Workers an additional paid time off that we have to offer to our employees who already receive sick and vacation time? **It is its own requirement, which can be met by existing sick and vacation policies, if it permits the employees to earn at the minimum rate required by the Act (1 hour for every 40 hours worked) and permits the employees to take the first 40 hours of earned PTO for any reason, within the requirements of the Act.**
- Do we have to provide this leave to as needed employees that work a few hours here and there throughout the year? **Assuming you do not fit into one of the limited exceptions listed in the presentation from the Act, yes, all employees must earn the PTO at the minimum rate required by the Act.**
- Do employees get to start using it as soon as they earn enough to use? **If you do the frontloading option, then yes, they can begin to use it immediately. If you do the banking/accrual option, they must be allowed to start using it on March 31, 2024, per the Act’s requirements.**

- Thank you very much for the webinar, and providing me with the slides, as I know I will need to go back through and catch things I missed. **It was my pleasure!**
- Can an employer use the change notice provisions on page 10 to get everyone to a calendar year for those employees hired during the year? **I'm not sure I'm understanding this question, but if the question is whether the notice option can be utilized to avoid the 12-month period requirements and get everyone on the calendar year basis, yes, but it can only be done if it is in writing and the effect of the change is such that the employees do not receive less than what they otherwise would have received but for the notice.** Also, can you accrue PTO for the first partial year and then front load as of Jan 1 each year thereafter? **Yes, but you need to provide notice to the employees that this is how PTO will be earned for them in each respective period.**
- Can an employer front load PTO for full time employees and accrue for part time employees as long as that is what is in their policy? Both methods would still meet the minimum requirements of the law. **Yes. There is nothing in the Act preventing you from using one method for one class of employees and one method for others.**
- If an employer only has 3 employees and they all request PTO for the same day, can a request be denied or can their policy dictate how that would be handled. The denied request would be fulfilled on a different day so not all employees are absent on the same day. **The Act is silent on this situation. As written, it does not appear you can deny the request. However, I know this is a question that has been posed to the DOL but I have yet to see any response published.**
- We are a Union contractor based in Illinois and performing work in both Indiana and Illinois. Would those doing work in Indiana fall under the required PTO? I'm assuming since the business is based in Illinois that they would. **This would depend on the situation for each employee and whether they qualify as an "employee" under the Act's definitions. If they work and live in Indiana, I do not believe they would be entitled to the minimum PTO. But since they are union employees, you will need to defer to your CBA.**
- Since we are under Union agreements (different trades), then this would go into effect when the new CBA's are ratified, correct? **If the CBAs are effective before January 1, 2024, yes. If the CBAs have effective dates after January 1, 2024, then the requirements apply unless they are waived in the CBA in clear and unambiguous terms.**
- Since the Unions are based in Indiana, I'm assuming they will not have the language in the CBA, but we would abide by the new ruling. Can you clarify? **It would not matter where the Union is based. The question is whether the employees are Illinois-based and work in Illinois. If they do, then the PTO requirements will apply.**
- Employee starts Jan first and we frontload. January 15th he takes his week off. January 30th he quits. Can we recoup any of the pay since he didn't work the whole year and would technically only have earned the 4 hours on the accrued method (assuming he works 40 hours a week)? **No. If you frontload, it is a use it or lose it policy, which goes both ways and that is a risk the employer takes in providing the leave frontloaded.**
- Our company works 7.5 hours a day so 37.5 hours per week. Are we still required to use 40? You would say 40 hours or 5 days at different times during your presentation. **The amount of hours worked per week is not determinative. Instead, for accrual, the Rule is that employees must be permitted to earn at least 1 hour of PTO for every 40 hours they worked. And they must be able to earn up to 40 hours of PTO per year if they work enough hours to earn them.**

- Our employees currently earn one week of personal time 37.5 when they are hired. We have 2 groups of employees. One group is a use it or lose it. The other group is use it or the balance of time is paid out on the employee's anniversary (extra week pay if none used). Any concerns I need to be aware of? **Not sure I have enough information to answer this. Do you plan to continue these policies going forward? The main concern should be, regardless of which method you use, the employees be permitted to earn at least 1 hour of PTO for every 40 hours they worked and that you permit them to use the PTO, per your policies, for any reason.**
- Finally with our employees earning personal time on their work anniversary, some will not have the 37.5 available due to previous use. If we have to make the hours up to 37.5, do they still get the full 37.5 hours on their anniversary date? **It should be 40. And yes, if you are frontloading, you should use Jan. 1, 2024 as your start date (not their anniversary date) to give it to them.**
- My employees have been getting paid vacation time for all of the major holidays. This year my employees for 2023 received 8 paid holidays (8 holidays at 5 hours for a total of 40 hours). I believe in Illinois holiday pay isn't a requirement. As a small business, I can't afford to do both the Illinois Paid Time Off and Holiday Pay, so I will probably have to eliminate paid holidays. I just wanted to confirm that Holiday Pay isn't a requirement, since our office will be closed for all major holidays? My employees are part-time and usually work anywhere from 15-30 hours a week. I know a lot of small businesses don't pay their part-time employees for days off or holidays. I feel I have been very generous as a small business owner to my employees but I don't want to be out of compliance or go bankrupt either. **Yes, holiday PTO is not a requirement in Illinois. Given what you've described here, eliminating the Holiday Pay policy, which does not permit the employees to use earned PTO for any reason, and replacing it with a compliant PTO policy in line with the Act's new requirements.**
- Do "Front Loaded" PTO hours always need to be the minimum of 40 hours to avoid the carryover requirement that accruing requires? **Yes**
- Are there other options to "Front Loading" to avoid carry over? ie. 20 hours if you start in July and then 40 hours starting the following year January if the 12-month period is defined as a calendar year. **Not in the text of the Act. You can either frontload, which can avoid carryover, or accrual, where employees can carryover.**
- Would 40 hours of accrued vacation time under a current policy need to be changed to account for the new PTO law requirements of 2 hour increments of usage and for-any-reason usage? Our current vacation policy has 4-hour minimum usage and a requested-time-off requirement prior to usage. **I would need to see the policy to determine if any of this is compliant.**
- Can part-time employee be required to use PTO (under new law) only on the days that they are scheduled to work? For example: If at year end an employee has unused PTO and they want to use 40 hours of PTO in one week so they get paid for it and not lose it when they only usually work 16 hours in a week. **No. Other than the notice requirements discussed, you cannot require an employee to use PTO at any given time.**
- If current policy already accrues 80 hours of vacation time over the first full year (accrue 10/12 of a day per month of employment) for use in the second year and our company wants to "Front Load" 40 hours of the new PTO (but include it as part of the 80 hours of vacation time that is accruing) can that vacation that must be paid out on termination be only the vacation time that has been accrued and not the Front Loaded 40 Hours of PTO? **I would need to see the policy to give a full response to this.**

- PTO hours do not need to be paid out upon termination whether accrued or Front Loaded. Correct? **Sort of. Employers are not required to pay out unused paid leave upon an employee's separation, unless the employer has "credited" PTO to an employee's paid time off or vacation banks, in which case the usual Illinois rules for paying out unused leave upon separation apply.** Accrued Vacation hours must be paid out upon termination under current Illinois Law. Therefore won't PTO 40 hours always need to be separated and tracked in our system independent of any additional vacation hours we currently have in our policy if we intend to not pay out PTO hours upon termination? **I would need to see the policy again to give a full response to this, but I believe that is correct based on the information you've provided.**
- Where in the law does it state the "Front Loaded" PTO hours are usable on day one and not after 90 days as discussed in the seminar? **It does not explicitly say this in the Act. The Act only refers to use of accrued leave, which "shall begin to accrue at the commencement of employment or on the effective date of this Act, whichever is later. Employees shall be entitled to begin using paid leave 90 days following commencement of their employment or 90 days following the effective date of this Act, whichever is later."** 825 ILCS 192/15(g). Given that under a front-loading policy, the PTO becomes immediately available to the employee on the first day of employment/first day of the 12-month period, my guidance and inference from the law is to provide to it to be usable for the employee on the day on the day it becomes available.
- Current law requires that Exempt Salary employees must be paid for a full 40 hours per week whether they are sick for a day or not. Will the new PTO law allow for PTO hours to be required to be used for sick days for Exempt Salary employees? **I would need to see your policy, but no, at least for the first 40 hours of PTO, you need to permit the employees to use the PTO for any reason. You cannot tether that to being used for days they are sick.**