

Illinois Employers Need to Prepare for Mandated Paid Leave Beginning in 2024

Francesca Giderof
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The Illinois Paid Leave For All Workers Act (“PLFAW”) has been passed by the legislature and is headed to Governor Pritzker for signature. Effective January 1, 2024, the PLFAW will require nearly all Illinois employers to provide covered employees up to 40 hours of paid leave per year to be used for any purpose. Outlined below are some of the major takeaways and important implications for covered Illinois employers.

LEAVE AMOUNT AND ACCRUAL: Full and part-time workers must earn and may use up to 40 hours of paid leave during a 12-month period. Paid leave will accrue at a rate of one hour of paid leave for every 40 hours worked, up to a total of 40 hours of statutorily required paid leave (or greater if the employer chooses to provide more leave). An employer may also front load the earned leave at the beginning of each 12-month period.

12-MONTH PERIOD: The employer may set the 12-month period *in writing* upon hire and may change 12-month periods so long as the total amount of paid leave available to an employee is not reduced. For example, if the 12-month period is a calendar year and an individual was hired in April, the individual would earn one hour of leave for every 40 hours worked through the end of December.

USE:

- Employees can begin to use paid leave 90 days after beginning their employment, or 90 days following the effective date of the PLFAW,

Attorneys

Francesca M. Giderof

Practice Areas

ERISA, Disability and Leave Laws

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whichever is later. The leave can be taken by an employee for any reason of the employee's choosing. The employee is not required to provide a reason for the leave and does not need to submit documentation or proof to support the leave.

- An employer can require the employee to provide seven calendar days' notice prior to using the leave if the need for use is foreseeable. If not foreseeable, the employee should provide notice as soon as practical. If an employer does require notice for unforeseeable need, the procedures for such notice must be in a written policy.
- Employers may require use in no more than two-hour increments.
- An employer may not require an employee to find a replacement or substitute to cover for the employee's leave.

CARRY OVER: Employers can make this leave available to an employee on the first day of employment or the first day of the 12-month period. If employers do this, they are not required to carry over paid leave, and may require employees to use all paid leave prior to the end of the benefit period or lose any unused leave. However, if not frontloaded, unused leave will carry over. Employers are not required to allow employees to use more than 40 hours in the designated 12-month period.

HEALTH CARE CONTINUATION: Employers are required to maintain coverage for the employee and any family member under any group health plan for the duration of the leave. The employee is still required to pay for their share of coverage.

POSTING: Employers are required to include a poster that will be prepared by the Department at their workplace. The notice prepared by the Department must also be in the employer's written leave policy. Employers must request a notice in an appropriate language other than English if a "significant portion" of its employees speak such other language. Employees may also request a notice from the Department in another language and the employer must post that notice. The notice will advise employees how to file complaints with the State.

PAY FOR COMMISSIONED AND TIPPED EMPLOYEES: Employers must pay the statutory minimum wage to any employee who is employed in a position where tips and commissions are regularly part of regular compensation.

NO PAYOUT ON TERM: Unused paid leave need not be paid out upon termination. However, any unused leave must be immediately reinstated if the employee is re-employed within 12 months from termination.

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CBA IMPLICATIONS: The paid leave requirements do not change the terms of a CBA in effect as of January 1, 2024. Thereafter, the paid leave requirement of the PLFAW can be waived in a CBA, but only if the waiver is explicitly set forth and is clear and unambiguous.

EXISTING POLICIES: Employers with existing paid leave policies that provide for at least 40 hours of paid leave need not provide any more so long as employees can use the paid leave for any reason.

PROHIBITIONS: Employers cannot change an employee's workdays or hours as a result of a request for leave. Paid leave may not be used as a negative factor in any employment action. Employers may not retaliate against employees for requesting leave, using leave or opposing violations of the PLFAW.

RECORD RETENTION: Records of leave accrual, usage and remaining balances must be retained for three years and for the pendency of any litigation. Employees must be provided their accruals upon request.

EXCLUSIONS: The PLFAW does not apply to construction employers whose employees are covered by a collectively bargained agreement or employers who deliver parcels, packages or freight nationally or internationally and whose employees are covered by a collectively bargained agreement.

Employees do not include:

- an employee defined in the federal Railroad Unemployment Insurance Act
- a student enrolled in college classes where the college is also the student's employer, and who is employed on a temporary basis.
- a short-term employee employed by an institution of higher education for less than two consecutive calendar quarters and who does not have a reasonable expectation they will be rehired by the same employer in the subsequent year.

Employers do not include:

- An employer who is covered by a municipal or county ordinance in effect that requires employers to provide a form of paid leave, including paid sick leave, unless the benefits under this PLFAW are greater than the municipal or county ordinance.
- School districts organized under the School Code.
- Park Districts organized under the Park District Code.