



Labor & Employment @lert

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Illinois Legislature Passes Paid Leave for All Workers Act

Key Notes:

- The Illinois Legislature has passed a law that provides nearly all workers in Illinois with paid leave to be used for any reason starting in 2024.
- The Illinois Department of Labor is responsible for enforcement and is creating a poster for employers to provide notice.

On January 10, 2023, the Illinois Legislature passed the Paid Leave for All Workers Act ("Act"), which Illinois Governor J.B. Pritzker has also announced his intention to sign.

The Act will take effect on January 1, 2024, and it provides nearly all Illinois workers with a minimum of forty (40) hours, or a pro-rated number of hours, of paid leave during a designated 12-month period. With this Act, Illinois became the third state after Maine and Nevada to require private employers to provide earned paid leave to employees for any reason. While the Act does not take effect until next year, employers with workforces in Illinois should take this time to prepare policies and procedures that comply with the requirements of the Act.

Covered Employers

The Act applies to all Illinois employers regardless of size, except school districts organized under the School Code and park districts organized under the Park District Code. The Act also does not apply to employers who are covered by municipal and county ordinances that provide paid leave if those ordinances are in effect on January 1, 2024.

Covered Employees

The Act applies to all Illinois employees except railroad workers, certain students working for universities and independent contractors. Union employees that are covered by a collective bargaining agreement may waive the requirements of the Act.

Leave Accrual

Leave accrues at the rate of one hour of paid leave for every 40 hours worked, and exempt employees are deemed to work 40 hours in each workweek unless their regular work hours are less than 40 hours per week. Accrual begins immediately upon employment or immediately upon enactment of the Act. Unused paid leave under the Act may be carried over to the next year, but employers are not required to allow employees to use more than 40 hours of leave in a 12-month period.

Requirements to Take Leave

Beginning January 1, 2024, employees will be permitted to use leave under the Act after 90 days on the job, unless the employer allows them to utilize leave earlier. Employees get to determine how much leave to use, but employers may set a reasonable minimum increment of no less than two hours per day. Notably, the Act will not require employees to give a reason for taking leave, and employers will not be permitted to require any documentation or certification of the need to take leave. Nevertheless, employers may require up to seven (7) calendar days' notice of foreseeable

leave if they have a written policy provided to employees outlining the notice requirement. If the leave is not foreseeable, employees are only required to provide notice as soon as practicable.

Rate of Pay While on Leave

Paid leave must be paid at the employee's regular hourly rate for paid leave and tipped employees earning a reduced tipped wage must be paid at the full minimum wage. An employee who is paid gratuities and commissions must be paid at least the full minimum wage for the jurisdiction, or their hourly rate, whichever is greater.

Employer's Obligations When an Employee Is Terminated

The Act expressly states that employers will not need to pay unused paid leave under the Act at the end of the benefit year or any other time unless the employer has credited leave under the Act to the employee's paid time off bank or employee vacation account. The Act further requires employers to restore leave under the Act when an employee leaves the employer but returns within twelve (12) months. As a result, employers should consider how they will track this leave and whether they want to account for it separately from the PTO bank or vacation account.

Posting Requirements

As expected, the Act requires employers to post a notice summarizing the requirements of the Act and providing information on how to file a charge. While not available yet, the Illinois Department of Labor ("IDOL") will create a notice poster that outlines these requirements that employers can use. Moreover, employers with workforces comprised of a significant portion of workers who do not read English will be required to request a notice in the appropriate language from IDOL. Violations of the posting requirements would subject employers to a penalty of \$500 for the first violation and \$1,000 for each subsequent violation.

Enforcement

IDOL is responsible for administering and enforcing the Act. Employees will have three (3) years to file complaints of alleged violations. Employers found to have violated the Act are subject to actual damages, compensatory damages, attorneys' fees/costs, and civil penalties, as well as being subject to equitable relief.

FOR MORE INFORMATION

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