

A LAST MINUTE, TEMPORARY REPRIEVE FOR CHICAGO EMPLOYERS: CHICAGO AMENDS PAID SICK LEAVE ORDINANCE

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US Labor, Employment, and Workplace Safety Alert

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With the 31 December 2023 effective date for the [Chicago Paid Leave and Paid Sick and Safe Leave Ordinance](#) (Ordinance) rapidly approaching, the Chicago City Council passed an amendment on 14 December 2023 (Amendment), which delays the effective date of most provisions of the Ordinance until 1 July 2024. As previously reported,¹ the Ordinance replaces Chicago's current [paid sick leave ordinance](#) and mandates that Chicago employers provide eligible employees with up to 80 hours of paid time off in a 12-month period, with 40 hours allocated to paid sick leave and 40 hours allocated to general paid leave. By delaying the effective date until July 2024, the Amendment offers employers more time to review existing policies, while continuing to comply with the current Chicago Paid Sick Leave Ordinance.

In addition to delaying the overall effective date for the paid leave provisions, the Amendment also ushers in additional, notable changes for Chicago employers, which are discussed in more detail below.

REVISED DEFINITION OF “COVERED EMPLOYEE”

The Amendment substantially modifies the definition of a “covered employee” by increasing the threshold for coverage. Under the Amendment, only employees who perform at least 80 hours of work for a covered employer within any 120-day period while physically present within the geographic boundaries of the city will be considered covered employees, which is a significant increase from the two-hour requirement under the Ordinance as originally passed. Specifically, employees that satisfy that threshold remain covered employees for the remainder of the time that they are employed by the employer regardless of the number of hours they work.

NOTIFICATION OF EMPLOYMENT POLICIES

Pursuant to the Amendment, covered employers must do the following effective 31 December 2023:

- Provide any written paid time off policy to each covered employee in the employee's primary language
- Provide workers whose regular work duties take place within the geographical boundaries of Chicago with copies of any employment policies in the primary language of the respective worker
- Provide workers with a 14-day notice prior to implementing changes to any employment policy.

PAYOUT REQUIREMENT FOR MEDIUM EMPLOYERS DELAYED UNTIL 1 JULY 2025

Under the Amendment, medium-sized employers with 51 to 100 covered employees will not be required to pay out up to 16 hours of accrued but unused paid leave for any qualifying separation event until 1 July 2025. Following 1 July 2025, medium-sized employers must pay out all accrued but unused paid leave for any qualifying separation event.

PRIVATE RIGHT OF ACTION AND CURE PERIOD

In addition to delaying the paid leave requirements under the Ordinance, the Amendment also delays the private right of action (civil lawsuits) for paid sick leave violations to 1 July 2024 and for paid leave violations to 1 July 2025. The Amendment now provides that a covered employee must wait to initiate a private right of action until after: (1) an alleged violation occurs; and (2) the payday for the next regular payroll period or 16 days after the alleged violation occurred passes, whichever is shorter. Although this form of “cure period” may assist employers in addressing violations before a covered employee may bring a private action, there is no requirement that the covered employee notify the employer of the violation in advance. Finally, this requirement will terminate on 1 July 2026.

RECORDKEEPING

Under the Ordinance, employers are required to maintain records relating to a covered employee's hours worked, pay rate, number of paid time off hours earned for each year, and the dates on which paid time off hours were taken and paid. Significantly, the Amendment now extends these recordkeeping requirements to any employee “whose regular work duties take place within the geographical boundaries of Chicago” regardless of whether they are entitled to paid leave under the Ordinance.

EFFECT ON COLLECTIVE BARGAINING AGREEMENTS

The Ordinance does not affect existing sick leave and paid time off provisions in bona fide collective bargaining agreements in effect on 1 July 2024. Per the Amendments, parties to a valid collective bargaining agreement made effective after 1 July 2024 will need explicit waiver language in clear and unambiguous terms to have the Ordinance not apply.

LOOKING AHEAD

Despite now having more time under this temporary reprieve to comply with the paid leave provisions of the Ordinance, Chicago employers should stay focused and continue to review their current paid time off policies and payroll systems for compliance. Employers should consider consulting their labor and employment attorneys for assistance in developing a policy that meets the requirements of the Ordinance as amended. Further, Chicago employers should prepare to comply with the notice and posting requirements that go into effect on 31 December 2023. The lawyers of our Labor, Employment, and Workplace Safety practice regularly counsel clients on a wide variety of issues related to paid leave policies and are well-positioned to provide guidance and assistance to clients on this significant development in Illinois.

FOOTNOTES

¹ See Erinn L. Rigney, et al., *Chicago Employers: Prepare for New Paid Leave Ordinance Effective 31 December 2023*, K&L Gates (Nov. 30, 2023), <https://www.klgates.com/Chicago-Employers-Prepare-For-New-Paid-Leave-Ordinance-Effective-31December-2023-11-30-2023>.

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