

COOK COUNTY, ILLINOIS AND THE CITY OF CHICAGO MANDATE NEW PAID SICK LEAVE BENEFITS

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On July 1, 2017, two very similar ordinances regarding employee paid sick leave will become effective. One of these ordinances is the modified version of The Chicago Minimum Wage and Paid Sick Leave Ordinance^[1] ("Chicago Ordinance"), while the other is the new Cook County Earned Sick Leave Ordinance^[2] ("Cook County Ordinance"). All of Chicago is geographically contained within Cook County, Illinois. Additionally, the Illinois Senate is considering a similar bill, which, if passed, would require employers in the rest of the state to provide some form of paid sick leave benefits for the first time in the state's history.^[3]

Unless an employer already provides sick leave benefits that would meet these new requirements or has a collective bargaining agreement with a union that specifically addresses these issues, these ordinances otherwise oblige an employer in these jurisdictions to provide a new and sizeable paid time off benefit to its employees.

EARNING AND USING PAID SICK LEAVE

These ordinances require most private employers in Cook County, regardless of the number of individuals they employ, to provide paid sick leave to their respective employees. Employees are allowed to use their accrued leave time if they or their family members need to recover from illnesses or seek medical treatments or preventative care, are victims of domestic violence or sexual violence or stalking, or in times of "public health emergencies."

Private employers of any size in Cook County will be required to provide one hour of earned sick leave for every 40 hours an employee works, for a maximum accrual of 40 hours per one 12-month period. At the end of the 12-month period, employees may carry over half of their accrued but unused leave, up to 20 hours. Furthermore, if an employer is subject to the Family and Medical Leave Act^[4] (FMLA), its employees are permitted to carry over up to 40 hours of additional unused accrued leave to use exclusively for FMLA purposes. Once the ordinances become effective, an employee begins to accrue such leave on his or her first day of employment and must be allowed to use earned leave within 180 days from the commencement of his or her employment.

Employers, however, may impose some limitations for using earned sick leave. If the need for sick leave is "reasonably foreseeable," such as going to a doctor's appointment, an employer may require up to seven days' notice before leave is taken. If the need is not "reasonably foreseeable," the employer can still require an employee to give notice "as soon as is practicable" on the day of the leave. Furthermore, if an employee is absent for more than three consecutive work days, the employer may require certification to show that the use met the requirements of the ordinances. Unlike the requirement that an employer make a final payment for

unused paid vacation or paid time off, an employer need not pay the value of accrued but unused sick leave as part of the employee's final paycheck. Lastly, the ordinances have anti-retaliation provisions, prohibiting discrimination or adverse action against an employee for exercising or attempting to exercise his or her rights under these ordinances.

ENFORCEMENT AND POSSIBLE COMPLIANCE CHALLENGES

All employers must post approved notices of these ordinances in each of their facilities. The Chicago Ordinance also requires employers to attach similar notices to paychecks after the ordinance becomes effective.

If an employer fails to comply with any provisions of these ordinances, an affected employee may bring a private cause of action against that employer. The employee may recover an amount up to triple the value of the lost leave, interest on that amount, costs, and reasonable attorney's fees.

However, compliance could be challenging, especially under the Cook County Ordinance, which broadly defines who is a "Covered Employee." Under the Cook County Ordinance, any employee who performs at least two hours of paid work in any two-week period, while physically present within the geographic boundaries of Cook County, is covered under this ordinance. However, because the Illinois state constitution allows for municipal ordinances to displace conflicting county ordinances, a number of municipalities within Cook County have either opted out of the Cook County Ordinance or voted for a less burdensome timetable for providing earned sick leave. Due to the close proximity of many municipalities to each other within Cook County, determining whether and which employees are entitled to accrue sick leave under the Cook County Ordinance could be more complicated and a bit frustrating for certain employers.

TAKEAWAY

Cook County and City of Chicago employers should thoroughly examine and modify, as needed, their respective sick leave policies to ensure compliance with these ordinances and, if applicable, bargain with their labor unions.

Notes:

- [1] Chi., Ill., Municipal Code of Chi. ch. 1–24 (2016) (effective July 1, 2017).
- [2] Cook Cty., Ill., Code § 42 (2016) (effective July 1, 2017).
- [3] See S.B. 1296, 100th Gen. Assemb. (Ill. 2017).
- [4] U.S. Family and Medical Leave Act of 1993, 29 USCS § 2611–12.

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