

April 5, 2023



# Understanding and Implementing the New Illinois Paid Leave for All Workers Act - Requirements for Employers

**Julie A. Proscia, Esq.**  
Labor & Employment  
Partner

**DISCLAIMER:** The information and materials contained in this slide deck are for informational and educational purposes only and shall not be construed as legal advice. Consult an experienced attorney for specific questions and answers. Information included is up-to-date as of date listed. ©AmundsenDavis LLC | [www.AmundsenDavislaw.com](http://www.AmundsenDavislaw.com)

# Agenda

- Coverage and exemptions
- Amount of Paid Leave
- Carryover/Frontloading
- Use/Documentation/Notice
- Pay and Benefits
- Termination/Transfer/Rehire
- Posting/Recordkeeping
- Current PTO Policies
- Prohibited Acts
- Enforcement/Damages
- Local Paid Leave Ordinances - Interplay
- Current PTO/Vacation Policies – Interplay
- Random Thoughts & Perspective Forward



# Illinois Paid Leave for All Workers Act



- On Jan. 10, 2023, the IL legislature passed the Paid Leave of All Workers (PLFAW) Act. The law was signed by Gov. Pritzker on March 13, 2023.
- It is effective January 1, 2024.
- It will provide nearly all IL workers with a **minimum of 40 hours of paid leave** (or a pro rata number of hours) during a 12-month period.

**Disclaimer: There are still unanswered questions.**

# Coverage



- **Covered Employers:** ALL private AND public Employers.
  - Including State of Illinois and Units of Local Government
  - Including Domestic Workers as defined by the IL Domestic Workers' Bill of Rights Act (820 ILCS 182) (i.e. housekeepers, cleaners, nannies, cooks, companion services, chauffeuring, etc. except for immediate family members)
- **Eligible Employees:** ALL Employees (Full-Time, Part-Time, Temporary AND Seasonal).
- **There are exemptions.**

# The New Law Will Not Apply To:



1. School districts organized under the School Code.
2. Park districts organized under the Park District Code.
3. An employee as defined in the federal Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.) or the Railway Labor Act;
4. A student enrolled in and regularly attending classes in a college or university that is also the student's employer, and who is employed on a temporary basis at less than full time at the college or university, but this exclusion applies only to work performed for that college or university;
5. A short-term employee who is employed by an institution of higher education for less than 2 consecutive calendar quarters during a calendar year and who does not have a reasonable expectation that they will be rehired by the same employer of the same service in a subsequent calendar year;
6. An employee covered by a bona fide CBA with an employer that provides services nationally and internationally of delivery, pickup, and transportation of parcels, documents, and freight;

# The New Law Will Not Apply To: (cont'd)



7. Employees in the **Construction Industry** who are covered by a bona fide collective bargaining agreement (CBA).

“Construction industry” means:

- Any maintenance, landscaping, constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, improving, wrecking, demolishing, or adding to or subtracting from - any building, structure, highway, roadway, street, bridge, alley, sewer, ditch, sewage disposal plant, waterworks, parking facility, railroad, excavation or other structure, project, development, real property, or improvement; OR
- To do any part thereof, whether or not the performance of the work herein described involves the addition to or fabrication into, any structure, project, development, real property, or improvement herein described of any material or article of merchandise; OR
- Moving construction related materials on the job site or to or from the job site, snow plowing, snow removal, and refuse collection.

# The New Law Will Not Apply To: (cont'd)



8. Employees subject to a bona fide CBA in effect on January 1, 2024 – in that the Paid Leave Act will not change the terms – for the duration of the CBA only.

**\*\*After January 1, 2024, all CBAs will be subject to the Paid Leave Act** and its requirements may only be waived by CBA if there is a clear and unambiguous waiver.

9. Employers covered by municipal or county ordinances in effect on January 1, 2024, that provide for paid leave or paid sick leave. See, slides 23-28.

\*\*After January 1, 2024, any municipal or county ordinance *enacted or amended* must comply with the act or give greater protections to employees --- apply whichever affords more protections to employees.

# Amount of Paid Leave/Accrual



- **“Up to a minimum** of 40 hours” of Paid Leave per 12-month period for each employee.
  - 12-month period may be designated by the Employer.
  - However, if you are going to change that period you **MUST**
    - 1) give notice to the employees in writing prior to any change.
    - 2) provide the employees with documentation of the balance of hour worked, paid leave accrued and taken and the remaining paid leave balance.

\*\*\*Begins accruing on the 1<sup>st</sup> day of employment or 01/01/2024, whichever is later.



# Amount of Paid Leave/Accrual



- Employees accrue 1 hour of Paid Leave for every 40 hours worked, beginning January 1, 2024 or first day of employment, whichever is later.
  - FT EE works 40 hours in a week – accrues 1 hour Paid Leave after 1 week – 40 hours annually.
  - PT EE works 20 hours a week – accrues 1 hour of Paid leave after 2 weeks – 20 hours annually.
- Employees who are exempt under the FLSA are deemed to work 40 hours a week unless their regular workweek is less than 40 hours.
- But, actual hours matter. You must track the hours actually worked for non-exempt workers.
- Employers can have policies that allow accrual to be faster or leave accrued beyond 40 hours.

# Carryover and Frontloading



- **Carryover**

- Employees **MUST** be allowed to carryover any unused Paid Leave, unless the Employer “frontloads” by providing at least 40 hours of Paid Leave on the first day of employment.
- IF an employee carryovers unused Paid Leave, they may still be limited to EARN and USE 40 hours of Paid Leave in a 12-month period.
  - So, if an employee has 40 hours in their earned bank they can stop earning until they use Paid Leave and their accrual goes below 40 hours.

- **Frontloading**

- You can frontload all time at the beginning of the year and not worry about the accruals. However, again, hours worked actually matter – you must not “short-change” the worker.
- IF an Employer frontloads (at least 40 hours, or the pro-rata amount), they may provide that any unused Paid Leave is forfeited at the end of the 12-month period.

# Use and Documentation



- Employees can begin to use accrued leave:
  - 90 days following their 1<sup>st</sup> day of employment or 90 days following 1/1/24, whichever is later.
  
- Employees shall determine how much paid leave they need to use; however, employers may set a reasonable minimum increment for the use of paid leave **not to exceed two (2) hours per day (unless they are scheduled for less than 2 hours – then they can take whatever is need to cover that schedule)**.
  
- **Paid Leave may be used “for ANY purpose”...“any reason of the Employee’s choosing”.**
  - Employees are NOT required to provide a reason for the leave
  - Employees are NOT required to find a replacement worker
  - Employees CANNOT be required to provide documentation/certification as proof of need

# Notice



- **Employees may request Paid Leave orally or in writing –**
  - Employers may require at least 7 days notice, IF the Employer has a written policy containing the procedures for an employee to provide notice.
    - Must provide this notice procedure requirements in writing and with at least five (5) days notice if making any changes to the policy.
  - **HOWEVER** – If the reason for Paid Leave is unforeseeable, the employee is only required to provide notice as soon as practicable after the employee is aware of the necessity for leave.
- **WARNING-DANGER** – The 2-hour max increment, inability to require information or documentation on reason for leave and ability of employees to request last second when “unforeseeable” opens to the door to significant abuse with respect to employees being tardy or absent AND risk in trying to enforce attendance policies.

# Pay and Benefits During Leave



- **Pay** – Paid Leave hours are paid at the Employee’s “hourly rate of pay”. Tipped and commissioned employees must be paid at least the full minimum wage “in jurisdiction” they are employed when the leave is taken.
- **Benefits** – During any period in which the employee takes Paid Leave, the employer must maintain coverage for the employee and any family member under any group health plan for the duration of the leave at the level and conditions in place at the time.
- **Other Leave** – Note, Employees may choose to use Paid Leave **prior to using** any other leave provided by Employer or State law.... Creates questions about consecutively running with other unpaid leaves. But, this should not impact interplay with Federal laws (i.e. FMLA).

# Termination/Transfer/Rehire



- **Termination** – Paid Leave does **NOT** have to be paid out at termination!!!
- **Rehiring and 12-month Look Back** – If an employee is rehired within 12 months, previously accrued, but unused/not paid out, Paid Leave must be reinstated and the Employee will be able to use Paid Leave beginning their first day of re-employment (i.e. no 90-day waiting period).
- **Transfers** – If an employee is transferred (even out of state), the employee is entitled to use all accrued but unused Paid Leave at the time of the transfer.

# Posting and Recordkeeping



- **New Poster and Policy Time!!!** – Employers must: (1) post a Notice (to be provided by the IDOL) **AND** (2): include a copy of the Notice in any written policies, handbook or manual the Employer has.
- **Notice of Changes** – Within five (5) calendar days of any change to a Paid Leave policy (and potentially PTO/Vacation policy substitute), Employers must provide written notice of the changes.
- **Records** – Employers must preserve records of an employee's hours worked, paid leave accrued and taken, and remaining paid leave balance for at least **3 years** – and preserve during any claim.
  - ***Request for Balance*** – Upon request, Employers must provide an Employee with the amount of Paid Leave accrued or used by the Employee.

# Current PTO/Vacation Policies



- Employers that have a PTO/Vacation Policy that satisfies the minimum amount of leave required (40 hours per 12-month period) can keep that policy if:
  1. At the employee's discretion, they may use the PTO/Vacation for any reason; AND
  2. The Policy states that Paid Leave under Illinois Paid Leave for All Workers Act may be credited against the PTO/Vacation policy; AND
  3. Accrued and unused PTO/Vacation will be paid out under the IWPCA.
- **NOTE** – It's nice that it does not require PTO/Vacation policies to comply with ALL requirements (ala Cook County/Chicago) *but it's unclear on what "requirements" would apply to a new or revised PTO/Vacation policy after 1/1/24.*
- **IMPORTANT** – #2 above is going to require a change to your PTO/Vacation policy before 1/1/24 if you are going to use your PTO/Vacation policy to satisfy any part of the Paid Leave Act requirements.



# Current PTO/Vacation Policies



- **CHANGING YOUR PTO or VACATION Policy (after 1/1/24)**
  - Company MUST give employees written notice if they are going to change the vacation or PTO policy or any other paid leave policy that affects an employee's rights to final compensation payout of the leave.
    - You **MUST BE VERY CAREFUL** with any changes because earned PTO/Vacation is wages in IL so unless you already have a forfeiture provision that will be triggered (i.e. at the end of the year) you will only be able to make changes going forward. You may end up with multiple buckets of "paid leave" until the legacy bank has been used.
  - *At this time, it is unclear on what "requirements" would apply to a new or revised PTO/Vacation policy after 01/01/2024.*

# To Be More Clear...



- **What about Current PTO/Vacation Policies?**

- Any employer who has a PTO/vacation policy in existence on or before January 1, 2024 that provides all employees the ability to accrue, earn and take at least 40 hours of leave per year, but that can be taken for any reason, does not have to modify it beyond expressly communicating that the Paid Leave under the new law is credited to the PTO/vacation policy.
- In other words, so long as employers adopt paid time off policies that provide for the minimum time off as mandated by the new law and such policies allow employees to take such time for any reason, then your policy should cover your obligations under the new law. However, in such a case, the Paid Leave is considered PTO/vacation time that must be paid out at termination under the IWPCA. AND... any further modification could be problematic under the statute's language.
- The IDOL is tasked to issue rules interpreting the law. We may obtain more insight on this issue in the months to come.

# Prohibited Acts



- ***No Retaliation*** – Employers are prohibited from considering the use of Paid Leave as a negative factor in any employment decision, including evaluating/reviews, promotion or discipline. Specifically, it is unlawful to threaten or take an adverse action against an employee for:
  - 1) Exercising or attempting to exercise rights under the Paid Leave Act
  - 2) Opposing practices believed to be in violation of the Paid Leave Act; or
  - 3) Supporting another employee exercising rights under the Paid Leave Act.
- ***No Fault Attendance Policies*** – It is unlawful to count paid leave as an absence under a no-fault attendance policy.
  - Need to review your policies and ensure any point systems are updated.
- ***No Waiver of Rights*** – Any employee waiver of their rights under the Act is void as against public policy.

# Enforcement



- ***Who Enforces*** – IDOL administers and enforces... No provision for Civil lawsuits...
  - This means any complaints will be handled via IDOL administrative hearing.
    - Typically held via telephone/video conference and have more flexible rules of evidence.
    - Administrative Law Judge generally have more discretion and sometimes do not necessarily follow legal precedent. (e.g. can be very employee friendly...)
- ***Statute of Limitations*** – Complaints must be filed with IDOL within 3 years of an alleged complaint.

# Damages



- *Damages Employees are Entitled to for a Violation –*

- Actual underpayment;
- Compensatory Damages;
- Penalty of not less than \$500 and no more than \$1,000; and
- Equitable relief as may be appropriate, including reasonable Attorneys' fees; reasonable Expert witness fees, and other costs of bringing an action.
- **NOTE** – IDOL will oversee payment of damages to employee, BUT for attorneys' fees, the employee's attorney is responsible for collecting.

- *IDOL Civil Penalties for Violation –*

- Violation of Notice Requirements –
  - Civil Penalty of \$500 for the first Audit violation and \$1,000 for any subsequent audit violation.
- Violations (other than Notice Requirements) –
  - Civil Penalty of \$2,500 for each separate offense – with offenses meaning any violation of the Act, with exception of the notice requirement.
  - The Act does not define what "separate offense" means... Hopefully this will be cleared up.
    - For example, is denying multiple requests to take Paid Leave considered one offense or is each denial of a proper request considered a separate offense.

# Illinois Paid Leave – Q&A / FAQs



- 1. Are Non-Construction CBAs Covered?** – The Paid Leave Act does not require CBA's in place on January 1, 2024 be changed to include Paid Leave. After January 1, 2024, CBAs will have to be compliant (and provide Paid Leave), unless there is a clear and unambiguous statement that the requirements of the Paid Leave Act do not apply/are waived.
- 2. Does using the accrual or frontloading method change if Paid Leave has to be paid out?** – No, Paid Leave only has to be paid out if made a part of (or credited against) an employee's PTO or vacation under your PTO or Vacation leave policy.
- 3. Can you have a Paid Leave ceiling?** – YES/Maybe?!?! The statutory language is not clear on this, but during the legislature floor debate it was stated that once an employee accrues 40 hours an employer can grant more – or stop it there – setting a ceiling on how much can be earned. However, there are questions on how the required carryover would work with a ceiling.
- 4. Will this impact Absenteeism?** – Yes, this will potentially have a significant impact on addressing excessive absenteeism, as employees could call off stating it is for an unforeseeable situation and use 2 hours of Paid Leave, without an employer being able to require them to provide additional information. That said, remember you can still ask for additional information – you just can't require it.
- 5. We require employees to use PTO/Vacation with FMLA leave, can we do the same with Paid Leave?** – For leave provided under federal law, yes, but under the Paid Leave law, "an employee may choose whether to use Paid Leave prior to using any other leave provided by the employer or state law" – meaning employers may not be able to run them concurrently with leave provided under state law.
- 6. Can you have a paid Holiday policy that requires employee to work the scheduled shift before and after the holiday in order for it to be paid?** – This is another question that is yet to be answered and we may need clarification through regulations or changes to the Act. The Act's current prohibition on retaliation, could prohibit not paying Holiday pay if an employee uses Paid Leave before the holiday, instead of PTO/vacation time.
- 7. Does this apply to Seasonal or Temporary workers who are employed for 4-5 months per year?** – YES – and if they are rehired within 12 months, they would be entitled to balance they had when their employment ended and not have to complete a waiting period to use Paid Leave.

# Local Paid Leave Ordinances



## Cook County, City of Chicago and other local Paid Leave Ordinances

- The Paid Leave Act does NOT apply to an Employer covered by a municipal or county ordinance in effect on January 1, 2024 that requires employers to give any form of paid leave to their employees, including paid sick leave or paid leave – for those employees covered by the local ordinance.
  - So, you may have employees in Chicago that are covered by the Chicago Sick leave ordinance and then other employees in Wheaton for which the new law will apply because they are NOT covered by the Chicago ordinance.
- BUT... IF a local ordinance that provides paid sick leave or paid leave is enacted OR MODIFIED after January 1, 2024, Employers must comply with the Paid Leave Act – or provide benefits, rights and remedies that are greater than those provided by the Paid Leave Act.

# Chicago and Cook County Paid Sick Leave Ordinances



When these ordinances went into effect in July 2017, the requirements were nearly identical.

	Chicago Paid Sick Leave Ordinance	Cook County Earned Paid Sick Leave Ordinance
Effective Date	July 1, 2017	July 1, 2017
Covered Employee	Works at least 80 hours for a covered business in any 120-day period and performs at least 2 hours of that work in Chicago during any 2-week period	Works at least 80 hours for a covered business in any 120-day period and performs at least 2 hours of that work in Cook County during any 2-week period
When Employee May Begin Using Sick Leave	180 days after start of employment	180 days after start of employment
Required Rate of Accrual	1 hour for every 40 hours worked	1 hour for every 40 hours worked
Minimum Total Hours Accrued in each 12-month period of employment	40 hours	40 hours
Required Carryover	20 hours	20 hours
Additional Carryover for FMLA purposes	40 hours	40 hours
Advance Notice Requirement	7 days or as soon as practicable	7 days or as soon as practicable



# Chicago and Cook County Paid Sick Leave Ordinances (cont'd)



After 2017, important differences came about, with Chicago and Cook County publishing their own interpretative rules, and Chicago passing amendments that went into effect Aug. 1, 2021.

	Chicago Paid Sick Leave Ordinance	Cook County Earned Sick Leave Ordinance
Frontloading (for employers subject to FMLA)	FMLA-covered employers can satisfy the ordinance by (1) frontloading 60 hours or (2) front 40 hours of sick leave and make available an additional 20 hours of Paid Sick Leave at the beginning of each subsequent Benefit Year to be used for purposes covered by the FMLA.	Employer can (a) frontload the 40 hours the employee could accrue in a year, while allowing the employee to carryover up to 60 hours into the next year, (b) frontload the 60 hours that the employee could have carried over from a previous year, while allowing the employee to accrue up to an additional 40 hours for use in the current year, or (c) frontload the entire 100 hours.

# Chicago PSL Ordinance – 2021 Amendments Expand Reasons for Use



- The additional reasons added by the amendments are marked in bold:
  1. The Covered Employee is ill or injured, or for the purpose of receiving **professional** care, including preventive care, diagnosis, or treatment, for medical, **mental, or behavioral issues, including substance use disorders.**
  2. A member of the Covered Employee’s family is ill, injured, or ordered to quarantine, or to care for a family member receiving **professional** care, including preventive care, diagnosis, or treatment, for medical, **mental, or behavioral issues, including substance use disorders.**
  3. The Covered Employee, or a member of the Covered Employee’s family, is the victim of domestic violence, as defined in Section 103 of the Illinois Domestic Violence Act of 1986, or a sex offense, defined here as any conduct proscribed in Article 11 and Sections 12-7.3, 12-4.4 and 12-7.5 of the Illinois Criminal Code of 2012, **or trafficking in persons as defined in Section 10-9 of the Illinois Criminal Code of 2012 (720 ILCS 5/10-9); or**
  4. The Covered Employee’s place of business is closed by order of a public official due to a public health emergency, or the Covered Employee needs to care **for a family member** whose school, class, or place of care has been closed.
  5. **The Covered Employees obeys an order issued by the Mayor, the Governor of Illinois, the Chicago Department of Public Health, or a treating healthcare provider requiring the Covered Employee to: (a) stay at home to minimize the transmission of a communicable disease; (b) remain at home while experiencing symptoms or sick with a communicable disease; (c) obey a quarantine order issued to the Covered Employee; and (d) obey an isolation order issued to the Covered Employee.**
- The amendments also clarify that employees must retain earned but unused paid Chicago sick leave in a change of control of the business (assuming the worker’s employment continues under new ownership).
- Employers must post and disseminate a **revised** notice advising employees of their paid sick leave rights and their rights with respect to pursuing claims for wage theft. Available online from the Chicago Commissioner of Business Affairs and Consumer Protection.

# Cook County Paid Sick Leave – Current Municipalities **Complying**



Barrington Hills	McCook
Berwyn	Northbrook
Cicero	Oak Brook
Countryside	Oak Park
Deerfield	Olympia Fields
Dolton	Phoenix
Elmhurst	Riverdale
Evanston	Robbins
Ford Heights	Skokie
Frankfort	University Park
Glencoe	Western Springs
Glenview	Wilmette
Homer Glen	Winnetka
Kenilworth	Woodridge
Lincolnwood	

	Chicago Paid Sick Leave	Cook County Earned Sick Leave	IL Paid Leave for All Act
Effective Date	July 1, 2017	July 1, 2017	January 1, 2024
Covered Employee	Works at least 80 hours for a covered business in any 120-day period and performs at least 2 hours of that work in Chicago during any 2-week period	Works at least 80 hours for a covered business in any 120-day period and performs at least 2 hours of that work in Cook County during any 2-week period	<b>All Illinois employees (except for those specifically excluded from coverage – e.g. construction industry CBA).</b>
Reasons for Use	Employee or family member is ill, injured, or victim of domestic violence or sex offense, or for medical care, treatment, diagnosis, or preventative care	Employee or family member is physically or mentally ill or injured, receiving medical care, treatment, diagnosis or preventative medical care or recuperating from same, victim of domestic violence or sex offense, employee’s child’s school or place of care, or employee’s place of employment, has been closed by government official due to public health emergency.	<b>Any reason of the employee’s choosing.</b> Employee is not required to provide a reason.
Notice Requirements	For foreseeable leave, may require up to 7 days of notice before leave is taken. If not foreseeable, as soon as practicable, via phone, email or text message, on the day the employee intends to take paid sick leave.	For foreseeable leave, may require up to 7 days of notice before leave is taken. If not foreseeable, as soon as practicable.	For foreseeable leave, may require up to 7 days of notice before leave is taken – <b>but only if written policy outlines notice requirements and procedures.</b> If not foreseeable, as soon as practicable.
Documentation/Certification that Employer May Request of Employee	Can require documentation after EE absent more than 3 days in a row. Employer expected to accept self-certification when difficult to obtain note due to public health emergency.	Can require documentation after EE absent more than 3 days in a row.	<b>None</b>
When Employee May Begin Using Sick Leave	180 days after start of employment	180 days after start of employment	<b>90 days after start of employment</b>
Required Rate of Accrual	1 hour for every 40 hours worked in Chicago (frontloading optional)	1 hour for every 40 hours worked (frontloading optional)	1 hour for every 40 hours worked (frontloading optional)
Accrual Cap Per 12 mo. period	No less than 40 hours	No less than 40 hours	No less than 40 hours
Required Carryover	½ of PSL hours, up to 20 hours and an additional 40 hours for FMLA	20 hours and an additional 40 hours for FMLA	<b>Any accrued, unused paid leave – unless employer frontloads.</b>

# Action Items

- Consider whether any employees who changed to a remote location in Chicago or Cook County have become eligible for paid sick leave under these ordinances.
- Confirm that you do not have employees in one of the townships or villages that decided to reverse course and opt back into coverage.
- Determine whether or not you have employees who fall under applicable exclusions.
- If the Chicago and Cook County ordinances DO apply to your company:
  - Take another look at leave and attendance policies to make sure they comply with the ordinances, including the new amendments to the Chicago ordinance and each municipalities' interpretive rules.
  - Audit for historical compliance to confirm that no issues have persisted for a period of time that could create exposure to larger penalties under these ordinances.
- If the Chicago and Cook County ordinances do NOT apply to your company:
  - Review company handbooks, employee leave and attendance policies, and other relevant leave notification processes to determine compliance with the upcoming Illinois requirements.
  - Consider preparing paid leave policies specifically addressing the PLFAW Act, including accrual and notice policies.
- Monitor the Illinois Department of Labor's website for the release of further guidance.



# Random Thoughts & Perspective Forward...



- Review your CBAs and evaluate same for next negotiation;
- Consider PTO/vacation policy changes/modifications effective prior to January 1, 2024;
- Consider implementing a stand-alone Paid Leave policy in conformity with the new law while revising or reviewing existing PTO/vacation policies;
- Review and update call-in/call-off notification policies. Be painfully clear as to the expectations of anyone who does not timely report to work; and
- Ensure appropriate time systems are in place to account for actual hours worked for paid leave credit and ensure proper record keeping is in place for paid leave use/availability.



Thank you for joining us!



**Julie A. Proscia, Esq.**

[JProscia@AmundsenDavisLaw.com](mailto:JProscia@AmundsenDavisLaw.com)

(630) 587-7911

[www.LaborAndEmploymentLawUpdate.com](http://www.LaborAndEmploymentLawUpdate.com)