



ILLINOIS HEARTLAND LIBRARY SYSTEM

ILLINOIS MANDATORY PAID LEAVE LAW (PLAW Act)

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Karen E. Milner

kmilner@fordharrison.com

(314)257-0302

www.fordharrison.com

ILLINOIS PAID LEAVE FOR ALL WORKERS ACT (PLAW ACT)

» Goes into effect January 1, 2024

» Highlights:

» Requires leave to be allowed for “any reason”

» Different from most other states, which have paid sick leave only

» Allows employees to earn up to 40 hours of paid leave per year

» The “year” to be defined by the employer

» Frontloaded, or earned at rate of 1 hour for every 40 hours worked

» No carryover to next year required unless combined with other forms of paid leave

» If employer already provides at least 40 hours of leave that can be used for any reason, no additional leave required (but other modifications possibly needed)

WHO IS AN “EMPLOYER” UNDER THE ACT?

- » Adoption of Illinois Wage Payment and Collection Act (IWPCA) definition of “employer”:
 - » All entities employing at least one employee in Illinois, except:
 - » Federal government employers;
 - » School districts organized under IL School Code; and
 - » Park Districts organized under IL Park District Code.
 - » Likely to be interpreted as potentially applying to out of state employers

WHO IS AN “EMPLOYER” UNDER THE ACT?

CONT’D

» But nothing is ever that simple:

- » PLAW Act also exempts employers covered by a “municipal or county ordinance that is in effect on the effective date of this act that requires employers to give any form of paid leave to their employees, including paid sick leave or paid leave.”
- » This means that for now, law doesn’t apply to Chicago employers, or employers in the Cook County municipalities that didn’t opt out of paid sick leave
 - » Highly likely that Chicago and Cook County will amend ordinances prior to 1/1/24
 - » If Chicago/Cook County don’t amend, it means leave allotted to employees there will be limited to sick leave purposes.
 - » If Chicago/Cook County do amend, they must comply with the minimum requirements of PLAW Act

Chicago/Cook County vs. PLAW Act

- » Besides purpose of leave (sick leave versus leave for any purpose), other differences to be recognized, which may or may not be addressed in any amendments.
 - » Chicago/Cook County allow employers to ask for documentation if more than 3 days of sick leave while PLAW Act prohibits employer from asking for reason for leave or documentation.
 - » Chicago and Cook County allow for carryover of half of unused leave to the next year (and more if the leave to be used for FMLA purposes) while PLAW Act requires all of the leave to be carried over (if not frontloaded), but limits use in any year period to 40 hours (with no FMLA exceptions).
 - » Chicago/Cook County require leave to be used starting at 180 days, while PLAW Act requires within 90 days
 - » Chicago/Cook County allow minimum increment of 4 hours vs. 2 hours minimum increments under PLAW Act

WHO IS AN “EMPLOYEE” UNDER THE ACT?

- » Adoption of Illinois Wage Payment and Collection Act (IWPCA) definition of “employee”:
 - » “Any individual permitted to work by an employer in an occupation”; and
 - » “Employees in this State, including employees of units of local government and school districts, but excepting employees of the State or Federal governments.”
- » With exceptions...

WHO IS AN “EMPLOYEE” UNDER THE ACT?

CONT’D

- » Exceptions to IWPCA definition:
 - » Domestic workers ARE employees under PLAW Act
 - » Employees under federal Railroad Unemployment Insurance Act or Railway Labor Act ARE NOT employees under PLAW Act
 - » College/University students who work part time and on temporary basis for the college at which enrolled ARE NOT “employees” under PLAW Act
 - » Individuals who work at “institution of higher learning” for less than 2 consecutive calendar quarters who don’t have expectation of being rehired by same institution ARE NOT employees under PLAW Act.
- » PLAW Act DOES NOT apply to independent contractors
- » PLAW Act DOES apply to part time employees

WHO ELSE MAY BE AN “EMPLOYEE”?

- » PLAW Act applies to “an employee who works in Illinois”
 - » Different than/conflicting with IWPCA definition
 - » Implication is that Act could apply to out-of-state employers with employees who perform any work in Illinois, regardless of where based
 - » Attend meetings? Conferences? Trade Shows?
 - » Remote work?
 - » Travel into or through Illinois?
 - » Temporary assignment to project in Illinois?
- » Regulations to be promulgated by Illinois Department of Labor (IDOL)

WHO ELSE MAY BE AN “EMPLOYEE”?

- » Current IWPCA regulations may be also be instructive
 - » IDOL can assert jurisdiction over claim “if the work is performed outside the State of Illinois, [and] the employer [is] located in Illinois.”
- » Key Takeaways:
 - » The PLAW Act *may* apply to out-of-state employers with employees performing any work in Illinois
 - » The PLAW Act *may* apply to in-state employers with employees performing work outside of Illinois
 - » Therefore, employers *may* need to track time employees working inside and outside Illinois

Applicability of PLAW Act to Bargaining Units

- » Requirements of the Act may be waived in a “bona fide collective bargaining agreement” if the waiver is “set forth explicitly in such agreement in clear and unambiguous terms.”
 - » The Act will NOT change or affect CBAs in effect on 1/1/24
 - » If bargaining now, consider including waiver
 - » May require effects bargaining where CBA won't expire until after 1/1/24
 - » Does NOT apply to employers covered by CBAs with state agency employers, employers in construction industry, or employers who provide services “nationally *and* internationally” of delivery, pickup, and transportation of documents, parcels, and freight.

HOW MUCH PAID TIME OFF AND HOW IS IT EARNED?

- » Minimum of up to at least 40 hours
 - » Employers can provide more
- » Time can be accrued/earned as employees work or be frontloaded
 - » If accrued as worked, 1 hour earned for every 40 hours worked
 - » FLSA exempt employees are presumed to work 40 hours per week unless regular workweek is less hours
 - » If frontloaded, must be 40 hours (even if for part time employee)
- » Regular rate of pay, and at least minimum wage for tipped and commission employees

FRONTLOAD VS. ACCRUAL?

- » Frontloading makes all leave available at once, but avoids it having to be carried over
- » Accrual may be more appropriate for part-time employees at employers who do not currently provide paid time off benefits to part-time employees
 - » i.e. employee working 20 hours per week would earn 26 hours of paid leave in a year
 - » Employees working more than 30 hours per week will reach 40 hours of leave
- » Most employers already providing at least 40 hours of some form of paid time off to full time employees, so not much harm in frontloading

WHEN PAID TIME OFF MUST BE PROVIDED?

- » Employer can choose the “yearly” period, but must stay consistent year to year
 - » Anniversary
 - » Calendar year
 - » Fiscal year
- » Requires written notice if changing the period
- » If any period other than anniversary, must be certain to provide pro rata amount for period worked prior to start date of yearly period
- » Employer can set minimum increment for use (no more than 2 hours)
- » Accrual must begin on first day of employment, but employers may require a 90 day waiting period to begin using

USAGE OF PAID TIME OFF

- » Leave can be used for ANY reason
- » If paid leave under PLAW Act kept separate from other forms of leave, employees can choose bank of hours from which leave is drawn
- » Employers may require 7 calendar days notice for foreseeable leave; HOWEVER, employers may not require employees to give reason for the leave or documentation to support the leave
 - » Compliance with attendance policies?
 - » Extension of FMLA, ADA, or other job-protected leave?
 - » Workplace safety?

CARRYOVER OF UNUSED PAID TIME OFF

- » If employer frontloads the 40 hours at beginning of yearly period, carryover of unused time is NOT required
- » If employer has employees accrue time as they work, then all unused time must carry over to next year
 - » HOWEVER, employer can still limit use of leave accrued under the Act to 40 hours.
- » What if employer combines required paid leave with other forms of leave?
 - » Unknown without regulations, as employers can have “use it or lose it” PTO policies as long as employee has reasonable amount of time to use it.

PAYOUT UPON SEPARATION ?

- » If paid leave earned under PLAW Act kept in separate “bank,” then unused time need not be paid out upon separation from employment.
- » If paid leave required under PLAW Act is combined into other forms of leave (i.e. vacation, personal), then unused time must be paid out upon separation.

TO COMBINE, OR NOT TO COMBINE?

- » Reasons for separate banks of leave:
 - » Must pay out all unused leave upon termination if combined
 - » More difficult recordkeeping and need to confirm with employees from which bank they want leave deducted
 - » May not be able to ask for reason for leave for any of the leave (waiting for regulations)
 - » May not be able to have “use it or lose it” policy (waiting for regulations)

- » Reasons for combined banks:
 - » Easier to manage time off
 - » Potentially limits payout of unused time upon termination

EFFECT OF TRANSFER OR REHIRE

- » If employee transferred to a separate division of same employer, employee keeps all accrued paid leave
- » If employee separated from employment and rehired within 12 months, employee entitled to reinstatement of prior accrued but unused leave accrued under the Act.

NOTICE/RECORDKEEPING REQUIREMENTS

- » Employers must post summary of the Act's requirements in conspicuous place where other notices customarily posted.
 - » Including how to file a charge with the IDOL for violation
 - » DOL to create and make notice available (in multiple languages)
 - » Also must provide notice to employees upon commencement of employment
 - » Must also be included in handbooks
- » Employers must create and preserve records documenting hours worked, paid leave accrued and taken, and remaining leave balance, for minimum of 3 years, and allow IDOL access if requested.
 - » Reminder, IWPCA requires employers to track hours of all employees, including FLSA exempt employees

NON-COMPLIANCE ENFORCEMENT/PENALTIES

- » Employees can file claim with IDOL
 - » 3 year statute of limitations
 - » If investigation shows cause to believe violation, matter referred to ALJ for formal hearing
- » If violation found (including as to recordkeeping), employer may be liable for the following:
 - » Up to \$1000 in civil penalties to affected employees
 - » Amount of actual underpayment
 - » Compensatory damages
 - » Equitable relief
 - » Reasonable attorney's fees, witness fees, and costs
 - » Penalty of \$2500 for each separate violation (except for violation of notice requirement) paid to "Paid Leave for All Workers Fund"

NON-RETALIATION PROVISION

- » Employer may not take or threaten to take adverse action against employee who takes leave under the PLAW Act or who otherwise engages in protected activity regarding the Act
- » Possible additional basis for retaliatory discharge claim under common law?

TAKEAWAYS/NEXT STEPS FOR EMPLOYERS

- » Employers should begin considering whether and if so, how, existing policies need to be modified, to have in place by 1/1/24
 - » Frontload or accrual method?
 - » Combine with existing leave or keep separate?
 - » Include in CBA negotiations?
- » Chicago/Cook County employers should expect amendment to ordinances later in 2023.
- » Employers should ensure proper timekeeping policies are in place (now and on 1/1/24)



**THANK YOU!
QUESTIONS?**