

# Illinois Enacts Statewide Paid Leave Law Mandating Paid Leave for Any Reason

Labor & Employment Workforce Watch

## WRITTEN BY

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On March 13, 2023, Governor J.B. Pritzker signed the [Paid Leave for All Workers Act](#) (the “Act”) into law. Although the Illinois paid leave requirements do not take effect until January 1, 2024, and additional guidance from the Illinois Department of Labor regarding the provisions of the Act should be published before then, the following is a summary of the Act’s key provisions.

### Leave Entitlement

With a few minor exceptions, all employees who work in Illinois will be entitled to paid leave under the Act. Specifically, the Act requires employers to provide each employee with a minimum of 40 hours of leave, or a pro-rata amount thereof, in a 12-month period selected by each employer. Employers may provide this leave via either an accrual or frontloading model.

Under the accrual model, employees earn one hour of leave for every 40 hours of work within the designated 12-month period. Employees begin accruing leave immediately upon their start date; however, they cannot use that leave until 90 days after that date. (Individuals employed on the Act’s effective date will begin accruing leave on that date but cannot use it until 90 days thereafter.) For purposes of accrual, the Act assumes that exempt employees work 40 hours per week, unless their regular workweek is actually less than that. Except as discussed below, employers that choose the accrual model must allow employees to carry over unused leave from one 12-month period to the next.

Under the frontloading model, employees receive their full allotment of paid leave for the applicable 12-month period at the outset of that period, or, if starting employment midway through that period, on their first day, prorated based on the amount of time they will work in the period. For employers who choose the frontloading method, they are not required to allow employees to carry over unused leave.

Employers must pay the applicable regular hourly rate for all leave taken under the Act. With one minor exception (discussed below), the Act does not entitle individuals to compensation for accrued, but unused, leave upon separation.

### Use of Leave

Employees may use accrued leave “for any purpose” so long as they do so in accordance with the Act’s relatively minor notification requirements. Employees are not required to tell their employer why they are taking

leave, and employers cannot require employees to provide any documentation or certification to justify the use of leave. Additionally, employees are free to choose the sequence in which they take leave available to them under the Act or leave available to them via their employer's policies or under state law.

Where an employee's need for leave is foreseeable, an employer can require the employee to provide written or verbal notification of the intent to take leave up to seven calendar days in advance of doing so. If an employee's need for leave is unforeseeable, then the employee is only required to notify the employer as soon as practicable after becoming aware of the need for leave. Employers must communicate to employees how employees are to provide notice of leave. Without the ability to know the details of why an employee is taking leave, there does not appear to be a mechanism in the Act for employers to challenge an employee's claim that the need for the leave was not foreseeable.

Employers can require employees to use leave in minimum increments; however, the lowest permissible increment is two hours.

### **Additional Employer Obligations**

Beyond permitting leave as described above, the Act also imposes certain administrative obligations. For instance, an employer must maintain existing benefits coverage for an employee throughout any leave taken under the Act. If the employee pays for a portion of those benefits, the employer must notify the employee of the continued obligation to make contributions during such leave.

The Act also imposes recordkeeping and notice requirements. In terms of recordkeeping, employers must retain records of each employee's number of hours worked, leave accrued and taken under the Act, and the balance of any leave accrued or provided under the Act, for at least three years. Employers using the accrual method must inform employees of the amount of leave they have accrued upon request. As for notice, employers must post a publication to be issued by the Illinois Department of Labor regarding the Act and employee rights thereunder. This notice must be displayed in a conspicuous location at each worksite throughout the state and included in the employer's handbook, if such a handbook exists.

The Act prohibits employers from taking (or threatening) any adverse employment action against employees for exercising (or attempting to exercise) rights under the Act, opposing practices they believe are in violation of the Act, or supporting another employee's exercise of rights under the Act.

### **Interplay with Other Laws, Policies, and Collective Bargaining Agreements**

#### *Other Laws*

Employers subject to a county or municipal paid leave ordinance (e.g., the Cook County Earned Sick Leave Ordinance or the Chicago Paid Sick Leave Ordinance) as of the effective date of the Act will remain subject to that ordinance, instead of the Act. However, if the county or municipality amends its ordinance, employers will become subject to the Act's requirements and only be subject to the amended ordinance to the extent that ordinance provides for leave benefits beyond those provided for by the Act.

## *Employer Policies*

If an employer has a paid leave policy that meets, or exceeds, the obligations imposed by the Act—including the provision for employees to use leave for any reason—then the employer will be considered in compliance with the Act. Relatedly, if an employer includes leave accrued under the Act among the hours banked through an existing leave policy (e.g., a vacation or PTO policy) for which the employer pays for unused hours upon separation of employment, then the employer must pay employees for those hours upon separation in the same manner it does for, and in addition to, all other hours in that leave bank.

## *Collective Bargaining Agreements*

The rights created under the Act can be waived through a bona fide collective bargaining agreement, but only if that waiver is explicitly stated in clear and unambiguous terms. Outside of the collective bargaining context, individual employees cannot waive their rights under the Act by agreement. The Act will not alter the terms of any collective bargaining agreements in effect as of its effective date; however, any collective bargaining agreements entered into thereafter (including new agreements and renewed agreements) must meet the Act's explicit waiver requirement, or employees covered by the agreement will be eligible for leave under the Act.

Employees in the construction industry and in certain shipping-related roles who are subject to a bona fide collective bargaining agreement are not entitled to leave under the Act.

## **Enforcement and Penalties**

The Illinois Department of Labor is empowered to investigate alleged violations of the Act and enforce it as appropriate. An employer failing to publish the paid leave notice required by the Act is subject to a \$500 fine following the first audit where this failure is discovered and a \$1,000 fine for each subsequent audit where the failure to publish persists. For any other violation of the Act, the Department of Labor may impose a penalty of \$2,500 per offense.

## **Notable Omission**

While the Act, as a whole, will significantly impact the workplace, it has one particularly glaring omission. Specifically, nowhere does the Act contemplate employer approval of leave under the Act, or even a failsafe whereby an employer could deny leave if necessary based on business exigencies (e.g., when there is a lack of sufficient personnel available to cover shifts at key times, such as around holidays or times of extra need for that employer). Instead, as written, so long as an employee is eligible to take leave, has leave available, and provides notice as contemplated by the Act, an employer has no choice but to deal with the employee's absence.

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