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NEW CHICAGO ORDINANCE REQUIRES EMPLOYERS PROVIDE BOTH PAID LEAVE AND PAID SICK LEAVE

On July 1, 2024, the City of Chicago's new Paid Leave and Paid Sick and Safe Leave Ordinance (6-130-005 et seq.) went into effect. The new Ordinance provides that all employees working in Chicago earn up to 40 hours of Paid Leave and 40 hours of Paid Sick Leave per 12-month period. These are minimum Paid Leave and Paid Sick Leave hours that all Chicago employees must be provided and for which they must receive their normal pay or compensation. The Ordinance distinguishes between Paid Leave and Paid Sick Leave as described below.

Paid Leave hours. Employees are to accrue up to 40 hours (or 5 days) of Paid Leave per 12-month period. See, Ordinance at 6-130-030(b). Employees accrue 1 hour of Paid Leave for every 35 hours worked. Employees can use their accrued Paid Leave hours for any reason including vacation or illness. However, employers can require employees to obtain reasonable preapproval before using their Paid Leave in order to maintain the continuity of business operations. Employees are eligible to use their accrued Paid Leave hours after 90 days on the job and in increments of 4 hours.

Paid Sick Leave hours. Employees are to accrue up to 40 hours (or 5 days) of Paid Sick Leave per 12-month period. See, Ordinance at 6-130-030(b). Employees accrue 1 hour of Paid Sick Leave for every 35 hours worked. Employees can use their accrued Paid Sick Leave hours for illness, injury, family illness, victim of domestic violence or sex offense, emergency, family care, etc. Employees are eligible to use their accrued Paid Sick Leave hours after 30 days on the job and in increments of 2 hours. If an employee uses Paid Sick Leave for 3 consecutive scheduled workdays, the employer may require a note from the employee's physician or other certification.

What employees are covered. A "Covered Employee" eligible for Paid Leave and Paid Sick Leave is an employee who works at least 80 hours in a 120-day period within the City of Chicago boundaries. If an employee reaches that threshold one time the employee is always eligible for such leave going forward. An employee starts accruing Paid Leave and Paid Sick Leave hours on the later of the start of employment or July 1, 2024; however, if an employee is already accruing paid Sick Leave under a prior law, then those hours carry forward. The Ordinance Rules provide that only hours worked within the City of Chicago count toward accrual of Paid Leave and Paid Sick Leave. See, Rule PTO 2.03(a). Similarly, Covered Employees do not accrue Paid Leave or Paid Sick Leave for the hours they are not physically working within the geographical boundaries of Chicago even if the employer is located within the geographical boundaries of the city. See, Rule PTO 2.03(a)(2).

Carryover of accrued but unused hours to the next year. A key component of the Chicago Ordinance is if and when any accrued but unused Paid Leave and Paid Sick Leave hours must be carried over for the employee's benefit to the following year. Importantly, unused Paid

Leave and Paid Sick Leave hours are handled differently. Unused Paid Sick Leave must be carried over at the end of the year – specifically, up to 80 accrued Paid Sick Leave hours can be carried over by the employee from one year to the other. In contrast, only 16 hours of accrued but unused Paid Leave hours can be carried over to the next year. In addition, if the employer chooses to “frontload” the Paid Leave hours – meaning the employee gets the full 40 hours at the start of the year and does not actually accrue any hours – any unused Paid Leave hours are not carried over to the next year. See, Rule PTO 2.05(a). This exception for carrying over unused Paid Leave hours does not apply to unused Paid Sick Leave hours which still must be carried over even if frontloaded. The Paid Leave and Paid Sick Leave hours carried over to the next year are in addition to the hours accrued in the new year. Note, employers do not need to pay or compensate the employee for any unused hours that are not carried over.

Payout of earned but unused hours upon termination. Another important component of the Chicago Ordinance is what happens to the accrued but unused hours if an employee’s employment is terminated. Under the Ordinance, accrued but unused Paid Sick Leave hours do not need to be paid out upon termination, regardless of the size of the employer. For accrued but unused Paid Leave hours, it depends on the size of the employer. Unused Paid Leave hours do not need to be paid upon a termination for small employers (1-50 employees). Upon a termination, medium employers (51-100 employees) must pay out up to 16 hours of unused Paid Leave until July 1, 2025 and up to 56 hours after that date. Finally, large employees (101+ employees) must pay out up to 56 hours of unused Paid Leave upon a termination.

Rate of pay. Employees must receive their regular rate of pay when using Paid Leave or Paid Sick Leave hours. The regular rate of pay for nonexempt employees will be calculated by dividing the employee’s total wages by total hours worked in full pay periods of the prior 90 days of employment. Wages do not include overtime pay, premium pay, tips or gratuities or commissions. However, the minimum hourly pay shall not be less than the base hourly wage or the applicable minimum wage governing the employee, whichever is higher. For any Covered Employee who is paid on a commission basis, whether base wage plus commission or commission only, the employer must pay Paid Leave and Paid Sick Leave to the Covered Employee at the hourly rate of pay based on the base wage or the highest hourly rate of the federal minimum wage, the Illinois minimum wage or the full Chicago minimum wage (without any allowance or credit for tips), whichever is greater. See, Rule PTO 2.02. When an employee uses Paid Leave or Paid Sick Leave hours, such hours must be paid no later than the next regular payroll period after the leave was used. See, Rule PTO 2.08.

Required policy and notices. The new Chicago Ordinance requires that employers establish and adopt a reasonable written Paid Leave and Paid Sick Leave policy laying out how the employer is going to handle the leave requirements and notice by employees of taking leave. If an employer chooses to frontload the Paid Leave and Paid Sick Leave hours, the Employer must make written notification of the fact and the availability of the hours to a Covered Employee at the beginning of the benefit year. See, Rule PTO 2.10(c). The benefit year can be the anniversary of the date of employment, calendar year, contract year, fiscal year, or tax year.

The employer’s policy on Paid Leave and Paid Sick Leave has to be communicated to the employees and can be done in a manual, handbook or by separate document. The Ordinance also requires that employers provide notices of Paid Leave and Paid Sick Leave policies with the employee’s first paycheck (by email is acceptable) and post the applicable City of Chicago poster

in communal work areas. A copy of the City of Chicago poster can be found on the City's website [here](#). Each time wages are paid employers must provide an update on Paid Leave and Paid Sick Leave hours remaining. Employers must keep and maintain records for 5 years under the Ordinance.

Impact on existing vacation or PTO policies. Employers who have pre-existing paid leave policies are not exempted or excused from complying with the Chicago Paid Leave and Paid Sick and Safe Leave Ordinance. Even if any employer has a more generous PTO policy for its employees (meaning it provides for more paid days off for vacation or sick leave) it must still ensure that its policy complies with the Ordinance in all respects. This includes, but is not limited to, the carryover requirements, the rules governing payment upon termination, and the shorter 30-day waiting period for Paid Sick Leave hours. Note should be made that there may be inconsistencies in how accrued but unused Paid Leave hours and PTO or vacation days are handled upon termination under the Chicago Ordinance and the Illinois Wage Payment and Collection Act. The Chicago Ordinance specifies that nothing in the Ordinance limits an employee's right to final compensation upon termination for promised or earned vacation time or paid time off under the Illinois Wage Payment and Collection Act. So, whereas, a small employer may not need to pay out for unused Paid Leave hours upon termination under the Chicago Ordinance, if such hours constitute earned but unused vacation time under the Illinois Wage Payment and Collection Act the employee would be entitled to a payout as final compensation upon termination. Employers should consult legal counsel for guidance specific to their situation on this question and other issues arising under the Ordinance.

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