**A thermometer and money next to a sign

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**A blue office chair with a sign on it

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(Marya: maybe choose one of the above visuals??)

**Make Sure Your Company is In Compliance!**

**Chicago Paid Leave and Paid Sick and Safe Leave Ordinance:** Chicago employers must take immediate steps to ensure that applicable leave policies are in compliance with the new paid leave and paid sick leave requirements.

While Chicago employers may already be familiar, and in compliance with, Chicago’s previous paid sick leave requirements, the city of Chicago recently passed the new Chicago Paid Leave and Paid Sick and Safe Leave Ordinance. The ordinance, which takes effect on December 31, 2023, significantly expands paid leave requirements for Chicago employers and includes some of the harshest penalties in the country for violations of paid leave provisions. Below, our guest contributors, Sara Davey and Randy Bridgeman from law firm Perkins Coie highlight the key considerations of the ordinance and next steps you should be considering in light of the upcoming changes in the law regarding paid leave.

**Who is covered?**

The ordinance broadly defines an employer to include “a person who gainfully employs at least *one*” employee. The ordinance’s definition of a “Covered Employee” is similarly broad and includes any employee who physically works within Chicago for *at least two hours* in any particular two-week period, including compensated travel time. Accordingly, even those employers who are not based or headquartered in Chicago will be subject to the ordinance’s requirements. Employers with delivery drivers or sales employees who travel into the city of Chicago for work-related purposes should be mindful of the ordinance’s requirements and carefully consider whether they are covered by the ordinance even if they are not technically based in the city of Chicago.

Note, however, this ordinance will not interfere with the rights of employees currently covered under valid collective bargaining agreements.

**How much leave must be provided?**

The ordinance requires employers to provide all Covered Employees with at least five annual days of paid leave that can be used for any purpose (paid leave) and five annual days of paid sick leave that can be used for specified purposes (paid sick leave). Employers may choose to provide the leave as employees accrue it throughout the year or front-load 40 hours of each type of leave on the first day of each 12-month period. Unlimited or flexible paid time off (PTO) policies that grant immediate access to PTO are also allowed under the ordinance.

At the end of each 12-month accrual period, employees must be permitted to carry over up to 16 hours of accrued, but unused paid leave, unless employers front-load paid leave, in which case no carryover is required. Employees also must be permitted to carry over up to 80 hours of accrued, but unused paid sick leave regardless of whether an employer uses an accrual or front-loading method. The requirement to carry over accrued but unused paid leave does not apply to employers who use an unlimited PTO system.

**When can employees use leave?**

Although eligible employees have the right to use paid leave for *any reason*, an employer may adopt a reasonable paid leave policy to: (1) require an eligible employee to give reasonable notice, not to exceed seven days, before using paid leave; and (2) obtain reasonable preapproval from the employer before using paid leave for the purpose of maintaining continuity of operations. An employer may also require eligible employees to provide up to seven days’ notice for using paid sick leave if the leave is reasonably foreseeable. Paid sick leave, however, may only be used for specific reasons, which include caring for the employee’s own illness or injury; caring for the employee’s family member’s illness or injury; addressing issues involving domestic violence, sex offenses, or trafficking of an employee or their family member; public-health closures of an employee’s business or a family member’s school or place of care; and staying home in compliance with an order concerning the transmission of an illness.

**What are the payout requirements?**

The new ordinance includes the following strict payout requirements:

* Employers with 51 or more Covered Employees must pay out any accrued, but unused paid leave at the time of termination, resignation, retirement, or separation from employment.
* Employers with 51 or more Covered Employees will also be required to pay out employees for accrued, unused paid leave when “a Covered Employee ceases to the meet the definition Covered Employee as a result of*transferal outside of the geographic boundaries of the City*” (emphasis added).
* Employees may also demand payout of accrued but unused paid leave after not receiving a work assignment for 60 days.
* Employers offering unlimited PTO must pay the monetary equivalent of 40 hours of paid time off (minus the number of hours of PTO used by an employee within the accrual year at separation).

Employers employing more than 100 Covered Employees must pay out all unused paid leave beginning on January 1, 2024. However, employers employing between 51 and 100 employees are only required to payout 16 hours of unused paid leave, until December 31, 2024; after this date, such employers will be required to pay the full monetary amount of unused paid leave.

**What about employers with more generous paid leave policies?**

Employers providing benefits greater than what is specified in the new Chicago ordinance must be sure to comply with requirements regarding carryover, payout, and usage.

**What about unlimited paid time off policies?**

Employers with unlimited paid time off policies are not exempt from the reach of the ordinance. As discussed above, employers with unlimited paid time off policies will now be subject to payout obligations.

**What notices do employers need to provide to employees?**

Beginning December 31, 2023, employers will be required to provide postings and reminders that advise employees of their rights to paid time off under the ordinance. Employers must:

* Provide conspicuous postings at each work site that explain the rights provided under the ordinance.
* Provide employees with an individualized notice of their rights under the ordinance in the employee’s first paycheck and annually with a paycheck issued within 30 days of July 1.
* Provide new hires with written notice of the employer’s paid time off policy at the time of hiring.
* Provide existing employees with notice of changes to an employer’s paid time off policy “within five calendar days before any change to the Employer’s paid time off policy requirements.”
* Provide employees with their balance of accrued but unused paid leave and paid sick leave, in addition to a reminder of the accrual rates “[e]ach time wages are paid.” Certain employers may be able provide this balance update on a monthly basis instead.

**What should employers do next?**

The penalties for noncompliance are steep, including the potential for businesses to become ineligible to operate in the city of Chicago. Mandated fines range between $500 and $1,000 for violations of the notice requirements and between $1,000 and $3,000 for each other offense under the ordinance, with ***each day*** that a violation continues counting as a separate, distinct offense. Employees are additionally entitled to treble damages for leave that was denied in violation of the ordinance, in addition to interest, attorneys’ fees, and costs.

Given the approaching December 31, 2023, effective date, Chicago employers (or employers with Chicago-based employees) must take immediate steps to ensure that applicable leave policies are in compliance with the new paid leave and paid sick leave requirements. If an employer’s existing sick leave policies do not comply with the new ordinance, then up to 80 hours of accrued, unused paid sick leave must carry over to the next year on January 1, 2024. Employers will need to review their employee handbooks and workplace policies, update wage payment notices, and train applicable staff regarding the new requirements. In light of the new risks presented by the ordinance, the assistance of outside counsel is highly recommended.