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Paid Leave for Any Reason Is Coming to Illinois

By Kelly Petrocelli

In this article, the author explains that Illinois employers should evaluate their existing paid leave policies to see whether those policies may need to be modified to comply with a likely new paid leave requirement or a separate bank of leave created.

On January 10, 2023, the Illinois legislature passed a bill, SB0208,¹ which would require most Illinois employers to provide employees with up to 40 hours of paid leave for any reason on an annual basis. The bill, entitled the “Paid Leave for All Workers Act,” if signed by the Governor (who has already expressed his support) would take effect on January 1, 2024. The bill is expansive in that it would require nearly all employers with one or more employees working in Illinois to provide paid leave. Leave would begin to accrue on January 1, 2024 or upon commencement of employment, whichever is later, but covered employers could impose a 90-day waiting period before leave may be used. With limited exceptions, all employees would be eligible to accrue leave, at a rate of one hour of paid leave for every 40 hours worked, up to 40 hours per 12-month period (e.g., calendar year). Exempt employees are assumed to have worked a 40-hour week unless their regular workweek is less than 40 hours.

Notably, the bill specifically provides that employers who already provide “any type of paid leave policy that satisfies the minimum amount of leave required by subsection (a) of Section 15” (i.e., 40 hours or a pro rata amount based on hours worked) are not required to modify the policy if employees are given the option, at their discretion, to take paid leave for any reason. Given this provision, employers may choose to modify their existing vacation, paid time off, or sick leave policies to

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satisfy this new leave requirement, rather than create a new leave bank for employees.

An employee will be entitled to carry over any accrued but unused leave to the following 12-month period, unless the employer provides the employee with the minimum number of hours of paid leave at the beginning of the following 12-month period (commonly referred to as “frontloading”). While carry over is required in the absence of frontloading, employers are not required to pay an employee for any accrued but unused leave upon any separation from employment. Keep in mind, however, that under existing Illinois law, employers must pay employees for any accrued but unused vacation upon separation of employment. Therefore, if an employer credits this new paid leave to an employee’s paid time off bank or vacation account, any unused paid leave must be paid upon separation to the same extent as vacation time under existing Illinois law.

Beyond its sheer breadth (i.e., that leave may be used for “any reason”), the bill further provides that an employee is not required to provide a reason for taking leave and cannot be required to provide any documentation or certification for the leave. An employer may require at least seven days’ advance notice of the leave if it is foreseeable, while unforeseeable leave would require notice as soon as practicable. In any event, employers must notify employees in writing if they intend to require any form of notice before taking leave.

Employers will not be permitted to require an employee to exhaust any other available leave provided by the employer or state law before using this new paid leave. However, employers may limit the use of this new paid leave to no more than 40 hours per 12-month period and require employees to use leave in increments of no less than two hours.

These leave requirements may be waived in a bona fide collective bargaining agreement (CBA) provided the waiver is clear and unambiguous. The law exempts employees working in the construction industry who are covered by a CBA and those who are covered by a CBA with an employer that provides services nationally and internationally of delivery, pickup, and transportation of parcels, documents and freight.

Significantly, the bill specifically exempts employers who are covered by a municipal or county ordinance that requires providing any form of paid leave to their employees, including paid sick leave or paid leave, provided that the ordinance is in effect as of January 1, 2024. Accordingly, employers in Chicago or Cook County (at least in the municipalities that have not “opted out” of the Cook County Earned Sick Leave Ordinance) should not have to provide paid leave beyond what they are already required to provide under the applicable municipal or county ordinance. However, the bill sets a minimum requirement for any local ordinance that is enacted or amended after January 1, 2024, thereby assuring that no local ordinance will provide less than the minimum amount of leave required by the bill.

The bill requires employers to post a notice, to be prepared by the Illinois Department of Labor (IDOL), summarizing the new law and an employee's right to file a charge with the IDOL. This notice must also be provided in the employer's employee handbook (if they have one), or a separate written policy. Aggrieved employees may file a charge with the IDOL within three years of the alleged violation, and recover the actual underpayment, compensatory damages, certain minimum civil penalties, equitable relief, and reasonable attorneys' fees and costs.

Illinois employers should evaluate their existing paid leave policies to see whether those policies may need to be modified to comply with this new paid leave requirement or a separate bank of leave created.

NOTE

1. <https://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=110&GA=102&DocTypeId=SB&DocNum=0208&GAID=16&LegID=129513&SpecSess=0&Session=0>.

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