ILLINOIS GUARANTEES ONE WEEK OF PAID LEAVE FOR ALL WORKERS

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U.S. Labor, Employment, and Workplace Safety Alert

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On 13 March 2023, Governor J.B. Pritzker signed the "Paid Leave for All Workers Act" (the Act),[1] which guarantees that Illinois workers can earn or accrue up to 40 hours of paid leave per year that may be used for any reason. The Act becomes effective 1 January 2024. In enacting this expansive law, Illinois joins only two other states with similar paid leave laws—Maine[2] and Nevada.[3]

The Act standardizes paid leave across the State of Illinois by establishing a minimum paid leave standard for nearly all Illinois employees working for employers in Illinois (including domestic workers, and state and local governments and political subdivisions, but excluding school and park districts). The Act notably exempts employers subject to local paid sick leave ordinances in effect on 1 January 2024. This exemption would extend to many employers with employees working in Chicago[4] and Cook County,[5] unless either locality amends its ordinance prior to 1 January 2024.[6] In addition to employers covered by local paid sick leave requirements, the Act also exempts employees covered by a collective bargaining agreement in effect as of 1 January 2024, as long as the parties to an agreement explicitly waive compliance with the Act. Finally, the Act will not apply to (i) employees subject to coverage under the federal Railway Labor Act; (ii) short-term employees in higher education; (iii) enrolled students employed on a temporary basis for a university or college; and (iv) employees covered by a collective bargaining agreement in the construction industry (further defined in the Act) or those in the parcel pickup and delivery industry.

Under the Act, employees are entitled to start using their paid leave 90 days following the commencement of their employment or 31 March 2024, whichever is later. The employee may use the paid leave for any purpose without fear of retaliation; the employee does not need to provide a reason to the employer, nor does the employee need to provide documentation or support for the paid leave. Further, the employee may elect to use paid leave under the Act prior to using other employer-provided leave or other leave required under state law. The employer, however, may set a "reasonable minimum increment" for the use of paid leave at no more than two hours per day and may require no more than seven days' advance notice for paid leave that is foreseeable. For leave that is not foreseeable, an employer may require employees to adhere to a notification procedure, but must have an established written policy outlining such requirements. Similar to other state and local paid sick leave laws, an employer may not require a worker to find a replacement or substitute for when the worker is on leave.

Employees are entitled to carry over any unused paid leave. However, at no point in time may an employee accrue more than 40 hours. The Act also permits an employer to "front-load" the 40 hours of paid leave on the employee's first day of employment or on the first day of the 12-month period. The "front-loading" method does not require an employer to carry over paid leave to the next 12-month period, and the employer may require employees to "use-it-or-lose-it" before the end of the benefit period.

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Under the Act, employers are not required to compensate an employee for any unused paid leave upon termination of employment, which mirrors the Chicago and Cook County paid sick leave ordinances. Further, paid leave does not need to be credited to the employee's paid time off bank unless the employer's policy provides as such. If, however, the paid leave is credited to the employee's paid time off bank, then any unused paid leave shall be paid to the employee upon the employee's termination or separation in accordance with the Illinois Wage Payment and Collection Act (IWPCA).[7]

In addition, the employer must post a notice in physical or electronic format summarizing the requirements of the Act, which will be prepared by the Illinois Department of Labor (IDOL). An employer who fails to post the notice may be fined a civil penalty of US$500 for the first violation, and US$1,000 for any subsequent violation. Moreover, the Act provides that an employee may file with IDOL a complaint against an employer for allegedly violating the Act. The complaint must be filed within three years after the alleged violation. An employer found to have violated the Act shall be fined a civil penalty of US$2,500 for each separate offense.[8]

Illinois employers that do not have a paid leave policy in place should reach out to their labor and employment attorneys for assistance in crafting a policy that is compliant with the Act. Employers subject to the Act that maintain vacation or other paid time off policies that provide the minimum amount of paid leave required by the Act are not required to modify their pre-existing policy, so long as an employee is permitted to take paid leave for any reason pursuant to the employer policy under conditions no more restrictive than what the Act requires. Employers should ensure that any changes to their current paid time off or vacation policies in response to the Act comply with requirements under the IWPCA governing forfeiture of earned or accrued vacation or paid time off and payment at time of termination. The lawyers of K&L Gates' Labor, Employment, and Workplace Safety practice regularly counsel clients on a wide variety of issues related to paid leave policies and are well-positioned to provide guidance and assistance to clients on this significant development in Illinois.

FOOTNOTES

[1] S.B. 208, 102nd Gen. Assemb. (2023).

[2] ME. REV. STAT. tit. 26, § 637 (2019). This law applies to employers with 10 or more employees.

[3] NEV. REV. STAT. § 608 (2020). This law applies to employers with 50 or more employees.

[4] MCC § 6-105.

[5] Ord. No. 16-4229

[6] If a municipality in Illinois enacts a local ordinance after 1 January 2024, it must comply with the requirements under this Act.

[7] 820 ILL. COMP. STAT. 115/2-4.

[8] An offense is defined as “any violation of [the] Act with the exception of a violation of the notice requirement . . .” S.B. 208, 102nd Gen. Assemb. § 35 (2023).

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