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# Illinois' New Paid Leave Law: Updating Your Paid Leave Policy to Comply with New Illinois Paid Leave Law Mandates

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- Use/Documentation/Notice
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# Illinois Paid Leave for All Workers Act



On Jan. 10, 2023, the IL legislature passed the Paid Leave of All Workers (PLFAW) Act.

It will provide nearly all IL workers with a **minimum of 40 hours of paid leave** (or a pro rata number of hours) during a 12-month period.

Gov. Pritzker signed the legislation on March 13.

It will be effective January 1, 2024.

**Disclaimer: There are still unanswered questions.**

# IDOL's Latest FAQs



## 1. Are schools required to comply with the Paid Leave for All Workers Act (the Act)?

- Public school districts organized under the School Code are exempt from the Act. A private school, not organized under the school code, is not exempt from the Act. (See [820 ILCS 192/10.](#))

## 2. Cook County has a paid leave ordinance, but municipalities are allowed to opt out of that county ordinance. Are employers located in municipalities which opted out required to comply with THE ACT?

- Yes, employers located in jurisdictions that have opted out of a local paid leave law or ordinance are required to comply with the Illinois Paid Leave for All Workers Act.

## 3. My employer already provides paid time off. Do they have to add another 40 hours of leave under the Act?

- An employer who already offers paid leave benefits that meet the minimum requirements of the Act does not have to add additional time.

## 4. Does the Act apply to part-time employees, or just full-time employees?

- The Act doesn't distinguish between part time, full time, or seasonal employees. Both full-time and part-time workers are covered by this Act.

# IDOL's Latest FAQs



## 5. Can an employer front-load paid leave time at the beginning of the year?

- Yes, an employer may front-load paid leave time by giving a full year's worth of leave that meets the minimum requirements of the Act to an employee at the beginning of the year.

## 6. Can an employer require employees to accrue paid leave time over the course of the year?

- Yes, an employer may require their employees to accrue paid leave time based on number of hours worked, at a rate of one hour of paid leave for every 40 hours worked.
- Notably, while a part-time worker might not accrue the full 40 hours of leave provided for in the law by the end of the year, they might accrue fewer hours of leave, based on the number hours they've worked.

**Example:** *Employee A works 15 hours per week, 52 weeks per year. They will accrue 19.5 hours of paid leave annually. (15 times 52 = 780 hours worked per year. 780 divided by 40 = 19.5 hours of paid leave.)*

# IDOL's Latest FAQs



## 7. When does accrual begin under the Act? When can employees start taking paid time off?

- The Act takes effect January 1, 2024. Accrual begins upon beginning employment or January 1, 2024, whichever is later. However, employees are entitled to begin using the accrued paid leave after 90 days.
- The first day employees could take off time that has accrued since January 1, 2024 would be March 31, 2024.

***Example:** The Paid Leave for All Workers Act takes effect January 1, 2024. Six months later, Employee B starts a new job on July 1, 2024, and works 40 hours per week. They start accruing paid leave on their first day (July 1) but must wait 90 days (until September 29, 2024) before taking any of their accrued paid leave.*

***Example:** Employee C has worked for their employer since 2019 but did not previously get paid time off. Employee C will begin accruing paid time off beginning January 1, 2024 (the effective date of the Act.)*

# IDOL's Latest FAQs



## 8. How does accrual apply to employees who work more than 40 hours in a week, but are exempt from the overtime requirements of the federal Fair Labor Standards Act?

- Employees (including but not limited to those commonly known as “salaried employees”) who are exempt from the overtime requirements of the federal Fair Labor Standards Act (29 U.S.C. 213(a)(1)) shall be deemed to work 40 hours in each workweek for purposes of paid leave time accrual if they regularly work 40 or more hours in a workweek. If such employee’s regular workweek is less than 40 hours, their paid leave time accrues based on the number of hours in their regular workweek.

# IDOL's Latest FAQs



**9. If an employer allows employees to borrow against future accrual, thereby making the employee's paid leave balance go negative, can the employer make the employee repay the paid leave if the employee terminates before they have earned that leave?**

- An employer may only make an employee repay borrowed accrued leave if that policy is disclosed in the employer's written paid leave policy and the employee agrees to that policy in writing prior to taking any leave. All payroll deductions must comply with the requirements of the [Illinois Wage Payment and Collection Act](#).



# IDOL's Latest FAQs



**10. If an employer frontloads an employee's paid leave at the beginning of the 12-month period, and the employee uses all of their leave and then quits before the end of the 12-month period, can the employer make the employee repay the paid leave?**

- No, an employer may not make an employee repay paid leave time that was frontloaded at the beginning of the 12-month period. Benefits that have already been provided may not be retroactively diminished.

# IDOL's Latest FAQs



**11. The law states that accrued time must be provided at a rate of 1 hour of paid leave for every 40 hours worked. Can an employer provide the paid leave on an hourly rate, such as .025 hours of paid leave per hour worked?**

- Yes, an employer can choose to provide leave in smaller, proportional, increments, as long as the rate of benefit is at least 1 hour of paid leave for every 40 hours worked.

# IDOL's Latest FAQs



## 12. Does an unlimited PTO Policy comply with the Act?

- To determine whether a specific employer's unlimited PTO policy is compliant with this Act would require a fact-specific analysis upon complaint or formal investigation. One factor the Department would consider in such analysis would be whether the employee in question actually did, or had the ability to, freely take the full 40 hours in a year, consistent with the Act and the Rules. Another factor would be whether the employees were paid their normal rate of pay for time they took off. This is not an exhaustive list of factors the Department may consider.

# IDOL's Latest FAQs



## 13. What does this law mean for temporary employees who work for 3rd party clients?

- Employers of day and temporary laborers are not exempted from the Act. Employers should consider their obligations under the [Day and Temporary Labor Services Act](#) and the principles of joint employment.

# IDOL's Latest FAQs



## 14. Must paid leave provided under the Act be paid out upon an employee's termination, resignation, or retirement?

- PLAW does not require payout of unused leave unless the leave is credited to the employee's paid time off bank or employee vacation account; however, employers should additionally consider their vacation payout obligations under the [Illinois Wage Payment and Collection Act](#).

# Coverage



- **Covered Employers:** ALL private AND public Employers.
  - Including State of Illinois and Units of Local Government
  - Including Domestic Workers as defined by the IL Domestic Workers' Bill of Rights Act (820 ILCS 182) (i.e. housekeepers, cleaners, nannies, cooks, companion services, chauffeuring, etc. except for immediate family members)
- **Eligible Employees:** ALL Employees (Full-Time, Part-Time, Temporary AND Seasonal).
- **There are exemptions.**

# The New Law Will Not Apply To:



1. School districts organized under the School Code.
2. Park districts organized under the Park District Code.
3. An employee as defined in the federal Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.) or the Railway Labor Act;
4. A student enrolled in and regularly attending classes in a college or university that is also the student's employer, and who is employed on a temporary basis at less than full time at the college or university, but this exclusion applies only to work performed for that college or university;
5. A short-term employee who is employed by an institution of higher education for less than 2 consecutive calendar quarters during a calendar year and who does not have a reasonable expectation that they will be rehired by the same employer of the same service in a subsequent calendar year;
6. An employee covered by a bona fide CBA with an employer that provides services nationally and internationally of delivery, pickup, and transportation of parcels, documents, and freight;

# The New Law Will Not Apply To: (cont'd)



7. Employees in the **Construction Industry** who are covered by a bona fide collective bargaining agreement (CBA).

“Construction industry” means:

- Any maintenance, landscaping, constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, improving, wrecking, demolishing, or adding to or subtracting from - any building, structure, highway, roadway, street, bridge, alley, sewer, ditch, sewage disposal plant, waterworks, parking facility, railroad, excavation or other structure, project, development, real property, or improvement; OR
- To do any part thereof, whether or not the performance of the work herein described involves the addition to or fabrication into, any structure, project, development, real property, or improvement herein described of any material or article of merchandise; OR
- Moving construction related materials on the job site or to or from the job site, snow plowing, snow removal, and refuse collection.



# The New Law Will Not Apply To: (cont'd)



8. Employees subject to a bona fide CBA in effect on January 1, 2024 – in that the Paid Leave Act will not change the terms – for the duration of the CBA only.  
**\*\*After January 1, 2024, all CBAs will be subject to the Paid Leave Act** and its requirements may only be waived by CBA if there is a clear and unambiguous waiver.
9. Employers covered by municipal or county ordinances in effect on January 1, 2024, that provide for paid leave or paid sick leave. See, slides 27-32.  
**\*\*After January 1, 2024, any municipal or county ordinance *enacted or amended* must comply with the act or give greater protections to employees ---apply whichever affords more protections to employees.**

# Amount of Paid Leave/Accrual



- **“Up to a minimum of 40 hours”** of Paid Leave per 12-month period for each employee.
  - 12-month period may be designated by the Employer.
  - However, if you are going to change that period you **MUST**
    - 1) give notice to the employees in writing prior to any change.
    - 2) provide the employees with documentation of the balance of hour worked, paid leave accrued and taken and the remaining paid leave balance.

\*\*\*Begins accruing on the 1<sup>st</sup> day of employment or 1/1/24, whichever is later.

# Amount of Paid Leave/Accrual



- Employees accrue 1 hour of Paid Leave for every 40 hours worked, beginning January 1, 2024 or first day of employment, whichever is later.
  - FT EE works 40 hours in a week – accrues 1 hour Paid Leave after 1 week – 40 hours annually.
  - PT EE works 20 hours a week – accrues 1 hour of Paid leave after 2 weeks – 20 hours annually.
- Employees who are exempt under the FLSA are deemed to work 40 hours a week unless their regular workweek is less than 40 hours.
- But, actual hours matter. You must track the hours actually worked for non-exempt workers.
- Employers can have policies that allow accrual to be faster or leave accrued beyond 40 hours.

# Carryover and Frontloading



- **Carryover**

- Employees **MUST** be allowed to carryover any unused Paid Leave, unless the Employer “frontloads” by providing at least 40 hours of Paid Leave on the first day of employment.
- IF an employee carryovers unused Paid Leave, they may still be limited to EARN and USE 40 hours of Paid Leave in a 12-month period.
  - So, if an employee has 40 hours in their earned bank they can stop earning until they use Paid Leave and their accrual goes below 40 hours.

- **Frontloading**

- You can frontload all time at the beginning of the year and not worry about the accruals. However, again, hours worked actually matter – you must not “short-change” the worker.
- IF an Employer frontloads (at least 40 hours, or the pro-rata amount), they may provide that any unused Paid Leave is forfeited at the end of the 12-month period.

# Use and Documentation



- Employees can begin to use accrued leave:
  - 90 days following their 1<sup>st</sup> day of employment or 90 days following 1/1/24, whichever is later.
- Employees shall determine how much paid leave they need to use; however, employers may set a reasonable minimum increment for the use of paid leave **not to exceed two (2) hours per day (unless they are scheduled for less than 2 hours – then they can take whatever is need to cover that schedule).**
- **Paid Leave may be used “for ANY purpose” ... “any reason of the Employee’s choosing”.**
  - Employees are NOT required to provide a reason for the leave.
  - Employees are NOT required to find a replacement worker.
  - Employees CANNOT be required to provide documentation/certification as proof of need.

# Notice



- **Employees may request Paid Leave orally or in writing –**
  - Employers may require at least 7 days notice, IF the Employer has a written policy containing the procedures for an employee to provide notice.
    - Must provide this notice procedure requirements in writing and with at least five (5) days notice if making any changes to the policy.
  - **HOWEVER** – If the reason for Paid Leave is unforeseeable, the employee is only required to provide notice as soon as practicable after the employee is aware of the necessity for leave.
- **WARNING-DANGER** – The 2-hour max increment, inability to require information or documentation on reason for leave and ability of employees to request last second when “unforeseeable” opens to the door to significant abuse with respect to employees being tardy or absent AND risk in trying to enforce attendance policies.

# Pay and Benefits During Leave



- **Pay** – Paid Leave hours are paid at the Employee’s “hourly rate of pay”. Tipped and commissioned employees must be paid at least the full minimum wage “in jurisdiction” they are employed when the leave is taken.
- **Benefits** – During any period in which the employee takes Paid Leave, the employer must maintain coverage for the employee and any family member under any group health plan for the duration of the leave at the level and conditions in place at the time.
- **Other Leave** – Note, Employees may choose to use Paid Leave prior to using any other leave provided by Employer or State law.... Creates questions about consecutively running with other unpaid leaves. But, this should not impact interplay with Federal laws (i.e. FMLA).

# Termination/Transfer/Rehire



- **Termination** – Paid Leave under this new law does **NOT** have to be paid out at termination!!! \*\*\*But, if you create a “hybrid” then it would be treated like any other paid leave and must be paid at termination.
- **Rehiring and 12-month Look Back** – If an employee is rehired within 12 months, previously accrued, but unused/not paid out, Paid Leave must be reinstated and the Employee will be able to use Paid Leave beginning their first day of re-employment (i.e. no 90-day waiting period).
- **Transfers** – If an employee is transferred (even out of state), the employee is entitled to use all accrued but unused Paid Leave at the time of the transfer.



# Posting and Recordkeeping



- **New Poster and Policy Time!!!** – Employers must: (1) post a Notice (to be provided by the IDOL) **AND** (2): include a copy of the Notice in any written policies, handbook or manual the Employer has.
- **Notice of Changes** – Within five (5) calendar days of any change to a Paid Leave policy (and potentially PTO/Vacation policy substitute), Employers must provide written notice of the changes.
- **Records** – Employers must preserve records of an employee’s hours worked, paid leave accrued and taken, and remaining paid leave balance for at least **3 years** – and preserve during any claim.
  - ***Request for Balance*** – Upon request, Employers must provide an Employee with the amount of Paid Leave accrued or used by the Employee.

# Current PTO/Vacation Policies



- Employers that have a PTO/Vacation Policy that satisfies the minimum amount of leave required (40 hours per 12-month period) can keep that policy if:
  1. At the employee's discretion, they may use the PTO/Vacation for any reason; AND
  2. The Policy states that Paid Leave under Illinois Paid Leave for All Workers Act may be credited against the PTO/Vacation policy; AND
  3. Accrued and unused PTO/Vacation will be paid out under the IWPCA.
- **NOTE** – It's nice that it does not require PTO/Vacation policies to comply with ALL requirements (ala Cook County/Chicago) *but it's unclear on what "requirements" would apply to a new or revised PTO/Vacation policy after 1/1/24.*
- **IMPORTANT** – #2 above is going to require a change to your PTO/Vacation policy before 1/1/24 if you are going to use your PTO/Vacation policy to satisfy any part of the Paid Leave Act requirements.

# Current PTO/Vacation Policies



- **CHANGING YOUR PTO or VACATION Policy (after 1/1/24)**
  - Company MUST give employees written notice if they are going to change the vacation or PTO policy or any other paid leave policy that affects an employee's rights to final compensation payout of the leave.
    - You **MUST BE VERY CAREFUL** with any changes because earned PTO/Vacation is wages in IL so unless you already have a forfeiture provision that will be triggered (i.e. at the end of the year) you will only be able to make changes going forward. You may end up with multiple buckets of "paid leave" until the legacy bank has been used.
  - ***At this time, it is unclear on what "requirements" would apply to a new or revised PTO/Vacation policy after 1/1/24.***

# To Be More Clear...



## What about Current PTO/Vacation Policies?

Any employer who has a PTO/vacation policy in existence on or before January 1, 2024 that provides all employees the ability to accrue, earn and take at least 40 hours of leave per year, but that can be taken for any reason, does not have to modify it beyond expressly communicating that the Paid Leave under the new law is credited to the PTO/vacation policy.

In other words, so long as employers adopt paid time off policies that provide for the minimum time off as mandated by the new law and such policies allow employees, at their discretion, to take such time for any reason, then your policy should cover your obligations under the new law. That's how the law was intended. However, in such a case, the Paid Leave is considered PTO/vacation time that must be paid out at termination under the IWPCA. AND... any further modification could be problematic under the statute's language.

**HOWEVER -> The IDOL is tasked to issue rules interpreting the law. We may obtain more insight on this issue in the months to come. The statutory language seems clear, but the IDOL's "take" could force employers to make more changes to existing paid leave policies than originally thought or intended by the business community.**

# Prohibited Acts



- **No Retaliation** – Employers are prohibited from considering the use of Paid Leave as a negative factor in any employment decision, including evaluating/reviews, promotion or discipline. Specifically, it is unlawful to threaten or take an adverse action against an employee for:
  - 1) Exercising or attempting to exercise rights under the Paid Leave Act
  - 2) Opposing practices believed to be in violation of the Paid Leave Act; or
  - 3) Supporting another employee exercising rights under the Paid Leave Act.
- **No Fault Attendance Policies** – It is unlawful to count paid leave as an absence under a no-fault attendance policy.
  - Need to review your policies and ensure any point systems are updated.  
**\*\*\*HOWEVER, this does not necessarily apply to CALL OFF policies.**
- **No Waiver of Rights** – Any employee waiver of their rights under the Act is void as against public policy.

# Enforcement



- ***Who Enforces*** – IDOL administers and enforces.... No provision for Civil lawsuits...
  - This means any complaints will be handled via IDOL administrative hearing.
    - Typically held via telephone/video conference and have more flexible rules of evidence.
    - Administrative Law Judge generally have more discretion and sometimes do not necessarily follow legal precedent. (e.g. can be very employee friendly...)
- ***Statute of Limitations*** – Complaints must be filed with IDOL within 3 years of an alleged complaint.

# Damages



## ▪ *Damages Employees are Entitled to for a Violation –*

- Actual underpayment;
- Compensatory Damages;
- Penalty of not less than \$500 and no more than \$1,000; and
- Equitable relief as may be appropriate, including reasonable Attorneys' fees; reasonable Expert witness fees, and other costs of bringing an action.
- **NOTE** – IDOL will oversee payment of damages to employee, BUT for attorneys' fees, the employee's attorney is responsible for collecting.

## ▪ *IDOL Civil Penalties for Violation –*

- Violation of Notice Requirements –
  - Civil Penalty of \$500 for the first Audit violation and \$1,000 for any subsequent audit violation.
- Violations (other than Notice Requirements) –
  - Civil Penalty of \$2,500 for each separate offense – with offenses meaning any violation of the Act, with exception of the notice requirement.
  - The Act does not define what “separate offense” means... Hopefully this will be cleared up.
    - For example, is denying multiple requests to take Paid Leave considered one offense or is each denial of a proper request considered a separate offense.

# Illinois Paid Leave – Q&A / FAQs



- 1. Are Non-Construction CBAs Covered?** – The Paid Leave Act does not require CBA’s in place on January 1, 2024 be changed to include Paid Leave. After January 1, 2024, CBAs will have to be compliant (and provide Paid Leave), unless there is a clear and unambiguous statement that the requirements of the Paid Leave Act do not apply/are waived.
- 2. Does using the accrual or frontloading method change if Paid Leave has to be paid out?** – No, Paid Leave only has to be paid out if made a part of (or credited against) an employee’s PTO or vacation under your PTO or Vacation leave policy.
- 3. Can you have a Paid Leave ceiling?** – YES/Maybe?!?! The statutory language is not clear on this, but during the legislature floor debate it was stated that once an employee accrues 40 hours an employer can grant more – or stop it there – setting a ceiling on how much can be earned. However, there are questions on how the required carryover would work with a ceiling.
- 4. Will this impact Absenteeism?** – Yes, this will potentially have a significant impact on addressing excessive absenteeism, as employees could call off stating it is for an unforeseeable situation and use 2 hours of Paid Leave, without an employer being able to require them to provide additional information. That said, remember you can still ask for additional information – you just can’t require it.
- 5. We require employees to use PTO/Vacation with FMLA leave, can we do the same with Paid Leave?** – For leave provided under federal law, yes, but under the Paid Leave law, “an employee may choose whether to use Paid Leave prior to using any other leave provided by the employer or state law” – meaning employers may not be able to run them concurrently with leave provided under state law.
- 6. Can you have a paid Holiday policy that requires employee to work the scheduled shift before and after the holiday in order for it to be paid?** – This is another question that is yet to be answered and we may need clarification through regulations or changes to the Act. The Act’s current prohibition on retaliation, could prohibit not paying Holiday pay if an employee uses Paid Leave before the holiday, instead of PTO/vacation time.
- 7. Does this apply to Seasonal or Temporary workers who are employed for 4-5 months per year?** – YES – and if they are rehired within 12 months, they would be entitled to balance they had when their employment ended and not have to complete a waiting period to use Paid Leave.



# Local Paid Leave Ordinances



## Cook County, City of Chicago and other local Paid Leave Ordinances

- The Paid Leave Act does NOT apply to an Employer covered by a municipal or county ordinance in effect on January 1, 2024 that requires employers to give any form of paid leave to their employees, including paid sick leave or paid leave – for those employees covered by the local ordinance.
  - So, you may have employees in Chicago that are covered by the Chicago Sick leave ordinance and then other employees in Wheaton for which the new law will apply because they are NOT covered by the Chicago ordinance.
- BUT... IF a local ordinance that provides paid sick leave or paid leave is enacted OR MODIFIED after January 1, 2024, Employers must comply with the Paid Leave Act – or provide benefits, rights and remedies that are greater than those provided by the Paid Leave Act.

# Cook County Paid Sick Leave – Current Municipalities **Complying**



Barrington Hills	McCook
Berwyn	Northbrook
Cicero	Oak Brook
Countryside	Oak Park
Deerfield	Olympia Fields
Dolton	Phoenix
Elmhurst	Riverdale
Evanston	Robbins
Ford Heights	Skokie
Frankfort	University Park
Glencoe	Western Springs
Glenview	Wilmette
Homer Glen	Winnetka
Kenilworth	Woodridge
Lincolnwood	

# Random Thoughts & Perspective Forward...



- Review any CBAs and evaluate same for next negotiation;
- Consider PTO/vacation policy changes/modifications effective prior to January 1, 2024;
- Consider implementing a stand-alone Paid Leave policy in conformity with the new law while revising or reviewing existing PTO/vacation policies (**perhaps consider implementing specific policies for temporary/seasonal/part time workers vs. full time hourly vs. full time exempt vs. however you want to slice and dice so that it all works for you and your operations --- there's no "one way fits all" approach here**);
- Review and update call-in/call-off notification policies. Be painfully clear as to the expectations of anyone who does not timely report to work; and
- Ensure appropriate time systems are in place to account for actual hours worked for paid leave credit and ensure proper record keeping is in place for paid leave use/availability.



Thank you for joining us!



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