Insights: Alerts

Understanding the Illinois Paid Leave for All Workers Act – A Comprehensive Overview

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Effective January 1, 2024

In an effort to address the evolving needs of the workforce and promote a healthier work-life balance, the state of Illinois has taken a significant step by enacting the Paid Leave for All Workers Act (PLAWA), codified as 820 ILCS 192/1 et seq. Effective January 1, 2024, eligible employees can earn up to 40 hours of paid leave within 12 months. Eligible employees are entitled to begin using this paid leave 90 days following the effective date (that means starting on March 31, 2024, or 90 days after the eligible employee begins their employment). In addition to PLAWA, this article cites proposed rules issued by the Illinois Department of Labor ("IDOL"). However, IDOL intends that finalized rules should be in place before March 31, 2024.[1]

Does PLAWA apply to me?

Employers are responsible for informing employees about their rights under the Illinois Paid Leave for All Workers Act, typically through workplace posters or other means. Compliance with the Act's requirements is crucial, and employers must maintain accurate records of employees' accrued and used paid leave.[2] The terms "employer" and "employee" have the same application and meaning as provided in Sections 1 and 2 of the Illinois Wage Payment and Collection Act with few exceptions:

- The term "employer"[3] shall include any: individual, partnership, association, corporation, limited liability company, business trust, employment and labor placement agencies. Employer does not include school districts organized under the School Code or park districts organized under the Park District Code.
- The term "employee"[4] shall include any individual permitted to work by an employer in an occupation, including domestic workers, but shall not include any of the following:
    1. an employee as defined in the federal Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.) or the Railway Labor Act;
    2. 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; or
    3. a short-term employee who is employed by an institution of higher education for less than two consecutive calendar quarters during a calendar year and who does not have a reasonable expectation that they will be rehired by the same employer.

Despite its statewide coverage, PLAWA does not apply to any employer that is already covered on January 1, 2024, by a municipal or county ordinance that requires employers to give any form of paid leave to their employees, including

paid sick leave. However, any such ordinance enacted or amended after January 1, 2024, must comply with the requirements of PLAWA or provide benefits, rights, and remedies that are greater than or equal to the benefits, rights, and remedies afforded under PLAWA.[5] Since Cook County and Chicago already have ordinances ensuring paid sick leave for certain employees, fulfillment of obligations under those ordinances will also satisfy PLAWA. It is important for employers to know which of these ordinances apply to their employees and to review them to ensure compliance because there have been recent changes.

On December 14, 2023, the Cook County Board of Commissioners voted to enact its Paid Leave Ordinance which took effect on December 31, 2023. The Cook County Commission on Human Rights begins enforcement of Cook County's Paid Leave Ordinance on February 1, 2024.

On November 9, 2023, the Chicago City Council signed a new paid time off ordinance, the Chicago Paid Leave and Paid Sick and Safe Leave Ordinance, effective July 1, 2024. Although employers covered by the Chicago ordinance are exempt from PLAWA, the Chicago ordinance adopts PLAWA's purpose of providing general paid leave to employees in addition to paid sick leave.

If PLAWA applies to me, what are my options?

Under PLAWA, an employee is entitled to earn a minimum of 40 hours or a pro rata number of hours of paid leave during a 12-month period. Employers may choose how they provide the 40 hours of paid leave to their employees. They may “frontload” the leave all at once or they may “accrue” paid time off over a period of time, proportionately to hours worked.

Frontloading

- Employers intending to implement frontloading must furnish a written notice to employees indicating the amount of paid leave they will receive either on or before the commencement of employment or on or before the initiation of the 12-month period.[6]
- Employers are allowed to frontload a "pro rata" or proportionate quantity of leave for part-time employees, aligning with the anticipated number of hours worked by the employee. If the employee surpasses the initially expected hours, they must be granted the opportunity to accrue additional paid leave. The frontloaded paid leave amount cannot be reduced if an employee ends up working fewer hours than initially anticipated. Employees commencing work in the middle of an employer's 12-month period may also receive a proportionate frontloaded hours allocation.[7]
- If an employer frontloads 40 hours of paid leave at the beginning of the 12-month period, it need not permit an employee to carry over unused paid leave from the prior 12-month period.[8]
- Employers may frontload PLAWA benefits for part-time employees at a pro-rata amount consistent with the employee's work schedule. However, if the employee in fact works more hours than the employer anticipates, the employee is entitled to accrue more hours at a rate of 1 hour of paid leave for every 40 hours worked, up to 40 hours for the 12-month period. If a part-time employee works fewer hours than anticipated by their employer, the employer may not diminish, or recoup used or unused front-loaded paid leave benefits.

Accruing Paid Leave Over a 12-Month Period

- An employee is entitled to accrue paid leave hours at the rate of one hour of paid leave for every 40 hours worked during a 12-month period up to a minimum of 40 hours of paid leave over the same 12-month period.[9] The employer is required to count all time that an employee works, including overtime hours worked, for purposes of calculating accrued leave.[10]
- Where paid leave is accrued, PLAWA indicates that "all" accrued but unused paid leave must carry over from one 12-month period to the next.[11] Although not addressed by the proposed rules, it is likely that any accrued leave added to the frontloaded leave of part-time employees who work more than initially anticipated would also be carried over to the next 12-month period.
- Notably, the proposed rules indicate that "[e]mployers may establish a reasonable policy . . . restricting employees' ability to carry over more than 80 hours of unused paid leave,"[12] but "[a]n employee is not entitled to use more than 40 hours of paid leave in a 12-month period unless the employer allows them to do so."[13]

Can I deny my employee's request for paid leave?

Despite being required to allow employees to take paid leave for any reason and without documentation, if an employer maintains a written paid leave policy, it may impose certain terms and conditions on the use of paid leave. Any such policy must be communicated to employees, applied equally to all employees, and conform with other applicable state and federal laws.[14]

Reasonable terms and conditions on the use of paid leave include that employers may require up to seven days' notice for leave if the leave is foreseeable. If the leave is unforeseeable, employees only need to provide notice as soon as practicable.[15]

The proposed rules detail the steps an employer must take if it wants the ability to deny a request to use paid leave.[16] For example, employers are able to deny a request for leave if they disclose their paid leave policy to employees in writing, including any basis for denial.

Employers may establish a policy with certain limited circumstances in which leave may be denied in order to meet the employer's core operational needs. The factors[17] to consider when denying leave due to operational needs are:

- Whether the employer provides a need or service critical to the health, safety, or welfare of the people of Illinois;
- Whether similarly situated employees are treated the same for the purposes of reviewing, approving, and denying paid leave;
- Whether granting leave during the time period would significantly impact the business operations due the employer's size; and
- Whether the employee has adequate opportunity to use all paid leave they are entitled to over a 12-month period.

Employers who deny leave must provide the employee with a record of each denied request and the employer's reason for denial.

Must paid leave provided under PLAWA be paid out upon an employee's termination, resignation or retirement?

PLAWA 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.[18]

Are there penalties for noncompliance?

In addition to the above requirements, PLAWA includes provisions safeguarding employees from retaliation for exercising their rights under the legislation.[19] Additionally, employers are prohibited from discriminating against employees who request or use paid leave in accordance with PLAWA.

If employers fail to comply with PLAWA, employees may recover the total value of earned paid leave hours owed to the claimant, compensatory damages, attorney's fees, reasonable expert witness fees, and other costs of the action.[20]

The Illinois Paid Leave for All Workers Act is a landmark piece of legislation designed to prioritize the well-being of employees by ensuring access to paid leave benefits. As the regulatory framework and enforcement regarding PLAWA evolves, it is important for attorneys tasked with advising on this new law to be aware of the legal considerations surrounding it. If done effectively, an attorney may implement appropriate measures to ensure employees and employers can derive benefit from the accrual and utilization of paid leave.

For questions regarding this article or advice on a particular PLAWA situation, please contact us.

Footnotes

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[1] Illinois Department of Labor, *Paid Leave for All Workers Act FAQ* https://labor.illinois.gov/faqs/paidleavefaq.html.
[2] 47 Ill. Reg. 15559 at Section 200.440.
[3] *Id*. at Section 200.110.
[4] *Id*.
[5] 820 ILCS 192/15(p) and 47 Ill. Reg. 15559 at 200.270.
[6] 47 Ill. Reg. 15559 at Section 200.230(a)(1).
[7] *Id*. at Section 200.230(c).
[8] 820 ILCS 192/15(c) and 47 Ill. Reg. 15559 at 200.320(b).
[9] 820 ILCS 192/15(a) and 47 Ill. Reg. 15559 at Section 200.220(a).
[10] 47 Ill. Reg. 15559 at Section 200.220(b).
[11] 820 ILCS 192/15(i) and 47 Ill. Reg. 15559 at Section 200.320(a).
[12] 47 Ill. Reg. 15559 at Section 200.320(a).
[13] 820 ILCS 192/15(i) and 47 Ill. Reg. 15559 at Section 200.320(a).
[14] *Id*. at Section 200.310(a).
[15] 820 ILCS 192/15(h) and 47 Ill. Reg. 15559 at Section 200.310(b).
[16] 47 Ill. Reg. 15559 at Section 200.310(c).
[17] *Id*.
[18] 820 ILCS 115/5, 820 ILCS 192/15(l) and 47 Ill. Reg. 15559 at Section 200.460(c).
[19] 820 ILCS 115/5 and 47 Ill. Reg. 15559 at Section 200.470.

[20] 47 Ill. Reg. 15559 at Section 200.530.

Related People



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