

# **LAW OFFICE OF LORI A. GOLDSTEIN, LLC**

## **SPECIAL CLIENT BULLETIN**

### **New Paid Sick Leave Requirements and Minimum Wage Increases in Chicago and Cook County Effective July 1, 2017**

#### **Employers Should Be Preparing Now for July 1 Requirements and Updating Their Employee Handbooks/Policies and Compensation**

##### **New Paid Sick Leave Laws**

For the first time, Chicago and Cook County\* employers will have to provide **paid** sick leave to most employees, including temporary and part-time employees. Beginning July 1, 2017, employers with **one or more employees** and a location in Chicago or other municipalities in Cook County, will need to comply with new ordinances providing covered employees with up to 40 hours of paid sick leave every year.

\* Cook County employers outside of Chicago are subject to the Cook County ordinance, unless the municipality in which they operate has opted out of the ordinance. Currently, these include Barrington, Bedford Park, Elmwood Park, Mount Prospect, Niles, Northbrook, Oak Forest, Palos Park, River Forest, Rolling Meadows, Rosemont, Schaumburg, Streamwood, Tinley Park and Wheeling.

##### **Covered Employees**

A “covered employee” is any employee who **works at least two hours in a two-week period** while physically present in the respective **geographic boundary** (either Cook County or Chicago) **and works at least 80 hours in any 120-day period**. (Chicago employees who participate in certain government-subsidized programs and employees under 18 are not “covered employees.”)

##### **When Accrued Leave May be Used**

An employer may **require employees to work up to 180 days before using** any accrued sick leave. If an employee **separates employment before the end of the 180-day period**, the employer is not required to pay the employee the sick leave accrued but not used. Unlike vacation/PTO, employees are **not due accrued, unused sick leave when employment ends**. A seasonal or temporary employee who works less than 180 days, with at least 120 days between successive periods of employment, would not have paid sick leave.

##### **Sick Leave Accrual and Carryover**

Under the ordinances, covered employees accrue **1 hour of paid sick leave for every 40 hours worked, up to a maximum of 40 hours in a 12-month period**. Employee who are **exempt from overtime** requirements accrue paid sick leave based on the number of hours worked in a normal work week, up to 40 hours. An employee who does not use all accrued paid leave by the

end of the 12-month period may **carry over to the following year half of all unused, accrued time, up to 20 hours.** However, if the employer is subject to the Family Medical Leave Act (FMLA), **workers can carry over up to 40 hours plus any additional time** allowed under the FMLA. Alternatively, employers can use a “front-loading” method and award employees a lump sum of 40 hours of paid sick leave immediately upon the date of an employee’s eligibility. This may eliminate the burden of calculating accrued paid sick leave, but could also provide some employees more sick leave than they would have otherwise been eligible to receive.

### **Use of Sick Leave and Notice/Certification**

Employees may use accrued paid sick leave in the following situations:

- The employee or the employee’s family member is ill or injured.
- The employee needs to receive medical care, treatment, diagnosis or preventative medical care.
- The employee needs to care for a family member receiving medical care, treatment, diagnosis or preventative medical care.
- The employee or the employee’s family member is the victim of stalking or domestic or sexual violence.
- The employee’s place of business is closed due to a public health emergency.
- The employee needs to care for a child whose school or place of care has been closed due to a public health emergency.

An employer may require that a covered employee provide **up to seven days’ notice if the paid sick leave is reasonably foreseeable.** Even if the leave is not reasonably foreseeable, an employer may require that a covered employee notify the employer via phone, email or text message on the **same day the sick leave is taken.** Additionally, an employer may require **medical certification supporting the leave for absences exceeding three consecutive work days.**

### **Regulations – Key Requirements**

The Cook County and Chicago Commissions on Human Rights have issued draft regulations, to be finalized and published on June 1, detailing procedures and will produce notices detailing the requirements, which employers will need to **display in a conspicuous location** in the workplace beginning July 1, 2017.

Additionally, employers **must give each worker notice of their rights under the ordinance with their first paycheck,** once the ordinance takes effect.

Although some of the regulations may change, it is important to be aware now and prepare for the key requirements, which are virtually the same under the Chicago law:

- Accrual period: The regulations provide that an employer may use any 12-month period it prefers to use for accrual purposes (e.g., a calendar year, fiscal year, etc.). The accrual period need not begin on July 1, when the Ordinance takes effect.
- PTO Allotment May Satisfy Requirements: If an employer provides paid time off (PTO) at a rate and in a manner that complies with the law, such a policy will be deemed to

satisfy the requirements of the Ordinance. Therefore, **some employers may already in compliance with the Ordinance, or their policies may just require modest revisions**, such as to the permissible reasons for taking leave under the policy.

- **Written Policies Required:** The draft regulations make clear that a written policy is absolutely essential. Without it, the Commission will make certain assumptions about an employer's practices and employees' rights that may lead to penalties for employers. For example, if a policy does not address **when employees may begin to use paid sick leave**, the Commission will assume that employees will be able to use any accrued leave as soon as they become eligible to use leave, i.e. once they have worked at least 80 hours during a 120-day period.
- The Ordinance provides that employers **may establish a minimum increment in which paid sick leave can be used of no fewer than four hours**. Absent a written policy, however, the Commission will presume that employees may use paid sick leave in increments of one hour.
- If an employer can't show a written policy with reasonable requirements for employees to provide notification, the Commission will presume that no such policy exists and that employees can use paid sick leave without providing any prior notice.
- The regulations also require employees to maintain personnel and payroll records for 5 years showing the number of hours of paid sick leave each covered employee was awarded and used and the dates on which the employee used paid sick leave.
- Non-compliance may be costly: Violators can be subject to a fine of up to \$1,000 per day per affected employee, plus lost wages, and injunctive relief. Employees may also bring a lawsuit for violations.

### **Illinois Sick Leave Act**

Meanwhile, the 2017 **Illinois Employee Sick Leave Act** requires **all Illinois employers** to allow employees with personal sick leave benefits for their own illness, injury or medical appointment (paid or unpaid), to use accrued benefits to care for their children and other family members.

### **Takeaway for Employers**

Employers with facilities in Chicago or Cook County **should not wait until July 1** but should begin now to assess whether either ordinance is applicable, review and update existing sick leave policies, and train supervisory personnel to comply with the ordinance(s). Please feel free to contact me for assistance.

### **New Minimum Wage Increases**

New minimum wage ordinances also become effective on **July 1. An increase from \$10.50 to \$11/hour will affect Chicago employees, and Cook County employees outside Chicago will benefit by an increase from \$8.25 to \$10/hour.** However, as of May 1, 10 of 135 Cook County municipalities have **opted out** through home rule. Businesses are concerned they will have to raise prices, causing loss of business, and may need to reduce staff, and lower/eliminate benefits.

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