LAW OFFICE OF LORI A. GOLDSTEIN, LLC

PREPARE FOR NEW LAWS: JULY 1, 2024

Employers locally and nationwide are busy reviewing and **adjusting policies, practices and salaries**. On July 1, the federal **overtime exemption minimum salary will increase** The new **Chicago Paid Leave and Safe and Sick Leave Act** will become effective after a 6-month delay. This will affect employers with employees working in Chicago – even employers outside of Chicago and Illinois. On the same date, the Chicago **minimum wage will rise** and Illinois freelance workers will become entitled to written contracts. Plus, a reminder about recent changes to Illinois temporary worker rights. Finally, a heads up about the possible federal ban on noncompetes scheduled for September.

1. **FLSA Overtime Exemption Minimum Salary Raised**

   Once again – this time in a **two-phase approach**, the federal Department of Labor has upped the minimum salary required for an employee to be exempt from overtime pay. This will provide 3.6 million more workers with overtime pay. Here are the new rules for employees who are salaried and who meet the executive, administrative, professional or other statutory test,:

   - The Fair Labor Standards Act (FLSA) minimum salary level will increase from $**35,568 per year $**684 per week) to **$43,888** on July 1.
   - Then on January 1, 2025, it will rise again to **$58,656**
   - Starting July 1, 2027, earnings thresholds will be **automatically updated every three years** so they keep pace with changes in worker salaries,
   - Total annual W-2 compensation required for **the highly compensated employee** exemption changes on July 1 from $107,432 per year to $143,988

   It's time **to review and audit** your exempt/nonexempt classifications, as well as your contractor/employee **classifications**. (The new DOL independent contractor test became effective in April.) Make sure they fit the federal tests and **bump salaries or convert to nonexempt.**

2. **Chicago Paid Leave Increases**

   Many employers faced new requirements for paid leave last year, with the new Illinois Paid Leave for All Workers Act and the Cook County Paid Leave Ordinance, both providing leave for

any reason, essentially vacation or PTO. Chicago employees and their employers have been subject to the Chicago Paid Sick Leave law since July 2017.

The new Chicago Paid Leave and Paid Sick and Safe Leave Ordinance was enacted last year, adding 40 annual hours of paid leave for any reason to the 40 hours of paid sick leave. Scheduled for December 31, 2023, there was an eleventh-hour reprieve based on businesses' pushback and unanswered questions in the ordinance. The new effective date of July 1, 2024 is almost upon us. On May 1, the City of Chicago published its final rules for the ordinance, resolving some ambiguity.

IMPORTANT: This is not only for Chicago employers. Anyone **with at least one employee that works in Chicago is subject to the requirements. The employer's business location is irrelevant.** Any employee who completes at least 80 hours of work for an employer in any 120-day period while "physically present" (including working remotely) within Chicago's geographic boundaries becomes a "Covered Employee."

What are the new benefits?
Employees will earn **1 hour of paid sick/safe leave (PSL) and 1 hour of paid leave days (PLD) for every 35 hours worked, up to 40 hours** of each annually. Instead of accrual, employers have the option of **front-loading** PSL or PLD or both. Employees would receive their full annual leave at the beginning of the year or at hire.

Can employees use earned leave immediately?

The ordinance establishes waiting periods: 30 calendar days for PSL and 90 calendar days for PLD, measured from hire. So most existing employees as of July 1 will start accruing (or be front-loaded) right away.

Can employers limit the amount of leave taken each year?
Employers can cap the amount of PLD and PSL **accrued** by an employee at 40 hours each in a 12-month period, but **cannot cap use**. **If the time off is available, the employee can use it.**

Does the ordinance include minimum increments for using leave?
Employers may require use in increments of at least **2 hours for PSL and 4 hours for PLD.**

How is the compensation for leave calculated?
Hourly employees are paid their **hourly rate** and salaried receive an hourly rate based on their salary divided by annual work hours. Employees paid on a **commission** basis (or base wage plus commission) must be paid at the **highest applicable minimum wage** (Chicago minimum wage – rising to $16.20 on July 1 - is higher than Illinois and federal.) Tipped employees must receive the **highest minimum wage and without deducting any credit for tips.**

Can employees use leave for any reason?
Yes, for PLD. Paid sick leave reasons align with the 2017 law, such as employee or family member illness/injury, victim of domestic violence or sex offense, school closings or public mandated quarantine for or health reasons.

Do employees carry over unused leave at the end of the year?
It depends.
PLD on Accrual Basis: Carryover of up to 16 hours.
PLD Front-Loaded: No carryover.
PSL: 80 hours [i.e. whether accrual or front-loaded]

How much notice must employees give to use leave?
PSL: If the need for sick leave is foreseeable, employers may require up to **7 days'** notice, and otherwise as soon as the employee becomes aware of the need for leave. If an employee uses **more than 3 consecutive days of PSL**, the employer can require **medical documentation**.

PLD: Employers require **pre-approval to ensure continuity of business** operations, but employees are entitled to take leave for any reason and employers may not require an employee to provide documentation.

Employers may deny PLD requests if business needs cannot accommodate it, based on factors like timing, or whether the business provides essential services.

We pay PTO out at separation. Does that apply here?
The Chicago ordinance has different rules based on workforce size.

- No payout for **small employers** (less than 51.)
- **Medium employers** (51-100) will see a two-year phase in: as of 12/31/24: 16 hours of PLD; In 2025, all unused PLD up to 56 hours is paid out. (But employees with front-loaded leave will receive up to 40.)
- **Large Employers** (101+ employees): Up to 56 hours (or 40 if frontloaded.)

A BIG HOWEVER: Provisions in the ordinance eliminating or limiting payout of paid leave days (not sick leave) at separation **likely violate the Illinois Wage Payment and Collection Act**, which requires payout of all accrued, unused vacation/PTO upon separation. **I strongly recommend paying out all accrued, unused paid leave days at separation**, until we hear otherwise.

How do employees find out about this?
Employers must post notice and provide it with the first paycheck or as part of an onboarding process. Notices must be posted in **English AND in all languages understood** by a significant portion of workers (at least 5% at a jobsite) for whom English is a second language.

What if we have unlimited PTO or we already provide the required amount of leave?
The ordinance will still have impact on unlimited and existing policies.

What are next steps for preparing?

- For employers with Chicago-based employees who have only provided Chicago PSL, **prepare to add PLD**. For employers with existing sick, vacation, or PTO **policies, evaluate these against the laws' new requirements** for compliance.

- Determine whether you are going to **frontload or accrue for PLD and PSL (you can treat them differently if you prefer..**

- Make sure that **payroll systems** are set up to properly track and document time off availability and usage.

- Determine whether any **remote employees are physically present** in the City of Chicago for work at least two hours in a two-week period and, if so, make sure they're included in the new policy.

- **Update template employment agreements** and separation agreements for compliance, including reflecting any new payment on termination provisions.

3. Latest on FTC Proposed Noncompete Ban

The Federal Trade Commission voted in April and **approved a ban on noncompete restrictions** for employees (including unpaid interns and volunteers) and contractors **nationwide**. If it becomes effective on the scheduled **September 4** date, it will supersede a patchwork of state laws.

The ban is **limited to post-employment/engagement non-compete provision** (not non-solicits or NDAs, contractor restrictions or business sales.) It would **retroactively invalidate existing agreements**, requiring businesses to **notify current and former employees** and contractors that their non-compete provisions are invalid.

The ban would not apply to:

- Bona fide nonprofits

- Banks, savings and loan institutions, common carriers (airlines), and insurance companies.

- Franchisee/franchisor agreements

- Certain business sales

- **Existing** noncompetes with **policy-making** senior executives who earned > $151,154 annual W-2 comp **in the prior year (limited and specific criteria)**

Will this Become Reality on September 4?

The U.S. Chamber of Commerce filed suit on April 24, and businesses and business organizations are challenging it and the FTC's authority to issue the rule. As the litigation proceeds, the rule will **probably be delayed and it may be overturned completely, portions stuck down or modified.**

So we can Ignore this until September?

Not really. Whether or not the rule becomes effective and in what form, employers need to make sure they are **currently compliant with applicable state requirements.** Steps include:

- **Examine and update** existing "form" restrictive covenant agreements, employment and separation agreements, and noncompetes in equity and incentive plans/agreements. Many states, like Illinois, have **timing/notice rules, minimum salary** requirements, and mandate that worker receive adequate legal "consideration (something of value besides new/continued at-will employment. Like a signing bonus.) Restrictions should reasonable and related to the actual business need in terms of duration and geographic scope.

- **Consider the big picture. Think about why your company has and whether you need noncompetes, and for whom.** Does the worker have important client relationships or confidential, proprietary business information that could truly harm the business if they competed? **Consider alternatives**, like strengthening covenants on confidentiality, IP, and non-solicitation.

- Consider what to offer as **consideration** to current employees and new hires. Think about it **before making and negotiating offers**. So, if you're contemplating total comp of $110K - offer $100K salary and a $10K signing bonus.

- Assess who are your **"Senior Executives**," and review their contracts. There is an opportunity to enter into enforceable agreements with them before the rule becomes effective.

- Exercise **due diligence**. Employers, make sure <u>you</u> can legally hire a candidate. Do they have a restrictive covenant agreement? Did the former employer send you a warning letter?

- If a worker/former worker is violating or threatening to violate a restriction, take action, show the company is serious about enforcing, consult with an attorney to send a cease and desist letter

4. **Equal Pay and Benefits for Temporary Workers**
   Last August, the Illinois Temporary Worker Fairness and Safety Act, became effective. The law imposes safety mandates and **restricts "permatemping**" (keeping workers in temporary assignments for long periods of time.) Among other things, as of April, staffing agencies - and employers who rely on temporary and day laborers – are required to provide temps who work **more than 90 days, pay and benefits comparable to direct-hire** employees. Companies can pay the hourly cash equivalent of the actual cost of the benefits, in lieu of providing the benefits.

I work with both **employers and employees** (not at the same company!) on workplace matters, compliance, discrimination, harassment, employment and severance contracts, training, and dispute resolution.