

PAID LEAVE FOR ALL WORKERS ACT
SIGNED INTO LAW

To: ICRMT Members
From: OKGC Law, LLC
Re: Paid Leave for All Workers Act
Date: March 13, 2023

On March 13, 2023, the Governor signed the [Paid Leave for All Workers Act](#) (“the Act”) into law. The Act becomes effective on January 1, 2024. In the meantime, employers will need to examine and revise their paid leave policies as necessary to ensure compliance. The Illinois Department of Labor (IDOL) is expected to provide additional guidance prior to the law’s effective date, and once that is available, we will distribute a sample policy for members.

The Act requires employers to provide employees with “up to a minimum” of 40 hours of paid leave in a 12-month period.¹ Alternatively, employees can earn a pro rata number of hours of paid leave at the rate of one hour of paid leave for every 40 hours worked “up to a minimum of 40 hours” or such greater amount if the employer provides more than 40 hours. It appears that part-time employees will earn paid leave based on the number of hours worked in a 12-month period and will not necessarily earn a full 40 hours in 12 months, although the language of the statute is somewhat unclear. Employees who are classified as exempt under the Fair Labor Standards Act are deemed to work 40 hours a week unless their regular work week is less than 40 hours.

The Act does not apply to certain employers including school districts organized under the School Code and park districts organized under the Park District Code. It also does not apply to college students who work part-time for their college on a temporary basis or to employees of institutions of higher education who work for less than 2 consecutive calendar quarters.

The paid leave can be used for any purpose and begins to accrue at the start of employment or on the effective date of the Act (January 1, 2024), whichever is later. Employees shall be entitled to take their accrued leave 90 days following the start of their employment or by March 31, 2024, whichever is later. Employees must be permitted to use the leave in increments as small as 2 hours.

¹ This memo has been prepared by OKGC Law, LLC for informational purposes only. It is not intended as legal advice. Member entities are encouraged to consult with their State’s Attorney, Corporation Counsel, or other legal advisor for legal advice regarding the subject of this memo.

Employers have the option to make the full 40 hours of paid leave available at the start of employment or at the start of a 12-month period selected by the employer. If the employer provides all of the leave to an employee up front, it can require the employee to use the leave by the end of the first year of employment or by the end of the 12-month period. If the employer chooses instead to award the leave as it accrues, employees must be allowed to carry over unused leave into the next 12-month period, except that an employer is not required to award more than 40 hours in a 12-month period. (It is unclear whether an employee would continue to accrue the paid leave once they have banked 40 hours.) The employer must notify employees in writing how it will calculate the 12-month period.

Employees are not required to provide a reason for taking the leave and may not be required to provide documentation in support of the leave. But if the employee is taking leave for a foreseeable reason, the employee must provide seven (7) days' notice. If the need for leave is unforeseeable, the employee must provide notice as soon as practicable. If the employer requires its employees to provide notice of leave, it must establish and distribute a written policy that contains the notice procedures.

Employees cannot be required to find a replacement before taking leave and may use the leave before taking "any other leave provided by the employer or State law." Presumably this provision is intended to permit employees to use the paid leave before taking FMLA, VESSA, family bereavement, or other paid or unpaid leave.

If the employer combines the leave required by the Act with another leave bank like PTO or vacation, then the employer must compensate its employees upon termination for unused leave accrued under the Act. If, however, the employer segregates the leave under the Act from other PTO or vacation banks, then the employer is not required to reimburse the employee upon termination for unused leave that is accrued under the Act. If an employee is separated from employment but returns to work for the same employer within 12 months, unused paid leave under the Act must be reinstated.

The Act does not affect the validity of a collective bargaining agreement (CBA) in effect on January 1, 2024 (the effective date of the Act). Moreover, the requirements of the Act may be waived in a CBA if the waiver is explicit.

The Act will not apply to an employer covered by an existing municipal or county ordinance, or one that takes effect before January 1, 2024, that requires employers to provide paid sick or other leave. If, however, the employer is not required by the municipal or county ordinance to provide paid leave, then it must comply with the Act. Any ordinance enacted after January 1, 2024 must comply with the Act.

The Act requires employers to keep records of leave accrual and usage, and must maintain the records for three (3) years.

Employers who have a policy that allows employees to take at least 40 hours of paid leave “at the employees’ discretion...for any reason,” are not required to modify their policy.

The employer must post a written notice in a conspicuous place on its premises where such notices are customarily posted as well as in its policy manual summarizing the requirements of the Act. Employers who violate the posting requirement are subject to a \$500 penalty for the first violation, and a \$1,000 penalty for subsequent violations. Further, an employee may file a complaint for a violation of the Act. The employer can be liable for damages for underpayment, compensatory damages, and penalties between \$500 and \$1,000. The employer may also be required to pay the employee’s attorney’s fees, expert witness fees and costs. The Act imposes a separate civil penalty of \$2,500 against employers for violating the Act which is paid into a special fund created for enforcement. Employers are prohibited from retaliating against an employee for taking leave.

The Illinois Department of Labor is expected to issue regulations which we hope will clarify some provisions in the law. In the meantime, employers are encouraged over the course of 2023 to examine their paid leave policies, and revise as necessary, to ensure that they are in compliance with the Act by its effective date of January 1, 2024.