

## Publication

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### Client Alert: Employers in Chicago Take Note: Impending City Ordinance to Require Paid Sick Leave

Chicago is likely to become the next municipality to require employers to provide paid sick leave. On April 13, 2016, the Chicago City Council proposed an amendment to the **Chicago Minimum Wage Ordinance** that would require employers to provide a minimum of five days per year of paid sick leave to virtually all employees. The proposed ordinance has strong support among Chicago aldermen and is likely to become law this year. Thus, employers with operations in the city should be aware of the following major provisions and requirements of the proposed ordinance that are widely expected to take effect.

#### Who Is Affected by the Paid Sick Leave Ordinance?

The proposed ordinance applies broadly to all employees who work at least 80 hours within any 120-day period for an employer that maintains a business facility within the city of Chicago or that is subject to city licensing requirements, regardless of the number of persons the employer employs. Put another way, the paid sick leave requirement will apply to most employees in the city of Chicago.

#### How Much Paid Sick Leave Do Employees Accrue?

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Under the proposed ordinance, employees would accrue paid sick leave at a rate of one hour for every 40 hours worked, beginning on their first day of employment or on the effective date of the ordinance (currently slated as July 1, 2017). Employees who are exempt from overtime requirements are assumed to work 40 hours each week, unless their normal workweek is less than 40 hours, in which case paid sick leave accrues based on the employee's normal work week.

Employees accrue up to 40 hours of paid sick leave per 12-month period (which is measured from the date the employee begins to accrue paid sick leave), unless the employer sets a higher accrual limit. In addition, employees can carry over half of their unused accrued sick leave at the conclusion of the 12-month accrual period, up to a maximum of 20 hours. If the employer is subject to the Family and Medical Leave Act (FMLA), employees can carry over up to 40 hours of unused accrued paid sick leave to use exclusively for FMLA-eligible purposes. However, if an employee carries over and uses those 40 hours toward FMLA leave, he or she may use no more than an additional 20 hours of accrued paid sick leave in the same 12-month period.

## **When May an Employee Use Paid Sick Leave?**

Employers should know that approved "paid sick leave" reasons under the proposed ordinance are quite broad. Namely, an employee may use paid sick leave not only for purposes of recovering from an injury or receiving medical care, but also when:

- A member of the employee's family is ill or injured, or to care for a family member receiving medical care, similar to the FMLA's eligibility criteria;
- The employee or a member of the employee's family is a victim of domestic violence;

- The employee's place of business is closed due to a public health emergency, or the employee needs to care for his or her child whose school has been closed due to a public health emergency.

Employees may determine how much paid sick leave is necessary in a given day, provided that the employer may set a reasonable minimum increment not to exceed 4 hours per day.

In addition, employers may require employees to provide up to 7-days notice when the need for leave is foreseeable. When the need for leave is not foreseeable, employers only may require employees to provide notice as soon as practicable.

## **What Is the Rate of Pay for Paid Sick Leave?**

Employers are required to compensate employees for paid sick leave at the same rate and with the same benefits, including health benefits, as the employee earned immediately prior to taking paid sick leave.

However – and significantly in Illinois, where employers must pay any earned, unused vacation to employees upon the termination of their employment – under the proposed ordinance employers will not be required to pay out unused, accrued paid sick leave to employees upon termination, unless an applicable collective bargaining agreement provides otherwise.

## **Are Any Employees Excluded From the Ordinance?**

Employers with seasonal or temporary employees potentially may avoid the paid sick leave requirement. Under the proposed ordinance, employers may require employees to be employed for 180 days before they are eligible to use the accrued paid sick leave benefit. Thus,



short-term employees may accrue, but be ineligible to use, paid sick leave.

Additionally, employers with unionized workforces will not be affected by the ordinance until the expiration of the collective bargaining agreement in place on the effective date of the ordinance. And even then, employers and their unionized employees may explicitly waive the paid sick leave requirements via future collective bargaining agreements.

## **Other Requirements and Parting Recommendations**

Employers that already provide paid sick leave, particularly in the amount that would satisfy the proposed/impending ordinance requirements, will be ahead of the curve. Those employers, like all covered employers, also will be required to comply with the ordinance's notice mandate, which, similar to the recently enacted Chicago Minimum Wage Ordinance, will require employers to: (1) post in a conspicuous place a notice informing employees of their rights to paid sick leave, and (2) provide a notice of rights with employees' first paychecks following the ordinance taking effect.

Employers who do not already provide qualifying paid sick leave to employees will need to adopt a paid sick leave policy that complies with the ordinance's requirements, prior to its effective date.