

ILLINOIS' NEW PAID LEAVE LAW: WHAT EMPLOYERS NEED TO KNOW

On March 13, 2023, Illinois Governor J.B. Pritzker signed the Paid Leave for All Workers Act (PLAWA) into law, guaranteeing all workers in the state of Illinois 40 hours of paid time off each year for any reason. The law goes into effect on January 1, 2024, so employers need to use the remaining months of 2023 to ensure they are prepared for compliance with the new law.

Illinois is now the third state to enact such a law, following Maine and Nevada.

IN DEPTH

PLAWA COVERAGE

PLAWA has broad coverage, applying to all employers that have at least one employee in the state of Illinois. There are limited exceptions: *i.e.*, employees in the construction and parcel delivery industry covered by a collective bargaining agreement are excluded from coverage. PLAWA also does not apply to independent contractors.

There is an issue of coordinating PLAWA with existing paid leave provisions under local law for employees in Chicago or elsewhere in Cook County. PLAWA excludes “any employer that is covered by a municipal or county ordinance...that requires employers to give any form of paid leave to their employees, including paid sick leave or paid leave.”

Since Chicago and Cook County already have ordinances ensuring paid sick leave for certain employees, compliance with those ordinances may satisfy employers' obligations under PLAWA. Interestingly, the plain meaning of this language excludes employers who have any employees covered by the Chicago or Cook County paid leave mandates from compliance not only for its employees in those locations but also for its employees located elsewhere in the state.

Note that if the employer is located in one of the 100-plus municipalities in Cook County that have opted out of the paid leave ordinance, this exemption likely would not apply. Employers should confirm whether they are in fact covered by the Cook County ordinance before relying on the exemption from PLAWA.

USING PLAWA LEAVE

Employees will start accruing paid leave on PLAWA's effective date: January 1, 2024. However, employees cannot *use* accrued paid leave until 90 days after PLAWA's effective date or the date they begin working, whichever is later. Thus, employers must be prepared to respond to requests for PLAWA leave starting on March 31, 2024.

Employees can use PLAWA leave for any purpose whatsoever and have no obligation to disclose a reason to their employer. Foreseeable leave requires at least seven days' notice. Unforeseeable leave requires notice as soon as practicable. Those are the same requirements for notice under the federal Family and Medical Leave Act (FMLA).

Employers can set limits on the minimum amount of leave an employee can use per day, but they must not make the limit higher than two hours per day. And employers may set policies and procedures on how employees should give notice of their intent to take any PLAWA leave.

PLAWA ACCRUAL

Hourly employees will accrue one hour of paid leave under PLAWA for every 40 hours worked, up to a maximum of 40 hours of paid leave per year. For purposes of PLAWA accrual, overtime-exempt employees are treated as working 40 hours each workweek "unless their regular workweek is less than 40 hours."

In lieu of accrual by hours worked, employers can choose to frontload the entire 40 hours of paid leave to their employees annually. The employer should notify its employees in writing of its chosen accrual method and of any future changes in the accrual method. The employer's choice of accrual method (frontload versus hourly accrual) affects how unused hours carry over from year to year. With frontloaded accrual, unused leave expires at the

end of the year; with hourly accrual, employers must allow up to 40 hours of paid leave to “roll over” annually. Regardless of the accrual method, employers may limit employees to using only 40 hours of leave per year.

Employers are not required to pay out any unused leave accrued under PLAWA unless “it is credited to an employee’s paid time off bank or employee vacation account.” Such integration requires PLAWA leave to be paid out on termination. Employers should be careful when integrating PLAWA leave into a paid time off bank in this way, as it raises additional operational issues in accounting for which time is PLAWA-time and must be available for use under PLAWA’s terms.

PLAWA ENFORCEMENT

There is no private right of action under PLAWA. As a result, individual employees cannot sue their employers for noncompliance. Instead, employees will need to file a complaint with the Illinois Department of Labor, which has statutory authority to pursue remedies on the employee’s behalf.

PLAWA also has an anti-retaliation provision prohibiting employers from retaliating against employees for taking leave or otherwise interfering with the employee’s rights under the Act. This is likewise enforced by the Illinois Department of Labor. Violations of PLAWA will expose employers to civil penalties of up to \$2,500 for each offense in addition to other remedies. Unlike the Illinois Wage Payment and Collection Act, there is no individual officer liability under PLAWA for any violations of the statute.

BEST PRACTICES FOR PLAWA COMPLIANCE

Employers will need to revisit their leave policies. If employers already provide at least 40 hours of paid leave per year that can be taken for any reason, no change in policy is required. If not, employers will need to revise their policies for compliance with PLAWA. Key considerations will include:

A. Choosing how to handle the differences between PLAWA and the Chicago and Cook County paid leave mandates with [1] separate paid leave policies for employees subject

to Chicago and Cook County paid leave mandates and those subject to PLAWA elsewhere; [2] a single policy that applies the highest common denominator to all employees; or [3] a policy that assumes that the plain meaning of PLAWA holds up in court and thus eliminates the need for applying PLAWA at all for employers with any employees in either Chicago or suburban Cook County;

B. Choosing whether to keep PLAWA leave separate from other paid time off banks to avoid the obligation to pay out PLAWA on termination of employment, or to integrate PLAWA into a regular time off bank to reduce the burden of administering multiple paid leave accounts; and

C. Choosing how to write coherent policies and procedures that maximize understanding of the paid and unpaid leave options (and the discrete requirements for each) and minimize the risk of misadministration of state and local paid leave benefits.

Employers must also provide written notice of PLAWA's requirements in their employee handbook and ensure that all records of paid leave accrued and taken by employees are retained for at least three years. There will also be notice posting required when the Department of Labor fulfills its obligation to draft such a poster.

For any questions regarding the Act, please contact your regular McDermott lawyer or one of the authors of this article.