

City of Chicago/Cook County Paid Sick Leave Ordinances

Is Your Company Ready?

THE BASICS:

On July 1, 2017, two new local ordinances requiring employers in Cook County or Chicago to provide paid sick leave take effect: the *Chicago Paid Sick Leave Ordinance* and the *Cook County Earned Sick Leave Ordinance*.

These ordinances require virtually all private employers to provide for the accrual and use of up to 40 hours of annual paid sick leave by most employees (*including part-time employees*) for their own or a family member's medical care/treatment or in the event such person is a victim of domestic or sexual violence. There is also a requirement that the employees be entitled to carry over one-half of their accrued but unused paid sick leave (up to 20 hours) for use in the following year. For FMLA-covered employers, an FMLA-eligible employee may also carry over another 40 hours of unused paid sick leave to use for FMLA leave in the following year (for a total of up to 60 hours carried over).

Cook County has issued its final *Interpretative and Procedural Rules* that attempt to clarify the application of various provisions and the plans for enforcement. The City of Chicago has issued "draft" rules and is taking comments on those draft rules until June 16, 2017. Until it issues its final rules, however, any Chicago-specific guidance below is tentative.

WHAT DOES YOUR COMPANY NEED TO DO?

Review these questions and make some preliminary decisions on the best option for your company. Then, set a time to discuss these issues with one of the lawyers in Gould & Ratner's Human Resources and Employment Law Practice.

Does your company have an existing PTO or sick leave policy?

If **yes**, using an existing PTO/sick leave policy is OK if:

- (1) it accrues leave no slower than 1 hour/40 hours worked;
- (2) it allows use of at least 40 (or 60) hours/year,
- (3) it allows the requisite carryover* of unused leave from one year to the next (20 to 60 hours depending on the circumstances),
- (4) it allows employees to use leave for the same reasons; and

QUESTIONS?

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(5) it does not require more notice or documentation than the ordinances.

In most cases this would mean some revisions to the company's existing PTO/sick leave policy, including providing for the accrual of paid sick leave (or PTO) for part-time employees.

*Note that there are some options to allowing for annual carryover, discussed in more detail below.

If **no**, the company needs to adopt a new paid sick leave policy.

Determine the required accrual rate.

Employers must allow for the accrual of at least 1 hour of paid sick leave per every 40 hours worked (or the equivalent if measured in different terms like days). Employers may provide more sick leave than the 40-hour minimum, but the accrual rate must still not be less than 1 hour/40 hours worked.

Determine the 12-month period the company will use.

The ordinances allow for either an anniversary year, measured from the employee's date of eligibility or a set 12-month period that corresponds with measurement of other benefits (referred to in the Chicago Ordinance as the "benefit year").

How should the company handle carry over at the end of the first partial year?

- **Chicago:** carry over accrued but unused up to 20 hours
- **Cook:** depends if the company accrues or front-loads paid sick leave (see discussion below):
 - > if front-loads, then the company should award the employee what would have accrued if hired on the first day of the benefit year, then apply normal carryover rules
 - > if accrues, then all accrued but unused carries over at year end (i.e., no cap on carryover)

Determine the waiting period before use of paid sick leave.

An employer may have up to a 180-day waiting period. In addition, to be eligible to use paid sick leave, the employee must have worked at least 80 hours in any 120-day period. Note, however, that employees begin to accrue paid sick leave much earlier, from the later of:

- July 1, 2017 (the effective date of the ordinances) or
- the first day after being employed

Determine if the company will use the accrual method for earning paid sick leave.

The ordinances allow for either accrual or immediate grants ("front-loading") of paid sick leave at the beginning of the anniversary or benefit year. Requirements to front-load:

- **Chicago:** The company must grant covered employees at least 40 hours of paid sick time no later than 180 days after the covered employee began working for the company, and grant 60 hours of paid sick time at the beginning of each subsequent work or benefit year.
- **Cook:** The company must grant the maximum amount of paid sick leave the employee can accrue during the year by the date the employee can use paid sick leave in Year One and by the beginning of each subsequent year (i.e., 40 hours).

Determine if the company will track annual carry over.

An employer may make sufficient immediate grants (front-loading) of paid sick leave to avoid having to track carryover.

- **Chicago:** The company must grant the entire paid sick leave (40 hours by day 180 in Year One, and then 60 hours at the beginning of each subsequent year)
- **Cook:** The company must grant at the start of the accrual period the maximum the employee could carry over (i.e., 20 hours for non-FMLA eligible employees or 20+40 for FMLA-eligible employees)

ANSWERS TO OTHER QUESTIONS

Is there an alternative to complying with both the accrual and carryover provisions?

Yes, the employer may make sufficient immediate grants (front-loading) of paid sick leave:

- **Chicago:** The company must grant the entire paid sick leave (40 hours by day 180 in Year One, and then 60 hours at the beginning of each subsequent year)
- **Cook:** The company must grant at the start of the accrual period the maximum annual amount the employee could both accrue and carryover
 - > For non-FMLA eligible:
40 hours (representing max accrual)
+ 20 hours (representing max carryover)
60 hours total must be front-loaded
 - > For FMLA eligible:
40 hours (representing max accrual)
+ 20 hours (representing max regular carryover)
+ 40 hours (representing max FMLA carryover)
100 hours total must be front-loaded

For FMLA-eligible employees, how is the split between regular paid sick leave and FMLA-related sick leave determined?

- **Chicago:** A covered employee with the option to carry over hours as regular paid sick leave or as FMLA-related paid sick leave must notify the company at the beginning of the benefit year as to which use the paid sick leave is carried over.
- **Cook:** FMLA-related carryover is only from the remaining amount of accrued but unused paid sick leave (i.e., after the regular one-half carryover)

Must the company allow accrual during paid leave (e.g., vacation)?

The ordinances only require accrual of paid sick leave for actual hours (not for time on leave, regardless if paid or unpaid).

Must the company allow an employee to accrue paid sick leave regardless of where the work is done?

The ordinances only require the accrual of paid sick leave for work performed in the City of Chicago or in Cook County (respectively). However, in determining employee eligibility (i.e., working 80 hours in a 120-day period), work at any location counts.

What is the minimum increment in which paid sick leave can be used?

- **Chicago:** Use must be in hourly increments unless the employer has a written minimum use policy.
- **Cook:** The employer can set the minimum number of hours which must be used for leave as long as it is not greater than 4 hours. If there is no written policy on the minimum increment which can be used then it can only be used in 1 hour increments.

Can the company set minimum employee notification requirements for use of paid sick leave?

Yes, but it must do so in writing.

What increment can the company use for carryover??

- **Chicago:** Carry over must be in hourly increments unless the company permits fractions of an hour.
- **Cook:** Hourly increments. If halving the accrued leave results in a fraction, it should be rounded to the nearest whole number (i.e., up). Fractional carry overs are not permitted.

How must the company inform the employee of the ordinances?

Post a poster and provide employees with a notice of rights (recommend be provided upon commencement of employment or with the first paycheck). Forms of those documents will be issued by the City and County.

EASIEST EMPLOYER OPTIONS:

- While the rules are not completely clear on the relation between PTO and paid sick leave, we did ask the Commissioner of the Cook County Commission on Human Rights (the agency in charge of administering and enforcing the Cook County ordinance) if an accrual-based PTO policy that accrued more than the minimum leave required and at a rate in excess of 1 hour of paid sick leave per 40 hours worked would be sufficient. He responded that subject to being allowed shortened notice (as required by the ordinance), that he believed the Commission would find such a policy in compliance.

Under the ordinances' requirement to accrue 1 hour per 40 hours worked, a normal 40 hour/week full-time employee would accrue 52 hours in a year, or 6.5 days of PTO/year. For FMLA-eligible employees, the ordinances allow an employee to take up to 60 hours of leave per year, which would equate to 7.5 days of PTO/year.

Thus, at least in theory, PTO policies with these minimum accruals and no carryover would be allowable under the ordinances:

- FMLA-covered employers: at least 7.5 days of PTO/year
- Non-FMLA-covered employers: at least 6.5 days of PTO/year

Remember that part-time employees are eligible for paid sick leave so the company will either need to include them in the PTO policy or make a separate paid sick leave policy for part-time employees.

- Alternatively employers can adopt a Paid Sick Leave policy that front-loads at least 40 hours of paid leave on day 1 of the first year and at least 60 hours of paid leave on day 1 of each subsequent year (for non-FMLA covered employers or non-FMLA eligible employees) or 100 hours of paid sick leave (for FMLA eligible employees of FMLA covered employers). Then the company does not have to track paid sick leave accruals or carryovers. However, for eligible part-time employees, unless they work a set amount of hours, hourly accruals will need to be maintained so as to properly award paid sick leave.



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