

Chicago Employers Have Until June 16 to Weigh In On Proposed Paid Sick Leave Regs

Effective July 1, 2017, Chicago and Cook County will join a growing contingent of localities that require employers to offer paid sick leave to employees. Here's what employers need to understand now to avoid being caught off guard next month.

The Chicago City Council unanimously passed an ordinance in June 2016 requiring every employer that maintains a business within Chicago and/or is subject to Chicago license requirements — except those in the construction industry — to provide paid sick leave to covered employees. The City of Chicago published proposed regulations for the enforcement of the ordinance in May 2017 and is accepting public comments through June 16, 2017, at 9:00 a.m. Cook County passed a similar ordinance in October 2016 that applies to municipalities outside Chicago.

In May 2017, Cook County approved regulations for enforcement of the ordinance.² There are currently inconsistencies between the draft Chicago regulations and the final Cook County regulations, including how covered employers subject to the Family and Medical Leave Act (FMLA) calculate paid sick leave hours if they choose to “frontload” by immediately granting a covered employee's paid sick leave hours at the beginning of each accrual period, and how covered employers round carryover hours between accrual periods. However, these inconsistencies may be resolved by the time the Chicago regulations become final.

Municipalities in Cook County have the option to opt out of the county's ordinance by July 1, 2017. An employer that gainfully employs at least one covered employee is covered under the county's ordinance if it maintains at least one place of business in a Cook County municipality that has not opted out, even if it maintains other places of business within municipalities that have opted out. As of May 26, 2017, 36 Cook County municipalities have opted out.³ An employer that maintains a place of business within Cook County but outside Chicago city limits should confirm whether its place of business is within a municipality that has opted out to determine whether the Cook County ordinance applies.

Who Is Covered?

Any individual or business entity that employs at least one “covered employee” and maintains a business within Chicago city limits and/or is subject to Chicago license requirements is covered by the Chicago ordinance.

A covered employee under the Chicago ordinance is anyone who works for a covered employer for at least 80 hours in any 120-day period, and who works for at least two hours in any two-week period within the city of Chicago. Significantly, time spent traveling within the city (e.g., making deliveries, sales calls, or “travel related to other business activity taking place within the city”) counts toward the two-hour minimum. That means an employee who typically works in the suburbs, for example, but spends a total of two hours working in the city during **any** two-week period is covered by the ordinance.

Any individual or business entity that employs at least one covered employee and maintains a place of business within Cook County is covered by the Cook County ordinance unless the place of business is within the geographic boundaries of a municipality that has lawfully preempted the ordinance.

A covered employee under the Cook County ordinance is anyone who works for a covered employer for at least 80 hours in any 120-day period and who works for at least two hours in any two-week period within Cook County. Similar to the Chicago ordinance, time spent traveling within



Jeremy J. Glenn

Member

jglenn@cozen.com
Phone: (312) 474-7981
Fax: (312) 706-9791

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Cook County (e.g., making deliveries, sales calls, or “travel related to other business activity taking place within Cook County”) counts toward the two-hour minimum. That means an employee who typically works in another county, for example, but spends a total of two hours working in Cook County during **any** two-week period is covered by the ordinance.

What Is Required?

The ordinances require that covered employers grant covered employees paid sick time, which will accrue at a rate of at least one hour for every 40 hours worked, up to a maximum mandated accrual of 40 hours in a 12-month period. A 40-hour workweek is assumed for exempt employees. If an exempt employee’s workweek is shorter than 40 hours, the employer bears the burden of showing it. The 12-month period is measured from the date on which an employee begins to accrue sick leave.

Sick leave accrual begins on an employee’s first day of employment after July 1, 2017. (For existing employees, the accrual starts on July 1, 2017.) However, an employee must wait 180 days to start using the accrued time. This limitation will eliminate the benefit for many temporary or short-term workers.

Employees must be permitted to carry over into the following year half of any accrued but unused sick time, up to 20 hours. If the employer is covered by the FMLA, employees must also be permitted to carry over up to 40 hours of accrued but unused paid sick time to use for FMLA leaves.

For ease of administration, covered employers can alternatively choose to immediately grant covered employees 40 hours of paid sick leave within 180 days after beginning work for the covered employer, and 60 hours of paid sick leave (40 hours of accrual plus 20 hours of carryover) at the start of each subsequent work year. A covered employer that chooses this immediate grant method is not required to follow the accrual or carryover models set forth in the ordinances.

Under the Chicago ordinance, covered employers are required to post a notice, setting forth employees’ rights under the ordinance, at each Chicago facility where a covered worker is employed. Additionally, covered employers must have on file and readily accessible current copies of the ordinance and the new regulations. The city will provide a form of notice for employers to use.

Under the Cook County ordinance, covered employers are required to post a notice, setting forth employees’ rights under the ordinance, at each Cook County facility where a covered worker is employed. Additionally, covered employers must provide employees with a notice of their rights with the first paycheck they receive after the ordinance takes effect. Cook County has provided a form of notice for employers to use.

What Is Not Required?

An employer is not required to pay out accrued but unused sick time upon an employee’s termination of employment (for any reason) unless the employee is covered by a collective bargaining agreement mandating such payment.

Employers that already offer paid time off “in an amount and manner that meets the requirements” of the ordinances are not required to provide any additional paid sick leave. That is, existing PTO or paid vacation policies can be used to satisfy the ordinances, but the policy must clearly allow employees to use the PTO or vacation time for illness and must meet the other requirements of the ordinances.

When Can a Covered Employee Use Accrued Leave?

A covered employee can use accrued sick leave under any of the following circumstances:

- the employee is ill or injured;
- the employee is caring for an ill or injured family member;
- the employee is receiving medical care, treatment, diagnosis, or preventive care;
- the employee is caring for a family member who is receiving medical care, treatment, diagnosis, or preventive care;

- the employee, or a member of his or her family, is the victim of domestic violence or a sex offense; or
- the employer's place of business is closed due to a public health emergency.

Employers may require up to one week of notice for leave that is reasonably foreseeable (e.g., scheduled doctor appointments or court hearings in a domestic violence case). When the need for sick leave is not reasonably foreseeable, employers can only require employees to give as much notice as is practicable under the circumstances. Under no circumstance may employers require employees to arrange for a co-worker to fill in for them during their paid sick leave.

Can Covered Employers Demand Proof of the Need for Leave?

If an employee is on paid sick leave for three consecutive days, the employer may require proof of the stated reason for taking leave. However, the employer may **not** require that the employee identifies the precise illness, injury, or medical condition at issue.

What Should Covered Employers Do Now?

In anticipation of the July 1, 2017, effective date, covered employers should review their policies on paid time off, including all PTO, vacation, and any existing sick time and sick pay policies and revise them as necessary to comply with the ordinances. Even if no policy revisions are required, all managers and supervisors should be trained on the company's paid-time-off policies. This training should emphasize that retaliation against an employee for exercising his/her rights under the ordinances is unlawful. It will also be important to budget for the additional costs the ordinances may impose, and to plan for the likelihood of increased employee absences once the ordinances take effect on July 1, 2017.

The ordinances make clear that they are **not** intended to change the terms of collective bargaining agreements that are in existence as of July 1, 2017. To the extent that a covered employer negotiates a new collective bargaining agreement **before** July 1, 2017, the employer should bear the new ordinances closely in mind at the bargaining table. For collective bargaining agreements negotiated **after** July 1, the requirements of the ordinances may be waived, but only if the waiver is set forth explicitly in the agreement "in clear and unambiguous terms."

We will keep you posted as further developments occur, particularly with regard to any conflicts between the Chicago and Cook County regulations. In the meantime, employers should review their policies to ensure they comply with the basic requirements of the laws as we now know them.

Cozen O'Connor's Labor & Employment attorneys are available to provide counsel and guidance on the issues discussed in this Alert.

¹ A copy of the proposed City of Chicago regulations can be found [here](#).

² A copy of the Cook County regulations can be found [here](#).

³ Cook County municipalities that have opted out as of May 26, 2017 include: Arlington Heights, Barrington, Bartlett, Bedford Park, Buffalo Grove, Burr Ridge, Elk Grove Village, Elmwood Park, Evergreen Park, Glenview, Hanover Park, Harwood Heights, Hickory Hill, Hoffman Estates, Lynwood, Mount Prospect, Niles, Norridge, Northbrook, Oak Forest, Oak Lawn, Orland Park, Palatine, Palos Heights, Palos Park, River Forest, Riverside, Rolling Meadows, Rosemont, Schaumburg, South Barrington, Streamwood, Summit, Tinley Park, Western Springs, and Wheeling.