



Chicago's New Paid Leave Ordinance: FAQs for Employers

By: Sonya Rosenberg

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Chicago recently passed its sweeping Paid Leave and Paid Sick and Safe Leave Ordinance, which goes into effect on December 31, 2023 – and our clients have had many questions! Here are answers to the most frequently asked questions we have fielded in the past two weeks:

Is my Company Covered?

If you are still reading this alert: Probably! The new Ordinance, like its Paid Sick Leave predecessor, will apply practically to any employer who has any employees in Chicago. Regardless of size, if you have any employees who are present in the geographic boundaries of the City for 2 hours of work in any 2-week period, then your business or organization is covered.

What Does the New Ordinance Require?

Up to 2 weeks of paid time off (PTO). As you probably know, Chicago's Paid Sick Leave Ordinance requires employers to provide employees up to 40 hours of paid sick leave per year. The new Ordinance requires covered employers to also provide employees up to 40 hours of paid leave per year to be used for any other reason. So, the new Ordinance requires covered employers to provide up to 80 total hours of PTO. Employees start earning this PTO on their hire date or beginning January 1, 2024, (whichever is sooner), at the rate of 1 paid hour off for every 35 hours worked.

Can I ask my Employees Why They Are Taking the Time and Require Advance Notice?

The short answer is no, on both. You can require no more than 7 days' notice if the leave is reasonably foreseeable and must allow less notice if leave is not reasonably foreseeable. You cannot require your employees to provide the reasons for taking PTO, though you can require employees absent for more than 3 consecutive days for sick leave reasons to provide substantiating documentation compliant with the new Ordinance.

Can I Deny Leave Based on Operational or Staffing Needs?

Likely, no. (I know.) While the Ordinance's language allows for some room to argue that foreseeable paid leave (for non-sick reasons) could be denied based on operational needs, the conservative interpretation at this time would be to not deny leave, even if it comes at an inconvenient time.

Are there Carry-Over Requirements?

Yes. Unless you front-load the PTO required by the new Ordinance (as discussed below), you have to allow your employees to carry over up to 80 hours of earned, unused paid sick leave, and up to 16 hours of earned, unused other paid leave from one year into the next.

Are there Tracking or Employee Notice Requirements?

Sadly, yes. The Notice part is easy: Once the City makes the Notice form available for the new Ordinance, you will need to provide it to your covered employees with their first check and annually on each July 1 thereafter. The Tracking part is harder. Unless you front-load the PTO required by the new Ordinance (as discussed below), you will have to

provide your covered employees with their accrued, unused PTO balances with every pay statement, or monthly if you already communicate PTO balances on a monthly basis.

Can't We Just Front-Load?

Yes, you can front-load the 80 hours, but query whether that option is too onerous or potentially problematic for your business. For example, if you are a small business that employs some part-time folks, these employees may not earn 80 hours of PTO if they are required to accrue as they go. Also, if you front-load, you run the risk that some employees may take advantage of two paid weeks off at the beginning of the year and then quit – or, depending on your size, that you will owe an employee who leaves or is terminated in the first part of the year some termination pay (see below).

Are there any Payment-on-Termination Requirements?

Yes. Chicago's prior Paid Sick Leave Ordinance did not require employers to pay employees for accrued, unused paid sick leave on termination. The new Ordinance is a different story. While small employers, defined as those with 50 or fewer employees, do not have to pay, medium employers, defined as those with 51 to 100 employees, have to pay up to 16 hours of accrued, unused paid (non-sick) leave under the new Ordinance until December 31, 2024, and then whatever is accrued and unused thereafter. What if you happen to be a larger employer, you ask? Then you have to pay out the balance of the employee's accrued, unused paid (non-sick) leave under the new Ordinance as of the separation date.

What about my Existing PTO Policies?

These are okay to continue to use, so long as they comply with the new Ordinance. The amount of PTO is unlikely to be an issue for many employers; most already provide the same or a more generous amount of PTO than the new Ordinance requires. However, some employers will have to amend the details in their existing policy – e.g., the advance notice requirements and the employer's denial rights – to not run afoul of the new Ordinance.

If We Have an Unlimited PTO Policy, Do We Now Need to Provide Additional PTO?

No, so long as you amend your Unlimited PTO policy if/as necessary to comply with the new Ordinance's above-discussed requirements – including by clarifying that no more than seven days notice is required for foreseeable leave, that leave won't be denied, and that employees need not disclose the reasons for taking the time off – you are good to continue to apply your policy. However, note: You now will be required to pay employees on termination the equivalent of 40 hours minus whatever amount of PTO the employee took in the preceding 12-month period.

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Should you have any questions regarding Chicago's New Paid Leave Ordinance its impacts on your business, or any compliance obligations it creates, please reach out to Sonya Rosenberg, or your NGE attorney.

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