

# Employment Law Mid-Year Update – Illinois and Chicago

by Jennifer M. Huelskamp and Erin McAdams Franzblau

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## Chicago Expands Covered Reasons for Use of Paid Sick Leave and Implements New Wage Theft Protections



The Chicago City Council passed Ordinance No. 02021-2182 on June 25, 2021, which expands the covered reasons for use of paid sick leave and creates new wage theft protections. The wage theft provisions of the Ordinance took effect on July 5, 2021 and the paid sick leave provisions take effect August 1, 2021.

### *Paid Sick Leave*

First, the Ordinance expands the reasons an employee may use paid sick leave. Any Covered Employee who works at least 80 hours for an Employer within any 120-day period shall be eligible for paid sick leave. The Ordinance expands the current reasons as follows:

- Employees may use leave for illness or injury, or for the purpose of receiving professional care, including preventive care, diagnosis, or treatment. The update now includes care for medical, mental, or behavioral issues, including substance abuse disorders.
- Employees may use leave for care of a covered family member who is ill or injured, and this provision is expanded to include a covered family member ordered to quarantine. In addition, use for a family member receiving professional care, including preventive care, diagnosis, or treatment, is expanded to include medical, mental, or behavioral issues, including substance abuse disorders.
- Leave may be used for any employee, or a covered family member, who is the victim of domestic violence or a sex offense, and this provision now includes stalking, aggravated stalking and cyber stalking.
- Any employee who needs to care for a family member whose school, class, or place of care has been closed is covered under the Amendment. Previously, the school or place of care was required to be closed by order of a public official due to a public health emergency, but this requirement has been removed.

In addition, a new category for leave has been added: employees may use paid sick leave to “obey[] an order issued by the Mayor, the Governor of Illinois, the Chicago Department of Public Health, or a treating healthcare provider,” requiring the Covered Employee to do one of the following:

- (i) stay at home to minimize the transmission of a communicable disease;
- (ii) remain at home while experiencing symptoms or sick with a communicable disease;
- (iii) obey a quarantine order issued to the Covered Employee; or
- (iv) obey an isolation order issued to the Covered Employee.

### *Wage Theft Protections*

The Ordinance establishes Chicago’s first ever wage theft protections. The new provision states, “[a]ny Employer who fails to timely pay a Covered Employee in accordance with this chapter, or in accordance with any wage agreement between the Employer and the Covered Employee above the threshold required by this chapter, shall have committed wage theft.”

A Covered Employee is any employee who performs at least two hours of work in any two-week period for an employer while physically present within the geographic boundaries of Chicago. Under this provision, “[w]age theft includes the non-payment of any wages required for work performed, and also includes paid time off, whether legislatively or contractually required, and contractually required benefits to the Covered Employee.”

A Covered Employee who has a wage theft claim may file a claim with the Office of Labor Standards or may file a civil action, but not both. A Covered Employee who files a claim with the Illinois Department of Labor may not also file with the Office of Labor Standards unless the Illinois Department of Labor has referred the case to the Office of Labor Standards.

In either action, the Employer shall be liable to the Covered Employee for the amount of any underpayments and shall also be liable for damages of either (i) 2% of the amount of any such underpayments for each month following the date of payment during which such underpayments remain unpaid or (ii) the amount specified by the Illinois Wage Payment and Collection Act, 820 ILCS 115/14(a), if the amount in the state law is greater. But a new bill was recently sent to the governor for signature that would increase damages from 2% to 5% for part (i) above. These remedies are in addition to the remedies available for an employer’s noncompliance with its Chicago paid sick leave obligations.

### Recommendations

1. Currently, employers are required to post the Chicago paid sick leave ordinance in the workplace. The new Ordinance adds that this posting must also include information regarding employees’ abilities to seek redress for wage theft. Thus, Employers should monitor the Chicago Office of Labor Standards’ (OLS) website for an updated version of the workplace posting.
2. In addition, employers must provide a copy of the City-created notice for the Chicago paid sick leave ordinance to employees with a paycheck issued within 30 days of July 1.
3. Employers should review and update their current policies and practices prior to the new paid sick leave provisions taking effect on August 1, 2021 to ensure compliance with the new requirements.

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Jennifer Huelskamp is a Partner in the Employment and Litigation Practice Groups with a practice focused on employment litigation and counseling. She has significant experience representing clients in state and federal courts and in proceedings before government agencies, including the Equal Employment Opportunity Commission, the Illinois Department of Labor, and the Illinois Department of Human Rights. Jennifer also routinely practices in the general commercial litigation space.

### Further Amendments to the Illinois Equal Pay Act



Illinois employers may recall that on March 23, 2021, the state enacted amendments to the Illinois Equal Pay Act of 2003 and the Illinois Business Corporation Act of 1983, targeting pay inequities for Illinois employees based on gender, race, and ethnicity. As part of the amendments, Illinois employers already required to file an EEO-1 report would be required to submit similar information to the Illinois Secretary of State beginning on January 1, 2023. Further, starting in 2024, the amendments required those employers with more than 100 employees in Illinois to obtain an “equal pay registration certificate” from the Illinois Department of Labor after filing wage and demographic information as well as attestations regarding the business’ compliance with pay equity and anti-discrimination laws.

On June 25, 2021, Governor Pritzker signed Senate Bill 1847 into law, making further amendments to the Illinois Equal Pay Act. Importantly, the new amendments do not alter the requirement that EEO-1 reporting companies file “substantially similar” information with the Illinois Secretary of State. The new amendments made significant changes to the “equal pay registration certificate” requirements. As part of those amendments:

1. The equal pay registration certificate requirements apply to private employers with more than 100 employees in the State of Illinois that are required to file an EEO-1 report with the Equal Employment Opportunity Commission;
2. The Illinois Department of Labor will assign each covered business a date by which it must submit its equal pay registration certificate. Those businesses operating in the state as of March 23, 2021 will be given a deadline that is between March 24, 2022 and March 23, 2024, and they must recertify every two years thereafter. Those businesses that are not operating in the state until after March 23, 2021 will be given a deadline that is after January 1, 2024 but within three years after they start business, and they must recertify every two years thereafter.
3. Covered employers must continue to provide to the Department of Labor a list of all employees, organized by gender, race, and ethnicity, and report total wages paid to each employee to the nearest \$100. Additionally, employers must indicate “the county in which the employee works, the date the employee started working for the business, [and] any other information the Department deems necessary to determine if pay equity exists among employees . . .”
4. Covered employers must certify compliance with “this [Illinois Equal Pay] Act, and other relevant laws” including but not limited to those specified in the previous amendments, “Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Illinois Human Rights Act, and the Equal Wage Act.”
5. Covered employers must certify that the average compensation for their female and minority employees is not consistently below the average compensation for male and nonminority employees within each of their major job categories, as determined by the United States Department of Labor, taking into account such factors as “education or training, job location, use of a collective bargaining agreement, or other mitigating factors” as well as those already specified in the previous amendments—“length of service, requirements of specific jobs, experience, skill, effort, responsibility, [and] working conditions of the job.”
6. Covered employers must detail “the approach the business takes in determining what level of wages and benefits to pay its employees” with acceptable approaches including but not limited to, “a wage and salary survey.”
7. Employees may request “anonymized data” regarding their job classification or title and the pay for that classification but “[n]o individually identifiable information may be provided” to the requesting employee.
8. Instead of a penalty of 1% of gross profits for violations of the Act’s certification and disclosure requirements, employers in violation face penalties of up to \$10,000. Employers that inadvertently fail to file an application or recertification will be given 30 days to comply, so as to avoid penalties.

## Recommendations

1. Contact counsel if you are unsure if your company is covered by the amendments.
2. Under the amendments, the Department of Labor will collect contact information for each covered employer and then provide application deadlines. Covered employers should be aware that they may be required to report as early as March 24, 2022 and be on the lookout for their individual deadline.
3. Assess pay equity issues in your organization and contact counsel to get ahead of your company’s upcoming deadline.

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Erin McAdams Franzblau is a Partner in the Litigation Practice Group, with a focus on helping companies navigate employment laws. Erin litigates employment matters, counsels employers on nearly every sub-specialty of employment law, and acts as employment counsel for M&A transactions. In her counseling practice, Erin assists organizations with a wide range of day-to-day employment issues, including personnel policies and procedures, executive employment and independent contractor arrangements, accommodations, restrictive covenants, employee misclassification risks, and internal investigations.

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