

# Illinois Employers Face Changing Employment Laws

by Rachel Atterberry

A FREEBORN & PETERS LLP CLIENT ALERT

## ABOUT THIS CLIENT ALERT:

Navigating employment laws can be a complicated and perilous process for employers. Compliance is especially challenging given that federal, state, county and city laws create multiple layers of rules. All this fragmentation makes staying abreast of the latest developments in employment law a challenge. To lessen the burden of identifying what is new, we have taken the time to outline for you major changes in Illinois, Cook County and the City of Chicago's employment laws.



### **Chicago and Cook County Minimum Wage Ordinance**

On July 1 of this year, the minimum wage in the City of Chicago will increase to \$11.00 per hour (note that different rates apply to tipped employees). Wages under the ordinance are subject to overtime compensation provisions, i.e., time and a half. The July 1, 2017 raise in the minimum wage is part of a December 2014 ordinance establishing a citywide minimum wage of \$13 per hour by 2019. As outlined in the ordinance, Chicago agreed to phase in the minimum increase on an annual basis every July 1, beginning in 2015.

For the ordinance to apply to an employer, the business must maintain a facility in Chicago and/or is subject to one of the city's licensing requirements. For an employee to qualify for the city's minimum wage, he or she must meet the following three criteria:

- 1. He or she must work for such an employer,**
- 2. Be physically present in Chicago,**
- 3. And work for at least two hours for any two-week period.**

The ordinance specifies a number of cases in which employees may be exempt, including employees taking part in government-subsidized transitional employment programs, employees of any governmental entity other than Chicago and certain employees exempt under state law, among others.

Similar to Chicago, Cook County also is set to increase the minimum wage. In October of 2016, the Cook County Board voted to raise the County's minimum wage for most employees to \$13.00 per hour by the year 2020. The Cook County minimum wage is set to rise to \$10.00 per hour on July 1, 2017. To date, more than 50 municipalities have opted out of Cook County's minimum wage hike.

## Chicago and Cook County Paid Sick Leave Eligibility



New Paid Sick Leave Requirements:

- Eligible employees receive up to 40 hours of paid sick leave in a 12 month period.
- Employees can earn one hour of sick time for every 40 hours worked.
- Employees may carry over half (capped at 20 hrs) of their unused sick time to the next year.
- FMLA employers must allow employees to carry over up to 40 hours of accrued, unused sick leave.

### Chicago and Cook County Paid Sick Leave Laws

As of July 1 of this year, an amendment to Chicago's Minimum Wage Ordinance will go into effect that will require employers to provide eligible employees with up to 40 hours of paid sick leave in each 12-month period of employment. Under the amendment, employees will earn one hour of sick time for every 40 hours worked. While the legislative cap is set at 40 hours per applicable 12-month period – beginning on the day the ordinance goes into effect or the first day an employee begins work, whichever is later – employers can choose to set a higher limit. Cook County's Paid Sick Leave Ordinance, which is essentially similar in coverage, also goes into effect on July 1, 2017.

To be eligible, employees must meet all of the following criteria:

- Perform at least two hours of work for a covered employer while physically present within the geographic boundaries of the city in any particular two-week period
- Work at least 80 hours for a covered employer in any 12-day period.

New employees can begin using accrued paid sick leave no later than the 180th day following commencement of employment. Employees may carry over half of their unused paid sick leave (up to 20 hours) to the next 12-month period. If the employer is subject to the Family Medical Leave Act ("FMLA"), employees are entitled to carry over up to 40 hours of accrued, unused paid sick leave to use exclusively for FMLA-eligible purposes.

As for the eligibility of employers, the amendment applies to employers of all sizes. If an employer already has a policy that grants employees paid time off in an amount and manner that meets the requirements of the ordinance, then the employer is not required to provide additional paid leave or otherwise change its policy. Employers also do not have to "pay out" the sick leave at termination, in contrast to earned but unused vacation time. In addition, employers must post a notice of employee rights under the ordinances.

The ordinance includes anti-retaliation provisions that protect employees against any adverse action taken as a result of their request for or use of paid sick leave. In other words, use of paid sick leave cannot be the basis for determining discipline, demotion, suspension, termination or any other adverse activity under an employer's absence policy. That said, employers may require that employees provide seven days' advance notice if the leave is foreseeable. However, if the need for leave is unforeseeable, employees must provide as much notice as is practical. Employers also may require employees using paid sick leave for more than three consecutive workdays to provide certification that the use of the leave was for a qualifying purpose. But, employers cannot require that the certification specify the nature of the medical issue that necessitated the need for leave.

Employees who are denied their rights to request and use sick time have a private right of action. If violations are found, damages may include up to three times the amount of any unpaid sick time denied or lost, along with interest, costs and reasonable attorneys' fees. Many municipalities outside of Chicago have opted out of the Cook County Paid Sick Leave Ordinance.

## Illinois Sick Leave



The Illinois Sick Leave Act requires employers who provide personal sick leave benefits to their employees to allow those employees to take the leave for the care of a close family member.

## Illinois Freedom to Work Act



The Illinois Freedom to Work Act prohibits most private-sector Illinois employers from entering into covenants not to compete with “low wage” employees.

### **The Illinois Sick Leave Act**

The Illinois Sick Leave Act went into effect Jan. 1 of this year. It mandates greater flexibility on the part of employers concerning employee use of leave benefits. Specifically, the law requires Illinois employers who provide personal sick leave benefits to their employees to allow employees to take such leave for absences due to the illness, injury or medical appointment of the employee’s child, spouse, sibling, parents, mother-in-law, father-in-law, grandchild, grandparents, or stepparents. Employers subject to the act are those that provide personal sick leave benefits to their employees. “Personal sick leave benefits” includes time accrued and available to employees to be used for absences related to personal illness, injury or medical appointments.

Under the act, employers must grant leave on the same terms under which the employee is able to use sick leave benefits for his or her own illness or injury. Employers may not discharge, threaten, demote, or otherwise discriminate against employees for using sick leave benefits, attempting to exercise their sick leave benefits, filing a complaint with the Illinois Department of Labor alleging a violation of the act, cooperating in an investigation or prosecution of the act, or otherwise opposing any policy or practice prohibited by the act.

There are some limitations written into the act. First, employers may limit employees from using more than half of their sick leave benefits for the care of family members. Additionally, the act specifies that it does not extend the maximum amount of leave to which an employee may be entitled under the federal FMLA. Furthermore, the act does not require employers to adopt sick leave policies if they do not already have such policies in place. However, if you are an employer in Chicago or Cook County, you may now be subject to paid sick leave benefit requirements.

### **Illinois Freedom to Work Act**

The Illinois Freedom to Work Act prohibits most private-sector Illinois employers from entering into covenants not to compete with “low wage” employees. The law became effective Jan. 1 of this year but does not apply to agreements signed prior to that date.

Under the act, low-wage employees are defined as those who earn the greater of \$13 per hour or the applicable minimum wage. The law prohibits employers from entering into agreements that restrict the low-wage employee from performing:

- Any work for another employer for a specified period of time;
- Any work in a specified geographic area;
- Work for another employer that is similar to such low-wage employee’s work for the employer included as a party to the agreement.



## Illinois Right to Privacy in the Workplace Act

As of Jan. 1 of this year, amendments to the Illinois Right to Privacy in the Workplace Act (IRPWA) prohibit employers from conducting a number of activities, including:

- Requesting or requiring an employee or prospective employee to provide a username, password, or other account information to his or her personal online account or demanding access in any manner to an employee or prospective employee's personal online account
- Requesting or requiring an employee or applicant to authenticate or access a personal online account in the presence of an employer
- Requiring an employee or applicant to invite the employer to join a group affiliated with the personal account of the employee or applicant
- Requiring an employee or applicant to joint an online account established by the employer or to add the employer to the employee or applicant's list of contacts that enable the contacts to access the employee or applicant's personal online account

Employers can still maintain lawful workplace policies governing employee use of employer's equipment and monitor use of such equipment. An employer also is permitted to request or require an employee or applicant to share content that has been reported to an employer in order to to ensure compliance with all applicable laws and regulations or to investigate an allegation based on specific information. Furthermore, if an employer inadvertently receives the account login information through the use of lawful technology to monitor the employer's network or employer provided devices for security or confidentiality purposes, the employer is not liable for having that information.

The IRPWA includes anti-retaliations. Employees who feel their rights have been violated may report a violation to the Illinois Department of Labor within 180 days. Damages may include actual damages plus court costs. If the employer committed a willful and knowing violation, the employee is eligible to receive actual damages, \$200 plus court costs and reasonable attorneys' fees. The employer or prospective employer who is found to have violated the law will be guilty of a petty offense, with a maximum penalty of \$1,000.

## Looking Ahead to 2018 and Beyond

What is in store for employment laws in 2018 and beyond is uncertain. For entities that operate across multiple states, compliance across all jurisdictions will continue to be a challenge, as state and local employment laws remain fragmented. To further complicate matters, legislators continue to amend employment laws on the state and local levels. Issues that employers should continue to keep an eye on include minimum wage and overtime rules as well as paid sick and parental leave laws, as these are expected to be hot-button issues for debate in the coming year.

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Rachel represents employers in several areas of employment law, including defending claims under Title VII of the Civil Rights Act (Title VII), the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), and other related laws. Rachel also has experience in the area of non-competition and trade secret disputes.

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