

# **WELCOME**

**GINA GAMBARO**

**Director, Marketing &  
Business Development**



Rx

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- ▶ This webinar is being recorded for on-demand access later, after the series' conclusion
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## 2023 WEBINAR SERIES

# State & Local Paid Leave Update

**Tom Luetkemeyer, Partner & Co-Chair,** Labor &  
Employment Practice Hinshaw & Culbertson LLP

**Aimee E Delaney, Partner,**  
Labor & Employment Practice Hinshaw & Culbertson LLP

# Illinois Paid Leave for All Workers Act

# Paid Leave for All Workers Act



- ▶ Effective date January 1, 2024
- ▶ All Illinois employers, regardless of size, will be required to provide covered employees up to 40 hours of paid leave per year to be used for any purpose.
  - Excludes only school districts and park districts
- ▶ May use other paid leave policies to satisfy obligation to provide paid leave under the Act.
- ▶ An employer is **NOT** required to modify its policy if
  - ❖ the policy satisfies the minimum amount of leave required under the Act (40 hours) for all employees and
  - ❖ the employee is permitted to take paid leave for any reason

# Paid Leave for All Workers Act

- ▶ 820 ILCS 192/20
- ▶ (b) An employer who provides any type of paid leave policy that satisfies the minimum amount of leave required by subsection (a) of Section 15 **is not required to modify the policy** if the policy offers an employee the option, at the employee's discretion, to take paid leave for any reason...

# Paid Leave for All Workers Act

- ▶ (p) The provisions of this Act shall not apply to any employer that is covered by a municipal or county ordinance that is in effect on the effective date of this Act that requires employers to give any form of paid leave to their employees, including paid sick leave or paid leave. Notwithstanding the provisions of this subsection, any employer that is not required to provide paid leave to its employees, including paid sick leave or paid leave, under a municipal or county ordinance that is in effect on the effective date of this Act shall be subject to the provisions of this Act if the employer would be required to provide paid leave under this Act to its employees.



# Paid Leave for All Workers Act

- ▶ Employee has the same meaning as used under the Illinois Wage Payment & Collection Act, and importantly, this picks up on the narrow definition of an independent contractor
- ▶ Under the WPCA, the term "employee" shall include any individual permitted to work by an employer in an occupation, but shall not include any individual:
  - 1) who has been and will continue to be free from control and direction over the performance of his work, both under his contract of service with his employer and in fact; and
  - 2) who performs work which is either outside the usual course of business or is performed outside all of the places of business of the employer unless the employer is in the business of contracting with third parties for the placement of employees; and
  - 3) who is in an independently established trade, occupation, profession or business.
- ▶ Specifically includes Domestic Workers as defined by the Domestic Workers' Bill of Rights, which is a person employed to perform housekeeping, house cleaning, caregiving, personal care or home health services for elderly persons or persons with an illness, injury or disability who require assistance in caring for themselves, laundering, cooking, companion services...
- ▶ Domestic workers will include independent contractors

# Paid Leave for All Workers Act

## ▶ Accrual

- All employees beginning on 1/1/24 (or the start of employment) must accrue one hour of paid leave for every 40 hours worked
- Exempt employees will be assumed to work 40 hours per week, unless on reduced schedule, then on the reduced hours worked
- The accrual must occur over a 12-month period
- 12-month period can be any 12-month period designated by the employer in writing at the time of hire
- May “frontload” in lieu of accrual method
  - ❖ Must frontload full 40 hours or pro-rata equivalent, give notice
  - ❖ If you frontload, there is no carry over, and unused leave is forfeited at the end of the 12-month period

# Paid Leave for All Workers Act

## ► Use of Paid Leave

- The paid time off benefit covers any need for leave, and is not limited to illness
- Can restrict employees from using the benefit in the first 90 days of employment
- May require up to 7 days' advance notice for a foreseeable reason for use. If leave is unforeseeable, employees need only provide as much notice as is practicable.
- If an Employer *adopts* a policy that requires advance notice for unforeseeable absences, the Employer must have a written policy that contains procedures for the employee to provide notice
  - ❖ If Employer makes any changes to their established notice provisions, must provide employees notice of the change in writing within 5 days of the change.
- Employers CANNOT require documentation or certification to support an employee's need for leave/use of paid time. Employees are not required to give a reason for the leave.

# Paid Leave for All Workers Act

## ► Use of Paid Leave (cont.)

- May set reasonable increment of use for paid leave, but it cannot be greater than 2 hours.
  - ❖ If employee's shift is less than two hours, minimum increment can be the length of the shift.
- Must receive regular rate of pay for time used
- *Unless* ER is using PTO policy for compliance, the Employer is not required to pay for unused paid leave time at the time of separation
- If the Employee leaves and is reinstated in less than 12 months, the accrued time prior to separation must be reinstated
  - ❖ What happens with reinstatement obligation if paid time off is paid out at separation?

# Paid Leave for All Workers Act

## Use Paid Leave (cont.)

- ▶ New proposed rules provide that an employer cannot deny an employee's request to use paid leave if the request does not meet the foreseeability requirements unless:
  - ❖ The policy includes a basis for denial disclosed to the employee
  - ❖ The policy contained limited circumstances in which leave may be denied to meet the core operational needs
  - ❖ A record of each request that is denied and the basis for denial

# Paid Leave for All Workers Act

## ▶ Carry over

- Employees may carry over up to 40 hours of paid leave from one 12-month period to the next
  - ❖ (i) Except as provided in subsection (c), paid leave under this Act shall carry over annually to the extent not used by the employee, provided that nothing in this Act shall be construed to require an employer to provide more than 40 hours of paid leave for an employee in the 12-month period unless the employer agrees to do so.
- Proposed rules issued this month confirm an employer can set a carry over cap of 80 hours
- Proposed rules also confirm that an employee can be restricted to using a maximum of 40 hours per year, unless the employer sets more generous restriction

# Paid Leave for All Workers Act

## ► Miscellaneous

- If you are going to require notice when a reason is not foreseeable, must be in a written policy with notice procedures
- Must provide notice of any change to notice requirements within 5 calendar days of a change
- If you are using an existing policy to comply, or mingle this time with a PTO/vacation bank, any unused leave must be paid out at separation of employment
- Cannot require that an employee seek or find a replacement worker
- The Act includes anti-discrimination and retaliation provisions
- Employers cannot consider use of paid leave as a negative factor in any employment action that involves evaluating, promoting, disciplining, or counting paid leave under a no-fault attendance policy.

# Paid Leave for All Workers Act

## ▶ Notice & recordkeeping requirements

- Must post a notice to be provided by the IDOL in a conspicuous place on the Employer's premises AND include a copy of the notice in a written document, or written employee manual or policy.
- If the Employer's workforce includes a significant portion of non-English speakers, it will be required to post a notice in this language, a model of which will be provided by the IDOL.
- Must maintain accurate records for each employee, showing the employee's hours worked, paid leave accrued and used, and remaining paid leave balance. Employers must provide this information to an employee upon request.
- Records must be retained for at least three years and must be available for inspection by the IDOL



# Paid Leave for All Workers Act

## ▶ IDOL Enforcement

- Employees may file a complaint with the DOL within three years of an alleged violation
- No reference to a private right of action with direct filing rights or access to the circuit courts
- Violations may lead to damages in the form of the actual underpayment, compensatory damages, a penalty of \$500-\$1000, equitable relief, attorneys' fees and other legal costs
- Civil penalty of up to \$2500 for each separate offense
- For violating the notice/posting requirements, employers will be subject to a \$500 civil penalty for the first audit violation and \$1,000 civil penalty for each subsequent audit violation.

# Paid Leave for All Workers Act

## ► Recommendations

- Review existing policy to determine whether minimum standards are met to use as method for compliance
- Where changes need to be made, make before January 1, 2024, so policy is “existing”
  - ❖ Consider different levels of benefits for categories not previously included in vacation or PTO policies, i.e. temporary, part-time, PRNs, etc. that satisfies just the minimum of statute’s requirements
- <https://labor.illinois.gov/laws-rules/paidleave.html>
  - ❖ FAQs

# Cook County Paid Sick Leave

Effective date? TBD

# Cook County Paid Leave Ordinance Amendment

- ▶ Passed 12/14/24, effective **12/31/23**
- ▶ Amends Cook County Paid Sick Leave to be a Paid Leave ordinance mirroring State Paid Leave for All Workers Act
  - Employee and Employer taken from Illinois Wage Payment and Collection Act
  - Employee will include Domestic Workers and independent contractors working as Domestic Workers
  - Adopts nearly all language of PLFAWA

# Cook County Paid Leave Ordinance Amendment

- ▶ An “employee who works in Cook County” is entitled to earn and use up to a minimum of 40 hours of paid leave during a 12- month period (or pro rata amount under conditions of the Act)
  - 1 hour for *every* 40 hours worked, up to a minimum of 40 hours
  - Incorporates same reference to pro rata equivalent for exempt employees\*
  - Allows minimum increment use of 2 hours
  - Allows front-loading, which eliminates carry over obligations, preserves “use it or lose it” framework
  - Absent front-loading, accrued paid leave carries over
    - ❖ PLFAW proposed rules indicate carry over cap of 80 hours is acceptable
    - ❖ “nothing... shall be construed to require an employer to provide more than 40 hours of paid leave for an Employee in the 12-month period...”

# Cook County Paid Leave Ordinance Amendment

- ▶ Allows employer to set the 12-month period
  - Changes to 12-month period must be made in writing with notice to employees and cannot reduce accrual rate
  - If change made, notice must include balance of paid leave time accrued, the time taken and the hours worked
- ▶ Time to be used for any reason, no documentation can be required and notice requirements restricted to 7 days for foreseeable use.
- ▶ Can restrict use to after completing 90 days of employment

# Cook County Paid Leave Ordinance Amendment

- ▶ Like the PLFAW, County ordinance allows employers to have a policy that includes:
  - 7 days' notice for use based on foreseeable reason;
  - If not foreseeable, as much notice as practical. If notice required when use is not foreseeable, the employer must have written policy that contains notice procedures
    - ❖ This is not a wholesale right to require any amount of notice; take guidance from PLFAW proposed rules
  - Must provide notice and posting of requirements and notice within 5 days of any change to Employer's notice requirements

# Cook County Paid Leave Ordinance Amendment

## ► Like the PLFAW:

- Time is not paid out at termination, as long as time is not mingled with PTO or vacation
- If an employee is rehired within 12 months of separation, accrued but unused paid leave must be reinstated. Employee returning in 12 months or less is entitled to use accrued/reinstated time at commencement of employment
- Cannot require employee to find replacement for paid leave time



# Cook County Paid Leave Ordinance Amendment

## ▶ Notice & posting requirements??

- ▶ (a) Every Employer shall post in a conspicuous place at each facility where any Covered Employee works that is located within the geographic boundaries of Cook County a notice advising the Covered Employee of his or her Employee rights to Earned Sick Time Paid Leave under this Division. The Agency shall prepare and make available a form notice that satisfies the requirements of this Division. Employers that do not maintain a business facility within the geographic boundaries of the County are exempt from this subsection.
- ▶ (f) An Employer shall post and keep posted in a conspicuous place on the premises of the Employer where notices to employees are customarily posted, and include it in a written document, or written employee manual or policy if the Employer has one, a notice, to be prepared by the Agency, summarizing the requirements of this Division and information pertaining to the filing of a charge upon commencement of an Employee's employment or 90 days following the effective date of this Division, whichever is later. If an Employer's workforce is comprised of a significant portion of workers who are not literate in English, the Employer shall notify the Agency and a notice in the appropriate language shall be prepared by the Agency. Employees may also request that the Agency provide a notice in languages other than English, which the Employer must post in accordance with this subsection. An Employer who violates this subsection shall be fined a civil penalty of \$500 for the first audit violation and \$1,000 for any subsequent audit violation.

# Cook County Paid Leave Ordinance Amendment

- ▶ Notice to employee at commencement of employment
- ▶ Records retention
  - Added provision requires retention of records documenting hours worked, leave accrued and taken, and remaining leave for 3 year period
- ▶ Enforcement
  - Employees can recover damages in a civil action within three years of violation
  - Alternatively, employee can pursue a charge with the County within 3 years of violation

# Cook County Paid Leave Ordinance Amendment

## ▶ Safe harbor for “existing policies”

Section 42-6(d):

- ▶ An Employer who provides any type of paid leave policy that satisfies the minimum amount of leave required this Division is not required to modify the policy if the policy offers an Employee the option, at the Employee's discretion, to take paid leave for any reason. Nothing in this Division shall be construed as requiring financial or other reimbursements to an Employee from an Employer for unused paid leave under this Division. Nothing in this Division shall be construed to discourage an Employer from adopting a paid leave policy more generous than the requirements of this Division

# Chicago Paid Leave and Paid Sick & Safe Leave

Effective January 1, 2024

# Old Ordinance Requirements

- ▶ Covered employees must earn up to 40 hours of **paid sick leave** in a 12-month period to be used for designated reasons under the ordinance
  - Covered employee is someone who worked at least 80 hours in any 120-day period within the City's jurisdiction, and includes Domestic Workers
  - Eligible to begin using accrued time on 180<sup>th</sup> day of employment
  - Accrual was one hour for every 40 worked
  - Complicated carry over rights, and varies by whether employer is an "FMLA" employer
  - Time not paid at termination, consistent with historic treatment of sick time

# New Ordinance Requirements

► Implementation delayed until 7/1/24

► Overview

- Creates right to accrue 2 types of paid leave time: “Paid Leave” and “Paid Sick Leave”
- Employees must accrue a minimum of 40 hours of EACH type of leave per 12-month period; reduced accrual rate to 1 hour for every 35 worked
- Employers can use existing policies/benefits to comply, but those policies will have to comply with “the requirements of the chapter”
- Applies to ALL employers with one or more employees, and includes Domestic Workers

# New Ordinance Requirements Cont.

- ▶ Who is a Covered Employee?
  - Original language expanded to any employee who, in a 2-week period, works at least 2 hours while physically present in the City of Chicago, not including time commuting
  - December amendment moves back to any employee who works 80 hours in any 120-day period while present in the City of Chicago.
  - December amendment adds that once someone reaches the threshold to be a Covered Employee, the employee remains a Covered Employee for the duration of employment
  
- ▶ Who is an Employer?
  - Any individual who gainfully employs at least one person
  - Small vs. Medium Employer distinction only relevant for payout obligations, not exemption from ordinance
  - Based outside Chicago?

# New Ordinance Requirements Cont.

- ▶ “Paid Leave” requirements (distinct from Paid Sick Leave)
  - Must begin accruing from first date of employment or July 1, 2024, whichever is later
  - Accrual rate must meet or exceed 1 hour for every 35 worked, up to a cap of 40 hours in a 12-month period
  - Accrual rate must be in whole hours, not fractional accruals unless credited on a monthly basis
  - Proposed rules indicate 12-month period can be set by the employer
  - Carry over rights for up to 16 hours of Paid Leave
  - Use must be permitted for any reason; cannot require documentation. However, an employer can have a policy that requires reasonable notice (not more than 7 days) and requires reasonable pre-approval to maintain continuity of operations



# New Ordinance Requirements Cont.

## ▶ “Paid Leave” requirements

- Can restrict right to begin using to the 90<sup>th</sup> day of employment and restrict increment use to a max of 4 hours
- Accrued, unused Paid Leave time must be paid out at termination of employment
  - ❖ Obligation will vary depending on whether you are **Small Employer** or **Medium Employer**
  - ❖ Obligation to pay out will exist if employee falls out of being a **Covered Employee**
  - ❖ **Obligation to pay out may exist if employee has not been offered a work assignment for 60 days.** Must notify employee of right to request payout of accrued Paid Leave time.

# Small Employer v. Medium Employer

- ▶ Only relevant to obligation to pay out accrued Paid Leave time
- ▶ Small Employer = 50 or fewer “Covered Employees”
- ▶ Medium Employer = between 51 and 100 Covered Employees
- ▶ If you have multiple entities that are considered a “single unitary business group” under the Illinois income tax rules, the number of Covered Employees will be aggregated
- ▶ Small Employers will not have obligation to pay out accrued Paid Leave at termination. Medium employers will only have to pay out 16 hours of accrued time at termination through 2024. Beginning 1/1/25, Medium Employer rule will go away.

# New Ordinance Requirements Cont.

## ▶ Paid Sick Leave Requirements

- Must begin accruing from first date of employment or July 1, 2024 (same)
- Accrual rate must meet or exceed 1 hour for every 35 worked, up to a cap of 40 hours in a 12-month period (same)
- Accrual rate must be in whole hours, not fractional accruals unless awarded on a monthly basis (same)
- 12-month period can be set by the employer, per proposed rules (same)
- Can restrict carry over to **80 hours** of Paid Sick Leave
- Use limited to existing paid sick leave reasons; employers can restrict right to begin using to the **30<sup>th</sup> day of employment** and restrict increment use to a max of **2 hours**
- Notice requirements same as prior ordinance; 7 days if foreseeable
- Documentation can be required after 3 consecutive days (same as prior ordinance)
- Accrued, unused time is NOT paid out at termination of employment

# Front Loading & Unlimited Vacation Policies

- ▶ Employers may choose to front load 40 hours of Paid Leave or 40 hours of Paid Sick Leave (or both) on the first date of employment or start of 12-month period
  - If an employer front loads, the employer is not required to allow the employee to carry over any accrued Paid Leave hours into the subsequent 12-month period. (no reference to Paid Sick Leave)
- ▶ Employers with unlimited vacation policies will still need to comply with the other requirements of the ordinance (e.g. notice (no pre-approval), use, pay out)
  - At the time of termination, obligated to pay out value of 40 hours of Paid Leave, less the value of hours taken by the prior 12 –month period. If the employee exceeded 40 hours, the employee will not owe any compensation to the employer

# Notice, Posting & Records

- ▶ Maintain notice of rights on bulleting board (required under prior ordinance)
- ▶ Notice with first paycheck and annually with each paycheck issued within 30 days of July 1 (required under prior ordinance)
- ▶ **NEW:** each time wages are paid, must provide written noted with updated amount of Paid Leave and Paid Sick Leave available and the accrual rate.
  - “The updated amount shall include accrued paid time off since the last notification, reduced paid time off since the last notification and any unused paid time off available for use.”
  - If time credited monthly, notice can be monthly
  - Can comply via portal or other online system that employees can access information on their available paid leave time
- ▶ **NEW:** must provide employees with written notice of the paid time off policy, including notice requirements, at the start of employment and within 5 calendar days of any change to the policy. Employees must be given 14 day written notice of changes that affect an employee’s right to final compensation for such leave.
- ▶ Must retain records for each employee with number of paid time off hours earned each year, dates paid time was taken, etc. for five years.

# New Ordinance Requirements Cont.

## ▶ Other details to know...

- “Meaningful access” to carry over language
- An Employer shall not use its absence-control policy to count paid time off as an absence that triggers discipline, discharge, demotion, suspension, or any other adverse activity.
- All unused time under the ordinance “shall be retained by the Covered Employee if the Employer sells, transfers, or otherwise assigns the business to another Employer and the Employee continues to work in the City”
- Violations will result in fines & damages
  - ❖ Fines: \$1,000-\$3,000 for each offense; \$500 -\$1000 for certain notice violations. Each day a violation continues = an offense.
  - ❖ Damages = 3X the full amount of leave denied, interest, attorneys’ fees
- Private right of action
  - ❖ December amendment qualifies that civil action may be initiated after an alleged violation occurs and the payday for the next regular pay period or 16 days (whichever is later) have passed.
  - ❖ Not a “cure period”

# Recommendations

## ▶ Audit employees & policy

- Are you based in Chicago or do you have employees that will work 80 hours in any 120- day period within the Chicago boundary?
- Do you have an existing vacation or sick leave policy?
  - ❖ Review policy to identify any inconsistency with ordinance: accrual amount, accrual rates, restrictions on grounds for use, restrictions on notice, documentation requirements, carry-over rights and limits, increments of use.
  - ❖ Must account for 80 hour of total paid leave (aggregating Paid Leave and Paid Sick Leave) with 96 hours of carry over rights (aggregating Paid Leave and Paid Sick Leave)
- If you have no existing benefit, must create before 1/1/24

# Q & A



# About CE credit

## Administrator credit

This program has been approved for Continuing Education for one total participant hour by NAB/NCERS.

Approval # 20241220-1-A99231-DL

## Nursing credit

This program has been submitted for Continuing Education for one total participant hour by the Illinois Board of Nursing.

# Obtaining CE credit

- ▶ Complete the evaluation at the conclusion of this program:
  - In your web browser
  - Also emailed immediately following this program
- ▶ For those sharing a computer to view the webinar:
  - Submit your sign-in sheet to the email address listed on the form
  - Each participant will then be emailed a link to the evaluation
  - Each person must complete an evaluation to receive CE credit
- ▶ CE certificates should be **emailed in the next 30 days**

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**THANK YOU!**