



ADMINISTRATOR'S ADVANTAGE

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Chicago Paid Sick Leave: *Are you feeling the pain?*

Amy M. Gibson

Cook County and the City of Chicago have recently passed ordinances (collectively the “Paid Sick Leave Ordinances”) establishing a right to paid sick leave for certain employees who work within Cook County or Chicago. It has been nearly five months since the Paid Sick Leave Ordinances became effective on July 1, 2017. As an employer, are you feeling any Paid Sick Leave Ordinance aches and pains? If so, this article will hopefully provide some necessary guidance and relief.

The Paid Sick Leave Ordinances were enacted to ensure that nearly all employees who work within Cook County and Chicago are entitled to earn and use a minimum amount of paid sick time during the year.

Both Cook County and the City of Chicago published rules interpreting their respective ordinances. A review of Cook County and the City of Chicago’s rules could easily leave employers in a state of confusion as the rules are complicated, complex and, in some instances, inconsistent with each other.

To help cut through some of the density and confusion, we have listed below some of the key provisions of the Paid Sick Leave Ordinances and the rules interpreting the ordinances.

Subject	Paid Sick Leave Ordinances
Covered employer	Any employer that employs at least <u>one</u> covered employee who works in Cook County or Chicago.
Covered employee	Any employee who works for a minimum of 2 hours in any two-week period in Cook County or Chicago. Note that this includes employees who are full-time, part-time, seasonal and temporary.
Permissible uses of paid sick leave	When the employee or a family member is ill, injured, seeking medical care, treatment, or diagnosis, the victim of domestic violence/stalking, or when the employee’s child’s school/daycare, or the employee’s place of business is closed for a public health emergency.
Eligibility to use paid sick leave	Employee must work 80 hours within any 120-day period.
Rate of accrual	1 hour of paid sick leave per 40 hours worked in Cook County or Chicago. Employers may frontload a certain number of hours to avoid tracking accrual.
Date of initial accrual	The later of July 1, 2017, or the first calendar day after the start of employment in Cook County or Chicago.
Maximum accrual per year	40 hours per 12-month period (with some exceptions).
Maximum use of paid sick leave per year	Up to 60 hours depending on whether the employer and employee are eligible under the Family and Medical Leave Act, 29 U.S.C. §2601 (“FMLA”). Of course, the employer can allow its employees to use additional paid sick leave.
Carryover of accrued and unused paid sick leave	Depends on FMLA eligibility. For non-FMLA eligible, the employee may carry over one half of unused hours, up to 20 hours. For FMLA eligible, the employee may carry over up to 40 hours of accrued and unused paid sick leave to be used solely for FMLA purposes. This is in addition to the carryover of a maximum of 20 hours of regular paid sick leave. Note that the employer may frontload the carryover to avoid individualized calculations.

Over the last several months, we have received numerous inquiries relating to the practical application of the Paid Sick Leave Ordinances to employers' existing paid sick leave policies. What follows are some of the most commonly asked questions, the answers to which we hope will cure some of your paid sick leave aches and pains.



Q: *If an employer located within Cook County already provided paid sick time to its employees before the Paid Sick Leave Ordinances became effective, must the employer provide additional paid sick time to comply with the Ordinances?*

A: No. The Paid Sick Leave Ordinances do not require employers to provide additional paid sick leave beyond the sick leave already provided, as long as the paid time off meets the minimum requirements of the Paid Sick Leave Ordinances.

Q: *If an employer is located outside of Cook County, could it be subject to the Paid Sick Leave Ordinances?*

A: Yes. This answer might be surprising to many employers. An employer that is not located in Cook County could be subject to the Paid Sick Leave Ordinances if, for example, it requires an employee to: (a) work remotely, such as from their home, and that remote location is within Cook County; or (b) travel through Cook County to perform services for the employer, such as requiring an employee to meet with clients in Cook County.

Q: *The Paid Sick Leave Ordinances seem to require employers to segregate paid sick time from vacation time or other personal time off provided to employees. Does that mean that general paid time off ("PTO") policies that lump together various types of paid time off are prohibited?*

A: No. PTO policies are permitted as long as they provide sufficient paid time off and do not impose restrictions on the use of paid sick leave that would violate the Paid Sick Leave Ordinances.

Q: *If an employer is located in a municipality within Cook County that has opted out of the Cook County Ordinance, must the employer, nevertheless, comply with the Ordinance?*

A: Several municipalities within Cook County have opted out of the Cook County Ordinance. Generally speaking, this means that if an employer is located in one of those municipalities, it is not required to comply with the Cook County Ordinance. However, for employers that have employees who work in other municipalities within Cook County, such as in the city where the employee resides, and that municipality did not opt out, the employer may be subject to the Cook County Ordinance.

Q: *Is an employer required to pay an employee for his or her accrued but unused paid sick leave upon separation?*

No, but the answer might be different if the employer has a general PTO policy. Under Illinois law, an employer is required to pay an employee his or her accrued and unused vacation time upon separation. Therefore, if the employer lumps paid sick time and vacation time into one PTO bank, any accrued and unused PTO would likely have to be paid to the employee upon separation.

Q: *Is an employee required to provide his or her employer with documentation to support the use of paid sick leave?*

A: No, unless the employee is absent for more than three consecutive days. In that event, the employer can require certain documentation including, without limitation, a doctor's note, police report, a court document, or other appropriate documentation.

Because the Paid Sick Leave Ordinances are only a few months old, we have not yet seen how the Cook County Commission on Human Rights or the City of Chicago Department of Business Affairs and Consumer Protection will interpret, enforce and investigate potential violations of the Paid Sick Leave Ordinances. We anticipate some degree of leniency in the short term, but employers should make every effort to comply with the Paid Sick Leave Ordinances to avoid exposure to fines, injunctive relief, damages and attorneys' fees.

If you have any questions about this article, or if you would like to review the Paid Sick Leave Ordinances and their implications further, please contact the author listed below. **A**



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