

# Legal Update

September 2016

## PREPARING FOR CHICAGO'S NEW PAID SICK LEAVE REQUIREMENTS

By Jon Vegosen and Cecilia M. Suh

The City of Chicago recently passed the Chicago Minimum Wage and Paid Sick Leave Ordinance (the Ordinance), joining over 20 other U.S. cities that require employers to provide employees with paid sick leave. The Ordinance amends the current Chicago Minimum Wage Ordinance and generally requires Chicago employers to provide employees with up to 40 hours of paid sick time off each year. The Ordinance will go into effect on July 1, 2017. Consequently, affected employers will need to take steps to adopt new paid sick leave policies or update existing paid time off benefits for compliance with the new Ordinance.

### Who Does the Ordinance Cover?

**Employers:** Employers covered under the Ordinance include any individuals or companies who (a) maintain a business facility within the City of Chicago's geographic boundaries or (b) are subject to one or more of the City of Chicago's licensing requirements. There is no "small employer" exception, and the Ordinance applies to all employers who employ at least one covered employee. The Ordinance does exclude bona fide collective bargaining agreements that are in force by July 1, 2017.

**Employees:** An employee is covered under the Ordinance if he or she: (a) works at least 80 hours for a covered employer within any 120-day period and (b) performs at least two hours of work for a covered employer while physically present within Chicago's geographic boundaries in any particular two-week period. Time spent traveling in Chicago that is compensated—such as deliveries, sales calls, and travel in connection with other business activity taking place within Chicago—will count as performing work while physically present within Chicago's geographic boundaries. Uncompensated commuting time, however, is not included. The Ordinance excludes any employee working in the construction industry who is covered by a bona fide collective bargaining agreement.

### What Does the Ordinance Require?

The Ordinance requires covered employees to begin accruing paid sick leave as of July 1, 2017, or on the first day after an employee's employment begins, whichever is later, at a rate of one hour of paid sick leave for every 40 hours worked. This paid sick leave must accrue only in hourly increments (and not as fractional accruals). The Ordinance caps paid sick leave at 40 hours of paid sick leave per a 12-month period—unless the employer sets a higher limit.

Under the Ordinance, employees are entitled to use up to 40 hours of paid sick leave in a 12-month period unless the employer sets a higher limit, but employees may carry over up to 20 hours of unused paid sick leave. Additionally, an employer covered by the FMLA must allow employees to carry over up to an additional 40 hours of unused accrued paid sick leave (on top of the standard 20 carryover

FVLD®

hours) to use exclusively for FMLA-eligible purposes. The Ordinance also imposes new notice and posting requirements. Employers must: (a) post in a conspicuous place at each Chicago facility where any covered employee works a notice advising employees of their paid sick leave rights and (b) include a notice that advises covered employees of their paid sick leave rights with their first paychecks on or after July 1, 2017.

Finally, the Ordinance prohibits employers from retaliating against employees for exercising their rights to paid sick leave or counting paid sick leave as an absence that triggers discipline, discharge, or any other adverse employment action. Employers remain entitled, however, to discipline employees who use paid sick leave for inappropriate purposes that are not authorized under the Ordinance.

### **When Can An Employee Use Paid Sick Leave?**

Under the Ordinance, employees may begin using paid sick leave no later than on the 180<sup>th</sup> calendar day following the beginning of employment. An employee may use paid sick leave when:

- (a) he or she is ill or injured, or to receive medical care, treatment, diagnosis, or preventative medical care;
- (b) his or her family member is ill or injured, or the employee needs to care for the family member receiving medical care, treatment, diagnosis or preventative medical care;
- (c) the employee or his or her family member is the victim of domestic violence or a sex offense; or
- (d) the employee's place of business is closed by order of a public official due to a public health emergency or the employee needs to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency.

If the need for paid sick leave is reasonably foreseeable, an employer may require up to seven days' notice before leave is taken (unless the employee is unable to give notice because he or she is unconscious or otherwise medically incapacitated or the need is unforeseeable). In addition, if an employee is absent for more than three consecutive work days, an employer may require the employee to submit certification regarding the use of paid sick leave.

### **What if An Employer Already Provides Paid Time Off?**

The Ordinance only imposes minimum requirements for paid sick leave, and an employer may provide greater paid time off benefits. If an employer already provides paid time off in an amount and manner that meet the Ordinance's requirements, it is not required to provide additional paid leave benefits. An existing paid time off policy must still comply with the Ordinance's other requirements, including the rules regarding accrual and use of paid sick leave. If, for example, an employer's policy has certain restrictions on the use of paid time off, then the policy may need to be updated to comply with the Ordinance's requirements regarding when an employee is entitled to use paid sick leave.

### **Is An Employee Entitled to be Paid Out for Unused Paid Sick Leave?**

No, an employer is not required to provide financial or other reimbursement for unused paid sick leave upon an employee's termination or other separation from employment (unless an applicable collective bargaining agreement provides otherwise).

### **Suggestions for Employers**

Employers who will be affected by the new Ordinance should review their existing paid time off policies, if any, to see if such policies currently meet the Ordinance's various requirements or will need



to be updated for compliance. Covered employers who do not currently provide paid sick time off will need to adopt new paid sick leave policies by July 1, 2017. This may also be a good time for employers to check their compliance with Chicago's other employment laws. For example, as of July 1, 2016, Chicago employers must pay a minimum wage of at least \$10.50 per hour to employees for each hour of work performed while physically present within Chicago's geographic boundaries. This minimum wage will increase to \$11.00 per hour on July 1, 2017. Chicago also has certain notice and posting requirements regarding the current minimum wage. Accordingly, Chicago employers should review their current policies and practices with counsel to comply with all applicable laws. Employers covered by the FMLA may also want to review their policies and practices regarding the use of paid leave (e.g., sick leave or other paid time off) during FMLA leave to ensure compliance with the Ordinance.

---

*FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Jon Vegosen 312.701.6860 [jvegosen@fvldlaw.com](mailto:jvegosen@fvldlaw.com), Cecilia Sub 312.701.6841 [csub@fvldlaw.com](mailto:csub@fvldlaw.com), or your regular FVLD contact.*

FVLD®

© 2016, Funkhouser Vegosen Liebman & Dunn Ltd.  
All rights reserved.