CRC BENEFITS | THRIVE Workplace Benefits
Dedicated to Development and Success

ILLINOIS

Regulatory Compliance and Resources by State

STATE CONTINUATION

Covered Employers: All employers

Qualified Beneficiaries:

- Employees and dependents who were continuously covered for 3 months before the qualifying event
- Divorced or widowed spouses (any age) and dependent children

Qualifying Events:

- Loss of coverage due to termination or reduction in hours
- Also, divorce from the employee, death of the employee, or retirement of the employee may be qualifying events under spousal continuation

COBRA Duration: 12 months; 2 years for divorced/widowed spouses, under age 55, and children. Time of the qualifying event: If he or she is 55 or older, the maximum period of coverage extends until Medicare eligibility.

Maximum Premium Amount: 100% of the premium; for spouses 55 or older, 120% after first two years of coverage

PAID FAMILY LEAVE

The Illinois paid leave law will apply to essentially all private employers, as well as the state and units of local governments, or any state or local government agency. (Illinois school districts organized under the Illinois School Code and Illinois park districts organized under the Illinois Park District Code, however, are not included in the definition of "employer" under the PLFAW Act.)

Of note is that the PLFAW Act does not apply to employers currently covered by a municipal or county ordinance that is in effect as of January 1, 2024, and requires the employer to provide any form of paid leave to their employees, including paid sick leave or other paid leave.

This means that employers in Chicago subject to the Chicago Paid Sick Leave Ordinance will be exempt from complying with the Illinois paid leave law.

Additionally, employers in Cook County that provide paid sick leave in accordance with Cook County Earned Sick Leave Ordinance will also be exempt from complying with the PLFAW Act.

However, employers located in a Cook County municipality that opted out of the Cook County Earned Sick Leave Ordinance may be subject to the PLFAW Act.

ILLINOIS PAID LEAVE LAW: ACCRUAL RATE, CARRYOVER, RATE OF PAY

Employees must accrue one hour of paid leave for every 40 hours worked and can begin using paid leave 90 days following the effective date of the law, or 90 days following the start of their employment, whichever is later.

Any earned but unused accrued paid leave must be carried over to the following year unless the employer frontloads the employee's leave at the beginning of the 12-month period.

The leave must be paid at the employee's hourly rate of pay. Employees who receive gratuities or commissions that are recognized as part of their pay must be paid the greater of the full minimum wage in the jurisdiction employed when the paid leave is taken, or their hourly rate.

Employee Notice of Intent to Take Paid Leave

Employers may require employees to provide up to seven calendar days' notice before they take paid leave if the leave is foreseeable. If the leave is not foreseeable, employees should provide notice as soon as possible.

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Employers who will require notice of paid leave that is not foreseeable will need to have a written policy that provides employees with procedures regarding the notice requirements.

RECORDKEEPING REQUIREMENTS

Employers will need to keep records of each employee's hours worked, paid leave accrued and taken, and the remaining paid leave balance for at least three years. Employers who provide paid leave on an accrual basis are also required to provide notice of the amount of paid leave accrued or used by the employee upon request.

POSTING AND NOTICE REQUIREMENTS

Meanwhile, employers will be required to display a labor law poster in the workplace that the Illinois Department of Labor will prepare. The poster will summarize the requirements of the PLFAW Act and include information on filing a charge.

If an employer has a workforce that primarily does not speak English, the employer must post the notice in the appropriate language spoken by the employees. Violations of the posting requirements will result in a $500 penalty for the first violation and $1,000 penalty for each subsequent violation.

STATE EMPLOYER REPORTING: NONE

PAID SICK LEAVE:

The Act applies to all employers in Illinois, including units of state and local government and government agencies. It does not, however, cover school districts organized under the School Code or park districts organized under the Park District Code.

The Act covers all employees, with the following exceptions:

- Employees as defined in the federal Railroad Unemployment Insurance Act or the Railway Labor Act
- Temporary college or university student-employees
- Certain short-term employees of an institution of higher learning
- Employees working in the construction industry who are covered by a bona fide collective bargaining agreement (CBA)
- Employees who are covered by a bona fide CBA with an employer that provides services nationally and internationally of delivery, pickup, and transportation of parcels, documents, and freight

It does not apply to employees covered by a valid CBA in effect on January 1, 2024. Following that date, the requirements of the Act can be waived in a bona fide CBA if the waiver is set forth explicitly in the agreement in clear and unambiguous terms.

Intersection with Chicago and Cook County Paid Sick Leave

The Act does not preempt the Chicago Minimum Wage and Paid Sick Leave Ordinance or the Cook County Earned Sick Leave Ordinance. Instead, it states that the 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 [the] Act that requires employers to give any form of paid leave to their employees, including paid sick leave or paid leave." Conversely, the Act requires employers not covered by these ordinances to provide paid leave.

For any local ordinances enacted or amended on or after January 1, 2024, an employer must comply only with the provisions of the local ordinance to the extent that it provides benefits, rights, and remedies that are greater than or equal to the benefits, rights, and remedies afforded under the Act. In other words, the Act sets the new floor, but the local ordinance can raise the ceiling.

Accrual, Carryover, and Frontloading

On January 1, 2024, or when employment begins – whichever is later – covered employees will accrue one hour of paid leave for every 40 hours worked. Exempt employees are presumed to work 40 hours per workweek for the purposes of accrual unless their regular workweek is less than 40 hours, in which case paid leave accrues based on that regular workweek.

Employees can accrue up to 40 hours in a 12-month period. Per the Act, a 12-month period may be any 12-month period designated by the employer in writing at the time of hire. Employees may carry over up to 40 hours of paid leave from one 12-month period to the next.

In lieu of accruing time, employers may choose to grant (or "frontload") 40 hours of paid leave on the first day of the 12-month period. If the full 40 hours is frontloaded at the beginning of the 12-month period, carryover from year to year is not required, and any unused leave will be forfeited at the end of the 12-month period.

Employees cannot use their paid leave until they have completed 90 calendar days of employment, or March 31, 2024, whichever is later.

Requesting and (Not) Documenting Paid Leave

Employers may require up to seven days' advance notice of a foreseeable need for paid leave. If leave is unforeseeable, employees need only provide notice as soon as practicable. An employer that requires advance notice for unforeseeable absences must adopt a written policy that contains procedures for the employee to provide notice. Despite these advance notice requirements, however, the Act does not appear to provide an avenue for employers to ascertain whether the employee provided appropriate notice under the circumstances.

Unlike most paid leave laws, the Act expressly prohibits employers from requiring documentation or certification to support an employee's need for leave.

Using Leave

Employers may set a reasonable minimum increment of use for paid leave under the Act, but it cannot be more than two hours. If an employee's shift length is less than two hours, the minimum increment of use will be the length of the employee's scheduled shift.

Employees must receive their hourly rate of pay when using paid leave, which does not include commissions or gratuities. However, an employee's hourly rate of pay for leave under the Act cannot drop below the applicable minimum wage.

End of Employment, Rehiring, and Transfers

Unless an employer is using a more generous paid time off policy for compliance, as outlined below, employers are not required to pay employees for unused paid leave time upon separation from employment.

Unused time must be reinstated and made available for use if the employee is rehired within 12 months of separation. Presumably, these reinstatement requirements would not apply in the event that unused paid leave is paid out upon separation from employment, but the Act does not address this issue. Employees transferring to a separate division, entity, or location will retain their accrued paid leave time.

Using Existing Leave Policies

Employers may use other types of paid leave policies to satisfy their obligation to provide paid leave under the Act.

The Act indicates that an employer is "not required to modify [their] policy" if it satisfies the minimum amount of leave required under the Act and the employee is permitted to take paid leave for any reason. Based on how other paid leave enforcement agencies have interpreted similar statutory language, it is more likely that the Illinois Department of Labor (IDOL) will view this language as the condition under which employers can use pre-existing, more generous policies to comply with their new obligations than any type of exemption to compliance requirements under the Act.

If an employer does use another type of vacation bank to satisfy its obligations under the Act, any unused leave must be paid out upon separation from employment, consistent with the requirements under the Illinois Wage Payment and Collection Act.

EMPLOYER NOTICE AND RECORDKEEPING REQUIREMENTS

Employers 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.

Employers must maintain accurate records for each employee showing the employee's: (1) hours worked; (2) paid leave accrued and used; and (3) remaining paid leave balance. Records must be retained for at least three years and must be available for inspection by the IDOL. While an employee's paid leave accruals need not be reported on a paystub, employers must provide this information to an employee upon request.

PROHIBITED ACTS, ENFORCEMENT, AND PENALTIES

Under the Act, an employer cannot require that an employee seek or find a replacement worker to cover the hours during which the employee uses paid leave.

The Act contains broad anti-discrimination and retaliation provisions, and explicitly prohibits consideration of the 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.

The IDOL will be tasked with the administration and enforcement of the Act. Employees may file a complaint with the IDOL within three years of an alleged violation. There does not appear to be a private right of action for employees.

An employer that violates the Act will be liable to the affected employee for damages in the form of actual underpayment, compensatory damages, and a penalty of at least $500 but no more than $1,000. Affected employees will also be entitled to equitable relief including attorney's fees, reasonable expert witness fees, and other costs of the action. Additionally, employers found to violate the Act will be subject to a $2,500 civil penalty for each separate offense, payable to the Paid Leave for All Workers Fund, a special fund created in the state treasury that is dedicated to enforcing the Act. Employers that violate the Act's notice/posting requirements will be subject to a $500 civil penalty for the first audit violation and $1,000 civil penalty for each subsequent audit violation.

MANDATORY 401(K)

https://www.ilsecurechoice.com/

By law, eligible employers must register and facilitate program activities by specific deadlines. Setting up your account is quick and easy. After completing these steps for the first time, you'll maintain your account by adding and removing employees and submitting payroll deductions each pay period.

Determine Eligibility

Not all employers are eligible. Only employers who do not sponsor a retirement plan and have 5 or more eligible employees must join Illinois Secure Choice.

Register Your Company

Registering takes just a few minutes. You will need your company's Federal Employer Identification Number or Tax Identification Number (EIN/TIN) and your Illinois Secure Choice Access Code.

Add Your Employees

When you register, you'll submit information for each eligible employee. This will begin the process of having a Roth IRA set up in each employee's name. Employees will then have 30 days to decide to participate or opt out. If they do not make a selection, they will be automatically enrolled in the program.

Submit Contributions

After you add employee information, you'll begin facilitating payroll deductions each payroll period through bank transfer. These payroll deductions will be added to the employee's Roth IRA account and invested according to their selections.

STATE DISABILITY: NONE

SURPRISE BILLING

Federal Surprise billing only

Department of Insurance website:
https://www2.illinois.gov/sites/insurance/Pages/default.aspx