

## Employers Face a Trio of Sick Leave Laws: Chicago, Cook County, and Illinois

February 9, 2017

By Peter A. Steinmeyer, Susan Gross Sholinsky, Julie Badel, and Nancy L. Gunzenhauser

---

As we [previously reported](#), the [Chicago](#) City Council enacted a sick leave ordinance (“Chicago Ordinance”), requiring employers to provide employees with up to 40 hours of paid sick leave per year. Following in its footsteps, [Cook County](#), Illinois,<sup>1</sup> enacted an ordinance that is nearly identical in substance and form to the Chicago Ordinance but applies outside of the Chicago city limits (“Cook County Ordinance”). Both the Chicago Ordinance and the Cook County Ordinance (collectively, “Ordinances”) become effective on July 1, 2017.

Additionally, the state of Illinois passed the [Employee Sick Leave Act](#) (“Illinois Act” or “Act”). Unlike the Ordinances (which require employers to provide paid sick leave), the Illinois Act merely requires employers that already provide sick leave to employees to allow those employees to use at least half of that sick leave to care for their family members (in addition to the employees’ own illnesses).<sup>2</sup> On January 13, 2017, Illinois Governor Bruce Rauner signed an [amendment](#) to the Illinois Act, clarifying several key provisions. The Illinois Act became effective on January 1, 2017.

### The Ordinances

#### **Accrual and Use of Sick Leave**

Under the Ordinances, eligible employees earn one hour of paid sick leave for every 40 hours worked, up to a maximum of 40 hours in a calendar year. Employees may carry over a maximum of 20 unused hours to the following calendar year. Employees covered by the federal Family and Medical Leave Act (“FMLA”) may carry over an *additional* 40 hours of unused paid sick leave to use exclusively during a leave of absence covered by the FMLA.

---

<sup>1</sup> On November 15, 2016, the Village of Barrington, Illinois, passed a [Municipal Ordinance](#) (“Village Ordinance”) opting out of the requirements of the Cook County Ordinance. In the Village Ordinance, the Village of Barrington found that the Cook County Ordinance “would place an undue burden on employers within the Village, given the current rights of employees available under Federal and State law.”

<sup>2</sup> Employers with operations in California may be familiar with this concept, as it is similar to the “kin care” requirements in California.

Neither the Chicago Ordinance nor the Cook County Ordinance addresses whether an employer may avoid the burden of tracking the accrual of leave by “frontloading” sick leave (i.e., crediting employees with the full 40 hours of leave at the beginning of the calendar year). However, Cook County has indicated that it will be publishing additional guidance regarding sick leave rules.

Employees may begin using paid sick leave on the 180th calendar day after hire. Employers may require employees to use paid sick leave in reasonable minimum increments, provided that a minimum increment does not exceed four hours per day.

An employee may use sick leave under the Ordinances when he or she:

- is ill or injured, or for purposes of receiving medical care;
- must care for a family member who is ill or injured, or receiving medical care;
- is a victim of domestic violence; or
- works at a place of business closed due to a public health emergency.

A “family member” includes the employee’s:

- child,
- legal guardian or ward,
- spouse,
- domestic partner,
- parent,
- spouse’s or domestic partner’s parent,
- sibling,
- grandparent,
- grandchild, or
- any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.

If the need for sick leave is reasonably foreseeable (such as prescheduled medical appointments or court dates), an employer may require up to seven days’ advance notice. If such need is not reasonably foreseeable, employers may require employees to provide notice as soon as practicable via phone, e-mail, or text message. If an employee is absent for more than three consecutive workdays, the employer may require certification that the sick leave was for one of the purposes set forth in the

Chicago Ordinance or the Cook County Ordinance, as applicable, but an employer may not require a health care provider to state the nature of the illness or medical treatment unless required by law.

### **Covered Employers and Employees**

Employers covered by the Ordinances include all individuals and business entities that employ at least one covered employee. Under the Chicago Ordinance, employers must also (i) maintain a business within the geographical boundaries of the city of Chicago and/or (ii) be subject to Chicago license requirements.

Both the Chicago Ordinance and the Cook County Ordinance define a “covered employee” as an employee who spends at least two hours of work in any two-week period in the respective jurisdiction (either the city of Chicago or Cook County). Compensated time spent travelling, such as making deliveries or sales calls (but not commuting time), is considered “work” within the jurisdiction’s boundaries. A covered employee becomes eligible for paid sick leave by working 80 hours in any 120-day period. Employees begin to earn paid sick leave upon either the first calendar day after the start of employment or July 1, 2017, whichever is later (but again, employees can be required to wait 180 calendar days to actually use any paid sick leave).

Domestic workers, including those employed by employers with fewer than four employees, are covered by the Ordinances. Tipped employees must be paid the required minimum wage for sick leave.

### **Other Important Terms**

*Collective Bargaining Agreements.* Nothing in the Ordinances affect the terms of a current collective bargaining agreement (“CBA”). However, for any CBA entered into after July 1, 2017, the requirements of the Ordinances may be waived by the terms of the CBA, but only if the waiver is set forth in clear and unambiguous terms. The paid sick leave provisions of the Ordinances do not apply to employees in the construction industry who are covered by a CBA.

*Notice.* Employers are required to post, at each facility where a covered worker is employed, a notice setting forth employees’ rights to paid sick leave. The Chicago Ordinance requires employers to provide employees with a notice of their rights under the ordinance with the first paycheck subject to the ordinance. The Cook County Ordinance requires employers to provide employees with a notice of their rights under the ordinance upon hire. The City of Chicago and Cook County will each be preparing form notices.<sup>3</sup>

---

<sup>3</sup> The Commissioner of Chicago’s [Department of Business Affairs and Consumer Protection](#) (“BACP”) is responsible for drafting form notices for employers’ use. The [Cook County Commission on Human Rights](#) (“CCCHR”) anticipates releasing form postings and notices (as well as regulations relating to the Cook County Ordinance) by June 1, 2017. Employers are encouraged to check the BACP and CCCHR websites for the form notices as the effective date of the Ordinances draws closer.

*No Retaliation.* Employers may not retaliate against employees for exercising their rights under the Ordinances. In addition, employers may not consider paid sick time taken under the Ordinances when determining discipline or discharge.

*Right of Action.* Employees may file a civil action for noncompliance with the Ordinances, and they may recover as damages three times the amount of unpaid sick leave denied or lost by reason of the violation, plus attorneys' fees and costs.

*Interaction with Other Leave Policies.* Nothing prohibits employers from providing more sick leave or greater benefits than what is required under the Ordinances, including sick time policies and paid time off ("PTO") policies.

For employers that maintain policies providing unlimited sick time or unlimited time off (sometimes called "freedom leave"), there is no obligation to provide additional sick leave pursuant to the Ordinances. But such policies should specify that they are meant to cover the requirements of the Ordinances, that 40 hours of such leave taken each calendar year will be deemed sick leave under the Ordinances, and that employees are not eligible for additional sick leave under the Ordinances. Further, such policies should reference certain provisions of the Ordinances for clarification purposes, including the reasons for use, maximum use for sick leave purposes, and carryover.

### **The Illinois Act**

Under the Illinois Act, all employers that provide sick leave benefits must permit employees to use at least half of their accrued sick leave for absences due to an illness, injury, or medical appointment of the employees' family members. The Act does not cover benefits provided pursuant to a short-term disability or long-term disability plan.

A "family member" under the Act includes an employee's:

- child (including stepchild),
- spouse or domestic partner,
- sibling,
- parent,
- parent-in-law,
- grandchild,
- grandparent, or
- stepparent.

Employers that have sick leave policies or paid time off ("PTO") policies that already provide employees with the ability to use sick leave to care for family members need not

modify their policies. Further, because of the requirements of the Ordinances (and the reasons for qualifying leave), employers with sick leave policies that comply with the Ordinances will likely not need to make additional changes to be in compliance with the Illinois Act.

The amendment to the Illinois Act expressly states that the Illinois Act does not invalidate or otherwise interfere with any CBAs or limit any party's power to collectively bargain. However, unlike the Ordinances, there is no discussion in the Illinois Act about whether rights under the Act can be waived in a CBA.

The Illinois Act does not contain any workplace posting requirement, and the Illinois Department of Labor's website states that it has not issued any administrative rules under the Illinois Act, and currently does not plan to do so.

### **What Employers Should Do Now**

All employers covered by the Chicago Ordinance, the Cook County Ordinance, and/or the Illinois Act should do the following:

- Review and revise, as necessary, policies that pertain to time off for illness to ensure that they comply with the Ordinances and the Act, as may be applicable.
- If you have a multistate workforce, consider whether a single sick leave policy will apply to all employees or whether specific policies should be created and implemented for each jurisdiction with a sick leave requirement.
- Post all required notices in the workplace, and modify any new hire paperwork, policies, and procedures to include the provision of required notices.
- Train supervisors before July 1, 2017, that:
  - neither discipline nor discharge can be based on an employee's use of the 40 hours of paid sick time in a calendar year covered by the Ordinances, and
  - no-fault attendance policies cannot be applied to the first 40 hours of absence under the Ordinances.
- Budget appropriately to account for the additional pay that may be required to provide paid sick leave to employees.
- Consider any production or scheduling changes that may become necessary as more employees begin to take time off, often without advance notice.

\* \* \* \*

For more information about this Advisory, please contact:

**Peter A. Steinmeyer**  
Chicago  
312-499-1417  
psteinmeyer@ebglaw.com

**Susan Gross Sholinsky**  
New York  
212-351-4789  
sgross@ebglaw.com

**Julie Badel**  
Chicago  
312-499-1418  
jbadel@ebglaw.com

**Nancy L. Gunzenhauser**  
New York  
212-351-3758  
ngunzenhauser@ebglaw.com

*This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.*

**About Epstein Becker Green**

Epstein Becker & Green, P.C., is a national law firm with a primary focus on health care and life sciences; employment, labor, and workforce management; and litigation and business disputes. Founded in 1973 as an industry-focused firm, Epstein Becker Green has decades of experience serving clients in health care, financial services, retail, hospitality, and technology, among other industries, representing entities from startups to Fortune 100 companies. Operating in offices throughout the U.S. and supporting clients in the U.S. and abroad, the firm's attorneys are committed to uncompromising client service and legal excellence. For more information, visit [www.ebglaw.com](http://www.ebglaw.com).

© 2017 Epstein Becker & Green, P.C.

Attorney Advertising