

Management Alert



If Pain, Yes Gain—Part XXXI: Grab Your First Aid Kit, Chicago Draft Sick Leave Rules Have Arrived

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Seyfarth Synopsis: After months of anticipation and without much notice, Chicago has published its long-awaited draft paid sick leave rules. The Chicago Minimum Wage and Paid Sick Leave Ordinance is set to become effective on July 1, 2017.

While no amount of multivitamins or antibiotics will save employers from the impending Chicago Minimum Wage and Paid Sick Leave Ordinance (“PSLO”),¹ on May 22, 2017, the City of Chicago provided businesses with some relief in the form of [draft paid sick leave rules](#) (the “Draft Rules”). The city will be accepting public comments on the Draft Rules until June 16, 2017—a mere two weeks before the PSLO goes into effect.

On July 1, Cook County, IL will join Chicago as the only municipalities in the state of Illinois with paid sick leave ordinances that are in effect. [Cook County’s draft sick leave regulations](#) were released in mid-April 2017 and the County is expected to release final regulations by June 1. We, of course, will keep you posted on these future developments.

In the meantime, here are some of the highlights of the Chicago Draft Rules and what employers need to know about interaction between the Chicago PSLO and the Cook County Sick Leave Ordinance.

- **Conflicts Between Chicago PSLO and Cook County Sick Leave Ordinance:** Article VII, Section 6(c) of the [Illinois Constitution](#) states that “if a home rule county ordinance conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction.” Therefore, to the extent the Chicago PSLO and Cook County sick leave ordinance impose differing obligations on covered Chicago employers, it is likely that the Chicago PSLO will govern. Unfortunately for covered Chicago employers that are also covered employers under the Cook County ordinance for locations outside of the City of Chicago, the Illinois Constitution’s language does not provide a remedy for reconciling distinctions between the laws.
- **Exclusions and Union Employees:** The Draft Rules list several types of workers that are excluded from the PSLO. Notably, the Draft Rules clarify that the PSLO does not apply to hours worked by employees covered by a collective bargaining agreement (“CBA”) in force on July 1, 2017. Employees covered by CBAs entered into after June 30, 2017 will be entitled to the PSLO’s benefits (assuming they otherwise satisfy the law’s eligibility and coverage standards) unless the CBA expressly waives the PSLO’s requirements in clear and unambiguous terms.
- **Accrual of Paid Sick Leave:** Under the PSLO, eligible employees accrue paid sick leave at a rate of at least one hour of sick leave for every 40 hours worked. The Draft Rules confirm that only hours worked within the City of Chicago count toward accrual of paid sick leave. Moreover, employers are not required to allow accrual of paid sick leave when an employee is absent on paid or unpaid leave.

¹ For more information, see our [prior alert](#) on the Chicago PSLO.

- **Frontloading Paid Sick Leave:** A major development in the Draft Rules is the language discussing covered employers' ability to comply with the PSLO via a frontloaded lump grant system. The Draft Rules state that employers may choose to immediately grant their employees paid sick leave or PTO at the start of the benefit year in lieu of following an accrual model. In particular, the Draft Rules explain that if an employer frontloads its newly hired employees a 40-hour lump grant of paid leave within 180 days of the employees' start of employment, and 60 hours of paid leave at the start of each subsequent benefit year, then the employer is not required to track sick leave accrual or follow the PSLO's complicated year-end carryover obligations. Note that the paid leave must be available for use in the manner at least as set forth in the PSLO. This is in contrast with the Cook County Sick Leave Ordinance which requires employers to frontload 100 hours to remove carryover obligations.
- **Year-End Carryover:** Where an employer opts to follow an accrual system, it must still follow the PSLO's carryover requirements. The PSLO provides that employees must be allowed to carry over to the following benefit year half of their unused, accrued sick leave, up to a maximum of 20 hours. Where an employer is subject to the Family Medical Leave Act ("FMLA"), employees are allowed to carry over up to 40 hours of additional unused, accrued sick leave (i.e., 60 total hours) into the subsequent year. There is language in the PSLO stating that certain amounts of this carried over time must be used exclusively for FMLA-eligible purposes.
 - **Draft Rules:** The Draft Rules explain that employers who are subject to the PSLO's carryover requirements must round up any odd number of unused paid sick leave at year-end to the next even number. This will allow the employer to ensure that employees carryover full increments of unused sick leave. In addition, while the Draft Rules suggest that employees have the option of carrying over unused paid sick leave for use under the PSLO or for use under the FMLA, an employer can require that employees notify the employer of this choice at the start of the benefit year.
- **Annual Usage Cap:** While the PSLO states that an employee is entitled to use no more than 40 hours of paid sick leave in a given year, the Draft Rules state, without reference to the PSLO's FMLA exception, that a covered employee may use a maximum annual amount of 60 hours of paid sick leave. The Draft Rules explicitly allow an employer that grants its workers greater paid sick leave hours than the PSLO's minimum requirement to limit the PSLO-required usage standards to the number of hours guaranteed by the PSLO.
- **Covered Family Member:** The PSLO contains a broad list of covered family members, which includes, among other relationships, any other individual related by blood or whose close association with the employee is the equivalent of a family relationship. The Draft Rules expressly state that family member may also include a godchild, godparent, and co-parent.
- **Payment of Sick Leave:** The Draft Rules state that paid sick leave must be paid no later than the next regular payroll period beginning after the paid sick leave was used by the employee.
- **Reinstatement of Unused Sick Leave Upon Rehire:** Unlike many paid sick leave laws and ordinances, the PSLO lacks a provision discussing whether an employer must reinstate its employees earned, unused paid sick leave if they are rehired within a certain amount of time after separation of employment. The Draft Rules, however, clarify this grey area and note that employers have discretion when deciding whether previously earned, unused paid sick leave becomes available to a covered employee upon rehire.
- **Notice and Posting Requirements:** The Draft Rules state that the Commissioner of the Chicago Department of Business Affairs and Consumer Protection shall prepare a model notice employers can use to comply with the PSLO's notice and posting requirements. The model notice will be published on the city's [minimum wage website](#), presumably before the July 1 effective date.
- **Recordkeeping Requirements:** The PSLO is silent on covered employers' specific recordkeeping obligations. The Draft Rules break this silence and note that employers must maintain at least 12 different types of records for a period of not less than five years. Among the required records are the date each covered employee was eligible to use paid sick leave and the dates and number of hours each covered employee used paid sick leave.

Chicago employers should take steps now to ensure that they will be able to achieve full compliance with the PSLO by the July 1, 2017 effective date. These are among the actions to consider:

- Review existing policies and procedures immediately to ensure that they meet at least the minimum requirements or develop a new paid sick leave policy that complies with the PSLO.
- Determine whether to have a single combined policy or separate policies for Chicago and Cook County locations.
- Review and, as necessary, revise anti-retaliation, attendance, conduct, and discipline policies to prevent retaliation against employees for taking paid sick leave.
- Prepare to comply with the PSLO's posting and notification requirements and monitor the city's [minimum wage website](#) for model notices and other sick leave guidance and updates.
- Train supervisory and managerial employees, as well as HR, on the PSLO requirements.
- Await further guidance, including final rules regulations, from the Chicago Department of Business Affairs and Consumer Protection, and update policies and practices to comply with any finalized advice.

With the paid sick leave landscape continuing to expand and grow in complexity, companies should reach out to their Seyfarth contact for solutions and recommendations on addressing compliance with this law and sick leave requirements generally. To stay up-to-date on Paid Sick Leave developments, [click here](#) to sign up for Seyfarth's Paid Sick Leave mailing list.

If you would like further information, please contact [Joshua D. Seidman](#) at jseidman@seyfarth.com or [Tracy M. Billows](#) at tbillows@seyfarth.com.

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