

One Minute Memo®



Recent Changes and Clarifications to the Illinois Employee Sick Leave Act

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Seyfarth Synopsis: The Illinois Employee Sick Leave Act (“ESLA”), which went into effect on January 1, 2017, requires employers that provide employees with “personal sick leave benefits” must allow the use of such benefits for certain covered family members. On January 10, 2017, only nine days after the ESLA went into effect, the Illinois General Assembly approved SB 2799, which purportedly cleans up and clarifies issues raised by the ESLA. Unfortunately, many of the changes seem to also create further ambiguity. This One Minute Memo discusses the recent revisions that are expected to go into effect within the next 90 days.

The Illinois Employee Sick Leave Act (“ESLA”), which went into effect on January 1, 2017, requires employers that provide employees with “personal sick leave benefits” must allow the use of such benefits for certain covered family members. A detailed discussion regarding the ESLA previously published by Seyfarth can be found [here](#).

Little is known about this law, which may have wide implications for employers and employees. The Illinois Department of Labor (“IDOL”), which is charged with enforcing the new law, just posted a complaint form and FAQs on its website last week, which can both be found [here](#). The FAQs do not contain specific guidance on how the IDOL intends to enforce this new law, although it appears that the IDOL only intends to enforce the “family care” language of the law and not to enforce the application of an employer’s sick pay policy for an employee’s use of sick time for personal illness.

On January 10, 2017, only nine days after the ESLA went into effect, the Illinois General Assembly approved SB 2799, which purportedly cleans up and clarifies issues raised by the ESLA. Unfortunately, many of the changes seem to also create further ambiguity. Governor Rauner is expected to approve SB 2799 within the next 90 days and it will become effective immediately.

Specifically, SB 2799 includes the following notable changes to the ESLA:

- Revises the definition of “personal sick leave benefits” from “time accrued and available” to “any paid or unpaid time available to an employee as provided through an *employment benefit plan or policy*. . . .” Under the new definition, the time need not be accrued to be covered. Additionally, it appears that if an employer allows unpaid time to be taken for personal sick leave under a covered plan or policy, it must also allow unpaid time be taken for reasons covered under the ESLA.

- Adds that an employment benefit plan or paid time off policy does not include long term disability, short term disability, an insurance policy, or other comparable benefit plan or policy. Unfortunately, it still remains unclear whether said plans must be ERISA based plans.
- Adds “stepchild” to the list of persons for whom an employee may use personal sick leave benefits and consistently addresses the coverage of domestic partners (who were previously mentioned in one section of the law but not another and which appeared to be a drafting error).
- Adds that an employer may request written verification of the employee’s absence from a health care professional if such verification is required under the employer’s employment benefit plan or paid time off policy.
- Adds that when sick leave benefits are based on years of service (instead of annual or monthly accrual), the employer may limit the amount of sick leave used under the ESLA to half of the employee’s maximum annual grant.
- Adds in the provision prohibiting retaliation: *“Nothing in this Section prohibits an employer from applying the terms and conditions set forth in the employment benefit plan or paid time off policy applicable to personal sick leave benefits.”* [Note: the intent behind this additional language is unclear.]
- Adds that the ESLA does not apply to: (i) an employee of an employer subject to certain provisions of the Railway Labor Act; or (ii) an employer or employee as defined in either the federal Railroad Unemployment Insurance Act or the Federal Employers’ Liability Act.
- Adds that the ESLA does not affect collective bargaining agreements or any party’s power to collectively bargain such an agreement.

Given the number of significant changes proposed under SB 2799, employers with policies and/or applicable benefit plans providing sick leave benefits to employees, including those employers who recently revised such policies to comply with the ESLA as previously drafted, should carefully review these policies and benefit plans to ensure they fully comply.

We will continue to monitor the ELSA and will provide updates should any arise. If you have any questions or require assistance reviewing your policies or applicable benefits plans, please contact your Seyfarth attorney, [Joan Casciari](mailto:joan.casciari@seyfarth.com) at joan.casciari@seyfarth.com, [Tracy Billows](mailto:tracy.billows@seyfarth.com) at [tbillows@seyfarth.com](mailto:tracy.billows@seyfarth.com), or [Megan Toth](mailto:megan.toth@seyfarth.com) at mtoth@seyfarth.com.

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