



Finally Some Answers for Employers: Illinois Clarifies 5 Key Points on New Paid Leave Law

Insights

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Illinois employers now have some long-awaited answers to key questions about a paid leave law that took effect earlier this year. Specifically, the Illinois Department of Labor published final regulations on April 30 interpreting the Paid Leave for All Workers Act. And while many of the rules, which took effect immediately, are consistent with the previous proposal, some final rules have changed and may have a large impact on how Illinois employers draft, implement, and enforce paid leave policies. Here are five critical areas to review as you update your PTO policies and practices.

1. Qualifying Pre-Existing Paid Leave Policies

Under the act, if employers provide any type of paid leave policy that provides at least 40 hours of paid leave and offers employees the option to take paid leave for any reason, they do not need to modify their policy to comply with the other requirements of the act. The final regulations clarify what is required under pre-existing policies to be carved out from having to comply with the other requirements of the act as follows:

- The qualifying pre-existing paid leave policy must be in effect as of January 1, 2024. However, employers may modify their pre-existing policies after January 1 as long as the policies still provide the minimum amount of leave required.
- An employer who maintains a pre-existing paid leave policy for part of its workforce only needs to implement a new policy in compliance with the act for the other employees. For example, an employer who provides 40 hours of paid vacation that can be used for any reason each year to its full-time employees but no paid vacation to its part-time employees will only need to implement a new paid leave policy for its part-time employees.
- Qualifying pre-existing paid leave policies can require advance notice and manager approval as long as the paid leave can be used for any reason.
- “Vacation” and “sick” leave policies can be used for qualifying pre-existing policies so long as the policy was modified prior to January 1, 2024, to allow employees to use their paid leave for any reason. Note, however, employers may still be required to comply with Illinois law regarding vacation time and its payment at separation of employment.

2. Carryover

Under the act, accrued but unused leave must be carried over from one 12-month period to the next. However, the final regulations explain that an employer may establish a reasonable policy limiting the amount of carryover to 40 hours of unused paid leave. Additionally, an employer and employee may agree that the unused leave will be paid out at the end of the 12-month period in lieu of carryover.

3. Frontloading

The final regulations confirmed that employers may pro-rate frontloaded paid leave for employees who begin their employment in the middle of the 12-month period, consistent with the employee's anticipated work schedule.

Similarly, frontloaded paid leave for part-time employees may be pro-rated consistent with the employee's anticipated work schedule. Note, however, employers that provided paid leave via the frontloading method may not recoup or require an employee to repay any used paid leave if their employment ends before the end of the 12-month period.

4. Denial of Paid Leave

The final regulations provide employers with much more discretion when approving or denying an employee's paid leave request. Under the proposed rules, employers could only deny a request to use paid leave if certain limited factors were met, like whether the employer provides a service critical to the health, safety, or welfare of the people of Illinois and whether the requested leave would significantly impact business operations due to the employer's size. Under the final regulations, however, employers have broader discretion to deny a request for paid leave and can do so if all of the following conditions are met:

- The employer's policy for considering leave requests under the act, including any basis for denial, is disclosed to the employee in writing;
- The employer's paid leave policy establishes certain limited circumstances in which paid leave may be denied in order to meet the employer's operational needs for the requested time period; and
- As a matter of fact, the employer's policy is consistently applied to similarly situated employees and does not effectively deny an employee adequate opportunity to use all paid leave time they are entitled to over a 12-month period.

5. Rate of Pay

The final regulations clarified that employees are to be paid their hourly rate of pay when taking paid leave. The proposed regulations included a "regular rate of pay" calculation for some employees, but this calculation has been removed in the final regulations and is now consistent with the act.

Next Steps for Employers

Employers should review their PTO policies, notices, recordkeeping, and other practices for compliance with the final regulations. While this article outlines many of the key requirements and clarifications of the final regulations, employers should consult with appropriate legal counsel as to all business adjustments that may be necessary.

We will continue to monitor any further developments and provide updates on these and other labor and employment issues affecting employers, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Chicago office](#).

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