

ILLINOIS

EMPLOYMENT LAW

City of Chicago Paid Sick Leave



Illinois does not currently have a statewide law that requires private employers to provide employees with paid sick leave. However, the city of Chicago enacted a law that requires employers to provide employees with paid sick leave, effective July 1, 2017. This law is the [City of Chicago Minimum Wage and Paid Sick Leave Ordinance](#).

In general, all employers in Chicago must comply with the paid sick leave law. The law covers any employee who works within Chicago's city limits and who works 80 or more hours in a 120-day period. Employees must accrue one hour of sick leave for every 40 hours worked, up to 40 hours in a 12-month period. Employers with paid time off policies that meet or exceed the paid sick leave requirements are not required to provide additional paid sick leave.

CITY & COUNTY RESOURCES

[City of Chicago Paid Sick Leave Website](#)

[Chicago Paid Sick Leave Ordinance Fact Sheet](#)

[City of Chicago Final Rules for Paid Sick Leave](#)

City of Chicago Poster

Employers can use this model [poster](#) to satisfy workplace posting requirements.

Cook County Paid Sick Leave

Cook County has its own paid sick leave law—the [Cook County Earned Sick Leave Ordinance](#)—which also became effective on July 1, 2017. While numerous municipalities have opted out of Cook County's paid sick leave law, the city of Chicago has not. Thus, Chicago employers are generally subject to both Chicago's and Cook County's paid sick leave laws. However, the laws are very similar and the Cook County Commission on Human Rights has [indicated](#) that an *employer that is complying with Chicago's paid sick leave law will not be found to have violated Cook County's paid sick leave law.*

This Employment Law Summary provides an overview of Chicago's paid sick leave law.

KEY PROVISIONS

Key provisions of Chicago's paid sick leave law include the following:

- ✓ Employees must accrue one hour of sick leave for every 40 hours worked, up to 40 in a 12-month period;
- ✓ Employees begin accruing paid sick leave upon commencement of employment;
- ✓ Employers may require employees to satisfy a 180-day waiting period prior to using accrued sick leave;

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- ✓ Employers may limit employee use of paid sick leave to 40 hours per 12-month period (or 60 hours if a Family and Medical Leave Act (FMLA)-protected leave is involved);
- ✓ Employers must post a notice regarding paid sick leave in their workplaces and provide a notice to employees in their first paychecks;
- ✓ Sick leave may be used by employees to care for themselves or their family members when they are sick or to receive medical care, or if the employee or family member is the victim of domestic violence or sexual abuse; and
- ✓ Employers with paid time off policies that meet paid sick leave requirements are not required to provide additional paid leave.

COVERED EMPLOYERS

In general, all employers in Chicago must comply with the paid sick leave law. Specifically, every employer that maintains a business facility in Chicago or is required to obtain a business license to operate in Chicago is covered by the paid sick

Employer Paid Time Off Policies

If an employer maintains a policy that provides employees with paid time off in an amount and manner that meets Chicago's paid sick leave requirements, the employer is not required to provide additional paid leave. In order for this exception to apply, employees must receive an amount of paid leave that is at least equal to the amount of paid sick leave required by the law and employees must be able to use leave under the employer's policy for the same reasons as authorized by the law.

leave law, regardless of size.

ELIGIBLE EMPLOYEES

Chicago's paid sick leave law applies to employees who work at least **two hours** for an employer in any two-week period within the geographic boundaries of the city of Chicago. Any covered employee who works at least **80 hours for an employer within any 120-day period** is eligible for accrued paid sick leave. An employer must allow a covered employee to begin using accrued paid sick leave no later than the 180th calendar day following the commencement of his or her employment.

Chicago's paid sick leave requirements do not apply to employees working in the construction industry who are covered by a collective bargaining agreement. The paid sick leave requirements also do not apply to collective bargaining agreements entered into before July 1, 2017. In addition, the requirements may be waived in collective bargaining agreements entered into after July 1, 2017, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms.

ACCRUAL RULES

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Covered employees begin accruing paid sick leave upon commencement of employment (or July 1, 2017, if later). Paid sick leave is accrued at a rate of **one hour for every 40 hours worked**, up to 40 hours per 12-month period. Only hours worked within the city of Chicago count for purposes of paid sick leave accrual.

Accrual of paid sick leave must be in hourly increments. Employers are **not** required to allow accrual of paid sick leave during a covered employee's use of any paid or unpaid leave.

Establishing a Benefit Year

In general, the 12-month period for accruing and using paid sick leave is calculated from the date the employee begins accruing paid sick leave (anniversary date). However, an employer may establish its own "benefit year" so that all employees have benefits granted at the same time. An employer may establish its benefit year for paid sick leave as any 12-month period, such as the employee's anniversary year, the calendar year, fiscal year or any other 12-month period the employer chooses. If an employer's benefit year begins after the employee's start date, up to 20 hours of any accrued sick leave must be carried over to the benefit year.

Also, employees who are exempt under the Fair Labor Standards Act (FLSA) are assumed to earn one hour of paid sick leave for each workweek. However, when an exempt employee's normal workweek is fewer than 40 hours, paid sick leave is accrued based on the employee's normal workweek.

CARRYOVER REQUIREMENTS

The carryover requirements for paid sick leave depend on whether the employer is covered by the federal FMLA.

- **Employer Not Covered by FMLA**—Employees are entitled to carry over half of their unused paid sick leave to the next 12-month period, up to a maximum of 20 hours.
- **Employer Covered by FMLA**—Employees are entitled to carry over up to 40 hours of unused sick leave into the next 12-month period, in addition to the maximum of 20 hours otherwise allowed. The additional carryover of up to 40 hours must be used exclusively for FMLA qualifying reasons.

FRONTLOADING OPTION

To avoid complying with the accrual and carryover requirements for paid sick leave, employers may choose to front load employees' paid sick leave at the beginning of employment or a benefit year. The frontloading rules for paid sick leave depend on whether the employer is covered by the federal FMLA.

- **Employer Not Covered by FMLA**—If the employer provides employees with 40 hours of paid sick leave no later than 180 days after their commencement of employment, the employer is not required to provide additional paid leave.
- **Employer Covered by FMLA**—An employer is not required to provide additional paid leave if both of the following requirements are met:

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- Employees are provided with 40 hours of paid sick leave no later than 180 days after their commencement of employment; and
- The employer provides an additional 20 hours of paid sick leave at the start of each subsequent benefit year to be used for FMLA purposes. Thus, an employee would be able to use 40 hours of regular paid sick leave in a year, and up to 20 hours for FMLA leave, if the employee qualifies for FMLA leave. Alternatively, an employee could take 40 hours of FMLA leave, if qualified, and 20 hours of regular paid sick leave. If an employee does not have an FMLA-qualifying need to for leave, the employee would be able to take a maximum of 40 hours of paid sick leave.

USE OF PAID SICK LEAVE

An employee must be allowed to use paid sick leave no later than 180 days after he or she began working for the employer if the employee worked at least 80 hours during any 120-period. Employees must use paid sick leave in hourly increments, unless the employer establishes a written policy regarding minimum use that is available to all employees.

An employee may use a maximum of 40 hours of accrued paid sick leave during a benefit year. However, an employee who works for an employer that is subject to the FMLA may use up to 60 hours of paid sick leave during a benefit year if the employee needs to take leave covered by the FMLA.

Employees must be permitted to use paid sick leave for any of the following reasons:

- ✓ The employee is ill or injured, or for the purpose of receiving medical care, treatment, diagnosis or preventive medical care;
- ✓ The employee's family member is ill or injured, or the family member is in need of medical care, treatment, diagnosis or preventive medical care;
- ✓ The employee or the employee's family member is the victim of domestic violence or a sex offense; or
- ✓ The employee's place of business is closed by order of a public official due to a public health emergency, or the employee must care for his or her child due to the child's school or place of care being closed by order of a public health official due to a public health emergency.

Employers may not require an employee to find a replacement worker in order to use available paid sick leave. In addition, an employer is prohibited from retaliating or discriminating against any employee for exercising his or her paid sick leave rights. An employer may not count paid sick leave absences as an absence under its attendance policy that could lead to discipline, discharge or other adverse employment action against the employee.

Family Members

For purposes of taking paid sick leave, a family member includes an employee's child, legal guardian or ward, spouse, domestic partner, parent, spouse or domestic partner's parent, sibling, grandparent, grandchild or any other individual related by blood whose close association with the employee is the equivalent of a family relationship. In addition, the [final rules](#) implementing Chicago's paid sick leave requirements clarify that an employee's family member includes, but is not limited to, a godchild, godparent or co-parent, and that the definition of family member is situation specific and must be determined based on the circumstances of the people involved.

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Payment of Paid Sick Leave

Paid sick leave must be paid at the same rate and with the same benefits (including health care benefits) that the employee regularly earns. It must be paid by the next regular payroll period beginning after the employee used the leave.

For employees who are paid on a commission basis (base wage plus commission or commission only), an employer must compensate paid sick leave at the hourly rate of pay based on the base wage or the applicable minimum wage, whichever is greater. Tipped employees whose base wage rate is less than the minimum wage must have paid sick leave compensated at an hourly rate that is at least equal to the minimum wage.

Employers are not required to payout an employee's accrued but unused sick leave upon separation of employment.

EMPLOYEE NOTICE & DOCUMENTATION REQUIREMENTS

When an employee's need to use paid sick leave is reasonably foreseeable, an employer may require the employee to provide up to **seven days' notice** before leave is taken. Where the employee's need for paid sick leave is not reasonable foreseeable, the employee must provide the employer with notice as soon as practicable, via phone, email or text message, on the day the employee intends to take paid sick leave.

If an employee is absent for **three or more consecutive work days**, the employer may require certification that the employee's use of paid sick leave was an authorized use under the ordinance. While an employer may not delay an employee's use or payment of paid sick leave on the basis that the employer has not received the appropriate certification, employers may take disciplinary action (up to and including termination) against an employee who uses paid sick leave for an unauthorized purpose.

EMPLOYER NOTICE & RECORDKEEPING REQUIREMENTS

Employers must conspicuously post a [notice](#) in the workplace that informs employees of their rights under Chicago's paid sick leave law. An employer that has covered employees in the geographical boundaries of city of Chicago but does not maintain a business facility within the city limits, is exempt from this posting requirement.

In addition, employers must provide employees with written notice of their paid sick leave rights with the employee's first paycheck.

Chicago's paid sick leave law also requires employers to maintain the following records for a period of no less than **five years**:

- ✓ Name of each covered employee;
- ✓ Mailing address, phone number and email address of each covered employee;
- ✓ Occupation and job title of each covered employee;
- ✓ Hire date of each covered employee;
- ✓ Date each covered employee was eligible to use paid sick leave;

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- ✓ Number of hours of paid sick leave accrued by, or awarded to, each covered employee;
- ✓ Dates and number of hours each covered employee used paid sick leave;
- ✓ Rates of pay of each covered employee;
- ✓ Hours worked each day and each workweek by each covered employee;
- ✓ Type of payment (hourly rate, salary, commission, etc.) straight-time and overtime pay and total wages paid to each covered employee in each pay period;
- ✓ Additions and deductions from each covered employee's wages for each pay period and an explanation of additions and deductions; and
- ✓ Dates of payment of each pay period covered by each wage payment to each covered employee.

ENFORCEMENT

Chicago's paid sick leave law allows employees to sue their employers for paid sick leave violations and receive damages equal to three times the full amount of any unpaid sick time that was denied or lost due to the employer's violation, including interest on the amount and costs for reasonable attorney's fees. Employees may also file complaints with the state agency that enforces the paid sick leave requirements, the [Chicago Department of Business Affairs and Consumer Protection](#) (BACP), and the BACP may initiate an investigation of the employer.