

## EMPLOYERS BE ON NOTICE – PAID LEAVE FOR ANY REASON COMING TO ILLINOIS IN 2024

On January 10, 2023, Illinois passed Senate Bill 208, otherwise known as the **Paid Leave for All Workers Act** (the “PLFAW” or the “Act”). Governor Pritzker has expressed enthusiasm for the Act and released a [statement](#) supporting his intention to sign the bill into law.

Once signed into law, the Act, which will take effect on January 1, 2024, will require most private employers to provide Illinois workers with a minimum of 40 hours of earned paid leave, or a pro-rata number of hours, during a designated twelve-month period that can be used by an employee for any reason.

The PLFAW also contains several other provisions that may impact employer administration of existing paid leave, including, but not limited to, rate of pay calculations and modification of existing policies, as well as additional notice, posting and recordkeeping requirements. Finally, the Act contains prohibitions on retaliation against employees for exercising their rights under the Act.

### 1. Who is subject to the PLFAW?

The Act specifies that it broadly applies to all employees “who work[] in Illinois”. However, there are exceptions; the Act will not cover students employed on a parttime, temporary basis by the college or university they attend, certain short-term employees of institutions of higher learning, independent contractors, or certain employees covered by bona fide collective bargaining agreements.

While most public and private employers are covered by the Act, it will not apply to public employers such as school districts or park districts. Notably the Act does not apply to employers subject to an existing municipal or county ordinance - such as the Chicago Paid Sick Leave Ordinance or the Cook County Earned Sick Leave Ordinance (that already requires 40 hours of paid leave but is more restrictive in the use of such leave).

## 2. Earning PLFAW Leave

Under the Act, leave shall accrue at a rate of one hour of paid leave for every forty hours worked for up to a minimum of 40 hours of paid leave. However, while any unused accrued PLFAW leave will carry over annually, employers will not be required to provide more than 40 hours of paid leave to any employee in a single designated twelve-month period.

Alternatively, employers may choose to frontload PLFAW leave from the first day of employment or the first day of a designated twelve-month period. Employers who choose to frontload PLFAW leave will not be required to carry over unused leave to the next twelve-month period.

## 3. Using PLFAW Leave

Once enacted, the Act will permit employees to use PLFAW leave after 90 days of employment. The Act will not require employees to give a reason for taking leave, and employers will not be permitted to require documentation supporting requests to take leave. Employers may, however, require up to seven calendar days' notice for foreseeable leave, provided they have an established a written policy outlining notice requirements and procedures. If the leave is not foreseeable, employees need only provide notice as soon as practicable. Employees may determine how much leave they need to use, but employers may set a reasonable minimum increment of no less than two hours per day.

## 4. Termination and Reinstatement

Unlike Illinois law relating to the payout of earned and unused *vacation time*, the Act will *not* require employers to payout employees for earned, unused PLFAW leave upon termination or resignation. However, if an employee leaves their employer and is subsequently rehired within a 12-month period, any previously accrued and unused PLFAW leave must be reinstated, and the employee will be entitled to use any such paid leave without a waiting period.

## **5. Employer Recordkeeping and Notice Requirements**

Employers will need to keep employee records documenting hours worked, leave accrued and taken, and remaining paid leave balances for each employee. Such records must be maintained for at least three years. Employers that provide PLFAW leave on an accrual basis must also provide information on the amount of leave accrued or used by an employee at the employee's request.

Furthermore, employers will be required to post notices in the workplace summarizing the requirements of the Act and giving employees information on how to file charges for violations of the Act.

## **6. Violating the PLFAW**

Once enacted, the Act will prohibit employers from taking adverse action against employees for exercising their rights under the Act or considering the use of leave under the PLFAW Act when making discipline, promotion, or evaluation decisions. The Act will be administered by the Illinois Department of Labor ("IDOL"). Employees improperly denied their rights under the Act will be permitted to bring complaints to the IDOL within 3 years of any violation of the Act. Employers who fail to abide by any provision contained in the Act may be liable to employees for up to \$1000 in civil penalties as well as damages in the form of underpayment, compensatory damages, equitable relief, reasonable attorneys' fees, and other costs of maintaining an action against the employer. Employers will also be subject to a statutory penalty of \$2,500 for each violation of the Act, to be paid into a "Paid Leave for All Workers Fund," which will be used to enforce the Act.

## **Employer Recommendations and Considerations**

While employers have almost a year to prepare for the Paid Leave for All Workers Act to take effect, they should start reviewing their policies and assessing their responsibilities under the Act much sooner. Employers that already have paid leave policies that provide at least forty hours of leave per year will not be required to modify their policies as long as the leave can be taken for any reason consistent with the Act.

# CCM ALERT

February 22, 2023

However, employers without such policies will need to consider changing existing accrual policies or creating policies specifically addressing the Act.

Regardless of their current procedures, all employers should consider taking the following steps:

- Review company handbooks, employee leave policies, and other relevant leave notification processes to determine compliance with changing Illinois requirements.
- Develop a paid leave policy that complies with the Act for any employees who are not covered under the employer's existing paid leave or PTO policies.
- Train supervisory and managerial employees on the Act's requirements and review, as necessary, anti-retaliation, attendance, conduct, and discipline policies to prevent retaliation against employees for taking time off under the Act.
- Stay informed about IDOL guidance pertaining to employer obligations and responsibilities under the Act.

For further questions about the new law and how it may impact your business, or for help with drafting or modifying existing policies to comply, please contact Edward Druck, Iman Eikram, or any other CCM lawyer with whom you have worked.