

Insights

Illinois Employment Alert: Add Paid Leave Policy to Employee Handbook

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Effective January 1, 2024, most full-time employees in Illinois are entitled to 40 hours of paid leave annually, to be used for any reason. Illinois now joins Maine and Nevada as the only three states implementing such legislation. The Paid Leave for All Workers Act (PLAWA) emphasizes liberal interpretation for the maximum benefit of employees' time off and job security (820 ILCS 192/5).

The Illinois Department of Labor (IDOL) will enforce PLAWA against any employer operating in Illinois with employees working predominantly in the state. This law applies universally, covering all types of employees, including part-time, temporary, seasonal, domestic, interns, and government employees, excluding only *bona fide* independent contractors.

In general, employees accrue one hour of paid leave for every 40 hours worked, up to a maximum of 40 hours per year. Employers with existing policies allowing 40 hours of paid leave for any reason need not modify them, but should be aware of additional PLAWA requirements, including:

- Employers must grant leave without questioning the reason (i.e., leave may be taken “for any reason of the employee’s choosing”).
- Full-time, salaried workers accrue 1 hour of leave per week, regardless of working more than 40 hours.
- Leave accrues from the start of employment, but usage can be delayed up to 90 days.
- Employers may frontload leave by giving employees the minimum required number of paid hours available on the first day of employment; however, frontloaded leave cannot be reclaimed if an employee resigns mid-year.
- Tipped and commissioned employees receive at least local minimum wage during leave.
- Unused leave (excluding frontloaded) must carry over annually, but usage can be capped at 40 hours per year.
- Records of leave accrual and usage must be maintained for three years.
- Employers must display a "Know Your Rights" poster on premises.
- Use of PLAWA leave cannot be considered negatively against the employee for any reason.

Employers have the flexibility to adopt clearly communicated policies on accrual and use of paid leave, addressing aspects such as:

- Frontloading leave hours at the start of the year.
- Applying different accrual rules to different employee types.
- Requiring advance notice and informing employees of operational necessities.
- Establishing rules for using leave to cover no-call, no-show instances.
- Setting minimum hours for leave usage (e.g., 2-hour minimum for a half-hour errand).
- Establishing rules for payout of unused leave upon termination.

These policies must be stated in advance as part of a written and consistently applied policy, preferably the employee handbook distributed to all employees on their first day. Employers who do not have leave provisions in their handbooks will expose themselves to deeper IDOL investigations, which may include employee interviews and record audits.

IDOL is currently focused on compliance assistance, but stricter enforcement is certain to follow. While PLAWA does not grant employees a private right of action, IDOL can sue employers for back wages, compensatory damages, and attorney fees for employees, as well as imposing its own fines for violations.

Penalties and Enforcement

❖ Complaints can be filed up to 3 years after the alleged violation

| Violation | Payee | Description |
|---|-------------|--|
| Any violation against affected employee(s) | Employee(s) | <ul style="list-style-type: none"> • back wages • compensatory da • penalty of \$500- • other relief as ap |
| Any violation of the Act except public notice violation | IDOL | <ul style="list-style-type: none"> • \$2,500 |
| Failure to post public notice | IDOL | <ul style="list-style-type: none"> • 1st offense: \$500 • subsequent offer |



Email: DOL.PaidLeave@illinois.gov

IDOL has issued proposed regulations implementing PLAWA, but as of the date of this alert the regulations are still in the formal rulemaking and comment process. As such, there may be additional employer requirements as PLAWA's implementation develops.

For questions about PLAWA's applicability, compliance, and impact on your company's employment practices, please contact Nancy J. Townsend, Matthew C. Branich, or another member of our Labor and Employment Practice.

Disclaimer: This article does not constitute legal advice on specific facts or circumstances. It is intended for general informational purposes only, and consulting with legal counsel is recommended for specific legal questions.