Engage PEO Client Alert: Illinois

Illinois Will Require Employers to Provide Paid Leave to Most Workers, for Any Reason

WHAT'S NEW: As of January 1, 2024, the Paid Leave for All Workers Act ("the Act") will require employers to provide up to 40 hours of paid leave (PTO) in a 12-month period to most workers for any reason. Illinois employers that already offer PTO plans that meet the minimum requirements of the Act (i.e. 40 hours annually) already satisfy the Act's requirements and do not need to offer additional leave.

WHAT IT MEANS: All Illinois employers with at least one employee are covered by the Act. Moreover, the Act doesn't distinguish between part-time, full-time, or seasonal employees.

Employers may provide the paid leave using either the front-load method **or** the accrual method. Here are the key highlights of the Act:

Front-Load Method: An employer can elect to grant employees a lump-sum grant of 40 hours of paid leave each year (or pro rata amount of what the employee would earn if accrued during the year). Employers that frontload the minimum number of hours of paid leave are not required not allow employees to carryover any paid leave time from year to year.

Accrual Method: An employer can require their employees to accrue paid leave time based on the number of hours worked at a rate of one hour of paid leave for every 40 hours worked. Employers can choose to use smaller proportional increments, such as .025 hours of paid leave per hour worked. This means that a part-time employee might not accrue the full 40 hours of leave provided for in the Act by the end of the year based on the number of hours they worked.

Additionally, properly classified **exempt** employees under the Fair Labor Standards Act shall be deemed to work 40 hours in each workweek for purposes of paid leave time accrual if they regularly work 40 (or more) hours in a workweek.

Carryover: Employees will be allowed to carryover any accrued, unused paid leave at the end of the year. As mentioned above, employers that **front-load** the minimum number of hours of paid leave are not required to allow employees to carryover any paid leave time from year to year. If an employer provides for carryover of paid leave, it may limit an employee's use of paid leave to 40 hours per year.

Waiting Period: Although accrual of paid leave is required to begin January 1, 2024, employees are not entitled to begin using the accrued paid leave until **90 days after** the Act's effective date or the start of employment (whichever is later). Therefore, the earliest day any employee must be allowed to take time off time is March 31, 2024.

12-Month Period: The 12-month period may be any consecutive 12-month period designated by the employer in writing at the time of hire. Changes to the 12-month period may be made by the employer if notice is given to employees in writing prior to the change and the change does not reduce the eligible accrual rate and paid leave available to the employee.

Interaction with Local Sick Leave Ordinances: The Act does not require that employers offer sick leave in addition to 40 hours of paid leave (PTO) annually. However, the Act will not apply to any employer covered by an **already existing** municipal or county ordinance that requires employers to give any form of paid leave to their employees, including paid sick leave. Notably, employers in municipalities who have opted out of another paid leave ordinance (*i.e.*, Cook County paid leave ordinance) are still required to comply with the Act.

Repayment of Negative PTO Balance: Employers **may opt** to permit employees to borrow against future accrual, thereby allowing the employee to have a negative paid leave balance. An employer may only make an employee repay borrowed accrued leave if that policy is disclosed in the employer's written paid leave policy and the employee agrees to that policy in writing prior to taking any leave. All payroll deductions must comply with the requirements of the Illinois Wage Payment and Collection Act.

Payout Upon Termination: The requirements of the Illinois Wage Payment and Collection Act would apply. Illinois employers are required to pay the monetary equivalent of all **earned** PTO or vacation to an employee who resigns or is terminated without having taken all PTO or vacation time earned in accordance with the policy. The policy is not allowed to provide for a forfeiture of **earned** time upon separation.

Penalties: The Act will be administered by the Illinois Department of Labor. Aggrieved employees may bring a complaint to the Department within three years of any violation. In addition to administrative penalties and the amount of any underpayment, employees can recoup compensatory damages, attorneys' fees, and other costs.

WHAT EMPLOYERS SHOULD DO: Illinois employers should review the Illinois Department of Labor's FAQ's as well as their current PTO policies to ensure that they currently meet or exceed **the minimum requirements** of the Act.

Additionally, employers should review and, as necessary, revise anti-retaliation, attendance, conduct, and discipline policies to prevent retaliation against employees for taking time off under the Act.

Please reach out to your Engage Human Resources Consultant if you have any questions concerning this alert or other H.R.-related matters.