



DRAFT

SB 208 – Illinois Mandatory Paid Leave Legislation

Passed by Illinois General Assembly in January 2023

Disclaimer: This is a preliminary analysis for the benefit of IBA members. At time of writing, the bill has not been signed into law, and thus no implementing administrative rules have been released. Accordingly, we strongly encourage our member banks to review the specific language of the legislation (and any forthcoming administrative rules) with your trusted human resources professionals, HR counsel, and other experts in employment regulations.

Background

During IL General Assembly's January lame duck session, [SB 208](#) was passed by both chambers. The bill creates a statewide paid leave requirement and represents an agreement between large employer groups, labor unions, and other parties. The IBA took no position on the bill. Governor Pritzker is expected to sign the bill into law.

Applicability

The bill defines "employer" by using the definition from the [Illinois Wage Payment and Collection Act](#):

As used in this Act, the term "employer" shall include any individual, partnership, association, corporation, limited liability company, business trust, employment and labor placement agencies where wage payments are made directly or indirectly by the agency or business for work undertaken by employees under hire to a third party pursuant to a contract between the business or agency with the third party, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, for which one or more persons is gainfully employed.

The bill additionally defines "employer" to include the State of Illinois and units of local government, but not school districts or park districts.

The bill's paid leave requirement generally applies to all employees who work in Illinois. The bill's definition of "employee" also references the IL Wage Payment and Collection Act as follows:

As used in this Act, the term "employee" shall include any individual permitted to work by an employer in an occupation, but shall not include any individual:

(1) who has been and will continue to be free from control and direction over the performance of his work, both under his contract of service with his employer and in fact; and

(2) who performs work which is either outside the usual course of business or is performed outside all of the places of business of the employer unless the employer is in the business of contracting with third parties for the placement of employees; and

(3) who is in an independently established trade, occupation, profession or business.

“Employee” also includes domestic workers, but it excludes certain student workers and railroad workers. The bill’s leave requirements apply broadly to all employee classes, both salary and hourly, and also must be accrued for part-time employees.

General Provisions, Accrual, and Rate of Pay

SB 208 creates the Paid Leave for All Workers Act, effective January 1, 2024. The Act provides that employees who work in Illinois are entitled to earn and use up to a minimum of 40 hours of paid leave – to be used for any purpose – during a 12-month period or a pro rata number of hours of paid leave earned by the employee. The paid leave shall accrue at the rate of one hour of paid leave for every 40 hours worked, up to a minimum of 40 hours of paid leave or such greater amount if the employer so chooses. Exempt employees are presumed to work 40 hours per week for accrual purposes.

Employees shall be paid their hourly rate of pay during paid leave. If an employee is engaged in an occupation where gratuities or commissions are a usual part of the employment, paid leave shall be paid at full minimum wage, at minimum.

Employers may make the entire 40 hours available to the employee on the first day of the 12-month period or the first day of work, whether they have accrued the hours or not. Employers that provide the minimum number of hours of paid leave to an employee on the first day of employment or the first day of the 12-month period are not required to carryover paid leave from 12-month period to 12-month period and may require employees to use all paid leave prior to the end of the benefit period or forfeit the unused paid leave.

Leave Purposes & Employer Notification

Paid leave under the Act may be used for any purpose. An employee is not required to provide an employer a reason for the leave and cannot be required to provide documentation or certification as proof or in support of the leave. An employee can choose whether to use the mandatory paid leave prior to using any other leave provided by the employer or State law.

Leave shall be provided upon the oral or written request of an employee in accordance with the employer's reasonable paid leave policy notification requirements which may include the following: (1) If the leave is foreseeable, employers may require up to 7 calendar days' notice; (2) If the leave is not foreseeable, the employee shall provide notice as soon as practicable; (3) An employer cannot require the employee to find a replacement worker to cover the hours during the paid leave.

Employees are not entitled to compensation upon employment separation for any unused paid leave under this Act. If an employee is transferred to another division within the same employer, their paid leave shall not be diminished. If the employee ceases to be employed by the employer, but is rehired within 12 months of separation, previously accrued paid leave that had not been used by the employee shall be reinstated and can be used immediately. If an employer elects to allow an employee to credit this leave to the employee's leave bank, the employee shall be paid for any unpaid leave upon employment separation.

An employer who provides any type of paid leave policy that satisfies the minimum amount of leave required by subsection (a) of Section 15 is not required to modify the policy if the policy offers an employee the option, at the employee's discretion, to take paid leave for any reason.

Local Ordinances

The provisions of the Act shall not apply to any employer that is covered by a municipal or county ordinance that is in effect on the effective date of this Act that requires employers to give any form of paid leave to their employees, including paid sick leave or paid leave. Any employer that is not required to provide paid leave to its employees under a local ordinance that is in effect on the

effective date of this Act shall be subject to the provisions of this Act if the employer would be required to provide paid leave under this Act to its employees.

Any local ordinance that provides paid leave, including paid sick leave or paid leave, enacted or amended after the effective date of this Act must comply with the requirements of this Act or provide benefits, rights, and remedies that are greater than or equal to the benefits, rights, and remedies afforded under this Act.

An employer in a municipality or county that enacts or amends a local ordinance that provides paid leave, including paid sick leave or paid leave, after the effective date of this Act shall only comply with the local ordinance or ordinances so long as the benefits, rights, and remedies are greater than or equal to the benefits, rights, and remedies afforded under this Act.

Employer Responsibilities

The legislation requires employers to keep records of accrued paid leave and remaining balances for up to 3 years and must provide the Department of Labor access to these records. Employers must also provide paid leave accrued information to employees upon request. Employers are prohibited from interfering with, denying, or changing an employee's work days or hours to avoid providing eligible paid leave time to an employee.

Notice of the Act's requirements and penalty provisions prepared by the Department of Labor shall be posted in a conspicuous place on the premises of the employer, as well as included in a written document or written employee manual or policy.

It is unlawful for any employer to threaten to take or to take any adverse action against an employee because the employee exercises rights or attempts to exercise rights under this Act, opposes practices which the employee believes to be in violation of this Act, or supports the exercise of rights of another under this Act. It is unlawful for any employer to consider the use of paid leave by an employee as a negative factor in any employment action that involves evaluating, promoting, disciplining, or counting paid leave under a no-fault attendance policy.

Penalties

A violation of the Act shall be subject to a civil penalty of \$2,500 for each violation, which will be deposited into the Paid Leave for All Workers Fund. An employee may file a complaint with IDOL within 3 years after an alleged violation. Any employer that violates the Act is responsible to the employee the actual underpayment, compensatory damages, and a penalty of \$500-\$1,000. Employees are also entitled to reasonable attorney's fees, expert witness fees, and any other costs of the action.