

Paid Leave for All Workers Act SB 208 (Gordon-Booth/Lightford – Passed both Houses)

As passed by the Illinois House and Senate, SB 208 establishes the Paid Leave for All Workers Act (“Act”), The Act requires employers to provide their employees with a minimum of 40 hours (i.e. 5 days) of paid leave per year that can be used for any reason.

1. Which employers are covered?

Beginning January 1, 2024, (1) all employers, as defined under the IL Wage Payment and Collection Act and (2) all units of state and local government, excluding School Districts organized under the School Code and Park Districts organized under the Park District Code, are covered under the Act.

2. How do employees earn paid leave?

An employee begins to accrue paid leave on the first day of employment at a rate of 1 hour of leave for every 40 hours worked. Employees may earn up to 40 hours of paid leave per year unless the employer provides more. An employer may “front-load” the leave by providing the 40 hours of leave on the first day of employment.

3. When is an employee entitled to start using paid leave?

Employees may use accrued paid leave starting on the 90th day of employment or 90 days after January 1, 2024, whichever is later. However, an employer may offer an employee the option to use paid leave earlier at the employer’s discretion.

4. Are there restrictions on the purpose an employee may use paid leave?

No. Employees may use the personal paid leave provided for any purpose without providing an employer a reason for the leave or any documentation or certification. Employees shall determine the amount of leave they need to use; however, employers may set a minimum increment not to exceed 2 hours per day.

5. Do employees need to provide notice before taking paid leave?

Yes. An employer may require employees to request paid leave in accordance with the employer’s written reasonable notification requirements. Further, the Act provides guidelines for requesting foreseeable and unforeseeable leave:

- **Foreseeable leave:** If the use of leave is foreseeable, the employer may require the employee to provide seven days’ notice
- **Unforeseeable leave:** If the use of leave is not foreseeable, an employee shall provide notice as soon as practicable, following any written policy for unforeseeable leave provided by the employer to the employee.

6. Can an employee “carry over” accrued paid leave if the employee does not use all of their accrued leave in a 12-month period?

Any accrued and unused paid leave will carry over annually to the next 12-month period, up to 40 hours.

7. Is an employee entitled to be paid out the remaining balance of accrued but unused paid leave upon termination from the employer?

No. Employers are not required to pay out any balance of an employee's paid leave. However, in the event of a layoff, any accrued leave shall be reinstated if the employee returns to employment.

8. Does this impact an employee's right to receive the unused balance of vacation time provided under Illinois' Wage Payment and Collection Act upon the termination of employment?

No. Employers are still required to pay employees for the remaining unused balance of vacation time upon separation from the employer. Additionally, any employer who comingles types of leave into one arrangement or account (e.g. a paid time off bank) must pay out the unused balance as part of an employee's final compensation. If paid leave under this Act is comingled with a vacation account, the employer must pay out the unused balance to the employee upon separation.

9. What is the rate of pay for employees using paid leave?

Employees must receive paid leave at their normal hourly rate of pay. Employees that typically receive gratuities or commissions must receive at least the full minimum wage within their jurisdiction. Employers must also maintain health care insurance coverage (if any) for employees during the leave.

10. Who is entitled to receive leave under this Act?

Any employee working for an employer of any size, excluding (1) independent contractors; (2) employees defined under the federal Railroad Unemployment Insurance Act or Railway Labor Act; (3) students participating in work-study for a college or university; (4) short-term employees at higher education institutions for less than 2 consecutive quarters that do not have a reasonable expectation of being by rehired; (5) any employee working in the construction industry covered by a collective bargaining agreement (6) employees covered by a collective bargaining agreement with an employer that provides services nationally and internationally of delivery, pickup, and transportation of parcels, documents and freight.

11. Does this Act impact collective bargaining agreements?

The Act does not apply to (1) employees with collective bargaining agreements in effect on January 1, 2024, or (2) employees employed by a state agency defined by the Forms Notice Act in effect on July 1, 2024. The requirements of the Act may be waived in future collective bargaining agreements if the waiver is set forth in the agreement.

12. How does this affect cities or municipalities that already have paid leave ordinances (e.g. Chicago)?

This Act does not apply to employers required to provide paid leave or sick leave under local ordinances already in effect. However, it does apply to employers if the employer would be required to provide paid leave under this Act for its employee, but the local ordinance does not currently require the employer to provide paid leave. This ensures that anyone that is not covered by the local ordinance is covered by this Act.

Any local ordinance or ordinances enacted after the effective date of this Act must provide, at a minimum, the rights, remedies, and benefits under this Act.

13. Who enforces the Act, and what are the violations of this Act?

- The Act is administered and enforced by the Illinois Department of Labor (IDOL) which has the power under the IL Administrative Procedure Act for contested cases. In addition, IDOL has the power to conduct investigations, conduct depositions and discovery, issue subpoenas, conduct hearings and impose civil penalties for violations of the Act.

- **Affected Employees:** An employee may file a complaint with the Department of Labor within three years of an alleged violation to recover:
 - (1) damages from the employer in the form of (i) the actual underpayment; (ii) compensatory damages; and (iii) a penalty of not less than \$500 and no more than \$1,000’;
 - (2) Other equitable relief;
 - (3) Reasonable attorney’s fees;
 - (4) Reasonable expert witness fees; and
 - (5) Other costs of the action.

The Attorney General may bring an action to enforce the collection of awards under this Act.

- **Civil Penalty:** Employers are subject to a \$2,500 civil penalty for each separate violation to be deposited into the Paid Leave for All Workers Fund to enforce the Act.
- **Recordkeeping:** An employer is subject to additional civil penalties for failure to comply with the recordkeeping requirements of the Act.
- **Notice and Posting:** An employer that violates the notice and posting requirements will be fined a civil penalty of \$500 for the violation and \$1,000 for each subsequent violation.

14. Will Governor Pritzker sign SB 208?

In a January 11, 2023, press release, Governor Pritzker stated: “Working families face enough challenges without the concern of losing a day’s pay when life gets in the way. I’m looking forward to signing this legislation and giving a safety net to hardworking Illinoisans. Thank you to all the legislators and advocates who championed this legislation and made this law possible, particularly Leader Gordon-Booth and Leader Lightford who have been on the forefront of this issue.”