

New Earned Sick Leave Ordinances

In both Chicago and Cook County, physician-employers must comply unless their communities have opted out **By Kathryn L. Kaler, Esq., Kimberly T. Boike, Esq., and Ryan A. Haas, Esq.**

LAST YEAR, the Chicago City Council enacted an earned sick leave ordinance (Chicago Ordinance) mandating that employers provide their employees with up to 40 hours of paid sick leave annually. Shortly thereafter, an earned sick leave ordinance was enacted by Cook County, Illinois (Cook County Ordinance), which is nearly identical in substance and form to the Chicago Ordinance, but also applies to employers located in suburban Cook County. Both the Chicago Ordinance and the Cook County Ordinance (collectively, the Ordinances) went into effect on July 1, 2017.

Affected Employers: Who Must Comply?

Nearly 100 municipalities in Cook County have exercised their home rule rights to opt out of the Ordinances. However, physician-employers located in communities that have declined to opt out are expected to comply with the Ordinances.

Both Ordinances apply to all individuals and business entities that employ at least one covered employee. However, the Cook County Ordinance applies only to employers that have a “place of business” in Cook County. On the other hand, the Chicago Ordinance applies to employers that “maintain a business facility” within the geographical boundaries of the City of Chicago, and/or those employers subject to Chicago business license requirements. Accordingly, the Chicago Ordinance may apply to an employer simply because it

has a Chicago business license irrespective of whether such employer is physically located in the City of Chicago.

How Employees Acquire and Use Paid Sick Leave

A “covered employee” includes any employee who works for an employer at least 80 hours within any 120-day period, and performs at least two hours of compensable work during any two-week period in Cook County or the City of Chicago (as applicable under the respective Ordinance).

“Covered employees may use paid sick leave if they or their family members are victims of domestic violence or a sex offense. Paid sick leave may also be used in the event an employee’s child whose school or daycare facility is closed due to a public health emergency.”

Under the Ordinances, covered employees accrue one hour of paid sick leave for every 40 hours worked, up to a maximum of 40 hours of paid sick leave during any calendar year. Employers also have the option to “frontload” paid sick leave by providing employees with a lump sum of 40 hours at the beginning of each year.

Employees may carry over a maximum of 20 hours of unused paid sick leave to the following calendar year. However, employees covered by the federal Family and Medical Leave Act (FMLA) may carry over an additional 40 hours of unused paid sick leave to use exclusively for FMLA purposes, for a total of 60 carry-over hours. In

the event of an employee separation, employers are not required to pay to the departing employees any of their accrued sick leave.

Paid sick leave may be used for an employee’s or an employee’s family member who is ill or injured, or receiving medical care, treatment, diagnosis or preventive medical care. In addition, covered employees may use paid sick leave if they or their family members are victims of domestic violence or a sex offense. Paid sick leave may also be used in the event an

employee’s child whose school or daycare facility is closed due to a public health emergency. If an employee’s need for paid sick leave is “reasonably foreseeable” (prescheduled appointments), employers may require employees to provide seven days advance notice prior to their absence. If not, employees are required to notify employers as soon as practicable via phone, e-mail or text message.

Policies and Procedures Key to Avoiding Liability

Employers who are subject to the Ordinances and already providing paid sick leave in a fashion that satisfies the requirements of

the Ordinances will not be required to provide additional paid sick leave. However, employers should carefully review their policies and procedures to ensure that existing practices meet the requirements of the Ordinances. Policies that substantially comply may need only minimal revisions. For example, a policy that requires more than seven days advance notice prior to a foreseeable absence will need to be revised. Additionally, employers may need to develop and implement appropriate mechanisms to track accrued earned sick leave and when and how it is used by employees.

The Ordinances grant employees private rights of action to pursue employers that violate the Ordinances. Successful plaintiff-employees may recover damages equal to three times the amount of unpaid sick leave denied or lost by reason of the violation, plus attorneys’ fees and costs.

If there are any doubts, employers should consult with an employment law attorney to advise on updates that should be incorporated into existing policies and procedures to mitigate or remedy potentially expensive problems in the future.

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