

Paid Leave and Paid Sick and Safe Leave Frequently Asked Questions (FAQs)

Updated July 2, 2024

Disclaimer: This document does not represent legal advice.

OVERVIEW

 PAID LEAVE		
REQUIRES PAID LEAVE TO BE USED FOR ANY REASON (MCC 6-130)		
Employers must provide Employees who work at least 80 hours within any 120-day period the ability to use Paid Leave (PL) for any reason of an Employee's choosing		
Accruing Leave	Using Leave	Carrying Over
PL accrues at a rate of 1 hour of PL for every 35 hours worked (up to 40 hours in a 12- month period)	Employees must be allowed to use accrued PL no later than on the 90 th day following the commitment of employment	Up to 16 PL hours can be carried over between 12-month periods (if PL is not frontloaded).

 PAID SICK AND SAFE LEAVE		
REQUIRES PAID SICK LEAVE FOR MEDICAL OR SAFETY REASONS (MCC 6-130)		
Employers must provide Employees who work at least 80 hours within any 120-day period the ability to use Paid Sick Leave (PSL) for medical and safety reasons for both the Employees and their family members		
Accruing Leave	Using Leave	Carrying Over
PSL accrues at a rate of 1 hour of PL for every 35 hours worked (up to 40 hours in a 12- month period)	Employees must be allowed to use accrued PSL no later than on the 30 th day following the commitment of employment	Up to 80 PSL hours can be carried over between 12-month period

1.) What changes are coming to Chicago regarding paid time off?

After December 31, 2023, all Employers must allow their Covered Employees to accrue and use Paid Sick Leave. As of July 1, 2024, all Employers must also allow their Covered Employees to also accrue Paid Leave.

2.) When does accrual of paid time off begin under the Chicago Paid Leave and Paid Sick and Safe Leave Ordinance (Ordinance)?

Accrual for Paid Leave begins upon the start of employment or July 1, 2024, whichever is later. Accrual for Paid Sick Leave also starts July 1, 2024, or the start of employment, whichever is later. However, if the Covered Employee already accrued Paid Sick Leave prior to July 1, 2024, then those hours carry forward. For those Covered Employees only the rate of accrual changes, as the rate of accrual changes from one hour earned for every 40 hours worked to one hour earned for every 35 hours worked.

3.) When can Covered Employees start using their Paid Leave under the Ordinance?

Covered Employees are entitled to begin using their Paid Leave after 90 days.

4.) When can Covered Employees start using their Paid Sick Leave under the Ordinance?

Covered Employees are entitled to begin using their Paid Sick Leave after 30 days.

5.) Do I have to still give Paid Sick Leave to Covered Employees?

Yes, Covered Employees should continue to have access to and use accrued Paid Sick Leave under Chicago's current Chicago Minimum Wage and Paid Sick Leave Ordinance (MCC § 6-105-045). Time accrued will transition to Paid Sick Leave (MCC Ch. 6-130) on July 1, 2024.

6.) Who is a Covered Employee?

A Covered Employee means an Employee who works at least 80 hours for an Employer within any 120-day period while physically present within the geographic boundaries of Chicago.

Once that threshold is met, the Employee shall remain a Covered Employee for the remainder of the time that the Employee works for the Employer.

There is no distinction between part-time, full-time, or seasonal employees.

7.) Who is an Employer?

An Employer means a person who gainfully employs at least one Employee.

8.) What is Paid Leave?

Paid Leave represents hours that a Covered Employee accrues and can use to take paid time off for any reason of the Covered Employee's choosing.

9.) What is Paid Sick Leave?

Paid Sick Leave is paid time away from work that a Covered Employee may use in order to take care of a number of conditions, such as time for getting better from an illness or taking care of an ill family member or even taking a family member to a doctor.

10.) What notices does an Employer need to provide to Covered Employees?

The Employer must provide the Paid Leave and Paid Sick Leave notice to all Covered Employees with their first paycheck and in communal areas at a workplace. Notices must be provided in English and any language spoken by Employees that do not speak English proficiently, notices in six languages have been provided by the Department of Business Affairs and Consumer Protection on the Office of Labor Standards website. Requests for additional languages can be made via e-mail at BACPLaborStandards@cityofchicago.org.

11.) Can notices be transmitted electronically?

Yes, the notices mandated to be provided with Covered Employee's paychecks can be transmitted electronically. Likewise, notices can be posted physically in break rooms or other communal areas at a workplace and can be displayed electronically on electronic bulletin boards and TV monitors in communal areas. All physical notices must be scaled appropriately (no less than 8.5 X 11 inches for notices provided with paychecks, and no less than 11 X 17 inches for workplace postings). While there are no specific size requirements for electronic notices, they should be at least as legible as the physical notice requirements.

ACCRUAL

12.) How is Paid Leave and Paid Sick Leave time accrued?

Employees must qualify for and accrue Paid Leave and Paid Sick Leave. If an Employee works at least 80 hours in any 120-day period in Chicago, the Employee qualifies for Paid Leave and Paid Sick Leave and is categorized a Covered Employee. For every 35 hours worked, a Covered Employee accrues one hour of Paid Leave **AND** one hour of Paid Sick Leave. The Covered Employee may accrue up to 40 hours of Paid Leave and up to 40 hours of Paid Sick Leave in any 12-month period unless the Employer sets a higher limit. The 12- month period starts when a Covered Employee first starts to accrue Paid Leave and Paid Sick Leave.

13.) Can Paid Leave or Paid Sick Leave be awarded in anything other than hourly increments?

No, Paid Leave and Paid Sick Leave can only be awarded in hourly increments.

14.) Can an Employer use an accrual rate that tracks fractional portions of an hour?

Yes, the employer can track accruals fractionally, but Paid Leave and Paid Sick Leave hours must be awarded in hourly increments.

15.) If a Covered Employee works outside Chicago, can that Covered Employee still accrue Paid Leave and Paid Sick Leave?

Hours worked outside Chicago do not count towards the accrual of Paid Leave or Paid Sick Leave.

16.) Are overtime hours (non-exempt employees) worked by an Employee counted for accrual purposes under the Ordinance?

Yes, employees eligible for overtime under the Fair Labor Standards Act should have their hours counted for accrual purposes under the City's 1 hour accrued for every 35 hours worked metric.

USAGE

17.) At what increment can Covered Employees use Paid Leave?

A Covered Employee may use Paid Leave at a minimum of four-hour increments. An Employer may choose to allow a Covered Employee to use Paid Leave in smaller increments.

18.) At what increment can Covered Employees use Paid Sick Leave?

A Covered Employee may use Paid Sick Leave at a minimum of two-hour increments. An Employer may choose to allow a Covered Employee to use Paid Leave in smaller increments.

19.) If a Covered Employee uses more than the minimum increments (2 hours for PSL, 4 hours for PL) can an employer set fixed periods for further use?

Yes. The respective minimum increments only apply to the first four hours of Paid Leave and to the first two (2) hours of Paid Sick Leave or PTO in a day. An Employer may require that a Covered Employee take subsequent time in other increments.

Example

- a. An Employer may set fixed periods of 30 minutes or any smaller amount of time for the use of accrued Paid Leave, Paid Sick Leave or PTO.

20.) What documents are required when an Employee decides to use Paid Leave?

An Employer may not require a Covered Employee to provide a reason for the use of Paid Leave and may not require them to provide documentation or certification as proof or in support of the use of Paid Leave.

21.) What documents are required when an Employer decides to use Paid Sick Leave?

An Employer may require certification after a Covered Employee uses Paid Sick Leave for three consecutive workdays.

22.) Can an Employer require a Covered Employee to confirm in writing that the Covered Employee used Paid Sick Leave as permitted under the Ordinance?

Yes. An Employer can require the Covered Employee to confirm in writing that the Covered Employee used Paid Sick Leave for permitted purposes. However, the Employer cannot require the Covered Employee to provide documentation from a medical or service provider if the Covered Employee did not use Paid Sick Leave for three or more consecutive workdays.

23.) Under what circumstances can a Covered Employee use Paid Sick Leave due to a medical issue in the family?

A Covered Employee can use Paid Sick Leave when a member of the employee's family is ill or injured, or to care for a family member receiving medical care, treatment, diagnosis, or preventative care. The employee can also use Paid Sick Leave when the employee needs to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency. Finally, the employee can use Paid Sick Leave if a family member is the victim of domestic violence or a sex offense.

24.) Who counts as a family member for the purposes of Paid Sick Leave?

A family member is a Covered Employee's child, legal guardian or ward, spouse under the laws of any state, domestic partner, parent, spouse or domestic partner's parent, sibling, grandparent, grandchild, or any other individual related by blood or whose close associate with the Covered Employee is the equivalent of a family relationship. A child includes not only a biological relationship, but also a relationship resulting from an adoption, step-relationship, or foster care relationship, or a child to whom the Covered Employee stands *in loco parentis*. A parent includes a biological, foster, stepparent or adoptive parent or legal guardian of a Covered Employee, or a person who stood *in loco parentis* when the Covered Employee was a minor child.

25.) What rate of pay do we use to pay our tipped employees if they use a day of Paid Leave or Paid Sick Leave?

The Employer shall pay at least the highest amount of the federal minimum wage, the Illinois minimum wage or the FULL Chicago minimum wage.

26.) What rate of pay do we use to pay our commission-based employees if they use a day of Paid Leave or Paid Sick Leave?

The Employer shall pay at least the highest amount of the base hourly wage, the federal minimum wage, the Illinois minimum wage or the Chicago minimum wage.

27.) When should the 90-day lookback period be used to determine the compensation rate for Paid Leave and Paid Sick Leave?

The 90-day lookback period should only be used when a Covered Employee has received a reduction in pay in the previous 90-day period. Outside of this scenario, Paid Leave and Paid Sick Leave must be paid at the same rate and with the same benefits that the Covered Employee regularly earns during hours worked.

28.) If a Covered Employee gets sick in the middle of a scheduled vacation, can the Covered Employee use Paid Sick Leave?

An Employer can establish a policy and they can choose whether to allow a Covered Employee to utilize Paid Sick Leave while on vacation.

29.) Can an Employer require a Covered Employee to telecommute or work from home instead of using Paid Sick Leave?

No. An Employer cannot require a Covered Employee to work from home or telecommute instead of using Paid Sick Leave.

PAYOUT

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	<ul style="list-style-type: none">• Not required for Paid Sick Leave• Paid Leave<ul style="list-style-type: none">• Required for Large Employers (101+ Covered Employees)• 2 Days (16 hours) for Medium Employers (51-101 Covered Employees) until July 1, 2025, required past this date• Not required for Small Employers (1-50 Covered Employees)

30.) Does Paid Leave under the Ordinance need to be paid out upon an employee's termination, resignation, or retirement?

Depending on the size of the Employer (see above box) accrued Paid Leave would need to be paid out upon separation of employment.

At no time does the Ordinance mandate that more than seven days of Paid Leave be paid at separation of employment.

31.) How is the size of an Employer determined?

For purposes of Paid Leave and Paid Sick Leave, numbers of Covered Employees will be aggregated if they are employed by members of a single unitary business group as defined for Illinois income tax purposes.

32.) Does Paid Sick Leave need to be paid out upon an employee's termination, resignation, or retirement?

Unless an applicable collective bargaining agreement provides otherwise, an Employer is NOT required to provide financial or other reimbursement for unused Paid Sick Leave to a Covered Employee.

33.) Does Paid Leave that is accrued during the first 90-days of employment (or the first 90-days after July 1, 2024) have to be paid out if the employer-employee relationship ends (i.e. terminated, resignation) before the Covered Employee would have the ability use accrued and unused time?

Note: The Ordinance states that an Employers must allow Covered Employees to use their Paid Leave no later than 90 days after the commitment of employment.

Yes, Paid Leave that is accrued and unused must be paid out in the scenario that has been presented. With the below caveats in place:

- The individual would have to meet the definition of a Covered Employee (worked at least 80 hours in any 120-day period)
 - Example, if someone quits is let go a week into their job, they would not be a Covered Employee.
- The Employer has 51 or more Covered Employees
 - Small Employers (1-50 Covered Employees) do not have to provide payout

34.) Can an Employer pay out Paid Leave annually, as opposed to rolling/carrying over up to 16 hours from one year to the next?

An Employer may have a policy giving a Covered Employee the option to receive payment for accrued and unused Paid Leave up to 16 hours in lieu of carrying over the time. The policy must be optional and not mandated (the Covered Employee has the option to choose rollover or payout). If a payout is chosen the voluntary agreement between Employer and Covered Employee should be in writing.

CARRYOVER

	CARRYOVER
<ul style="list-style-type: none">• Up to 16 hours of Paid Leave (if not front-loaded)• Up to 80 hours of Paid Sick Leave (whether time is accrued or front-loaded)	

35.) Does an Employer need to allow carry-over, also known as roll-over, of Paid Leave and Paid Sick Leave?

Unless an Employer front loads Paid Leave hours, Covered Employees are allowed to carry over unused, accrued Paid Leave from one year to the next. Covered Employees are allowed to carry over up to 16 hours of Paid Leave.

Covered Employees are allowed to carry over unused, accrued Paid Sick Leave from one year to the next regardless of whether the time is frontloaded or accrued. Covered Employees are allowed to carry over up to 80 hours of Paid Sick Leave.

Covered Employees must be allowed to utilize their carryover time in addition to accrued time in a new year.

36.) Does the Ordinance establish a balance cap for either Paid Leave or Paid Sick Leave when considering the carryover parameters/limits?

Under accrual method a Covered Employee may carryover up to 16 hours of accrued and unused Paid Leave. A Covered Employee could earn an additional 40 hours, so it would be possible to have up to 56-hour balance.

For Paid Sick Leave a Covered Employee may have up to a 120-hours balance. To arrive at this scenario a Covered Employee would carryover 80-hours of accrued and unused Paid Sick Leave from one year to the next, earn an additional 40 hours to reach 120-hours.

EMPLOYER POLICIES / ACTIONS

37.) Does an unlimited paid time off (PTO) policy comply with the Ordinance?

A fact-specific analysis of the PTO policy would need to be conducted to ensure compliance with Ordinance. Factors to be considered would be: reasonable access and ability to utilize at least 80 hours of PTO in a year; rate of pay for the PTO time that is used; and notification and approval policies for the usage of PTO time.

38.) May an Employer front load Paid Leave and Paid Sick Leave at the beginning of the year?

Yes, an Employer may front load either or both Paid Leave and Paid Sick Leave by giving a 12-month period's worth of Paid Leave or Paid Sick Leave.

An Employer may make available Paid Leave and Paid Sick Leave "in proportion" or "pro-rata" to their fiscal or calendar year.

39.) Can an Employer limit the Ordinance required parameters to the number of hours guaranteed by the Ordinance?

An Employer that grants its Covered Employees greater Paid Leave/Paid Sick Leave hours than the Ordinance requires may limit the Ordinance required parameters to the number of hours guaranteed by the Ordinance.

40.) If an Employer provides Covered Employees with leave benefits that exceed the Ordinance's requirements, must the Employer maintain records?

Yes. Employers must maintain records documenting compliance with the Ordinance, including if the employer complies with the Ordinance by providing even more benefits than what the Ordinance requires.

41.) Can an Employer establish policies that dictate how far in advance Covered Employees request Paid Leave?

Note: Employers can establish preapproval procedures to ensure business continuity. Said procedures should be in writing and given to Covered Employees in the language they commonly use.

Covered Employees should have the ability to request/give reasonable notice AT LEAST SEVEN days before using their Paid Leave.

Example: A Covered Employee can request their child's spring break week which occurs on April 5th-9th on January 10, as the notice date is at least seven days before the use of the Paid Leave.

HOW TO FILE A COMPLAINT

I'm an Employee and I think my rights under the Paid Leave and Paid Sick and Safe Leave Ordinance have been violated. How can I submit a complaint to the Office of Labor Standards?

You can submit a complaint several ways:

1. Call 3-1-1
2. Use the CHI 311 mobile application
3. Download and mail a complaint form to the Office of Labor Standards, Department of Business Affairs and Consumer Protection, 2350 West Ogden Avenue 2nd Floor, Chicago, IL 60608. The complaint form can be found online at: Chicago.gov/LaborStandards.
4. Download and email the complaint to the Office of Labor Standards at bacplaborstandards@cityofchicago.org.

Information on the complaint form should detail the basis of your complaint. If appropriate, the Office of Labor Standards will review your complaint and start an investigation.