

Illinois paid leave for all workers (slide deck)

March 13, 2024
Mercer Law & Policy Group, New York

A business of Marsh McLennan



Paid Leave for All Workers Act (PLAWA) overview

Accrual, use and preemption of local laws

Employers must provide covered employees at least 40 hours (one hour for every 40 hours worked) of paid leave in a 12-month period.

Employees can use accrued paid leave for any reason.

Employers can impose a 90-day waiting period before new hires can use accrued paid leave.

PLAWA does not preempt local leave ordinances in effect on Jan. 1, 2024 (i.e., Chicago and Cook County) or more generous local ordinances passed after Jan. 1, 2024.

Employers with workers in Chicago or Cook County must comply with those ordinances for those workers and the state law for workers elsewhere in Illinois.

Note: Many municipalities opted out of the Cook County requirement. Employers in those municipalities must comply with the state law. See this [Cook County webpage](#) for a listing of municipalities that opted in and opted out.



PLAWA overview

Timing, carryover, frontloading, etc.



Accrual. Employees start accruing leave on hire date (or on Jan. 1, 2024, for existing employees) in 15-minute increments.

For example, 46 minutes of work is considered a full hour of work for paid leave accrual purposes.

Carryover. Employers may limit carryovers to 80 hours of unused accrued paid leave.

Frontloading. Employers may frontload a proration of 40 hours for new hires and part-time employees.

Leave increments. An initial minimum two-hour increment per day is permitted.

Preexisting paid leave policies. Employers with a *bona fide* paid leave policy in effect before Jan. 1, 2024, that provides at least 40 hours of paid leave for any reason do not need to modify those policy terms.

Covered employees

A “covered employee” meets any of these criteria:

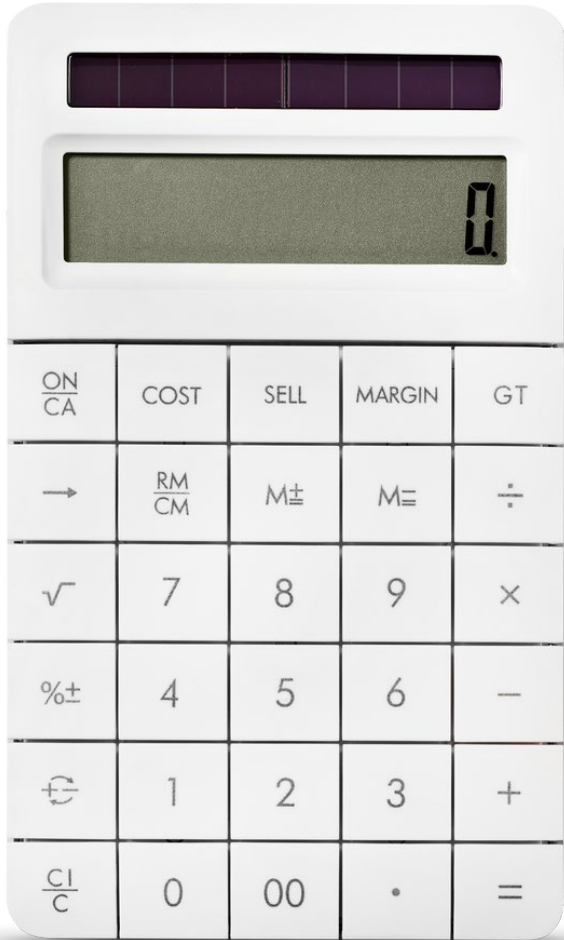
- ✓ Works for an employer whose base of operations, regional office or headquarters is in Illinois, and the employee’s work is primarily performed in Illinois
- ✓ Primarily works in Illinois for an employer that performs substantial business in the state, markets its services in the state or maintains a registered agent within the state
- ✓ Primarily works in Illinois and lives in Illinois

When considering whether work is “performed primarily in Illinois,” IDOL will consider these factors:

- How much work is performed in versus outside of Illinois
- Whether the work performed in Illinois is isolated, temporary, or transitory
- Whether the work performed outside of Illinois has the same nature or duties as the work performed in Illinois

Employees includes part-time, temporary and seasonal employees.

Regular rate of pay



Employees are paid their regular rate of pay when taking paid leave.

- **Hourly employees:** Calculate average hourly pay rate by dividing compensation by hours worked.
- **Full-time employees exempt from overtime under the federal Fair Labor Standards Act (FLSA):** Calculate regular rate of pay using a 40-hour workweek.
- **Overtime:** Consult IDOL overtime rules and the US Department of Labor's Wage and Hour Division guidance and regulations on calculating regular rate of pay for overtime purposes.
- **Tipped employees:** Proposed regulations require paying tipped employees (if the employer takes a tip credit) during leave at the greater of their annualized rate of pay or the minimum wage.

Accrual amounts

Employers may provide leave in **smaller proportional increments** if the accrual rate is still one hour for every 40 hours worked.

Work periods **shorter than 15 minutes** must be rounded up.

All time worked — including overtime — is included. Leave (paid and unpaid) or other uncompensated time when no work is done doesn't have to be included.

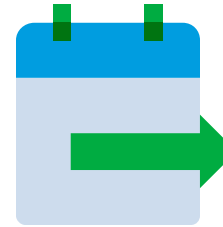
FLSA-exempt employees are deemed to work 40 hours per week; if they regularly work fewer hours, paid leave accrues based on the hours in their regular workweek.



Frontloading paid leave

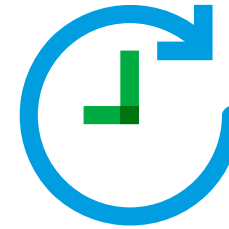
Employers can frontload paid leave instead of accruing the time if each of the following conditions are met:

- The minimum required number of paid leave hours is provided on the first day of employment or the first day of a 12-month period.
- Written notice is provided before the first day of employment or the 12-month period.
- The number of hours provided is not less than what the employee would have earned under the accrual method.



12-month period

The 12-month period can start on a uniform calendar day (e.g., Jan. 1 or July 1) or on each employee's start date.



Prorating

Frontloaded paid leave may be prorated for part-time employees and for new employees hired after the start of a fixed 12-month period.

Notes: Carryover of unused paid leave is not required if the paid leave is frontloaded.
Employers may frontload for full-time employees and use accrual method for part-time employees.

Denying a request to use paid leave under PLAWA

Employer policy can establish parameters for taking leave and limited reasons for denying leave due to operational necessity. Relevant factors include:

- Whether the employer provides a need/service critical to the health/safety/welfare of the people of Illinois
- Whether similarly situated employees are treated the same
- Whether granting leave during a particular time period would significantly impact the business operations due to the employer's size
- Whether the employee has adequate opportunity to use all of his or her paid leave entitlement over a 12-month period



Policy must be reasonable, communicated to employees, applied equally, and conform with other applicable state and federal laws.



Policy must be in English and any other language commonly spoken by the workforce.



Cannot require a reason for taking paid leave or any documentation as proof or support for the reason to use paid leave.



Cannot require an employee to find a replacement to cover duties while the employee is on paid leave.



Can adopt a reasonable no-call, no-show policy.

Payout, reinstatement, transfer

Payout on employment separation is not required, unless the PLAWA leave is credited to — or combined with — an existing employer-provided paid leave allowance.

If leaves are credited/combined, then payout is required to the same extent that vacation time must be paid under the Wage Payment and Collection Act.

Employees rehired within 12 months of separation must have unused paid leave hours previously accrued or frontloaded reinstated, unless leave paid out on separation.

Employees transferring to a different division, entity or location retain all accrued unused paid leave at the time of transfer.





Employer policies

Employers can apply **reasonable notice procedures** if they are **written** and **communicated** to employees.

- Employees can request to use paid leave either orally or in writing (employer cannot require one or the other form of request).
 - Policy may require **seven days/ advance notice for foreseeable leaves**.
 - For **unforeseeable leave**, policy must allow notice **as soon as practicable**.
 - Employers cannot deny leave request based on an employee's failure to meet the notice requirement.
 - Employers must provide the written policy to employees when hired (or by April 1, 2024, if later).
 - Employers must inform employees about any change to the notice requirements within five days of the change.
-

Any **absence-control policy** or **attendance point system** cannot be used against employees for taking PLAWA leave.

Other employer responsibilities

✓ Notices

- Post notice in conspicuous location at each workplace.
- Provide notice via regular electronic communication method for those not at the physical workplace.
- Include in the notice a summary of the law's requirements and information about filing a complaint (provided by IDOL [here](#)).
- Include in the notice a summary of the employer's paid leave policy and ways to obtain a copy.
- Provide notice in English and any other language commonly spoken in the workplace.

✓ Earnings statements

Must include an accounting of an employee's unused paid leave balance on each paystub or other form normally furnished to notify employees about wage payments and deductions.

✓ Recordkeeping

- Must retain records for three years
- Must make records available on request by an employee or the IDOL.

Job protections

Employers cannot interfere with, deny, or change an employee's workdays or hours to avoid providing paid leave time to that employee.

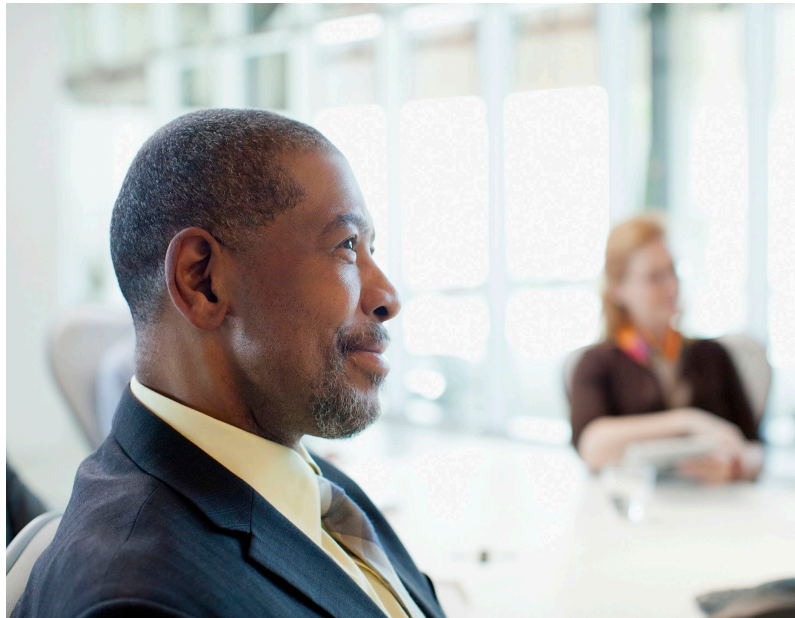


Benefit continuation

- **Must maintain** health plan coverage for the employee and any dependents during paid leave.
- **Must notify** an employee before the use of paid leave about any requirement for the employee to continue paying health plan premium while on paid leave.

Prohibited retaliation includes:

- Threats and adverse action against an employee for exercising or attempting to exercise PLAWA rights, for supporting the exercise of those rights by others, or for opposing employer practices that violate the PLAWA
- Adverse employment action, including penalizing or disciplining an employee under an attendance policy (e.g., a no-fault policy) for exercising PLAWA rights
- Considering the use of paid leave as a factor in recruitment, hiring, promotion, and other terms, privileges, or conditions of employment



Enforcement and penalties

Enforcement authority. IDOL enforces the act and may conduct investigations on receiving a complaint or at the discretion of the director. Unresolved matters are referred for an administrative hearing.

Penalties paid to an employee. Violations are subject to a penalty of at least \$500 but no more than \$1,000, plus compensatory damages, paid leave owed to the claimant, and equitable relief as determined by the administrative law judge.

IDOL penalties. All violations (except for notice failures) are subject to a civil penalty of \$2,500 per offense, payable to the PLAW Fund.

Notice failures. Poster and notice violations are subject to \$500 penalty for a first violation and \$1,000 penalty for later violations. Notice violation penalties are payable to the PLAW Fund.





Mercer is not an “administrator,” “sponsor” or other “fiduciary” within the meaning under applicable law, including the Employee Retirement Income Security Act of 1974, as amended.

Mercer is not engaged in the practice of law, and this content is not intended as a substitute for legal advice. Accordingly, you should secure the advice of competent legal counsel with respect to any legal matters related to this document or the content.

Mercer is not engaged in the practice of medicine, and this content is not intended as a substitute for medical advice.

Mercer and its affiliates make no representations whatsoever about any third-party website that you may access through this document. By including links to such websites in this document, Mercer and its affiliates do not endorse or accept any responsibility for such websites’ content or use or indicate that Mercer or its affiliates are affiliated in any way with such websites’ owners. Mercer and its affiliates do not investigate, verify, monitor or endorse such websites. In addition, the access to such third-party websites through this document does not imply that Mercer and its affiliates are affiliated with or otherwise endorse any third parties or are legally authorized to use any trademark, trade name, logo, or copyright symbol displayed in or accessible through the links, or that any linked site is authorized to use any trademark, trade name, logo, or copyright symbol of Mercer or its affiliates.