



March, 2023

PAID LEAVE FOR ALL WORKERS ACT

Governor Signs Senate Bill 208

Public Act 102-1143

Governor Pritzker signed Senate Bill 208 into law granting paid leave to Illinois workers. [Senate Bill 208](#) was passed by the 102d General Assembly during the Lame Duck Legislative Session in January, 2023. This update is being provided for informational purposes regarding potential impact on your firm and your clients.

High points of the Act include:

- 40 hours of paid leave per year
- Workers accrue one hour of paid leave for 40 hours worked—not to exceed 40 hours per year
- Workers may take paid time off for any reasons such as sick leave, childcare, mental health, vacation, medical appointments etc
- The legislation is effective January 1, 2024

There are many nuances to the Act. Attached is a detailed fact sheet prepared by the Illinois State Chamber of Commerce. *[Note: although the fact sheet has been marked confidential, ICPAS has been authorized to share with our membership].*

ICPAS Government Relations is working with the Illinois Department of Labor for more authoritative guidance on the implementation of the Act. We will continue to provide updated information as it becomes available.

ATTACHMENT-PLAWA Fact Sheet



Illinois Legislative Update

“Paid Leave for All Workers Act” (PLAWA)

Background

During the recently concluded lame duck session, the Illinois Chamber, joined by other business groups, were able to negotiate an agreement with legislative sponsors House Deputy Majority Leader Jehan Gordon Booth (D-Peoria) and Senate Majority Leader Kim Lightford (D-Hillside). The General Assembly approved the agreement in [SB 208](#) which is expected to be signed by Governor Pritzker.

Important changes were made between House amendment 3 and amendment 4 which became the bill. We were seeking preemption of local government leave benefits to prevent employers in those jurisdictions to have two laws to comply with. We fell short of preemption but were able to achieve changes that mitigates the impact of the laws and allows employers flexibility to implement what would otherwise have been a more costly and difficult benefit mandate.

Provision	Amendment 4	Amendment 3
Effective Date	January 1, 2024	July 1, 2023
Paid Days/Hours Required	5 days/40 hours	7 days/56 hours
Carryover Hours	40 hours	60 hours
Application of Local Government Mandate	PLAWA not applicable to employers where a municipality or county has a paid leave law in place prior to the effective date of the state law. Any local ordinance must comply with the PLAWA or provide benefits, rights, and remedies that are greater than or equal to the PLAWA.	

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Key Details

Section 5. Findings; legislative intent; construction.

- PLAWA establishes a minimum standard allowing all Illinois employees to have a paid leave benefit to use for any reason.
- PLAWA to be liberally construed to provide workers with the greatest amount of paid time off and employment security.
- Employers may provide or retain paid leave benefits, including vacation, holiday, or any other paid time off or paid leave policy more generous than policies in compliance with the PLAWA.
- An employer is required to pay final compensation for any type of paid leave promised under a contract of employment or employment policy and earned by the employee pursuant to the Illinois Wage Payment and Collection Act. *(Note this is a clarification of current law in that final compensation not only includes accrued vacation pay but all earned paid leave benefits.)*

Section 10. Definitions.

“Construction” and “construction industry” are very broadly defined and include “moving construction related materials on the job site or to or from the job site, snow plowing, snow removal, and refuse collection.”

“Domestic work” and “domestic worker” have the same meanings as defined in Section 10 of the [Domestic Workers' Bill of Rights Act](#), except that “domestic worker” also includes independent contractors, sole proprietors, and partnerships.

“Employee” has the same application and meaning as that provided in Sections 1 and 2 of the [Illinois Wage Payment and Collection Act](#) and includes all domestic workers.

Employee does not include:

- an employee as defined in the federal [Railroad Unemployment Insurance Act](#) (45 U.S.C. 351 et seq.) or the [Railway Labor Act](#);
- a student enrolled in and regularly attending classes in a college or university that is also the student's employer, and who is employed on a temporary basis at less than full time at the college or university, but this exclusion applies only to work performed for that college or university; or
- a short-term employee who is employed by an institution of higher education for less than 2 consecutive calendar quarters during a calendar year and who does not have a reasonable expectation that they will be rehired by the same employer of the same service in a subsequent calendar year.

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"**Employer**" has the same application and meaning as that provided in Sections 1 and 2 of the Illinois Wage Payment and Collection Act, and includes the State and units of local government, any political subdivision of the State or units of local government, or any State or local government agency.

Employer does not include school districts organized under the [School Code](#) or park districts organized under the [Park District Code](#).

"**Writing**" or "**written**" means a printed or printable communication in physical or electronic format, including a communication that is transmitted through electronic mail, text message, or a computer system or is otherwise sent or stored electronically.

Section 15. Provision of paid leave.

An employee who works in Illinois is entitled to earn and use up to a minimum of 40 hours of paid leave during a 12-month period or a pro rata number of hours accrued at 1 hour per 40 hours worked. An employer may provide a greater amount. Paid leave begins to accrue at the commencement of employment or on January 1, 2024, whichever is later. Employees shall be entitled to begin using paid leave 90 days following commencement of their employment or 90 days following January 1, 2024, whichever is later. Paid leave required under the PLAWA may be taken by an employee for any reason of the employee's choosing. An employee is not required to provide an employer a reason for the leave and may not be required to provide documentation or certification as proof or in support of the leave. An employee may choose whether to use paid leave provided under the PLAWA prior to using any other leave provided by the employer or State law. *(Note: this would include unpaid leave mandates such as that provided under the Victims Economic Security & Safety Act AKA VESSA.)*

Employees are to be paid their hourly rate of pay for paid leave. However, employees engaged in an occupation in which gratuities or commissions have customarily and usually constituted and have been recognized as part of the remuneration for hire purposes shall be paid by their employer at least the full minimum wage in the jurisdiction in which they are employed when paid leave is taken.

Employees who are exempt from the overtime requirements of the federal [Fair Labor Standards Act](#) (29 U.S.C. 213(a)(1)) shall be deemed to work 40 hours in each workweek for purposes of paid leave accrual unless their regular workweek is less than 40 hours, in which case paid leave accrues based on that regular workweek.

Employers may set a reasonable minimum increment for the use of paid leave not to exceed 2 hours per day. If an employee's scheduled workday is less than 2 hours day, the employee's scheduled workday shall be used to determine the amount of paid leave.

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An employer may make available the minimum number of hours of paid leave, subject to pro rata requirements, to an employee on the first day of employment or the first day of the 12-month period. 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. However, under no circumstances shall an employee be credited with paid leave that is less than what the employee would have accrued. *(Note: During House debate, the House sponsor clarified that an employer is not required to carryover hours in excess of 40 hours. Also, an employer "use it or lose it" policy is only allowed if the employer grants all 40 hours at the start of employment/12-month period rather than an employer that only permits the employee to accrue paid leave hours after each 40 hours worked.)* The 12-month period may be any consecutive 12-month period designated by the employer in writing at the time of hire. Changes to the 12-month period may be made by the employer if notice is given to employees in writing prior to the change and the change does not reduce the eligible accrual rate and paid leave available to the employee. If the employer changes the designated 12-month period, the employer shall provide the employee with documentation of the balance of hours worked, paid leave accrued and taken, and the remaining paid leave balance.

Paid leave under the PLAWA must be provided upon the oral or written request of an employee in accordance with the employer's reasonable paid leave policy notification requirements.

A reasonable employer notification policy may include:

- If use of paid leave under the PLAWA is foreseeable, the employer may require the employee to provide 7 calendar days' notice before the date the leave is to begin.
- If paid leave under the PLAWA is not foreseeable, the employee shall provide such notice as soon as is practicable after the employee is aware of the necessity of the leave. An employer that requires notice of paid leave under the PLAWA when the leave is not foreseeable shall provide a written policy that contains procedures for the employee to provide notice.

Employers shall provide employees with written notice of the paid leave policy notification requirements in the manner provided in Section 20 for notice and posting and within 5 calendar days of any change to the employer's reasonable paid leave policy notification requirements.

An employer may not require, as a condition of providing paid leave under the PLAWA, that the employee search for or find a replacement worker to cover the hours during which the employee takes paid leave.

Nothing in this Section or any other Illinois law or rule shall be construed as requiring financial or other payment to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for paid leave accrued under the PLAWA that

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has not been used. Nothing in this Section or any other Illinois law or rule shall be construed as requiring financial or other reimbursements to an employee from an employer for unused paid leave under this Act at the end of the benefit year or any other time.

Paid leave under the PLAWA shall not be charged or otherwise credited to an employee's paid time off bank or employee account unless the employer's policy permits such a credit. If the paid leave under this Act is credited to an employee's paid time off bank or employee vacation account then any unused paid leave shall be paid to the employee upon the employee's termination, resignation, retirement, or other separation to the same extent as vacation time under existing Illinois law or rule.

Nothing in the PLAWA shall be construed to waive or otherwise limit an employee's right to final compensation for promised and earned, but unpaid vacation time or paid time off, as provided under the Illinois Wage Payment and Collection Act and rules. Employers shall provide employees with written notice of changes to the employer's vacation time, paid time off, or other paid leave policies that affect an employee's right to final compensation for such leave. *(Note: the last three paragraphs appear to be in conflict or at least lend confusion as to what and how an employer is responsible for accrued paid leave not used at time of separation/termination of employment. Based on information provided by House Democrat staff, the intent is to not change current law regarding payment of earned vacation pay at termination as provided by the "Golden Bear" decision. It appears that the only way to avoid paying at time of separation is if the statutory paid leave benefits are separate from any employer provided vacation or personal time policy. We will be seeking greater clarification as IDOL prepares the required rules for implementation and enforcement.)*

If an employee is transferred to a separate division, entity, or location, but remains employed by the same employer, the employee is entitled to all paid leave accrued at the prior division, entity, or location and is entitled to use all paid leave as provided in this Section. If there is a separation from employment and the employee is rehired within 12 months of separation by the same employer, previously accrued paid leave that had not been used by the employee shall be reinstated. The employee shall be entitled to use accrued paid leave at the commencement of employment following a separation from employment of 12 months or less.

During any period an employee takes leave under the PLAWA, the employer shall maintain coverage for the employee and any family member under any group health plan for the duration of such leave at no less than the level and conditions of coverage that would have been provided if the employee had not taken the leave. The employer shall notify the employee that the employee is still responsible for paying the employee's share of the cost of the health care coverage, if any.

The validity or the terms of bona fide collective bargaining agreements in effect on January 1, 2024 are not changed by the PLAWA. But, the requirements of the PLAWA may be waived in a bona fide collective bargaining agreement, only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms.

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Section 20. Related employer responsibilities.

An employer must make and preserve records documenting hours worked, paid leave accrued and taken, and remaining paid leave balance for each employee for a period of not less than 3 years and shall allow the Illinois Department of Labor (IDOL) access to such records, at reasonable times during business hours, to monitor compliance. In addition, the records shall be preserved for the duration of any claim pending pursuant to Section 35. An employer that provides paid leave on an accrual basis shall provide notice of the amount of paid leave accrued or used by an employee upon request by the employee in accordance with the employer's reasonable paid leave policy notification provisions. An employer that fails to comply with this subsection is subject to the civil penalties established by the PLAWA.

An employer who provides any type of paid leave policy that satisfies the minimum amount of leave required by the PLAWA 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.

An employer shall post and keep posted in a conspicuous place on the premises of the employer where notices to employees are customarily posted, and include it in a written document, or written employee manual or policy if the employer has one, a notice, to be prepared by IDOL, summarizing the requirements and information pertaining to the filing of a charge upon commencement of an employee's employment or 90 days following January 1, 2024, whichever is later.

If an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer shall notify IDOL and a notice in the appropriate language shall be prepared by IDOL. Employees may also request that IDOL provide a notice in languages other than English, which the employer must post.

An employer who fails to provide notice as required shall be fined a civil penalty of \$500 for the first audit violation and \$1,000 for any subsequent audit violation.

No employer shall interfere with, deny, or change an employee's work days or hours to avoid providing eligible paid leave time to an employee.

Section 25. Retaliation.

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 the PLAWA.

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.

Such retaliation shall subject an employer to civil penalties provided under the PLAWA. An employee who has been unlawfully retaliated against shall also be entitled to recover through a claim filed with IDOL, all legal and equitable relief as may be appropriate.

Provisions applicable to domestic workers only:

For domestic workers, if an employer requires evidence of hours worked for other employers to confirm that the domestic worker has worked or is scheduled to work 8 or more hours in the aggregate for any relevant workweek, a signed statement by the domestic worker stating that he or she has performed or is scheduled to perform domestic work for 8 or more hours in the aggregate for any relevant workweek shall satisfy any documentation requirements of hours worked under the Domestic Workers' Bill of Rights Act and the PLAWA. Such employer shall not require more than one signed statement in a calendar quarter if the hours the domestic worker has performed or is scheduled to perform domestic work have not decreased to less than 8 hours in the aggregate in any relevant workweek in that calendar quarter. An employer that requires evidence of hours worked must give the domestic worker written notice of such request and allow no fewer than 7 days or until the next scheduled workday, whichever is greater, for the domestic worker to comply with the request. The employer may not deny paid leave pending submission of the signed statement.

Section 30. Illinois Department of Labor responsibilities.

The Department shall administer and enforce this Act. The Department has the powers and the parties have the rights provided in the Illinois Administrative Procedure Act for contested cases.

An employee may file a complaint with the Department alleging violations of the Act within 3 years after the alleged violation.

An employer that violates this Act is liable to any affected employee for damages in the form of the actual underpayment, compensatory damages, and a penalty of not less than \$500 and no more than \$1,000. Employees shall also be entitled to such equitable relief as may be appropriate, in addition to reasonable attorney's fees; reasonable expert witness fees, and other costs of the action, which shall be paid by the employer to the employee.

The Department has the power to conduct investigations in connection with the administration and enforcement of this Act, including the power to conduct depositions and discovery and to issue subpoenas.

If the Department finds cause to believe that this Act has been violated, the Department shall notify the parties in writing, and the matter shall be referred to an Administrative Law Judge to schedule

a formal hearing in accordance with hearing procedures established by rule. Administrative decisions shall be reviewed under the Administrative Review Law.

The Department is authorized to impose civil penalties prescribed in Section 35 for any violation of this Act. The Department is authorized to collect and supervise the payment of any damages awarded to an employee or employees under the PLAWA. Any sums recovered by the Department on behalf of an employee or employees under this Act shall be paid to the employee or employees affected. The Department is not authorized to collect and supervise the payment of any awarded attorney's fees. Those fees shall be subject to collection by the attorney awarded such fees.

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

The Department shall adopt rules necessary to administer and enforce this Act.

Section 35. Penalties and enforcement.

An employer that violates this Act or any rule adopted under the PLAWA shall be subject to a civil penalty of \$2,500 for each separate offense. An offense means any violation of the PLAWA with the exception of a violation of the notice requirement.

Any penalties collected from an employer under this Section or the failure to provide a posting of the PLAWA shall be deposited into the Paid Leave for All Workers Fund, a special fund created in the State treasury that is dedicated to enforcing the PLAWA.

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