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LEAVE AND DISABILITY REGULATORY COMPLIANCE

Summary of legislative and regulatory changes

Private employer sector | December 2023

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Illinois

Chicago — Ordinance No. O2023-0005883 (paid sick leave amendment)

Enacted Dec. 13, 2023

Effective Dec. 13, 2023

Informational only – Sedgwick does not administer.

On Dec. 13, 2023, the Chicago City Council enacted an ordinance amending and delaying the implementation of the paid leave provisions of the Chicago Paid Leave and Paid Sick and Safe Leave Ordinance (the ordinance), discussed in last month's newsletter, from Jan. 1 to July 1. The delay impacts a number of provisions of the ordinance. As a general reminder, Sedgwick does not administer paid sick leaves or other accrual-based wage replacement benefits.

The new paid sick leave amends the accrual rate to one hour for every 35 hours and changes paid sick leave carryover provisions, which will now take effect on July 1. Paid leave accrual will also now begin on July 1.

The ordinance does not affect the validity or change the terms of a sick leave or paid time off (PTO) policy in a valid collective bargaining agreement (CBA) in effect on July 1. Following that date, the requirements of the ordinance may be waived in a bona fide CBA if the waiver is set forth in clear and unambiguous terms.

Under the ordinance, certain employers are required to pay an employee the monetary equivalent of all unused accrued paid leave upon the employee's termination, resignation, retirement, other separation or transfer outside of the geographic limits of the city, dependent on the employer's number of covered employees. Medium employers (51-100 covered employees) would have been required to pay out up to 16 hours of paid leave on separation or transfer through Dec. 31, and all unused paid leave upon separation or transfer on or after Jan. 1, 2025. That date has been postponed by six months until July 1, 2025.

In addition to the delayed effective dates, **the amending ordinance** also modifies certain provisions of the ordinance. The amending ordinance redefines a covered employee as an individual who works at least 80 hours for an employer within any 120-day period while physically present within the geographic boundaries of the city. Previously, the threshold for coverage was performing at least two hours of work for an employer in any particular two-week period while physically present within the geographic boundaries of the city. The amending ordinance also clarifies that once the 80-hour threshold for coverage is reached, the employee will remain a covered employee for the remainder of the time that the employee works for the employer.

The amending ordinance requires that employers comply with the ordinance's recordkeeping requirements for employees whose regular work duties take place within the geographical boundaries of Chicago, even if those

individuals do not meet the standard for a "covered employee" under the ordinance and therefore are not entitled to paid leave or paid sick leave.

The amendments require that an employee may only initiate a private civil action after both: (1) an alleged violation occurs, and (2) the payday for the next regular payroll period or 16 days after the alleged violation occurred passes, whichever is the shorter period. However, this prerequisite to filing a paid leave private civil action sunsets on July 1, 2026. The prerequisite does not apply to paid sick leave violations.

The amending ordinance requires employers to provide their written paid time off policy to each of their covered employees in the employee's primary language. Effective Dec. 31, 2023, the amending ordinance also modifies the general required employment notices provisions as follows:

- Employers must provide their employment policies to their workers whose regular work duties take place within the geographical boundaries of Chicago. The employment policies must be provided in the primary language of each worker.
- Employers must provide workers with a 14-day notice of any changes to employment policies.

Illinois

Cook County — Ordinance No. 24-0583 (paid leave ordinance)

Enacted Dec. 14, 2023

Effective Dec. 31, 2023

Informational only — Sedgwick does not administer.

Cook County has enacted an ordinance that repeals its paid sick and safe leave ordinance and enacts new paid leave provisions requiring employers to provide 40 hours of paid leave per year for an employee to use for any purpose. The **new ordinance** largely mirrors Illinois's Paid Leave for All Workers Act (PLAWA).

The new law applies to all employers, as that term is defined under the Illinois Wage Payment and Collection Act. In addition, all employees are covered, except for the following:

- Employees as defined in the federal Railroad Unemployment Insurance Act.
- Temporary college or university student-employees.
- Certain short-term employees of an institution of higher learning.
- Employees working in the construction industry who are covered by a bona fide CBA.

Like PLAWA, Cook County's new ordinance provides exemptions for valid collective bargaining agreements (CBAs) and pre-existing paid time off (PTO) policies. The new ordinance does not affect the validity or change the terms of a valid CBA in effect on Jan. 1. Following that date, the requirements of the ordinance may be waived by a bona fide CBA if the waiver is explicit in the agreement, and it is in unambiguous terms. Further, employers may use pre-existing PTO policies if they provide employees with at least 40 hours of paid leave per year, which can be used for any reason.

The use of accrual, carryover and frontloading provisions are modeled after the provisions of PLAWA. Under the new law, employees are entitled to accrue paid leave at least one hour for every 40 hours, for up to 40 hours accrued in a year. Employers must allow carryover of unused leave time from one year to the next. In addition, employers may frontload 40 hours of paid leave on the first day of the benefit year. If employers frontload leave, then employers are relieved of carryover obligations to carry over unused time.

Under the new law, employers may limit the use of paid leave until the 90th day of employment, and employees are not entitled to use time under the law until 90 days following the effective date of the law (March 30). Paid leave may be taken by an employee for any reason of the employee's choosing. An employer may choose whether to use paid leave provided under the ordinance or any other leave provided by the employer or state law.

Employers may set a reasonable minimum increment of use for paid leave under the act, but it cannot be more than two hours, just like the provisions outlined in PLAWA. Employees must be paid their hourly rate for paid leave. However, employees who receive gratuities or commissions customarily must be paid by their employer at least the full minimum wage in the jurisdiction in which they are employed when paid leave is taken.

The new ordinance, like PLAWA, provides that employers may require up to seven days of advance notice for the foreseeable need for paid leave. For the unforeseeable use of paid leave notice must be provided as soon as practicable. However, employers are expressly prohibited from requiring documentation or certification to support an employee's need for leave. In addition, paid leave must be provided upon the oral or written request of an employee in accordance with an employer's reasonable paid leave policy notification requirements. PLAWA and the ordinance provide that employers are not required to pay employees for unused paid leave upon separation from employment.

Employers must post a notice, as provided by the Cook County Commission on Human Rights (agency), in a conspicuous place at each facility located in Cook County. If the workforce is comprised of a significant portion of workers who are not literate in English, employers must obtain a notice in that language from the agency. Employers that violate these posting requirements will be fined a civil penalty of $500 for the first audit violation and $1,000 for any subsequent audit violation.

Employers are prohibited from threatening or taking adverse action against an employee because an employee exercises, or attempts to exercise, their rights under the new ordinance. In addition, employers are prohibited from considering 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. Employers will be subject to civil penalties for any retaliation violations.

Employers that violate the new ordinance will be liable for civil penalties of $2,500 for each separate offense. Employees may bring action against an employer for any violation of the new ordinance and may recover three times the full amount of unpaid leave denied or lost, interest calculated at the prevailing rate and reasonable attorney's fees.

Minnesota

Duluth — Ordinance No. 23-062-O (repeal of paid sick and safe time ordinance)

Enacted Dec. 19, 2023

Effective Jan. 18, 2024

Informational only – Sedgwick does not administer.

The City of Duluth, Minnesota, has **repealed** its paid sick and safe time ordinance, originally enacted in 2018. Minnesota enacted a statewide earned sick and safe time law that went into effect on Jan. 1, and the city has deemed it unnecessary to continue to maintain and enforce its own paid sick and safe time ordinance.

New York

New York City — Int. No. 0563-2022 (Earned Safe and Sick Time Act amendment)

Passed by Council Dec. 20, 2023

If enacted, effective 60 days after becoming a law.

Informational only — Sedgwick does not administer.

The New York City Council has passed an **amendment** to the city's Earned Safe and Sick Time Act (the act) that would permit an employee to file a civil action to enforce the provisions of the act. If enacted, the amendment would require a civil action to be commenced within two years of the date the employee knew or should have known of the violation. The employee would not be required to file a complaint with the Department of Consumer and Worker Protection (the department) before filing a civil action.

However, the proposed amendment, if enacted, would require the department to stay any pending investigation (other than one opened on the department's initiative) until resolution of the civil action. The complaining employee would have 30 days to notify the department following the time for any appeal that has lapsed that the civil action is withdrawn, dismissed without prejudice, or resolved by final judgment or settlement. If the department determines that the violation was not resolved by the civil action, it would be able to continue its investigation of the alleged violation.

Washington

Seattle — SHRR Ch. 250 (final rules re: app-based worker paid sick and safe time)

Adopted Dec. 6, 2023

Effective Jan. 13, 2024

Informational only — Sedgwick does not administer.

The Seattle Office of Labor Standards (OLS) has adopted **final rules** to implement the App-Based Worker Paid Sick and Safe Time Ordinance, enacted in March 2023. The rules provide additional detail and compliance requirements for a covered network company with respect to administering paid sick and safe leave for its workers.

Companies are required to provide monthly notifications of accrued paid sick and safe time for app-based workers. Companies must also provide workers with notification of the worker's retained accrued sick and safe time.

App-based workers can use their paid sick and safe time during a deactivation or other status that prevents work for the company, unless that status is due to a verified allegation of sexual assault committed by the app-based worker. A verified allegation is one that is supported by any of the following examples of evidence, obtained by, or reported to the company, such as: victim or witness testimony or statement; policy report; court documents; statement of an advocate for victims of domestic violence, sexual assault, or stalking; statement of an attorney; statement of a member of the clergy; documentation from a medical provider; video or pictures of the alleged incident, or other evidence in accordance with the company's policies and procedures for verifying allegations of sexual assault. In the event that a sexual assault allegation is found to be unsubstantiated, the app-based worker shall have retroactive access to previously approved paid sick and safe time.

Companies are required to establish an accessible system for app-based workers to understand, request and use their paid sick and safe time. The system must be accessible via a smartphone application or online web portal as well as at any physical location. The company must provide a link to the system via its worker platform and must make the system available in English as well as the primary language of the app-based worker. The company may use the accessible system to include ongoing access to paid sick and safe time information that the company is required to provide, including the amount of accrued paid sick and safe time available since the last notification, the amount of paid sick and safe time used since the last notification, and any unused paid sick and safe time available for use.

The system must include monthly information on how the worker's average daily compensation was calculated by the company and must include the current rate of average daily compensation for the use of paid sick and safe time, a designation of which days worked were included in the average daily compensation, and the total earnings

and total number of days worked for the 12 months immediately prior to the date the app-based worker's amount of accrued paid sick and paid safe time was last calculated.

The system must also include a mechanism for workers to request, and the company to approve, paid sick and safe time, and must include timely responses from the company to app-based worker's requests. For these purposes, a response is timely when it confirms the receipt of the request within two hours, and the request is approved or denied within 48 hours of the request. The approval notification must include the specific start and end times of the paid sick and safe time approved, which must be allowed in 24-hour increments.

A company can withhold compensation if it determines an app-based worker used paid sick and safe time for a reason not authorized by law. The company must provide a method of contact and an accessible procedure for workers to contest the withholding and to assert that their use of paid sick and safe time was for an authorized purpose. The company must provide a designated email or phone number for the worker to directly contact company personnel regarding the contested use of paid sick and safe time. Further, when a company withholds compensation for the requested days of paid sick and safe time, the company must explain the basis of their determination — such as a record of the worker's performed orders during the requested days of paid sick and safe time — to the worker along with the notice of determination.

A company must provide each app-based worker with a written notice of rights under the ordinance based on the model notice of rights created and distributed by the OLS. The company must provide that notice in an electronic format that is readily accessible to workers via the accessible system described above. The company must provide the notice to each worker in English and in any language that the company knows or has reason to know is the primary language of any of their app-based workers, and must make available the model notice in all languages in which the model notice is published. At least once every year, the company must distribute the notice of rights via email and in one of two formats: text message or via a message in the company's accessible system. The manner selected must be the same manner that communications are typically sent from the company to workers.

Companies must affirmatively provide each worker with written notice of the company's policies and procedures for meeting the paid sick and safe time requirements. The company must also publish clear instructions and procedures for the accessible system, including information on where workers can access the accessible system and how to navigate the system, including, but not limited to, easy-to-follow steps to request their paid sick and safe time.

The company must also publish its policy for meeting the accessible procedure for when the use of paid sick and safe time is not authorized. That policy must include the company's expected response time to a worker's contestation, it must be made available via the worker platform, and it must be made available in English and the worker's primary language.

Companies must retain records that document compliance with these rules for each app-based worker for a period of three years. Companies must also retain all records that document the verification of sexual assault allegations

where the app-based worker is the alleged perpetrator and must maintain those records for three years. Finally, companies must retain for three years all records used to determine that an app-based worker used paid sick and safe time for a reason not authorized by law, in addition to records of all communications between the company and worker when the worker contests a determination. If a company fails to retain adequate records as required, there will be a presumption, rebuttable by clear and convincing evidence, that the company violated the rules pertaining to paid sick and safe time for the relevant periods and for each app-based worker for whom records were not retained.

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