

# Office of the Illinois Attorney General

## Guidance from the Workplace Rights Bureau on Employment Leave During the COVID-19 Pandemic

This document is intended to serve as guidance from the Office of the Illinois Attorney General's ("OAG") Workplace Rights Bureau ("WRB") regarding employment leave during the COVID-19 pandemic. Employment-related benefits are administered by different state agencies and the OAG cannot provide legal assistance to individuals. The OAG provides the guidance below to help workers be aware of the sick leave benefits available to them if they become sick and need to take leave in order to reduce the spread of COVID-19 and other diseases within workplaces. Workers should consult employment attorneys for legal advice tailored to their specific circumstances and employer's policies.

### **1. How Do I Know Whether I am Entitled to Paid Sick Leave During the COVID-19 Pandemic?**

First look at your employer's established policies, for example, in your employment handbook or manual, to see if your employer provides paid sick leave. Also, check to see if your employer has recently changed its policies in response to COVID-19.

If your employer's policies do not provide paid sick leave, you may be eligible for paid sick leave under a recently enacted federal law. Beginning April 2, 2020 through December 31, 2020, you may be temporarily entitled to paid sick leave under the federal Emergency Paid Sick Leave Act. You may be eligible for this leave if you have been employed for at least 30 days by an employer with 50-500 employees.

Employers covered by this new federal law must provide full-time employees with 10 days (equivalent to 80 hours) of paid sick leave when the employee cannot work or work remotely due to circumstances related to COVID-19. Part-time employees and employees with irregular schedules are entitled to the average number of hours they work each week over a two-week period.

Employees eligible for paid sick leave under the federal Emergency Paid Sick Leave Act include:

- a) Employees who are subject to a government quarantine or isolation order related to COVID-19;
- b) Employees who have been advised by healthcare providers to self-quarantine due to COVID-19;
- c) Employees who are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- d) Employees who are caring for an individual subject to a quarantine order or self-quarantine;
- e) Employees who are caring for children if schools are closed or their caregivers are unavailable because of a public health emergency; or
- f) Employees who are experiencing substantially similar conditions as those specified by the Secretary of Health and Human Services.

Payment to employees will vary depending on the reason for their leave. If the worker is absent from work to care for a sick family member or a child, payments will be capped at \$200 per day.

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If the worker is absent from work for any of the other reasons referenced above, payments will be capped at \$511 per day. Subject to these caps, federal law requires employers to pay employees for any paid sick time they take at the higher of: a) their regular rate of pay; b) the federal minimum wage; or c) the local minimum wage.

### **2. Will I Be Allowed to Use My Paid Sick Leave if My Child's Daycare or School Closes Due to COVID-19?**

If your leave is provided by an employer's policy, you should check the details and any conditions of the employer's policy. Be sure to look for any updated policies your employer may have adopted in response to COVID-19.

Additionally, effective April 2, 2020 through December 31, 2020, you have a right under the federal Emergency Sick Leave Act to take paid sick leave to care for your child because his or her school or place of care closes due to a public health emergency such as COVID-19. Likewise, a worker can use his or her accrued paid sick leave for this purpose under the Cook County and Chicago sick leave ordinances.

Beginning April 2, 2020 through December 31, 2020, you may also be eligible for 12 weeks of protected leave. The first 2 weeks of this leave may be unpaid; however, employees may use accrued personal or paid sick leave under the Emergency Paid Sick Leave Act, which provides for paid sick leave to care for child whose day care or school closes, during this time. You are eligible for this leave if: (1) you have been employed for at least 30 days; (2) your employer has less than 500 employees; and (3) you are unable to work or telework in order to care for children because their schools are closed or their daycares are unavailable due to a public health emergency. After the first 10 days of this protected leave, payment to employees will be made at the rate of two thirds of the employee's regular rate and will be capped at \$200 per day.

### **3. Do Any Local Governments Impose Paid Sick Leave Requirements?**

Yes. Cook County and Chicago both have paid sick leave ordinances. The following municipalities are covered by the Cook County Paid Sick Leave ordinance: Barrington Hills, Berwyn, Cicero, Countryside, Deerfield, Dolton, Evanston, Glencoe, Glenview, Kenilworth, Lincolnwood, McCook, Northbrook, Oak Brook, Oak Park, Phoenix, Skokie, University Park, Western Springs, Wilmette, and Winnetka.

### **4. What Paid Leave Am I Entitled to Under the Cook County Paid Sick Leave Ordinance?**

Many workers in Chicago and Cook County have the right to earn and use up to 40 hours of paid sick leave per year to take care of themselves and certain family members. If you worked at least 80 hours within any 120-day period for an employer with a business or a business license to operate in Chicago or a covered Cook County municipality, then you may be entitled to paid sick leave.

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Workers must earn at least one hour of earned sick leave for every 40 hours worked. For every 40 hours worked, a worker earns 1 hour of paid sick leave. A worker can earn up to 40 hours of paid sick leave per year.

You can find further information on the Cook County Paid Sick Leave Ordinance [here](#) and the Chicago Paid Sick Leave Ordinance [here](#).

### **5. If My Employer Has Its Own Paid Sick Leave Policy, Can I Use My Paid Sick Leave to Take Care of a Sick Family Member?**

Yes. Pursuant to the Illinois Sick Leave Act, an employee may use his or her personal sick leave benefits provided by an employer to take care of the employee's child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent, on the same terms upon which the employee is able to use personal sick leave benefits for the employee's own illness or injury.

Please note that if you work in Cook County or Chicago, you enjoy the same right, although the term "family member" is defined more broadly to include any other blood relative whose relationship to the employee is equivalent to a family relationship. You can find further information the Cook County Paid Sick Leave Ordinance [here](#) and the Chicago Paid Sick Leave Ordinance [here](#).

### **6. Can My Employer Retaliate Against Me If I Ask to Use My Paid Sick Leave to Take Care of Myself or a Family Member?**

No. Pursuant to the Illinois Sick Leave Act, the Chicago Paid Sick Leave Ordinance, and the Cook County Paid Sick Leave Ordinance, an employer cannot retaliate in any way, such as firing, cutting hours, or giving less desirable assignments, against an employee for exercising his or her rights to paid sick leave.

### **7. If I Work in a Municipality Covered by the Cook County Ordinance, Can I Use Paid Sick Leave if My Employer is Ordered to Temporarily Close Its Doors Due to COVID-19?**

Yes. Under the Cook County Paid Sick Leave ordinance, a worker can use his or her accrued paid sick leave if his or her employer is ordered closed by order of a public official due to a public health emergency, such as Governor Pritzker's Executive Order No. 2020-10 closing all nonessential businesses.

### **8. If I was Furloughed or Temporarily Laid Off Because My Employer Temporarily Closes, Can My Employer Preclude Me From Using My Accrued Vacation Time?**

The use of your accrued vacation depends largely on the employer's policy. However, an employer must provide a reasonable opportunity for employees to use their accrued vacation time, and blanket provisions prohibiting the use or payment of accrued vacation time could violate Illinois law.

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### 9. Does My Employer Have to Pay Me While the Company is Closed?

Generally, a worker is only entitled to be paid for work performed for the employer.

### 10. If My Employer Shuts Down and I was Furloughed or Laid Off Because of the COVID-19 Pandemic, Do I Have a Right to Apply for Unemployment?

If you are unable to work because your employer has laid you off, furloughed you, or drastically cut your hours, you may be eligible for unemployment benefits if you are otherwise available to work. You may find FAQs from Governor Pritzker's office regarding unemployment insurance during the COVID-19 pandemic [here](#). To file a claim for unemployment benefits, please contact the Illinois Department of Employment Security for more information by visiting [this website](#) or calling (800) 244-5631. Please note that this website and number are experiencing high traffic and call volumes. In order to process the extremely high volume of unemployment benefit claims due to COVID-19, Illinois Department of Employment Security has implemented a schedule based on last names for those filing claims online and over the phone.

### 11. If I Contract COVID-19 While I Am at Work, Am I Entitled to Workers' Compensation Benefits?

Eligibility for workers' compensation benefits depends on specific facts and circumstances involving your job and how you contracted COVID-19. Certainly, you can use any earned paid sick leave to care for yourself.

### 12. Where Can I Find More Information?

If you have further questions about your rights under the federal Emergency Sick Leave Act or Family Medical Leave Act, you may contact the U.S. Department of Labor [here](#) or find further information [here](#).

If you have further questions about your rights under the Cook County Sick Leave Ordinance, you may contact the Cook County Commission on Human Rights or find more information [here](#).

If you have further questions about your rights under the Chicago Sick Leave Ordinance, you may contact the City of Chicago's Office of Labor Standards or find more information [here](#).

You may also have additional rights under other laws, such as the National Labor Relations Act, the Workers' Compensation Act, and the Fair Labor Standards Act. You should consult with an employment attorney about your individual circumstances. If you are seeking pro bono legal assistance, lists of organizations who provide legal assistance in Illinois are available [here](#).

*This document is current as of March 31, 2020.*