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NEW PAID SICK LEAVE ORDINANCE COVERS EMPLOYEES WORKING IN COOK COUNTY, ILLINOIS

The new Cook County Earned Sick Leave Ordinance (16-4229) goes into effect on July 1, 2017. It provides for the mandatory accrual of paid sick leave for employees working in Cook County. The new ordinance will cover essentially all employees working in Cook County, and requires that employers provide up to 40 hours of paid sick leave per year.

Covered Employers and Employees. The new ordinance applies to any employer with a place of business in Cook County that employs at least one “covered employee.” A “covered employee” is any employee who: (i) works at least 80 hours in any 120-day period; and (ii) in any two-week period, performs at least two hours of work while physically present within the boundaries of Cook County. Importantly, compensated time spent by employees traveling in Cook County, such as for sales calls or for deliveries will count towards the two-hour requirement, while uncompensated commuting time will not. The ordinance will not apply to collective bargaining agreements which are in effect before July 1, 2017. Employees subject to collective bargaining agreements effective after July 1, 2017, will be protected by the ordinance unless the collective bargaining agreement expressly waives the protections under the ordinance.

Accrual of Sick Leave. Under the ordinance, a covered employee will begin to accrue paid sick leave on July 1, 2017, or upon his or her first day of employment if hired thereafter. Employees will accrue one hour of paid sick leave for every 40 hours worked. However, earned sick leave shall only accrue in hourly increments – there are no fractional accruals. For employees exempt from overtime requirements, they shall be assumed to work 40 hours in each workweek for purposes of earned sick leave accrual. Employers may cap the earned sick leave at 40 hours per 12-month period. However, at the end of the 12-month period, the employee is allowed to carry over up to 20 hours of any unused accrued sick leave to the following 12-month time period. Note: if the employer is subject to the Family and Medical Leave Act (“FMLA”), i.e., has 50 or more employees, the covered employee may carry over up to 40 hours of any unused accrued sick leave to the next 12-month period to be used exclusively for FMLA purposes.

Use of Earned Sick Leave. A covered employee may use earned sick leave in the following situations: (i) the employee is ill or injured or for the purpose of receiving medical care; (ii) a member of the employee’s family is ill or injured or to care for a family member receiving medical care; (iii) the employee or a family member is the victim of domestic violence; or (iv) the employee’s place of business or child’s school or child care facility is closed due to a public health emergency. Employees must be permitted to start using their accrued sick leave no later than the 180th calendar day after the commencement of their employment. However, the ordinance does not specify whether existing employees have to wait 180 days to start using their accrued sick leave. Employers can limit an employee’s use of earned sick leave to 40 hours per 12-month period.

Notice of Use of Earned Sick Leave. The employer may require the employee to provide up to seven days' advance notice of the employee's need to use earned sick leave, but only if the employee's use of the leave is reasonably foreseeable, i.e., for a scheduled doctor's appointment. If the need for the leave is not foreseeable, the employee must provide notice as soon as practicable on the day the employee intends to take the earned sick leave. If the employee is absent for more than three consecutive work days, the employer may require certification that the use of the earned sick leave was for an authorized purpose. However, the employer may not require that the certification specify the nature of the injury, illness or condition that necessitated the leave.

Notice of Rights. Employers must post a notice in the workplace advising covered employees of their rights to earned sick time under the ordinance. In addition, new employees must be provided written notice of their rights under the ordinance at the commencement of employment. The ordinance creates a private cause of action against the employer for violating the requirements of the ordinance, including treble damages for the amount of any unpaid sick leave denied or lost, along with interest, costs and attorney's fees.

Impact on Existing Paid Time Off Policies. If an employer already has in place a policy that provides paid time off, the ordinance does not require existing policies to provide additional paid leave. However, the existing policy must meet all the substantive requirements of the ordinance, including the reasons for which the time off may be used. Importantly, the ordinance does not require that employers pay out any earned but unused sick leave upon the termination of employment.

Further Implication for Employers

- At least nine municipalities within Cook County have passed their own counter-ordinances that expressly opt out of the Cook County Earned Sick Leave Ordinance. The ordinance will not apply to employers in Barrington, Bedford Park, Elmwood Park, Mount Prospect, Oak Forest, River Forest, Rosemont, Schaumburg and Tinley Park. More Chicago suburbs may join these municipalities in opting out of the Cook County ordinance prior to the July 1, 2017 effective date.

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This is an update provided for informational purposes to our clients and friends.
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