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Illinois Increases Protected Leaves for Employees

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Just two months after Chicago became the second city in the Midwest to require employers to provide paid sick leave,¹ Illinois has enacted three laws that entitle employees to additional protected leaves. The Child Bereavement Leave Act, the Employee Sick Leave Act, and an amendment to the Victims' Economic Security and Safety Act are described below.

Illinois Child Bereavement Leave Act

The Illinois Child Bereavement Leave Act ("CBLA") entitles eligible employees to take up to two workweeks of unpaid bereavement leave in a 12-month period to: (1) attend the funeral (or its alternative) of a child; (2) make arrangements necessitated by the death of the child; and (3) grieve the death of the child. If an employee suffers the loss of multiple children, the CBLA entitles an employee to two weeks of bereavement leave per child, up to a maximum of six weeks in a 12-month period. The employee must complete the leave within 60 days after the employee learns of the child's death.

The CBLA defines "child" as an employee's son or daughter who is a biological, adopted, foster, or step child, legal ward, or a child of a person standing in loco parentis. Its definition of child does not include any reference to the child's age.

Coverage

The CBLA applies to "employers" and "eligible employees" as those terms are defined in the federal Family and Medical Leave Act ("FMLA"). This means that at the time an employee requests leave under the Act: (1) the employer must have 50 or more employees who were employed for at least 20 or more workweeks in the current or preceding calendar year; (2) the employee must have worked for the employer for a total of at least

¹ See Sarah J. Gorajski and Larry D. Robertson, [Chicago to Become the Second City in the Midwest to Mandate Paid Sick Leave in 2016](#), Littler Insight (June 24, 2016). On May 31, 2016, Minneapolis, Minnesota became the first Midwestern city to mandate paid sick leave. See Sarah J. Gorajski, [Minneapolis Becomes the Only City in the Midwest to Mandate Paid Sick and Safe Leave](#), Littler Insight (June 1, 2016).

12 months; (3) the employee must have worked for the employer at least 1,250 hours over the previous 12 months; and (4) the employee must work at a worksite where 50 or more employees are employed within 75 miles of the worksite.

Other Existing Leave

Generally, the CBLA entitles eligible employees to substitute bereavement leave for any existing paid or unpaid leave to which they are entitled. This includes “family, medical, sick, annual, personal, or other similar leave” the employee receives under: (1) federal, state, or local law; (2) a collective bargaining agreement; and/or (3) an employment benefits program or plan.

Although employees may substitute bereavement leave for other leave they receive under federal, state, or local law, or an employer’s policies or practices, the CBLA “does not create a right for an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or is in addition to the unpaid leave time permitted by” the FMLA. Thus, if an employee has exhausted his or her FMLA leave and has no other leave available, the employee will not receive additional time off under the CBLA. Unless an employee’s CBLA leave is for an FMLA-qualifying reason, it will not run concurrently with FMLA leave and will not count against an employee’s FMLA leave entitlement.

Similarly, when the Chicago PSL Ordinance takes effect on July 1, 2017, employees will be able take CBLA leave if they have leave available under the Chicago PSL Ordinance, but it appears that unless the Chicago PSL Ordinance covers the reason for taking CBLA leave, employers may not be able to count CBLA leave against an employee’s Chicago PSL leave entitlement.

Leave Requests and Certifications

Employees must provide employers with at least 48 hours’ advance notice of their intent to take bereavement leave, unless doing so would be unreasonable and impracticable. Employers may require employees to provide reasonable documentation in connection their taking bereavement leave. Reasonable documentation may include: (1) a death certificate; (2) a published obituary; or (3) a written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or government agency.

Retaliation and Private Cause of Action

Employers may not retaliate or otherwise take any adverse employment action against employees because they: (1) exercise their rights or attempt to exercise their rights under the Act; (2) oppose practices they believe constitute violations of the Act; or (3) support the exercise of rights of another under the Act.

The Illinois Department of Labor will enforce the CBLA. Employees who believe an employer has violated their rights have 60 days to either file a complaint with the Department or file a civil action. Employees can seek unpaid wages, damages, and injunctive relief. Employers that violate the CBLA face a \$500 civil penalty per affected employee for the first offense. The penalty increases to \$1,000 per affected employee for subsequent offenses.

For employers in Chicago, if an employee believes that a violation of the CBLA also is a violation of the Chicago PSL Ordinance, the employee may file a private suit under both laws or file a complaint with the Illinois Department of Labor and file a private suit under the Chicago PSL Ordinance.

The CBLA took effect July 29, 2016.

Illinois Employee Sick Leave Act

Under the Illinois Employee Sick Leave Act (“ESLA”), if an employer allows employees to use personal sick leave benefits for their own illnesses or injuries, the employer must allow employees to use those benefits (on the same terms) for the illness, injury or medical appointment of an employee’s (1) child or grandchild; (2) spouse or domestic partner; (3) parent or stepparent; (4) mother-in-law or father-in-law; and (5) sibling.

The ESLA entitles employees to use at least the amount of personal sick leave benefits they would accrue in six months at their current rate. Employers need not modify paid time off policies if they already comply with the ESLA. The ESLA does not extend an employee’s FMLA leave entitlement.

The rights provided under ESLA “are in addition to any other rights...afforded under other provisions of law.” Thus, the ESLA will not relieve employers in Chicago of their compliance obligations under the Chicago PSL Ordinance. Indeed, although the ESLA allows employers to limit use of personal sick leave benefits to the amount of leave an employee would normally accrue in six months, that limit would not apply to the sick leave benefits an employee accrues under the Chicago PSL Ordinance, which generally entitles employees to use up to 40 hours (or approximately nine months of leave accrued by an employee who works 40 hours a week) of accrued paid sick leave in a 12-month period for the illness or injury of these family members.

Coverage

This Act covers all employers that provide “personal sick leave benefits.” Personal sick leave benefits include the accrued and available time an employee may use to be absent from work for personal illness, injury, or medical appointment.

Retaliation

Employers may not retaliate against an employee for:

- Using personal sick leave benefits under the Act;
- Attempting to exercise the right to use personal sick leave benefits;
- Filing a complaint with the Illinois Department of Labor;
- Alleging a violation of the Act;
- Cooperating in an investigation or prosecution of an alleged violation of the Act; or
- Opposing any policy, practice or action the Act prohibits.

The ESLA takes effect January 1, 2017.

Amendment to the Illinois Victims’ Economic Security and Safety Act

The Victims’ Economic Security and Safety Act (“VESSA”) entitles employees who are victims of domestic or sexual violence or whose family members or household members are victims of domestic or sexual violence to take unpaid leave to address issues related to the domestic or sexual violence. The existing law provides employees with 8 workweeks of unpaid leave in any 12-month period if they work for an employer with 15 to 49 employees, and 12 workweeks of unpaid leave in any 12-month period if they work for an employer with 50 or more employees.

Effective January 1, 2017, employees who work for an employer with no more than 14 employees will be entitled to 4 workweeks of unpaid leave in any 12-month period to address issues related to domestic or sexual violence.

Notable Paid Sick Leave Legislation

The CBLA, ESLA, and VESSA amendment may not be the end of leave mandates for Illinois employers.

Two bills are pending in the Illinois General Assembly which would require Illinois employers to provide paid sick leave. SB2147, the Healthy Workplace Act, would require employers to permit employees to accrue up to seven “paid sick days” during a 12-month period. HB3297, the Employee Paid Health Care Time Act, would require employers to permit employees to accrue up to 56 hours of “paid health care time” in a 12-month period. Both bills would permit use of paid sick leave if an employee or an employee’s family member is ill or injured.

Meanwhile, in Cook County, Illinois, a proposed ordinance is pending before the Board of Commissions which would require employers to provide their employees with paid sick leave. Proposed Ordinance No. 16-4229 would create the Cook County Employer Paid Sick Leave Ordinance, which would be nearly identical to the Chicago PSL Ordinance. The Ordinance would entitle covered employees to accrue up to 40 hours of paid sick leave in a 12-month period for use when employees or their family members are ill or injured. If enacted, the Ordinance would require employers to report their sick leave policies on a public website.

Employer Recommendations

Regardless of whether any of this proposed legislation passes, Illinois employers should take steps to ensure that their policies comply with the three most recently enacted laws:

- Review and revise their time-off policies and procedures, if necessary, to ensure that they comply with the CBLA and will comply with the ESLA and VESSA as of January 1, 2017.
- Review and revise attendance policies, if necessary, to ensure that an employee does not suffer an adverse action for using protected leave.
- Review their timekeeping, payroll, and any leave tracking systems to ensure that they are capable of tracking all of these statutory leaves.