

The Cure to All of Your Paid Sick Leave Ordinance Aches and Pains

**A Discussion of the Cook County
Earned Sick Leave Ordinance and
Chicago Paid Sick Leave Ordinance,
Effective July 1, 2017**

Presented By:

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Tab 1**

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ACKNOWLEDGEMENTS

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LAWYERS (2010-2017)
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MEMBERSHIPS

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Amy is Co-Chair of Aronberg Goldgehn's Commercial Litigation Practice Group. She focuses her practice on complex commercial litigation, including claims involving shareholder disputes, fraud, consumer fraud, breach of contract, and real estate.

She also defends local and national employers in litigation and administrative proceedings involving claims by employees for discrimination, retaliation, violation of state and federal wage and hour laws, and worker misclassification. Amy's employment practice encompasses assisting businesses with the protection of their assets and trade secrets by pursuing claims against former employees for breach of fiduciary duty, misappropriation of trade secrets, and breach of non-competition agreements. Amy counsels employers on a wide-range of employment matters, such as employment policies, compliance with state and federal employment laws, internal investigations, terminations, and classification of independent contractors/employees.

Amy represents a broad range of clients, including restaurants, banks, national non-profit organizations, closely-held businesses, physicians and medical groups, general contractors, energy companies, manufacturers, distributors, real estate developers and retailers.

SPEECHES AND PUBLICATIONS

Amy has been invited on several occasions to be a guest lecturer at Chicago-Kent College of law to discuss the topics of attorney billing and discovery in the Illinois court system.

She also represented the firm at an event hosted by the Association of Corporate Counsel in 2012 at which time she spoke on a panel discussing the differences between arbitration and litigation. Amy co-authored the white paper for that event titled "Arbitration v. Litigation: A True Hobson's Choice."

PROFESSIONAL BACKGROUND

Amy joined Aronberg Goldgehn as a law clerk in 2006 and, upon graduation from law school, as an associate in 2007. She became a Member/Partner in the firm in January 2015.

Amy has been instrumental in the firm's growth of its labor and employment practice. She makes it a priority to stay current on changes in the law, emerging trends in the employment context, and how those changes and trends impact her clients. In early June 2017, she completed a thorough guide to the paid sick leave rules enacted by

the City of Chicago and Cook County, entitled "Is Your Business Prepared to Comply with the Cook County and City of Chicago Paid Sick Leave Ordinances That Become Effective July 1, 2017?"

From 2015-2017, Amy has been recognized annually as an Emerging Lawyer in Commercial Litigation by Illinois Leading Lawyers, and for 2010 through 2017 as a Rising Star in Business Litigation by Illinois Super Lawyers.

Amy is well traveled, having been to Greece, Israel, Italy, Spain, Argentina, Chile, Australia, Croatia and the Czech Republic, among other places. In her free time, she enjoys spending time with family (including her husband and young daughter), working out, snow skiing, ice skating, and hiking. She is also a self-described 'foodie' and enjoys trying new restaurants, cooking and baking.

COMMUNITY INVOLVEMENT

- Chicago-Kent College of Law (Student Mentor)

LEADERSHIP ROLES

- Co-Chair, Commercial Litigation Group

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Tab 2**

The Cure to All of Your Paid Sick Leave Ordinance Aches and Pains

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THANK YOU COOK COUNTY AND THE CITY OF CHICAGO!!!!



Disclaimer

The material herein is intended for general information and promotional purposes, and should not be relied on or construed as professional advice. Under the Illinois Rules of Professional Conduct, some of this information may be considered advertising material. The transmission of this information is not intended to create, and receipt of it does not create, a lawyer-client relationship.

Today's Prescription

- General Overview of Paid Sick Leave Ordinances
- Q&A and Examples

When Must an Employer Comply With the Ordinances?

- Cook County → at least 1 employee who works in Cook County
- Chicago → at least 1 employee who works in Chicago

Employees Covered By the Ordinances

- Employees who work for a minimum of 2 hours in any 2-week period within Cook County/Chicago
- This includes full-time, part-time, exempt, non-exempt and temporary/seasonal workers

Permissible Uses for Paid Sick Leave

- When the employee or a family member is:
 - Ill, injured, seeking medical care, treatment or diagnosis;
 - The victim of domestic violence or stalking; or
 - When the employee's child's school or daycare or the employee's place of business is closed by order of federal, state or local government for a public health emergency.

Accrual of Paid Sick Leave

- 1 hour of paid sick leave per 40 hours worked
- Maximum accrual: 40 hours per year (unless the employer allows more)
- Accrual starts on day 1 of employment (but the right to use paid sick leave may be delayed)

Maximum Annual Use

- For non-FMLA: 40 hours
- For FMLA: up to 60 hours
- Unless the employer allows for more

Use Waiting Period

- Employee can use paid sick leave as long as they work 80 hours within any 120-day period
- BUT, the employer can establish a use waiting period not to exceed 180 days

Carryover

- For non-FMLA → 1/2 of accrued and unused paid sick leave (up to 20 hours)
- For FMLA → 1/2 of accrued and unused paid sick leave (up to 20 hours) + 40 hours to be used for FMLA sick leave

Alternatives to Tracking Accrual and Carryover

1. Frontloading the accrual of paid sick leave (40 hours; same for FMLA and Non-FMLA)
2. Frontloading the carryover
 - non-FMLA = 20 hours
 - FMLA = 60 hours (20 hours + 40 hours for FMLA leave)

Continued...

Alternatives to Accrual And Carryover Con't

3. Frontloading BOTH the accrual and carryover

– Non-FMLA:

- Cook: 60 hours (40 hours of frontloaded accrual + 20 hours of carryover)
- Chicago: 40 hours

– FMLA

- Cook: 100 hours (40 hours of frontloaded accrual + 20 hours of carryover + 40 hours of FMLA carryover)
- Chicago: 60 hours (40 hours of frontloaded accrual + 20 hours of carryover)

4. Other Options? YES

- as long as the employee is as good or better off under the employer's policy

Required Notice to Employees

- Cook County: posting required
- Chicago: posting + notice in first pay check
- Can use approved form notices or create your own

Possible Repercussions for Failing To Comply With Ordinances

- Fines, license suspension, injunctive relief
- Order requiring employer to pay lost wages (3 times the full amount of unpaid sick leave denied), employee's attorney's fees, costs
- But, please don't fret...

Paid Sick Leave Q & A and Examples

Which Ordinance Applies?

Question: Can Bryzzo Souvenir Co., which is located in Chicago, be subject to the Cook County Ordinance?

- General rule:
 - Chicago employer = Chicago Ordinance
 - Employer in Cook County, not Chicago = Cook County Ordinance
- Possible Exceptions:
 - Employer has employees who work outside the home city of the employer (i.e. a truck driver delivering souvenirs to the SOX memorabilia store in Cicero)
 - Municipalities that have opted out of Cook County Ordinance

Which Ordinance Applies, Con't?

Question: Does an employer located in Chicago need to provide the notice for the Chicago Ordinance, the Cook County Ordinance, or both?

- Definitely the Chicago Ordinance
- Possibly the Cook County Ordinance as well if, for example, employees are required to work in other areas of Cook County (including from home) or they travel to covered areas of Cook County

Which Ordinance Applies, Con't?

Question: Wonka Industries is located in Des Plaines, which has opted out of the Cook County Ordinance. Does it still need to comply with the Cook County Ordinance?

– Maybe

- If the Oompa Loompas also work in Des Plaines (or another city that has opted out of the Cook County Ordinance), then no.
- If, however, the Oompa Loompas perform work for Wonka at its candy factory in another municipality that has not opted out, then Wonka may be subject to the Ordinance

Alternatives to Accrual/Carryover

Question: If an employer chooses to frontload paid sick leave at the beginning of the benefit period, how many hours need to be frontloaded?

– 40 hours (same for FMLA/non-FMLA eligible)

Practice Note: An employer that frontloads the accrual may still be required to allow a carryover

Alternatives to Accrual/Carryover

Question: Anthony Weiner, who works at the Wiener Circle, has unused paid sick leave at the end of the year. How many hours does the Wiener Circle have to allow Anthony to carry over into the next year (assuming the employer does not frontload the carryover)?

- For non-FMLA eligible, one half of the unused paid sick leave at the end of the year (up to 20 hours)
- For FMLA eligible, one half of the remaining paid sick leave at the end of the year (up to 20 hours) + up to 40 hours that may be used exclusively for FMLA leave

Alternatives to Accrual/Carryover

Question: If an employer, which is not covered by FMLA, frontloads 40 hours of paid sick leave, must it allow an employee to carry over any remaining hours at the end of the benefit year?

- Yes. The employee must be allowed to carryover $\frac{1}{2}$ of accrued but unused paid sick time, up to 20 hours

Alternatives to Accrual/Carryover

Question: Must an employer covered by FMLA allow additional carryover if their PTO policy currently allows employees to carry over 40 hours?

– Maybe.

- If the employer frontloads at least 60 hours of PTO to the employee at the beginning of the year, and those hours are not restricted for use as FMLA/non-FMLA paid sick leave, no carryover is required (not even the 40 hours already allowed by the employer's current policy)
- If the employer does not frontload the accrual, but it instead tracks accrual, the employer must allow a carryover of a maximum of 60 hours, 20 more hours than currently provided

Alternatives to Accrual/Carryover

Question: Is the following PTO plan for an employer that is not covered by FMLA in compliance with the Ordinances?

- Employed for 0-5 years, PTO of 15 days, accruing 1/12 per month
- Employed 5 or more years, PTO of 20 days, accruing 1/12 per month
- No carryover allowed
- Answer: *Let's break this down on the next slide*

Alternatives to Accrual/Carryover

1. Is the rate of accrual in compliance with the Ordinances?

- Employed 0-5 years: 15 days/12 months = 1.25 days or 10 hours per month; That's 2.5 hours per week
- Employed 5+ years: 20 days/12 months = 1.66 days or 13.28 hours per month; That's more than 3 hours per week
- The Ordinances require 1 hour per 40 hours worked so the accrual rate is acceptable

2. Does the total amount of PTO comply?

- 15 and 20 days of PTO far exceeds the 40 hour requirement of the Ordinances

3. Is the prohibition of carryover compliant?

- NO. Under this policy, at the beginning of the benefit year, the employee will not have any hours to use. The Ordinances would allow the employee to carryover a maximum of 20 hours. So the employee is worse off with this policy EVEN THOUGH the policy is far more generous as far as providing total paid sick leave. The employer would need to allow carryover here.

Practice Note: This policy would comply with the Ordinances if the employer simply frontloaded the PTO (or at least 60 hours of it), instead of having the employee accrue time. That way, the employee would have available for use on Jan 1 at least 60 hours of PTO. No carryover would be required.

Maximum Use

Question: Ron Emanuel, who works for Divvy, got run over by Bruce Rounder while on his bicycle. At the beginning of the benefit period, Ron had 60 hours of paid sick leave: 20 hours carried over from the prior year and 40 frontloaded hours for the new year. Must Divvy (which is not FMLA eligible) allow Ron to use all 60 hours during the new year to recover from his injuries?

- No. 40-hour maximum use (unless employer is more generous)
- If Ron uses all 40 frontloaded hours during the new year, he will have 20 hours remaining at the end of the year. Half of those hours (10 hours) would then be carried over to the following year.

Maximum Use

Question: Beyoncé just had twins and she wants to take leave under the FMLA. At the beginning of the benefit period, she had 60 hours of paid sick leave: 20 hours of Ordinance restricted carryover + 40 hours of FMLA restricted carryover. Does Beyoncé's FMLA eligible employer have to allow her to use all 60 hours in the new year?

- Maybe. Beyoncé may be able to use up to 40 hours for FMLA restricted paid sick leave and up to 20 hours for Ordinance paid sick leave, or vice versa.
 - Use of ≤ 20 hours of paid sick leave or all 40 hours of FMLA leave, employee's total use of paid sick leave is capped at 60 hours
 - Use of ≥ 20 hours of paid sick leave or ≤ 40 hours of FMLA leave, employee's total use of paid sick leave is capped at 40 hours

Maximum Use

Question: At the beginning of the benefit period, an employee has 20 hours of paid sick leave that were carried over from the prior year. She is also accruing 1 hour of paid sick leave per week, up to 40 hours. Can the employee use the 20 hours that were carried over from the prior year on Jan 1?

Yes

Payment for Accrued But Unused Paid Sick Leave

Question: Flo quits her job with Progressive because she's tired of making terrible commercials. Does Progressive need to pay her for earned, but unused sick time at the time of termination?

– No

Practice Note: If an employer has a general PTO policy that lumps paid sick leave with other types of paid time off, such as personal days and vacation days, the employer may be required to pay out unused and accrued PTO upon separation.

Different Treatment of FT/PT Employees

Question: If an employer grants 45 hours of paid sick leave to FT employees, does the employer have to grant the same 45 hours to PT employees?

– No

- The employer can use the accrual method for PT employees as long as they accrue at least 1 hour for every 40 hours worked
- The employer could also frontload the PT employees a lesser amount than FT employees, but that can be risky if the PT employees' hours are unpredictable/fluctuate and they end up accruing more time than was frontloaded

Different Treatment of FT/PT Employees

Question: If an employer chooses to frontload PTO, can the employer prorate PT employees' accruals based on their hours worked from a previous year, add more PTO at the end of the year if the employee accrued more PTO in the current year than the previous year, and allow them to carry over the hours?

– This seems risky.

- This PTO plan could be viewed as worse than what the Ordinances provide if the employee is not accruing PTO during this year at the rate of 1 hour for every 40 hours worked.
- The employee might also be worse off if they can't use earned sick leave during the year in which it was earned. This could be the result of the employer adding hours at the end of the year to be carried over to the following year.

Different Treatment of FT/PT Employees

Question: Can an employer frontload for FT employees and track accruals and carryover for PT employees?

Yes

Paid Time Off (“PTO”)

Question: Are general PTO policies permitted, or does an employer need a separate sick leave policy?

- PTO policies are permitted as long as they provide sufficient paid time off and do not impose restrictions on the use of paid sick leave that would violate the Ordinances, such as:
 - Requiring an employee to find coverage for their absence
 - Requiring an employee to provide a certain amount of notice prior to being able to use sick leave
 - Use it or lose it policies. These may need to be modified depending on the amount of PTO granted and if the PTO is frontloaded.
 - For Example:
 - If the employer frontloads 80 hours of unrestricted PTO, a “use it or lose it” policy would be compliant because the employer is not required to allow a carryover
 - If the employer tracks accrual and provides 80 hours of PTO, 1/12 per month, a “use it or lose it” policy would violate the Ordinances because, under the Ordinances, employees must be allowed to carry over at least 20 hours for non-FMLA and up to 60 hours for FMLA paid sick leave. While the employee is getting more PTO than the Ordinances require in the first year, the employee will be worse off under the employer’s policy on Jan 1 of year 2 because they won’t have any available PTO hours to use at that time.

PTO con't

Question: If the Cook County branch of the White House grants the President unlimited PTO to golf (among other things), does the White House need to create a paid sick leave policy to comply with the Ordinances?

- No, as long as it doesn't have restrictions on the President's ability to use PTO for sick leave that are more burdensome than those provided by the Ordinances

PTO con't

Question: How does one determine the sick time carryover if the employer does not distinguish between sick and vacation time in a PTO policy?

- The employer may have to calculate the appropriate carryover based on the total bank of PTO

Practice Note: Most PTO policies provide more paid time off than is required by the Ordinances. So, as long as the employer frontloads at least 60 hours of PTO, the employer does not need to allow any carryover

Cashing Out an Employee's Paid Sick Leave at the End of the Year

- The Ordinances state that employers cannot pay an employee not to take earned sick leave. Arguably, this could prevent an employer from cashing out an employee's earned sick leave in certain circumstances.
- Examples:
 1. Employer has a paid sick leave policy where employees accrue 1 hour per week, up to 40 hours. At the end of the year, the employee has 10 hours of unused paid sick leave. Can the employer cash out those hours?
 - Maybe, for at least some of the hours
 - Non-FMLA: The employee would be entitled to carry over 5 hours (half of the 10 remaining hours). The employer could cash-out the employee for the remaining 5 hours (if so desired).
 - FMLA: The entire 10 hours would need to be carried over (5 hours of Ordinance restricted paid sick leave, and 5 hours for FMLA restricted sick leave). No cash out.
 2. Employer frontloads its employees 100 hours of PTO at the beginning of the year. At the end of the year, the employee has 30 hours of unused PTO. Can the employer cash out the employee's 30 hours?
 - Yes, because it is frontloading more unrestricted hours than is required by the Ordinances. Based on this, the employer is not required to allow the employee to carry over any hours.

Granting/Managing Paid Sick Leave For Employees Who Start Mid-Year

Question: Anthony Scaramucci started working for the President in July 2017. How should the President grant and manage paid sick leave for employees like Anthony who start mid-year?

- Track the accrual and allow the employee to carry over up to 20 hours into the next year (without first dividing the accrued and unused hours in half); OR
- Frontload a greater amount of paid sick leave than the amount an employee would be entitled.
 - For example, if a FT employee started on July 1st, and the employer tracked their accrual, the employee would accrue 24 hours through the end of the year. The employer can frontload 30 hours (for example) to avoid tracking accrual/carryover.

Breaks in Service

Question: Elaine Benes resigned from her employment at J. Peterman Catalog to become a professional dancer. That did not work out well for her so she re-applied for her old job and was re-hired. What happens to Elaine's unused paid sick leave that she accrued before she resigned?

- Unused paid sick leave is lost. J. Peterman Catalog is not required to return unused paid sick leave when there is a break in service.
- Note that:
 - If the employee returns to the company within 120 days of separation, she must return to her same level of eligibility (i.e. the employer cannot impose another use waiting period).
 - If the employee returns more than 120 days after separation, the employee will need to reestablish eligibility and she may be subject to the employer's use waiting period (if any).

Employee Notice/Documentation Regarding Use of Paid Sick Leave

Question: The Donald is having a hair transplant procedure in a few weeks. It's going to be GREAT. He wants to use paid sick leave while he is out of the office. How much notice can The Donald's employer require him to give of his intent to use paid sick leave?

- If the use of paid sick leave is reasonably foreseeable → up to 7 days
- If the use is not reasonably foreseeable → as soon as practicable on the day the employee intends to use paid sick leave
- Method of notice: The employer can require notification by any reasonable method, i.e. phone, text message, email for both foreseeable and unforeseeable absences
- Practice Note: It is important to have a notification policy in writing. Otherwise, the presumption is that notice is not required and the employer cannot discipline the employee for failing to comply.

Employee Notice/Documentation Regarding Use of Paid Sick Leave

Question: Is the employee required to provide the employer with documentation to support his use of paid sick leave?

- No, unless the employee is absent for more than 3 consecutive days
- Employer can then require a certification from the employee as to the use of paid sick leave (i.e. a doctor's note, a police report, a court document, signed statement from an attorney or victim services advocate, etc.)

Employee Notice/Documentation Regarding Use of Paid Sick Leave

Question: Melissa McCarthy had to take 3 consecutive days off as a result of an attempt by Sean Spicer to poison her so she would stop doing impressions of him. Can Saturday Night Live refuse to allow Melissa to use additional paid sick leave or delay the payment of wages for paid sick leave until SNL receives appropriate documentation to support the leave?

- No, BUT if an employee fails to provide the requested information within a reasonable period of time, the employer can discipline the employee, including termination
- The employer can also demonstrate that the employee has misused earned sick leave (such as by taking vacation) and discipline them accordingly
- Practice Note: Employers may want to include in their employee handbook a statement as follows: (a) failing to provide documentation to support sick leave exceeding 3 consecutive days; and (b) misuse of paid sick leave, could subject an employee to discipline, including termination.

Questions?

For additional questions, contact Amy Gibson:

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**Replace With
Tab 3**

Key Provisions of the Cook County Earned Sick Leave Ordinance and City of Chicago Minimum Wage and Paid Sick Leave Ordinance, current as of July 16, 2017¹

Subject	Cook County Ordinance & Rules	Chicago Ordinance & Rules
Covered employer	Employs at least 1 covered employee who works in Cook County (which could include the employee’s home if, among other things, the employee is <i>required</i> to telecommute). <i>See</i> Ordinance, 42-2; Rules, 320.100. For exempt employers, such as federal, state, and local governments, <i>see</i> Ordinance, 42-2, Rules, 320.100(C)	Same as ← but, the employer must employ at least 1 covered employee who works in the City of Chicago (note that this could arguably include work from the employee’s home if the employee is <i>permitted</i> to telecommute) (<i>See</i> Ordinance, 1-24-010, “employee”; Rules, Article 1, Section 1, “covered employee”). Exempt employers are not discussed or defined by the Ordinance or Rules.
Covered employee	<p>Covered employee: Employee who works for a minimum of 2 hours in any two-week period in Cook County (note that uncompensated commuting or traveling through Cook County without stopping for a work purpose do not count; However, compensated commuting or travel, or work from home in Cook County does count if <i>required</i> by the employer. <i>See</i> Ordinance 42-2; Rules, 310.100</p> <p>Exempt employees: Certain employees subject to a collective bargaining agreement and independent contractors. <i>See</i> Rules, 310.100(D)</p>	<p>Same as ← for covered employees but, the employee must work in Chicago (note that work from home in Chicago may count if such work is <i>permitted</i> by the employer. <i>See</i> Rules, Article 1, Section 1</p> <p>Exempt employees (among others): Certain employees subject to various subsections of the Illinois Minimum Wage Law, employees of any subsidized temporary youth program, employees of any governmental entity other than the City of Chicago, certain employees covered by a collective bargaining agreement. <i>See</i> Rule MW 1.05.</p>

¹ The chart is intended to highlight some of the key provisions of the Cook County Earned Sick Leave Ordinance No. 16-4229, effective July 1, 2017 (the “Cook County Ordinance”), the Interpretative and Procedural Rules governing the Cook County Ordinance, approved May 25, 2017 (the “Cook County Rules”), the City of Chicago Minimum Wage and Paid Sick Leave Ordinance, Chapter 1-24 of the Municipal Code of Chicago, effective July 1, 2017 (the “Chicago Ordinance”), and the rules interpreting the Chicago Ordinance dated June 28, 2017 (the “Chicago Rules”). The chart is not intended to include all provisions and terms of the Cook County and Chicago Ordinances (collectively the “Ordinances”), or their corresponding rules. Users should review the full text of the Ordinances and corresponding rules to confirm the scope and applicability of the Ordinances. This document shall in no way constitute legal advice or form any attorney-client relationship.

Subject	Cook County Ordinance & Rules	Chicago Ordinance & Rules
Eligibility to use paid sick leave	Employee must work 80 hours within any 120-day period. <i>See</i> Ordinance, 42-3(a)(1); Rules 310.300(B). However, the employer may establish a use waiting period prohibiting the employee from using paid sick leave until as late as 180 days after the start of employment. <i>See</i> Rules, 500.200	Same as ← <i>See</i> Ordinance, 1-24-045(a)(1), (c)(1); Rules MW 3.03, 3.08
Rate of accrual of paid sick leave	<p>(a) 1 hour of paid sick leave per 40 hours worked in Cook County.</p> <p>(b) Overtime exempt employees are assumed to work 40 hours per week, unless their normal workweek is less than 40 hours, in which case paid sick leave shall accrue based upon that normal work week. <i>See</i> Ordinance, 42-3(b)(3)</p> <p>(c) If non-exempt from overtime, an employee may earn more than 1 hour per week depending on the number of hours actually worked. <i>See</i> Ordinance, 42-3(b)(2)-(3); Rules, 400.200</p> <p>(d) Employers need not award paid sick leave in fractional increments. <i>See</i> Rules, 400.200(E)</p> <p>(e) Employers may front load paid sick leave to avoid having to track accrual. <i>See</i> Ordinance, 42-3(b)(7); Rules, 400.200(G)</p>	<p>Same as ← (a) but, hours must be worked in Chicago. Ordinance, 1-24-045(b)(2); Rule MW 3.04(b)</p> <p>Same as ← (b), (d), (e) (<i>See</i> Ordinance, 1-024-045(b)(2)-(3); Rule MW 3.04(c), (e); Rule MW 3.05</p> <p>Silent as to (c)</p>
Date of initial accrual	The later of July 1, 2017 or the first calendar day after the start of employment in Cook County (so if an employee worked for a covered employer prior to July 1, 2017, but worked for the employer in another county, the date of initial accrual would not begin until the employee worked for the employer in Cook County for 2 hours in a two-week period). <i>See</i> Ordinance, 42-3(b)(1); Rules, 400.100	Same as ← except work must be in Chicago. <i>See</i> Ordinance, 1-24-045(b)(1); Rule MW 3.04(a)
Maximum accrual per year	40 hours per 12-month period (with some exceptions). <i>See</i> Ordinance, 42-3(b)(4); Rules, 400.500	Same as ← <i>See</i> Ordinance, 1-24-045(b)(4); Rule MW 3.08(c), (d)

Subject	Cook County Ordinance & Rules	Chicago Ordinance & Rules
<p>Carryover of unused and accrued paid sick leave</p>	<p>Depends on whether covered employer is FMLA eligible:</p> <p>(a) For non-FMLA eligible: Half of unused hours may be carried over into the following year, up to 20 hours. <i>See</i> Ordinance 42-3(b)(5); Rules, 400.600(A)</p> <p>(b) For FMLA eligible: the employee may carry over up to 40 hours of accrued and unused paid sick leave to be used exclusively for FMLA purposes. This is in addition to the carryover of a maximum of 20 hours of regular paid sick leave. <i>See</i> Ordinance, 42-3(b)(6); Rules, 400.600(B)</p> <p>(c) the carryover must be in hourly increments, and may not be fractional. Therefore, if the employee has an odd number of accrued and unused sick leave hours, that amount should be rounded up before calculating the carryover. <i>See</i> Rules, 400.600</p> <p>(d) employers may front load carryover to avoid individualized calculations of the amount of unused earned sick leave to be carried over from one accrual period to the next. <i>See</i> Rules, 400.600(C).</p> <p>If the benefit year begins after an employee’s start date, the employer may frontload a greater amount of paid sick leave than the amount to which the employee is entitled OR allow the employee to carry over up to 20 hours of any accrued paid sick leave without first dividing in half the accrued and unused paid sick leave hours. Rules, 600.300(E)</p> <p>Note that frontloading the accrual and carryover are not the only alternatives to tracking accrual. Employers are free to adopt other alternative practices as long as those practices do not treat employees worse than if the employer followed the accrual and carryover procedures.</p>	<p>Same as ← (a), (b), (c), (d) <i>See</i> Ordinance, 1-24-045(b)(5), (6); Rule MW 3.06(a), (d)</p> <p>If the employer frontloads 40 hours of paid sick leave for non-FMLA eligible and 60 hours for FMLA eligible (40 hours for FMLA leave and 20 hours for ordinance paid sick leave, or 40 hours for ordinance paid sick leave and 20 hours for FMLA leave) at the beginning of the covered employee’s 12-month benefit period, the employer is not required to carryover hours from one year to the next. <i>See</i> Rule MW 3.05</p> <p>If the benefit year begins after an employee start date, up to 20 hours of any accrued paid sick leave shall be carried over. Unlike normal carryover, where the figure gets halved, all of the unused accrued paid sick leave, up to 20 hours, is carried over. Rule MW 3.06(b)</p>

Subject	Cook County Ordinance & Rules	Chicago Ordinance & Rules
Permissible uses for accrued paid sick leave	When the employee or a family member is ill, injured, seeking medical care, treatment, or diagnosis, the victim of domestic violence or stalking, or when the employee's child's school or daycare or the employee's place of business is closed by order of federal, state or local government for a public health emergency. <i>See</i> Ordinance, 42-3(c)(2); Rules, 500.500	Same as ← <i>See</i> Ordinance, 1-24-045(c)(2)
Maximum use of accrued paid sick leave per accrual period	Maximum of 40 hours, unless the employer allows for more. Also, if the employer/employee are FMLA eligible, the maximum use could be as high as 60 hours. <i>See</i> Ordinance, 42-3(c)(1); Rules, 500.300(C) Note that the employee's sick leave bank could be greater than what they are actually entitled to use.	Same as ← <i>See</i> Ordinance, 1-24-045(c)(1); Rule MW 3.08(c), (d)
Increments of use	Minimum of 1 hour; But the employer may provide a policy requiring employees to take leave in up to 4-hour increments. <i>See</i> Rules, 500.400	Same as ← BUT, the minimum use policy is not capped at 4-hour increments. Leave can be taken in hourly increments unless the employer establishes a written minimum use policy. <i>See</i> Rule MW 3.08(b)
Remuneration for unused sick pay	Employer is not required to compensate employee for unused sick leave upon separation from employment, unless a collective bargaining agreement provides otherwise. <i>See</i> Rules, Section 200.200	Same as ← <i>See</i> Ordinance, 1-24-045(a)(3); Rule MW 3.11(c)

Subject	Cook County Ordinance & Rules	Chicago Ordinance & Rules
Breaks in service	<p>(a) When a covered employee is rehired by the same employer within 120 days of his separation, he is considered to have continued his employment during the 120-day period for purposes of being eligible for paid sick leave and surpassing any applicable use waiting period. <i>See</i> Rules, 310.400.</p> <p>(b) When a covered employee is rehired by the same employer more than 120 days after separation, the employee must reestablish eligibility for coverage and use of paid sick leave. Rules, Section 310.400.</p> <p>(c) If a covered employee has separated from service with unused paid sick leave, the employer does not need to restore this leave when the employee is rehired. Rules, Section 310.400.</p>	<p>Same as (c) ← Rule MW 3.10</p> <p>Silent as to (a) and (b)</p>
Notice and documentation from covered employee relating to use of paid leave	<p>Employer may establish reasonable notice requirements for covered employees using earned sick leave for both foreseeable and unforeseeable absences from work. <i>See</i> Rules, Section 500.600</p> <p>Employer may require certain documentation when employee is absent for more than 3 consecutive work days. <i>See</i> Ordinance, 42-3(c)(5); Rules, Section 500.700</p>	<p>Same as ← <i>See</i> Rule MW 3.12</p> <p>Same as ← except a special rule exists for employees of a common carrier regulated by the railway Labor Act. <i>See</i> Ordinance, 1-24-045(c)(5); Rule MW 3.14</p>
Notification of employee's rights under the Ordinances	<p>Employer is required to post a notice of employee's rights under the Ordinance as well as provide each covered employee with a notice of rights. <i>See</i> Ordinance, 42-6; Rules, 700.100-200</p>	<p>Same as ← except the posting and notice to be provided to covered employees may be in the form provided by the Commissioner and the employer shall provide notice with the first paycheck. <i>See</i> Ordinance, 1-24-070; Rule MW, 1.04.</p>

Subject	Cook County Ordinance & Rules	Chicago Ordinance & Rules
Required recordkeeping of covered employer	Technically, none, until the covered employer is named as a respondent in a claim filed under the Ordinance; However, the Rules anticipate that moderately sophisticated employers will keep certain employment records for the most recent 3 years and if they don't maintain certain information, there may be an adverse presumption in a later filed claim by an employee. <i>See Rules, 800.100</i>	Employer must maintain, at a minimum, 12 different types of records relating to a covered employee for a period of not less than 5 years. <i>See Rule MW 1.06</i>
Prohibited acts under the Ordinance (these lists should not be read as exhaustive)	<ul style="list-style-type: none"> • (a) requiring a covered employee to find coverage as a condition of using earned sick leave. <i>See Ordinance, 42-3(c)(3)</i> • (b) retaliating against a covered employee for exercising his rights under the Ordinance. <i>See Ordinance, 42-7</i> • (c) counting absences arising from the use of properly noticed earned sick leave that triggers any adverse employment action. • (d) switching the employee's schedule after he provides notice of intent to use earned sick leave to avoid paying him during his absence. • (e) paying a covered employee not to take earned sick leave. <i>See Rules. 900.100</i> 	Same as ← (a), (b), (e) <i>See Ordinance, 1-24-045(c)(3), 1-24-080; Rule MW 3.11(b)</i>
Successor employer	Not mentioned in the Ordinance	Unused paid sick leave shall be retained by the covered employee if the employer sells, transfers, or otherwise assigns the business to another employer and the covered employee continues to work in the City of Chicago. <i>See Rule MW 3.13</i>
Ordinance enforced by:	Cook County Commission on Human Rights	City of Chicago's Department of Business Affairs and Consumer Protection

Subject	Cook County Ordinance & Rules	Chicago Ordinance & Rules
Administrative process: Time limit for filing a complaint	Within 3 years of the alleged violation of the Ordinance. BUT, if there is evidence that the employer concealed the violation, then the covered employee may file the complaint within 3 years after the covered employee discovered, or reasonably should have discovered, the violation. Ordinance, 42-8(b); Rules, 1020.100. Even if a claim is time-barred before the Commission, it may not preclude a covered employee from filing a claim in court. Such a claim may be filed without the covered employee's exhaustion of its administrative rights. Ordinance, 1040.100	The Commissioner of the City of Chicago's Department of Business Affairs and Consumer Protection has discretion whether or not to accept a complaint filed more than 3 years after the disputed wages were due or the sick time was not granted. Rule MW 4.01(c) This does not alter a covered employee's ability to file a civil action. Ordinance, 1-24-110; Rule MW 4.01(c)
Administrative remedies	Fines (not to exceed \$500 per violation per covered employee per day); Lost wages; injunctive relief. <i>See</i> Rules, 1030	Fines, license suspension or revocation, restitution to the covered employees and former covered employees. <i>See</i> Rules MW 4.02(d)
Damages in civil action	Damages up to 3 times the full amount of any unpaid sick leave denied or lost, plus interest, attorney's fees and costs. <i>See</i> Ordinance 42-8(b)	Same as ← <i>See</i> Ordinance 1-24-110

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**Replace With
Tab 4**

**List of Municipalities - Indicating Whether They Have or Have Not
Opted Out of the New Cook County Sick-Leave Ordinance (as of 7-31-17)**

Municipality	Has Not Opted Out	Opted Out
Alsip		X
Arlington Heights		X
Barrington		X
Barrington Hills (partly in Kane, Lake and McHenry counties)	X	
Bartlett (partly in DuPage County)		X
Bedford Park		X
Bellwood		X
Bensenville (partly in DuPage County)	X	
Berkeley		X
Berwyn	X	
Blue Island		X
Bridgeview		X
Broadview		X
Brookfield		X
Buffalo Grove		X
Burbank		X
Burnham		X
Burr Ridge		X
Calumet City		X
Calumet Park		X
Chicago Heights		X
Chicago Ridge		X
Cicero	X	
Country Club Hills		X
Countryside	X	
Crestwood		X
Deer Park (partly in Lake County)		X
Deerfield (partly in Lake County)	X	
Des Plaines		X
Dixmoor	X	
Dolton	X	
East Dundee (partly in Kane County)		X
East Hazel Crest		X
Elgin		X
Elk Grove Village		X
Elmhurst (partly in DuPage County)	X	
Elmwood Park		X
Evanston	X	
Evergreen Park		X
Flossmoor		X
Ford Heights	X	
Forest Park		X

**List of Municipalities - Indicating Whether They Have or Have Not
Opted Out of the New Cook County Sick-Leave Ordinance (as of 7-31-17)**

Municipality	Has Not Opted Out	Opted Out
Forest View		X
Frankfort (partly in Will County)	X	
Franklin Park		X
Glencoe	X	
Glenview		X
Glenwood		X
Golf		X
Hanover Park		X
Harvey		X
Harwood Heights		X
Hazel Crest		X
Hickory Hills		X
Hillside		X
Hinsdale		X
Hodgkins		X
Hoffman Estates		X
Hometown		X
Homewood		X
Indian Head Park	X	
Inverness		X
Justice		X
Kenilworth	X	
La Grange		X
La Grange Park		X
Lansing		X
Lemont (partly in DuPage and Will counties)		X
Lincolnwood		X
Lynwood		X
Lyons		X
Markham		X
Matteson (partly in Will County)		X
Maywood		X
McCook	X	
Melrose Park		X
Merrionette Park		X
Midlothian		X
Morton Grove		X
Mt. Prospect		X
Niles		X
Norridge		X
North Riverside		X
Northbrook		X
Northfield	X	

**List of Municipalities - Indicating Whether They Have or Have Not
Opted Out of the New Cook County Sick-Leave Ordinance (as of 7-31-17)**

Municipality	Has Not Opted Out	Opted Out
Northlake		X
Oak Brook (partly in DuPage County)	X	
Oak Forest		X
Oak Lawn		X
Oak Park	X	
Olympia Fields	X	
Orland Hills		X
Orland Park		X
Palatine		X
Palos Heights		X
Palos Hills		X
Palos Park		X
Park Forest		X
Park Ridge		X
Phoenix	X	
Posen		X
Prospect Heights		X
Richton Park		X
River Forest		X
River Grove		X
Riverdale		X
Riverside		X
Robbins	X	
Rolling Meadows		X
Roselle (partly in DuPage County)		X
Rosemont		X
Sauk Village (partly in Will County)		X
Schaumburg		X
Schiller Park		X
Skokie	X	
South Barrington		X
South Chicago Heights		X
South Holland		X
Steger		X
Stickney		X
Stone Park		X
Streamwood		X
Summit		X
Thornton		X
Tinley Park		X
University Park (partly in Will County)	X	
Westchester		X
Western Springs		X

**List of Municipalities - Indicating Whether They Have or Have Not
Opted Out of the New Cook County Sick-Leave Ordinance (as of 7-31-17)**

Municipality	Has Not Opted Out	Opted Out
Wheeling		X
Willow Springs (partly in DuPage County)		X
Wilmette		X
Winnetka	X	
Worth		X

**Replace With
Tab 5**

Frequently Asked Questions

The text of the Cook County Earned Sick Leave Ordinance (“Ordinance”) and the Interpretative and Procedural Rules (“ESL Regulations”) adopted by the Cook County Commission on Human Rights (“Commission”) provide detailed guidance for employers. The staff of the Commission does not have the authority to give individual legal advice or render advisory opinions to individual employers. However, in an effort to facilitate broad compliance, the staff of the Commission will gather and attempt to answer frequently asked questions. These responses are not binding on the Commission in an enforcement action related to the Ordinance. To the extent that these responses conflict with the Ordinance or the ESL Regulations, the Ordinance and the ESL Regulations are more authoritative and will prevail.

This list of FAQs will be updated from time to time with newer FAQs appearing at the bottom.

[June 30, 2017]

Enforcement Priorities

Q1: What are the Commission’s enforcement priorities with respect to the Ordinance?

A1: The Commission will investigate all filed complaints alleging a colorable violation of the Ordinance. That said, the Commission has limited resources to dedicate to enforcement of the Ordinance and must establish priorities. The Commission will prioritize those cases brought by working people, who on June 30, 2017, received no paid leave of any kind from their employer. The Commission seeks to prevent those working people from ever having to choose again between caring for themselves – or a sick family member – today and having a job to return to tomorrow.

Employers with generous preexisting paid leave programs who have made a good faith effort to ensure that such programs are compliant with the Ordinance will find the Commission’s approach to enforcement to be reasonable. The Commission’s ESL Regulations explicitly provide that during the first year of the Commission’s enforcement after the effective date of the Ordinance, if such an employer is the target of an enforcement action by the Commission and if the employer works with the Commission to quickly understand its obligations under the Ordinance and meet those obligations, then the Commission will drop the enforcement action without protracted litigation or issuing fines. *See* ESL Regulations, § 1020.800. The Commission’s goal is to reward responsible employers who quickly come into compliance with the Ordinance when they make reasonable mistakes so that limited resources can be re-focused on employers who are intentionally violating the Ordinance or otherwise acting in bad faith.

Coverage in the City of Chicago

Q2: Does the Ordinance apply to employers and employees working in the City of Chicago?

A2: To the extent that an employee and employer are both located in the City of Chicago, enforcement of earned sick leave obligations lies with the City of Chicago’s Department

of Business Affairs and Consumer Protection (“BACP”) under the City of Chicago’s Paid Sick Leave Ordinance. *See* ESL Regulations, § 1010.100.

There are some limited circumstances in which BACP may not have jurisdiction to hear a claim by employees working in the City of Chicago under the City’s Ordinance, but the Commission will have jurisdiction to hear the claim under the County’s Ordinance (*e.g.*, an employer in suburban Cook County that sends its employees into the City of Chicago to work or an employer in the City of Chicago that sends its employees into suburban Cook County to work). In those instances, an employer who can demonstrate that its treatment of its employees complies with the City’s Paid Sick Leave Ordinance (and/or any interpretative rules issued by BACP) has an absolute defense against the Commission finding a violation of the County’s Ordinance.

In other words, the Commission will generally not find that an employer who is complying with the City’s substantially similar Paid Sick Leave Ordinance has violated the County’s Ordinance.

Posting Notice at Places of Business in Chicago

Q3: Do employers in the City of Chicago need to post both the City and the County’s notice of rights?

A3: If an employer in the City of Chicago does not have employees who work in suburban Cook County, it is not necessary to provide a separate notice of rights under the County’s Ordinance to employees. If, on the other hand, employees may work in suburban Cook County, a Chicago-based employer should notify employees about how to contact the Commission to file a complaint under the County’s Ordinance. *See* ESL Regulations, § 700.100.

A Chicago-based employer can achieve this by posting a separate notice of rights related to the County’s Ordinance or can take the opportunity to draft a single notice that references both the County Ordinance and the City’s Paid Sick Leave Ordinance.

Coverage in “Opt Out” Suburban Municipalities

Q4: Does the Ordinance apply to employers and employees working in “opt out” suburban municipalities?

A4: To the extent that an employee and employer are both located in a suburban municipality that has lawfully preempted the Ordinance, the employer has no earned sick leave obligations for the Commission to enforce. *See* ESL Regulations, §§ 310.100(C), 310.300(A), 320.100(B), 400.200(C).

There are some limited circumstances, however, in which an employer in a suburban municipality that has lawfully preempted the Ordinance may have obligations under the County Ordinance. For example, an employer in such a jurisdiction may send its employees to another municipality or unincorporated area in Cook County where the County’s Ordinance applies. Such employees could become covered by the Ordinance

and entitled to accrue and use earned sick leave on the basis of this work outside of the “opt out” municipality. Such employees can seek enforcement of those rights by the Commission even though the employer is located in a suburban municipality that has otherwise lawfully preempted the Ordinance.

In addition, not every community that has purported to opt out of the Ordinance has lawfully preempted the Ordinance. For example, non-home rule municipalities may lack the authority to pass a sick leave ordinance that would preempt the County’s Ordinance. The Commission urges employers who are relying on legislation from a suburban municipality to relieve them of any obligations under the Ordinance to consult with an attorney.

Suburban municipalities that have purported to opt out of the Ordinance are not required to notify the Commission of this decision. The Commission will instead rely on employers located in these municipalities to raise the existence of such legislation as an affirmative defense to any enforcement action by the Commission, as appropriate.

Use-or-Lose Carried Over Sick Leave

Q5: Can an employer require that an employee use time carried over from the prior accrual period by the end of the current accrual period or otherwise forfeit these carried over hours?

A5: No. An employer may not require that an employee forfeit accrued earned sick leave if it is not used other than by operation of the carryover rules described in ESL Regulations, § 400.600. Note that while the Ordinance does not have an explicit cap on the size an employee’s earned sick leave bank, the most a Non-FMLA-Eligible employee can ever have available to her at any time is 60 hours (*i.e.* maximum carryover of 20 hours, plus 40 hours accrued in any given year). The most an FMLA-Eligible employee can ever have available to her at any time is 100 hours (*i.e.* maximum carryover of 60 hours, plus 40 hours accrued in any given year). Accrued earned sick leave that is unused and carried over from accrual period to accrual period will eventually bump up against these mathematical caps and be forfeit as a result of the operation of the Ordinance’s exact procedure for carryover.

Available Accrued or Carried Over Sick Leave versus Maximum Use Per Accrual Period

Q6: If an employee has more than 40 hours of sick leave available to her because she has carried over accrued sick leave from a prior accrual period, can the employee use more than 40 hours of sick leave during the current accrual period?

A6: Generally not. The design of the Ordinance is that under some circumstances an employee may have more earned sick leave available to her than she can use during the current year. This generally occurs when an employee carries over a large amount of unused accrued sick leave from a prior accrual period and then does not use this leave while continuing to accrue additional earned sick leave in the current accrual period. Unused (or unusable) sick leave is carried over to the next accrual period.

There are two possible exceptions to this. First, the Ordinance sets the maximum use per accrual period at 40 hours, but an employer is free to increase this maximum use cutoff to a higher number if it is concerned about employees banking more sick leave than they can use in a year. *See* ESL Regulations, §§ 500.300, 600.100(5). Second, there is one circumstance in which an employer must allow an employee to use more than 40 hours of sick leave in a single year. This situation involves an FMLA-Eligible employee who has conserved her sick leave in the prior accrual period and who then needs to use 40 hours of sick leave for an FMLA purpose. An employer must allow such an employee to be able to use an additional 20 hours of paid sick leave. Note that if an FMLA-Eligible employee needs to use less than 40 hours of sick leave for FMLA purposes, the maximum use per accrual period would remain 40 hours.

Occasional Employees: Using Earned Sick Leave

Q7: Many employers that require complete coverage, such as hospitals or daycare centers, use a pool of occasional employees to provide coverage when regular employees are unavailable due to, for example, illness. If these substitute or back-up employees have earned sick leave by virtue of prior work for the employer, can they use earned sick leave when they are called in to provide coverage – necessitating that the employer find coverage elsewhere and compensate both its regular employee and its occasional employee for a sick day?

A7: Occasional employees who meet the criteria for coverage set out in the Ordinance (*e.g.*, work for a Covered Employer for at least 80 hours in any 120-day period and work for the Covered Employer in Cook County for at least 2 hours in any 2-week period) are eligible to accrue and use earned sick leave like any other covered employee.

That said, whether an occasional employee can use sick leave to be compensated for an absence from work depends on whether the occasional employee was actually scheduled to work in the first place. An occasional employee who is on the employer's schedule (to provide coverage for another employee or otherwise) is entitled to compensation if she becomes ill and needs to use her accrued sick leave. An occasional employee who is not on the employer's schedule, however, cannot force the employer to compensate her when the employer offers to schedule her and the occasional employee indicates that she is too ill to accept.

Existing Employees: Use Waiting Period

Q8: Can an employer make employees who are already employed in Cook County on July 1, 2017 (and who begin to accrue sick leave immediately under the Ordinance) wait 180 days before they can use any of that accrued sick leave?

A8: The Ordinance gives employers the ability to establish a use waiting period of no more than 180 days from the start of the employee's employment. *See* ESL Regulations, § 500.200. That means that an employer can make a new employee hired after July 1, 2017 wait up to 6 months before she can use any of her accrued sick leave. It also means that if an existing employee was hired prior to January 2, 2017, she will be able to use any

sick leave that she accrues under the Ordinance immediately after July 1, 2017, even if the employer has adopted a 180-day Use Waiting Period.

Using Earned Sick Leave Accrued in Cook County, Outside of Cook County

Q9: If an employee, who works for an employer in Cook County and has accrued sick leave under the Ordinance, is permanently transferred to a job site outside of Cook County by the same employer, can the employee continue to use sick leave and carryover unused sick leave from one accrual period to the next?

A9: Yes. Once an employee has accrued sick leave under the Ordinance, she can use that sick leave while working for the same employer anywhere, including outside of Cook County or within the borders of a municipality that has lawfully preempted the Ordinance. *See* ESL Regulations, § 310.300(C). If such an employee does not use her earned sick leave, her employer should allow unused earned sick leave to continue to rollover pursuant to the Ordinance's carryover rules (*i.e.* halve the unused bank of sick leave each year) even though the employee no longer accrues new sick leave on the basis of work outside of Cook County.

Collective Bargaining Agreements That Contain Sick Leave Provisions

Q10: If a collective bargaining agreement entered into prior to July 1, 2017 contains provisions that address paid sick leave, but does so in a manner that is less generous than the Ordinance, does the Ordinance apply to the employees covered by the collective bargaining agreement to bring them up to the statutory minimum?

A10: No. The Ordinance does not apply to employees whose employment relationship is governed by a *bona fide* collective bargaining agreement as of July 1, 2017, even if that agreement does not include paid sick leave provisions or provides paid sick leave benefits that are less generous than those established by the Ordinance.

When bargaining re-opens after July 1, 2017, the Ordinance will then apply to raise the contractual sick leave benefits up to the floor established by the Ordinance unless the parties to the collective bargaining explicitly include language opting out of the protections of the Ordinance into the collective bargaining agreement. *See* ESL Regulations, § 330.100.

Employer's Ability to Require Documentation

Q11: What documentation is an employer allowed to require from an employee when they use their earned sick leave benefits under the Ordinance?

A11: An employer may require the following documentation to verify that earned sick leave is being used for permissible purposes *only* when an employee is absent for *more* than three consecutive workdays:

- For time used in connection with an injury, illness or other health condition, an employer may require that an employee provide a note

signed by a licensed health care provider; however, the employer may not require that such a note specify the nature of the employee's or his or her family member's injury, illness, or condition, except as required by law;

- For time used in connection with domestic or sexual violence, an employer may require that an employee provide a police report, court document, a signed statement from an attorney, a member of the clergy, or a victim services advocate, or any other evidence that supports the employee's claim, including a sworn declaration or affidavit from him or her or any other person who has knowledge of the circumstances; and
- For time used in connection with the federal Family and Medical Leave Act ("FMLA"), a Covered Employer may require a Covered Employee to provide the type of documentation that is required for leave under the FMLA.

An employer cannot delay the use of earned sick leave or delay the payment of wages due during an absence allotted by the Ordinance on the basis that the employer has not yet received required documentation. The Commission, however, will not protect an employee from discipline, including termination, for failure to provide requested documentation where the employer has given the employee a reasonable period of time to produce any requested documentation.

Although an employer cannot *require* documentation from an employee to prove that earned sick leave was used for a proper purpose for absences of three consecutive workdays or less, an employer may demonstrate that an employee has misused earned sick leave by referencing any other documentation obtained from any other source that is not the employee. Moreover, the Commission encourages employees to document the appropriateness of earned sick leave used. *See* ESL Regulations, § 500.700.

Equivalent Alternatives Not Mentioned in the ESL Regulations

Q12: Are the "equivalent alternatives" described in Rule 600.300 of the Commission's ESL Regulations, the only ways in which an employer can deviate from the accrual, carryover and use rules set out in the Ordinance without actually violating the Ordinance?

A12: During public rulemaking, the Commission was asked to opine on the permissibility of a number of specific alternative procedures for ensuring that covered employees received earned sick leave. These procedures are set out in Rule 600.300 of the Commission's ESL Regulations. But the Commission did not intend Rule 600.300 to be exclusive or exhaustive such that any other methodology is *per se* impermissible simply because it is not mentioned explicitly in that section.

Instead, it is the Commission's position that employers are free to adopt other alternative practices. The Commission will treat those alternative practices as permissible so long as such an employer's employees are not worse off than they would be had the employer

followed the accrual and carryover procedures exactly as those procedures are laid out in Ordinance.

For example, if an FMLA-Eligible Covered Employee can only use a maximum of 60 hours of Earned Sick Leave in a year, such an employee is not worse off than she would be under the exact procedures for accrual, carryover and use set out in the Ordinance if her employer provides 60 hours of earned sick leave at the start of each year that can be used for both FMLA and non-FMLA purposes. Such an employer could forgo, without violating the Ordinance, awarding employees additional paid leave based on the number of hours the employee works during the year, carryover of unused sick time at the end of the year and tracking of whether hours available to such an employee can be used for FMLA or non-FMLA purposes.

The Commission also suggests that if an employer is using an equivalent alternative practice to meet its obligations under the Ordinance, then the employer should explain this practice on the notice of rights and posting made available to its covered employees. Doing so in advance will reduce the likelihood of unnecessary litigation.

PTO Policies

- Q13:** May a Covered Employer meet its obligations under the Ordinance by providing Covered Employees with Paid Time Off (“PTO”) that can be used for any purpose instead of creating a separate category of paid leave that can only be used when an employee is sick?
- A13:** Covered Employees may continue to use (or implement) PTO policies in lieu of dedicated sick leave. *See* ESL Regulations, § 600.300(D). Such employers should carefully review these policies, however, to ensure that employees receive a number of hours of PTO sufficient to meet the employer’s obligations under the Ordinance and that the policy does not impose burdens on the use of an employee’s PTO (at least when it is being used in lieu of sick leave) that are greater than those allowed under the Ordinance. For example, an employer may need to adjust its PTO policy to eliminate the requirement that an employee provide advanced notice of an unforeseeable leave, provide documentation of brief illness absences or find coverage when taking PTO in lieu of sick leave. *See* ESL Regulations, §§ 500.600, 500.700, 900.100.
- Q14:** Would an unlimited PTO policy be compliant with the Ordinance?
- A14:** An employer that allows employees to use an unlimited number of hours of PTO in a year would satisfy its obligation under the Ordinance to ensure that employees receive a sufficient number of hours of earned sick leave, but such an employer would still have to review that PTO policy to ensure that that the policy does not impose burdens on the use of an employee’s PTO (at least when it is being used in lieu of sick leave) that are greater than those allowed under the Ordinance as described in the response above. In addition, the Commission would prosecute a violation of the Ordinance where an unlimited PTO policy was unlimited in name only and the employer made it difficult for employees to actually take paid time off for the purposes described in the Ordinance.

Q15: If an employer frontloads 80 hours of PTO that can be used for both vacation and sick leave purposes during the year and the employee uses all 80 hours for vacation by mid-year and then falls ill, must the employer provide the employee with additional PTO?

A15: No. The Ordinance does not require an employer who has provided sufficient time that could be taken as sick leave with additional time if the employee does not conserve this time and instead uses it for some purpose other than sick leave.

No-Fault Attendance Policies

Q16: Can a no-fault attendance policy be made compliant with the Ordinance?

A16: The Commission would examine a no-fault attendance policy to determine whether an employee is worse off under the particular policy than she would be under the exact procedures for accrual, carry over and use under the Ordinance. Such a policy could be compliant if employees received pay and did not receive “points” when they took off time for being for being sick.

Like a PTO program, the employer would have to pay attention to both the number of full pay/no points days employees received under a modified no-fault attendance policy, but would also have to modify the policy to the extent that it imposed burdens on employees that are impermissible under the Ordinance, such as excessive advance notice of foreseeable absences, documentation of the reason for the absence and/or a requirement that an employee find coverage for herself when she was taking sick leave pursuant to the Ordinance.

Adjusting Benefit Years

Q17: Can an employer use the same standard 12-month accrual period for all of its employees (e.g., all employees cycling through their Earned Sick Leave Accrual Periods on the same calendar year or a fiscal year)?

A17: The Commission recognizes that some employers may prefer to use (or to continue to use) the same standard accrual period for all its employees. Employers may do so without violating the Ordinance so long as their employees are not made worse off than they would be had the employer followed the exact procedures in the Ordinance that create an individualized 12-month accrual period for each individual employee. *See* ESL Regulations, § 600.300(E). This may require the employer to provide an individual employee greater benefits than the employee would otherwise be entitled to under the exact procedures of the Ordinance.

To illustrate, if an employer uses a standard benefit year of January 1 to December 31, a full-time employee who is hired on June 1, 2018 will be worse off on the employer’s standard benefit year than she would be under the exact procedures in the Ordinance. That is because on December 31, 2018, she will have accrued 26 hours of sick leave based on 1,040 hours of work. Under the Ordinance procedures, she would continue to accrue sick leave (up to 40 hours) until May 31, 2019, but if the employer ends her accrual period on December 31, 2018, she will only have 13 hours of earned sick leave

on January 1, 2019. If the employee then fell ill for three days (*i.e.* 24 hours of leave) in January under the Ordinance procedures, she would have sufficient earned sick leave banked. Under the employer's standard year, she would not.

One solution (there may be others) to making the employee at least as well off on a standard benefit year as she is under the Ordinance's individualized accrual periods is to let the employee, in her first year of employment, carryover all of her unused sick leave from one benefit year to the next. Thus, in the example, above an employee who did not lose half of her unused earned sick leave on December 31, 2018 does not have a basis to complain about her employer's use of a calendar year to standardize all employees' earned sick leave accrual periods. In subsequent years of employment, the employee would carryover unused sick leave under the ordinary carryover rules (*e.g.*, halve the unused earned sick leave bank).

Q18: May an employer use an individualized 12-month accrual period for its existing employees, rather than use the Ordinance method of putting all existing employees on the effective date of the Ordinance on an accrual period that runs from July 1 to June 30?

A18: Yes. An employer may do so using the same standard and equivalent practices described in the response above.

Cannot Trade Off Minimal Characteristics of Earned Sick Leave

Q19: Is an employer who provides one hour of earned sick leave for every 45 hours worked (instead of every 40 hours) compliant with the Ordinance, if the employer also allows employees to accrue 45 hours of paid sick leave each year (instead of 40 hours)?

A19: The Commission's approach to alternative practices is to consider whether at any given time an employee is worse off under the procedures adopted by the employer than she would be under the exact procedures for accrual, carryover and use under the Ordinance. Here, an employee may be better off if the Commission only considers the employee's position at the end of the accrual period because the employer has adopted a higher annual accrual cap. But earlier in the year (*e.g.*, after the first week), the employee would be worse off because the employer is using a lower rate of accrual. As such, the Commission would find that this employer's alternative practice violates the Ordinance.

Generally speaking, an employer cannot trade off the minimal characteristics of earned sick leave under the Ordinance (*e.g.*, accrual rate, maximum use per accrual period, accrual cap, *etc.*) against each other. Whatever alternative practice an employer adopts must be at least as good as earned sick leave under the Ordinance in all ways that may be relevant to an employee at any given time.

[July 10, 2017]

Re-Hired Employees

Q20: If an employer re-hires a former employee, is that employer responsible for providing the employee with any hours of earned sick leave that the employee accrued during her previous stint with the employer, but did not use?

A20: No. An employer does not have any obligation under the County Ordinance to compensate a departing employee for unused accrued sick leave. *See* ESL Regulations, § 200.200.

In addition, if an employer re-hires an employee, the employer is not obligated to restore unused accrued sick leave to the employee from her first stint so that it is available to the employee for use in her second.

Note that the Commission does require that if an employer re-hires an employee *within 120 days* of that employee's date of separation from service, the employer cannot require that the re-hired employee re-establish her eligibility to accrue sick leave under the Ordinance or impose a new use waiting period on the employee. *See* ESL Regulations, § 310.400. The Commission will treat as a violation of the Ordinance any attempt by an employer to terminate and re-hire employees as a way of preventing employees from exercising their rights under the Ordinance.

Q21: If an employer typically frontloads earned sick leave benefits for the entire benefit year, must an employer re-frontload the entire complement of hours for the year if an employee quits and is then re-hired in the same benefit year?

A21: No. An employer who frontloads all sick leave benefits for employees at the start of each benefit year is not required to frontload a full year's worth of sick leave benefits for employees who are hired or re-hired in the middle of the benefit year. Instead, the employer can frontload fewer hours or have these employees earn sick leave on an accrual basis (accruing at least one hour of leave for every 40 hours worked in Cook County).

The Commission considers an employee who separates from service and is rehired by the same employer within 120 days to be continuing her original employment for the employer. *See* ESL Regulations, § 310.400. As such, an employer is not required to allow an employee re-hired within 120 days of separation from service in the same accrual period to use additional sick leave in her second stint if she already used the maximum amount of sick leave for the accrual period during her initial employment. *See* ESL Regulations, § 500.300.

Similarly, an employer is not required to allow an employee re-hired within 120 days of separation from service in the same accrual period to accrue additional sick leave if she already accrued the maximum amount of sick leave for the accrual period during her first stint. *See* ESL Regulations, § 400.500.

Again, the Commission may take a different approach in any particular case if there is evidence that the employer separated the employee from service as a way of preventing the employee from exercising her rights under the Ordinance.

Fractional Accrual of Earned Sick Leave

Q22: Can an employee who has only worked 39 hours in a week require her employer to award her 0.975 hours of earned sick leave?

A22: No. The Ordinance does not require an employer to award sick leave to an employee in less than whole hour increments. *See* ESL Regulations, § 400.200(E). An employee who worked 39 hours in a week would not be entitled to any sick leave until she worked at least one additional hour for her employer in Cook County.

Covered Employees

Q23: Is an employee covered by the Ordinance when she works for her employer in Cook County for at least 2 hours during any two-week period or when she works for her employer anywhere for at least 80 hours in any 120-day period?

A23: An employee is covered by the Ordinance for the purpose of being able to accrue sick leave after working for her employer in Cook County for at least 2 hours during any two-week period. *See* ESL Regulations, § 310.100. But such an employee cannot use any of the sick leave she accrues by virtue of being covered by the Ordinance unless she has also worked for her employer for at least 80 hours during any 120-day period. *See* ESL Regulations, § 310.300(B).

Annual Use of Earned Sick Leave Hours

Q24: Under the Ordinance, what is the maximum number of hours of earned sick leave an employee can use during a single year?

A24: Employers can set the maximum number of hours of earned sick leave that their employees can use each year so long as the employer sets that number higher than the floor established for annual use by the Ordinance. *See* ESL Regulations, § 600.100. The floor is 40 hours per year for non-FMLA-eligible employees. *See* ESL Regulations, § 500.300(A)-(B).

The floor is the same for FMLA-eligible employees, except in one circumstance. That one circumstance is that if an FMLA-eligible employee carried over 40 hours of unused FMLA-Restricted Earned Sick Leave from the previous accrual period and used all 40 hours of FMLA-Restricted Earned Sick Leave in the current accrual period, then the Ordinance requires that an employer let that employee use up to an additional 20 hours of sick leave in the current accrual period. *See* ESL Regulations, § 500.300(C).

To illustrate this exception to the typical 40-hour annual use cap: (1) if an FMLA-eligible employee uses 35 hours of FMLA-Restricted Earned Sick Leave, she can only use an additional 5 hours of Ordinance-Restricted Earned Sick Leave in the same year;

(2) if an FMLA-eligible employee uses 35 hours of FMLA-Restricted Earned Sick Leave and then uses an additional 5 hours of FMLA-Restricted Earned Sick Leave, she can then use up to 20 hours of additional Ordinance-Restricted Earned Sick Leave in the same year, if she has it to use.

An employee is unlikely to know in advance how much sick leave she will use in a year and may take Ordinance-Restricted Sick Leave before taking FMLA-Restricted Sick Leave. Once an FMLA-eligible employee uses more than 20 hours of Ordinance-Restricted Sick Leave in a year, her maximum annual use will be capped under the Ordinance at 40 hours (unless the employer chooses to be more generous than the Ordinance). So long as an FMLA-eligible employee has not yet used 20 hours of Ordinance-Restricted Sick Leave in a year, an employer should let an FMLA-eligible employee who has carried over 40 hours of unused FMLA-Restricted Sick Leave from the previous accrual period use up to 40 hours of this time in the current year (in addition to any Ordinance-Restricted Sick Leave already used).