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News & Types: Employment, Labor & Benefits Update

Masuda Funai Employment Newsflash: New Illinois Legislation Will Require Private Employers to Provide Paid Leave for Any Reason

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Practices: Employment, Labor & Benefits

On January 10, 2023, the Illinois Legislature passed the Paid Leave for All Workers Act ("PLFAW Act" or the "Act") which, once signed by Governor Pritzker, will go into effect on January 1, 2024 and make Illinois one of just three states requiring private employers to provide earned paid leave to all employees with limited exceptions.

Key Takeaways:

- Under the PLFAW Act, all Illinois employers will be required to provide a minimum of 40 hours, or a pro rata number of hours, of paid leave during a designated twelve-month period to be used for any reason of the employee's choosing.
- Employees are not required to give a reason for taking leave, and employers will not be permitted to require any documentation or certification of the need to take leave. However, employers may require up to seven calendar days' notice of foreseeable leave if they have a written policy outlining notice requirements and procedures for paid leave under the Act. If the use of leave is unforeseeable, employees need only provide notice as soon as practicable.
- Employers can choose to frontload the 40 hours of leave time to employees on the first day of employment or the first day of a designated twelve-month period, or use an accrual method. The Act dictates that employees must begin to accrue paid leave on their first day of employment at a rate of one hour of leave for every 40 hours worked. The Act permits employees to begin using their leave after 90 days on the job, but employers can allow workers to utilize leave earlier. Employees may determine how much leave to use, but employers may set a reasonable minimum increment of no less than two hours per day. Under the Act, up to 40 hours of unused accrued leave will carry over annually. Notably, employers that choose to frontload the 40 hours will not be required to carry over unused paid leave to the next twelve-month period.
- The PLFAW Act will require employers to create records documenting hours worked, leave accrued and taken, and remaining paid leave balances. Such records must be maintained for at least three years, and employers must allow the Illinois Department of Labor (IDOL) access to the records. Employers that

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provide PLFAW Act leave on an accrual basis must provide notice of the amount of leave accrued or used by an employee upon request.

- Employers with existing leave or PTO policies providing at least 40 hours of paid leave during a designated twelve-month period will not be required to modify their policy, provided the policy offers an employee the option to take paid leave for any reason at the employee's discretion.
- Under the Act, employers that do not credit PLFAW Act leave to an employee's paid time off bank or employee vacation account will not be required to pay unused paid leave not taken under the PLFAW Act at the end of the benefit year or any other time. In other words, employers will not be required to cash out the balance of an outgoing employee's PLFAW Act paid leave, provided such leave was not credited to the employee's paid time off bank or vacation account. That said, employers should still be cognizant of their requirement to pay out earned vacation time at the end of the employment relationship pursuant to the Illinois Wage Payment and Collection Act, which is not waived or otherwise limited by the PLFAW Act.
- The Act will require employers to post, where other notices are customarily posted, a notice (that IDOL will prepare) summarizing the requirements of the act and giving information on filing a charge. Employers that have workforces comprised of a significant portion of workers who do not read English will be required to request a notice in the appropriate language from IDOL.

Employers that want to re-examine their existing paid leave policies or who are considering creating a policy specifically addressing the PLFAW Act can contact Kevin S. Borozan or any member of Masuda Funai's Employment, Labor and Benefits Group.

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