

Key Legal Trends Impacting Employers 2023 - Q&A

Federal Pregnant Workers Fairness Act

Can an employer discipline a pregnant employee for being consistently late?

Assume that they were late even before they were pregnant. Yes, an employer can discipline the employee, except to the extent the employee is late because of the pregnancy or related condition in which case the employer is required to reasonably accommodate unless doing so would cause an undue hardship. A reasonable accommodation could mean the employee's pregnancy-related tardies are considered excused absences.

If attendance at work is an essential function of the job, will the EEOC Proposed Regulations for the PFWA require employers to temporarily suspend that?

Yes. When an employee misses work because of a pregnancy or related medical condition, the Pregnant Workers Fairness Act requires the employer to make accommodations for the employee which may include granting additional leave / excusing the pregnancy-related absences unless the employer can show that doing so imposes an undue hardship.

Does this (PWFA) run concurrent with FMLA?

If both the Pregnant Workers Fairness Act and FMLA are applicable, the leaves will typically run concurrently. However, there will be situations in which an employee is eligible for leave under one, but not the other.

Illinois Paid Leave For All Workers Act

When do you anticipate the IL Department of Labor (IDOL) will issue regulations/ guidance on the PLFAWA?

The IDOL issued FAQs on 8/30/2023. The [IDOL's website](#) states the department "is in the process of preparing guidance and other materials to educate employees and assist employers with compliance," but we do not know when further regulations / guidance will be issued. The DOL has scheduled webinars, beginning on 10/3/2023, so perhaps we will have more guidance by then, but it is hard to predict.

Does the PLFAWA require an employer to provide 40 hours of leave for part-time employees?

Yes. [According to the IDOL](#), "The Act doesn't distinguish between part time, full time, or seasonal employees. Both full-time and part-time workers are covered by this Act."

Does the PLFAWA prohibit a Chicago employer from capping rollover vacation/PTO time?

The PLFAWA does not apply to employers that are required to provide paid sick leave under the Chicago or Cook County ordinance. 820 ILCS 192/15 states that the "Act shall not apply to any employer that is covered by a municipal or county ordinance that is in effect on the effective date of this Act that requires employers to give any form of paid leave to their employees, including paid sick leave or paid leave." However, Cook County employers not covered by the Chicago ordinance and operating in jurisdictions that have opted out of the Cook Co ordinance, are required to comply with the IL PLAWA effective 1/1/2024. If PLFAWA does apply, unused PLAWA leave rolls over. However, the employer can avoid the rollover requirement by frontloading.

The PLAWA does not require an employee to be paid out for unused leave, if the leave is administered separately and not part of a larger PTO or vacation leave policy. However, if an employer provides the leave as part of its typical PTO / Vacation leave policy/bucket, then payout of any accrued but unused portion is required upon termination. The statute itself states, in relevant part, "Employers that provide the minimum number of hours of paid leave to an employee on the first day of employment or the first day of the 12-month period are not required to carryover paid leave from 12-month period to 12-month period and may require employees to use all paid leave prior to the end of the benefit period or forfeit the unused paid leave." But also states: "If the paid leave under this Act is credited to an employee's paid time off bank or employee vacation account then any unused paid leave shall be paid to the employee upon the employee's termination, resignation, retirement, or other separation to the same extent as vacation time under existing Illinois law or rule." See 820 ILCS 192/15 subsections (j) and (l).

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Does a Chicago employer have to offer “leave for any reason” leave, or can it be satisfied through the employee’s sick leave bank?

At this time, a plain reading of the PLAWA (which indicates that it does not apply to employers required to provide sick leave under the Chicago or Cook County ordinances) suggests that a Chicago employer that is covered by the Chicago or Cook County paid sick leave ordinance(s), does not have to offer “leave for any reason.” We anticipate more clarity through the forthcoming regulations and guidance from the IDOL.

If paid leave is frontloaded and an employee leaves mid-year, must you pay out the entire unused leave, or can you pay the accrued amount?

The IL PLAWA itself does not require an employee to be paid out for unused leave if the leave is administered separately and not part of a larger PTO or vacation leave policy. However, if an employer provides the leave as part of its typical PTO / Vacation leave policy/bucket, then payout of any accrued but unused portion is required upon termination. The statute itself states, in relevant part, “Employers that provide the minimum number of hours of paid leave to an employee on the first day of employment or the first day of the 12-month period are not required to carryover paid leave from 12-month period to 12-month period and may require employees to use all paid leave prior to the end of the benefit period or forfeit the unused paid leave.” But also states: “If the paid leave under this Act is credited to an employee’s paid time off bank or employee vacation account then any unused paid leave shall be paid to the employee upon the employee’s termination, resignation, retirement, or other separation to the same extent as vacation time under existing Illinois law or rule.” See 820 ILCS 192/15 subsections (j) and (l).