

U.S. COVID-19: CHICAGO ORDINANCE BARS RETALIATION FOR TAKING COVID-19 RELATED LEAVE

Jun 01, 2020

As the result of an Ordinance that was passed and became effective on May 20, 2020, Chicago employers are prohibited from taking adverse action against employees who take leave for certain COVID-19 related reasons.

Covered Employers

The Ordinance applies to all employers who are covered by the Chicago Minimum Wage and Paid Sick Leave Ordinance (“PSL Ordinance”), which went into effect in July 2017. This includes any employer (any individual, partnership, association, corporation, limited liability company, business trust, or person/group of persons) that: (a) employs at least one Covered Employee, and (b) maintains a business facility within the geographic boundaries of Chicago and/or is subject to certain Chicago licensing requirements.

Covered Employees

Most employees are covered, so long as they work at least two hours during any two-week time period in the City of Chicago (including time travelling for deliveries or sales calls but not including uncompensated commuting time).

Prohibited Retaliation

As part of a “[d]uty to allow Covered Employees to obey public health orders,” employers are prohibited from taking adverse action against an employee “for obeying an order issued by the Mayor, the Governor of Illinois, the Chicago Department of Public Health, ... or a treating healthcare provider [in the case of 2-4 below],” requiring an employee to:

1. Stay at home to minimize the transmission of COVID-19;
2. Remain at home while experiencing COVID-19 symptoms or sick with COVID-19;
3. Obey a quarantine order issued to the Covered Employee;
4. Obey an isolation order issued to the Covered Employee; and

5. Obey an order issued by the Commission of Health regarding the duties of hospitals and other congregate facilities.

Further, adverse action may not be taken against an employee for caring for an individual subject to 1-3 above.

Application of the Ordinance

Effectively, the prohibition on retaliation means that employers must permit employees to take protected leave if one of the identified reasons applies. Although not clear from the Ordinance, it would appear that, if an employee is able to telework despite the applicable order (e.g., if the employee's COVID-19 symptoms were not so serious that the employee is unable to work), an employer could require the employee to telework rather than take leave. To the extent the employee takes leave, the Ordinance does not require such leave to be paid; however, employers should apply their paid leave policies per normal practice and should ensure that such policies comply with other applicable legal requirements, such as the provisions of the Families First Coronavirus Response Act (FFCRA) and the Chicago PSL Ordinance.

Further, employers must ensure that they have legitimate business reasons unrelated to the employee's protected leave (or to the employee being subject to one of the identified orders) for any employment actions that may negatively impact the employee, such as a layoff, furlough, or reduction in hours or compensation.

Remedies/Fines

Violation of the Ordinance can result in a civil action with the possibility of reinstatement plus an award of damages including up to three times lost wages, any other actual damages, and attorneys' fees and costs. City enforcement actions may also result in the imposition of fines.

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MEET THE TEAM



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