

## **CHICAGO AMENDS MINIMUM WAGE AND PAID SICK LEAVE ORDINANCE: WHAT EMPLOYERS NEED TO KNOW**

Aug 19, 2021

The City of Chicago has amended its Minimum Wage and Paid Sick Leave Ordinance (the “Ordinance”), providing new reasons for taking paid sick leave under the Ordinance, and adding a new remedy for Chicago employees alleging wage theft against their employers (collectively, the “Amendments”). The Amendments are in full effect as of August 1, 2021, and employers should carefully review their policies and practices to ensure compliance. For additional background on the Ordinance, please refer to BCLP’s earlier post [here](#).

### **New Cause of Action for Wage Theft**

The Amendments create a new cause of action for wage theft. The Illinois Wage Payment and Collection Act (“IWPCA”) already prohibited wage theft, and employees in Chicago already had the right to bring claims for untimely or incomplete payment of wages in state court. The Amendments give “Covered Employees” in Chicago a new remedy separate and apart from the IWPCA. Covered Employees are defined as those employees who work at least two (2) 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.

Now, Covered Employees may file a claim of wage theft with the Chicago Office of Labor Standards or in state court (but not both) if their employer fails to pay them for:

- any wages required for work performed;
- paid time off, whether legislatively or contractually required; and/or
- contractually required employee benefits.

Penalties for violation of the Ordinance are steep: an employer must pay the amount of any underpayment and either:

- 2% of the amount of any underpayments for each month following the date of payment during which the underpayments remain unpaid; or

- the amount specified by the IWPCA, if that amount is greater.

Recently, Governor Pritzker signed [House Bill 118](#), which increased the IWPCA monthly penalty for underpayments from 2% to 5% of any underpayments. Therefore, at this time, the IWPCA rate would apply as the penalty rate for underpayments.

### **New and Expanded Reasons for Paid Sick Leave**

The Amendments expand the existing reasons a Covered Employee may take paid sick leave under the Ordinance. Now, Covered Employees who are eligible for paid sick leave (i.e., any Covered Employee as defined above who also works at least 80 hours for an Employer within any 120-day period) may take paid sick leave if (changes to the previous Ordinance indicated in *italics*, and deletions indicated by strikethrough):

- The Covered Employee is ill or injured, or for the purpose of receiving *professional care*, including preventive care, diagnosis, or treatment, *for medical, mental, or behavioral issues, including substance use disorders*.
- A member of the Covered Employee's family is ill, injured, *or ordered to quarantine*, or to care for a family member receiving *professional care*, including preventive care, diagnosis, or treatment, *for medical, mental, or behavioral issues, including substance use disorders*.
- The Covered Employee, or a member of the Covered Employee's family, is the victim of domestic violence as defined by the Illinois Domestic Violence Act, or a sex offense as defined by the Illinois Criminal Code, *or trafficking in persons as defined by the Illinois Criminal Code*.
- The Covered Employee's place of business is closed by order of a public official due to a public health emergency, or the Covered Employee needs to care for a family member whose school, class, or place of care has been closed by order of a public official due to a public health emergency.
- *The Covered Employees needs leave so as to obey an order issued by the Mayor of Chicago, the Governor of Illinois, the Chicago Department of Public Health, or a treating healthcare provider, requiring the Covered Employee to:*
  - *stay at home to minimize the transmission of a communicable disease;*
  - *remain at home while experiencing symptoms or sick with a communicable disease;*
  - *obey a quarantine order issued to the Covered Employee; or*
  - *obey an isolation order issued to the Covered Employee.*

## **Posting Requirement**

The Ordinance already required employers to post a City-approved poster in their workplaces, and provide certain notices to their Covered Employees. The Amendment revises the notice to add information regarding employees' right to file claims of wage theft under the Ordinance. Covered Employers must not only post this revised poster in the facilities, but also provide Covered Employees with the revised notice with a paycheck issued within 30 days of July 1, 2021. A copy of the City-approved notice and poster can be found at the Chicago Department of Business Affairs and Consumer Protection's [website](#). Employers should update the posters posted in their facilities and provide notice to employees if they have not done so already.

## **RELATED PRACTICE AREAS**

- Employment & Labor

## MEET THE TEAM



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