

# Illinois Bar Journal

May 2023 • Volume 111 • Number 5 • Page 10

## LawPulse

# Ready for Paid Leave?

By **Amelia Buragas**

Paid leave and retirement-planning laws affecting small businesses.

Law firms large and small need to be prepared for new employee-benefits laws in Illinois. These changes include expansion of both paid and unpaid leave as well as expanded eligibility of companies required to provide retirement benefits to their employees.

The Paid Leave for All Workers Act was signed into law by Gov. Pritzker earlier this year and goes into effect on Jan. 1, 2024. The new law applies to virtually all employers in the state with at least one employee; covered employees will be able to earn and use up to 40 hours of paid leave per year “for any reason.”



“One employee is a very low threshold,” says Danielle Kays, senior counsel with Seyforth Shaw LLP. “It is going to affect a broad number of businesses.”

Kays notes that there are some limited exceptions, including for independent contractors and student employees. But in general, smaller employers that have been historically exempt from employee-benefits laws need to be aware of the upcoming changes. This includes the more than one in four attorneys who are sole practitioners in Illinois—the largest practice size setting for attorneys in the state, according to the Attorney Registration and Disciplinary Commission.

Rachel E. Bossard, a partner with Chicago-based Burke, Warren, MacKay & Serritella, P.C., which includes labor and employment law among its concentrations, says even larger employers that already have generous paid-leave policies need to make sure they are complying with the requirements of the Act. But she says compliance does not necessarily mean offering additional paid leave.

“Across the board, one misunderstanding of the Act is that it requires employers to provide additional leave,” Bossard says. “A lot of clients that I’m working with are already providing more than sufficient leave,

but we are tweaking their policies to make sure they apply to part-time or seasonal employees.”

Companies in Cook County may also be exempt from the new law if they are already covered by local ordinances requiring paid leave. Kays notes that whether employers need to adjust the amount of paid time off they offer will be determined on a case-by-case basis, depending on how much leave the company already provides. “There are obviously going to be situations where it is going to increase the amount of paid leave or time off for employees,” Kays says. “It may also create a shift in how the leave already provided is allocated.”

Kays notes that even businesses that already offer paid leave beyond what the new law requires need to examine their practices to make sure they are complying with the Act’s recordkeeping and employee-notice requirements. The Illinois Department of Labor is authorized to conduct audits to ensure compliance with the law.

“Companies need to start considering this law,” Kays says. “Earlier is always better.”

Employers may also need to adjust their practices to comply with the “for any reason” component of the law. Bossard notes that companies will no longer be able to ask for medical documentation from employees seeking to use paid-leave benefits.

“One of the big takeaways is that this leave can be taken for any reason,” says Bossard. “Employers cannot ask for the reason.”

**(For more on the Act, see Bossard and Alex Mark’s article in February’s *The Corporate Lawyer*, the newsletter of the ISBA’s Corporate Law Departments Section.)**

Another possible surprise for some under the Act will be the new notice component. Employees are required to give seven days’ notice prior to using paid leave, but only if the use of paid leave is “foreseeable.” If the use of paid leave is not foreseeable, then employees are only required to provide notice “as soon as is practicable.” Kays notes that the law requires that paid leave be used in minimum increments of two hours. She says that this will reduce the likelihood that employees will use the benefit for routine tasks like errands and says that allowing smaller increments of time would have been a “logistical nightmare for companies.”

## **Family Bereavement Leave Act**

Illinois businesses and law firms have already adjusted to changes made to unpaid leave under the Family Bereavement Leave Act (FBLA), which amended the former Child Bereavement Leave Act and went into effect in January. The new bereavement law expands job-protected leave to cover pregnancy loss, failed adoptions, unsuccessful reproductive procedures, and other events that negatively impact pregnancy or fertility. Employees may take up to two weeks of unpaid leave for any of the events covered under the Act.

Kays notes that, unlike the Paid Leave Act, which applies to all businesses with at least one employee, the FBLA only applies to employers already subject to the Family Medical Leave Act. Also, unlike the Paid Leave Act, employers may require reasonable documentation from employees certifying that they have experienced an event covered by the FBLA—with the caveat that employees are not required to identify the specific event that qualifies them for unpaid leave under the FBLA. A sample certification form is available

on the Illinois Department of Labor's website.

## Retirement planning 2.0

There also have been changes to both state and federal law regarding employee retirement plans. The Secure 2.0 Act was signed into law by President Biden at the end of last year and it includes roughly 90 provisions affecting retirement savings plans, including expanded eligibility for long-term and part-time employees.

"The Secure 2.0 Act of 2022 is arguably the broadest and most comprehensive retirement legislation since the passage of the Tax Equity and Fiscal Responsibility Act, Deficit Reduction Act, and Retirement Equity Act of the 1980s," says Bernard G. Peter of Maduff & Maduff, LLC.

(For coverage of the [Secure 2.0 Act legislation and its effect on businesses](#), see Brian M. Pinheiro's article in the March issue of The Corporate Lawyer.)

At the state level, Illinois recently expanded eligibility under the Illinois Secure Choice Savings Program Act to include employers with as few as five employees. The Secure Choice Savings Program is a state-sponsored retirement savings program. Employers with five to 15 employees have until Sept. 1 of this year to either enroll in the Secure Choice Savings Program or to establish an employer-sponsored plan.



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