

TYPES NOT MAPPED YET June 12, 2020 | TTR not mapped yet | Susan M. Lorenc, Michael W. Duffee, Ryan J. Gehbauer

Coming July 1: What Chicago employers need to know about the new paid sick leave, minimum wage and fair workweek rules

The City of Chicago has revised its paid sick leave and minimum wage rules, amended its paid sick leave ordinance, passed a COVID-19 anti-retaliation ordinance and issued final rules on the Fair Workweek Ordinance; each of which have sweeping effects for City of Chicago employers.

Revised paid sick leave and minimum wage rules

Chicago's Department of Business Affairs and Consumer Protection ("BACP") [has published](#) revised minimum wage and paid sick leave rules effective July 1, 2020. Notable changes include:

1. New employer notice requirements:

- Employers may satisfy the workplace posting requirement through their usual methods of communication for such notices, whether by physical posting (measuring 11×17 inches) or electronic notice (via email or other internal communication).
- Employers may also satisfy the individual notice requirement on employees' first paycheck with either physical or electronic notice (if the employee receives a direct deposit).
- Employers must now provide individual notice to employees on an annual basis with their first paycheck on or following July 1.
- All notices must be provided in English and any language(s) spoken by employees at the facility who are not proficient in English and in which the Department has made a notice available (as of now, only Spanish).

2. New recordkeeping requirements: Records regarding paid sick leave usage, rates of pay, hours worked and wage deductions must be kept for at least five years, and made available for inspection upon request by the BACP. The records must identify whether an employee is tipped, non-tipped or performs duties of tipped and non-tipped positions.

3. Covered employees can now submit a complaint for violations of Chicago's Minimum Wage and Paid Sick Leave Law by calling 311, Chicago's non-emergency services platform or using the CHI 311 mobile application.

COVID-19 Anti-Retaliation Ordinance

The Chicago City Council approved Substitute Ordinance 2020-2343, an anti-retaliation ordinance. The Ordinance prevents employers from terminating, demoting or taking any other adverse action against an employee in Chicago for obeying an order issued by Mayor Lightfoot, Governor Pritzker or the Chicago Department of Public Health (or, in the case of subsections (2) through (4) below, a treating healthcare provider) requiring the employee to:

1. Stay at home to minimize the transmission of COVID-19;
2. Remain at home while experiencing COVID-19 symptoms or while being sick with COVID-19;

3. Obey a quarantine order issued to the employee (to keep an employee who has come into contact with an infected person separate from others);
4. Obey an isolation order issued to the employee (to separate an employee with COVID-19 from others);
or
5. Obey an order issued by the Commissioner of Health regarding the duties of hospitals and other congregate facilities.

An employer is prohibited from taking adverse action against an employee for caring for an individual subject to subsections (1) through (3) above. The Ordinance provides for reinstatement, actual damages, treble damages, and attorneys' fees and costs for successful retaliation claims in civil suits brought by the BACP commissioner.

Paid Sick Leave Ordinance Amendments

In Substitute Ordinance 2020-2343, the City Council also amended Chicago's Paid Sick Leave Ordinance (the "PSLO"), that will take effect July 1, 2020. The City Council claims the amendments, which were enacted a little more than one week after the BACP finalized its paid sick leave rules, were needed to correct a "scrivener's error that erroneously removed groups previously subject to the paid sick leave" provisions. As a result, the Ordinance clarifies that the following employees are covered under the PSLO:

1. An outside salesperson,
2. A member of a religious corporation or organization,
3. A student at, and employed by, an accredited Illinois college or university, and,
4. Motor carriers regulated by the U.S. Secretary of Transportation or the State of Illinois.

Since the PSLO requires notice to individual employee, employers of employees that are now considered covered employees effective July 1 **must** provide those individuals with the [paid sick leave notice](#) along with their first paycheck subject to the PSLO.

Note that, effective July 1, the PSLO will apply to all employers with at least one covered employee, **regardless of whether the employer has a Chicago worksite or is subject to business license requirements.**

Fair Workweek Ordinance Final Rules

As we previously reported, effective July 1, 2020, Chicago's Fair Workweek Ordinance will require employers in specific industries, including building services, healthcare, hotels, manufacturing, restaurants, retail and warehouse services ("Covered Industries") to provide certain categories of employees with advance notice of work schedule (10 days beginning July 1, 2020), as well as provide these employees with the right to decline previously unscheduled hours, 1 hour of predictability pay for any shift change within 10 days, and the right to rest by declining work hours with less than 10 hours after the end of the previous day's shift. For more information, please see our [previous discussion](#).

On May 12, the BACP issued its [final rules](#) for the Fair Workweek Ordinance, which will also go into effect on July 1, 2020, to clarify certain requirements under the Ordinance. Among other things, the final rule:

- Includes terms to provide clarity to defined terms under the Ordinance;
- Requires employers to provide the locations where new employees will work and the estimated work schedule. Healthcare employers that operate out of multiple buildings in a facility or campus can identify the work location by the name of the facility or campus;
- Requires employers to maintain the confidentiality of employees who have identified themselves as victims of domestic or sexual violence and have requested that their work schedules not be shared with other employees;
- Allows employers to change a previously scheduled shift by 15 minutes or less and avoid having to pay predictability pay;
- Allows employers, for employees receiving non-physical paystubs, to give notice of an employee's rights under the Ordinance through the employer's usual means of electronic communications;
- Clarifies that an employee's written consent for a work schedule change must be time and date-stamped, and obtained for each work schedule change;
- Clarifies that the required notice shall be posted using the employer's usual method of communication for such notices, whether paper or electronic dissemination;
- Allows employers to maintain electronic records for demonstrating compliance with the Fair Workweek Ordinance. The final rule specifies records that must be maintained for at least 3 years, which shall be available to the BACP upon request.



- Specifies that the pandemic exception for predictability pay does not apply to the Ordinance's "Right to Rest" provision in which employers must pay covered employees at 1.25 times their regular rate of pay for any work shift that begins less than 10 hours after the end of the previous day's shift.

Under the Fair Workweek Ordinance, there is an exception to the obligation to pay predictability pay if the work schedule change is caused by certain circumstances including a "pandemic." The BACP also issued a [supplemental COVID-related rule](#) to the Fair Workweek Ordinance explaining how COVID-19 qualifies under this pandemic exception.

For more information or questions regarding the above, please contact [Susan Lorenc](#), [Mike Duffee](#), [Ryan Gehbauer](#) or your Thompson Coburn attorney.

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