

Paid Leave for All Workers Act – Q&A

As of October 18, 2023

The Frequently Asked Questions (FAQs) provided below highlight topics and specific questions that are often asked of the Illinois Department of Labor (IDOL). The information provided in the FAQs is intended to enhance public access and understanding of IDOL laws, regulations and compliance information.

The FAQs should not be considered a substitute for the appropriate official documents (i.e. statute and/or administrative rules.) Individuals are urged to consult legal counsel of their choice. Court decisions may affect the interpretation and constitutionality of statutes. The Department cannot offer individuals legal advice or offer advisory opinions. If you need a legal opinion, we suggest you consult your own legal counsel. These FAQs are not to be considered complete and do not relieve employers from complying with applicable IDOL laws and regulations.

1. Does the Act apply to part-time employees, or just full-time employees?

The Act doesn't distinguish between part-time, full-time, or seasonal employees. Both full-time and part-time employees are covered by this Act. However, employees who work fewer hours may accrue less leave time compared to full time employees.

2. Are the Judicial and Legislative branches subject to PLAWA? There are competing/conflicting definitions of "state agency" (and related terms) in various Acts.

The legislature specifically contemplated that for this Act, covered employers include the State and units of local government, any political subdivision of the State or units of local government, or any State or local government agency. This would include the judicial and legislative branches of government.

3. My company already offers employees 40+ hours of paid leave. Does my policy need to comply with the other requirements of the Act? (See Section 20(b) of PLAWA)

If your company has an existing policy that meets or provides the minimum amount of leave required by the Act (40 hours) in a 12-month period and your employees can in fact take that amount of leave for any reason of their choosing, you do not need to modify the terms of your policy.

IDOL expects to further clarify how existing policies meet expectations of the law in rulemaking.

4. What does this law mean for temporary employees who work for 3rd party clients?

Staffing agency employers of day and temporary laborers are not exempted from the Act. Employers should consider their obligations under the Day and Temporary Labor Services Act as well as the principles of joint employment.

5. Must paid leave provided under the Act be paid out upon an employee's termination, resignation, or retirement?

PLAWA does not require payout of unused leave unless the leave is credited to the employee's paid time off bank or employee vacation account; however, employers should additionally consider their vacation payout obligations under the Illinois Wage Payment and Collection Act.

6. How does this law apply to companies who have employees working in more than one state, including Illinois?

IDOL has traditionally found that Illinois workplace protections apply to employees who primarily perform work in Illinois for a company that does business in Illinois.

IDOL will seek to provide further clarity regarding these issues in rulemaking.

7. Cook County has a paid leave ordinance, but municipalities are allowed to opt out of that county ordinance. Are employers located in municipalities which opted out required to comply with the Act?

Yes, if on the effective date of the Act (1/1/24) a municipality does not have an ordinance in place that requires payment of paid sick or paid leave, then employers in that municipality shall be covered by this Act.

8. This could negatively impact local governments with police and fire personnel, what are they supposed to do?

The Act does not prohibit an employer from adopting an evenly applied paid leave policy to allow it to address operational issues and meet safety objectives. Employers of unionized employees can also address these concerns through collective bargaining.

9. Can I deny an employee use of paid leave under this law? (Put differently, is an employee allowed to take leave under this Act in any circumstance?)

Nothing in the Act prohibits an employer from adopting a policy that establishes some parameters for taking leave, and limited reasons the

employer may deny leave for operational necessity. Any such policy must be communicated to employees, applied equally to all employees, and conform with other applicable state and federal laws.

IDOL will seek to provide further clarity regarding this issue in rulemaking.

10. At what increment can employees take this leave under the law?

An employee may take PLAWA leave at a minimum of two-hour increments, although an employer could choose to allow an employee to take leave in smaller increments. *An employer whose existing policy meets the minimum requirement of 40 hours of paid time off for any reason of the Act would not have to modify that existing policy in regards to leave increments.*

11. If an employer policy requires employees to use paid time off (vacation) in 4-hour increments, do they need to amend their policy?

If the employer's existing policy on the effective date of the Act provides 40 hours or more of paid leave that can, in fact, be taken for any reason of the employee's choosing, they do not need to adjust the terms of the existing policy.

12. Can an employer front load paid leave time at the beginning of the year?

Yes, an employer may front load paid leave time by giving a full year's worth of leave that meets the minimum requirements of the Act to an employee at the beginning of the year.

An employer may make available the minimum number of hours of paid leave, subject to pro rata requirements, a proportional share of accrued hours, under the law, at the beginning of the year for its employees.

13. If our business wants to front load PLAWA benefits for part-time staff, does the business have to frontload 40 hours or can I front load an amount proportionate to their work schedule?

Employers may front load PLAWA benefits for part-time employees at a pro rata amount consistent with the employee's work schedule. However, if the employee in fact works more hours than the employer anticipates, the employee is entitled to accrue more hours at a rate of 1 hour of paid leave for every 40 hours worked, up to 40 hours for the 12-month period. *If a part-time employee works fewer hours than anticipated by their employer, the employer may not diminish or recoup used or unused front loaded paid leave benefits.*

14. Can an employer require employees to accrue paid leave time over the course of the year?

Yes, instead of front-loading leave benefits, an employer may allow employees to accrue or earn paid leave time at a rate of one hour of paid leave for every 40 hours worked. Notably, a part-time employee might not accrue the full 40 hours of leave provided for in the law by the end of the year, based on the number hours the employee works.

Example: Employee A works 15 hours per week, 52 weeks per year. They will accrue 19.5 hours of paid leave annually. (15 times 52 = 780 hours worked per year. 780 divided by 40 = 19.5 hours of paid leave.)

15. When does accrual begin under the Act? When can employees start taking paid time off?

The Act takes effect January 1, 2024. Accrual begins upon the start of employment or January 1, 2024, whichever is later. Employees are entitled to begin using the accrued paid leave after 90 days. If an employee begins accruing paid leave on January 1, 2024, the first day they could take that paid time off would be March 31, 2024.

Example: The Paid Leave for All Workers Act takes effect January 1, 2024. Six months later, Employee B starts a new job on July 1, 2024, and works 40 hours per week. They start accruing paid leave on their first day (July 1) but must wait 90 days (until September 29, 2024) before taking any of their accrued paid leave.

Example: Employee C has worked for their employer since 2019 but did not previously get paid time off. Employee C will begin accruing paid time off beginning January 1, 2024 (the effective date of the Act.)

16. How does accrual apply to employees who work more than 40 hours in a week, but are exempt from the overtime requirements of the federal Fair Labor Standards Act?

Employees who are exempt from the overtime requirements of the federal Fair Labor Standards Act (29 U.S.C. 213(a)(1)) shall be deemed to work 40 hours in each workweek for purposes of paid leave time accrual if they regularly work 40 or more hours in a workweek. If such employee's regular workweek is less than 40 hours, their paid leave time accrues based on the number of hours in their regular workweek.

17. If an employer allows employees to borrow against future accrual, thereby making the employee's paid leave balance go negative, can the employer make the employee repay the paid leave if the employee terminates before they have earned that leave?

An employer may only make an employee repay borrowed accrued leave if that policy is disclosed in the employer's written paid leave policy and the employee agrees to that policy in writing prior to taking any leave. All payroll deductions must comply with the requirements of the Illinois Wage Payment and Collection Act.

18. If an employer frontloads an employee's paid leave at the beginning of the 12-month period, and the employee uses all of their leave and then quits before the end of the 12-month period, can the employer make the employee repay the paid leave?

No, the law does not allow an employer to make an employee repay paid leave time that was frontloaded at the beginning of the 12-month period. Benefits that have already been provided may not be retroactively diminished.

19. How can an employer track the time required under this Act, versus other benefit time given to the employee?

The Act requires employer tracking of paid time off for any reason. If the employer chooses to offer paid sick time or other forms of paid time off in addition to paid leave, they should track that too as a best practice, but it is not covered by this Act.

20. How does carry over, also known as "roll over," work under this law?

Employees are allowed to carry over or roll over unused, accrued leave from one year to the next under this law. However, there is no obligation for the employer to offer more than 40 hours of paid leave off in a year. An employer may offer more than the 40 hours off if they choose.

21. What does "regular rate of pay" mean in Section 15(f) of the law?

The "regular rate of pay" is an employee's average hourly rate and is generally calculated by dividing compensation by hours worked. For employees who are exempt from the overtime requirements of the federal Fair Labor Standards Act and regularly work 40 or more hours in a week, employers may deem them to work 40 hours in a week for purposes of calculating their regular rate of pay.

Employers may consult IDOL overtime rules and US Department of Labor Wage and Hour Division guidance and regulations on calculating the regular rate of pay for overtime purposes for further guidance on the regular rate of pay.

22. What rate of pay do we use to pay our tipped employees if they use a day of paid leave?

Employees engaged in an occupation in which gratuities (tips), or commissions have customarily and usually constituted and have been recognized as part of the remuneration for hire purposes shall be paid by their employer at least the full minimum wage in the jurisdiction in which they are employed when paid leave is taken. This wage shall be treated as the employee's regular rate of pay for purposes of this Act.

23. Is there a difference between “vacation” and “PTO” (paid time off)?

Generally speaking, PTO is leave that can be taken for any reason or no reason at all and may not have to be paid out to an employee upon separation. Leave specified as “vacation” leave is subject to pay out pursuant to Section 4 of the Wage Payment and Collection Act.

24. How will PLAWA interact with FMLA?

FMLA is unpaid job protected leave that can only be used by covered employees in covered circumstances. Employees going on FMLA may use PLAWA time concurrently during their FMLA leave. [All FMLA questions should be directed to the [United States Department of Labor](#)

25. How does this law interact with other unpaid leave protections?

An employee covered under the Act is entitled to use paid leave under the Act before using unpaid leave under any employer policy or other state law.

26. When will IDOL have rules in place for this Act?

The Department anticipates filing a draft of the rules before the effective date of this Act. Under the rulemaking process there will then be a public comment period on those rules and a time period for the Department to make any changes. **Finalized rules should be in place before March 31, 2024.**

27. When will the notice that is required in the Act be available from the Department?

The required notice will be on our website by the end of 2023.