

# Employment Law Update 2023

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# About Me

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- Raised in Minooka
- Illinois Wesleyan University; Political Science and English, 2012
- University of Illinois Chicago Law School (Formerly John Marshall Law School), 2015
- Licensed in 2015, Partner in 2023
- Practice Areas - Governmental and Corporate Law



# Overview

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- Paid Leave for All Workers Act - Public Act 102-1143
- The Equal Pay Act of 2003 Amendments – Public Act 103-0539
- Day and Temporary Labor Services Act Amendments - Public Act 103-0437
- Other new law updates

# Paid Leave for All Workers Act

## Section 15(a)-(b)

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- Public Act 102-1143; effective January 1, 2024
- Applies to all Illinois public and private employers, except schools organized under the School Code and park districts organized under the Park District Code.
- All employees are entitled to earn and use a minimum of 40 hours of paid leave during a 12-month period (or pro rata).
  - 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.  $780 \div 40 = 19.5$  hours of paid leave.)
- Paid leave accrues at a rate of 1 hour per 40 hours worked.
- Exempt employees are deemed to work 40 hours in each workweek unless their regular workweek is less than 40 hours, then leave accrues based on their regular workweek.



# Paid Leave for All Workers Act

## Section 15(c)

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- This Act applies to all employees- Full Time, Part-Time, Seasonal, Temp., etc.
- Employers are required to allow carryover of paid leave from year to year unless the employer provides the minimum number of hours of paid leave on the first day of employment or first day of 12-month period.
- The Act does not require payout of unused leave unless the leave is credited to the employee's paid time off bank or employee vacation account.
  - Make sure paid leave under this Act is its own category.

# Paid Leave for All Workers Act

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- When can an employee begin to use benefits provided by the Act?
  - Leave begins to accrue on the initial date of employment OR the effective date of the Act.
  - An employee is entitled to use paid leave under this Act 90 days after the initial date of employment OR the effective date of the Act.
- How can leave be requested?
  - Oral or written requests in accordance with the “employer’s reasonable paid leave policy notification requirements.”



# Paid Leave for All Workers

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- Employer's reasonable paid leave policy notification requirements may include the following:
  - (1) If use of paid leave under this Act is foreseeable, the employer may require the employee to provide 7 calendar days' notice before the date the leave is to begin.
  - (2) If paid leave under this Act is unforeseeable, the employee shall provide such notice as soon as is practicable after the employee is aware of the necessity of the leave. An employer that requires notice of paid leave under this Act when the leave is not foreseeable shall provide a written policy that contains procedures for the employee to provide notice.
  - (3) Employers shall provide employees with written notice of the paid leave policy notification requirements in this Section in the manner provided in Section 20 for notice and posting and within 5 calendar days of any change to the employer's reasonable paid leave policy notification requirements. (Posted in conspicuous place where notices to employees are customarily posted).
  - (4) An employer **may not require**, as a condition of providing paid leave under this Act, that the employee search for or find a replacement worker to cover the hours during which the employee takes paid leave.

# Paid Leave for All Workers Act

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- **What if the employer already provides paid time off?**
  - The intent of the Act is to establish a minimum paid leave standard for all workers in Illinois.
  - An employer who already offers paid leave benefits that meet the minimum requirements of the Act does not need to add additional time, but must provide leave that complies with the Act
    - Amount of leave, any reason, methods of accrual, rollover capability, notice requirements...
- IDOL expects to further clarify how existing policies meet expectations of this law in rulemaking.



# Paid Leave for All Workers Act

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- **Whatif the employer already provides “unlimited” PTO?**
  - Illinois Department of Labor will require a fact-specific analysis upon complaint or formal investigation. Factors considered include:
    - Whether the employee in question actually did, or had the ability to, freely take the full 40 hours in a year, consistent with the Act and the Rules; and
    - Whether the employees were paid their normal rate of pay for time they took off.
    - This is not an exhaustive list of factors the Department may consider.

# Paid Leave for All Workers Act

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- **I sometimes let my employee borrow paid leave prior to its accrual. If my employee is terminated/separated from employment when paid leave balance is negative, can I make the employee repay the paid leave?**
  - An employer may only make an employee repay borrowed accrued leave if the policy requiring it is disclosed in the employer's written paid leave policy and the employee agrees to that policy in writing prior to taking any leave.
  - Do not deduct it from the employee's last paycheck unless employer and employee entered into a voluntary written repayment agreement at the time of the deduction.
    - Sections 300.720, 300.750, and 300.760 of Title 56 in the Illinois Administrative Code



# Paid Leave for All Workers Act

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- **Can I deny an employee use of paid leave under this Act?**
- 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.
- This 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.

# Paid Leave for All Workers Act

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- Employers shall make and preserve records documenting hours worked, paid leave accrued and taken, and remaining paid leave balance for each employee for a period of not less than 3 years.
- Employers that provide leave on an accrual basis (not front loaded) must provide notice of amount of paid leave accrued or used upon employee request.
- State will produce a Notice summarizing this Act.
  - Employer must post the Notice where notices to employees are customarily posted, and include it in a written document, or written employee manual or policy if the employer has one.



# Paid Leave for All Workers Act

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- **QUESTIONS?**

- Email [DOL.Paidleave@illinois.gov](mailto:DOL.Paidleave@illinois.gov)
- Watch for Rules adopted by the Joint Committee on Administrative Rules
  - Finalized rules should be in place before March 31, 2024

- **IDOL Webinar Schedule**

- November 1      10 am - 11 am -Webex
- November 16    2 pm - 3 pm- Webex

- **[labor.Illinois.gov/law-rules/paidleave.html](http://labor.Illinois.gov/law-rules/paidleave.html)**

- FAQs updated on 10/18/23

# The Equal Pay Act of 2003

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- Public Act 103-0539; Effective January 1, 2025
- Amendment only applies to employers with 15 or more employees and for positions that are (i) physically performed, at least in part, in Illinois or (ii) physically performed outside of Illinois, but the employee reports to a supervisor, office, or other work site in Illinois.
- Employers must include a “pay scale and benefits” in any specific job posting.
  - Requirement is satisfied if the posting includes a hyperlink to a webpage that includes the pay scale and benefits.
- If the employer advertises through a 3<sup>rd</sup> party advertiser, employer is responsible for providing 3<sup>rd</sup> party with the “pay scale and benefits” information.
- Keep record of all job postings for at least 5 years.



# The Equal Pay Act of 2003

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- "Pay scale and benefits" means the **wage or salary, or the wage or salary range, and a general description of the benefits and other compensation**, including, but not limited to, bonuses, stock options, or other incentives the employer reasonably expects in good faith to offer for the position, set by reference to any applicable pay scale, the previously determined range for the position, **the actual range of others currently holding equivalent positions, or the budgeted amount for the position**, as applicable.

# The Equal Pay Act of 2003

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- Employers shall announce, post, or otherwise make known all opportunities for promotion to all current employees no later than 14 calendar days after the employer makes an external job posting for the position.
- If an employer does not post a public or internal posting for the job, promotion, transfer, etc., employer must disclose to an applicant the pay scale and benefits **prior to any offer or discussion of compensation and at the applicant's request.**



# Day and Temporary Labor Services Act

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- Public Act 103-0437, effective August 4, 2023
- Applies all employers that hire temporary labor and to day and temporary labor service agencies.
- Does not apply to labor or employment of a professional or clerical nature.
- “Equal pay for equal work”

# Day and Temporary Labor Services Act

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- A Temp Worker assigned to a single employer for more than **90 days** shall be paid **not less than the rate of pay and equivalent benefits** as the lowest paid directly hired employee of that employer with the same level of seniority and performing the same or similar work that requires substantially similar skill, effort and responsibility, and under similar conditions.
- If there is none comparable, than **not less than the rate of pay and equivalent benefits** as the lowest paid direct hired employee with the closest level of seniority at the company.



# Day and Temporary Labor Services Act

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- What does 90 days mean? What does benefits mean?
  - Illinois Department of Labor drafted Emergency Rules, effective August 7
  - Permanency possible after October 2, 2023 (I am aware of no new updates)
- Emergency Rules say:
  - 90 days means 90 calendar days within any 12-month period, whether consecutively or intermittently
  - Benefits means health care, vision, dental, life insurance, retirement, leave (paid and unpaid), other similar employee benefits, and other employee benefits as required by law.
- Temp Agencies may pay the hourly cash equivalent of the actual cost benefits in lieu of benefits.
- Upon request, employers must provide Temp Agencies all necessary information to comply with the Act.

# Day and Temporary Labor Services Act

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- Before assignment of a Temp Worker to a worksite employer the **Temp Agency must:**
  - Ask about company's safety and health practices;
  - Provide training to the Temp Worker for general awareness safety training at no expense to the Temp Worker;
  - Transmit to the Employer a general description of the training program;
  - Provide the Illinois Department of Labor hotline number to report safety hazards; and
  - Inform the Temp Worker who they should report safety concerns to at the workplace.



# Day and Temporary Labor Services Act

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- Before the Temp Worker works for an Employer, the **Employer must:**
  - Document and inform the Temp Agency about anticipated job hazards likely encountered by the day or temporary laborer;
  - Review the safety and health awareness training provided by the Temp Agency to determine if it addresses recognized hazards for the client company's industry;
  - Provide specific training tailored to the particular hazards at the client company's worksite; and
  - Document and maintain records of site-specific training and provide confirmation to the Temp Agency that the training occurred within 3 business days of providing the training.
- If the Employer changes the job tasks or work location with new hazards, the Employer must inform the Temp Agency and Temp Worker of the new hazards and provide updated PPE and training prior to engaging in the new work.

# Day and Temporary Labor Services Act

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- 820 ILCS 175/11 – Right to refuse assignment to a labor dispute.
- No day and temporary labor service agency may send a day or temporary laborer to a place where a strike, a lockout, or other labor trouble exists without providing, at or before the time of dispatch, a statement, in writing and in a language that the day and temporary laborer understands, informing the day or temporary laborer of the labor dispute and the day or temporary laborer's right to refuse the assignment without prejudice to receiving another assignment.
- Failure to provide any of the required information is a violation Section 95 of the Act.
- Failure to provide each piece of required information at each time it is required shall constitute a separate and distinct violation.



# Illinois Victims' Economic Security and Safety Act (VESSA)

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- Public Act 103-0314; effective January 1, 2024
- Amendments to VESSA permit employees to take leave for "Violent Crime Bereavement," which includes attending the funeral or wake of a family or household member killed in a violent crime, making arrangements for such a family member, or grieving their loss.

# Child Extended Bereavement Leave Act (CEBL)

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- Public Act 103-0466; effective January 1, 2024
- Amendments require employers with 50 or more full-time employees in Illinois to provide unpaid, job-protected leave to employees who lose a child due to suicide or homicide. The duration of this leave varies based on the employer's size.
- An employee that takes leave under CEBL may not take leave under the Child Bereavement Leave Act.



# Employee Blood and Organ Donation Leave Act

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- Public Act 103-0450; effective January 1, 2024
- This Act will replace the existing Employee Blood Donation Leave Act.
- Eligible employees may take up to 10 days of paid leave to donate organs or tissue in any 12 month period, in addition to the existing blood donation leave provisions allowing up to one hour, or more if authorized by the employer, to donate blood every 56 days.

# Gender Violence Act (GVA);

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- Public Act 103-0282; effective January 1, 2024
- Extension of Liability to Employers Under the GVA
- Amendments to the GVA will allow victims of gender-related violence to sue employers whose employees or agents commit such violence in the workplace.
- These amendments expand the definition of "gender-related violence" and establish a four-year statute of limitations for bringing GVA claims against employers.
- Gender Related Violence now includes domestic violence as defined in VESSA.



# Personnel Record Review Act Amendments

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- Public Act 103-0201; effective January 1, 2024
- Amendments to the Illinois Personnel Record Review Act (PRRA) will require employers to provide employees with copies of their personnel records via email or mail.
- Additionally, employers will need to distribute mandatory employee notices and summaries electronically for remote employees.

# Transportation Benefits Program Act (TBPA)

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- Public Act 103-0291; effective January 1, 2024
- Employers with 50 or more covered employees in Cook County and surrounding townships must offer pre-tax commuter benefits for purchasing public transit passes.
  - Including Frankfort Township, Wheatland Township, Naperville Township, Homer Township, Lockport Township, Plainfield Township, New Lenox Township, Joliet Township, and Troy Township. (None in Grundy County)
- Covered employees are those who work full-time for at least 35 hours per week and have completed 120 days of employment.



# Illinois Labor Dispute Act (LDA)

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- Public Act 103-0040; effective January 1, 2024
- Amendments restrict the relief available to courts in labor disputes.
- Courts will be prohibited from awarding monetary damages in most cases.

# Questions?

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