

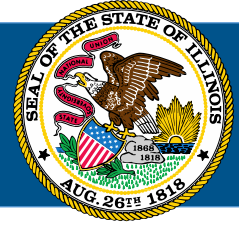


# Paid Leave for All Workers Act

## *What Employers Should Know*

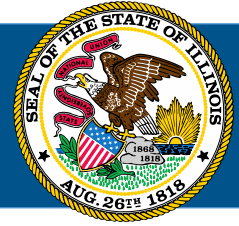


# About IDOL



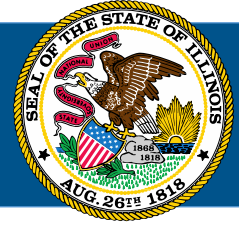
- ❖ Charged with enforcing laws protecting workers' rights on the job.
- ❖ Enforces nearly 30 different workplace protections and safety standards.
- ❖ Has offices in Chicago, Springfield, and Marion.
- ❖ Have 4 labor law enforcement divisions: Fair Labor Standards; Conciliation and Mediation; IL OSHA; and Leave Rights.

# Format of Today's Presentation



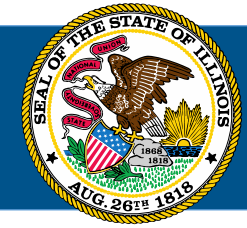
1. The presentation has been modified to provide information about various sections of the Act and to address frequently asked questions we have received since the law went into effect.
2. Questions will be allowed at the conclusion of the presentation.
3. We encourage you to visit the Frequently Asked Questions on our website.
4. A copy of these PowerPoint presentation slides are available on our website.

# Disclaimer



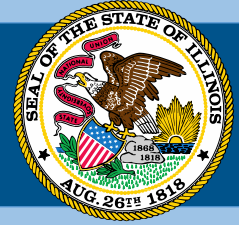
- ❖ This presentation is intended to offer **general guidance** on the provisions of the Paid Leave for All Workers Act.
- ❖ IDOL cannot provide legal advice or provide advisory opinions on specific paid leave policies.
- ❖ Employers should consult their own legal counsel to determine what actions they should and should not take in order to comply with the law including any situations specific to their business or operations.

# Agenda



- ❖ Who is Covered?
- ❖ How can I provide paid leave?
- ❖ How can employees use paid leave?
- ❖ Other Employer Responsibilities
- ❖ Penalties and Enforcement
- ❖ Q&A session

# Main Takeaways

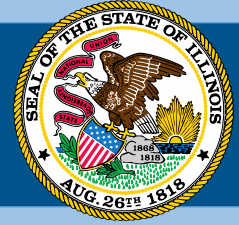


- ❖ Nearly all employees working in the state of Illinois are entitled to earn and use up to 40 hours of paid leave per year under the Act. This includes part-time and seasonal employees, as employees of small businesses and not-for-profit organizations.
- ❖ Any employer who has a **bona fide, qualifying pre-existing policy** that allows all employees to take 40 hours of paid leave, or a pro-rated amount, for any reason of the employee's choosing is not required to provide additional paid leave time or modify the terms of their policy.
- ❖ Employers may enact reasonable, clearly-communicated policies that establish circumstances in which the employer may deny an employee's request to use paid leave due to **operational necessity**. Employees should know where they stand and be able to plan ahead.



# Who is Covered by PLAWA?

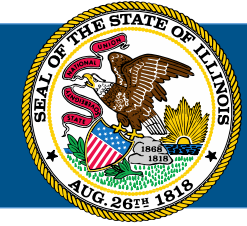
# What About Existing Leave Programs?



- ❖ **What if an employer has a pre-existing paid leave policy, such as Paid Time Off, Paid Sick Leave, or Paid Vacation?**
- ❖ If the bona fide, qualifying pre-existing policy meets the minimum amount of paid leave set forth in Section 15(a) of the Act (40 hours), and your employees can, in fact, take that amount of leave for any reason each year, then you do not need to modify the terms of your pre-existing policy or provide additional paid leave time.
- ❖ *Nothing in this Act shall be construed to discourage employers from **adopting or retaining** paid sick leave, paid vacation, paid holidays, or any other paid time off or paid leave policy more generous than policies that comply with the requirements of this Act. (Sec. 5(c))*
- ❖ Tip: If you believe your current plan complies with this provision, you are advised to communicate this clearly to your employees and maintain supporting documentation.

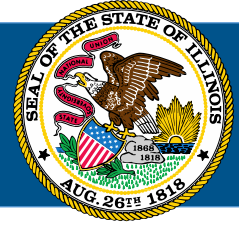


# Overlap with Local Ordinances



- ❖ The Act applies to any employer who doesn't already have a qualifying pre-existing policy, and who isn't already covered by a local paid leave or paid sick leave ordinance in effect on January 1, 2024, that meets the minimum standards of PLAWA.
- ❖ Questions regarding the Chicago Paid Leave and Paid Sick & Safe Leave Ordinance should be directed to the **City of Chicago Office of Labor Standards** [bacplaborstandards@cityofchicago.org](mailto:bacplaborstandards@cityofchicago.org).
- ❖ Questions regarding the Cook Co. Paid Leave Ordinance should be directed to the **Cook County Commission on Human Rights** [human.rights@cookcountyil.gov](mailto:human.rights@cookcountyil.gov).

# Who is an employee?

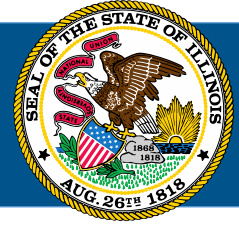


**"Employee"** = "any individual permitted to work by an employer in an occupation."

- same definition as Sections 1 & 2 of Illinois Wage Payment and Collection Act (IWPCA), plus a few additional categories.

This means "employee" includes part-time, temporary, and seasonal employees.

# Independent Contractor Test

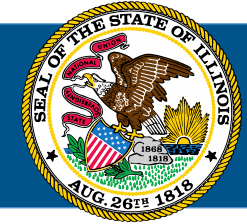


According to the IWPCA, **“employee”** includes any worker who performs work for an **employer**, *unless that worker is a bona fide independent contractor:*

- (1) **free from control and direction** over the performance of his work; and
  - (2) performing work which is either **outside the usual course of business** or is performed outside all of the places of business of the employer unless the employer is in the business of contracting with third parties for the placement of employees; and
  - (3) is in an **independently established trade, occupation, profession or business.**
- (emphasis added)*

**The 3 factors indicate whether a worker is really a true independent contractor, or is an employee covered under the Paid Leave for All Workers Act.**

# What About Union Employees?



- ❖ Employers and Employees covered by Collective Bargaining Agreements that are in effect on January 1, 2024, are “grandfathered” in for the duration of the pre-existing agreement.
  - ❖ *Union construction and freight employees are not covered at all – see next slide.*
- ❖ **After 1/1/24: When negotiating a new agreement, the parties may waive PLAWA in new contracts or contract renewals – only if the waiver provision is explicit, clear, and unambiguous.**
- ❖ Example: A CBA signed effective 7/1/2021 expires on 6/30/2025. Parties will need to address a possible waiver when they negotiate a new CBA on or before 7/1/2025. If no waiver is agreed to and added to the contract, the employer must comply with the law – although the parties may want to bargain over individual provisions of the employer’s policy.
- ❖ **Best practice guidance:** *Consider inserting language in a CBA regarding PLAWA, whether waiving or not.*

# Employee Exemptions

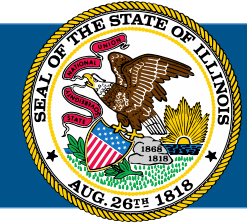


**Some groups of employers/employees are specifically exempted from PLAWA.**

- ❖ Certain railroad and airline employees;
- ❖ Certain higher ed employees:
  - ❖ College/university students who are employed part-time by their school (conditions apply); or
  - ❖ Some short-term, temporary employees of institutions of higher education (conditions apply).
- ❖ Collective bargaining-covered (union) construction work
- ❖ Collective bargaining-covered (union) package transportation and delivery (domestic and international freight)

**If an explicit exemption is not listed in the Act, that employer/employee is most likely covered and entitled to earn and use paid leave under PLAWA.**

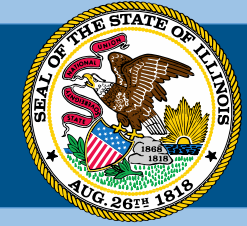
# Who is an Employer?



**PLAWA Sec. 10:** "Employer" has the same application and meaning as that provided in Sections 1 and 2 of the Illinois Wage Payment and Collection Act...

- Sec. 2: "employer" shall include any individual, partnership, association, corporation, limited liability company, business trust, **employment and labor placement agencies** where wage payments are made directly or indirectly by the agency or business for work undertaken by employees under hire to a third party pursuant to a contract between the business or agency with the third party, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, for which one or more persons is gainfully employed.
- except that for purposes of this Act, **"employer" also means 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.**
- **"Employer" does not include public school districts** organized under the School Code **or park districts** organized under the Park District Code.

# Frequently Asked Questions

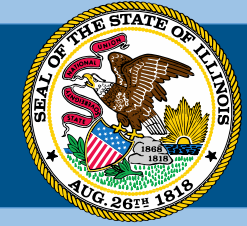


Q1: Does this apply to remote employees?

Q2: Does this apply to employees who don't live in Illinois, but commute to Illinois for work every day, or vice versa?

*IDOL has traditionally found that Illinois workplace protections apply to **employees who primarily perform work in Illinois** for an **employer that does business in Illinois**. In the PLAWA rules, specifically Section 200.110, the Department outlines some of the factors it will consider when determining whether work is performed primarily in Illinois, such as the amount of work performed in IL, whether the work performed inside IL is isolated, temporary, or transitory, and whether the work performed outside of IL is of the same nature/same duties of work performed in IL.*

# Frequently Asked Questions



Q3: Is there an exemption for small business?

Q4: Is there an exemption for not-for-profits?

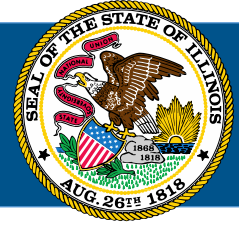
**No. The PLAWA lists several explicit exemptions, but there is no exemption for small businesses or not-for-profits, or any other type of employer not explicitly exempted.**





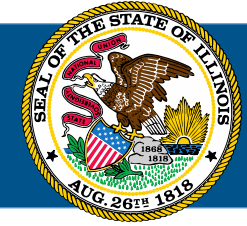
# Provision & Use of Paid Leave

# Accruing Paid Leave



- ❖ **“Accrual”** – employees earn 1 hour of Paid Leave for every 40 hours worked
- ❖ Employees **“accrue”** up to 40 hours per year
  - ❖ A **part-time, temporary, or seasonal worker** is entitled to earn Paid Leave under the Act, but because they work less, they might never accrue a full 40 hours of leave in one year.
  - ❖ ***Example: Employee A works 20 hours a week, earns 2 hours every 4 weeks, works 50 weeks per year = approx. 24 hours a year***

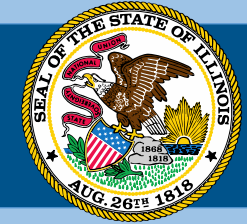
# Frontloading Paid Leave



- ❖ Instead of requiring employees to accrue leave gradually throughout the year, employers may make 40 hours of Paid Leave, or a pro rata amount, available to the employee at the beginning of the 12-month period (a.k.a. "frontloading").
- ❖ The 12-month period is not necessarily January-December and is determined by the employer. (Can be employee anniversary date.)
- ❖ If employer changes the 12-month period, they must provide detailed written notice to employees.

**Frontloaded benefits may not be retroactively diminished.**

# Frequently Asked Questions



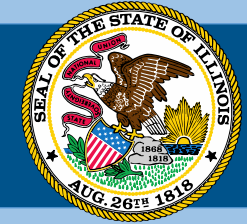
- **Can we frontload less than 40 hours for part-time workers?**
- **Can we pro-rate frontloaded Paid Leave for employees who are hired mid-year?**
- **Can we use an employee's hire anniversary date to set their 12-month period?**

A: Yes, to all 3.

The employer may design the frontloaded leave to be pro-rated according to their business practice so long as the amount of leave provided is 1 hour of paid leave for every 40 hours worked.

- Employers may frontload PL for part-time employees at a pro-rated amount consistent with the employee's anticipated work schedule, but must add paid leave time if they work more than expected.
- If an employer sets a January-December 12-month period, and hires an employee who starts in July, the employer can frontload 6 months' worth of paid leave, until the following January.

# Frequently Asked Questions



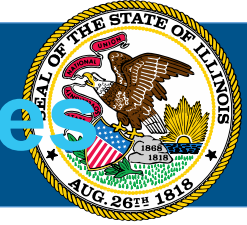
## **Can we frontload 40 hours for full-time employees and accrue for part-time employees?**

A: Yes, you can have separate policies that provide paid leave via frontloading for some employees and via accrual for others, but those policies must be applied consistently, communicated ahead of time, outlined clearly in your written policy, and not illegally discriminatory.

## **Can an employer who frontloads hours recoup paid leave an employee has used if the employee's employment ends before the end of the year?**

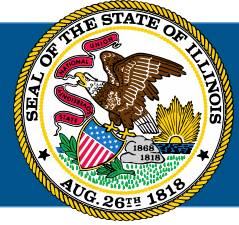
A: No, the law does not allow an employer to make an employee repay paid leave time that was frontloaded at the beginning of the 12-month period. Benefits that have already been provided may not be retroactively diminished. This also applies if you frontload paid leave according to an employee's anticipated work schedule – if they end up working less than expected, you cannot take back or make them repay their used or unused paid leave.

# Provisions for Overtime-Exempt Employees



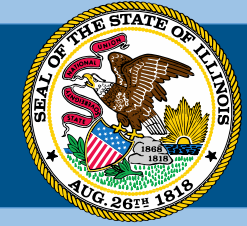
- ❖ **Managers, professionals, some salaried staff work far more than 40 hours a week, so – how does earning paid leave work for them?**
- ❖ Generally, for “**administrative, executive, and professional**” employees, who do not get OT under the Fair Labor Standards Act, the earning rate **would cap at 40 hours worked per week.**
- ❖ Generally, employees that meet that exemption accrue at 1 hour per week, even if they work more.
- ❖ **Example:** A manager at a retail location – if FLSA-Exempt Management who works more than 40 hours per week, the manager may be deemed to work 40 hours per week for PLAWA accrual purposes.
- ❖ **Guidance:** carefully review FLSA definitions

# When Can Employees Use Paid Leave



- ❖ Paid Leave shall begin to **accrue**, or must be **frontloaded**, on **January 1, 2024**, or upon start of employment for employees hired after that date.
- ❖ Employees shall be entitled to **use** Paid Leave starting March 31, 2024 (**90 days after** January 1, 2024), or 90 days after starting employment for employees hired after that date.
  - ❖ 90-day waiting period only applies **once** for any given employee for the duration of their employment (either 1/1/24 for current employees or upon hire for future employees.)

# Frequently Asked Questions



## **How does this work for seasonal employees who work less than 90 days per year?**

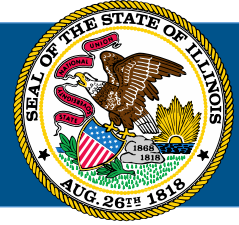
A: Under the Act, seasonal employees are entitled to accrue up to 40 hours of paid leave per year. However, they may be unable to use that leave if they stop working before the 90-day waiting period. The Act does require employers to maintain records on the amount of paid leave accrued in the event the seasonal employee returns within a 12-month period.

## **Do seasonal employees have to wait 90 days to use their paid leave every year?**

A: No. The 90-day waiting period only applies to an employee once during their employment. So, for a seasonal employee returning the next year, they would be able to use their reinstated paid leave time right away.

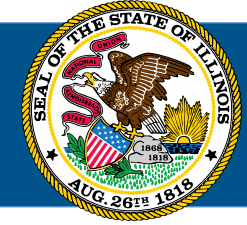


# Rate of Pay for Paid Leave



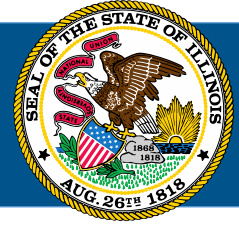
- ❖ Employees shall be paid their **hourly rate of pay** when taking paid leave time.
- ❖ Tipped employees and workers earning commissions shall be paid at least the full minimum wage in the jurisdiction where they work or the agreed upon base hourly wage rate, whichever is higher, for all paid leave hours.

# Employee Requests for Paid Leave



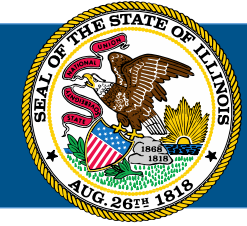
- ❖ An employer must adopt a reasonable, written paid leave policy that, at a minimum, includes the protections of the Act and the rules, and shall be provided to employees on their first day of employment or on March 31, 2024, whichever is later.
- ❖ Employers must allow for **oral or written** request to use earned paid leave. However, an employer's policy may require the employee to provide written notice after making an oral request for paid leave.
- ❖ Section 15(h): employers can have a reasonable Paid Leave notification policy:
  - ❖ (h)(1): If foreseeable leave --> may require a maximum of 7 days notice.
  - ❖ (h)(2): If unforeseeable leave --> notice as soon as practically possible.
- ❖ *Guidance: this area requires employers to carefully consider operational needs and the terms "reasonable" and "foreseeability" in light of the right of employees to take time off for any reason.*

# Employee Requests for Paid Leave



- ❖ *“An **employee may choose** whether to use paid leave provided under this Act prior to using any other leave provided by the employer or State law.”* – Paid Leave for All Workers Act, Sec. 15(e).
- ❖ An employer who offers more than one type of leave should confirm and document what category of leave the employee wishes to draw from for any use of leave. See 56 Ill. Admin. Code 200.300(f).

# Employer Denial of Paid Leave



An employer may deny an employee's request to use paid leave if all of the following conditions are met:

- ❖ The employer's policy for considering leave requests is disclosed to the employee in writing;
- ❖ The employer's policy establishes certain limited circumstances in which paid leave may be denied to meet the employer's operational needs for the requested time period; and
- ❖ As a matter of fact, the employer's policy is consistently applied to similarly situated employees and does not effectively deny an employee adequate opportunity to use all paid leave time over a 12-month period.

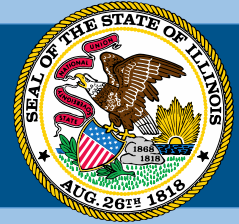
See 56 Ill. Admin. Code 200.310(c).

# Does Paid Leave Carry Over?



- ❖ For employees who accrue paid leave time over a 12-month period, any unused paid leave time shall carry over annually.
- ❖ An employer and employee may mutually agree, in writing and on an annual basis, that unused paid leave will be paid out to the employee at the end of the 12-month period instead of being carried over.
- ❖ Employees who receive frontloaded paid leave at the start of a 12-month period are not entitled to carry over paid leave time unless the employer allows them to do so.
- ❖ The employee is only entitled to use 40 hours of paid leave each year, unless the employer chooses to allow them to use more.

# Frequently Asked Questions



**Can we deny an employee's request to use paid leave under PLAWA?**

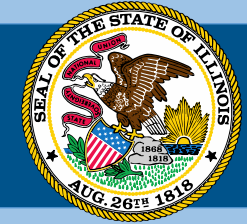
**Can employers set times of the year (holidays, peak periods) when use of PL is limited?**

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, such as to conform with legally required minimum staffing levels. Any such policy must be reasonable, communicated to employees, applied equally to all employees, and conform with other applicable state and federal laws. See 56 Ill. Admin. Code 200.310(c) for guidance on factors that employers may consider.

**What about no-call, no-shows?**

An employer can adopt a reasonable policy regarding how they will handle no-call, no-show absences when an employee provides no notice, but the policy must be disclosed in the employee manual and cannot require employees to disclose the reason for their absence.

# Frequently Asked Questions



**Can employers force employees to use PL if their employees request unpaid leave or another form of paid leave?**

**Can I require employees to take sick time (or any other time) before taking PLAW leave (or vice versa)?**

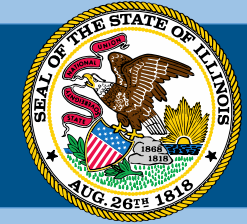
The law says: *An employee may choose whether to use paid leave provided under this Act prior to using any other leave provided by the employer or State law.* If the employer has another paid or unpaid leave policy or practice, the worker can choose whether to use PLAW leave before that.

**How does this interact with FMLA?**

Employees going on Family and Medical Leave Act leave may use PLAWA time concurrently during their FMLA leave.

We (the Illinois Department of Labor) do not administer or enforce FMLA (which is federal law.) All FMLA questions should be directed to the [United States Department of Labor](https://www.dhs.gov/eis-viv/viv/viv-home)

# Frequently Asked Questions



## **Because employees may carry over 40 hours per year, and use can be limited to 40 hours, can employees bank their leave and carry it over forever?**

Employers may establish a reasonable policy restricting employees' ability to carry over more than 40 hours of unused paid leave per year. Additionally, employers can limit use of paid leave time to 40 hours per year. Note that part-time employees who may not accrue a full 40 hours of paid leave each year are still entitled to use up to 40 hours if they carry that time over.

## **Can I make my employees take their leave half a day or a day at a time?**

Unless an employer has a **bona fide, qualifying pre-existing policy**, the highest minimum you can set for using leave is 2 hours.

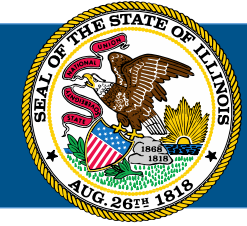
Example: Employee wants to take 45 minutes of paid leave to run an errand. An employer may have a policy requiring them to use 2 hours.

Example: Employee wants to take 3 hours of paid leave. An employer may **not** require them to take 8 hours instead.

Employers can always be more flexible or generous than the law requires!



# Payout Upon Separation from Employment



**PLAWA does not require payout** of unused leave unless the leave is credited to the employee's general paid time off bank or employee vacation account (Sec. 15(I)). See 56 Ill. Admin. Code 200.460.

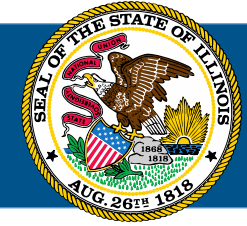
However, **employers should also consider their vacation payout obligations** under the **Illinois Wage Payment and Collection Act**, especially if you are crediting paid leave time to a pre-existing policy.

*Guidance: review carefully, and consult legal counsel, as you think about compliance solutions.*



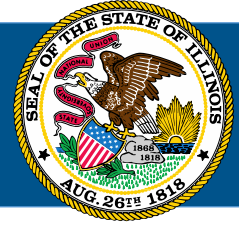
# Other Employer Responsibilities

# Recordkeeping Requirements



- ❖ **Sec. 20 Related employer responsibilities:** requires employers to keep records of each employee's:
  - ❖ Hours worked each day in each workweek;
  - ❖ Amount of Paid Leave accrued or provided (frontloaded) in each workweek; and
  - ❖ Amount of Paid Leave taken or used in each workweek;
  - ❖ Requests by the employee to use paid leave that the employer denied; and
  - ❖ Remaining paid leave balance in each workweek and upon employee's separation or termination from employment.
  
- ❖ Record retention requirement: 3 years
- ❖ Provide IDOL access to records upon investigation
- ❖ **Public Notice ("Know Your Rights" poster) required.**

# Employee Handbook



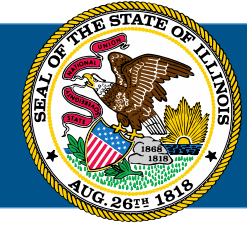
- Employers are advised to develop an employee handbook/personnel policy that clearly communicates any policies they want employees to abide by.
- Any such policies must comply with the Paid Leave for All Workers Act and any other applicable laws.
- The handbook must be in writing and distributed to all employees on or before the employee's first day.
- In absence of a written handbook, the Department will still conduct an investigation of whether an employer unlawfully denied an employee their rights under the Act.

# Retaliation Prohibited



- ❖ **Retaliation is prohibited under the Act (820 ILCS 192/25).**
- ❖ *Employers shall not consider an employee's use of Paid Leave as a negative factor in any employment action that involves evaluations, promotion, discipline, or counting paid leave under a no-fault attendance policy.*
  - ❖ In other words: If an employer has a **points-based attendance system** that leads to discipline for absences, any instance when an employee is utilizing Paid Leave provided under this Act **may not be counted** against that employee.

# Penalties and Enforcement



• **Complaints can be filed up to 3 years after the alleged violation.**

Violation	Payee	Description
Any violation against affected employee(s)	Employee(s)	<ul style="list-style-type: none"><li>• back wages</li><li>• compensatory damages</li><li>• penalty of \$500-1,000</li><li>• other relief as appropriate</li></ul>
Any violation of the Act except public notice violation	IDOL	<ul style="list-style-type: none"><li>• \$2,500</li></ul>
Failure to post public notice	IDOL	<ul style="list-style-type: none"><li>• 1<sup>st</sup> offense: \$500</li><li>• subsequent offense: \$1,000</li></ul>



## Welcome to the Illinois Department of Labor

The Illinois Department of Labor is a medium-sized State agency that manages an extra-large workload, serving thousands of employees and businesses in the State each year. IDOL's primary responsibilities are to protect worker wages, welfare and working conditions by enforcing State labor and employment laws, providing compliance assistance to employers, and increasing public awareness of workplace protections. IDOL has offices throughout the State, with main offices in Springfield and Chicago; an office in the State Regional Office Building in Marion; and field staff located throughout the State.



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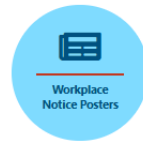
### Frequently Visited Pages



Paid Leave for All Workers Act



Minimum Wage Law



Workplace Notice Posters



Prevailing Wage Act

[Equal Pay Registration Certificate Portal](#)

labor.illinois.gov/laws-rules/paidleave.html


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## Leave Rights Division

- [Child Extended Bereavement Leave Act](#)
- [Family Bereavement Leave Act](#)
- [Employee Sick Leave Act](#)
- [Paid Leave for All Workers Act](#)**

# Paid Leave for All Workers Act

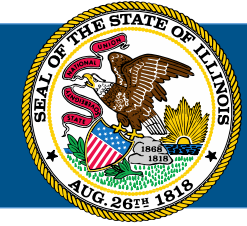
The Paid Leave for All Workers Act (PLAWA) allows workers to earn up to 40 hours of paid leave from work each year. Workers can use paid leave for any reason and employers may not require workers to provide a basis for their time off request. Workers earn one (1) hour of paid leave for every 40 hours they work. If an employer has an existing policy, certain exceptions may apply. There are certain categories of workers that are not subject to the law.



-   
Do you work in Chicago?
-   
Do you work in Cook County?
-   
Frequently Asked Questions
-   
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# Questions and Comments



Q&A: Send questions to All Panelists

Questions: [DOL.PaidLeave@illinois.gov](mailto:DOL.PaidLeave@illinois.gov)

Hotline: (312) 793-2600

<https://labor.illinois.gov/paidleave>