



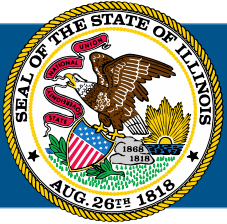
# Paid Leave For All Workers Act

*What Employers Should Know*



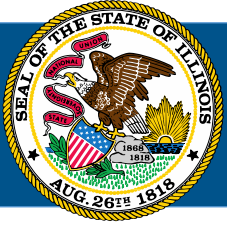
Illinois Department of  
**LABOR**

# About IDOL



- ❖ Charged with enforcing laws protecting workers' rights on the job.
- ❖ Enforces about 25-30 different workplace protections and safety standards.
- ❖ Has offices in Chicago, Springfield, and Marion.
- ❖ Has 3 labor law enforcement divisions: Fair Labor Standards; Conciliation and Mediation; and OSHA.
- ❖ New Leave Rights Division established in 2024.

# Paid Leave for All Workers Act Background



- ❖ The General Assembly finds that it is in the public policy interests of the State for all working Illinoisans to have some **paid leave** from work to maintain their health and well-being, care for their families, or use for **any other reason** of their choosing.
- ❖ Illinois is one of only three states with a paid leave “for any reason” law.
- ❖ *“...the provisions of this Act shall be liberally construed in favor of providing workers with the greatest amount of paid time off from work and employment security.”*

# Format of Today's Presentation

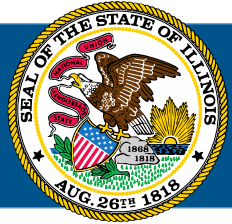


1. The presentation has been modified to provide information about various sections of the Act and to address frequently asked questions we received during the last presentation and via email, from employers and employees new to understanding the law, as well as from more advanced practitioners who have targeted, specific questions regarding particular sections of the law.
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 recording of this webinar is available on our website.

# Best Practices for Compliance



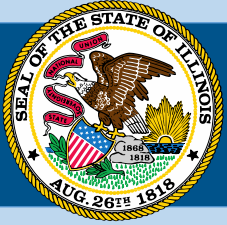
- ❖ This presentation is intended to offer **general guidance** on the provisions of the Paid Leave for All Workers Act.
- ❖ IDOL cannot provide legal advice.
- ❖ Employers should consult their own legal counsel to determine what actions they should and should not take in order to comply with the law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



# Paid Leave Overview – Agenda

- ❖ Who is Covered?
- ❖ Providing (Frontloading vs Accrual) Paid Leave
- ❖ Using Paid Leave
- ❖ Other Employer Responsibilities
- ❖ Penalties and Enforcement
- ❖ FAQs – see our website at [labor.Illinois.gov](http://labor.Illinois.gov)
- ❖ We will run through most common questions throughout, and finish with a question session.

# Main Takeaways



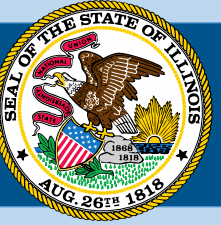
- ❖ Any employer who has a **bona fide, qualifying pre-existing policy** that allows all employees to take 40 hours of paid leave for any reason of the employee's choosing is not required to modify the terms of their policy.
- ❖ Employers may enact reasonable, clearly-communicated policies that establish 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.
- ❖ IDOL will be emphasizing employer compliance assistance for first part of 2024. However, IDOL will still review every complaint to determine whether it warrants an investigation.
- ❖ A recording of this webinar is on our Paid Leave website.



# Who is Covered by PLAWA?



# What About Existing Leave Programs?



- ❖ What if an employer has an existing policy such as Paid Time Off, Paid Sick Leave, or Paid Vacation – do we have to modify or change that program?
- ❖ 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.
- ❖ *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 law 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 Ordinance should be directed to the **City of Chicago Office of Labor Standards** [www.Chicago.gov/laborstandards](http://www.Chicago.gov/laborstandards).
- ❖ 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).

# Definition of Employees – Who is covered



- "Employee"** has the same meaning as the definition of "employee" in Sec. 1 & 2 of Illinois Wage Payment and Collection Act (IWPCA), plus a few additional categories:
- ❖ Part-time, temporary, and seasonal workers
  - ❖ All domestic workers (e.g. nannies and housekeepers)
  - ❖ Employees of state & local governments/agencies (Sec.1 IWPCA)
  - ❖ Interns, if they are considered employees under the Act.

# Who is / Who's Not Covered: 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 7/1/2020 expires on 6/30/2024. Parties will need to address a possible waiver when they negotiate a new CBA on or before 7/1/2024. 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:** from 1/1/24 forward – *consider inserting language in a CBA regarding PLAWA, whether waiving or not.*
- ❖ Different provisions apply for State Agency employers and employees. Consult HR or your union.

# Who's Not: Employee Exceptions



**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.

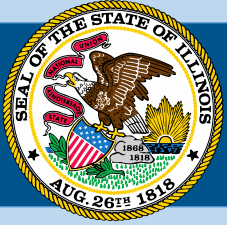
# Definition of Employer



**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 school districts** organized under the School Code **or park districts** organized under the Park District Code.

# Frequently Asked Questions



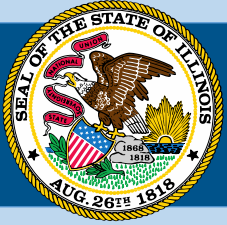
**May municipalities or counties opt out of PLAWA in order to provide fewer hours of paid leave than what is required under statute?**

No. The Department recognizes Section 15(p) provides an exemption for municipalities or counties with a local ordinance in effect prior to the effective date of the Act, if that ordinance requires employers to provide any form of paid leave, including sick leave. However, Section 5(a) of PLAWA sets the **statewide minimum standard** for the amount of paid leave that employers, including municipalities or county employers, are required to provide for their employees. **Any local ordinance that is enacted or amended after the effective date of the Act must comply with all PLAWA requirements.**

Given the potential legal implications of such local laws, ordinances or regulations, it is recommended that **employers consult with legal counsel** prior to changing or enacting such policies, laws, rules or regulations.



# Frequently Asked Questions

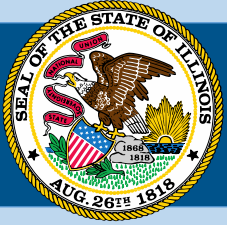


Q1: Does this apply to remote employees?

Q2: Does this apply to employees who live in Illinois but commute to Indiana 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.** See proposed Rules for factors.*

# 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 10 hours a week, earns 1 hours of paid leave every 4 weeks; works 50 weeks per year = earns approx. 12 hours a year
  - ❖ **Example: Employee B** works 20 hours a week, earns 2 hours every 4 weeks, works 50 weeks per year = approx. 24 hours a year

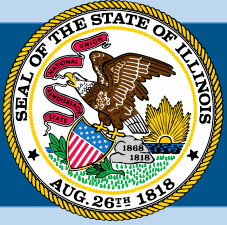
# Frontloading Paid Leave



- ❖ 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



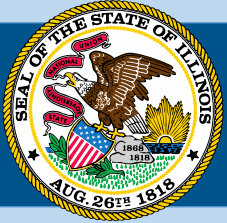
- **Can we frontload less than 40 hours for part-time workers?**
- **Can we pro-rate frontloaded Paid Leave for employees who are hired mid-year?**
- **Can we match our Paid Leave 12-month period to our Fiscal Year - July 1-June 30?**
- **Can we use an employee's hire anniversary date to set their 12-month period?**

A: Yes, to all 4.

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.
- For an employer who wants to follow a July-June fiscal year, the employer can count January 1, 2024 through June 30, 2024 as a half year, provide leave on a pro-rated basis for that 6 months, and then start a new 12-month period on July 1, 2024.

# 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 PL



- ❖ 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 **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.)

# Rate of Pay for Paid Leave



- ❖ Sec. 15(f) discusses “rate of pay”.
- ❖ Employees shall be paid their **hourly rate of pay** for time taken on Paid Leave.
- ❖ Tipped employees and workers earning commissions shall be paid at least the full minimum wage in the jurisdiction where they work.

# Employee Request for Paid Leave



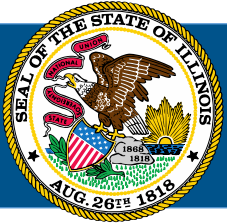
- ❖ Employers must allow for **oral or written** request to use earned paid leave.
- ❖ Section 15(h): employers can have a reasonable Paid Leave notification policy:
  - ❖ (h)(1): If foreseeable leave --> may require 7 days notice.
  - ❖ (h)(2): If unforeseeable leave --> notice as soon as practical.
- ❖ *Guidance: this area requires employers to carefully consider operational needs, the term “reasonable” and “foreseeability” in light of the right of employees to take time off for any reason.*

# Employee Request 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).

# Employer Denial of Paid Leave



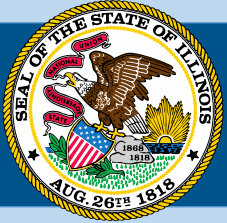
- ❖ Employers may enact reasonable, clearly-communicated policies that establish circumstances in which the **employer may deny an employee's request** to use paid leave due to operational necessity.
- ❖ Must be in employers' written employee handbook and distributed to all employees.
- ❖ See Proposed Rules for factors an employer may consider.

# Does Paid Leave Carry Over?



- ❖ Generally, under this Act, an employee's unused Paid Leave that was provided **via accrual** shall carry over annually. (Sec. 15(c))
  - ❖ *(Frontloaded leave does not have to carry over.)*
- ❖ The employee is only entitled to use 40 hours 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?**

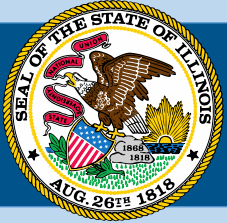
**For firefighters and emergency responders, can we restrict use of PL?**

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 Proposed Rules 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 employers cannot require the employee to disclose the cause for the absence, and the policy must be disclosed in the employee manual.

# 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.

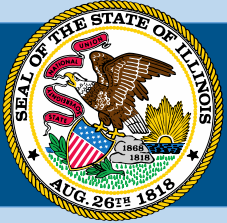
**How does this interact with FMLA?**

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-offices/departmental-administrative-functions/us-department-of-labor)



# 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?**

IDOL is hoping to adopt Rules to clarify this point, but the Act does not specifically address this topic. Employers can limit use to 40, and even part-time employees who may not accrue a full 40 hours each year are entitled to use up to 40 hours if they carry some over.

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

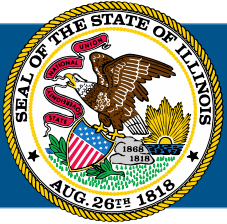
Unless an employer has a **bona fide, qualifying pre-existing policy**, the highest minimum you can set for using leave is 2 hours.

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 4 or 8 hours instead.

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

# Payout Upon Resignation/Termination



**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(l));

However, **employers should also consider their vacation payout obligations** under the **Illinois Wage Payment and Collection Act** (IWPCA Sec. 5).

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



# Other Employer Responsibilities

# Pre-Existing PTO/Vacation Plans



- An employer who has a **bona fide, qualifying pre-existing policy** that allows all employees to take 40 hours of paid leave for any reason is not required to add to or change their plan.
- *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))*
- An employer's existing vacation plan may already meet their obligations under PLAWA, without modifying anything.

# Records Requirements



- ❖ **Sec. 20 Related employer responsibilities:** requires employers to keep records of each employee's:
  - ❖ Hours worked;
  - ❖ Amount of Paid Leave accrued or provided (frontloaded); and
  - ❖ Hours of Paid Leave used, and when.
  
- ❖ Record retention requirement: 3 years
- ❖ Provide IDOL access to records upon investigation
- ❖ **Public Notice (“Know Your Rights” poster) required.** (on our web site)
- ❖ Employers of Domestic Workers have special provisions. See Act and consult counsel if you employ Domestic Workers.

# Employee Handbook



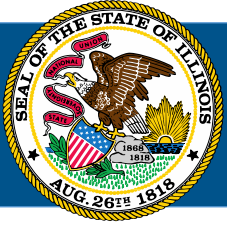
- Employers are advised to develop an employee handbook/personnel policy that clearly communicates any policies they want employees to abide by.
- Any such policies must comply with the Paid Leave for All Workers Act and any other applicable laws.
- The handbook must be in writing and distributed to 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 (Sec. 25 of Act)



- ❖ **Retaliation is prohibited under the Act.**
- ❖ *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

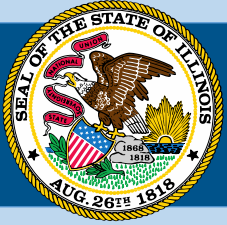


❖ **Complaints can be filed up to 3 years after the alleged violation.**

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>



# Frequently Asked Questions



Frequently Asked Questions were updated on **December 27, 2023**.

The Department has proposed rules to clarify provisions of the Act.

IDOL recommends employers and employees **review our web site for FAQs.**

**Required public notice is posted on “Required Posters” section of web site.**

**<https://labor.illinois.gov/faqs/paidleavefaq.html>**



# Welcome to the Illinois Department of Labor



## Visit Illinois Work Safe

[Learn More](#)



## See What's Happening at IDOL

[Learn More](#)



## Labor Advisory Board

[Learn More](#)

## Paid Leave for All Workers Act

THE PAID LEAVE FOR ALL WORKERS ACT TAKES EFFECT JANUARY 1, 2024.

The Department of Labor is in the process of preparing guidance and other resources and materials to educate employees and assist employers with compliance.

[Paid Leave Information](#)



## Laws and Rules

Conciliation and Mediation  
Division ▾

Fair Labor Standards  
Division ▾

Leg... Division ▾

Illinois OSHA ▾

**Paid Leave for All  
Workers Act** ▾

# Paid Leave for All Workers Act

## THE PAID LEAVE FOR ALL WORKERS ACT TAKES EFFECT JANUARY 1, 2024.

The Department of Labor is in the process of preparing guidance and other resources and materials to educate employees and assist employers with compliance. If you would like to submit a question or comment to inform our outreach and compliance assistance efforts, you may do so by emailing: [DOL.PaidLeave@illinois.gov](mailto:DOL.PaidLeave@illinois.gov)

Read the Law: [820 ILCS 192/Paid Leave for All Workers Act. \(ilga.gov\)](#)

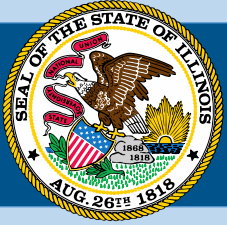
Read the Proposed Rules published 11/3/2023 at 47 Ill. Reg. 15559: [47 Ill. Reg. 15559](#)

UPDATE 11/21/2023: View the [Frequently Asked Questions](#)

## Webinar Schedule

DATE	TIME	REGISTER
December 7	10 am - 11 am	<a href="#">Webex</a>
December 21	2 pm - 3 pm	<a href="#">Webex</a>

# Main Takeaways – Q&A



- ❖ Any employer who has a **bona fide, qualifying pre-existing policy** that allows all employees to take 40 hours of paid leave for any reason of the employee's choosing is not required to modify the terms of their policy.
- ❖ Employers who are subject to PLAWA 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.
- ❖ IDOL will be emphasizing employer compliance assistance for first part of 2024. However, IDOL will still review every complaint to determine whether it warrants an investigation.
- ❖ A recording of this webinar is on our Paid Leave web site.

# Questions and Comments



Q&A: Send questions to All Panelists

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

[www.Labor.Illinois.Gov](http://www.Labor.Illinois.Gov)