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Illinois' New Leave Laws and Non-compete Warning; Sick Leave Comes to Berkeley and St. Paul

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Illinois passes two new leave laws; bars non-compete agreements for low wage workers.

First, the [Child Bereavement Leave Act](#), which became effective July 29, 2016, requires Illinois employers with 50 or more employees to grant up to two weeks (10 days) of unpaid leave to eligible employees who have lost a child (and 6 weeks in the event of the death of more than one child during a 12-month period), unless the employee has already exhausted his or her FMLA leave entitlement. Employees may substitute any available paid leave, if they choose. Employees are eligible for the leave after 1,250 hours of service with the employer during the prior 12 month period. The time may be used to attend the funeral or alternative to a funeral, make arrangements necessitated by the death, or to grieve the death of the child. The leave must be completed within 60 days after the date employee receives notice of the death of the child. Employers are entitled to 48 hours of notice before the leave, unless it is not practicable. Employers may require documentation to verify the necessity of the leave.

Second, effective January 1, 2017, *Illinois's Employee Sick Leave Act* requires employers who voluntarily provide their employees with paid sick leave to allow the employee to use approximately half of that leave to care for the employee's immediate family members, parents-in-law, grandchildren, or grandparents. The act defines "personal sick leave benefits" to include time accrued and available to employees to be used for absences related to personal illness, injury or medical appointments. Employers who have paid time off policies that allow employees to take such leave to care for family members as required by the act are not required to modify such policies.

Finally, Illinois has banned non-compete agreements with low wage workers. The *Illinois Freedom to Work Act*, effective January 1, 2017, applies to all agreements signed after that date. Under the act, non-compete agreements are prohibited with workers who earn the greater of 1) the Federal, State, or local minimum wage or 2) \$13.00 an hour.

Berkeley, California and St. Paul, Minnesota are the latest cities to jump on the paid sick leave law bandwagon; Berkeley raises minimum wage.

Berkeley's law both increases the minimum wage and instituted mandatory paid sick leave. Under the law, passed on August 29, 2016, the minimum wage will go to \$13.75 an hour on Oct. 1, 2017 and \$15 an hour on Oct. 1, 2018 (current minimum wage is \$11, increasing to \$12.53 on October 1, 2016); starting July 1, 2019 the minimum wage will increase in accordance with the CPI. The paid sick leave provisions of Berkeley's law, passed on August 31, 2016, are slated to become effective October 1, 2017. However, there are [two other measures addressing minimum wage and paid sick leave](#) on the ballot this November that could end up negating the current ordinance.

The paid sick leave provisions of the current ordinance go beyond the requirements of the state of California's Healthy Workplaces, Healthy Families Act, which requires employers to provide up to 48 hours of paid sick leave per year to employees. Berkeley's law requires employers of 25 or more employees to allow employees to



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accrue up to 72 hours of paid sick leave per year. Under Berkeley's law, paid sick leave carries over from year to year but is subject to a cap of 48 hours total (for employers of 1-24 employees) or 72 hours total (for employers of 25 or more employees); there is no cap on employee sick leave use except for employers of 1-24 employees, who can cap sick leave use at 48 hours per year. Berkeley's law also allows employees to use paid sick leave not only for their own illness, but also to care for family members when they become sick or injured.

On September 7, 2016, St. Paul's City Council unanimously approved a [paid sick leave ordinance](#) that goes into effect July 1, 2017 for business with 24 or more employees, and on January 1, 2018 for employers with up to 23 employees. Under the law, employees working at least 80 hours per year in St. Paul will be entitled to accrue one hour of paid sick leave for every 30 hours worked, up to a maximum of 48 hours per year. Employees may carry over accrued, unused paid sick leave from year to year, up to a maximum accrual cap of 80 hours of paid sick leave. Employers may frontload paid sick leave, but if they choose to do so, must provide at least 48 hours in the employee's first year of employment and must provide 80 hours each subsequent year. Employers are required to provide employees with specific notice of their rights under the law, and if the employer has a handbook, must include such notice in the handbook also. Of note, in addition to providing for administrative fines for violations, the law gives aggrieved employees the right of private civil action, with the opportunity to recover damages and attorneys' fees.

Employers with workers in any of these locations should review their policies and practices and revise as necessary to comply with these new laws.

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