

# CHICAGO MINIMUM WAGE AND PAID SICK LEAVE RULES

## ARTICLE 1 – GENERAL RULES FOR MCC 1-24

### SECTION I. DEFINITIONS

Terms used in these rules that are defined in Chapter 24 of Title 1 of the Chicago Municipal Code shall bear those definitions. Such terms, as well as those defined below, are set out in bold type for ease of reference.

“**BACP**” means the City of Chicago’s Department of Business Affairs and Consumer Protection.

“**Business facility**” – A place where Employees work for an Employer, including a residence or dwelling unit where a Domestic Worker is employed and engages in work for an Employer.

“**Calendar year**” means twelve calendar months beginning at any point.

“**Covered Employee**” – “Covered Employee” means any Employee who is not subject to any of the exclusions set out in Section 1-24-050 and Rule MW 1.05, and who, in any particular two-week period, performs at least two hours of work for an Employer while physically present within the geographic boundaries of the City. For purposes of this definition, time spent traveling in the City that is compensated time, including, but not limited to, deliveries, sales calls, and travel related to other business activity taking place within the City, shall constitute work while physically present within the geographic boundaries of the City; however, time spent traveling in the City that is uncompensated commuting time shall not constitute work while physically present within the geographic boundaries of the City. Day and temporary laborers and occasional and irregular employees (occasional and irregular employees means employees whose employment requires not more than 90 days to complete) may all be Covered Employees from the day they begin work.

“**Day laborer**,” “**day labor agency**,” “**contract employer**,” and “**day labor**” have the meanings ascribed to those terms in Section 4-6-070 of the Municipal Code of Chicago. As such: a) “**day laborer**” means any person referred by a day labor agency to a contract employer to perform day labor or seeking such a referral; b) “**day labor agency**” means any entity engaged in providing day labor workers for a contract employer, not including any not-for-profit organization; c) “**contract employer**” means any person who obtains the services of one or more individuals through an agreement with a day labor agency, regardless of whether such agreement is oral or in writing; and d) “**day labor**” means labor or employment that is 1) irregular or occasional; and 2) not longer than the time required to complete the assignment for which the person was hired; and 3) where wage payments are made directly or indirectly by the day labor agency or the contract employer for work undertaken by one or more day laborers. The term “day labor” does not include secretarial, clerical or professional services.

“Ordinance” means Chapter 1-24 of the Municipal Code of Chicago.

## **SECTION II. GENERAL INFORMATION**

### **Rule MW 1.01 Application of the Ordinance**

All functions and powers of BACP and the Commissioner under the ordinance shall be exercised in cooperation with the functions and powers of the U.S. Department of Labor under the Fair Labor Standards Act of 1938, 29 U.S.C. 201 *et seq.*, as amended, and the Illinois Department of Labor and its Director under the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq.*, as amended. In areas where the City of Chicago, the State of Illinois, and the federal government possess concurrent powers under their respective laws, the strictest of the three laws shall control.

### **Rule MW 1.02 Notice to Employers – Copies of the Ordinance and Rules**

All Employers shall have on file and readily accessible current copies of the Ordinance and these rules.

### **Rule MW 1.03 Domestic Workers and Day Laborers**

For purposes of the Ordinance and these rules, a person or entity that employs one or more domestic workers or day laborers who qualify as Covered Employees qualifies as an Employer.

### **Rule MW 1.04 Notice**

Each Employer shall post the notice described in Section 1-24-070 of the Ordinance that informs Covered Employees of the current minimum wage and of their rights under the Ordinance. The Commissioner shall prepare the notice and make it available online at <http://www.cityofchicago.org/minimumwage>. This rule does not apply to Employers who employ solely domestic workers and / or day laborers.

### **Rule MW 1.05 Exclusions**

The exclusions described in this rule that are defined by reference to state law may be affected by changes to the Illinois Minimum Wage Law. The Ordinance does not apply to hours worked:

- a) By Employees subject to the provision in subsection 4(a)(2) of the Illinois Minimum Wage Law, which currently allows employers to pay certain employees a wage up to 50¢ per hour less than the state minimum wage during the first 90 consecutive calendar days of employment;
- b) By Employees subject to the provision in subsection 4(a)(3) of the Illinois Minimum Wage Law, which currently allows Employers to pay Employees who are less than 18 years old a wage up to 50 cents per hour less than the state minimum wage;
- c) By camp counselors subject to subsections 4(d) and 4(e) of the Illinois Minimum Wage Law;

- d) By Employees licensed as “learners” by the Illinois Department of Labor, pursuant to Section 6 of the Illinois Minimum Wage Law. Generally speaking, the term “learner” refers to a person participating in a training program for an occupation in which he is employed, where the program involves either formal instruction or on-the-job training during a period when the Employee is entrusted with limited responsibility and is under supervision or guidance;
- e) By Employees of any subsidized temporary youth employment program;
- f) By Employees of any subsidized transitional employment program;
- g) By Employees of any governmental entity other than the City of Chicago;
- h) By Employees covered by a Collective Bargaining Agreement in force on July 1, 2017. Collective Bargaining Agreements entered into after June 30, 2017, must expressly waive the requirements of the Ordinance for the Employees to be exempted.

**Rule MW 1.06                      Contents of Records of Employers**

Employers must maintain, at a minimum, the following records for Covered Employees, for a period of not less than 5 years, and shall make such records available for inspection upon request by BACP:

- a) Name of each Covered Employee;
- b) Address of each Covered Employee;
- c) Occupation of each Covered Employee;
- d) Social Security number of each Covered Employee;
- e) Hire date of each Covered Employee;
- f) Date each Covered Employee was eligible to use Paid Sick Leave;
- g) Dates and number of hours each Covered Employee used Paid Sick Leave;
- h) Rates of pay of each Covered Employee;
- i) Hours worked each day and each workweek by each Covered Employee;
- j) Type of payment (hourly rate, salary, commission, etc.), straight-time and overtime pay, and total wages paid to each Covered Employee in each pay period;
- k) Additions and deductions from each Covered Employee’s wages for each pay period and an explanation of additions and deductions;

- l) Dates of payment of each pay period covered by each wage payment to each Covered Employee

## **ARTICLE 2 – MINIMUM WAGE RULES**

### **Rule MW 2.01 Covered Employee Exclusions**

For purposes of Minimum Wage, the Ordinance does not apply:

- a) to individuals who work for an Employer who employs fewer than 4 employees;
- b) to hours worked by Employees of an Employer who has attained a Section 5 special license issued under the Illinois Minimum Wage Law.
- c) to certain individuals employed in agriculture or aquaculture;
- d) to individuals employed as outside salesmen;
- e) to individuals employed as a member of a religious corporation or organization;
- f) to individuals employed at an accredited Illinois college or university employed by the college or university at which he is a student who is covered under the provisions of the Fair Labor Standards Act of 1938, as heretofore or hereafter amended; and
- g) to individuals employed for a motor carrier and with respect to whom the U.S. Secretary of Transportation has the power to establish qualifications and maximum hours of service under the provisions of Title 49 U.S.C. or the State of Illinois under Section 18b-105 (Title 92 of the Illinois Administrative Code, Part 395 - Hours of Service of Drivers) of the Illinois Vehicle Code.

### **Rule MW 2.02 Collective Bargaining Agreements**

The requirements of the Ordinance may be waived only if the waiver is explicitly set forth in a bona fide collective bargaining agreement in clear and unambiguous terms.

### **Rule MW 2.03 Tipped Employees**

- a) Calculation of the City tipped straight-time minimum wage.

The City tipped straight-time minimum wage is defined by reference to state law, and therefore may be affected by changes to the Illinois Minimum Wage Law. As of the date the City issued these rules, the state tipped straight-time minimum wage is \$4.95 per hour, which is calculated by reducing the state minimum wage of \$8.25 by \$3.30 (i.e., the maximum state tip allowance of 40% of \$8.25). Under subsection 1-24-030(a)(1) of the Ordinance, the City tipped straight-time minimum wage is \$5.45 per hour (i.e., the state tipped straight-time minimum wage of \$4.95 per hour plus \$0.50). If, for example, the state amended the Illinois Minimum Wage Law to

raise the state minimum wage to \$9 per hour and reduce the maximum tip allowance to 30%, the state tipped straight-time minimum wage would increase to \$6.30 per hour, which is calculated by reducing the new state minimum wage of \$9 per hour by \$2.70 (i.e., the new maximum tip allowance of 30% of \$9.00). The City tipped straight-time minimum wage would thereby increase to \$6.80 per hour (i.e., the new state tipped straight-time minimum wage of \$6.30 per hour plus \$0.50). Under both state law and the Ordinance, if an Employee's wages plus tips do not equal at least the number of hours worked times the applicable minimum wage, his or her Employer must make up the difference.

b) Record requirements

Employers must maintain, at a minimum, the following records for Covered Employees whose compensation is derived in part from gratuities, for a period of not less than five years, and shall make such records available for inspection upon request by BACP:

- 1) An identifying symbol, letter, or number on the payroll record indicating such Employee is a person whose wage is determined in part by gratuities.
- 2) The report received from the Employee setting forth gratuities received during each workday. Such reports submitted by the Employee shall be signed and include his or her social security number.
- 3) The amount by which the swage of each such Employee has been deemed to be increased by gratuities as determined by the Employer. The amount per hour which the Employer takes as a gratuity credit shall be reported to the Employee in writing each time it is changed from the amount per hour taken in the preceding pay period.
- 4) Hours worked each work day in any occupation in in which the Employee does not receive gratuities, and total daily or weekly straight-time payment made by the employer for such hours.
- 5) Hours worked each workday in occupations in which the Employee received gratuities and total daily or weekly straight time earnings for such hours.

**Rule MW 2.04 Overtime**

Unless subject to one of the exceptions in subsection 4(a)(2) of the Illinois Minimum Wage Law, a Covered Employee is entitled to at least 1.5 times the City minimum wage for each hour in excess of 40 worked in any particular week. As of the date of these rules, the City minimum wage is \$10.50 per hour; therefore, the minimum overtime wage is \$10.50 times 1.5, which equals \$15.75 per hour.

A tipped Covered Employee is entitled to an overtime hourly wage of at least 1.5 times the City minimum wage, minus no more than the current maximum tip allowance. As of the date the City issued these rules, the maximum tip allowance is \$4.55 (calculated by subtracting the City tipped straight-time

minimum wage of \$5.95 per hour from the general minimum wage of \$10.50 per hour) and the minimum tipped overtime wage is \$11.20 per hour (calculated by subtracting the maximum tip allowance of \$4.55 from the general minimum overtime wage of \$15.75 per hour). These figures, like the City tipped straight-time minimum wage, are tied to state law, and therefore may be affected by changes to the Illinois Minimum Wage Law. For example, under the scenario set out above in Rule MW 1.07(a), where the City tipped straight-time minimum wage increases to \$6.80 per hour, the new maximum tip allowance is \$3.70 (i.e., \$10.50 minus \$6.80) and the new tipped overtime minimum wage is \$12.05 per hour (calculated by subtracting the new maximum tip allowance of \$3.70 from the general overtime wage of \$15.75 per hour). Again, under both state law and the Ordinance, if an employee's wages plus tips do not equal at least the number of hours worked times the applicable minimum wage, his or her Employer must make up the difference.

## **ARTICLE 3 – PAID SICK LEAVE RULES**

### **SECTION I. DEFINITIONS**

**“Benefit year”** – The period that an Employer sets so that all Employees are synchronized to have benefits granted at the same time.

**“Date of eligibility”** – The first date upon which a Covered Employee may use Paid Sick Leave.

**“Family member”** may include, but is not limited to, a godchild, godparent, or co-parent. The definition is necessarily situation specific and governed by the circumstances of the individuals involved.

**“Paid Time Off”** means time an Employer provides to a Covered Employee that the Employee can use for any reason during normal business hours and is compensated at the same rate and with the same benefits, including health care benefits, that the Covered Employee regularly accrues during hours worked.

### **SECTION II. PAID SICK LEAVE**

#### **Rule MW 3.01                      General**

The Paid Sick Leave portion of the Ordinance has three main categories which must be complied with: (1) accrual / grant of hours of Paid Sick Leave; (2) carryover of Paid Sick Leave from one year to the next; and (3) usage of Paid Sick Leave. Grant of sufficient hours may exempt an Employer from carryover as explained below. The Ordinance establishes minimum standards. Employers are welcome to go above the standards set forth in the Ordinance. Those Employers whose Paid Time Off policies meet or exceed the requirements of the Ordinance in all three categories are not required to provide additional leave.

**Rule MW 3.02                    Collective Bargaining Agreements**

With regard to Paid Sick Leave, this Ordinance does not apply to collective bargaining agreements entered into before July 1, 2017. The requirements of the Ordinance may be waived only if the waiver is explicitly set forth in a bona fide collective bargaining agreement entered into after July 1, 2017, in clear and unambiguous terms.

**Rule MW 3.03                    Eligibility**

Any Covered Employee who works at least 80 hours for an Employer within any 120-day period is eligible to use Paid Sick Leave by the 180<sup>th</sup> calendar day following the commencement of his or her employment regardless of the number of persons the Employer employs.

**Rule MW 3.04                    Accrual**

- a) A Covered Employee shall immediately begin accruing Paid Sick Leave from the date of first employment.
- b) Only hours worked within the City of Chicago count toward accrual of Paid Sick Leave.
- c) Salaried Employees: A Covered Employee who receives a salary and is exempt from overtime shall accrue one hour of Paid Sick Leave for each week of employment.
- d) Employers are not required to allow accrual of Paid Sick Leave during a Covered Employee’s use of any paid or unpaid leave.

**Rule MW 3.05                    Accrual vs. Immediate Grant**

Instead of following an accrual model, Employers may choose to immediately grant its Covered Employees their Paid Sick Leave or Paid Time off at the beginning of the work year or benefit year. If an Employer grants Covered Employees 40 hours of Paid Time Off no later than 180 days after the Covered Employee began working for the Employer, and 60 hours of Paid Time Off at the beginning of each subsequent work year or benefit year that may be used in the manner at least as set forth in the Ordinance, then the Employer is not required to provide additional paid leave and is not required to follow the accrual model as set out in the Ordinance. Under the immediate grant model, the Employer is not required to allow the Covered Employee to carry-over any hours from one year to the next as long as the grant of hours is as in this rule.

**Rule MW 3.06                    Carry-over**

- a) An Employer who grants 40 hours of Paid Sick Leave at the beginning of the Covered Employee’s 12-month period or benefit year must allow the Covered Employee to carry over half of his or her unused Paid Sick Leave, up to a maximum of 20 hours, into the next 12-month period or benefit year. If the Employer grants 60 hours of Paid Sick Leave at the beginning of the Covered Employee’s 12-month period or benefit year, then the Employer is not required to carry-over hours from one year to the next.

- b) Carry-over must be in hourly increments unless an Employer permits fractions of an hour.
- c) If an Employer's benefit year begins after any Covered Employee's start date, up to 20 hours of any accrued Paid Sick Leave shall be carried over to the benefit year. Unlike normal carry-over, where the figure gets halved, all of the unused accrued Paid Sick Leave, up to 20 hours, in the less than a year before the benefit year begins, is carried over.
- d) Should a Covered Employee have an odd number of hours of Paid Sick Leave at the end of a year, the number shall be rounded up to the next even number for calculating the number of hours for carry-over of regular use Paid Sick Leave (as opposed to Paid Sick Leave for FMLA purposes). So if a Covered Employee has 17 hours of Paid Sick Leave remaining at the end of the year, that number is rounded up to 18 hours. The Covered Employee may carry-over half of that to the next year, and so may carry-over 9 hours of Paid Sick Leave.
- e) A Covered Employee who has the option of carrying over hours as regular use Paid Sick Leave or Paid Sick Leave for FMLA use shall inform his or her employer at the beginning of the benefit year as to for which use the Paid Sick Leave should be carried over.

**Rule MW 3.07                      FMLA**

- a) From year to year, a Covered Employee who works for an Employer that is subject to FMLA may carry-over up to 40 hours of accrued and unused Paid Sick Leave to be used exclusively for FMLA purposes.
- b) A maximum of 20 hours of regular Paid Sick Leave and 40 hours of Paid Sick Leave for FMLA purposes may be carried over from one year to the next if a Covered Employee works for an Employer that is subject to FMLA. Thus, if a Covered Employee who accrues 40 hours of Paid Sick Leave each year does not use any Paid Sick Leave for three years, the Covered Employee can still only carry over a maximum of 40 hours of Paid Sick Leave that may be used for FMLA purposes and 20 hours for general sick leave even though the Covered Employee accrued a total of 120 hours of Paid Sick Leave over that three year period (though it could certainly be less, e.g., if the Covered Employee chooses never to put carry over accrued hours for FMLA purposes).

**Rule MW 3.08                      Usage**

- a) A Covered Employee must be allowed to use Paid Sick Leave no later than 180 days after he or she began working for an Employer if the Covered Employee worked at least 80 hours for an Employer within any 120-day period. This rule applies whether the Employer uses the accrual method or grants Paid Sick Leave at the beginning of a calendar year.
- b) A Covered Employee may use Paid Sick Leave in hourly increments unless the Employer establishes a written minimum use policy that has been made available to all Employees.

- c) A Covered Employee may use a maximum of 60 hours of accrued Paid Sick Leave during a work year or benefit year unless an Employer has a more generous policy.
- d) An Employer that grants its Covered Employees greater Paid Sick Leave hours than the Ordinance requires may limit the Ordinance-required usage parameters to the number of hours guaranteed by the Ordinance.
- e) The following examples help illustrate the minimum usage under the ordinance, but Employers may provide more liberal benefits:
- Example A: Alyssa, a Covered Employee, uses no sick leave during her first year of employment (Year One) and accrued 40 hours of Paid Sick Leave. She carries over 20 hours of Paid Sick Leave to Year Two. During her second year of employment (Year Two), she accrues another 40 hours of Paid Sick Leave. She and her family come down with various illnesses that require her to take sick time in Year Two. She can use a total of 40 hours of Paid Sick Time during the course of Year Two—20 hours that she carried over from Year One and 20 hours that she accrued during her second year. She will carry over 10 hours to Year Three.
  - Example B: Bart, a Covered Employee of an Employer subject to FMLA, uses no sick leave during his first year of employment and accrued 40 hours of Paid Sick Leave. Bart chooses to carry over 40 hours of Paid Sick Leave for FMLA purposes to Year Two. During his second year of employment (Year Two), he accrues another 40 hours of Paid Sick Leave. During Year Two he takes paternity leave exercising time granted to him under FMLA. He can use all 40 hours of carried over Paid Sick Leave from the previous year during his FMLA time. However, he may only use 20 more hours of Paid Sick Leave that he accrued during the course of the current year. At the end of Year Two, he chooses to carry over 10 hours of regular Paid Sick Leave to Year Three (half of the 20 unused hours that he accrued).
  - Example C: Carmen, a Covered Employee of an Employer subject to FMLA, accrues 40 hours of Paid Sick Leave in Year One and uses 7 hours of it that year, leaving her with 33 hours of unused accrued Paid Sick Leave. Entering Year Two, Carmen chooses to carry over 17 hours of Paid Sick Leave for general purposes (33 divided by 2 equals 16.5, but must be rounded up to the nearest whole). Toward the end of Year Two, after Carmen has already accrued another 40 hours of Paid Sick Leave, she has a condition for which she may take time off with her position protected by FMLA. However, as she chose to carry over her time into regular Paid Sick Leave and has no hours reserved for FMLA time, she may only apply her Paid Sick Leave hours to her FMLA-protected leave if her Employer grants her that privilege. She may use 57 hours of regular Paid Sick Leave hours during Year Two (17 hours carried over from Year One and 40 hours accrued during Year Two).

- Example D: David, a Covered Employee of an Employer subject to FMLA, accrues 40 hours of Paid Sick Leave in Year One and uses none of it. At the end of the year, he chooses to carry over those hours for FMLA eligible purposes. In Year Two, he accrues 40 hours of Paid Sick Leave. During the course of Year Two he again uses no Paid Sick Leave. He still may carry over the 40 hours of unused accrued hours from Year One for FMLA eligible purposes and may carry over 20 hours of regular Paid Sick Leave. This is the maximum that any Covered Employee may carry over under the Ordinance. But in any year, no Covered Employee is entitled to use more than 60 hours of Paid Sick Leave, for any purpose, under the Ordinance. So if, in Year Three, David uses 40 hours of regular Paid Sick Leave early in the year, he may only use 20 hours subsequently for FMLA eligible purposes.

**Rule MW 3.09                      Disciplinary Leave**

An Employer is not required to allow the use of Paid Sick Leave when a Covered Employee has been suspended or otherwise placed on leave for disciplinary reasons.

**Rule MW 3.10                      Breaks in service / Seasonal workers**

When a Covered Employee is separated from employment and rehired by the same Employer within 12 months of separation, previously accrued unused Paid Sick Leave shall be available for use and/or carry-over by the Covered Employee only at the discretion of the Employer. An Employer shall not terminate a Covered Employee to avoid providing sick leave benefits.

**Rule MW 3.11                      Payment of Paid Sick Leave Benefits**

- a) Paid Sick Leave must be paid no later than the next regular payroll period beginning after the Paid Sick Leave was used by the Employee.
- b) An Employer may not request a Covered Employee to waive his or her right to take sick leave in exchange for receiving payment for unused sick leave.

**Rule MW 3.12                      Notification Policy**

An Employer may establish reasonable methods of notification for the Covered Employee to notify the Employer of the Covered Employee’s need to use Paid Sick Leave.

**Rule MW 3.13                      Successor Employer**

Unused Paid Sick Leave shall be retained by the Covered Employee if the Employer sells, transfers, or otherwise assigns the business to another Employer and the Covered Employee continues to work in the City.

**Rule MW 3.14                      Certification**

Section 1-24-045(c)(5) of the Municipal Code provides that an Employer may require certification for the use of Paid Sick Leave if a Covered Employee is absent for more than three

consecutive work days. In light of the potentially significant impact on interstate commerce caused by unexpected absences during peak travel periods, a common carrier regulated under subchapter II of the Railway Labor Act, 45 U.S.C. §§ 181-188, may require certification for the use of Paid Sick Leave for an absence of one or more work days during travel periods associated with Federal holidays and from October 29 through November 1. Such a certification requirement, and any action taken in accordance with the Employer's paid sick leave policy in conjunction with the Covered Employee's failure to provide such certification, shall not in and of itself be deemed to contravene Section 1-24-080 of the Municipal Code.

## **ARTICLE 4 – COMPLAINT PROCEDURE AND CITY INVESTIGATION**

### **Rule MW 4.01 Filing a Complaint**

- a) A Covered Employee who believes that he was not paid the minimum wage or has not been granted paid sick leave required by the Ordinance may file a complaint by completing the affidavit found online at <http://www.cityofchicago.org/minimumwage> and sending it to the address on the form. In the alternative, the Employee may register a complaint by calling 311. However, a complaint registered with the City's 311 system via telephone or online will not be deemed filed unless and until the complainant submits a complaint affidavit. All information requested by the complaint affidavit must be provided to allow proper review and investigation of the alleged violation.
- b) Documents that substantiate a claim shall be made available to BACP to allow the Department to proceed on the Covered Employee's behalf.
- c) The Commissioner, in his or her discretion, may choose not to accept a complaint filed more than three years after the disputed wages were due or sick time not granted. This decision shall not alter the Covered Employee's ability to exercise his or her rights under Section 1-24-110 of the Ordinance.

### **Rule MW 4.02 Investigation Procedures**

- a) BACP will review each complaint affidavit for timeliness and completeness.
- b) Within 30 days of receiving a complaint, BACP will send a subpoena to the business requesting a submission of the records listed in Rule MW 1.06.
- c) BACP will review records submitted by the business.
- d) Evidence of the payment of back wages due all Covered Employees of the business and / or evidence of grant of requested Paid Sick Leave to all Covered Employees of the business will be evidence of compliance with the provisions of the Ordinance.

- e) If the Employer does not voluntarily comply with the request for records or provide proof of compliance with the Ordinance, the Commissioner may issue administrative notices of violation seeking fines payable to the City, license suspension or revocation, and / or restitution to the Covered Employees and former Covered Employees.

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