

CHICAGO MINIMUM WAGE AND PAID SICK LEAVE RULES
SUPPORTING CHAPTER 1-24 OF THE MUNICIPAL CODE OF CHICAGO

DRAFT FOR PUBLIC COMMENT

ARTICLE 1 – GENERAL RULES

SECTION I. DEFINITIONS

As used in these Rules, the following definitions shall apply:

“Benefit Year” means the twelve month period that an Employer sets for an Employee to receive Paid Sick Leave benefits. The months must be consecutive. An Employer may set different dates for each Employee or synchronize all of its Employees to have benefits granted at the same time or have other policies.

“Calendar Week” means seven consecutive days.

“Commissioner” means the Commissioner of the Department of Business Affairs and Consumer Protection.

“Department” means the Department of Business Affairs and Consumer Protection.

“Gratuities” means voluntary monetary contributions to an employee from a guest, patron or customer in connection with services rendered.

“Minimum Wage Law” means the Illinois Minimum Wage Law, 820 ILCS 105/1, *et seq.*

“Occupation” means an industry, trade, business or class of work in which employees are gainfully employed.

“Tipped Allowance” means the difference between the tipped wage and the non-tipped minimum wage.

“Tipped Employee” means any employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips.

SECTION II. GENERAL INFORMATION

Rule MW 1.01 Application of the ordinance

All functions and powers of the Department 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.

Rule MW 1.02 Immigration Status

Immigration status does not affect an individual's status as a Covered Employee.

Rule MW 1.03 Domestic Workers and Day Laborers

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

- (a) The notice Employers post advising the Covered Employees of their rights under the Ordinance shall be printed on and scaled to fill a sheet of paper that measures eleven inches by seventeen inches.
- (b) The notice Employers provide with the first paycheck subject to the Ordinance advising the Covered Employee of their rights under the Ordinance shall be printed on and scaled to fit a sheet of paper that measures eight and a half inches by eleven inches.
- (c) The notice Employers provide with the first paycheck subject to the Ordinance shall be provided yearly with the first paycheck on or following July 1.
- (d) All notices shall be posted in English and in any languages spoken by employees at the facility who are not proficient in English.

Rule MW 1.06 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. If a collective bargaining agreement is silent as to the Ordinance, the Ordinance applies to those Covered Employees.

Rule MW 1.07 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) Mailing address, telephone number, and email address of each Covered Employee;
- (c) Occupations and job titles of Covered Employees and whether they are tipped, non-tipped or perform duties of both tipped and non-tipped positions;
- (d) Hire date of each Covered Employee;
- (e) Date each Covered Employee was eligible to use Paid Sick Leave;

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- (f) Number of hours of Paid Sick Leave accrued by or awarded to each Covered Employee;
- (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

Rule MW 1.08 Record Requirements for Tipped Employees

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:

- (a) The report received from the Covered Employee setting forth gratuities received during each workday. Such reports submitted by the Covered Employee shall be signed.
- (b) The amount by which the wage of each such Covered 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 Covered Employee in writing each time it is changed from the amount per hour taken in the preceding pay period.
- (c) Hours worked each work day in any occupation in which the Covered Employee does not receive gratuities, and total daily or weekly straight-time payment made by the employer for such hours.
- (d) Hours worked each workday in occupations in which the Covered Employee received gratuities and total daily or weekly straight time earnings for such hours.

ARTICLE 2 - MINIMUM WAGE RULES

Rule MW 2.03 Chicago Minimum Wage

- (a) As of July 1, 2020, the minimum wage for each hour of work performed for an Employer by a Covered Employee is as follows:

- (1) \$14.00 per hour for Employers who have 21 or more Employees.
 - (2) \$13.50 per hour for Employers who have more than 3, but fewer than 21 employees.
 - (3) \$10.00 per hour for Subsidized Temporary Youth Employment Programs, for Subsidized Transitional Employment Programs, for Covered Employees who are under 18 years of age, and those subject to Section 6 of the Minimum Wage Law.
- (b) Updates to the Chicago Minimum Wage will be posted to the website of the Department of Business Affairs and Consumer Protection.

Rule MW 2.04 Tipped Employees

- (a) As of July 1, 2020, the minimum wage for each hour of work performed for an Employer by a Covered Employee is as follows:
- (1) \$8.40 per hour for Employers who have 21 or more Employees
 - (2) \$8.10 per hour for Employers who have more than 3, but fewer than 21 employees.
 - (3) \$6.00 per hour for Subsidized Temporary Youth Employment Programs, for Subsidized Transitional Employment Programs, for Covered Employees who are under 18 years of age, and those subject to Section 6 of the Minimum Wage Law.
- (b) Updates to the Chicago Minimum Wage will be website of the Department of Business Affairs and Consumer Protection.

Rule MW 2.05 Overtime

- (a) 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 Calendar Week.
- (1) As of July 1, 2020, the City minimum wage is \$14.00 per hour for Employers with greater than 21 Covered Employees; therefore, the minimum overtime wage is \$14.00 multiplied by 1.5, which equals \$21.00 per hour.
 - (2) As of July 1, 2020, the City minimum wage is \$13.50 per hour for Employers with greater than 3 and less than 21 Covered Employees; therefore, the minimum overtime wage is \$13.50 multiplied by 1.5, which equals \$20.25 per hour.
 - (3) As of July 1, 2020, As of July 1, 2020, the City minimum wage is \$10.00 per hour for Subsidized Temporary Youth Employment Programs, for Subsidized Transitional Employment Programs, for Covered Employees who are under 18 years of age, and those subject to Section 6 of the Minimum Wage Law; therefore, the minimum overtime wage is \$10.00 times 1.5, which equals \$15.00 per hour.

(b) Tipped Covered Employees are 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.

(1) As of July 1, 2020, the maximum tip allowance (tip credit) is \$5.60 for tipped Covered Employees who work for an Employer with 21 or more employees (calculated by subtracting the City tipped straight-time minimum wage of \$8.40 per hour from the general minimum wage of \$14.000 per hour). The corresponding minimum tipped overtime wage is \$15.40 per hour (calculated by subtracting the maximum tip allowance of \$5.60 from the general minimum overtime wage of \$21.00 per hour).

(2) As of July 1, 2020, the maximum tip allowance (tip credit) is \$5.40 for tipped Covered Employees who work for an Employer with greater than 3 and less than 21 employees (calculated by subtracting the City tipped straight-time minimum wage of \$8.10 per hour from the general minimum wage of \$14.85 per hour). The corresponding minimum tipped overtime wage is \$15.15 per hour (calculated by subtracting the maximum tip allowance of \$5.40 from the general minimum overtime wage of \$20.25 per hour).

(3) As of July 1, 2020, the maximum tip allowance (tip credit) is \$4.00 for tipped Covered Employees in Subsidized Temporary Youth Employment Programs, Subsidized Transitional Employment Programs, tipped Covered Employees who are under 18 years of age, and those subject to Section 6 of the Minimum Wage Law (calculated by subtracting the City tipped straight-time minimum wage of \$6.00 per hour from the general minimum wage of \$10.00 per hour.) The corresponding minimum tipped overtime wage is \$11.00 per hour (calculated by subtracting the maximum tip allowance of \$4.00 from the general minimum overtime wage of \$15.00).

(c) If a Covered Employee's wages plus tips do not equal at least the number of hours worked times the applicable minimum wage, the Employer must make up the difference.

(d) Updates to the Chicago Minimum Wage and overtime hourly rates will be posted to the website of the Department of Business Affairs and Consumer Protection.

ARTICLE 3 – PAID SICK LEAVE RULES

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 carry-over as explained below. The Ordinance establishes minimum standards. Employers are at liberty 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 or the record requirements. However, other requirements of the

Ordinance, such as when a Covered Employee must be allowed to begin using Paid Sick Leave, must still be followed.

Rule MW 3.02 Collective Bargaining Agreements

With regard to Paid Sick Leave, this Ordinance does not change the terms of collective bargaining agreements entered into before July 1, 2017.

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 accrued Paid Sick Leave by the 180th calendar day following the commencement of employment, regardless of the number of persons the Employer employs.

Rule MW 3.04 Accrual

- (a) A Covered Employee shall begin accruing Paid Sick Leave on the first calendar day after 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 unless the salaried position is for an amount different from 40 hours worked per week, in which case the rate of accrual shall be 1 hour for every 40 hours of salaried work.
- (d) Employees on commission: A Covered Employee who works on commission and whose hours are not tracked shall accrue Paid Sick Leave as a salaried employee would.
- (e) Employers are not required to allow accrual of Paid Sick Leave during a Covered Employee's use of any paid or unpaid leave.
- (f) Accrual of Paid Sick Leave shall be in hourly increments, but Employers shall keep track of hours worked by non-salaried employees so that a Covered Employee is properly awarded with Paid Sick Leave.

Rule MW 3.05 Accrual vs. Immediate Grant

- (a) Instead of following an accrual model, Employers may choose to immediately grant their Covered Employees their Paid Sick Leave at the beginning of employment or benefit year, a practice sometimes known as frontloading. Frontloading done in the manner explained below relieves the Employer from having to follow the accrual and carryover model.
- (b) If an Employer grants Covered Employees 40 hours of Paid Sick Leave no later than 180 days after the Covered Employee began working for the Employer, and the Employer is not subject to FMLA, then the Employer is not required to provide additional paid leave.

- (c) An Employer subject to FMLA is not required to provide additional paid leave if it:
1. grants Covered Employees 40 hours of Paid Sick Leave no later than 180 days after the Covered Employee began working for the Employer, and
 2. makes available an additional 20 hours of Paid Sick Leave at the beginning of each subsequent benefit year to be used for FMLA purposes. An Employer who does this must still grant 40 hours of regular Paid Sick Leave to its Covered Employees at the beginning of the benefit year, where 20 of those hours may be taken for FMLA purposes. Thus, a Covered Employee would be able to use 40 hours of regular Paid Sick Leave in a year and up to 20 hours of FMLA time if the Covered Employee qualifies to take FMLA time. Or, a Covered Employee could take 40 hours of FMLA time, if qualified, and 20 hours of regular Paid Sick Leave. If a Covered Employee does not have a condition for which FMLA applies, the Covered Employee would be able to take a maximum of 40 hours of Paid Sick Leave.

Rule MW 3.06 Carryover

- (a) An Employer subject to FMLA who grants 40 hours of Paid Sick Leave at the beginning of the Covered Employee's benefit year must allow the Covered Employee to carry over up to 40 hours of the unused Paid Sick Leave into the next benefit year to be used exclusively for FMLA purposes.
- (b) 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.
- (c) If a Covered Employee has 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 carryover 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.

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 regular sick leave even though the Covered Employee accrued a total of 120 hours of Paid Sick Leave over that three-year period.

Rule MW 3.08 Usage

- (a) A Covered Employee must be allowed to use Paid Sick Leave no later than 180 days after the Covered Employee 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 immediately grants Paid Sick Leave at the beginning of a benefit 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 40 hours of accrued regular Paid Sick Leave during a benefit year.
- (d) A Covered Employee who works for an Employer subject to FMLA may use up to 60 hours of accrued Paid Sick Leave during a benefit year if the Covered Employee has to take leave protected by FMLA. At least 20 of the 60 hours must be hours that had been carried over for, or granted for, FMLA purposes.
- (e) 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.
- (f) For Covered Employees who are paid on a commission basis, whether base wage plus commission or commission only, the Employer must pay the Paid Sick Leave to the Covered Employee at the hourly rate of pay based on the base wage or the applicable minimum wage, whichever is greater.

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, 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

- (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 the right to take sick leave in exchange for receiving payment for unused sick leave.

(c) An Employer is not required to pay out any accrued and unused Paid Sick Leave upon a Covered Employee's termination, resignation, retirement, or other separation from employment.

Rule MW 3.12 Notification Policy

An Employer may establish reasonable methods 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 Ordinance 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 Ordinance.

ARTICLE 4 – COMPLAINT PROCEDURE AND CITY INVESTIGATION

Rule MW 4.01 Filing a Complaint

(a) A Covered Employee who has been denied any of the rights, responsibilities, or duties due from the Employer under the Ordinance may file a complaint with the Office of Labor Standards.

1. A complaint may be submitted through any one of the following methods:

- (a) Call 311
- (b) Use the CHI 311 mobile application
- (c) Download and mail a complaint form to the Office of Labor Standards, Department of Business Affairs and Consumer Protection, 121 North LaSalle Street, City Hall, Room 805, Chicago,

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IL 60602. The complaint form can be found online at:

<http://www.chicago.gov/laborstandards>.

(d) Download and email the complaint to the Office of Labor Standards at bacplaborstandards@cityofchicago.org.

2. Information on the complaint form should adequately state the basis of the complaint.

(b) The complainant shall provide documents supporting their claim to the Department and shall substitute documents and information upon request.