

May 10, 2017

Kenneth A. Gunn  
 Chairperson  
 Cook County Commission on Human Rights  
 69 West Washington Street, Suite 3040  
 Chicago, IL 60602

RE: Draft Regulations for Cook County Earned Sick Leave Ordinance

Dear Mr. Gunn:

On behalf of the Illinois Health and Hospital Association (IHA), which represents all 73 hospitals within Cook County, we appreciate the opportunity to provide comments on the Commission's draft regulations for the Cook County Earned Sick Leave Ordinance. Hospitals, by their nature, are a culture of health and wellness and are particularly sensitive to the health of their staff – for both the good of their staff, but also for the good of their patients and their family.

IHA respectfully requests that the Commission coordinate with the City of Chicago's Department of Business Affairs and Consumer Protection to ensure that the Earned Sick Leave regulations for both the City and County are parallel to lessen the administrative and financial burden that inconsistent regulations could have on employers with employees in both locations.

**Section 200.100: Description**

Section 600.200 is clear that an employer can use various terminology to describe Earned Sick Leave benefits and still be in compliance with the Ordinance as long as the paid leave benefits meet the requirements of the Ordinance; however, Section 200.100 of the proposed regulations implies that an employee is entitled to his or her accrued sick leave time for purposes set out in the Ordinance. IHA seeks further clarification of the following scenario: if an employer provides employees 80 hours of paid time off per year to be used for vacation and purposes listed in the Earned Sick Leave Ordinance and an employee uses all 80 hours for vacation in the same year, instead of saving some time for sick time, and then gets sick (or a child gets sick, etc.), do the Ordinance and regulations require the employer to provide additional paid time off for the purposes listed in the Ordinance?

**Section 310.200: Types of Employees Who Can Be Covered Employees.**

Many IHA member hospitals use a pool of occasional employees to provide coverage as needed, such as during a surge in patient care need, during flu season when more

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regularly scheduled employees are home sick, or when a specialty need is identified. For example, if a hospital has 10 full-time regularly scheduled neonatal intensive care unit (NICU) nurses and three will be out at the same time for a vacation, the nursing leadership may wish to supplement the remaining seven full-time regularly scheduled NICU nurses with an employed NICU nurse who only works as needed. The “as needed” nurse will likely work the required number of hours within a two-week period triggering eligibility; however, the very nature of being an “as needed” nurse is to provide coverage when coverage is needed. This nurse can tell the nursing leadership when he or she is available and then be scheduled for those times. It is at odds to allow a nurse who agrees to schedule designed to cover “as needed” then take sick time and be paid for that time. It is equally at odds with the concept of an “as needed” nurse, whose role it is to provide coverage, to take schedule sick time when he or she is needed. Also, the regulations provide a financial windfall to this group of individuals as they can accumulate Earned Sick Time, can schedule around it and can carry forward up to 20 hours into the next year. It supports public policy to encourage these “as needed” nurses and other hospital employees to provide the coverage the hospital needs. Finally, these occasional employees are, oftentimes, employed full-time at another hospital and would, therefore, be covered by that employer’s Earned Sick Leave policy. With that said, IHA recommends that the definition of “Covered Employee” should not include occasional employees in this situation.

**Section 310.300 (B): Eligibility: Based on Work for Covered Employer in Any Location**

IHA members include large health systems that have locations in Cook County and the surrounding areas outside the County; often times their employees will work at the various sites within the system – both inside and outside of Cook County. IHA is concerned that it will be extremely difficult and burdensome to track the hours worked in a particular location, especially for salaried employees.

IHA suggests that the determination for “Covered Employee” should be based on the employee’s primary work location and not whether that employee only works in Cook County on occasion.

IHA also seeks clarification regarding eligibility – can an employee be eligible for coverage in one 120-day period because they worked at least 80 hours, but then work less than 80 hours in a subsequent 120-day period and not be eligible?

**Section 310.400: Separation of Service.**

IHA recommends that employees that leave voluntarily and then are rehired within 120 days by the same employer should not be considered as continuing his or her employment for the purposes of coverage pursuant to section 310.100, eligibility to use Earned Sick Leave pursuant to Section 310.300 (B)-(C), and number of days passed in any applicable Use Waiting Period.

**Sections 320.200 and 320.300: Temporary Staffing Firms; and Joint Employers.**

It is IHA's understanding that sole authority over "joint employers" is within the purview of the U.S. Department of Labor. IHA respectfully requests the avoidance of a preemption analysis, which could lead to different conclusions, and allow employers to rely upon this well-established body of law. IHA also notes that "temporary staffing" firms are addressed separate and apart from "joint employers," which they should be, but the manner in which they are addressed seems to create a contradiction.

**Section 400.300(B): Accrual Period**

If electing a Standardized Accrual Period, the references in the draft language refer to how newly employees are on-boarded. IHA believes that it would be helpful to confirm that, for purposes of implementation, or if the employer opts to change the accrual period processes after the effective date of the Ordinance, the same rules would be applied to existing employees.

**Section 400:600: Carry Over from One Accrual Period to the Next**

The second sentence in the draft regulations states, "In all scenarios, the amount of unused accrued Earned Sick Leave that is carried over must be in hourly increments, and may not be fractional." Many payroll systems accrue time off on a fractional basis. IHA suggests that the use of this more precise accounting for accrued paid sick leave should not be prohibited. Additionally, throughout the draft regulations there are other references to required rounding up, which should also not be required (Subsections (A) and (B)).

**Section 500.500(C): FMLA-Restricted Earned Sick Leave.**

The draft language regarding Family Medical Leave is neither clear nor reflects the actual language used in the Family Medical Leave Act (FMLA). As a result, the proposed regulation is contradictory and confusing and will be difficult for employers to interpret and implement appropriately. IHA respectfully requests the avoidance of a preemption analysis, which could lead to different conclusions, and allow employers to rely upon this well-established body of law.

**Section 500.600 (B): Foreseeable Absences.**

IHA suggests that if a Covered Employee has advance notice of a foreseeable absence prior to the maximum seven days' notice requirement that a Covered Employer can require, a Covered Employee should notify the Covered Employer within a reasonable amount of time of the scheduled event, but no less than seven days. For example, a Covered Employee that schedules surgery or a court date will likely know seven days' prior to the scheduled absence and should be required to notify his or her employer upon the scheduling of the event. As written, the draft language states that any policy asking for more than seven days' notice is unreasonable on its face. Hospitals often generate work schedules weeks in advance, and it is burdensome

and potentially unsafe to prohibit requiring more than seven days' notice when the employee is able to provide it.

**Section 600.100: Minimum Requirements**

Given that Section 600.200 establishes that an employer can use any terminology to describe its paid time off that includes time for those items enumerated in the Ordinance, IHA seeks a similar clarification to Section 600.100. If the employer allows a carry over of paid time off which satisfies the requirements of the Ordinance (i.e., for an FMLA eligible employee, a maximum of 60 hours), must the employer specifically track and restrict the use of the carried over accrued amounts to just those purposes enumerated in the Ordinance or FMLA, as the case may be? If use of carried over time is not restricted (because the time can be used for any purpose the employee chooses), and the employee elects to use all of the carried over amount for vacation or non-Ordinance covered matters, is it compliant with the Ordinance for the employer to have made the appropriate amount of time available, or is the employer then required to provide more paid time off in an amount equal to the Ordinance amount carried over?

I appreciate the opportunity to comment on the draft Earned Sick Leave regulations. Please feel free to contact Sarah Calder, Director of Government Relations, should you have any questions or need additional information ([scalder@team-iha.org](mailto:scalder@team-iha.org); 312/906-6141).

Thank you,

Dave Gross  
Senior Vice President, Government Relations