**I. The Requirements of the Ordinances and the IESLA**

Under the Ordinances, beginning on July 1, 2017, employers with employees in Cook County (including Chicago) must allow employees who work at least 80 hours in any 120-day period (other than construction workers covered by union contracts) to earn up to 40 hours (roughly 5 days) of paid sick leave each year and must also allow their employees to carry over up to 20 hours (~2.5 days) of earned but unused paid sick leave into a subsequent year. Employees in Cook County will be entitled to begin to accrue paid sick leave on the first calendar day after July 1, 2017. Hourly workers will earn paid sick time at a rate of one hour for every 40 hours worked, while salaried exempt employees will earn one hour of paid sick leave for each week worked.

The new Ordinances require covered employers to allow employees who work in Cook County to use paid sick leave when: (1) they or a family member is sick, injured or receiving medical care; (2) the employee's place of business or a child's school/caregiver is closed for a public health emergency; or (3) the employee or a family member is a victim of domestic violence or a sex offense. As discussed below, existing federal and state laws already require unpaid leave for many of the same reasons.

Both Ordinances broadly define “family member” as an employee's child (whether foster, biological, adopted, step-child, legal guardian or ward), parent, spouse, domestic partner, spouse or domestic partner's parent, sibling, grandparent, grandchild, or any other individual related by blood or whose close association with the covered employee is the equivalent of a family relationship. The definition of “family member” under the Ordinances is the same as the definition under the federal Family Medical Leave Act (“FMLA”). Under the IESLA, employers that allow “personal sick leave benefits” (accrued and available leave for illness, injury or medical appointments) will also, beginning on January 1, 2017, have to allow family leave for “absences due to an illness, injury, or medical appointment for an employee's child, spouse, sibling, parent, parent-in-law, grandchild, grandparent, or stepparent.” But, family leave under the IESLA can be limited to half of the employee’s annual amount of personal sick leave. Thus, paid family leave under the Ordinances may have to be handled differently from the unpaid family leave under the IESLA.

**II. Coordinating the New Ordinances and the IESLA with Existing Leave Laws**

The new Ordinances and the IESLA will allow paid sick leave for many of the same reasons as existing federal and state unpaid leave laws, but with far less restrictions.

**FMLA:** The Ordinances apply to all employers and their employees in Cook County. However, the FMLA allows up to 12 weeks of unpaid leave for individual and family medical care, but only if the employee: (1) works in a facility with 50 or more employees in a 75-mile radius; (2) has worked for at least 12 non-consecutive months; and (3) has worked 1,250 hours in the previous year. In contrast to the FMLA, all employees covered by the new Ordinances will be able to accrue paid leave immediately and can use their accrued paid sick leave after an initial 180 calendar day period. Although the Ordinances usually allow employees to “carry over” only 20 hours of accrued paid sick leave into a subsequent year, FMLA-eligible employees in Cook County must be allowed to carry over up to an additional 40 hours of accrued but unused paid sick leave (for a total potential carry-over of 60 hours). However, these employees may use their FMLA-eligible paid leave only for FMLA purposes.

**VESSA:** The new Ordinances also require coordination with recent amendments to the Illinois Victims Economic Security and Safety Act ("VESSA") which now require all employers with any employees in Illinois to provide at least 4 weeks of unpaid leave (or more depending on the number of the employees) to deal with domestic violence or sexual assault issues. Under the new Ordinances, up to 40 hours of domestic violence leave taken by employees in Cook County will have to be paid leave, while employees in the rest of Illinois are only entitled to unpaid domestic violence leave under VESSA.

**IWPCA:** The new Ordinances also overlap with the Illinois Wage Payment and Collection Act ("IWPCA") when it comes to employers that allow employees to earn generalized paid time off ("PTO") that can be used for sick time, vacation, and personal days. Regulations under the IWPCA allow employers in Illinois to adopt “use it or lose it” policies that require employees in Illinois to use earned PTO by a certain date or lose it, as long as employees are given a reasonable opportunity to take the PTO before it is lost. Employers covered by the new Ordinances may have to make an exception to their "use it or lose it" policies to allow employees to carry-over up to 20 (or as many as 60 FMLA-eligible) hours of earned but unused PTO into subsequent years. In addition, the Ordinances do not require covered employers to pay out earned but unused sick time as final compensation upon termination, while the IWPCA does require Illinois employers to pay out earned but unused PTO upon termination.

**III. Action Items for Employers in Illinois**

Employers with employees in Illinois should take the following actions:
Determine if they are covered by the two new Ordinances and/or the IESLA.

- Review and revise sick leave policies, PTO policies, family leave policies, and domestic violence leave policies to make sure the policies comply with these new leave laws to the extent the employer is covered by them.
- Revise existing sick leave or PTO policies if they do not already allow leave for care of a family member as will be required by IESLA.
- Make sure the definition of “family member” matches the definition of IESLA (and the Ordinances to the extent they apply).
- Determine whether to limit the amount of IESLA family leave to half of the employee's annual personal sick leave accrual, as will be allowed under the IESLA.

Employers with employees in Chicago and Cook County must also take the following action:

- Consider revising “use it or lose it” sick leave and PTO policies to allow employees to carry-over up to 20 (or as many as 60 FMLA-eligible) hours of paid leave into subsequent years.
- Consider revising leave policies that “cap” or place a maximum on the amount of sick leave or PTO that employees can accrue or accumulate each year to make sure that eligible employees will, once the Ordinances go into effect next July 1, be able to accrue at least 40 hours of paid sick leave each year.
- Alter how sick leave or PTO is tracked and administered to make sure that eligible employees are allowed to accumulate, use, and carry over appropriate amounts of 20 or 40 hours paid sick leave or PTO in accordance with the Ordinances.
- Provide the notices of rights as required by the new Ordinances (Chicago employers must provide notices for both Ordinances).

If you have any questions about leave rights under the Chicago Ordinance, Cook County Ordinance, and IESLA, please contact Paul E. Starkman at (312) 517-7508 | pstarkman@clarkhill.com, Mikyia S. Aaron at (313) 965-8528 | maaron@clarkhill.com, Stephen R. Gee at (616) 608-1144 | sgee@clarkhill.com, or any other member of Clark Hill PLC's Labor and Employment Practice Group.