COOK COUNTY
COMMISSION ON HUMAN RIGHTS
69 W. Washington Street
Suite 1130
Chicago, Illinois 60602

INTERPRETATIVE AND PROCEDURAL RULES

GOVERNING THE COOK COUNTY PAID LEAVE ORDINANCE

APPROVED July 1, 2018

AMENDED TO PAID LEAVE RULES MARCH 14, 2024; AMENDED <Insert date>

TABLE OF CONTENTS

PART 100 GENERAL PROVISIONS	**1**
Subpart 100 Definitions	1
Section 110.100 Defined Terms	1
Subpart 120 Rules of Construction	4
Section 120.100 Construction of Rules	4
Section 120.200 Effect of Rules	4
Section 120.300 Amendment of Rules	4
Section 120.400 Availability of Rules	4
Section 120.500 Petition for Rulemaking	4
Section 120.600 Practice Where Rules Do Not Provide Clear Guidance	4
Section 120.700 Days	4
Section 120.800 Delegation of Authority by Commissioners	4
PART 200 BENEFIT	**6**
Section 200.100 Description	6
Section 200.200 No Consideration of Immigration Status	7
PART 300 COVERAGE	**8**
Subpart 310 Employee	8
Section 310.100 Defined	8
Section 310.200 Types of Employees	10
Section 310.300 Separation from Service	11
Subpart 320 Employers	11

Section 320.100 Defined	11
Section 320.200 Temporary Staffing Firms	12
Section 320.300 Joint Employers	12
Section 320.400 Successor Employers	12
Subpart 330 Waiver	13
Section 330.100 Pursuant to Collective Bargaining	13
Section 330.200 Pursuant to Individual Bargaining	13
PART 400 EMPLOYER METHODS OF CALCULATING PAID LEAVE	**14**
Section 400.100 General Provisions	14
Section 400.200 Accrual Method	14
Section 400.300 Rate of Accrual	14
Section 400.400 Accrual Period	15
Section 400.500 Maximum Accrual Per Accrual Period	15
Section 400.600 Frontload Method	16
Section 400.700 Mixed-Calculation Methods	17
Section 400.800 Carryover of Unused Paid Leave	17
PART 500 USE	**19**
Section 500.100 Paid Leave Available for Use	19
Section 500.200 Increments of Use	19
Section 500.300 Permissible Employer ~~Usage~~ Policies~~y~~ and Notice Requirements	20
Section 500.400 Reasons for Denial of Paid Leave Requests	23
Section 500.500 Payment of Paid Leave	23
Section 500.600 Determining Payout of Paid Leave Upon Employee's Separation	23
PART 600 ALTERNATIVE PRACTICES	**24**

Section 600.100 Minimum Requirements	24
Section 600.200 Terminology	24
PART 700 NOTIFICATION OF RIGHTS	**25**
Section 700.100 Posting Required	25
Section 700.200 Employer Written Policy ~~Notice of Rights~~ Required	25
PART 800 RECORDKEEPING	**26**
Section 800.100 Required Records; Employer	26
Section 800.200 Required Records; Employee	26
Section 800.300 Preservation Obligation	27
PART 900 MISCELLANEOUS PRACTICES	**28**
Section 900.100 Prohibited	28
Section 900.200 Permissible	28
PART 1000 ENFORCEMENT	**29**
Subpart 1010 Scope	29
Section 1010.100 Application of the Ordinance	29
Subpart 1020 Administrative Process	29
Section 1020.100 Time Limit for Filing Complaints	29
Section 1020.200 Initiating Enforcement at the Commission	30
Section 1020.300 Commission Investigations of Alleged Ordinance Violations	32
Section 1020.400 Commission Findings	35
Section 1020.500 Administrative Hearing	35
Section 1020.600 Administrative Review	36
Section 1020.700 Service	36

Section 1020.800 Evidence of Compliance	37
Subpart 1030 Administrative Remedies	38
Section 1030.100 Penalties and Damages	38
Section 1030.200 Injunctive Relief	39
Subpart 1040 Judicial Enforcement	40
Section 1040.100 Private Right of Action	40
Section 1040.200 Effect on Administrative Enforcement	40

PART 100 GENERAL PROVISIONS

SUBPART 110 DEFINITIONS

Section 110.100 Defined Terms

All defined terms used in these regulations have the same meaning as the defined terms set out in Section 42-2 of the Cook County Paid Leave Ordinance ("Ordinance"). The following terms shall have the following meanings when used in these Rules:

Accrual Cap: The maximum number of hours of Paid Leave an Employer must allow an Employee to accrue during any Accrual Period and as described in Section 400.500.

Accrual Minimum: The minimum number of hours of Paid Leave an Employer must allow an Employee to accrue during any Accrual Period as described in Section 400.500.

Accrual Period: The 12-month period in which an Employee accrues Paid Leave, and which is used for purposes of determining the minimum and maximum number of hours of Paid Leave that may be accrued, used and carried over.

Board, County Board or Cook County Board of Commissioners: The Cook County Board of Commissioners as defined under Article III of the Cook County Code of Ordinances.

Carryover: The transfer of an Employee's accrued and unused Paid Leave time from one Accrual Period to the next.

Commission/Agency: The Cook County Commission on Human Rights.

Commissioners: The appointed members of the Commission pursuant to Section 42-34 of the Cook County Code of Ordinances.

Commission Staff: Individuals who perform investigative, clerical, administrative or other duties as described and delegated by the Commissioners, and on behalf of the Commission.

Construction Industry: As defined in Section 42-2 of the Ordinance to mean any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any building, structure, highway, roadway, excavation or other structure, project, development, real property or improvement, or to do any part thereof, whether or not the performance of the work herein described involves the addition to, or fabrication into, any structure, project, development, real property or improvement. Construction Industry also includes moving construction related material on the job site or to or from the job site, snow plowing, snow removal and refuse collection.

Date of First Allowable Use: The first date upon which an Employee can begin to use Paid Leave, which is (a) 90 days following their Start of Employment, or (b) 90 days following December 31, 2023 (the effective date of the Ordinance), whichever is later.

Date of Initial Accrual: The first date upon which an Employee starts accruing Paid Leave, which is the later of (a) December 31, 2023 (the effective date of the Ordinance), or (b) at the ~~first day after their Start of~~ Start of Employment.

Director: The Director of the Cook County Commission on Human Rights.

Domestic Work: Housekeeping, house cleaning, home management, nanny services including childcare and child monitoring, caregiving, personal care or home health services for elderly persons or persons with an illness, injury or disability who require assistance in caring for themselves, laundering, cooking, companion services, chauffeuring, or other household services for members of households or their guests in or about a private home or residence or any other location where the domestic work is performed, as defined by the Domestic Worker's Bill of Rights Act, 820 ILCS 192/10.

Domestic Worker: A person, including independent contractors, sole proprietors, and partnerships, who performs domestic work. *Employee*: As defined in Section 42-2 of the Ordinance and Section 310.100 herein.

Employer: As defined in Section 42-2 of the Ordinance and Section 320.100 herein.

FMLA: The Family and Medical Leave Act of 1993, 29 USC § 2601 *et seq.*

FMLA-Eligible Employee: An Employee who works for an FMLA-Eligible Employer and is eligible for job-protected unpaid leave under the FMLA.

FMLA-Eligible Employer: An Employer who is subject to the FMLA.

~~*FMLA-Restricted Paid Leave*: Paid Leave awarded by an Employer to an Employee that the Employee can use for any purpose set out in the FMLA and still be compensated by the Employer at the same rate and with the same benefits earned as if the Employee had worked for the Employer instead.~~

Frontload: Means by which an Employer makes available the minimum number of hours of Paid Leave, subject to pro rata requirements, to an Employee on the Start of Employment or the first day of the 12-month work period.

~~*Non-FMLA-Eligible Employee*: An Employee who works for a Non-FMLA-Eligible Employer or for an FMLA-Eligible Employer but is not eligible for job-protected unpaid leave under the FMLA for any reason, including but not limited to instances where an employee has not worked for the Employer for at least 12 months, has not worked at least 1,250 hours for the Employer in the last 12 months, or does not work in a location that is close enough to a location where the Employer employs 50 or more employees.~~

~~*Non-FMLA-Eligible Employer*: An Employer who is not covered by the FMLA, for any reason, including but not limited to an Employer with fewer than 50 employees or with 50 or more employees who worked less than 20 workweeks in the current or preceding calendar year.~~

Ordinance: The Cook County Paid Leave Ordinance as enacted by the Cook County Board of Commissioners on December 14, 2023, compiled into the Cook County Code of Ordinances at Chapter 42, Article I, Division 1 effective December 31, 2023, and as amended from time to time

thereafter.

Overtime Eligible: An Employee eligible for additional compensation for overtime hours worked under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq*., the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq*., or other applicable law.

Overtime Exempt: An Employee exempt from compensation for overtime hours worked under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq*., the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq*., or other applicable law.

*Paid Lea*ve: Time off from work for which the Employer is required to pay the Employee.

Paid Time Off Bank: Means by which an Employer combines all paid time off benefits into a single account for Employees to use for multiple purposes, as opposed to providing separate accounts for Paid Leave, vacation time, sick time, personal time, and other types of compensated leave.

Regular Rate of Pay: Wages paid to an Employee per hour/week as calculated by the Cook County Minimum Wage Ordinance. For Employees who customarily receive gratuities, the regular rate of pay shall be at least the full minimum wage for non-tipped workers.

Start of Employment: The date upon which an Employee begins working for an Employer. As explained in Section 310.300, rehire by the same Employer within 12 months of an Employee's prior separation from employment relates back to the original Start of Employment.

Temporary Staffing Firm: An Employer that hires its own Employees and assigns those Employees to perform work or services for outside entities or organizations.

SUBPART 120 RULES OF CONSTRUCTION

Section 120.100 Construction of Rules

These Rules shall be liberally construed to accomplish the purposes of the Ordinance.

Section 120.200 Effect of Rules

These Rules shall constitute the policy and practice of the Commission and shall govern activities of the Commission.

Section 120.300 Amendment of Rules

Changes to these Rules may be made by a vote of a majority of the full membership of the Board of Commissioners at a regular or special meeting.

Section 120.400 Availability of Rules

The Rules of the Commission shall be available to the public, and copies may be obtained on the Commission's website.

Section 120.500 Petition for Rulemaking

Any person may request that the Commission promulgate, amend or repeal a rule by submitting a written petition to the Chairperson. The petition shall be in writing set forth with specificity the rulemaking action desired, and contain the person's arguments or reasons in support thereof. The Commission shall be notified of a petition filed in accordance herewith. Any rulemaking undertaken in response to such petition shall be conducted in accordance with Section 120.300 herein.

Section 120.600 Practice Where Rules Do Not Provide Clear Guidance

If a matter arises in enforcement of the Ordinance that is not specifically governed by these Rules, the Director shall, in their discretion, specify the practice to be followed and, as soon as practicable, petition the Commission to adopt a clarifying rule pursuant to Section 120.500 herein.

Section 120.700 Days

Where the Ordinance or these Rules refer to passage of time in days, the Commission will treat days as calendar days, inclusive of weekends and holidays. The Commission will not use business days unless the Ordinance or these Rules state so explicitly.

Section 120.800 Delegation of Authority by Commissioners

Except as to those matters specifically enumerated below, the Commissioners may delegate to the Commission Staff, as the Commissioners consider necessary, any matter properly before the Commission. Such delegation to the Commission Staff, where permissible, shall be presumed,

subject to recall as to specific items at any time by a vote of the majority of Commissioners present at a meeting of the Commission. Any delegation of authority by the Commissioners to the Commission Staff shall be effectuated in accordance with both the Ordinance and these Rules adopted and approved by the Commissioners.

The following matters are reserved for consideration of and disposition by the Commissioners:

(1) Proposed changes to rulemaking and similar proceedings involving the promulgation of Commission rules; and

(2) Conducting Commission meetings.

PART 200 BENEFIT

Section 200.100 Description

Paid Leave is a benefit provided by an Employer to an Employee, which consists of (1) allowing job-protected absences from work for a given number of hours, for the purposes set out in Section 42-3(a) of the Ordinance ~~or, where applicable, the FMLA~~ and (2) compensating the absent Employee for these hours as if they were not absent from work.

(A) Compensation and Benefits

Except as provided in subdivision (1) of this Section, when using Paid Leave, an Employee shall be compensated at the same hourly rate that the Employee would have earned at the time the Paid Leave is taken.

(1) If the Employee uses Paid Leave during hours that would have been designated as overtime, the Employer is not required to pay the overtime rate of pay.

(2) When using Paid Leave, an Employee is not entitled to compensation for lost tips or gratuities; provided, however, that an Employer must pay an Employee in an occupation in which gratuities have customarily and usually constituted part of the remuneration at least the applicable minimum wage, inclusive of additional compensation that an Employer would be obligated by law to pay to the Employee if they had worked the same number of hours for the Employer but had received no gratuities.

(3) When an Employee who is paid on a commission basis (whether base wage plus commission or commission only) uses Paid Leave, the Employer must pay the Employee the hourly rate of pay based on the base wage or the applicable minimum wage, whichever is greater.

(4) For Employees who are paid on a piecework basis (whether base wage plus piecework or piecework only), the Employer shall calculate the Employee's hourly rate of pay by adding together their total earnings from all sources for the most recent workweek in which no Paid Leave was taken and dividing that sum by the number of hours spent performing the work during such workweek. For purposes of this subdivision, "workweek" means a fixed and regularly recurring period of 168 hours, or seven consecutive 24-hour periods.

If an Employer would compensate an Employee for regular work with additional benefits, including but not limited to the accrual of Paid Leave (vacation, sick, personal days, etc.),

Commented [J(1]: @Julia Epplin-Zapf (DHRE) @Tamiya Wright (DHRE) for clarity

Commented [JE2R1]: Sounds good

seniority or health benefits, an Employer shall compensate an Employee using Paid Leave with such additional benefits in the same manner and to the same extent as if they had performed the regular work.

(B) No Adverse Employment Consequences

Paid Leave includes the entitlement to take leave free from adverse employment consequences stemming from the leave. The Ordinance does not insulate an Employee from adverse employment actions that are unrelated to the exercise of rights established or protected by the Ordinance, including poor work performance, unexcused absenteeism and other failures to meet an Employer's reasonable expectations.

Section 200.200 No Consideration of Immigration Status

The Commission will enforce the Ordinance without regard to the immigration status of an individual, employee, employer or witness. Employers must extend the benefit of this Ordinance to all Employees without regard to immigration status of an Employee.

PART 300 COVERAGE

SUBPART 310 EMPLOYEES

Section 310.100 Defined

An individual is an Employee as that term is used in the Ordinance if:

(1) The individual performs compensated work;

(2) For an Employer as defined in Section 320.100;

(3) While physically present within the geographic boundaries of Cook County; and

(4) Is not exempt from coverage under the Ordinance or Section 310.100(C).

(A) Compensation for Work

An individual must be legally or equitably entitled to compensation for their work by an Employer for the individual to be defined as an Employee. An uncompensated volunteer is not an Employee.

(B) Location of Work

The Commission will consider compensated work that an individual performs within the geographic boundaries of Cook County that is equal or greater than 50% of their total compensated work for the purpose of determining whether the individual is an Employee with the following exception: The Commission will not consider work that an individual performs within the geographic boundaries of a municipality that has lawfully preempted the Ordinance.

The Commission will not consider the following to be compensated work while physically present within the geographic boundaries of Cook County:

(1) Uncompensated commuting; or

(2) Traveling through Cook County without stopping for a work purpose. Examples of stopping for a work purpose include, but are not limited to, making deliveries or sales calls. Stopping for a work purpose would not include making only incidental stops such as to purchase gas or buy a snack.

The Commission will also consider the following to be compensated work while physically present within the geographic boundaries of Cook County:

(1) Compensated commuting; and

(2) Traveling into Cook County for a work purpose, including but not limited to, deliveries, sales calls and travel related to other business activity for an Employer which takes place within Cook County.

(C) Exempt Employees

Notwithstanding the foregoing, the Commission will not consider an individual to be an Employee under the following conditions:

(1) The employee is covered by a *bona fide* collective bargaining agreement entered into prior to December 31, 2023 and remains in effect after December 31, 2023; or

(2) The employee waived their rights under the Ordinance pursuant to a *bona fide* collective bargaining agreement entered into after December 31, 2023 under the conditions described in Section 330.100; or

(3) The individual is an "employee" as that term is defined by Section 1(d) of the Railroad Unemployment Insurance Act, 45 U.S.C. § 351(d); or

(4) Federal or state law preempts the individual from being covered by the Ordinance; or

(5) The individual is an independent contractor, except for Domestic Workers; or

(6) The individual is a student enrolled in and regularly attending classes in a college or university that is the student's Employer, and is employed on a temporary basis and parttime at the college or university, and applies only to work performed for that college or university; or

(7) The individual is a short-term employee who is employed by an institution of higher education for less than two consecutive academic terms during a calendar year and who does not have a reasonable expectation that they will be rehired by the same Employer of the same service in a subsequent calendar year.

Section 310.200 Types of Employees

The Commission will consider an individual who meets the criteria set forth in Section 310.100 to be an Employee without regard to whether that individual is a full-time, part-time, temporary, seasonal, occasional, long-term, newly hired or re-hired employee, subject to the listed exceptions. Certain Employees, however, may be subject to special rules regarding accrual and use of Paid Leave; for example, see Section 310.300 regarding Employees who separate from the Employer and return to work for the same Employer within 12 months.

(A) Domestic Workers

(1) Domestic workers shall earn or accrue Paid Leave under the Ordinance from each Employer for whom they perform work.

(2) If an Employer requires evidence from an Employee of hours worked for other Employers to confirm that the Domestic Worker has worked eight or more hours in the aggregate for a workweek, a signed statement stating the same shall satisfy documentation requirements under the Domestic Workers' Bill of Rights Act and this Ordinance.

(a) An Employer shall not require more than one signed statement in a calendar quarter if the hours the Domestic Worker has performed or is scheduled to perform domestic work have not decreased to less than eight hours in the aggregate in any relevant workweek in that calendar quarter.

(b) An Employer that requests evidence of hours worked must give the Domestic Worker written notice of such request and allow no fewer than seven days or until the next scheduled workday, whichever is greater, for the domestic worker to comply with the request.

(c) The Employer may not deny Paid Leave requests pending submission of the signed statement.

(3) If a Domestic Worker is employed jointly by two or more Employers in a share services arrangement, then each of the Employers shall be considered an Employer who must comply with the provisions of the Paid Leave Ordinance ~~for the purposes hereunder~~.

Example: An Employee is hired jointly by two families with an agreement to provide nanny services for two households. The Employee provides service for a combined 50 hours during the week: 30 hours for Family A and 20 for Family B. For the purpose of providing Paid Leave, the families are in a shared services arrangement. The Employee's cumulative time working for both families is counted together for purposes of calculating accrued Paid Leave time, and is proportional to the distribution of time worked for each employer.

Section 310.300 Separation from Employment

An individual is an Employee, as defined in these Rules, if rehired by the same Employer within 12 months of the Employee's separation of employment from the same Employer.

(A) Reinstatement

Previously accrued Paid Leave that had not been used by the Employee shall be reinstated when an Employee is rehired within 12 months. Any Paid Leave that was previously paid out prior to the date of rehire is not required to be reinstated.

If an Employer credits Paid Leave to an Employee's paid time off bank, then the Employer would be required to pay out any credited Paid Leave upon separation of employment. See Section 500.67~~00~~. Any Paid Leave amounts credited to an Employee's paid time off bank that were not previously paid out upon separation must be reinstated immediately and available for use upon rehire.

SUBPART 320 EMPLOYERS

Section 320.100 Defined

An employer who meets the following criteria is an Employer as that term is used in the Ordinance and an "Employer" as that term is used in these Rules:

(1) Any individual, partnership, association, corporation, limited liability company, business trust, or any person or group of persons;

(2) The Employer gainfully employs at least one Employee as defined in Section 310.100; and

(3) The Employer is not exempt from coverage under the Ordinance or Section 320.100(A).

(A) Exempt Employers

Notwithstanding the foregoing, the Commission exempts the following as an Employer if:

(1) Federal or state law preempts the employer from being covered by the Ordinance;

(2) The employer exclusively employs employees who are exempt from the Ordinance pursuant to Section 310.100(C);

(3) The employer is a government employer, including:

a. The government of the United States or a

corporation wholly owned by the government of the United States;

b. An Indian tribe or a corporation wholly owned by an Indian tribe; and

c. The government of the State of Illinois or any agency or department thereof.

Section 320.200 Temporary Staffing Firms

When a Temporary Staffing Firm places an employee in a temporary position at another entity or organization, the Commission will consider the Temporary Staffing Firm the employee's employer. The Temporary Staffing Firm is required to comply with the provisions of the Paid Leave Ordinance. The Temporary Staffing Firm and organization where the Employee is placed are subject to requirements for Joint Employers under Section 320.300.

Temporary Staffing Firms are required to comply with other relevant state and federal laws, including the Illinois Day and Temporary Labor Services Act, 820 ILCS 175.

Section 320.300 Joint Employers

Where two or more Employers have control over the work or working conditions of an Employee, the Commission may treat the employers as "Joint Employers" of the Employee for purposes of the Ordinance. To be Joint Employers, each Employer must independently satisfy the definition of an Employer pursuant to Section 320.100.

All Joint Employers are responsible, individually and jointly, for compliance with provisions of the Ordinance. In discharging their obligations under this Ordinance, Joint Employers may allocate responsibility for such obligations among themselves. Notwithstanding an agreement among Joint Employers, all Joint Employers remain responsible for compliance with the Ordinance and for satisfaction of penalties imposed for violation thereof.

If a joint employment scenario includes a Temporary Staffing Firm, the Temporary Staffing Firm is required to maintain records of Paid Leave accrual and use. These records may be collected by staffing agencies from the companies where employees are temporarily placed.

Section 320.400 Successor Employers

If an Employer sells, transfers or otherwise assigns its business to a successor Employer who satisfies the definition of "Employer" as described in Section 320.100, then an Employee who continues to work for the successor Employer will be entitled to retain any Paid Leave without interruption or reduction in coverage, eligibility, accrual and use of Paid Leave.

SUBPART 330 WAIVER

Section 330.100 Pursuant to Collective Bargaining

The Commission will not enforce the Ordinance with respect to employment governed by a *bona fide* collective bargaining agreement that was entered into prior to December 31, 2023 and remaining in force on December 31, 2023. After December 31, 2023, the Commission will enforce the Ordinance with respect to Employees and Employers governed by any *bona fide* collective bargaining agreement that is entered into after December 31, 2023, unless that *bona fide* collective bargaining agreement provides in clear and unambiguous terms that the Employees waived their rights under the Ordinance.

The Commission will enforce the Ordinance, except where the waiver of rights complies with this rule, whether a *bona fide* collective bargaining agreement executed after December 31, 2023 is the first collective bargaining agreement between the parties or a renewal or extension of a previously existing collective bargaining agreement.

Section 330.200 Pursuant to Individual Bargaining

The Commission will deem any waiver, written or otherwise, by an Employee of any provision of the Ordinance, except as described in Section 330.100, as void, contrary to public policy, and unenforceable under the Ordinance.

PART 400 EMPLOYER METHODS FOR CALCULATING PAID LEAVE

Section 400.100 General Provisions

An Employer may choose between two methods of providing Paid Leave to Employees: (1) accrual method, or (2) frontloading method. Employers must provide Employees a copy of written policies outlining the method(s) used and which applies to various groups of Employees (full-time, part-time, seasonal, etc.).

Section 400.200 Accrual Method

An Employee begins to accrue Paid Leave on the Date of Initial Accrual, which is the later of (a) December 31, 2023, or (b) the first calendar day ~~after the Start~~ of Employment. For the purposes of these Rules, employment training is considered employment and should contribute to the Employee's hours worked.

An Employee's exact Date of Initial Accrual is dependent on whether the Employee began working for an Employer before or after December 31, 2023 (the effective date of the Ordinance).

An Employee who beganins working for an Employer before December 31, 2023 would start to accrue Paid Leave under the Ordinance on January 1, 2024.

An Employee hired by an Employer after December 31, 2023, would begin to accrue Paid Leave on the first calendar day ~~after their Start~~ of Employment. For example, if an Employee starts working for an Employer in Cook County on July 20, 2024, they will start to accrue Paid Leave on July 201, 2024.

Section 400.300 Rate of Accrual

An Employee accrues one hour of Paid Leave for every 40 hours worked for the Employer, subject to the following qualifications:

(A) Overtime-Exempt Employees

For purposes of calculating accrued Paid Leave under the Ordinance, the Commission presume that an Overtime Exempt Employee works 40 hours per week. If, however, an Employee actually works for an Employer less than 40 hours per week, the Employer can credit the amount of accrued Paid Leave to the Employee based on their actual number of hours worked. If the Employee works more than 40 hours per week, the Commission will not require the Employer to award more than one hour of Paid Leave per week.

Example: If an Employee is a part-time Overtime-Exempt Employee working 10 hours per week, they will accrue one hour of Paid Leave after four weeks (or 40 hours) of work. If an Employee is a full-time Overtime-Exempt Employee working 60 hours in a given week, the Commission will not find an Ordinance violation if an Employer awarded the Employee one hour of Paid Leave as if the Employee had only worked 40 hours that week.

(B) Overtime-Eligible Employees

Overtime-Eligible Employees accrue Paid Leave based on actual hours worked.

Example: If an Employee is a part-time Overtime-Eligible Employee working 10 hours per week, they will accrue one hour of Paid Leave after four weeks of work. If an Employee is a full-time Overtime-Eligible Employee working 60 hours per week, they will accrue one hour of Paid Leave after the first 40 hours of work during the first week, another hour of Paid Leave after their next 40 hours of work during the second week, and another hour of Paid Leave by the end of the second week (at which point they will have worked 120 hours), for a total of three hours of Paid Leave after two weeks of work.

(C) Hours Worked

Employees accrue one hour of Ppaid Lleave for every 40 hours worked and while using accrued Ppaid Lleave hours.

If uncertainty arises about what constitutes hours worked for determining accrued Paid Leave, the Commission will consider the principles of the Fair Labor Standards Act, 29 C.F.R. § 785.1 *et seq*., as may be amended from time to time, and any analogous Illinois law, to be instructive.

(D) Frequency of Accrual

Paid Leave accrues continuously up to the Accrual Cap (described in Section 400.500) for an Employee's Accrual Period (described in Section 400.400), but an Employer is only required to award an Employee Paid Leave in hourly increments. The Commission will not require an Employer award Paid Leave in fractional hours when an Employee has worked less than 40 hours since accruing the last hour of Paid Leave. However, an Employer should track the hours of work required to earn the next hour of Paid Leave until the end of the Accrual Period. Nothing in this Section prohibits an Employer from using a payroll system that tracks fractional accruals of Paid Leave.

~~(E) Employees of FMLA-Eligible Employers~~

~~For Employees working for FMLA-Eligible Employers, the Commission considers Paid Leave to be Ordinance-Restricted Paid Leave during the Accrual Period in which an Employee accrues it, even if it is carried over from one Accrual Period to the next, it may become FMLA-Restricted Paid Leave in the next Accrual Period pursuant to Section 400.600(B).~~

Section 400.400 Accrual Period

Each Employee will accrue Paid Leave during a 12-month Accrual Period that begins on the Date of Initial Accrual, ends once the Employee reaches their Accrual Cap (described in Section 400.500), and repeats annually. Different Employees of the same Employer are likely to have different Accrual Periods.

Section 400.500 Maximum Accrual Per Accrual Period

During any Accrual Period, an Employee is entitled to accrue a minimum of one hour of Paid Leave for every 40 hours worked. An Employer may set a higher Accrual Cap or allow unlimited accrual of Paid Leave for hours worked.

To clarify, after an Employee's first Accrual Period, they may have more hours of Paid Leave available for use than the Accrual Cap as a result of carrying over unused Paid Leave accrued during the prior Accrual Period.

Section 400.600 Frontload Method

Employers may choose to frontload Paid Leave for its Employees rather than use the accrual method described in this Section.

For example, an Employer that awards a full-time Employee at least 40 hours of Paid Leave at the start of each 12-month period would not be required to allow the Employee to carryover unused Paid Leave to comply with the Ordinance. If the Employer chooses instead to allow carryover of unused Paid Leave, the Employer may provide a set amount of carried over Paid Leave hours to the Employee in addition to the frontloaded amount.

For example, the Commission will consider an Employer to have complied with the Ordinance if the Employer awards an Employee planning to work 1,040 hours during the year 26 hours of Paid Leave up front. Where an ~~Covered~~ Employer cannot accurately predict the number of hours a part-time employee will work during an Accrual Period, the Employer may use the accrual methodology instead or, should estimate the amount of Paid Leave due to an Employee (*e.g.*, award all Employees 40 hours of Paid Leave). Such an Employer may also use a combination of front-loading and accrual methodologies to true up employees that work more hours during the Accrual Period than the Employer estimated at the start.

If an Employer frontloads Paid Leave by providing the minimum required number of hours for the Employee's use the Start of Employment or first day of a 12-month period, the Employer is subject to the following requirements:

(A) The Employer shall provide written notice to the employee with the number of Paid Leave hours the Employee will receive on or before their Start of Employment or the first day of the 12-month period.

(1) If an Employer chooses a fixed date for the beginning of the 12-month period, such as January 1 or July 1, the employer may pro- rate the amount of frontloaded Paid Leave time for an Employee who begins employment after the start of the 12-month period's fixed start date. For example, for a 12-month period that starts on January 1, an Employer may pro-rate the frontloaded Paid Leave of an Employee who starts on July 1 of the 12-month period.

(2) An Employer may use the Employee's start date as the start of that Employee's 12-month period.

(3) An Employer may not retroactively reduce Paid Leave benefits the Employer has already provided to an Employee. An Employer may not recoup or require an Employee to repay Paid Leave that was frontloaded if the employment ends before the 12-month period.

(B) Each 12-month period shall renew consecutively for the duration of employment unless the Employer does all the following:

(1) Gives written notice to employee at least 30 days prior to the end of the 12-month period, informing that the 12-month period is changing or ending;

(2) Gives written notice of the exact change the Employer is making; and

(3) Ensures that changing the 12-month period does not reduce the number of Paid Leave hours the employee is entitled to in a 12-month period.

If an Employer changes from a frontload method to an accrual method, they must comply with Subsection B of this Section and provide the Employee with written documentation of the number of hours worked in a 12-month period and the rate of anticipated Paid Leave accrual.

The number of hours of Paid Leave provided under this Section shall not be less than what the Employee would be entitled to otherwise earn if the Employer had not frontloaded Paid Leave hours on the first day of employment or the first day of the 12-month period.

Section 400.700 Mixed Calculation Methods

With appropriate notice to the Employee and documentation, Employers may frontload Paid Leave time for part-time employees at a pro-rata amount consistent with the Employee's anticipated work schedule for that 12-month period. However, if the Employee works more hours than the Employer anticipated, the Employee is entitled to accrue additional hours at the rate of one hour for every 40 hours worked in that same 12-month period. If an Employee works fewer hours in the 12-month period than anticipated by the Employer, the Employer may not diminish or recoup used or unused frontloaded Paid Leave benefits, nor may they charge the Employee for them.

An Employer may provide some of its Employees Paid Leave in the form of frontloading, and other Employees Paid Leave via the accrual method, if the Employer's Paid Leave policy meets all the requirements of the Ordinance and the Rules contained herein.

An Employer shall not illegally discriminate or otherwise violate County, state, or federal laws when determining which employees qualify for frontload or accrual.

Section 400.800 Carryover of Unused Paid Leave

Unused accrued Paid Leave shall be carried over from the end of one Accrual Period to the next Accrual Period. Employers may establish policies that limit the amount of Paid Leave that can be carried over from one accrual period to the next, but may not restrict Employees from carrying over 40 hours or less of unused Paid Leave to the next Accrual Period.

Employers who use a frontload method may require Employees to use all Paid Leave before the end of a 12-month period and are not required to carryover Paid Leave from one 12-month period to the next 12-month period.

For example, an Employer that awards Employees at the start of each 12-month period at least 40 hours of Paid Leave does not need to allow carryover of unused accrued Paid Leave to comply with the Ordinance. Alternatively, an Employer that awards Employees at the start of each 12-month period at least 40 hours of Paid Leave and chooses to allow carryover of unused leave, may award a set amount of hours to each employee in addition to the frontloaded amount. *See also* Section 400.300 for rules on frontloading.

PART 500 USE

Section 500.100 Paid Leave Available for Use

Employees may use Paid Leave for any purpose. An Employee may use Paid Leave that they have accrued or carried over pursuant to these Rules. An Employee is not entitled to use Paid Leave in anticipation of accruing it at a later date.

Section 500.200 Increments of Use

The Commission encourages an Employees to consult with their Employer to determine the duration (*i.e.* number of days and/or hours) of Paid Leave available for use; however, in the event of a disagreement as to the duration of Paid Leave, the Employee's preference is determinative provided it stays within the Employer's minimum increment policy.

An Employer may set minimum increments for use of Paid Leave, provided that the minimum increment is no greater than two hours, even if this minimum requirement requires an Employee to use more Paid Leave than they would prefer.

For example, an Employee with 20 hours of accrued Paid Leave is scheduled to work from 8:00 a.m. until 4:00 p.m. The Employee has an appointment at 8:00 a.m. that day, which will last for one hour. Although the Employee could arrive at work by 9:00 a.m., if the Employer has established a minimum use increment of two hours, then the Employee may be required to use two hours of Paid Leave. Similarly, if an Employee has only one hour of accrued Paid Leave and the Employer has established a minimum use increment of two hours, then the Employee would need to accrue one more hour to use the Paid Leave.

If an Employer has not established a written policy stating minimum increment for its employees' use of Paid Leave, the Commission will presume that Paid Leave may only be used in two-hour increments.

Section 500.300 Permissible Employer Usage Policiesy and Notice Requirements

Generally, Employees may use Paid Leave for any purpose. An Employer may require reasonable notification from an Employee prior to the Employee taking Paid Leave.

(A) Unreasonable Accommodations

An Employer may not require unreasonable accommodations from an Employee taking Paid Leave including:

(1) An Employer shall not require an Employee to search for or locate a replacement worker to cover the time an Employee is on Paid Leave.

(2) If an Employer imposes terms and conditions on an Employee's use of Paid Leave, the Employer must adopt a reasonable, written Paid Leave policy, made available in English and in any additional language commonly spoken by the Employer's workforce, that, at a minimum, includes the protections of the Ordinance and the rules contain herein, and is consistent with the provisions of the Ordinance and rules contained herein.

(3) The Paid Leave policy may be a part of an existing employer manual, existing employer handbook, or a separate document.

(4) An Employer shall provide the Paid Leave policy to the Employee prior to or upon the Employee's commencement of employment or within 90 days after the effective date of the Ordinance. Employers who regularly communicate with employees via electronic means shall provide the notice via the employer's regular electronic communication method.

(5) Changes to an Employer's Paid Leave shall be provided to Employees in writing as soon as practicable, but in no case longer than five days.

(6) An Employee may request to use Paid Leave under this Ordinance and Rules contained herein by making an oral or written request to the employer consistent with the Employer's Paid Leave policy. If the Employer does not have a written policy, the Employee may request Paid Leave orally or in writing.

(B) Disciplinary Leave

An Employer may not allow an Employee to use Paid Leave when the Employee has been suspended or otherwise placed on leave for disciplinary reasons.

(C) Notice of Use

If an Employer establishes notice requirementpolicies for Employees using Paid Leave for foreseeable and unforeseeable absences from work, the notice requirementspolicies must be in writing and comply with this Section 500.400(C).

(D) Foreseeable Absences

For the purpose of this Rule, a Foreseeable Absence includes any leave that is planned, routine, or easily foreseen. In ascertaining whether an absence was foreseeable, the Commission will

consider foreseeability from an objective perspective of whether a reasonable person under the same circumstances would have foreseen the absence.

The Commission will consider an Employer policy regarding required notification to use Paid Leave for Foreseeable Absences to be unreasonable under the following conditions:

(1) where such a policy is not in writing;

(2) where such a policy has not been communicated to the Employee in advance of the Employee's failure to provide notice;

(3) where such a policy would require the Employee to give notice when he or she is unconscious or otherwise incapacitated;

(4) where such a policy requires ~~a~~an Employee to provide notice ~~prior to~~more than seven days before the absence; or

(5) where such policy limits the means by which an Employee can provide the required notice in a manner that makes compliance so unreasonably difficult that Paid Leave cannot, as a practical matter, be used (e.g., requiring employees who work in the field to provide in-person notice at a distant business facility or requiring employees with limited written English abilities to submit notice by writing a complex memo).

(E) Unforeseeable Absences

Unforeseeable Absences are absences that are not Foreseeable Absences as described in Section 500.3~~4~~00(D~~C~~). An unforeseeable absence includes leave that is unplanned, non-routine, or not easily foreseen. In ascertaining whether an absence was unforeseeable, the Commission will consider foreseeability from an objective perspective of whether a reasonable person under the same circumstances would have foreseen the absence.

If an Employee's request to use Paid Leave is unforeseeable, an Employer may require the Employee to provide notice as soon as practicable after the Employee is aware of the need to take leave.

The Commission will consider a policy regarding required notification for Unforeseeable Absences to be unreasonable under the following conditions:

(1) Where the policy is not in writing;

(2) Where the policy requires notice when the Employee is unconscious or otherwise incapacitated;

(3) Where the policy disallows a third-person other than the

Employee to provide the required notice on behalf of the Employee;

(4) Where the policy requires an Employee to provide notice prior to the day of the absence; or

(5) Where the policy excludes notification by phone, email or text messaging.

Although an Employer cannot limit the means of communication by which an Employee provides any required notice of an Unforeseeable Absence to exclude phone, email or text messaging, the Commission will not consider it to be an unreasonable policy for an Employer to require that an Employee memorialize the notification they provided of an Unforeseeable Absence after returning from the absence by the Employer's preferred means of communication to facilitate the Employer's recordkeeping.

An Employer shall not deny an Employee's request to use Paid Leave, even if the Employee's request does not meet an Employer's foreseeability requirements, except subject to Section 500.400.

(F) In the Absence of a Written Policy

If an Employer cannot produce a copy of the written Paid Leave policy with previously established notification requirements, the Commission will presume that no such policy exists and that Employees may use Paid Leave pursuant to the Ordinance without providing prior notification and without discipline.

(G) Preference for Written Notification

Employees shall provide notification consistent with the reasonable written policy of the Employer. The Commission encourages Employees and Employers to document notification of the use of Paid Leave in writing. When faced with conflicting evidence regarding notification, the Commission will presume the accuracy of evidence that is written and dated when in conflict with evidence that is testimonial.

(H) FMLA Leave

The FMLA rules and regulations, including notification requirements, take precedence over this Ordinance, the Rules promulgated hereunder, and an Employer's Paid Leave Policy when an eligible FMLA employee uses FMLA leave. Per FMLA rules, an Employer may require FMLA--Eligible Employees to use accrued paid leave, paid sick or family leave for some or all of the FMLA leave period prior to taking unpaid FMLA leave. Absent an Employer requirement to use accrued paid time off for FMLA leave, an FMLA--Eligible Employee may choose whether to use accrued paid leave or unpaid leave for FMLA leave purposes pursuant to the FMLA rules and regulations.

Section 500.400 Reasons for Denial of Paid Leave Requests

An Employer may deny an Employee's request to use Paid Leave under any of the following conditions:

(1) The Employer's policy for considering leave requests for paid time off, including any basis for denial under this section is disclosed to the employee in writing.~~;~~

(2) Restrictions on an Employee's use of Paid Leave shall be limited to the Employee's regular workweek. ~~; and~~

(3) The Employer's Paid Leave policy establishes limited circumstances in which Paid Leave may be denied to meet the Employer's core operational needs for the requested time period.

In considering whether an Employee's request for Paid Leave may be denied based on operational needs, relevant factors include:

(a) Whether the Employer provides a need or service critical to the health, safety, or welfare of the people of Cook County.

(b) Whether similarly situated employees are treated the same for the purposes of reviewing, approving, and denying Paid Leave.

(c) Whether granting leave during a particular time period would significantly impact the business operations due to the employer's size. This includes having appropriate staff coverage for the job function.

Note that an Employer ~~-~~may restrict Employees from using paid leave if they voluntarily accept additional shifts or to cover a partial or entire shift.

Limited circumstances in which Paid Leave may be denied must be included in the Employer's written policy. The Commission will consider an Employer's written policy regarding the above-mentioned reasons for denial in investigations of alleged violations of the Paid Leave Ordinance.

Section 500.500 Payment of Paid Leave

Wages earned during Paid Leave shall be paid ~~within~~ in the ~~next~~ regular payroll period during w~~ith~~hich ~~beginning after~~ the Paid Leave was used by the Employee. Payment for wages earned during Paid Leave should be included on the Employees regular paycheck.

Employees with multiple job functions or job codes and who work for various rates should be paid an average of all hourly rates, *or* the greater of the minimum wage or lowest rate.

Section 500.600 Determining Payout of Paid Leave Upon Employee's Separation

Employers are required to pay the Employee for any unused Paid Leave upon the Employee's termination, resignation, retirement, or other separation, if the Employer credits Paid Leave to an Employee's paid time off bank. The Employer shall comply with the provisions of the Illinois

Wage Payment Collection Act and pay out unused accrued Paid Leave ~~within 15 days of the Employee's~~ at the time of the Employee's termination, resignation, retirement, or separation, if possible, but in no case later than the next regularly scheduled payday for such employee. ~~termination, resignation, retirement,~~ ~~or other separation~~. Unused Paid Leave required to be paid out under this section shall be paid at the Employee's regular rate of pay.

PART 600 ALTERNATIVE PRACTICES

Section 600.100 Minimum Requirements

Sections 400 and 500 provide minimum requirements for an Employer on the accrual, carryover and use of Paid Leave. Nothing in these Rules should be construed as prohibiting an Employer from allowing an Employee:

(1) to accrue Paid Leave at a faster rate than that described in Section 400.200;

(2) a higher annual Accrual Cap than described in Section 400.500;

(3) to carry over more accrued Paid Leave from one Accrual Period to the next; or

(4) to use more Paid Leave in each Accrual Period.

Employers may (1) adopt or retain paid sick leave, paid vacation, paid holidays, or paid time off that is in addition to the minimum Paid Leave hours required under the Ordinance and these Rules or (2) provide a Paid Leave policy that is more generous than the minimum rate of accrual required under the Ordinance and these Rules.

An Employer that exercises one or more of the foregoing options does not create a cause of action for an Employee under the Ordinance if the Employer later reverts to the minimum requirements of these Rules or some other practice that exceeds the minimum requirements of these Rules but is less generous. For example, if an Employer had allowed Employees to accrue one hour of Paid Leave for every 10 hours of work, the Commission would not entertain the complaint of an Employee if the Employer, on a later occasion, requires an Employee, for any nondiscriminatory reason, to instead work 30 hours before accruing an hour of Paid Leave.

Section 600.200 Terminology

The Commission will not require an Employer to use the same terminology used in the Ordinance or these Rules to describe Paid Leave benefits provided as a precondition of finding that such Paid Leave benefits meet the requirements of the Ordinance.

PART 700 NOTIFICATION OF RIGHTS

Section 700.100 Posting Required

Every Employer shall post in a conspicuous place at each place of business where any Employee works within the geographic boundaries of Cook County a notice advising Employees of their rights under the Ordinance. Such posting shall include, at a minimum, a summary of the Paid Leave ~~-~~Ordinance and information on ~~whow~~how to file a complaint if ~~description of the benefit, coverage, the rate of accrual, permissible uses and prohibited employer practices as well as contact information for the Commission and an explanation of how~~ an employee ~~who~~ believes that their employer has violated the Ordinance. ~~can make a complaint.~~ This is referred to as the Workplace Poster.

The Commission will provide a ~~on its website a model~~ Workplace Poster ~~posting~~ on its website for Employers to post in physical worksites located within the geographic boundaries of Cook County. The Workplace Poster is available on the agency website in additional languages. An Employer may request the poster in other languages not made available on its website. ~~that satisfies an Employer's obligation under this Rule; however, an Employer may satisfy its obligation under this Rule through any posting that advises Employees of their rights under the Ordinance, including an explanation of how an Employer's specific leave policy, which may use different terminology than the Ordinance, meets the requirements of the Ordinance.~~

Employees who do not work at a physical worksite should receive a copy of the Workplace Poster via their normal method of communicating workplace policies (e.g., email, worker portal, company intranet).

For the purpose of this Rule, the Commission will not consider a residence where an Employer employs only one or more domestic workers to be a place of business where posting of notice is required by the Ordinance. In addition, the Commission will not consider a place of business to be within the geographic boundaries of Cook County if it is also within the geographic boundaries of a municipality that has lawfully preempted the Ordinance.

~~The Commission will provide on its website a model posting that satisfies an Employer's obligation under this Rule; however, an Employer may satisfy its obligation under this Rule through any posting that advises Employees of their rights under the Ordinance, including an explanation of how an Employer's specific leave policy, which may use different terminology than the Ordinance, meets the requirements of the Ordinance.~~

Section 700.200 ~~Notice of Rights~~Employer Written Policy Required

Every Employer shall also provide to every Employee a written policy, which advises each Employee of their leave benefits and rights ~~notice of rights advising each Employee of their rights~~ under the Ordinance by the later of each Employee's ~~Date of Coverage or Date of Eligibility~~Start of Employment or Date of Initial Accrual, and at least once per calendar year thereafter. Such notice may accompany an Employee's paycheck or paycheck deposit notification. Such ~~notice~~ policy shall include, at a minimum, a summary of the Paid Leave Ordinance, a description of the benefit(s) offered by Employer, coverage, the rate of accrual, permissible uses and prohibited employer practices as well as contact information for the

Formatted: Line spacing: Multiple 1.08 li

Commission and an explanation of how employees who believe that their employer has violated the Ordinance can file ~~an mak~~e a complaint. This should be distributed to Employees as a written document, or Employer handbook or policy.

~~The Commission will provide on its website a model notice of rights that satisfies an Employer's obligation under this Rule; however, an Employer may satisfy its obligation under this Rule through any written notice that advises Employees of their rights under the Ordinance, including an explanation of how an~~ Note that an Employer's specific leave policy~~, which~~ may use different terminology than the Ordinance, so long as it meets the requirements of the Ordinance.

PART 800 RECORDKEEPING

Section 800.100 Required Records; Employer

Employers shall make and preserve records documenting:

(1) Employee's name and contact information, including mailing address, telephone number and/or email address;

(2) Employee's Start of Employment date;

(3) Employee's classification (full-time, part-time, seasonal, temporary);

(4) Hours worked;

(5) Paid leave earned and used;

(6) Remaining Paid Leave balance for each Employee; and,

(7) Requests made by the Employee to take Paid Leave of which the Employer denied

for a period of not less than three years. Employers shall allow the Commission access to such records, at reasonable times during business hours, to monitor compliance with the requirements of this Division.

In addition, all relevant records shall be preserved for the duration of any complaint. An Employer that provides Paid Leave on an accrual basis shall provide notice of the amount accrued or used by an Employee upon request by the Employee in accordance with the Employer's reasonable Paid Leave policy notification provisions.

An Employer failing to comply with this subsection is in violation of the Division and subject to the civil penalties established in Section 42-8. An Employer who provides any type of Paid Leave policy that satisfies the minimum amount of leave required this Division is not required to modify the policy if the policy offers an Employee the option, at the Employee's discretion, to take Paid Leave for any reason.

Failure of an Employer to be able to produce such records if requested by the Commission in response to a complaint alleging a violation of the Ordinance may result in an adverse presumption against the Employer by which the Commission will presume the accuracy of a Employee's testimonial evidence with respect to the enumerated issue when it is in conflict with the testimonial evidence of an Employer who cannot produce the expected records.

Section 800.200 Required Records; Employee

Employees are not required to retain records supporting their claim to a violation of the Ordinance in advance of filing such a claim with the Commission. The Commission encourages Employees to retain such records if they will use the Commission to enforce their rights under

the Ordinance. The Commission will presume the accuracy of an Employer's contemporaneously written business records when they are in conflict with an Employee's testimonial evidence. Employers may have other record keeping obligations under federal and state laws for which they are required to comply. The record-keeping requirements under this section of the Rules are specific to the Cook County Paid Leave Ordinance.

Section 800.300 Preservation Obligation

Once an Employer or Employee has notice of a claim under the Ordinance, they have an obligation to retain all records related to the claim in their possession, custody or control until final disposition of the claim by the Commission. Destruction, damage or loss of such records will result in an adverse presumption against any party who had a retention obligation under this Rule. The Commission may also fine that party if the Commission determines that the destruction, damage or loss of such records was intentional.

PART 900 MISCELLANEOUS PRACTICES

Section 900.100 Prohibited

In addition to any other practice expressly or implicitly prohibited by the Ordinance, the Commission will consider an Employer to have violated the Ordinance by doing any of the following, including, but not limited to:

(1) Requiring that an Employee find coverage as a condition of using Paid Leave;

(2) Retaliating against an Employee for exercising rights under the Ordinance or participating as a party or witness in a case alleging a violation of the Ordinance that is or was pending before the Commission;

(3) Counting absences arising from the use of properly noticed Paid Leave as an absence that triggers discipline, demotion, suspension or any other adverse employment action;

(4) Switching an Employee's schedule after they provide notice that they are using or will use Paid Leave to avoid paying the employee during their absence;

(5) Forbidding or requiring an Employee to take Paid Leave, instead of allowing an Employee to choose whether to use Paid Leave prior to using any other leave provided by the Employer or State law, provided that it is not prohibited for an Employer to require that an Employee use leave in accordance with FMLA rules and regulations; or ~~accrued Paid Leave when the Employee can do so instead of taking an unpaid absence from work; or~~

(6) Paying an Employee to not take Paid Leave.

Section 900.200 Permissible

The Commission will not consider an Employer to have violated the Ordinance if an Employer fails to pay Paid Leave on the grounds that the payment of Paid Leave in the specific circumstances at issue would require the Employer to compensate an Employee at more than the appropriate rate of pay as described in Section 200.100(A).

For example, if an Employee is being compensated by an Employer at 100 percent of their hourly rate of pay through workers' compensation payments or disability leave benefits, the Commission will not require that an Employer compensate the Employee at 200 percent of their normal rate of pay through an additional payment for the use of Paid Leave.

PART 1000 ENFORCEMENT

SUBPART 1010 SCOPE

Section 1010.100 Application of the Ordinance

With respect to enforcement of the Ordinance, the Commission will defer to the jurisdiction of any municipality that is within the geographic boundaries of Cook County, including but not limited to the City of Chicago, that has enacted an Paid Leave law applicable to the Employee at issue, which (a) provides Paid Leave in an amount and manner that is as, or more, generous than the Ordinance and (b) provides remedies against an Employer that fails to provide such benefits.

SUBPART 1020 ADMINISTRATIVE PROCESS

Section 1020.100 Time Limit for Filing Complaints

An Employee who seeks to file a complaint with the Commission alleging that an Employer has violated the Ordinance must do so within three years of the alleged violation, provided that, if there is evidence that the Employer concealed the violation, then any complaint must be filed with the Commission within three years of when the Employee discovered, or reasonably should have discovered, the violation. Where such a violation is continuing, the claim must be brought within three years of the last occurrence of the alleged violation.

Once an Employee has filed a complaint within the time allowed by this Rule, the Commission's investigation of that complaint is not necessarily limited to the same time period though, as a matter of practice, the Commission will not focus its investigation on alleged violations of the Ordinance that are more than three years old.

That a claim may be too old to file at the Commission will not impact the Employee's ability to bring the claim in a court of competent jurisdiction pursuant to Section 42-8(b) of the Ordinance.

Section 1020.200 Initiating Enforcement at the Commission

The Commission on Human Rights is the enforcement agency for the Cook County Paid Leave Ordinance (Sec. 42-3). As such, any matters filed with the Commission pursuant to the Paid Leave Ordinance are governed by the procedures herein and additional provisions outlined in the Human Rights Ordinance (Sec. 42-30) and accompanying Substantive and Procedural Rules.

(A) Case Initiation

A ~~Covered~~n Employee who believes that their Employer has committed any violation of the Ordinance may file a complaint with the Commission. Such a complaint must be in writing and verified by the complaining Employee in addition to being timely pursuant to Section 1020.100.

Further, the complaint must include:

(1) The name of the Employee and their contact information;

(2) The name of the Employer that has allegedly violated the Ordinance and its contact information;

(3) A statement of facts alleged to establish that the complaining employee and his or her employer are covered by the Ordinance, including, but not limited to, (i) the address of the Employer's Place of Business located in Cook County and (ii) the date(s) and place(s) where the complainant performed a minimum of two hours of work for the Employer while physically present within the geographic boundaries of Cook County and a brief description of that work; and

(4) A statement of the facts alleged to constitute the violation of the Ordinance, including, but not limited to, (i) the date(s) and amount(s) of any alleged denial of use or under-accrual of Paid Leave for work performed for the Employer while in Cook County; (ii) the date(s) and place(s) of any alleged failure to notify; and (iii) the date(s), place(s) and witness(es) to any alleged retaliation.

The Commission will provide a form that an Employee can use for this purpose on its website. A complaining Employee can be represented by counsel at this or any stage of the Commission process but is not required to retain an attorney for this purpose.

(B) Review of Complaint

Once filed, the Commission will review the complaint to ensure:

(1) The complaint is timely;

(2) The Commission has jurisdiction over the complaint; and

(3) The complaint states facts that, if true, would constitute a violation of the Ordinance.

If the complaint lacks any of the three factors above, the Commission will issue an order dismissing the complaint. The order of dismissal will be served on Complainant and Respondent(s), and the Commission will take no further action with respect to the employee's claim.

The Executive Director [of the Commission] is authorized to request the Commission to issue an order limiting a serial complainant's ability to file additional claims with the Commission. A "serial complainant" is defined as a person who has:

(1) Filed three or more complaints with the Commission within two years, five or more complaints with the Commission within ten years, or both, where the majority of such claims have been dismissed for lack of substantial evidence of a violation of the ~~Human Rights~~Paid Leave Ordinance, failed to cooperate or for lack of jurisdiction; or

(2) Filed a second complaint at the Commission while he or she has another complaint currently pending at the Commission.

In any instance, the Commission's decision to decline an employee's request to initiate a case for enforcement of the Ordinance does not in any way prejudice any right that employee may have to pursue enforcement of the Ordinance outside of the Commission in a court of competent jurisdiction pursuant to Section 42-8(b) of the Ordinance.

If the complaint is deemed viable by the Commission, the Commission will either serve the complaint on the Employer named in the complaint or will serve, as a substitute, a Commission Initiated Complaint as described in Section 1020.200(C).

(C) Commission Initiated Complaint

In its sole discretion, the Commission may serve a complaint on an Employer that is written in the Commission's name. The complaint does not have to include the name of a complaining Employee and may allege violations of the Ordinance that are broader than those involving the complaining any one Employee.

The Commission will consider the totality of the circumstances but at least two circumstances will favor this approach: (i) multiple Employees of the same Employer have filed, or attempted to file, complaints with the Commission alleging substantially similar violations of the Ordinance by the Employer or (ii) there is a reasonable probability based on the nature of the allegations and any evidence provided by the complaining Employee that the Employer has violated the Ordinance with respect to other Employees who have not yet filed a complaint with the Commission but could conceivably do so.

Section 1020.300 Commission Investigations of Alleged Ordinance Violations

(A) Response

Once served with a complaint, the Employer has 30 days to file with the Commission a written and verified answer to the complaint that admits or denies each allegation and sets out any additional facts that, if true, would establish that the Employer has complied with the Ordinance, the Ordinance does not apply, the Commission lacks jurisdiction over the claim, or any other reason in support of dismissal of the complaint.

The Employer can request an extension of time to respond to a complaint but must do so in writing before the expiration of the time to answer. Absent extraordinary circumstances, the Commission will only grant one extension. The failure to promptly retain counsel is not an extraordinary circumstance.

Where the Commission deems the Employer's response to be sufficient to demonstrate that the complaint lacks merit, the Commission will dismiss the complaint. The Commission's decision to dismiss at this stage does not in any way prejudice any right that an Employee may have to pursue enforcement of the Ordinance outside of the Commission in a court of competent jurisdiction pursuant to Section 42-8(b) of the Ordinance.

Where the Commission deems the Employer's response to be insufficient to demonstrate that the complaint lacks merit, the Commission will proceed with discovery.

Failure to submit a response within the time allotted will constitute an admission by the Employer to the Commission of each allegation in the complaint. The Commission will render an order pursuant to Section 1020.400 on the basis of such admissions as appropriate.

(B) Discovery

The Commission will direct all discovery related to its determination of whether a violation of the Ordinance has occurred. The complaining Employee and the Employer can suggest discovery to the Commission that would facilitate the determination of whether or not a violation of the Ordinance has occurred, but the Commission will make the final determination of what information and testimony to obtain with the goal of conducting an accurate and expeditious investigation at the lowest reasonable cost to all parties and witnesses.

In conducting discovery of the parties, the Commission may conduct interviews or submit document requests and questionnaires calling for written responses. In conducting discovery of non-parties or as otherwise necessary, the Commission may issue a subpoena pursuant to Section 1020.300(B)(4).

To the extent that the Commission is confronted with conflicting testimonial evidence on an issue that is material to its determination of whether a violation of the Ordinance has occurred, the Commission may order an Evidentiary Conference pursuant to Section 1020.300(B)(3).

(1) Failure to Produce Requested Evidence

All discovery requested by the Commission must be provided within the time provided to respond in the Commission's request. The Commission will presume that any evidence it requests but that has not been produced or that has not been produced within the time requested does not exist, and it will resolve the related question of fact or law on the basis of the absence of evidence and/or the presence of other evidence obtained from other sources. Further, if a party fails to produce information requested by the Commission within the time requested, the party will be barred from presenting that evidence in any later setting related to enforcement of the Ordinance.

(2) Sensitive Information

Parties who may be producing confidential, proprietary or personal information to the Commission should identify that material as such and may request appropriate protections for that information (*e.g.*, request that any documents that are not included or referenced in the Commission's final order be returned to the producing party at the close of the investigation).

(3) Evidentiary Conference

The Commission may order an Evidentiary Conference to resolve simple factual disputes arising from conflicting testimonial evidence by parties and/or witnesses that is potentially determinative as to whether there is evidence of a violation of the Ordinance. The Commission may order the parties and/or witnesses to provide in-person, sworn testimony on the disputed fact before an administrative law judge who will make a determination as to the credibility of any testifying party or witness with respect to the disputed fact. An order of an Evidentiary Conference will provide the parties with notice of the disputed issue of fact and the identity of the testifying parties and/or witnesses. Additional witnesses may be added by the parties as provided in subsection (a).

(a) At an Evidentiary Conference, the testifying parties and/or witnesses will be examined by the administrative law judge. The parties to the case, or their attorneys or representatives of record, will then have the opportunity to examine and cross-examine any party or witness testifying at an Evidentiary Conference. The parties to the case, or their attorneys or representatives of record, may also present any additional witnesses or documentary evidence to the administrative law judge that the parties believe will assist the administrative law judge in resolving the disputed issue of fact. A party must provide advance notice of any such additional evidence to the Commission and the other party at least five business days before the Evidentiary Conference. The Evidentiary Conference is limited to hearing evidence relevant to resolving the dispute of fact identified in the order of an Evidentiary Conference.

(b) Within 21 days of the Evidentiary Conference, the administrative law judge will present in writing any findings of fact, including any determinations of testimonial credibility, to the Commission. The administrative law judge's findings shall be considered an additional piece of evidence in the Commission's investigation into the merits of the complaint.

(4) Subpoenas

The Commission may issue a subpoena on its own initiative at any time for the appearance of witnesses or the production of evidence. If a person does not comply with a subpoena on the date set for compliance whether because of refusal, neglect, or a change in the compliance date (such as due to continuation of an Administrative Hearing) or for any other reason, the subpoena shall continue in effect for up to one year, and a new subpoena need not be issued.

When issuing a subpoena the Commission shall pay witness fees of $20.00 per day and mileage fees of $0.20 per mile to the person subpoenaed.

The person to whom the subpoena is directed may object to the subpoena in whole or in part. The objection may be made to the Commission or to the administrative law judge (if one has been assigned) no later than five business days prior to the time for appearance or production required by the subpoena. The objection shall be in writing, filed with the Commission, served on all parties and on the administrative law judge (if any assigned), and shall specify the grounds for objection. The party opposing the objection may file a written response to the objection specifying the need for certain witnesses or documentation no later than two business days prior to the time for appearance or production required by the subpoena. The Commission or, if assigned, the administrative law judge, shall consider the objection and render a decision on the objection.

Failure to comply with a subpoena issued by the Commission shall constitute a separate violation of the Ordinance. Every day that a person fails to comply with said subpoena shall constitute a separate and distinct violation. The Commission may seek judicial enforcement of its subpoenas.

Section 1020.400 Commission Findings

(A) Finding of No Violation

If the Commission finds that the parties' pleadings and the evidence that the Commission obtained through discovery is insufficient to establish that the Employer violated the Ordinance, the Commission will render a Finding of No Violation and serve it on the parties. A Finding of No Violation is on the merits and may prejudice any right that the complaining Employee may have to pursue enforcement of the Ordinance outside of the Commission in a court of competent jurisdiction pursuant to Section 42-8(b) of the Ordinance. A Finding of No Violation is a final order of the Commission, subject to administrative review as described in Section 1020.600.

(B) Finding of Violation

If the Commission finds on the basis of its investigation that a violation has occurred, the Commission will render a Finding of Violation. The Finding of Violation will order remedies and/or sanctions as described in Subpart 1030.

The Employer has 30 days from the date that the Commission renders its Finding of Violation to accept the Commission's finding or contest it pursuant to the procedures set out in Section 1020.500.

If the Employer accepts the Finding of Violation, the Employer must demonstrate compliance with any remedies ordered within 30 days or such other time as may be provided by the Commission.

Section 1020.500 Administrative Hearing

If the Employer does not accept the Commission's Finding of Violation pursuant to Section 1020.400(B), the Commission will appoint an administrative law judge to make a final determination as to whether the Employer violated the Ordinance and the remedies and sanctions ordered by the Commission are appropriate. The Commission, or its designee, will present the evidence it obtained that supports its Finding of Violation. The Employer can cross-examine this evidence and/or produce additional relevant evidence (that it is not otherwise prohibited by Section 1020.300(B)(2) from producing). Neither the Commission nor the Employer will be entitled to any additional discovery at this stage though the Commission can use its subpoena power as described in Section 1020.300(B)(4) to arrange for the presence of any necessary witnesses whose live testimony is requested by the administrative law judge or the Employer. In the case of a witness subpoenaed at the request of the Employer, the Employer must effect service of the subpoena and pay the associated witness and mileage fees.

The administrative law judge will promptly issue a written opinion affirming or setting aside all or any portion of the Finding of Violation, including any proposed remedies and/or sanctions. The administrative law judge's decision will be the final decision of the Commission and be subject to administrative review as described in Section 1020.600.

Section 1020.600 Administrative Review

The Commission will not entertain motions for reconsideration of Findings of Violation or Findings of No Violation. A party contesting the Commission's Finding of Violation or Finding of No Violation may, however, seek administrative review of the Commission's decision by filing a petition for *writ of certiorari* in the Circuit Court of Cook County within 30 days of a Finding of No Violation as described in Section 1020.400(A) or within 30 days of a Finding of Violation as described in Section 1020.500.

Section 1020.700 Service

For the purpose of any of these Rules that require service:

(A) On Complainant

A complaining Employee shall be served by electronic mail (e-mail), mail or in person at the address they provide on the complaint, provided that, if a complaining Employee subsequently provides another address, including the address of counsel, in writing to all parties and the Commission, then all future service upon the complaining Employee shall be at that address.

(B) On Respondent

An Employer shall be served by electronic mail (e-mail), mail or in person at its principal place of business or at its place of business where all or some of the alleged Ordinance violations occurred, provided that, if an Employer subsequently provides any other address, including the address of counsel, in writing to all parties and the Commission, then all future service upon the Employer shall be at that address.

(C) On the Commission

The Commission shall be served by electronic mail (e-mail), or alternatively at its 69 West Washington office by mail or in person Monday through Friday, excluding County holidays, between 9:00 a.m. and 4:00 p.m.

(D) Electronic Service

Service by electronic means to an email address provided by a party or the Commission can be made in lieu of mail or in-person delivery after the initial pleadings to any party or the Commission with the prior written consent of that party or the Commission, as applicable.

(E) When Service is Effective

Electronic service is presumed to be effective on the date on which it is sent. In-person service is presumed to be effective on the date on which it is made. Service by U.S. mail is presumed to be effective three business days after it is deposited in the mail with postage prepaid.

Section 1020.800 Evidence of Compliance

For the first two years after the effective date of the Ordinance, if an Employer that is the respondent in a complaint for violation of this Ordinance provides the Commission with competent evidence that it is in, or has come back into, full compliance with the Ordinance, then the Commission will terminate any investigation pursuant to Section 1020.300(A), will not proceed to rendering an order pursuant to Section 1020.400, and will dismiss the complaint with prejudice. The Commission considers full compliance to include the payment of any lost wages to affected Employees that resulted from noncompliance with the Ordinance.

SUBPART 1030 ADMINISTRATIVE REMEDIES

When the Commission determines that an Employer has violated the Ordinance, the Commission may (1) fine the Employer; (2) order the Employer to pay lost wages to affected Employees; and/or (3) order other appropriate injunctive relief.

Section 1030.100 Penalties and Damages

The Commission may impose penalties and damages on an Employer found in violation of the Ordinance payable to the affected Employee. Penalties and damages payable to the affected Employee may include:

(1) A penalty of not less than $500 and no more than$1,000 per violation per Employee affected, and

(2) Payment for amount of any lost wages that resulted from noncompliance with the Ordinance, and

(3) Compensatory damages.

In exercising its discretion to set appropriate penalties and damages, the Commission will consider the extent of the violation, the culpability of the Employer, and whether the Employer promptly and thoroughly cooperated during the course of the Commission's investigation into the complaint that led to the Finding of Violation. In exercising its discretion, the Commission will consider whether the Employer is currently meeting its obligations under the Ordinance and the amount and duration of lost wages to affected Employees.

Any person who, with intent to avoid compliance with the Ordinance or the Rules hereunder by labelling an Employee as an Independent Contractor, shall be subject to double the penalties and damages listed in this section.

Employers that share Employees shall not enter into agreements, contracts or understandings designed or intended to avoid compliance with this Ordinance or Rules promulgated hereunder.

An Employer may be ordered by the Commission to pay lost wages if it required an Employee to take unpaid leave when the employee had accrued and requested Paid Leave but was denied in violation of the Ordinance and these Rules. The Commission may also impose compensatory damages and a penalty amount in addition to the affected Employee's lost wages.

If the Commission exercises the option pursuant to Section 1020.200(C) to proceed on behalf of the complaining Employee, lost wages will be based on all Employees employed by the Employer during the relevant time period. The Commission will award the complaining Employee their lost wages. The Commission will collect any back wages due to non-complaining Employees to create a fund, administered by the Commission or its designee, to award lost wages to non-complaining Employees employed by the Employer.

If the Commission does not proceed on behalf of the complaining Employee, the amount of lost wages awarded will be based only on lost wages due to the complaining Employee. Back wages due to non-complaining Employees will not be considered.

Section 1030.200 Injunctive Relief

The Commission may impose appropriate post-judgment injunctive relief. Such relief may include, for example, an order to cease and desist violating the Ordinance going forward or to reinstate an Employee who was discharged in retaliation for exercising rights protected by the Ordinance.

The Commission may require the Employer to submit to monitoring of future compliance with the Ordinance by the Commission or its designee. Monitoring may include additional recordkeeping obligations.

SUBPART 1040 JUDICIAL ENFORCEMENT

Section 1040.100 Private Right of Action

To the extent that an Employee wishes to pursue a claim against an Employer in Cook County in a court of competent jurisdiction pursuant to Section 42-8(b) of the Ordinance, the Commission will not require that the Employee first bring such a claim to the Commission. An Employee requires no authorization from the Commission to pursue such a claim in a court of competent jurisdiction and the Commission will not purport to grant such authorization.

Section 1040.200 Effect on Administrative Enforcement

If an Employee first brings a claim alleging an Ordinance violation to the Commission and, while it is pending, files a substantially similar claim pursuant to Section 42-8(b) of the Ordinance in a court of competent jurisdiction, the Commission will dismiss its pending matter so as to avoid the risk of rendering inconsistent determinations. Similarly, the Commission will not entertain a claim to vindicate a right under the Ordinance that is substantially similar to a claim that was previously filed in a court of competent jurisdiction.