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## **Application of the Illinois Paid Leave for All Workers Law to Community College Employees**

**July 13, 2023**

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# Agenda

Analysis of the Paid Leave for All Workers Act

Answers to FAQ



**PAID  
LEAVE  
for ALL**



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## Paid Leave for All Workers Act



Public Act 102-1143, signed into law by Governor Pritzker on March 13, 2023



Effective : January 1, 2024



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## PLFAWA: Legislative Findings

“The General Assembly finds that it is in the public policy interests of the State for all working Illinoisans to have some paid leave from work to maintain their health and well-being, care for their families, or use for any other reason of their choosing.”

## PLFAWA: Covered Employers

- All private employers
- Most governmental employers, except:
  - Short-term employers in higher education
  - Temporary student workers who work part-time in higher education
  - School districts
  - Park districts
  - Certain railroad workers
  - Certain construction workers
- Employees covered by a CBA with an employer that provides services nationally and internationally of delivery, pickup, and transportation of parcels, documents and freight

## PLFAWA: Excluded Employees

- **Short-term employees in higher education**

- Employed for less than 2 consecutive calendar quarters during a calendar year; and
- No reasonable expectation that they will be rehired by the same employer for the same service in a subsequent calendar year.



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## PLFAWA: Short-Term Employee

### “Less than 2 consecutive calendar quarters during a calendar year”

- The PLFAWA does not state whether the “calendar year” is based on a January to December calendar or an educational calendar
- The definition in the PLFAWA mirrors the definition of “short-term employee” under the IELRA
- For purposes of defining a “short-term employee”, the IELRB has interpreted “calendar year” to mean “educational calendar year” (e.g., August – August)
- Brief breaks between semesters do not constitute breaks in service
- Adjuncts who teach 2 semesters cannot be short-term
- Adjuncts who teach 1 semester *might* be short-term



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## PLFAWA: Short-Term Employee

- “No Reasonable Expectation”
  - Reasonable Expectation: when an employee leaves employment, they have a strong belief that they will be able to work for the employer again in subsequent years
  - Factors that the IELRB has considered for purposes of “no reasonable expectation”:
    - **Whether hiring preference is given to past employees**
    - Whether employees must reapply each year
    - Number of employees rehired from year to year
    - Whether the employer has provided the employee notice that he/she will be re-hired



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## PLFAWA: Short-Term Employee

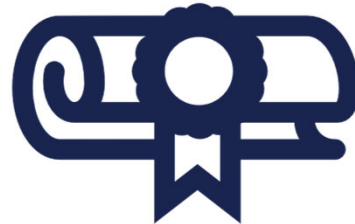
- “No Reasonable Expectation”
  - The IELRB has primarily focused on whether an employee has been repeatedly rehired.
  - “Any adjunct faculty member who has been hired by the same employer to perform the same service for at least one semester in each of three consecutive years has a reasonable expectation of being rehired for the same service in a later calendar year.” (emphasis added) – *William Rainey Harper Community College 512 v. Harper College Adjunct Faculty Association, IEA/NEA, 273 Ill.App.3d 648 (1995)*



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## PLFAWA: Excluded Employees

- **Temporary student workers who work part-time in higher education**
  - Enrolled in and regularly attending classes in a college that is also the student's employer; and
  - Employed on a temporary basis at less than full-time at the college.
  - *Only applies to work performed for the college the student is enrolled and attending classes in.*



## PLFAWA: Employees Covered by a CBA

CBA's in effect as of January 1, 2024 are grandfathered and a college need not comply with the PLFAWA as to employees covered by the CBA for the term of the CBA.

New and successor CBA's entered into after January 1, 2024 must comply with the PLFAWA or contain an explicit waiver of the law.

## PLFAWA: Employees Covered by a CBA

- Waiver of the PLFAWA
  - Waiver must be explicitly set forth in the CBA.
  - Terms of the waiver must be clear and unambiguous.
    - *Example:* The Union expressly states that it has knowledge of and has read the Paid Leave for All Workers Act (Public Act 102-1143, eff. 1/1/24). The Union hereby waives and releases the College from any and all requirements under the Act that may be applicable in any way to individuals employed in positions covered by this CBA.
- Subject to further guidance issued by IDOL, we believe partial waivers are permissible (*i.e.*, to omit or limit carryover, to require a reason or documentation, etc.).
- Individual employees **cannot** waive their rights under the PLFAWA.



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## PLFAWA: General Provision of Paid Leave

Eligible employees are entitled to earn and use up to 40 hours of paid leave during a 12-month period or a pro-rata number of hours of paid leave.



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## PLFAWA: 2 Options for Provision of Paid Leave

### Option #1

Paid leave shall accrue at a rate of 1 hour of leave for every 40 hours worked.

- Employees who are exempt from overtime requirements under the FLSA are deemed to work 40 hours in each workweek for purposes of leave accrual (unless their regular workweek is less than 40 hours).
- For Option 1, employees must be allowed to carryover unused paid leave from one 12-month period to the next.



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## PLFAWA: 2 Options for Provision of Paid Leave

### Pros – Option #1

- Employees who separate mid-year can only use a portion of their paid leave

### Cons – Option #1

- Employees carryover unused leave
- Can result in employees using more leave at the end of the 12-month period
- Administrative burden of calculating accruals for individual employees and carryover



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## PLFAWA: 2 Options for Provision of Paid Leave

### Option #2

The minimum annual amount of paid leave shall be made available to the employee on the first day of their employment or the first day of a designated 12-month period.

- If using a designated 12-month period (*i.e.*, July 1), pro-rate for employees with an employment start date after the first day of the 12-month period.
- For Option 2, employers may implement a “use it or lose it” policy that requires employees to take leave during the 12-month period or forfeit it.



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## PLFAWA: 2 Options for Provision of Paid Leave

### Pros – Option #2

- Colleges can implement a “use it or lose it” policy
- Employees know exactly how much leave they can use and may spread the use of leave out throughout the 12-month period
- Less of an administrative burden

### Cons – Option #2

- Employees can use the full amount of leave received and then separate mid-year



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## PLFAWA: Reason for Leave

- Leave can be used for any purpose/reason.
- Employers **cannot require** an employee to:
  - Provide a reason for the leave.
  - Provide documentation or certification as proof or support of the leave.
- Employees may choose to use accrued leave under the PLFAWA before using any other leave provided by the employer or by State law.

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## PLFAWA: Procedures for Requesting Leave

- Oral or written request.
- For foreseeable leave, an employee may be required to provide 7 calendar days' notice for use of leave.
- If not foreseeable leave, an employee shall provide notice as soon as practicable.
  - The employer's written policy must contain procedures for the employee to provide notice.
- **Minimum increments for use of paid leave not to exceed 2 hours per day.**
- An employee may not require an employee to search for or find a replacement worker to cover their paid leave time.
- Changes to an employer's policy or procedures for taking leave must be provided in writing to employees and posted for 5 calendar days.

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## PLFAWA: Group Health Plan Coverage

Similar to the FMLA, an employer must maintain coverage for the employee and any family member under any group health plan for the duration of the leave under the same conditions as if the employee had not taken leave.



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## PLFAWA: Credit/Payment for Accrued and Unused Leave

- Employers are NOT required to:
  - Pay an employee for accrued and unused leave at the end of the employee's benefit year or at any other time.
  - Allow for accrued and unused leave to be credited (converted) to another paid time off bank or employee account.



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## PLFAWA: Payment for Accrued and Unused Leave

- Employers are not required to pay an employee for accrued and unused leave upon separation of employment.
  - However, if the employee is rehired within 12 months of separation, any accrued and unused leave that the employee had at the time of separation shall be reinstated and available for immediate use.
  - **CAUTION:** If an employee is allowed to convert accrued and unused paid leave to their paid time off bank or vacation account, then the employee is entitled to payment for the accrued and unused paid leave upon separation of employment (just like accrued and unused vacation under the law).

## PLFAWA: Recordkeeping

- For a period of at least 3 years, an employer must maintain and preserve the following records for each employee:
  - Hours worked
  - Paid leave accrued
  - Paid leave used
  - Remaining paid leave balance
- Records are subject to audit by IDOL
- Civil penalties for non-compliance

## PLFAWA: Notice to Employees

- ✓ IDOL to prepare a Notice summarizing the law and information for how to file a charge (not available as of 7/11/23).
  - Check [www.labor.Illinois.gov](http://www.labor.Illinois.gov).
  - If the employer's workforce is comprised of employees who are not literate in English, the employer shall notify IDOL and a notice in the appropriate language shall be prepared by the IDOL.
- ✓ Employers must post the Notice in a conspicuous place where notices to employees are customarily posted.
- ✓ Include the Notice in a written document, employee manual or policy (if the employer has one).
- ✓ Civil penalties for non-compliance.



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## PLFAWA: Retaliation

- It is unlawful for an employer to take or threaten to take any adverse action against an employee for:
  - Attempting to or exercising their rights under the PLFAWA;
  - Opposing practices which they believe violate the PLFAWA; or
  - Supporting the exercise of rights of another under the PLFAWA.
- **Employers cannot consider the use of paid leave as a negative factor in connection with an individual's employment.**
- Civil penalties for violations.



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## PLFAWA: Administration and Enforcement

IDOL	3-year statute of limitations to file a complaint with IDOL for alleged violations	If violation found:	Attorney General may bring an action to enforce collection of awards issued by IDOL
		<ul style="list-style-type: none"><li>• Pay damages in the form of the actual underpayment due to the employee</li><li>• Compensatory damages</li><li>• Civil penalty of not less than \$500 and not more than \$1,000</li><li>• Equitable relieve as appropriate</li><li>• Reasonable attorneys' fees and costs</li><li>• Reasonable expert fees</li></ul>	

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## PLFAWA: Providing Greater Benefits to Employees



The law expressly states that nothing shall be construed to discourage employers from adopting or retaining paid sick leave, paid vacation, paid holidays, or any other paid time off or paid leave policy more generous than what is provided for in the PLFAWA.

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## **Our college already provides paid time off. Do we have to add another 40 hours of leave under the PLFAWA?**

No. An employer who already offers paid leave benefits that meet the minimum requirements of the PLFAWA does not have to add additional time. See <https://labor.illinois.gov/faqs/paidleavefaq.html>.

- *Note:* Most existing paid leave policies do not extend to all employees covered by the PLFAWA, provide the minimum amount of leave under the PLFAWA or allow use of leave for any reason, etc.

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## Discussion: How Could a College Modify Current Leave Policies for Compliance?

### Current Example #1 – Vacation Days

- ✓ All employees receive 10 days of vacation upon hire. Vacation requests must be submitted 2 weeks in advance. Vacation days may be taken in half day or full day increments.

### Current Example #2 – Sick/Personal Days

- ✓ All employees receive 15 sick days to use in the event of personal illness or to care for a family member suffering from serious illness. After 3 consecutive days, the employee must provide a medical note supporting the use of sick leave.
- ✓ All employees receive 2 personal days that may be used at their discretion. Personal days may be taken in hourly increments.



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## Can you provide an example of how the accrual method works for part-time employees?

- An employer may require their employees to accrue paid leave time based on number of hours worked, at a rate of one hour of paid leave for every 40 hours worked.
- Notably, while a part-time worker might not accrue the full 40 hours of leave provided for in the law by the end of the year, they might accrue fewer hours of leave, based on the number hours they've worked.
- *Example: Employee A works 15 hours per week, 52 weeks per year. They will accrue 19.5 hours of paid leave annually. (15 times 52 = 780 hours worked per year. 780 divided by 40 = 19.5 hours of paid leave.)*
- See <https://labor.illinois.gov/faqs/paidleavefaq.html>.



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## When does accrual begin under the PLFAWA? When can employees start taking paid time off?

- Accrual begins upon commencing employment or January 1, 2024, whichever is later. However, employees are entitled to begin using the accrued paid leave after 90 days.
- The first day employees could take off time that has accrued since January 1, 2024 would be March 31, 2024.
  - *Example: The Paid Leave for All Workers Act takes effect January 1, 2024. Six months later, Employee B starts a new job on July 1, 2024, and works 40 hours per week. They start accruing paid leave on their first day (July 1) but must wait 90 days (until September 29, 2024) before taking any of their accrued paid leave.*
  - *Example: Employee C has worked for their employer since 2019 but did not previously get paid time off. Employee C will begin accruing paid time off beginning January 1, 2024 (the effective date of the Act.)*
- See <https://labor.illinois.gov/faqs/paidleavefaq.html>.



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## What pay rate is used for leave under the PLFAWA?

- Employees shall be paid their hourly rate of pay for paid leave.
- For employees not paid on an hourly basis, they should not suffer any loss of pay for an absence when using paid leave.



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## Does the PLFAWA apply to temporary, seasonal or contingent workers?

- Possibly.
- Under the PLFAWA, exemption for any “short-term employee who is employed by an institution of higher education for less than 2 consecutive calendar quarters and who does not have a reasonable expectation that they will be re-hired by the same employer of the same service in a subsequent calendar year.”
  - 2 consecutive calendar quarters analysis
  - Reasonable expectation analysis



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## Does the PLFAWA apply to adjunct faculty?

- Yes, the PLFAWA will *normally* apply to adjunct faculty.
- Exceptions:
  - Meets requirements to exclude as a “short-term employee”
  - Grandfathered CBA, as defined in the law (temporary exception);
  - Unique circumstance/assignment where statutory definition is not met for a particular adjunct; or
  - Union agrees to waiver language.



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## Options for calculating leave allotment for eligible adjunct faculty

- *Calculation of leave allotment is subject to bargaining.*
- Actual hours worked.
- Front load the minimum amount of leave under the PLFAWA.
- Use the 2.25 multiplier for each classroom hour taught (ACA method)
  - In addition to crediting an hour of service for each hour teaching in the classroom, this method would credit an additional 1 ¼ hours service" for "related tasks such as class preparation and grading of examinations or papers.
  - Separately, instructors should also be credited with an hour of service for each additional hour they spend outside of the classroom on duties they are "required to perform (such as required office hours or required attendance at faculty meetings".
- Front load the applicable amount based on 29 hours per week
  - Assumes all adjuncts are not "full time" for ACA purposes meaning they work on average less than 30 hours per week.
  - Under the PLFAWA, accrual rate is 1 hour of leave for every 40 hours worked.
  - Assuming adjuncts work at most 29 hours per week, the pro-rated accrual is just under .75 hours per week.
  - If the college semester is 16 weeks, then front load 12 hours of leave for the semester (16 weeks x .75 weekly accrual = 12 hours)
    - May have to add additional hours for a "kick-off" or orientation week, etc.

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Catherine Locallo's practice focuses on labor and employment law and board governance matters. She counsels employers in all aspects of employment law including hiring, employment contracts, employee discipline issues, terminations and reductions in force, collective bargaining and labor relations, nonimmigrant worker visas and employment discrimination matters. She also counsels public bodies on compliance with Illinois' Freedom of Information Act and Open Meetings Act. Catherine has extensive experience representing clients in court and administrative agency proceedings involving discrimination, retaliation, and harassment claims.

Catherine is approved by the Illinois State Board of Education to provide school board member training.

**AWARDS**

Honorable Gerald L. Sbarbaro Mentoring Award (2023)

Illinois "Rising Star," Employment & Labor Law (2015-2018)

**RECENT PUBLICATIONS**

Co-Author, "Seventh Circuit Addresses Employer Liability for Coworker and Supervisor Harassment and Challenges in Establishing Claims For Retaliation, Defamation, and IIED," *Employment and Labor Law Flashpoints*, IICLE (2023)

"Each Discrete Statutory Violation of Biometric Information Privacy Act is Actionable by Employees" *Employment and Labor Law Flashpoints*, IICLE (2023)

"Illinois Employers Ring in New Year with Five New Laws," *Employment and Labor Law Flashpoints*, IICLE (2022)

"Recent Seventh Circuit Case Addresses Declaratory Judgment, Equivalent Job, and Attorney's Fee Awards Under FMLA," *Employment and Labor Law Flashpoints*, IICLE (2022)

"Employee's Loss of Ability To Maintain Privacy Rights Is Not Injury Compensable Under Workers' Compensation Act," *Employment and Labor Law Flashpoints*, IICLE (2022)

"OSHA Pauses Vaccination and Testing ETS Following Legal Challenges," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Chicago Teachers Union Claim Doesn't Survive Summary Judgment on Race Discrimination Claim," *Employment and Labor Law Flashpoints*, IICLE (2021)



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Education Law  
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the Seventh Circuit

U.S. District Court for the  
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U.S. District Court for the  
Northern District of Illinois

Supreme Court of Illinois

"Effective January 1, 2022: Vast Expansion of VESSA," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Illinois Committed to Restrictive Covenant Reform Through Passage of Senate Bill 672," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Plaintiff's Cat's Paw Theory of Liability Failed To Scratch Surface," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Walmart Need Not Change Shift Rotation Practice To Accommodate Religious Beliefs" *Employment and Labor Law Flashpoints*, IICLE (2021)

"CBA Provision Clearly Rebutted At-Will Employment Presumption for IT Employee," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Employer's Judgment and Job Description Defeat Failure To Accommodate Claim," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Recent Department of Labor Opinion Letters: Pay for Training and Travel," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Sexual Harassment Prevention Training Compliance Required Before New Year," *Employment and Labor Law Flashpoints*, IICLE (2020)

"Will 'Scabby the Rat' Live To Fight Another Day?" *Employment and Labor Law Flashpoints*, IICLE (2020)

"Superintendent's Police Report is Protected Speech" *Employment and Labor Law Flashpoints*, IICLE (2020)

"Changing the Landscape: Abusive Conduct Not Protected Under NLRA" *Employment and Labor Law Flashpoints*, IICLE (2020)

"COVID-19 Changes to Claims for Unemployment Benefits in Illinois" *Employment and Labor Law Flashpoints*, IICLE (2020)

"Seventh Circuit: Jury, Not Judges, Must Decide Coach's Sex Discrimination Claim" *Employment and Labor Law Flashpoints*, IICLE (2020)

"Examining DOL Rule on New Employee Leave Rights" *Employment and Labor Law Flashpoints*, IICLE (2020)

## RECENT PRESENTATIONS

*Legal, Legislative and Ethics Update*, ICCTA Illinois Council of Community College Presidents Meeting (November 2022)

*You're On the Board, Now Elevate Your Game*, ICCTA Annual Conference (November 2021)

## ORGANIZATIONS

Chicago Bar Association

Illinois Council of School Attorneys

Illinois State Bar Association

National Council of School Attorneys

Second Vice President, Justinian Society of Lawyers

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Kevin's practice focuses in the area of labor and employment law. Kevin counsels school districts, community colleges, libraries, and municipalities with issues involving employee discipline, internal investigations, employee leaves of absences, and alleged discrimination and harassment claims. Kevin also defends clients in litigation and administrative charges in federal and state court, the U.S. Equal Employment Opportunity Commission, the Illinois Department of Human Rights, and the Illinois Department of Labor. In addition to his experience in labor and employment law, Kevin has trained school districts and community colleges pursuant to Title IX of the Education Amendments Act of 1972.

Prior to joining Robbins Schwartz, Kevin represented individuals with employment matters, civil rights claims, and consumer protection litigation.

**AWARDS**

Illinois "Rising Star," by Super Lawyers Magazine

**RECENT PUBLICATIONS**

"OSHA Pauses Vaccination and Testing ETS Following Legal Challenges,"  
*Employment and Labor Law Flashpoints*, IICLE (2021)

Contributing author, "Employment Discrimination" *School Law: Personnel and Student Issues*, IICLE (2021)

"NLRB Takes New Look at Charter Schools," *Chicago Daily Law Bulletin* (2019)

**RECENT PRESENTATIONS**

*Updates from the DOL: New Developments for FMLA, FLSA, and IWPCA*,  
IAPD/IPRA Soaring to New Heights Conference (January 2020)

*Is it ADA, FMLA, or Other Leave? Navigating the Murky Waters of Employee Leave Benefits*, IAPD/IPRA Soaring to New Heights Conference (January 2020)

*Illinois Minimum Wage: Nutz and Bolts Overview*, IGFOA Payroll Seminar  
(October 2019)



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During law school, Amy participated in both the Labor and Employment Certificate Program and the Alternative Dispute Resolution Team. She also attended the American Arbitration Association Summit and interned with various in-house legal departments. Prior to joining Robbins Schwartz, Amy worked at a general practice defense firm, focusing on insurance defense and general business law.



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