CHICAGOLAND
CHAMBER OF COMMERCE

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TO: City of Chicago – Office of Labor Standards, Department of Business Affairs and Consumer Protection

FROM: Chicagoland Chamber of Commerce

DATE: February 16, 2023

RE: PROPOSED CHICAGO PAID LEAVE AND PAID SICK LEAVE RULES, DEPARTMENT OF BUSINESS AFFAIRS AND CONSUMER PROTECTION

On behalf of the over 1,000 businesses of all sizes and from every sector across Chicago represented by the Chicagoland Chamber of Commerce, thank you for the opportunity to provide public comment pertaining to the proposed Chicago Paid Leave and Paid Sick Leave rules issued by the Office of Labor Standards ("OLS") and Department of Business Affairs and Consumers Affairs ("BACP"). Additionally, the Chamber has appreciated the willingness of both BACP and OLS to engage and communicate with the Chamber and its members as Chicago nears the July 1 effective date of the new ordinance.

The issue of paid leave required of employers in Chicago and Illinois has seen a tremendous amount of focus and attention in recent years. In 2022 and early 2023, the Chamber, along with business association partners like the Illinois Retail Merchants Association and Illinois Manufacturing Association came to the table to negotiate and reach a compromise on the Illinois Paid Leave for All Workers Act, because the business community truly understands there is a need for balance when it comes to paid leave policies. The new requirements at the State level were signed into law on March 13, 2023 and went into effect on January 1, 2024 and reflect a carefully negotiated balance between Illinois' workers and businesses. The Illinois business community, now that the rules are being discussed at the State level, is yet again fighting to ensure that the law and associated rules reflect the agreement reached last year. Understanding that every business and its workforce is unique and every paid leave policy is much more complicated than simply the number of paid leave days required, rule promulgation by the Illinois Department of Labor remains unresolved after the Illinois Joint Committee on Administrative Regulations (JCAR) opted to not accepted IDOL's proposed rules at the January meeting due in large part to the rules going beyond the parameters that were carefully negotiated between all stakeholders. This means it has taken nearly a year to draft rules at the State level. Organizations like the Chicagoland Chamber have challenged the proposed rules and the members of JCAR have concurred with our assessment.

We mention the State law and the challenges with paid leave rule promulgation at the State level because it informs our perspective and position towards the proposed Chiago Paid Leave and Paid Sick and Safe Leave ordinance rules. The Chicagoland Chamber worked with a coalition of 14 businesses organizations representing every size of business and industry in Chicago to negotiate the new Chicago Paid Leave and Paid Sick and Safe Leave Ordinance. Unfortunately, due to the unwillingness of the Johnson Administration and City Council to include basic legal and financial protections in the ordinance, along with an unwillingness to craft a better constructed and thoughtful ordinance, the Chamber, along with our business coalition partners, ultimately opposed the ordinance. This occurred despite the business

community's continued desire to reach a compromise that would be fair for both Chicago workers and businesses.

With this in mind, it is our belief that the proposed rules are lacking the clarity businesses will need to successfully comply with the new requirements beginning July 1, 2024. The proposed rules in many instances simply copy the statutory provisions where far more explanation and guidance are needed. Further, there are simply many typos and what seem to be unfinished provisions throughout the proposed rules. Critically, far more direction is needed as to what compliance looks like for Chicago businesses. Rule PTO 2.01, for example, is unfortunately woefully insufficient and will likely result in numerous lawsuits filed against Chicago businesses, particularly small businesses, which we do not believe is the intent of BACP and OLS. And, lastly, the proposed rules in many instances differ from, what we believed. was the intent of the various provisions in the Ordinance, which was based on our negotiations with proponents of the Ordinance.

Moreover, many businesses already offer paid leave benefits well in excess of the requirements set forth by the ordinance. For many reasons, however, from the lack of clarity and poorly drafted language in both the ordinance and proposed rules, businesses already offering generous benefits are concerned they will be subject to complaints and lawsuits. Again, we do not believe that is the intent of BACP and OLS.

As such, the Chicagoland Chamber of Commerce respectfully requests that OLS go back to the drawing board and propose a new set of rules that provides the clarity and guidance Chicago businesses will need to successfully comply with the ordinance. Below, we outline a number of comments and areas the business community is seeking revisions and further clarification on. Thank you again for the opportunity to comment on the rules and we look forward to working with the Department and OLS to establish a fair, implementable, and coherent paid leave and paid sick leave regulatory and compliance framework for Chicago business.

Note on Comment Style: The "DETAILED COMMENTS" section contains specific recommendations and justifications for changes to the draft rules. Throughout, we highlight the specific Rule PTO, highlight the specific section we seek to amend or add clarifications to, and add specific comments and reasoning, where applicable, for the recommended changes to the Rule. Use of underlining denotes recommended additions, and strikethrough denotes recommended deletions in the Rule.

DETAILED COMMENTS

Rule PTO 1.02 DAY LABORERS

RULE: Day laborers are considered Employees. Therefore, day laborers who perform at least two hours of work for an employer while physically present within the geographic boundaries of the City are Covered Employees.

COMMENT: At no point during the negotiations between stakeholders did the issue of Day or Temporary Laborers come up. We recommend striking Rule PTO 1.02 in its entirety. Should the Department not move to delete this specific rule, the definition of "day laborer" should reflect the language change to the definition of "covered employee" pursuant to SO2023-5883, which, in part, states:

> "'Covered Employee' means an Employee who, works at least 80 hours for an Employer within any 120-day period while physically present within the geographic boundaries of the City."

Rule PTO 1.03 NOTICE AND POSTING

RULE: a. Employers shall post the notice prepared by the Department through the Employers' usual methods of communication for such notices, whether by paper posting or by electronic dissemination through the Employers' internal communication channels. When posting a paper notice, the notice shall be printed on and scaled to fill a sheet of paper that measures eleven inches by seventeen inches. However, an employer may provide such a notice to Employees on a sheet of paper that measures eight and a half inches by eleven inches and an employer would not be in violation of Rule PTO 1.03(a) if the employer prints the notice on a sheet of paper of this size.

c. The notice or notices required to be provided to Employees may be provided to Covered Employees via an employee handbook in the event the employer has an employee handbook.

COMMENT: In order to ensure that employers throughout the City of Chicago, which are the only Employers required to post notices for Covered Employees per the Chapter, we recommend that the Department allow for reasonable accommodations for employers seeking to comply with posting notice requirements, such as allowing for printing on tradition 8.5 x 11 inch paper and allowing for, as applicable, employers to supply notices to Covered Employees via employee handbooks.

Rule PTO 1.05 CONTENTS OF RECORDS OF EMPLOYERS

RULE: If the Commissioner reasonably determines that an Employer is operating in violation of the Chapter or any other applicable provision of the Municipal Code of Chicago, the Commissioner may issue an order, which may take the form of a subpoena, directing the Employer to provide the information, including, but not limited to, the name of the business, the address of the business, the details of the information being sought pursuant to the Chapter, and any information necessary to demonstrate compliance with the Chapter within the control or possession of the Employer. The Employer shall, within ~~30~~ 60 calendar days of the date on which such order is issued, either provide the information or file a legal objection to such order in writing with the Commissioner. If the Employer files a legal objection, the Commissioner shall provide a hearing on the objection within ten business days. The Commissioner's determination shall be final and may be appealed in the manner provided by law. Nothing in this Rule shall be considered a limitation or restriction on the Commissioner's powers and duties under Chapter 2-25 of the Municipal Code of Chicago.

COMMENT: Rule PTO 1.05(b) outlines powers above and beyond what was outlined in the Chapter during stakeholder negotiations on the Chicago Paid Leave and Paid Sick and Safe Leave Ordinance and the related amendment (i.e., SO2023-5883). In order to ensure that employers are able to responsibly and reasonably be able to respond to an action taken by the Department, including but not limited to, appealing an order, there should be given 60 days to file an appeal with the Department.

Rule PTO 2.01 GENERAL

RULE: a. The Chapter articulates three main Paid Leave and Paid Sick Leave requirements: (i) accrual / grant of hours of Paid Leave and Paid Sick Leave; (ii)

carryover of Paid Leave and Paid Sick Leave from one Benefit Year to the next; and (iii) usage of Paid Leave and Paid Sick Leave. The Chapter establishes minimum standards, and Employers are at liberty to go above those standards. Those Employers whose paid time off policies meet or exceed the three main requirements of the Chapter enumerated above are not required to provide additional leave or records beyond what is required to demonstrate compliance with the Chapter. ~~However, other requirements of the Chapter, such as when a Covered Employee must be allowed to begin using Paid Leave or Paid Sick Leave, must still be followed.~~

COMMENT: From the initial engagement from the Chicagoland Chamber of Commerce, and other business organization, on the original Ordinance (i.e., SO2023-2980), trailer Ordinance (i.e., SO2023-5883), and the Rules process, one of the most important issues to the business community has been ensuring clear and reasonable rules and regulations regarding the new paid leave law. Repeatedly during stakeholder meetings, proponents of advancing the Ordinance expressed their desire to create a regime that would not unnecessarily burden employers acting in good-faith, especially small employers. To this end, Rule PTO 2.01(a) does just the opposite.

We appreciate the Department taking reasonable steps to clearly and unambiguously try to offer guidance to all employers that will be forced to comply with the provisions of the Chapter come July 1, 2024. Rule PTO 2.01(a) clearly states that the "minimum standards" are inclusive of "three main requirements." Meaning, that any employer that has an existing policy or chooses to develop a new policy need only meet the following main provisions of the Chapter: 1. "accrual," 2. "carryover," and 3. "usage." We agree with the Department that this three-factor test should be an effective barometer of whether a policy complies with the law and the rules.

Yet, the Department appears to completely dismantle this clean and reasonable standard when it adds an incredibly broad and undefined qualifier seemingly allowing any "other requirements" from also being considered when determining compliance. We strongly urge the Department to entirely strike the provision outlined above in order to clearly demonstrate to employers that the City of Chicago is not trying to play "gotcha" and is indeed interested in making the law fair for both employers and their employees.

Rule PTO 2.01 GENERAL

RULE: <u>c. An Employer whose paid leave policy, in effect on or after July 1, 2024, offers Covered Employees at least 10 days (or at least 80 hours or a reasonable equivalent number of hours commensurate with the Employer's normal work week) of Paid Leave, and whose policy meets the minimum standards, i.e., meets the three main requirements provided for under subsection (a) of PTO 2.01, under this Chapter, shall be considered to be in compliance with the Chapter.</u>

COMMENT: During the negotiations between the Chicagoland Chamber of Commerce, other stakeholders, and members of the City Council, there were repeated assertions made that a "paid leave" benefit is a greater benefit than a "paid sick leave" benefit. Therefore, it would follow that a paid leave policy that offers at least a

minimum of 10 days of "paid leave," subject to the minimum standards prescribed under Rule PTO 2.01(a), should be considered in full compliance of the law and need not be altered to provide any additional leave to meet the minimum requirements of the Ordinance, unless an employer may choose to grant such additional benefits.

Rule PTO 2.01 GENERAL

RULE: d. Any Employer who is not physically located within the geographic boundaries of the City of Chicago is exempt from any provisions related to the Chapter and is not liable for any penalty, fine, or any other administrative or legal liability related to the Chapter.

COMMENT: Awareness related to compliance of any new or amended government mandate required by local Ordinance is difficult for the Department of Business Affairs and Consumer Protection to easily and regularly guarantee for businesses located within the geographic boundaries of the City of Chicago. A new and expanded government mandate of the magnitude and scope of the one created by the Chicago Paid Leave and Paid Sick and Safe Leave in the Chapter will be that much more challenging as it relates to employers wholly located in any other local, State, or national jurisdiction. Therefore, we recommend exempting any such employer from any legal or administrative liability.

Rule PTO 2.04 ACCRUAL VERSUS IMMEDIATE GRANT/FRONTLOADING

RULE: b. If an Employer grants Covered Employees 40 hours of Paid Leave no later than 90 days after the Covered Employee began working for the Employer, ~~and at the same time each subsequent year,~~ then the Employer is not required to provide additional Paid Leave.

e. If an employer tracks accrual of paid leave or paid sick leave, nothing in the Chapter may be interpreted to disallow an Employer from offering Covered Employees the ability to use advanced paid leave or paid sick leave days that may not have yet been accrued. An employer may utilize an accrual method, for record-keeping purposes, and also allow for advanced use of days at the beginning of the Benefit Year.

COMMENT: Under Rule PTO 2.04 (c), there is no language related annual or "subsequent' year mandates. We recommend, for consistency, that the above language be struck.

Additionally, we are recommending that the Rule PTO 2.04 address situations where employers use an accrual method, for record-keeping purposes, but allows paid leave or paid sick leave days to be advanced, or rather, to be used regardless of whether or not the paid leave or paid sick leave days have been accrued.

Rule PTO 2.05 CARRYOVER

RULE: a. Paid Leave
i. Unless an Employer frontloads in accordance with PTO 2.04(b), an Employer must allow the Covered Employee to carry over up to 16 hours of ~~unused accrued~~ accrued and unused Paid Leave into the next Benefit Year.

~~ii.If a Covered Employee carries over unused accrued Paid Leave to the following year, accrual of Paid Leave in the subsequent year shall be in addition to the hours accrued in the previous year and carried over.~~

b. Paid Sick Leave
i. Unless an Employer frontloads in accordance with PTO 2.04(c), an Employer must allow the Covered Employee to carry over up to 80 hours of ~~unused~~ accrued and unused Paid Sick Leave into the next Benefit Year.
~~ii. If a Covered Employee carries over unused accrued Paid Sick Leave to the following year, accrual of Paid Sick Leave in the subsequent year shall be in addition to the hours accrued in the previous year and carried over.~~

COMMENT: Rule PTO 2.05, subsection (a)(i) and (b)(i), make reference to "unused accrued" and "unused", respectively, as it relates to accrued and unused paid leave or paid sick leave benefits that may be allowed to be rolled-over to the immediately following year. We want to make clear that the time that is required to be allowed to roll-over must be both "accrued" and "unused" in order to be eligible. Making consistent references to "accrued and unused" is recommended.

Additionally, Rule PTO 2.05, subsections (a)(ii) and (b)(ii), are provisions that are not consistent with the provisions of either the original Ordinance (i.e., SO2023-2980) or the trailer Ordinance (i.e., SO2023-5883), therefore, we recommend striking them in their entirety.

Rule PTO 2.06 USAGE

RULE: (b) If an Employer elects to offer 80 hours of paid leave (or an equivalent of 10 days of paid leave), as opposed to offering 40 hours of paid leave and 40 hours of paid sick leave as required by the Chapter, regardless of the number of Employees the Employer employs, a Covered employee is eligible to use such accrued paid leave by the 90th calendar day following commencement of employment.

COMMENT: As explained in the comment made on Rule PTO 2.01, if it is generally understood that an employer policy that offers 80 hours (or the equivalent of 10 days) of paid leave, along with the required minimum standards outlined in Rule PTO 2.01, satisfies the 10-day PTO requirement, then we recommend making it clear that such an employer policy would be subject to the 90-calendar day paid leave usage rule.

RULE PTO 2.08 PAYMENT OF PAID LEAVE AND PAID SICK LEAVE

RULE: d. Except as detailed below, an Employer is required to pay out any accrued and unused Paid Leave upon a Covered Employee's termination, resignation, retirement, or other separation from employment. This payment may be a part of the Covered Employee's final compensation at the Covered Employee's final rate of pay.
i. Small Employers shall not be required to meet the requirements of PTO 2.10(d).
ii. Medium Employers shall be limited to pay out a maximum of 16 hours accrued, unused Paid Leave until June 30, 2025, unless the Medium Employer sets a higher limit. On or after July 1, 2025, Medium Employers shall be required to pay the monetary equivalent of all unused, accrued Paid Leave.

iii. A Covered Employee may request payout of their unused Paid Leave after not receiving a work assignment for 60 days.

COMMENT: Under Subsection (d) of Rule PTO 2.08, there seems to be a typo. We recommend adding the word "may" to the subsection to make the rule consistent with the Ordinance.

Additionally, under Subsection (d)(ii) and (d)(iii), there is reference to "unused, accrued" and "unused," respectively. We recommend, as previously mentioned, that the Rule clearly make reference to "accrued and unused."

RULE PTO 2.09 PAID LEAVE USAGE POLICY AND NOTIFICATION POLICY

RULE: iv. The Paid Leave policy may require a Covered Employee to obtain reasonable pre-approval from the Employer before using Paid Leave for the purposes of maintaining continuity of Employer operations.
a. Denials of Paid Leave requests in consideration of operation needs should include relevant factors such as:
i. Whether the Employer provides a need or service critical to the health, safety, or welfare of the people of Chicago; ~~and~~ or
ii. Whether similarly situated employees are treated the same for the purposes of reviewing, approving, and denying Paid Leave; ~~and~~ or
iii. Whether granting Paid Leave during a particular time period would significantly impact business operations; ~~and~~ or
iv. Whether the Covered Employee has adequate opportunity to use all Paid Leave time the Covered Employee is entitled to over a 12-month period~~.~~; or
v. Whether the Employer provides the Department any other factor that may be reasonably believed to be necessary.

COMMENT: During negotiations between stakeholders on the need to allow for reasonably broad parameters to apply around the issue of denials of paid leave in order to maintain continuity of operations, therefore, we recommend that subsections (a)(iv)(a)(i)-(a)(iv) be made permissive rather than be required factors.

RULE PTO 2.09 PAID LEAVE USAGE POLICY AND NOTIFICATION POLICY

RULE: b. An Employer may establish reasonable methods for the Covered Employee to notify the Employer of the Covered Employee's need to use Paid Leave or Paid Sick Leave. There shall be a reasonable expectation of all Covered Employees to notify an Employer of a Covered Employees' need to use paid leave or paid sick leave, Examples of such methods include:
i. Notifying their immediate Supervisor in writing or verbally
ii. Calling a designated phone number at which a Covered Employee can leave a message
iii. Following a uniform-call in procedure
iv. Sending an e-mail to a designated e-mail address
v. Submitting a leave request in a scheduling software system
vi. Use of another reasonable and accessible means of communication identified by the Employer

~~b~~ c. An Employer may restrict a Covered Employee's use of Paid Leave or Paid Sick Leave. Nothing in the Chapter or this Rule PTO 2.09 may prohibit an Employer from denying an Employee use of paid leave or paid sick leave if no

reasonable effort was made by a Covered Employee to notify an Employer of the need to use accrued and unused paid leave or paid sick leave, including in no-show situations where an Employee does not report to a scheduled shift or job placement. An Employer may take reasonable adverse employer actions in the event of no-show events.

COMMENT: The Chapter and Rules outline and prescribe several mandates on Employers, many of which expose Employers to severe legal and administrative liability. There are very narrow, limited instances where any responsibility is expected from Covered Employees. In order to provide additional employer flexibility to take necessary corrective actions, and ensure continuity of operations, during instances where no reasonable effort is made to notify an employee of leave being taken, we recommend adding the additional language provided above.

RULE PTO 2.11 CERTIFICATION

RULE: b. An Employer shall not require certification before receiving notification that a Covered Employee will be using Paid Sick Leave for a third consecutive workday. However, in no event shall a Covered Employee be allowed to not submit required certification as soon as reasonably practicable.

COMMENT: The Chapter clearly outlines the need for certification to only be required of paid sick leave benefits after a third consecutive workday absence. We do not dispute this provision. However, we recommend that the Department make clear that a Covered Employee that is legally required to provide certification do so as soon as practicable.

RULE PTO 3.01 FILING A COMPLAINT

RULE: ii. Information on the complaint form ~~should~~ must adequately state the basis of the complaint.

COMMENT: We recommend that a mandatory requirement be clearly outlined in Rule PTO 3.01 on any and all complaints to be properly filed and contain all relevant information necessary for the Department to properly consider the complaint and make sure that potentially frivolous complaints are not considered, which may negatively impact the time and effort the Office of Labor Standards, and the staff, may have to consider viable complaints.