The New District of Columbia Paid Sick Leave Law

... and how it affects your company

March 27, 2008

Introduction

A new District of Columbia law requires paid leave for employees who are absent for medical and certain other reasons. This Advisory provides answers to questions you may have about the new Law, which is formally known as the Accrued Sick and Safe Leave Act of 2008. While the “paid leave” concept of the law is simple, the law itself is rather detailed, and not every provision is summarized. Mayor Fenty signed the legislation on March 19, and the Law will take effect this fall — six months after official publication.

Summary of the Law

Employers covered by the law must have or establish a system to account for and accrue a set number of hours of leave that employees may take on a paid basis. Only leave taken for qualifying purposes will require the employer to treat the absence as a paid leave. The Law also prohibits an employer from interfering with an employee’s exercise of his paid leave rights and prohibits retaliation against an employee who uses leave under the Law or who takes steps to help enforce the Law. Employers must post a Notice about the Law once the Mayor’s office prepares it.

Q&A

Does the Law apply to my company? The new law applies to all employers. This includes employers that are not headquartered in the District, if they have employees in the District.

Does the Law cover all employees? The Law uses the same definition of “employee” as the District’s Family and Medical Leave Act (DCFMLA). Employees qualify for paid leave under the law only if they have worked for you for at least one year and worked at least 1,000 hours in the 12-month period preceding the leave. However, the Law does not require employers to provide paid leave to the following groups:

• Certain health care workers
• Certain college students
• Restaurant workers who receive wages and tips

Non-employees (unpaid volunteers, independent contractors) are not entitled to the benefits.

Are part-time employees covered? Yes, if they are otherwise eligible as described above. However, a special rule applies to students working for their school. Specifically, the law does not afford paid leave benefits to a full-time college student who works for his school, so long as he works less than 25 hours per week.
**Are unionized employees covered?** Yes, but some paid leave may be negotiated away. Leave in excess of three paid days may be “waived by a bona fide collective bargaining agreement.”

**Are Maryland and Virginia Telecommuters Covered?** The bill does not mention telecommuters and makes no exception for them. If they are employed by a District employer, they are covered by the Law even if they rarely work in the District.

**Does the law apply if we already offer paid leave?** Yes. Depending on how generous your current policy is, you may or may not need to make significant changes to your policies. Consider these factors:

- How many days of paid leave do you provide?
- Does your paid leave policy apply to all employees?
- Does your policy permit an employee to carry over unused accrued paid leave?
- When does an employee begin to accrue paid leave and when can he use it?
- At what rate does an employee accrue paid leave benefits?
- For what purposes may an employee take leave on a paid basis?

An employer does not need to change an existing paid leave policy if it permits employees to accrue paid leave on terms at least as favorable as those stated in the Law and to use paid leave for the same purposes and to the same extent as the law allows.

**What benefits does the Law provide to employees?** The Law guarantees (a) accrual of paid leave at a certain rate, and (b) the use of accrued paid leave by eligible employees. As a nod to small businesses, the accrual rate and the maximum required paid leave depend on how many employees the organization has. The following table summarizes the accrual and paid leave requirements.

<table>
<thead>
<tr>
<th>Number of employees</th>
<th>Rate of accrual</th>
<th>Maximum required leave</th>
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</thead>
<tbody>
<tr>
<td>100 or more</td>
<td>One hour per every 37 hours worked</td>
<td>7 days per calendar year</td>
</tr>
<tr>
<td>25-99</td>
<td>One hour per every 43 hours worked</td>
<td>5 days per calendar year</td>
</tr>
<tr>
<td>Under 25</td>
<td>One hour per every 87 hours worked</td>
<td>3 days per calendar year</td>
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</tbody>
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To count employees, employers must determine the average number of full-time equivalent employees during the prior calendar year. Accordingly, when implementing the Law later this year, employers should rely on 2007 data.

**Are there any accrual rules to be followed?** Yes. Follow these requirements:

- Accrual begins on an employee’s first day of employment; the law is somewhat confusing on this point, because a worker is not technically an “employee” until he meets the one-year/1,000 hour requirements mentioned above; the new Law states that an individual accrues paid leave “at the beginning of his or her employment”
- An employer must calculate paid leave accrual in accordance with the employer’s established pay period
- Unused accrued paid leave at the end of a 12-month period is to be carried over annually
- Unused accrued paid leave does not need to be paid out at the conclusion of employment
- Employees who are “exempt” under the FLSA do not accrue leave for hours worked beyond 40 hours in a workweek.

(Special rules apply to employees of beauty, hair and nail salon employees who receive commissions.)
**What types of medical leave qualify for paid leave?** An employee may use paid leave:

- For his own physical or mental medical needs (specifically, the Law covers an “absence resulting from a physical or mental illness, injury, or medical condition” — note that this is not the same as a “serious health condition” under the DCFMLA or FMLA)
- For medical appointments (specifically, the Law covers an “absence resulting from obtaining professional medical diagnosis or care, or preventative medical care”)
- To attend to a family member’s medical needs or care

**Are any leave requests not relating to medical issues covered?** Yes. Note that the title of the Law refers not only to sick leave but also to “safe leave.” An employee may also use paid leave if he (or a family member) is a victim of stalking, domestic violence, or sexual abuse, but only if the absence is directly related to social or legal services relating to those types of occurrences. This leave is not in addition to paid sick leave; rather, an employee can use the paid leave he accrues for either sick or safe leave.

**Do the paid leave requirements affect FMLA requirements?** No. As a local law the new Law cannot trump or modify federal FMLA requirements. The District has its own leave laws, which do not require paid leave, including the DCFMLA and the Parental Leave Act. The new Law does not diminish those rights.

**How much paid leave time may an employee use in one year?** While accrued leave rolls over on an annual basis, employees are not allowed to use in one year more than the maximum hours as allowed in the table above — unless the employer voluntarily allows them to. The practical effect of this arrangement is that employees who carry over paid leave benefits will be able to use them early in the year; they will not have to wait to accrue paid leave.

**Who are “family members” under the Law?** These relatives are considered family members:

![Family Members Diagram]

Similar to the DCFMLA, the Law also counts as family members a child who lives with the employee where the employee acts as the parent and anyone who has shared a home with the employee for at least 12 months if they have a “committed relationship.”
Can a Paid Time Off (PTO) policy be used to provide paid sick leave? Yes. If you offer PTO that the employee may use for any reason your policy likely satisfies the new requirements as long as employees accrue PTO at the same (or better) rate. On the other hand, if your company’s current policy offers paid leave only in limited circumstances—say, only for absences related to the employee’s own illness—you will need to broaden your policy.

May an employee “stack” paid sick and safe leave benefits onto existing paid leave benefits that we offer? An employer must provide the minimum paid leave required by the law for the types of leaves covered by the law. However, the Law does not require that the paid leave time be in addition to leave for other reasons. It simply sets a minimum policy for providing paid leave. As noted above, employees still retain all the benefits of the FMLA and DCFMLA.

Does the Law affect employee benefits plans? No. The Law states that it does not diminish an employer’s obligation to comply with any employment benefit program or plan.

Do employees have any obligations? Unless the need for leave is unforeseeable, employees must submit paid leave requests in writing. Employees also are required to make reasonable efforts to schedule paid leave—for a doctor’s appointment, for example—to minimize disruption of the employer’s operations. If qualifying leave is foreseeable, employees are required to provide notice ten days in advance or as early as possible. Employers may require employees to provide “certification” of the need for a paid leave of three or more days, which the employee may submit upon his return from leave. Certification may be from a health care provider for sick leave; for “safe leave,” certification may be in the form of a police report, court order or similar documents. If the employer suspects that an employee is abusing leave, it may request more frequent certifications. Note that employers must maintain the confidentiality of certification information provided by an employee.

What are the consequences of a violation of the Law? Modest civil monetary penalties may be imposed for willful violations of the Law.

This summary is provided as an information tool. It is not intended to be and should not be considered to be legal advice, and receipt of this information does not establish an attorney-client relation. For legal advice, please contact a knowledgeable attorney.

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