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Paid Sick & Family Leave Passes D.C. City Council

For over a year, the D.C. City Council has considered a bill that would have provided employees in the nation's capital paid family and sick leave. Now, after extended debate and comment from the public and business community, on December 20, 2016, the D.C. City Council passed the bill, known as the Universal Paid Leave Amendment Act of 2016 ("the Act"), with some modifications.

The new law gives eight (8) weeks of paid leave to new parents, and six (6) weeks for those taking care of sick family members. Although the bill offers the most generous paid leave in the U.S. for new parents and employees who are taking care of sick family members, the law only offers two (2) weeks of paid leave for personal injuries or illnesses, which is less than other city and state programs around the country. The program will be administered by a social insurance program controlled by the city and funded by a .62 percent increase to employer payroll taxes.

Mayor Muriel Bowser, a staunch opponent of the legislation, has [vowed](#) that she will not add her name to the legislation. However, the bill passed by a 9-4 margin – the minimum number of required votes to override a veto by Mayor Bowser. The bill may therefore likely go into law without her signature.

Employers should pay careful attention to this bill and consider changing employer provided paid leave policies, especially since the Mayor will begin collecting the .62 percent payroll tax from all covered employers **on or before July 1, 2019**. Payment of paid leave benefits to eligible employees will commence **on July 1, 2020**.

The following highlights what D.C. employers need to know about this groundbreaking law and how it will affect them.

1. Who does the law apply to?

The Act requires all covered employers to contribute to the Universal Paid Leave Implementation Fund ("the Fund"). A covered employer is defined as any "individual, partnership, general contractor, subcontractor, association, corporation, business trust, or any group of persons who directly or indirectly or through an agent or any other person, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of an employee and is required to pay unemployment insurance on behalf of its employees by section 3 of the District of Columbia Unemployment Compensation Act"

and a “self-employed individual who has opted into the paid leave program established pursuant to [the] Act.” The law permits a “covered employee” to collect paid leave under the Act. A covered employee is defined as “any employee who spends more than 50% of his or her work time in the District of Columbia for a covered employer.” Therefore, there is no “small business exception” and employers that employ any individuals in the District of Columbia are subject to the Act’s requirements.

To be eligible to receive paid leave under the Act, an “eligible individual” must be a covered employee during some or all the 52 calendar weeks immediately preceding the qualifying event for which paid leave is being taken, or a self-employed individual who earned self-employment income for work performed more than 50% of the time in the District of Columbia during some of all of the 52 calendar weeks immediately preceding the qualifying event for which paid leave is being taken and has opted into the paid leave program established pursuant to the Act.

Thus, an employee is eligible for paid leave as soon as he or she is hired, regardless of the number of hours worked for the employer, subject to a one week waiting period.

2. How long can employees receive paid leave benefits?

Upon the occurrence of a qualifying family leave event (the diagnosis or occurrence of a serious health condition of a family member of an eligible individual), qualifying medical leave event (the diagnosis or occurrence of a serious health condition of an eligible individual), or qualifying parental leave event (the birth of a child; the placement of a child with an eligible individual for adoption or foster care; or the placement of a child with an eligible individual for whom the individual legally assumes and discharges parental responsibility), and after a one week waiting period during which no benefits are payable, an eligible individual is entitled to receive payment of his or her paid leave benefits.

An eligible individual can submit a claim for payment of his or her paid leave benefits for a period during which he or she does not perform his or her regularly and customary work following the occurrence of a qualifying event, as provided below:

- a. *Family Leave*: eligible individuals may receive up to a maximum of 6 workweeks within a 52-workweek period that an eligible individual may take following the occurrence of a qualifying family leave event.
- b. *Medical Leave*: eligible individuals may receive up to a maximum of 2 workweeks within a 52-workweek period that an eligible individual may take following the occurrence of a qualifying medical leave event.
- c. *Parental Leave*: eligible individuals may receive up to a maximum of 8 workweeks within a 52-workweek period that an eligible individual may take following the occurrence of a qualifying parental leave event.

- d. *Intermittent Leave*: eligible individuals may receive payment for his or her paid leave benefits for intermittent leave, provided the total amount of intermittent leave shall not exceed 6 workweeks in a 52-workweek period for a qualifying family leave event, 2 workweeks in a 52-workweek period for a qualifying medical leave event, or 8 workweeks in a 52-workweek period for a qualifying parental leave event.

An eligible individual can receive benefits under any one or a combination of paid leave provided under the Act. However, eligible employees are only entitled to receive payment for a maximum of 8 workweeks in a 52-workweek period, regardless of the number of qualifying leave events that occurred during that period.

For example, if an employee receives parental leave following the birth of twins, the employee is only entitled to 8 weeks of paid leave, not 16. Also, if an employee receives 4 weeks of paid medical leave to care for a sick family member, and then takes parental leave a few months later, the employee is only entitled to an additional 4 weeks of paid leave within the 52-workweek period.

However, under the DC FMLA, employees would still be eligible for unpaid leave.

3. What benefits do employees receive during paid leave?

An eligible individual who earns an average weekly wage at a rate that, on an annualized basis, is equal to or less than 150 percent of the District's minimum wage, currently set at \$11.50, are entitled to payment of benefits at a rate that equals 90% of that eligible individual's average weekly wage rate (based on a 40-hour workweek). For those eligible individuals who earn an average weekly wage at rate that, on an annualized basis, is greater than 150% of the District's minimum wage are entitled to paid leave benefits at a rate that equals:

- a. 90 percent of the 150 percent of the District's minimum wage; plus
- b. 50 percent of the amount by which the eligible individual's average weekly rate exceeds 150% of the minimum wage.

However, prior to October 1, 2021, the maximum benefit amount that any eligible individual may receive is \$1,000 per week. On October 1, 2021, and October 1 of each successive year, the maximum weekly benefit will increase in proportion to the annual average increase in the Consumer Price Index for All Urban Consumers, Washington-Baltimore metropolitan area, as published by the Bureau of Labor Statistics.

4. What obligations do employers have under the law?

Covered employers are required to contribute 0.62 percent of the wages of each of its covered employees to the Universal Paid Leave Implementation Fund in a manner prescribed by the Mayor.

The Mayor has 180 days of the effective date of the Act to provide public notice to covered employers regarding the way contributions to the Fund shall be collected. The Mayor must begin collecting contributions to the Fund from covered employers and self-employed individuals who opted into the paid leave program by July 1, 2019.

An employer that fails to contribute the amount required under the Act is subject to the same notice requirements, procedures, interest, penalties, and remedies set forth in section 4 of the District of Columbia Unemployment Compensation Act.

Employers are required to provide covered employees a notice, as prescribed by the Mayor, at the time of hiring and annually thereafter, and at the time the covered employer is aware that the leave is needed, that explains:

- a. the employees' right to paid leave benefits under the Act and the terms under which such leave may be used;
- b. that retaliation by the covered employer against the covered employee for requesting, applying for, or using paid leave benefits is prohibited;
- c. that an employee who works for a covered employer with under 20 employees shall not be entitled to job protection if he or she decides to take paid leave pursuant to the Act; and
- d. that the covered employee has a right to file a complaint and the complaint procedures established by the Mayor for filing a complaint.

An employer that violates the notice requirement may be subject to a \$100 civil penalty for each covered employee to whom individual notice is not delivered and \$100 for each day that the covered employer fails to post notice in a conspicuous place.

5. How is the law administered?

Under the Act, the Mayor is responsible for establishing procedures and forms for filing claims for benefits and specify what supporting documentation is required to support a claim for benefits – none of which have been contemplated. Nonetheless, if an individual is deemed eligible to receive paid leave benefits, the Mayor shall make the first payment to the eligible individual within 10 business days of the determination or eligibility and subsequent payments are made biweekly thereafter.

Covered employers will receive notice that an employee has filed for paid leave benefits under the Act within 3 business days of the claim being filed. However, employees are still required to give their employer notice of their leave under the Act, to the extent practicable. If leave is foreseeable, the written notice shall be provided at least 10 days, or as early as possible, in advance of the paid leave. If leave is unforeseeable, a notification, either oral or written, shall be provided prior to the start of the work shift for which paid leave is being used. In the case of an emergency, the eligible individual, or another individual on behalf of the eligible individual, shall notify the employer, either orally or in writing, within 48 hours of the emergency occurring.

6. How does the law interact with DCFMLA and existing employer paid leave policies?

The DC Family Medical Leave Act (DCFMLA), which provides for 16 weeks of unpaid leave, remains unchanged under the Act. Therefore, employees are still eligible to take unpaid leave under DCFMLA. When paid leave taken pursuant to the Act also qualifies for leave under the DCFMLA, the paid leave taken under the Act will run concurrently with, not in addition to, leave taken under other acts such as DCFMLA. Nothing in the act provides job protection to any eligible individual beyond that to which an individual is entitled to under DCFMLA.

Eligible employers are not prohibited from providing individuals with leave benefits in addition to those provided under the Act but employers are still required to provide the paid leave benefits under the Act. The provision of supplemental or greater paid leave benefits does not exempt the covered employer from providing or prevent an eligible employee from receiving benefits under the Act.

Employers should consider modifying any existing paid leave policies. Because a covered employer is required to participate in the Fund, regardless of existing policies, employers may want to amend their paid leave policies to offer *additional or supplemental* paid leave benefits. However, the parameters of the additional or supplemental paid leave should be clearly laid out to prevent any confusion about employee's double dipping. Employers may provide additional benefits above the maximum amount received through the Fund or provide additional paid leave beyond the eight, six, or two weeks provided under the Act.

7. Is there an exemption or exception for small businesses?

No, there is not an exemption or exception for small businesses. Council members Mary Cheh and Jack Evans introduce an amendment to the bill that the council did not pass, which would fund paid leave through an individual-employer mandate, in which employers pay for parental leave when employees need it, instead of the current plan to raise taxes and provide the benefit through a public-insurance program. The amendment would have also given a tax credit – not an exemption – to small businesses to help them cover their employees' wages while they are gone. However, under the Act that was passed, employers of all sizes must contribute to the Fund.

In sum, there remain many questions as to how the Act and the Fund will be administered, all of which should be answered after the Act becomes effective and the Mayor's office issues forms and notices. We will continue to keep you apprised of any developments under the Act, and what employers should do to ensure compliance.

For additional information or inquiries please contact [Kara M. Maciel](mailto:Kara.M.Maciel).

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