

## DC Paid Sick Leave Law Effective November 13, 2008

2008-07-16

In March 2008, the Washington DC Council approved the "Accrued Sick and Safe Leave Act of 2008" (the Act), requiring all employers to provide each employee with paid sick and/or safe leave. The Act was approved by Congress on May 13, 2008, and goes into effect November 13, 2008.

The Act requires all employers to provide each employee with some amount of paid sick and/or safe leave depending on the employer's size:

- Employers with 100 or more employees must provide each employee at least 1 hour of paid leave for every 37 hours worked, not to exceed 7 days of leave per year.
- Employers with 25 to 99 employees must provide each employee at least 1 hour of paid leave for every 43 hours worked, not to exceed 5 days of leave per year.
- Employers with 24 or less employees must provide each employee at least 1 hour of paid leave for every 87 hours worked, not to exceed 3 days of leave per year.

Independent contractors, students, health care workers participating in premium pay programs, and restaurant wait staff and bartenders who work for a combination of wages and tips are not considered employees under the Act.

An employee begins accruing paid sick and/or safe leave from the start of employment and may use the leave after 90 days of employment. An employee may use such leave for the following situations: (1) physical or mental illness, injury, or medical condition of the employee; (2) to obtain a medical diagnosis or preventative care for the employee; (3) situations arising under (1) and/or (2) for a child, parent, spouse, domestic partner, or other family member of the employee; or (4) to obtain social or legal services pertaining to stalking, domestic violence, or sexual abuse of the employee or employee's family member.

The Act expands the definition of "family member" beyond that found under the Federal and DC Family and Medical Leave Acts. Under the Act, "family member" means: spouse or domestic partner; parents of spouse; children (including foster or grandchildren); spouses of children; parents; siblings; spouses of siblings; children living with the employee and for whom the employee permanently assumes and discharges parental responsibility; or a person who has shared with the employee for at least 12 months a mutual residence and committed relationship.

An employee must provide a written request for paid leave, indicating the reason for and the expected duration of the leave according to the following schedule:

- If the leave is foreseeable, employees must provide notice at least 10 days in advance, or as early as possible.
- If the leave is unforeseeable, employees must provide notice prior to the start of the shift for which paid leave is requested.
- If an emergency arises, the employee must notify the employer of his or her request before the start of the employee's next work shift or within 24 hours of the onset of the emergency, whichever is sooner.

An employer may require an employee to provide reasonable certification for 3 or more consecutive days of absence, such as a signed document from a physician verifying illness.

An employee's unused paid sick and/or safe leave for each year shall carry over annually. An employer, however, is not required to pay an employee for his or her unused paid sick and/or safe leave if the employee is terminated or resigns.

Employers that currently have paid time off or universal leave policies are not required to modify those policies if the employer offers paid leave to be used at the employee's discretion under terms and conditions that are at least equivalent to those set forth in the Act. Terms and conditions of an employer's policy are presumed equivalent if they allow employees to either access and accrue leave at the same or greater rate than that provided for in the Act or use paid leave in the same manner provided for in the Act.

Employers should look closely at their leave policies and confer with their employment counsel to determine if they comply with the Act, particularly to ensure that paid sick and/or safe leave is extended to all employees at the minimum levels outlined in the Act. Employers are also required to display a summary of the pertinent provisions of the Act once an approved notice has been issued by the DC mayor's office. Lastly, once rules are promulgated to implement the provisions of the Act, employers may need to make additional modifications to their leave policies.

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