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## District of Columbia Enacts the Universal Paid Leave Act

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In late 2016, after more than a year of debate, the District of Columbia Council voted to create one of the most generous paid leave laws in the country. After making it through the congressional review period, the Universal Paid Leave Act of 2015 (“the Act”) became effective on April 7, 2017. The Act provides covered employees with 8 weeks of paid parental leave, 6 weeks of paid family leave, and 2 weeks of paid personal medical leave. The paid leave will be funded by a 0.62% increase in DC employer payroll taxes.

For a thorough review of the Act’s provisions, please see [District of Columbia Passes Expansive Paid Leave Law](#). The following is a summary of the more important provisions of the Act.

### Leave Entitlements

The Act provides for three types of leave: parental leave, family leave and medical leave.

The Act requires employers to provide employees with up to 8 weeks of paid parental leave, which may be taken within one year following (1) birth of a child, (2) placement of a child for adoption or foster care, or (3) placement of a child where the eligible individual legally assumes and discharges parental responsibility. Employers must provide up to 6 weeks of paid family leave under the Act so the employee can provide “care or companionship” to a family member who has a diagnosis or occurrence of a serious health condition. Employers further must provide up to 2 weeks of paid medical leave for an eligible individual following his or her diagnosis or occurrence of a serious health condition.

In order to qualify for family or medical leave, the employee must demonstrate the existence of a “serious health condition,” which includes a physical or mental illness, injury, or impairment that requires inpatient care

in a hospital, hospice, or residential health care facility, or continuing treatment or supervision at home by a health care provider or other competent individual.

Employees may begin to access paid leave beginning in 2020. Eligible employees with a weekly wage at a rate that, on an annualized basis, is equal to or less than 150% of the DC minimum wage (which will be \$14.00 per hour in 2020) will be entitled to payment of leave benefits at a rate that equals 90% of that eligible individual's average weekly wage rate. Eligible employees earning in excess of 150% of the DC minimum wage will be entitled to (1) 90% of 150% of the DC minimum wage, plus (2) 50% of the amount by which the eligible individual's average weekly wage rate exceeds 150% of the DC minimum wage, with a maximum weekly benefit capped at \$1,000.

The \$1,000 weekly benefit cap will increase in proportion to the annual average increase, if any, in the Consumer Price Index beginning October 1, 2021.

### **Establishment of the Paid Leave Program**

There are already concerns regarding whether there will be sufficient funds in the DC budget to implement and administer the Act. This is because DC lacks an existing system or program to administer the Act, which means that the DC Council must create and implement an entirely new bureaucracy. The mayor will begin the task of establishing an agency to administer the paid leave program, and once the agency is established, the agency presumably will issue implementing regulations. It is estimated that the District of Columbia will require 113 full-time employees to administer this program.

As noted, the paid leave program will be funded through a 0.62% employer payroll tax of the annual wages of each covered employee. The collection of this tax is scheduled to begin on March 1, 2019. The monies collected will be put into a universal fund that will be administered by the District. It is estimated that over \$246 million will be collected each year and over 500,000 employees will be covered.

### **Interactions with Other Laws and Employer Policies**

If paid leave taken under the Act also qualifies as protected leave under the Family and Medical Leave Act ("FMLA") or the DC Family and Medical Leave Act ("DC FMLA"), the paid leave taken under the Act will run concurrently with, and not in addition to, such protected leave. The Act provides no additional job protections beyond those already existing in the DC FMLA.

A covered employer may provide eligible individuals with leave benefits in addition to those provided by the Act. However, the provision of such benefits, including a paid leave program, does not exempt the covered employer or the eligible individuals from the provisions of the Act, including payment of the tax.

If eligible individuals are receiving unemployment insurance or long-term disability payments, they are not eligible to receive benefits provided for in the Act. Additionally, if an individual concurrently earns self-employment income and is a covered employee employed by a covered employer, the individual will not be entitled to receive double payments.

The Act also prohibits any agreement by an individual to waive his or her rights under this Act.

### **Possible Amendments are Underway**

Various efforts are already underway in the DC Council to change the Act. Councilmembers Mary Cheh and Jack Evans introduced one possible modification on February 21, 2017: the Paid Leave Compensation Act of 2017 (B22-130). This modification would provide the same guarantees for time off but would lower the payroll tax from 0.62% to:

- 0.20% for large employers, defined as employers with 50 or more employees or whose annual payroll equals \$3.5 million or more; and
- 0.40% for small employers, defined as employers with between 5 and 49 employees and whose annual payroll equals less than \$3.5 million.

This proposed bill would require large employers to administer the benefits for their own employees, while the DC government would run the program for small employers.

The same day, councilmembers Jack Evans and Vincent Gray introduced another alternative: the Universal Paid Leave Compensation for Workers Amendment Act of 2017 (B22-133). This proposal would eliminate the government-run program, would require all employers to purchase private insurance to compensate employees during covered time off, and would lower the payroll tax to an amount not to exceed 0.10%. In addition, the payroll tax under this proposal would not apply to small businesses with fewer than 50 employees.

The proposed amendments are currently pending.

### **Recommendations for Employers**

While the Act represents a major change in the law concerning paid leave for District of Columbia employers, its substantive provisions do not take effect until March 1, 2019, providing employers time to prepare. The anticipated interpretive regulations should provide businesses with some clarification and guidance prior to the requirements' taking effect.

Employers should take advantage of this lead time to identify covered employees, prepare their payroll systems to include the additional payroll tax should it take effect, and to consult experienced DC employment counsel to review current paid time off, leaves of absence and family and medical leave policies to account for these new requirements.

Littler will continue to monitor the effects of the Act and the status of alternative proposals in the DC Council.