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JUNE 2008

Washington, D.C. becomes the second city to pass a law requiring employers to provide paid leave to employees. Effective November 13, 2008, most employers in D.C. will be required to provide at least three days paid leave for employees absent for their own illness, to care for family members who are ill and for absences when an employee or an employee's family member is a victim of stalking, domestic violence, or sexual abuse.

East Coast Edition

A Littler Mendelson East Coast-specific Newsletter

D.C. Passes the Accrued Sick and Safe Leave Act of 2008

By Nancy N. Delogu and S. Libby Henninger

Washington, D.C. has become the second city, after San Francisco, to pass a law that requires employers to provide paid sick leave to all employees. After significant amendment including input from the employer community, the Accrued Sick and Safe Leave Act of 2008 was passed by the D.C. Council in March. Following approval by Mayor Adrian Fenty and a 30-day review process by Congress, the Act was approved on May 13, 2008. Effective November 13, 2008, mandatory sick leave provisions will apply to even the smallest employers.

Sick and Safe Leave Provisions

The Act provides that employers must provide the following amount of accrued paid leave to its employees:

- An employer with 100 or more employees must provide one hour of paid leave for every 37 hours worked, not to exceed **7 days** a year;
- An employer with 25 to 99 employees must provide one hour of paid leave for every 43 hours worked, not to exceed **5 days** a year; and
- An employer with 24 or fewer employees must provide one hour of paid leave for every 87 hours worked, not to exceed **3 days** per year.

Employees do not include independent contractors, students, health care workers (who participate in a premium pay

program), or restaurant wait staff and bartenders (who work for a combination of wages and tips). Employers will be able to apply for a "hardship" exemption pursuant to regulations that have yet to be drafted.

Use of Leave

Covered leaves are essentially those that would also qualify for protection under the District of Columbia Family and Medical Leave Act (DCFMLA). For example, employees can use accrued leave for an absence from work for their own, or a family member's, illness, injury or medical condition. Leave can also be used for time needed if an employee or an employee's family member is a victim of stalking, domestic violence, or sexual abuse (hence, the "Safe" in the Act's title). *Family member* is broadly defined as a spouse, domestic partner, parents of a spouse, children (including foster children and grandchildren), spouses of children, parents, brothers and sisters, and the spouses of brothers and sisters.

Eligibility

To be eligible to earn paid sick leave, an employee must complete 90 days of service with his or her employer. Leave begins to accrue from the start of employment, however, and an employee can take advantage of accrued paid leave after the 90-day period has elapsed.

Carry-Over of Leave

An employee's unused paid leave accrued during a 12-month period must carry over annually. *However*, an employee can

only use, in a year, the maximum amount of hours that can be accrued (3, 5, or 7, depending on the number of employees), regardless of how many hours have been carried over. The Act also provides that if an employee is discharged after the completion of a 90-day probationary period and is rehired within 12 months, he or she becomes eligible to access any accrued but unused paid sick leave immediately upon rehire. This provision, in turn, suggests that accrued but unused sick leave need not be paid at termination.

Certification

An employer can require that an employee seeking compensation and who is out on leave for 3 consecutive days provide a medical certification, police report, court order, or signed victim or witness statement, supporting the reason for the leave.

Current Leave Policies

Per the statute, an employer who currently has a “paid-time off” program or “universal leave” policy that provides accrued paid leave that is at least as generous as the law’s minimum requirements, and that can be used for the same qualifying reasons detailed in the Act, need not modify its existing practice. Given the Act’s provision of leave to care for victims of domestic violence and crimes of like nature, however, it is likely that most employers will need to at least modify their current leave policies to enumerate the additional qualifying circumstances.

Collective Bargaining Agreements and Benefit Programs

If a collective bargaining agreement (CBA) is in effect on the effective date of the Act, the provisions of the Act will apply either at the date of the termination of the CBA, or the date that occurs 18 months after the effective date of the Act, whichever is sooner. Once effective, paid leave requirements cannot be waived by a CBA but may be reduced, by agreement, to no less than 3 paid leave days. Nothing in the Act reduces any agreement, contract or benefit program or plan that provides *greater* paid leave rights to employees.

What this Means for Employers

Employers that currently offer paid leave should review their policies to ensure that they clearly communicate each of the qualifying circumstances and meet at least minimum paid leave thresholds. Those employers that do not currently offer paid sick leave must implement those policies on or before the Act’s effective date (November 13, 2008).

The District of Columbia Mayor’s office is preparing a notice that summarizes the rights and complaint procedures provided by the Act. The notice will be provided to employers and they must post it in a conspicuous place as there is a monetary penalty associated with failing to do so.

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