

District of Columbia's Expanded Paid Sick and Safe Leave Law Takes Effect

The District of Columbia's Accrued Sick and Safe Leave Act requires employers to provide eligible employees with a minimum amount of paid leave to care for their own or a family member's illness or for reasons related to domestic violence or sexual abuse. Earlier this year, DC passed amendments to the law that expanded its coverage, availability, enforcement, and penalty provisions subject to future funding. Funded in DC's 2015 fiscal year budget, the amendments became fully effective on October 1, 2014. If employers have not already done so, they should review their current leave policies and take any steps needed to ensure compliance with the new requirements.

Background

The District of Columbia's [Accrued Sick and Safe Leave Act of 2008](#) requires employers to provide paid leave to eligible employees for their own or a family member's illness, or for reasons relating to domestic violence or sexual abuse. With certain exceptions, employees who satisfy a minimum service threshold are eligible for paid leave under the 2008 law. How much leave has to be provided and the rate at which it accrues is determined by the employer's size.



On January 2, 2014, DC Mayor Vincent Gray signed the [Earned Sick and Safe Leave Amendment Act of 2013](#) (Act), which made a number of significant changes to the 2008 law, including expanding coverage and eliminating the minimum service requirements for employee eligibility. (See our [March 21, 2014 For Your Information](#).) Because the DC budget for FY2014 (ending September 30, 2014) did not include funding to implement the amendments, the changes could not become fully effective or be enforced immediately. With funding provided in the DC FY2015 budget, the amendments became fully effective on October 1, 2014.

Major Changes

The Act amends and expands both the definition of "employee" and "employer." The net result of these changes is the extension of a paid sick leave benefit to a larger group of "employees" with a corresponding increase in the compliance burden imposed on DC employers.

Expanded Definition of Employer

The amended law defines “employer” to include any entity that directly or indirectly employs or exercises control over a workers’ wages, hours, or working conditions. Under this expanded definition, employers will not be able to avoid the paid leave requirement through the use of temp or staffing agencies.

Elimination of Service Threshold and Extension of Benefits

In addition to expanding the definition of employer, the amended law also redefines employee eligibility for paid leave by eliminating the 12-month and 1,000 hours of service threshold, and extends the leave entitlement to both temporary workers and to tipped employees who were not covered by the 2008 law.

Comment. This change is expected to impact employers with substantial turnover rates to a far greater degree than it will affect employers with a more stable workforce.

The amended law retains the prior eligibility exclusions for independent contractors, students, and health care workers who voluntarily participate in a premium pay program, and adds new exclusions for certain volunteers, officers of religious organizations, and babysitters. In addition, it excludes employees in the building and construction industry who are covered by a bona fide collective bargaining agreement that clearly and unambiguously waives the paid leave requirements.

Change in Accrual Schedule

With the elimination of the service threshold, employees will begin to accrue leave on their hire date and will be eligible to use accrued leave after 90 days of employment.

Accrual Rates. Current accrual rates remain unchanged with the exception of tipped restaurant and bar employees. Employers with:

- 100 or more employees must provide one hour of paid leave for every 37 hours an employee works, up to a maximum of seven days annually
- 25 to 99 employees must provide one hour of paid leave for every 43 hours an employee works, up to a maximum of five days annually
- 24 or fewer employees must provide one hour of paid leave for every 87 hours an employee works, up to a maximum of three days annually

Tipped Restaurant and Bar Employees. Regardless of the employer’s size, tipped restaurant and bar employees will accrue one hour of paid leave for every 43 hours worked, up to a maximum of five days annually. Employers will be required to pay tipped employees the regular DC minimum wage while on leave.

Reinstatement. Under the amended law, an employer will be required to reinstate any previously accrued but unused paid leave when an employee:

- Who was transferred out of DC returns to a position with any division, entity, or location of the same employer within DC
- Is rehired within one year of separation from employment

Recordkeeping

Employers will be required to maintain records of hours worked by employees and accrued leave taken for a period of three years, and allow the Office of the DC Auditor to access their records to monitor compliance. Failure to maintain or to allow access to these records will create a rebuttable presumption that the law was violated.

Expanded Enforcement Provisions and Penalties

The amended law expands existing enforcement provisions and provides enhanced penalties for noncompliance. Employees who believe they were unlawfully denied paid leave will have administrative remedies, or they may bring a civil lawsuit. Employers face penalties of \$500 per day in damages to any employee for each day of accrued leave improperly denied, and potential civil penalties of \$1,000 per day for a first offense, \$1,500 for a second offense, and \$2,000 for a third or subsequent offense. Additional remedies include back pay, reinstatement, injunctive relief, compensatory and punitive damages, as well as attorneys' fees and costs.

In Closing

The amended law expands the number of workers who are covered by the paid sick and safe leave requirements, and imposes new obligations on employers in DC. Employers should review their leave policies, employee leave tracking procedures, and recordkeeping practices to ensure that they have made any changes necessary to ensure compliance with the new requirements.

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