

District of Columbia Paid Family Leave Advances

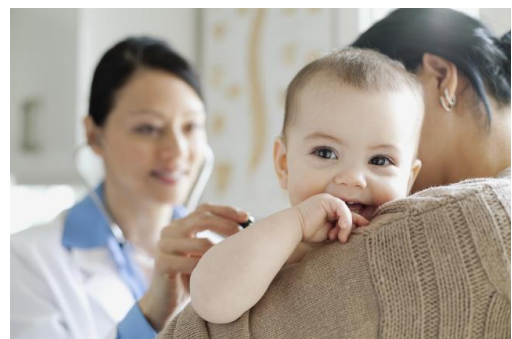
On December 20, the Council of the District of Columbia approved the Universal Paid Leave Amendment Act of 2016. The Act would allow individuals who work in the District to take up to eight weeks of parental leave, six weeks of family leave, and two weeks of medical leave, paid for by a 0.62% payroll tax on employers. On February 16, the mayor allowed it to advance without her signature. The Act must now be sent to Congress for mandatory review. Employers will want to monitor developments closely.

Background

California was the first state to implement a paid family leave plan in 2004, followed by New Jersey and Rhode Island. Each of the plans is administered through the state's disability insurance program. Although Washington passed a paid family leave law, it was never implemented due to a lack of funding. Last April, New York state adopted a plan funded entirely by employee contributions that offered more generous benefits than any other state. When fully implemented, it will provide up to 12 weeks of job-protected, paid leave to bond with a new child, or to care for a parent, child, spouse, domestic partner, or other family member with a serious health condition. (See our [April 26, 2016 For Your Information.](#))

Universal Paid Leave Amendment Act of 2016

On December 20, 2016, the Council of the District of Columbia (DC or District) approved one of the nation's most generous family leave laws – the [Universal Paid Leave Amendment Act of 2016](#) (Act). The Act guarantees private-sector employees up to eight weeks of paid leave in a 12-month period, starting July 1, 2020. On February 16, DC Mayor Muriel Bowser [returned](#) the bill to the council, allowing it to advance without her signature. The law now must be sent to Congress, which will have 30 legislative days to pass a disapproval measure or allow it to take effect.



Who's Covered

The Act generally covers private-sector employers – other than employers that DC is not authorized to tax under federal law or treaty – regardless of size, but exempts both the federal and local governments. Covered employers

include individuals, partnerships, general contractors, subcontractors, associations, corporations, business trusts, and other groups that directly or indirectly (including through a temporary services or staffing agency) employ or exercise control over the wages, hours, or working conditions of employees and are required by the District to pay unemployment insurance on their behalf.

Comment. Although the Act expands family leave eligibility to employees of businesses with fewer than 20 employees, the prescribed notice for employees explains that employees who work for those employers would not be entitled to job protection if they took paid leave pursuant to the Act. However, the Act's anti-retaliation provision is silent as to whether a small employer's failure to restore an employee to his or her prior position following leave would be unlawful.

The Act covers eligible individuals who work full-time, part-time or for tips in the District, regardless of where they live. Employees would be eligible for paid leave benefits if they worked for a covered employer during some or all of the 52 calendar weeks immediately preceding the qualifying family, medical or parental leave event and either:

- Spend more than 50% of their work time in the District for a covered employer; or
- Are based in DC and regularly spend a substantial amount of their work time in the District for a covered employer but not more than 50% of their work time in another jurisdiction

Self-employed individuals who opt into DC's paid leave

program would also be eligible for benefits, provided they earned income for work performed more than 50% of the time in the District during some or all of the 52 calendar weeks immediately preceding the qualifying leave event.

Comment. DC's Paid Sick and Safe Leave Act of 2008 currently requires both public and private employers in the District to provide covered employees with up to seven days paid leave per year, depending on the employer's size. The law does not extend to independent contractors.

Funding

Rather than requiring employers to provide paid family leave directly, DC's new program would be administered by the District but funded by a new business tax. Covered employers would be subject to a 0.62% payroll tax, with employer contributions to DC's "Universal Paid Leave Fund" to begin by July 1, 2019. Self-employed individuals who opt into the paid leave program would be notified about the collection of their contributions.

Federal and DC Family and Medical Leave Acts

The federal Family and Medical Leave Act (FMLA) requires employers with at least 50 employees within 75 miles to provide eligible employees with up to 12 weeks of unpaid, job-protected leave in a 12-month period for qualifying family or medical reasons. Employees must have worked for their employer for at least 1,250 hours in the 12-month period preceding leave to qualify.

DC has its own Family and Medical Leave Act (DCFMLA), which is more generous than the FMLA. The DCFMLA allows eligible employees to take up to 16 weeks of unpaid, job-protected family leave and 16 weeks of unpaid, job-protected medical leave during a 24-month period. Only employees who have worked for an employer with at least 20 employees for at least 1,000 hours without a break in service during the 12-month period preceding the leave request qualify.

FMLA and DCFMLA leaves run concurrently and cannot be used consecutively if the leave is covered under both laws.

Leave Entitlements

The Act provides paid leave benefits to eligible employees for qualifying family leave, medical leave or parental leave events. For these purposes, a qualifying family leave event means the diagnosis or occurrence of a serious health condition of an eligible individual's family member. In addition to the list of family members for whom leave can be taken under the DCFMLA, the Act also includes: a legal ward; a son or daughter of a domestic partner; and a person "who stood in loco parentis" to the eligible individual when he or she was a child.

The Act defines a qualifying medical leave event as the diagnosis or occurrence of a serious health condition of an eligible individual. A qualifying parental leave event means bonding and other events associated with: the birth of an eligible individual's child; placement of a child with an eligible individual for adoption or foster care; or placement of a child with an eligible individual for whom he or she legally assumes and discharges parental responsibility.

Benefits

The duration and amount of paid leave benefits available to an eligible individual varies depending on the nature of the qualifying event. Cumulatively, no more than eight weeks of paid leave in a 52-week period would be available under the Act regardless of the number of qualifying events that occur.

Maximum Paid Leave

Paid leave available under the Act would be provided for up to:

- 8 weeks of baby-bonding leave for new parents
- 6 weeks to care for a family member with a serious health condition
- 2 weeks for personal sick leave

Individuals would receive payment for intermittent leave, but the total amount of leave could not exceed the maximum amounts above. The Act defines "intermittent leave" as "paid leave taken in increments of no less than one day, rather than for one continuous period of time."

Maximum Weekly Benefit

Payment of paid leave benefits would begin by July 1, 2020. The program would pay a maximum weekly benefit of \$1,000, prior to October 1, 2021. Subject to that cap, eligible individuals would be eligible to receive 90 percent wage replacement for earnings of up to 1.5 times the DC minimum wage, and then 50 percent of earnings above that level. Medical, family and parental leave benefits for partial weeks of leave would be prorated. The maximum benefit amount would be indexed annually for inflation beginning on October 1, 2021.

Paid leave benefits would be subject to an initial one-week waiting period during which no benefits are payable. Regardless of the number of qualifying events an eligible individual claims, he or she would only have one waiting period within a 52-week period.

Comment. Eligible employees would be able to use paid sick time that they have accrued under DC's Paid Sick and Safe Leave Act to cover some or all of the waiting period.

Coordination of Benefits

If paid leave taken under the Act also qualifies as protected leave under the FMLA or DCFMLA, the leave would run concurrently with – not in addition to – leave taken under those acts. Further, nothing in the Act should be construed to entitle any eligible individual to greater job protections than under the DCFMLA. While a covered employer may provide additional leave benefits (including a paid leave program), that would not exempt the employer from the payroll tax or prevent an eligible individual from receiving benefits under the Act.

Although the Act makes clear that an otherwise eligible individual who is receiving unemployment compensation or long-term disability payments would not qualify to receive its paid leave benefits, it does not address the interaction with an employer's short-term disability or salary continuation program. It would, however, prevent double payments to an individual who concurrently earns self-employment income and is a covered employee of a covered employer. If the self-employed individual has opted into the paid leave program, his or her benefit amount would be based on the combined wages from covered employment and self-employment.

The Act would not supersede any provision of law, collective bargaining agreement, or other contract that provides additional paid-leave rights, or prevent a covered employer from adopting or retaining a paid leave policy that supplements or otherwise provides greater benefits than the Act. An individual's right to benefits under the Act could not be diminished by a collective bargaining agreement or other contract entered into or renewed after December 31, 2017, or by an employer policy. Any agreement to waive an individual's rights under the Act would be void.

Non-Retaliation

Like the DCFMLA and the federal law, the Act includes various provisions intended to protect employees from retaliation for exercising or seeking to exercise their paid leave rights. Notably, it expressly prohibits employers from retaliating by reporting – or threatening to report – employees', former employees' or their family members' "actual or suspected citizenship or immigration status" to federal, state or local agencies.

Enforcement and Penalties

The DC attorney general or the mayor would be able to bring an enforcement action within one year of an alleged violation or its discovery. The Act would also provide a new private right of action, allowing aggrieved employees to bring a civil action in any court of competent jurisdiction without exhausting any preliminary administrative process.

Employers that fail to comply with the Act's employee notice and notice-posting requirements would also be subject to civil penalties of up to \$100 for failure to provide an individual employee notice and \$100 per day for failure to post the required notice in a conspicuous location.

In Closing

If Congress approves, private-sector employees working in DC will be entitled to paid family and medical leave benefits starting in 2020, funded by a new payroll tax on employers. In that event, employers will need to review and make any needed adjustments to their existing leave policies and practices to ensure compliance.

Authors

Nancy Vary, JD

Abe Dubin, JD

Produced by the Knowledge Resource Center

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email fyi@conduent.com.

You are welcome to distribute *FYI*® publications in their entirety. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.