

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

2001 Edition

2008 Summer
Supp.

West Group
Publisher

To require employers in the District of Columbia to provide paid leave to employees for illness and for absences associated with domestic violence or sexual abuse.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Accrued Sick and Safe Leave Act of 2008”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Domestic violence” means an intrafamily offense as defined in D.C. Official Code § 16-1001(5).

(2)(A) “Employee” shall have the same meaning as provided in section 2(1) of the District of Columbia Family and Medical Leave Act of 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-501(1)).

(B) The term “employee” shall not include:

- (i) An independent contractor;
- (ii) A student;
- (iii) Health care workers who choose to participate in a premium pay program; or
- (iv) Restaurant wait staff and bartenders who work for a combination of wages and tips.

(3)(A) “Employer” means a legal entity (including a for-profit or nonprofit firm, partnership, proprietorship, sole proprietorship, limited liability company, association, or corporation), or any receiver or trustee of an entity (including the legal representative of a deceased individual or receiver or trustee of an individual), who employs an employee.

(B) The term “employer” shall include the District government.

(4) “Family member” means:

(A)(i) A spouse, including the person identified by an employee as his or her domestic partner, as defined in section 2(3) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(3));

- (ii) The parents of a spouse;
- (iii) Children (including foster children and grandchildren);
- (iv) The spouses of children;
- (v) Parents;
- (vi) Brothers and sisters; and
- (vii) The spouses of brothers and sisters.

(B) A child who lives with an employee and for whom the employee permanently assumes and discharges parental responsibility; or

(C) A person with whom the employee shares or has shared, for not less than the preceding 12 months, a mutual residence and with whom the employee maintains a committed relationship, as defined in section 2(1) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(1)).

(5) "Paid leave" means accrued increments of compensated leave provided by an employer for use by an employee during an absence from employment for any of the reasons specified in section 3(b).

(6) "Premium pay program" means a plan offered by an employer pursuant to which an employee may elect to receive extra pay in lieu of benefits.

(7) "Sexual abuse" means any offense described in the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3001 *et seq.*).

(8) "Student" means an employee who:

(A)(i) Is a full-time student, as defined by an accredited institution of higher education;

(ii) Is employed by the institution at which the student is enrolled;

(iii) Is employed for less than 25 hours per week; and

(iv) Does not replace an employee subject to this act; or

(B) Is employed as part of the Year Round Program for Youth, as established by the Department of Employment Services.

Sec. 3. Provision of paid leave.

(a)(1) An employer with 100 or more employees shall provide for each employee not less than one hour of paid leave for every 37 hours worked, not to exceed 7 days per calendar year.

(2) An employer with at least 25, but not more than 99, employees shall provide for each employee not less than one hour of paid leave for every 43 hours worked, not to exceed 5 days per calendar year.

(3) An employer with 24 or fewer employees shall provide not less than one hour of paid leave for every 87 hours worked, not to exceed 3 days per calendar year.

(4) For the purposes of paragraphs (1) through (3) of this subsection, the number of employees of an employer shall be determined by the average monthly number of

full-time equivalent employees for the prior calendar year. The average monthly number shall be calculated by adding the total monthly full-time equivalent employees for each month and dividing by 12.

(5) In the case of employees who are exempt from overtime payment under section 213(a)(1) of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 *et seq.*), employees shall not accrue leave for hours worked beyond a 40-hour work week.

(b) Paid leave accrued under this section may be used by an employee for any of the following:

(1) An absence resulting from a physical or mental illness, injury, or medical condition of the employee;

(2) An absence resulting from obtaining professional medical diagnosis or care, or preventive medical care, for the employee, subject to the requirement of subsection (d) of this section;

(3) An absence for the purpose of caring for a child, a parent, a spouse, domestic partner, or any other family member who has any of the conditions or needs for diagnosis or care described in paragraph (1) or (2) of this subsection; or

(4) An absence if the employee or the employee's family member is a victim of stalking, domestic violence, or sexual abuse; provided, that the absence is directly related to social or legal services pertaining to the stalking, domestic violence, or sexual abuse, to:

(A) Seek medical attention for the employee or the employee's family member to recover from physical or psychological injury or disability caused by domestic violence or sexual abuse;

(B) Obtain services from a victim services organization;

(C) Obtain psychological or other counseling;

(D) Temporarily or permanently relocate;

(E) Take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence or sexual abuse; or

(F) Take other actions to enhance the physical, psychological, or economic health or safety of the employee or the employee's family member or to enhance the safety of those who associate or work with the employee.

(c)(1) Paid leave under this section shall accrue in accordance with the employer's established pay period. An individual shall accrue paid leave at the beginning of his or her employment. An employee may begin to access paid leave after 90 days of service with his or her employer.

(2) An employee's unused paid leave accrued during a 12-month period shall carry over annually. An employee shall not use in one year more than the maximum hours as allowed in subsection (a)(1), (2), and (3) of this section, unless the employer chooses otherwise. Unused paid leave accrued under this act shall not be reimbursed upon the termination or

resignation of any employee.

(3) An employee who is discharged after the completion of a 90-day probationary period and is rehired within 12 months may access paid leave immediately.

(4) Upon mutual consent by the employee and the employer, an employee who chooses to work additional hours or shifts during the same or next pay period in lieu of hours or shifts missed, shall not use paid leave; provided, that the employer does not require the employee to work such additional hours or shifts.

(d) An employee shall make a reasonable effort to schedule paid leave under subsection (b) of this section in a manner that does not unduly disrupt the operations of the employer.

(e) If an employee does not suffer a loss of income when absent from work, for the number of days up to the days of paid leave provided for in subsection (a)(1), (2), and (3) of this section, an employer shall not be required to provide paid leave for such employee in accordance with this act. Notwithstanding the foregoing sentence, the provisions of section 9 shall apply to employees who do not suffer a loss of income when absent from work.

(f) If employees of beauty, hair, and nail salons are paid by commission (whether commission only or base wage plus commission), the sick leave rate of pay shall be calculated as follows: divide the employee's total earnings in base wages and commissions for the prior calendar year by the total hours worked as a commissioned employee during the prior calendar year. If employees do not have a prior calendar year's work history, divide the employee's total earnings in base wages and commissions since the employee's date of hire by the total hours worked as a commissioned employee since that date.

Sec. 4. Notification.

Paid leave shall be provided upon the written request of an employee upon notice as provided in this section. The request shall include a reason for the absence involved and the expected duration of the paid leave. If the paid leave is foreseeable, the request shall be provided at least 10 days, or as early as possible, in advance of the paid leave. If the paid leave is unforeseeable, an oral request for paid leave shall be provided prior to the start of the work shift for which the paid leave is requested. In the case of an emergency, the employer shall be notified prior to the start of the next work shift or within 24 hours of the onset of the emergency, whichever occurs sooner.

Sec. 5. Certification.

(a)(1) An employer may require that paid leave under section 3(b) for 3 or more consecutive days be supported by reasonable certification.

(2) Reasonable certification may include:

(A) A signed document from a health care provider, as defined in section 2(5) of the District of Columbia Family and Medical Leave Act of 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-501(5)), affirming the illness of the employee;

(B) A police report indicating that the employee was a victim of

stalking, domestic violence, or sexual abuse;

(C) A court order; or

(D) A signed statement from a victim and witness advocate, or domestic violence counselor, as defined in D.C. Official Code § 14-310(a)(2), affirming that the employee is involved in legal action related to stalking, domestic violence, or sexual abuse.

(3) If certification is required by an employer, the employee shall provide a copy of the certification to the employer upon the employee's return to work.

(b)(1) This act shall not require a health care professional to disclose information in violation of section 1177 of the Social Security Act, approved August 21, 1996 (110 Stat. 2029; 42 U.S.C. § 1320d-6), or the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (110 Stat. 2033; 42 U.S.C. § 1320d-2, note).

(2) All information provided to the employer under section 3 shall not be disclosed by the employer, except to the extent that the disclosure is:

(A) Requested or consented to by the employee;

(B) Ordered by a court or administrative agency; or

(C) Otherwise required by applicable federal or local law.

Sec. 6. Current paid leave policies.

(a) An employer with a paid leave policy providing paid leave options, such as a paid time-off program or universal leave policy, shall not be required to modify such policy if the policy offers an employee the option, at the employee's discretion, to accrue and use leave under terms and conditions that are at least equivalent to the paid leave prescribed in this act.

(b) The terms and conditions of an employer's policy shall be presumed equivalent if they allow an employee to:

(1) Access and accrue paid leave at least at the same rate as or greater than the hours of paid leave provided in section 3(a)(1), (2), and (3); or

(2) Use the paid leave for the same purposes as those set forth in section 3(b), including unscheduled leave.

Sec. 7. Effect on existing employment benefits.

(a) This act shall not diminish the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan that provides greater paid leave rights to employees than the rights established under this act.

(b) The paid leave requirements under this act shall not be waived for less than 3 paid leave days by the written terms of a bona fide collective bargaining agreement.

Sec. 8. Encouragement of more generous paid leave policies.

This act shall not prevent an employer from the adoption or retention of a paid leave policy more generous than the one required by this act.

Sec. 9. Prohibited acts.

(a) A person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided by this act.

(b) An employer shall not discharge or discriminate in any manner against an employee because the employee:

(1) Opposes any practice by an employer made unlawful by this act;

(2) Pursuant or related to this act:

(A) Files or attempts to file a charge;

(B) Institutes or attempts to institute a proceeding; or

(C) Facilitates the institution of a proceeding;

(3) Gives any information or testimony in connection with an inquiry or proceeding related to this act; or

(4) Uses paid leave provided under this act.

(c) Nothing in this act shall prohibit an employer from establishing and enforcing a lawful policy relating to improper use of paid leave or from seeking more frequent certifications from an employee if there is evidence of a pattern of abuse of paid leave.

Sec. 10. Posting requirement.

(a) The Mayor shall prescribe, and the Mayor shall provide to employers, in languages in accordance with the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931 *et seq.*), and an employer shall post and maintain in a conspicuous place, a notice that sets forth excerpts from or summaries of the pertinent provisions of this act and information that pertains to the filing of a complaint under this act. The notice shall be published in all languages spoken by 3% of or 500 individuals in the District of Columbia population, whichever is less.

(b)(1) An employer who willfully violates this section shall be assessed a civil penalty not to exceed \$100 for each day that the employer fails to post the notice; provided, that the total penalty shall not exceed \$500.

(2) No liability for failure to post notice will arise under this section if the Mayor has failed to provide to the business the notice required by this section.

(c) An employer shall post the notice in English and all languages spoken by employees with Limited or no-English Proficiency, as defined in section 2(5) of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931(5)).

(d) Employers shall be furnished copies or summaries of this act prepared by the Mayor on request.

Sec. 11. Administration.

This act shall be administered by the Department of Employment Services.

Sec. 12. Effect on other laws.

This act shall not:

- (1) Supersede any provision of law or contract that provides greater employee paid leave rights than the rights established under this act; or
- (2) Modify or affect any federal or District law prohibiting discrimination on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, or political affiliation.

Sec. 13. Penalties.

Except as provided in section 10(b), an employer who willfully violates the requirements of this act shall be subject to a civil penalty of \$500 for the 1st offense, \$750 for the 2nd offense, and \$1000 for the 3rd and each subsequent offense.

Sec. 14. Rules.

The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this act within 60 days after its effective date. If rules are promulgated, the Mayor shall submit the proposed rules to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within this 30-day review period, the proposed rules shall be deemed approved.

Sec. 15. Hardship exemption.

The Mayor shall exempt, by rule, businesses that can prove hardship as a result of this act. The Mayor shall submit the proposed hardship exemption rules to the Council for a 45-day period of review, excluding Saturdays, Sunday, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within the 45-day review period, the proposed rules shall be deemed disapproved.

Sec. 16. Report by the District of Columbia Auditor.

The District of Columbia Auditor shall prepare and submit to the Mayor and Council, annually, a report of this act's economic impact on the private sector. Among other things, the District of Columbia Auditor shall audit a sample of District businesses to determine:

- (1) The compliance level of businesses with the posting requirements; and
- (2) Whether companies are utilizing staffing patterns to circumvent the intention of this act.

Sec. 17. Applicability.

(a) This act shall apply 6 months after its effective date.

(b) In the case of a collective bargaining agreement in effect on the effective date set forth in subsection (a) of this section, this act shall apply on the earlier of the date of the termination of the agreement or the date that occurs 18 months after the date of the effective date of this act.

Sec. 18. Appropriations contingency.

This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

Sec. 19. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 20. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia