

## D.C. Council Considering 16-Week Employee Paid Leave Bill

October 12, 2015

The Council of the District of Columbia is considering legislation that would give all D.C. residents and those employed in the District up to 16 weeks of paid family and medical leave every 24 months for certain qualifying life events, including bonding with a new child, recuperating from a military deployment, and caring for an ill family member. If passed, the bill would offer D.C. residents and workers the most generous paid leave in the country.

The Universal Paid Leave Act of 2015, introduced on October 6, 2015, amends the D.C. Family Leave Act. It would require nonfederal employers to pay a new tax into a city-managed Family and Medical Leave Fund to cover the paid leave benefit. Contributions are based upon the salaries of the employer's workers, with the employer paying between 0.5% and 1% of each worker's salary into the Fund on an annual basis. D.C. residents who work outside the District or who work for the federal government also would contribute to the fund based upon their annual income. Self-employed residents may opt out of the Fund.

An eligible individual taking leave would file a claim with the Fund for wage replacement using an online web portal. To be eligible for benefits, the individual (1) must be a D.C. resident or (2) must have been employed by a covered employer for some or all of the year immediately preceding the qualifying event and spent at least 50% of his or her working time in the District. Unemployed individuals who meet the above criteria also are eligible for the benefits. Weekly benefits paid will be from \$1,000 to \$3,000, depending on the employee's average weekly wages. Individuals also can seek payment from the Fund for intermittent and reduced schedule leave. The D.C. Office of Administrative Hearings will oversee the determination of claims.

Should the bill pass, D.C., Virginia, and Maryland employers will need to carefully review and likely revamp their leave policies as the bill covers D.C. residents, not just employees working in the District. Virginia and Maryland employers who employ D.C. residents will need to consider whether to create two sets of leave policies: unpaid or partially paid leave for D.C. residents who have access to Fund payments and more generous paid leave policies for all other employees. Virginia and Maryland employers who have no presence in the District, but who employ D.C. residents, may consider whether to assert any legal challenges against the application of Universal Paid Leave Act. Employers offering short-term disability insurance are not exempt from coverage; meaning, employers will need to coordinate paid time off under the proposed bill with any applicable insurance requirements or other company leave programs.

Paid leave under the Universal Paid Leave Act of 2015 will run concurrently with absences under the federal Family and Medical Leave Act and D.C. FMLA; however, the bill is silent on the applicability of other leave laws, such as the D.C. Accrued Sick and Safe Leave Act of 2008 ("SSLA"). Under the SSLA, employers of any size with any employees in D.C. must provide three, five, or seven days of paid sick and safe leave each year to eligible employees who work in the District, depending on the number of employees working for the company. Should the Universal Paid Leave Act of 2015 pass, it is unclear how the two statutes will interact when leave is taken for an absence that qualifies for coverage under both statutes (i.e., whether employees have a choice to be paid for such time off through an employer's SSLA policy or apply to the Fund for payment).

Federal contractors in D.C., Maryland, and Virginia will have the added challenge of determining how to administer the Universal Paid Leave Act of 2015 requirements in light of President Obama's recent executive order requiring contractors to provide seven days of paid sick leave to employees each year. (For more, please see our article, [Workers of Federal Contractors to Get Paid Sick Leave under Obama Executive Order](#).)

Like most D.C. employment legislation, the bill requires all covered D.C. employers to post a notice of rights at its worksite and to provide a copy of the notice to employees upon hire, annually, and at the

time a leave is requested. Covered D.C. employers are subject to civil penalties for non-compliance.

The bill was sponsored by seven Council members (a majority of the Council). It has received enthusiastic support from the Obama administration and was developed based, in part, from a federal grant from the U.S. Department of Labor for studying paid leave proposals. The bill been assigned to a Council committee for a hearing.

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