

Paid Family Leave Law Approved by D.C. Council in Veto-Proof Vote

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The Washington, D.C., Council has approved a measure that requires employers to provide paid family leave to employees working in the District of Columbia. The veto-proof 9-to-4 vote moves the significant increase in mandatory paid time off closer to becoming law in the District of Columbia.

The “Universal Paid Leave Amendment Act of 2016,” passed by the Council on December 20, 2016, would establish a family and parental paid leave system for private sector employees (including residents of Maryland and Virginia who work in the District) spending more than 50% of their work time in Washington, D.C.

If unchanged before becoming law, the Act would provide three key benefits to a covered employee:

1. eight weeks of paid time off to new parents;
2. six weeks off to take care of a family member who has been diagnosed with a serious health condition; and
3. two weeks of personal sick time.

The Fund

D.C. employers will pay for the law, if enacted, by contributing into a “Universal Paid Leave Fund.”

The Fund would be an insurance fund, similar to unemployment insurance or social security. It does not require employers to pay the salaries of persons who are on leave directly. Instead, D.C. employers will pay into the Fund at a rate of 0.62% of salaries.

When an employee needs to take leave, the Fund will pay benefits to the employee directly at a rate of 90% of the employee’s first \$900 in weekly salary (90% of 150% of D.C.’s minimum wage) and 50% of the employee’s remaining weekly salary, capped at \$1,000 a week. This monetary benefit will certainly increase in step with D.C.’s already-enacted plan to increase the minimum wage from \$11.50 an hour to \$15.00 an hour by 2020 (and then in step with indexing).

Amendment Failed

The Act passed 9-to-4 after a last-minute amendment effort by two members of the Council, Jack Evans (D-Ward 2) and Mary M. Cheh (D-Ward 3), to substitute an alternative bill. The proposed alternative guaranteed the same amount of paid leave as the Act, but would become effective sooner and replace the payroll tax and additional bureaucracy with an employer mandate and a \$200-per-employee annual tax credit for businesses with 70 or fewer workers. However, the alternative bill failed to pass in a 5-to-8 vote.

Next Steps

The Act has moved to Mayor Muriel Bowser’s desk for signature or veto.

When the Council first voted to move forward with the Act on December 6, Mayor Bowser’s spokesperson explained that the Mayor was concerned about the large amount of monetary benefits that would go to commuters rather than to D.C. residents. Studies project that 64% of the Act’s monetary benefits will go to residents of Maryland and Virginia who work in the District.

After the Council voted to make the Act law, Mayor Bowser said in a statement, “I predict the Council will need to revisit this legislation and address the detrimental impacts on District residents and small businesses. I will not add my name to this legislation.”

Whether Mayor Bowser will attempt to veto the Act is unclear. In any event, the Council’s vote margin — if repeated — is enough to override a veto.

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After Mayor Bowser makes a decision on the Act, the next step is submission to the U.S. Congress for final approval. Congressional approval also is unclear.

If Congress approves the Act, the Act requires the District to provide public notice to covered employers within 180 days of the effective date of the law on the manner in which it will collect contributions to the Universal Paid Leave Fund. To account for the time needed to set up the Fund, collections from employers likely will not start until 2019 and benefits are not projected to be paid out until 2020.

D.C. employers should revisit their leave policies and compare their existing PTO benefits with what the Act (and other already-enacted D.C. laws) provides. If you have questions or concerns about this or other workplace developments, please contact Jackson Lewis.

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