

October Brings Changes to D.C. Universal Paid Leave Law and D.C. Family and Medical Leave Act

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The District of Columbia has enacted emergency legislation expanding the District's Universal Paid Leave Act (UPLA). The legislation takes effect on October 1, 2021, and lasts for no more than 90 days.

In addition, the D.C. Mayor signed legislation to make these changes permanent. That legislation is in its 30-day Congressional review period. The legislation also expands eligibility for leave under the District's Family and Medical Leave Act (D.C. FMLA).

Changes to UPLA

As amended, the UPLA will provide paid leave for prenatal medical care, at least through October 1, 2022.

"Prenatal medical care" is defined to include medical appointments, exams, and treatments associated with a pregnancy, including pre-natal checkups, ultrasounds, treatment for pregnancy complications, bedrest and pre-natal physical therapy.

The right to prenatal leave is separate from the right to parental leave. An eligible employee can take the maximum amount of both types of leave available. In a single year, however, an employee cannot take a combination of prenatal leave plus medical leave that exceeds the number of weeks of medical leave available for that fiscal year.

In addition, for the first time, the UPLA will expressly provide paid leave to recover from miscarriage or stillbirth. The D.C. City Council recognized that medical leave in the pre-October 2021 law implicitly included treatment associated with miscarriage or stillbirth, but these amendments clarify that a pregnancy ending in stillbirth or miscarriage is considered an eligible medical leave event.

The law also expands the number of weeks of paid leave available to eligible employees, at least for the fiscal year ending on October 1, 2022. Between October 1, 2021, and October 1, 2022, the maximum number of leave weeks are:

- 8 workweeks of parental leave;
- 6 workweeks of family leave;
- 6 workweeks of medical leave; and
- 2 workweeks of pre-natal leave.

This is the result of a surplus of \$420.5 million in the Universal Paid Leave Fund through fiscal year 2022. These maximum leave durations can be increased or decreased in future years, depending on the availability of funding for the leave, to a maximum of:

- 12 workweeks of parental leave;
- 12 workweeks of family leave;
- 12 workweeks of medical leave; and
- 2 workweeks of pre-natal leave.

If decreased, the number of workweeks of leave available will not be less than those available before October 1, 2021 (8 workweeks of parental leave; 6 workweeks of family leave; 2 workweeks of medical leave; and no pre-natal leave).

In addition, the law provides for retroactive benefits if the employee files their claim within 30 days of the qualifying leave event. This 30-day deadline may be waived due to exigent circumstances, which is defined to mean physical or mental incapacity, inability to reasonably access the means by which a claim could be filed, or an actual lack of knowledge by the employee due to their employer's failure to properly provide notice to the employee of their rights. Further, starting on October 1, 2021, and lasting until one year after the end of the COVID-19 public health emergency, the one-week waiting period for benefits does not

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Finally, pursuant to an emergency amendment to the UPLA that passed earlier this summer and was renewed in the new law, short-term or temporary disability insurers are not permitted to offset or reduce benefits or income to claimants based on the availability of UPLA payments. In other words, employees can collect short-term disability benefits as well as UPLA medical leave benefits, even though it may result in the employee receiving more than 100 percent of their pay. Employers who are self-insured, however, are permitted to reduce the benefits they provide to employees to account for UPLA payments.

Changes to D.C. FMLA

The new law also makes one change to the D.C. FMLA. Going forward, D.C. employees will be entitled to D.C. FMLA leave if they have worked 1,000 hours during their prior 12 months of employment with the employer, which may be non-consecutive months, as long as all periods of employment occurred within the past 7 years. For example, if an employee works for a company for six months and works 500 hours during that time, leaves the company for 3 years, then returns to the company, that employee would be eligible for D.C. FMLA leave after 6 months of employment and another 500 hours worked. Previously, the employee had to work 1,000 hours during the prior 12-month period to be eligible for D.C. FMLA leave. This change represents a departure from the federal Family and Medical Leave Act, which requires 1,250 hours during the prior 12-month period (rather than 1,250 hours during non-consecutive periods of employment with the company).

Action Items

Policies that may be affected by these legal changes include parental leave, family and medical leave, disability, and other policies. Employers should review and update these policies as appropriate with the assistance of counsel to ensure they conform to the current laws.

Please reach out to the authors or any Jackson Lewis attorneys with whom you work with any questions.

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