

D.C. Council Unanimously Adopts Paid Leave for D.C. Employees Getting COVID-19 Vaccines

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The D.C. Council has adopted legislation that “removes one of the biggest obstacles workers say prevents them from getting the COVID-19 vaccine” by ensuring paid time off for both vaccination and recovery from any side effects. D.C. Mayor Muriel Bowser is expected to sign the “[COVID Vaccination Leave Emergency Amendment Act of 2021](#)” into law.

The adopted legislation also expands some benefits of the District of Columbia Family and Medical Leave Act, while extending several protections enacted under prior [emergency legislation](#).

This measure is an effort to extend the Coronavirus Support Temporary Amendment Act of 2021 and amend the Accrued Sick and Safe Leave Act of 2008 (ASSLA) and the D.C. Family and Medical Leave Act of 1990 (DCFMLA).

As this measure is emergency legislation, it will remain in effect for no more than 90 days. Under the D.C. legislative process, once signed by the mayor, a 30-day congressional review period will follow, then the Act will become effective and will expire after 225 days. The additional time is to allow the Council to enact permanent legislation stemming from this emergency legislation.

Employers Covered Under the Act; Enforcement

Employers subject to the Act include private employers with any number of employees in D.C.

The mayor has the authority to enforce violations of the Act through investigation and administrative proceedings in response to an administrative complaint or through the mayor’s own initiative. If the violation is determined to be willful, the employer will be fined a penalty of \$500 for the first offense, \$750 for the second offense, and \$1,000 for the third and each subsequent offense.

Key Amendments to ASSLA

Similar to, but more generous than, requirements for paid leave in connection with vaccinations under the Occupational Safety and Health Administration COVID-19 vaccination and testing [Emergency Temporary Standard](#), the Act amends the ASSLA to require D.C. employers to provide up to four hours of paid leave (two hours per dose) for employees who are receiving the COVID-19 vaccination or are accompanying their children to receive the COVID-19 vaccination. Employers also must provide up to eight hours of paid leave per injection during the 24-hour period following the two-hour vaccination leave period for employees experiencing side effects or whose child is experiencing side effects and requires care. However, employers are not required to provide more than 48 hours of leave in total in a year starting on the effective date of the Act.

An employer must offer paid leave under the Act to any employee who commenced work for the employer at least 15 days before the request for leave. Paid leave is in addition to any other paid leave an employer provides an employee under an existing leave policy, including under an existing contract or collective bargaining agreement, *except* a paid leave policy that expressly provides for COVID-19 vaccination and recovery leave and does not reduce other available paid leave. Employers may require employees taking paid leave for vaccination to provide reasonable documentation, such as a vaccination record or other document attesting to the date and time of the vaccination, upon return to work.

The Act also prohibits certain employer actions. Employers may not require an employee seeking leave under the Act to:

- Provide more than 48 hours' notice of the need to use paid leave or, in the event of an emergency, require more than reasonable notice of the employee's need to use such leave; or
- Search for or identify another employee to perform the work hours or work of the employee using paid leave.

Key Amendments to DCFMLA

Beginning on November 5, 2021, the Act extends and updates existing unpaid leave available for COVID-19-related purposes under the DCFMLA.

The amended DCFMLA requires employers to provide unpaid leave if the employee is unable to work because the employee:

- Has tested positive for COVID-19 or is caring for a family member or individual with whom the employee shares a household who has tested positive for COVID-19 and must quarantine pursuant to Department of Health guidelines; or
- Must care for a family member or an individual with whom the employee shares a household, who is isolating or quarantining pursuant to the order or policy of the family member's or individual's school or childcare provider.

The Act also extends previous protections created by prior emergency legislation. As of November 5, 2021, employers must provide unpaid leave if the employee is unable to work because the employee:

- Has a recommendation from a healthcare provider (or, for the first time, a directive from an employer) that the employee isolate or quarantine due to COVID-19, including because the employee or an individual with whom the employee shares a household is at high risk for serious illness from COVID-19; or
- Must care for a child whose school or place of care is closed or whose childcare provider is unavailable to the employee due to COVID-19; or
- Must care for a family member or an individual with whom the employee shares a household, who is isolating or quarantining pursuant to Department of Health guidance or the recommendation of a healthcare provider.

An employer may require reasonable certification of the need for COVID-19 leave. Except for the paid leave that is already employer-provided, or that is shared through a leave bank, DCFMLA leave may consist of unpaid leave.

An employee cannot use more than 16 weeks of leave under the DCFMLA in the two-year period beginning on the Act's effective date. Similar to the prior emergency legislation,

employees may, but are not required to, elect to use paid leave under the COVID-19 leave section of the Act before other leaves the employee is entitled under employer policies and federal or D.C law.

If you have questions about your compliance obligations under applicable federal or state laws, or need assistance with updating your policies and practices to ensure compliance with paid leave amendments, please reach out to the Jackson Lewis attorney with whom you often work, or any member of our Workplace Safety and Health Practice Group, our Disability, Leave and Health Management Practice Group, or our [COVID-19 team](#).

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