

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, the Accrued Sick and Safe Leave Act of 2008 to provide paid time off for COVID vaccinations and recovery; the District of Columbia Family and Medical Leave Act of 1990 to extend and update existing unpaid leave available for COVID-related purposes; and the Coronavirus Support Temporary Amendment Act of 2021 to make conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “COVID Vaccination Leave Emergency Amendment Act of 2021”.

Sec. 2. The Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code § 32-531.01 *et seq.*), is amended as follows:

(a) Section 2(5) (D.C. Official Code § 32-531.01(5)) is amended to read as follows:

“(5) “Paid leave” means:

“(A) 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); and

“(B) Compensated leave required to be provided by an employer to an employee pursuant to section 3a or 3b.”.

(b) Section 3(c)(1) (D.C. Official Code § 32-531.02(c)(1)) is amended by striking the phrase “Paid leave under” and inserting the phrase “Except as provided in section 3a or 3b, paid leave under” in its place.

(c) A new section 3b is added to read as follows:

“Sec. 3b. Paid vaccination leave requirement.

“(a)(1) In addition to paid leave otherwise provided under this act, an employer shall provide paid leave to an employee pursuant to this section for an absence from work related to COVID-19 vaccination.

“(2) An employer shall provide paid leave to an employee in the following amounts, but shall not be required to provide more than 48 hours of leave in total in a year

beginning on the effective date of the COVID Vaccination Leave Emergency Amendment Act of 2021, passed on emergency basis on November 2, 2021 (Enrolled version of Bill 24-404):

“(A) For vaccination leave, up to 2 hours per injection; and

“(B) For vaccination recovery leave, up to 8 hours per injection during the 24-hour period following the 2-hour vaccination leave period.

“(3)(A) Subject to subparagraph (B) of this paragraph, an employer shall compensate an employee for leave provided pursuant to this section at the employee’s regular rate of pay. In the case of an employee who does not have a regular rate of pay, the employee’s rate of pay shall be determined by dividing the employee’s total gross earnings, including all tips, commission, piecework, or other earnings earned on an irregular basis for the most recent workweek that the employee worked for the employer, by the number of hours the employee worked during that workweek.

“(B) In no case shall an employee’s rate of pay fall below the minimum wage established by section 4(a) of the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Code Official Code § 32-1003(a)).

“(4) An employer shall provide paid leave under this section to any employee who commenced work for the employer at least 15 days before the request for leave.

“(b)(1) Notwithstanding any other provision of this act or An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat. 977; D.C. Official Code § 32-1301 *et seq.*), the Mayor may, but shall not be required, to enforce violations of this section through investigation and administrative proceedings *sua sponte* or in response to an administrative complaint filed pursuant to section 13.

“(2) Before taking any other administrative action on a complaint filed pursuant to section 13, the Mayor shall promptly provide the employer with written notice of the alleged violation, in a form or manner to be determined by the Mayor, and give the employer 5 business days to cure the alleged violation. The time to cure the violation shall run from the date the employer receives the notice.

“(c) Notwithstanding any other provision of this act:

“(1) The paid leave required to be provided under this section shall be 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; provided, that a paid leave policy that exclusively and expressly provides for COVID vaccination and recovery leave, and does not reduce other available paid leave, in amounts equivalent to or greater than the paid leave required under this section shall satisfy the requirements of this section; and

“(2) Parties to a collective bargaining agreement may not waive or reduce the amount of leave an employer is required to provide pursuant to this section.

“(d) For the purposes of this section, the term:

“(1) “Child” means a child under the age of 18 years who lives with an employee and for whom the employee permanently assumes and discharges parental responsibility, or a foster child under the age of 18 years.

“(2) “Employer” does not include:

“(A) The District government; or

“(B) A public charter school, as the term is defined in section 2002(29) of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321-226; D.C. Official Code § 38-1800.02(29)).

“(3) “Vaccination leave” means leave taken from employment by an employee to receive an injection, or for an employee’s child to receive an injection, of a COVID-19 vaccination approved by the federal Food and Drug Administration, including a booster injection approved for the employee or child by the Centers for Disease Control and Prevention.

“(4) “Vaccination recovery leave” means leave taken from employment by an employee to recover, or for an employee to care for a child recovering, from side effects from a COVID-19 vaccination approved by the federal Food and Drug Administration, including a booster injection approved for the employee or child by the Centers for Disease Control and Prevention, which precludes the employee from performing his or her work.”.

(c) Section 4 (D.C. Official Code § 32-531.03) is amended as follows:

(1) The existing text is designated as subsection (a).

(2) New subsections (b) and (c) are added to read as follows:

“(b) An employer may not require an employee who seeks to use paid leave pursuant to section 3a to:

“(1) For any reason, provide more than 48 hours' notice of the need to use such leave;

“(2) In the event of an emergency, provide more than reasonable notice of the employee’s need to use such leave; or

“(3) Search for or identify another employee to perform the work hours or work of the employee using paid leave.

“(c) An employer may not require an employee who seeks to use paid leave pursuant to section 3b to search for or identify another employee to perform the work hours or work of the employee using the paid leave.”.

(d) Section 5 (D.C. Official Code § 32-531.04) is amended as follows:

(1) A new subsection (a-2) is added to read as follows:

“(a-2) An employer may require that an employee who uses paid leave pursuant to section 3b to provide reasonable documentation upon return to work of the need for leave, which may include a vaccination record or other documentation attesting to the date and time of the vaccination injection.”.

(2) Subsection (b)(2) is amended by striking the phrase “under section 3” and inserting the phrase “under sections 3, 3a, or 3b” in its place.

Sec. 3. 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 *et seq.*), is amended by adding a new section 3a to read as follows:

“Sec. 3a. COVID-19 leave.

“(a) Beginning on November 5, 2021, an employee shall be entitled to leave if the employee is unable to work because the employee:

“(1) 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;

“(2) Has a recommendation from a health care provider or 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;

“(3) 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, the recommendation of a health care provider, or the order or policy of the family member’s or individual’s school or childcare provider; or

“(4) 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.

“(b) An employee may use no more than 16 weeks of leave pursuant to this section in the 2-year period beginning on the effective date of the COVID Vaccination Leave Emergency Amendment Act of 2021, passed on emergency basis on November 2, 2021 (Enrolled version of Bill 24-404).

“(c) An employer may require reasonable certification of the need for COVID-19 leave, including as follows:

“(1) If the leave is needed due to a positive COVID-19 test of the employee or employee’s family or household member, a copy of such test results with the date;

“(2) If the leave is necessitated by the recommendation of a health care provider to an employee’s family member or individual with whom the employee shares a household, a written, dated statement from a health care provider stating that the individual has such need and the probable duration of the condition;

“(3) If the leave is necessitated because of Department of Health guidance, a copy of such guidance and other supporting documentation that demonstrates the need for leave at the time it is taken or requested;

“(4) If the leave is needed because a child must quarantine due to school or childcare provider policy or orders, a copy of that policy or a dated statement from the head or administration of the school or childcare provider stating such need to quarantine or isolate or

providing information and a dated copy of a communication to or from the school or childcare provider indicating the child had to quarantine; or

“(5) If the leave is needed because a school, place of care, or childcare provider is unavailable due to COVID-19, a statement by the head of the agency, company, or childcare provider stating such closure or unavailability, which may include a printed statement obtained from the institution’s website.

“(d) An employer may require an employee to provide reasonable advance notice of leave taken under section; provided, that in the event of an emergency or an unforeseen need to use the leave an employer may not require an employee to provide advance notice of the employee’s need to use leave, but may require notice to be provided as soon as reasonably practicable after leave is taken, but in no event fewer than 24 hours after leave is taken.

“(e)(1) Except as provided in paragraphs (2) and (3) of this subsection, leave under this section may consist of unpaid leave.

“(2) Any paid leave provided by an employer that the employee elects to use for leave under this section shall count against the total workweeks of allowable leave provided in this act.

“(3) If an employer has a program that allows an employee to use the paid leave of another employee under certain conditions and the conditions have been met, the employee may use the paid leave and the leave shall count against the 16 workweeks of leave provided in this section.

“(4) An employee shall not be required, but may elect, to use leave provided under this section before other leave to which the employee is entitled under federal or District law or an employer’s policies, unless barred by District or federal law.

“(f) The provisions of section 6 shall apply to an employee who takes leave pursuant to this section.

“(g) An employer who willfully violates subsection (a), (b), (c), (d), or (e) of this section shall be assessed a civil penalty of \$1,000 for each offense.

“(h) The rights provided to an employee under this section may not be diminished by any collective bargaining agreement or any employment benefit program or plan; except, that this section shall not supersede any clause on family or medical leave in a collective bargaining agreement in force on the applicability date of this section for the time that the collective bargaining agreement is in effect.

“(i) For the purposes of this section, the term “COVID-19” means the disease caused by the novel coronavirus SARS-CoV-2.”.

Sec. 4. The Coronavirus Support Temporary Amendment Act of 2021, effective June 24, 2021 (D.C. Law 24-9; 68 DCR 6913), is amended as follows:

(a) Section 104(b) is repealed.

(b) Section 105(a) is amended as follows:

ENROLLED ORIGINAL

(1) Paragraph (1) is repealed.

(2) Paragraph (3) is repealed.

Sec. 5. Applicability.

Section 3 and section 4(a) shall apply as of November 5, 2021.

Sec. 6. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 7. 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), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia