

# COMPLIANCE BULLETIN

## District of Columbia Approves Paid Leave Law

### HIGHLIGHTS

- The new paid leave program will be funded by a 0.62 percent increase in payroll taxes for covered employers.
- Employees are limited to eight weeks of paid family and medical leave in any 52-week period.
- The paid leave program will be administered by the D.C. government.

### IMPORTANT DATES

#### March 1, 2019

Deadline for the D.C. government to begin collecting contributions from covered employers

#### March 15, 2020

Deadline for the D.C. government to begin paying leave benefits to eligible individuals

### OVERVIEW

The D.C. Council approved the [Universal Paid Leave Act](#) (Act) requiring virtually all employers to fund paid family and medical leave for employees through an increase in payroll taxes. D.C. Mayor Muriel Bowser returned the Act to the Council unsigned, which effectively allows the Act to become law following a 30-day congressional review period.

The Act provides eligible employees with up to:

- ✓ Eight weeks of parental leave to care for a newborn, adopted or foster child;
- ✓ Six weeks of family leave to care for family members with serious health conditions; and
- ✓ Two weeks of medical leave for an employee's own serious health condition.

### ACTION STEPS

Employers will need to determine how to coordinate the paid leave law's requirements with their existing leave programs. Existing attendance policies may also need to be revised to ensure that the Act's broad anti-retaliation provisions are not violated.

### Provided By:

Touchstone Consulting Group

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## Employer Coverage

The Act covers **all private D.C. employers** that are required to pay unemployment insurance on behalf of their employees. Self-employed individuals may opt into the paid leave program at their own discretion.

## Eligible Employees

To be eligible for paid leave benefits under the Act, an employee must have been a covered employee during some or all of the 52 calendar weeks immediately preceding the qualifying event that employee is taking paid leave for. A “covered employee” is an employee who spends **more than 50 percent of his or her work time** working in D.C for a covered employer. This will likely include residents of Maryland or Virginia that commute to D.C. to work.

*All private employers in D.C. that are required to pay unemployment insurance on behalf of their employees will be required to comply with the Act, and pay the increased payroll tax of 0.62 percent to fund the paid leave program.*

## Types of Leave

Under the Act, eligible employees are entitled to **three types** of paid leave—parental leave, family leave and medical leave. Each type of leave is permitted to be used in blocks of time or on an intermittent basis.

Under the Act, an employee may take up to:

- ✓ **Eight weeks of parental leave** within one year of the birth of the employee’s child, the placement of a child with the employee for adoption or foster care, or the placement of a child where the employee legally assumes and discharges parent responsibility;
- ✓ **Six weeks of family leave** to care for a family member with a serious health condition; and
- ✓ **Two weeks of medical leave** for the employee’s own serious health condition.

Eligible employees are **limited to up to eight weeks** of paid leave during any 52-week period, in any combination of the above types of leave.

## Paid Leave Benefits

Benefits under the paid leave program are expected to begin in 2020. The amount of weekly paid leave benefits an employee is eligible for will depend on the employee’s income.

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- ✓ An employee who earns a wage that is **equal to or less than 150 percent of the D.C. minimum wage** is entitled to receive paid leave benefits at a rate equal to 90 percent of the employee's average weekly wage rate.
- ✓ An employee who earns a wage that is **more than the 150 percent of the D.C. minimum wage** is entitled to receive paid leave benefits at a rate that equals (i) 90 percent of 150 percent of the D.C. minimum wage; plus (ii) 50 percent of the amount by which the employee's average weekly wage rate exceeds 150 percent of the D.C. minimum wage.

No eligible employee is entitled to receive more than the **maximum weekly benefit of \$1,000** under the paid leave program. This maximum weekly benefit amount may be adjusted for inflation beginning Oct. 1, 2021.

## Notice Requirements

Covered employers must post a notice in the workplace regarding the Act's rights and protections, as well as provide the notice to employees. D.C.'s mayor will provide covered employers with a **model notice** to satisfy this notice requirement. Employers will be required to provide the notice to each new employee upon hire, at the time an employer is aware that paid leave under the Act is needed and on an annual basis.

Failure to comply with the Act's notice requirements may result in a **civil penalty of up to \$100** for each covered employee who did not receive the required notice. In addition, an employer may be assessed a penalty of up to \$100 per day that the employer failed to post the notice in the workplace. These notice penalties will not be assessed until the mayor publishes the model notice.

## Enforcement

Employers are prohibited from retaliating against employees who request, apply for or use paid leave benefits. In addition, an employer may not retaliate against an employee who opposes unlawful practices as provided in the Act, files or attempts to file a charge, institutes or attempts to institute a proceeding, or provides information or testimony in connection with an inquiry or proceeding relating to the Act.

An eligible individual or the D.C. mayor may bring civil action against an employer in order to enforce the provisions of the Act. The right to bring civil action ends one year after the occurrence or discovery of the violation. The Act also provides the mayor with power to investigate and gather employer data regarding wages, hours, conditions and practices of employment that relate to the Act.

## Coordination with Other Types of Leave

If the [D.C. Family Medical Leave Act](#) or the federal Family and Medical Leave Act (FMLA) also applies to a paid leave, the paid leave under the Act will run concurrently with the job-protected leave. An employee who is receiving unemployment or long-term disability benefits is ineligible to receive paid leave benefits under the Act. The Act does not specifically address how it affects or interacts with D.C.'s current paid sick leave law.

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## Implementation Steps

To fund the paid leave program, covered employers will be required to make contributions of 0.62 percent of the wages paid to covered employees. These contributions will be pooled into a collective fund for the paid leave program. D.C.'s mayor is tasked with establishing an agency to administer the paid leave program. This agency will be responsible for making benefit eligibility determinations and notifying employers when benefit claims are filed with the agency. The mayor is also responsible for issuing implementing rules for the program. To provide adequate time to establish this program, the payroll tax is not required to begin until 2019 and benefit payments are not required to begin until 2020.