



## Legal Alert: District of Columbia Employers Must Provide Paid Sick Leave Beginning November 13, 2008

9/11/2008

Beginning November 13, 2008, employers in the District of Columbia will be required to provide paid sick leave benefits to employees. The Accrued Sick and Safe Leave Act of 2008 requires employers to provide paid sick leave for illnesses and medical appointments and “safe leave” for absences related to incidents of domestic violence or sexual abuse.

Paid leave accrues to employees based upon the size of the employer and the number of hours worked:

- employers with 100 or more employees, one hour of paid leave for every 37 hours worked, up to seven days per calendar year;
- employers with 25 to 99 employees, one hour of paid leave for every 43 hours worked, not to exceed five days per calendar year; and
- employers with 24 or fewer employees, one hour of paid leave for every 87 hours worked, not to exceed three days per calendar year.

The number of employees is determined by the average monthly number of full-time equivalent employees for the prior calendar year. The law does not address whether this number includes employees who do not work within the District of Columbia.

The law incorporates the definition of employee found in the District of Columbia Family and Medical Leave Act (those who have worked for the employer for at least one year without any break in service, other than regular holiday, sick, or personal leave, and have worked at least 1,000 hours in the twelve months immediately preceding the request for family and medical leave). However, the law does not apply to: independent contractors; full-time students employed by their higher education institution for less than 25 hours per week; health care workers who choose to participate in a premium pay program; or restaurant wait staff and bartenders who work for a combination of wages and tips.

Individual employers may request a hardship exemption from the law.

**Reasons for Which Paid Leave is Available:** Under the law, employees may use paid leave for the following purposes:

- absences resulting from a physical or mental illness, injury, or medical

condition of the employee;

- obtaining professional medical diagnosis or care, or preventive medical care for the employee; and
- caring for a child, parent, spouse, domestic partner, or other family member who has a physical or mental illness, injury, or medical condition or needs professional medical diagnosis or care.

Additionally, if the employee or employee's family member is a victim of stalking, domestic violence, or sexual abuse, the employee may use paid leave for absences directly related to obtaining social or legal services pertaining to the stalking, domestic violence, or sexual abuse to:

- seek medical attention for the employee or the employee's family member to recover from physical or psychological injury or disability caused by domestic violence or sexual abuse;
- obtain services from a victim services organization;
- obtain psychological or other counseling;
- temporarily or permanently relocate;
- take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence or sexual abuse; or
- take other actions to enhance the physical, psychological, or economic health or safety of the employee or the employee's family member or to enhance the safety of those who associate or work with the employee.

**Definition of Family Member:** The law defines family member as:

- the employee's spouse or domestic partner;
- the employee's parents;
- the spouse's parents;
- the employee's children (including foster children and grandchildren) and the children's spouses;
- the employee's brothers and sisters, and spouses of the brothers and sisters;
- a child who lives with an employee and for whom the employee permanently assumes and discharges parental responsibility; and
- a person with whom the employee shares or has shared a mutual residence for at least the preceding twelve months, and with whom the employee maintains a committed relationship.

**Accrual, Access and Carry-Over of Paid Leave:** Under the new law, paid leave will accrue in accordance with the employer's established pay period. The law states that employees are entitled to access paid leave after ninety

days of service with the employer. However, as noted above, the definition of employee is one who has worked for the employer at least one year and at least 1,000 hours in the twelve months immediately preceding the request for leave. Thus, it is not clear whether the waiting period is ninety days or one year.

Employees may carry over unused paid leave to the next year, but they may not use more than the maximum amount of paid leave that they could earn in that year unless the employer agrees. Employees are not entitled to payment of unused accrued leave upon termination or resignation; however, an employee who is discharged after the completion of a ninety-day probation period and rehired within twelve months may access paid leave immediately.

**Notice to the Employer:** Where the need for leave is foreseeable, the employee must provide a written request at least ten days, or as early as possible, in advance of the need for leave. The request must state the reason for the absence and the expected duration of the paid leave. Where the need for leave is not foreseeable, the employee should make a verbal request for leave prior to the start of the work shift for which paid leave is requested. In the case of an emergency, the employee should notify the employer prior to the start of the next work shift or within 24 hours of the onset of the emergency, whichever occurs sooner. Additionally, employees are to make a reasonable effort to schedule paid leave “in such a manner that does not unduly disrupt the operations of the employer.”

**Certification:** The employer may require that paid leave for three or more consecutive days be supported by certification. Such certification may include a signed document from a health care provider, a police report, a court order or a signed statement from a victim and witness advocate or domestic violence counselor. The employee may present the certification upon return to work.

**Current Leave Policies:** An employer is not required to modify its current paid leave policy if that policy provides benefits at least equivalent to those required by the new law. A policy is considered equivalent if it permits paid leave to accrue at least at the same rate as required by the law or it permits employees to take paid leave for the same purposes as the law.

**Other Provisions:** The law prohibits retaliating or discriminating against employees for exercising their rights under the act. It also requires employers to post a notice, provided by the Mayor of the District of Columbia, of the provisions of the law and information for filing a complaint. An employer who willfully violates the posting requirement is subject to a civil penalty of up to \$100 for each day that the employer fails to post the notice, not to exceed a total of \$500. No liability for failure to post a notice will arise if the Mayor fails to provide the required notice. Penalties for willful violations of the other provisions of the law are: \$500 for the first offense, \$750 for the second offense, and \$1,000 for the third and each subsequent offense.

#### **Employers' Bottom Line:**

Employers in the District of Columbia should review their current leave policies to ensure that they will be in compliance with the law's requirements beginning November 13, 2008. While there are some ambiguities in the law, we anticipate the District of Columbia Department of Employment Services will issue regulations clarifying these issues.

If you have any questions regarding the new law or other labor or employment related issues, please contact the Ford & Harrison attorney with whom you usually work.