

Memo



CBIZ Benefits & Insurance Services, Inc.

11440 Tomahawk Creek Parkway ♦ Leawood, KS 66211
P: 913.234.1000 ♦ F: 913.234.1100
www.cbiz.com

To: CBIZ Benefits & Insurance Services' Groups
From: Karen R. McLeese, Vice President – Regulatory Affairs
Date: 5/22/08
Re: District Of Columbia – Accrued Sick And Safe Leave Act

The D.C. Council recently passed the Accrued Sick and Safe Leave Act (“ASSLA”) meaning the District of Columbia is the second U.S. city (*in addition to San Francisco*) to pass a law requiring employers to provide sick leave for their employees. District employers will be subject to the requirement to provide sick leave benefits in mid-November, 2008, (*six months after the law's effective date of May 13, 2008*).

Paid Leave Requirement

The ASSLA requires an employer to provide paid leave to an employee for any of the following:

- An absence resulting from a physical or mental illness, injury, or medical condition of the employee;
- An absence resulting from obtaining professional medical diagnosis or care or preventative medical care, for the employee (*an employee must make a reasonable effort to schedule leave for this reason, in a manner that does not unduly disrupt the employer's business operation*);
- An absence for the purpose of caring for a child, parent, spouse, domestic partner, or other family member; and
- Certain absences associated with instances of domestic violence or sexual abuse.

What Employers Are Subject To The Law?

This law applies to all employers in the District, including both profit and not-for-profit businesses and organizations. (*Note: it is possible that the Mayor, via regulation, may exempt certain businesses able to demonstrate hardship resulting from ASSLA compliance*).

What Is A “Covered Employee”?

A covered employee is defined as an individual who has:

1. Been employed by the same employer for one (1) year without a break in service (*except for regular leave granted by the employer*); and
2. Worked at least 1,000 hours for the employer during the preceding 12 months.

Excluded from Coverage: The ASSLA does not apply to independent contractors, students, certain health care workers, and restaurant wait-staff and bartenders who work for a combination of wages and tips.

Amount Of Paid Leave – How Is This Determined?

This determination is based on the number of employees working for an employer and is broken down as follows:

- Employers With 100 Or More Employees: must provide at least one (1) hour of paid leave for every 37 hours worked, not to exceed seven (7) days per calendar year.
- Employers With At Least 25, But Not More Than 99 Employees: must provide at least one (1) hour of paid leave for every 43 hours worked, not to exceed five (5) days per calendar year.
- Employers With 24 Or Fewer Employees: must provide at least one (1) hour of paid leave for every 87 hours worked, not to exceed three (3) days per calendar year.

The number of employees is determined based on the average monthly number of full-time equivalent employees working for the employer during the preceding calendar year.

Employee Notification To Employer - Certification

An employee is required to provide an employer with a written request at least 10 days before a proposed leave date, if the event for paid leave is foreseeable. If such an event is unforeseeable, the employee must provide the employer with an oral request prior to the start of the work shift which will be affected by his/her leave. In situations where an employee has taken three (3) or more consecutive days of paid leave, the employer may require the employee to provide reasonable certification to support the reasons for the leave.

Accrued Paid Leave

Any unused paid leave accrued by a covered employee during a 12-month period carries over annually. However, unless an employer grants permission, an employee may not use more than the maximum number of hours permitted in any one year period. Also, employers do not have to pay an employee for unused leave upon the employee's termination or resignation from the job. The above, notwithstanding, nothing in this law is intended to discourage an employer from providing a more generous benefit. An employer can continue its existing sick leave policy as long as it is at least as generous as the ASSLA, both in accrual and availability.

Employer Posting Requirements

Each covered employer is required to conspicuously post, in the workplace, a notice setting forth excerpts from or summaries of the pertinent provisions of this law. The Mayor's office will develop notices that can be used to satisfy this posting obligation and the employer must then post the notices in English, and in all languages spoken by employees with "limited or no-English proficiency," as such is defined under the Language Access Act of 2004. Any violations of this requirement may result in a fine not exceeding \$100 for each day the notice is not posted (*the maximum penalty is \$500*).

Enforcement and Penalties

An employer who willfully violates this law may be subject to a civil fine of \$500 for the initial offense; \$750 for the second offense; and \$1,000 for the third and following offenses. In addition, an employer is expressly prohibited from retaliating against any employee who exercises his/her paid leave rights.