Proskauer

DC's Paid Family Leave Benefits Available July 1, 2020: What Employers Need to Know

Law and the Workplace Blog on **June 29, 2020**

On ***July 1, 2020***, employees in DC will be able to begin taking Paid Family Leave ("PFL") pursuant to the DC Paid Family Leave Act (the "Act"). Here's a quick primer on what employers need to know ahead of the program's launch.

Eligible Leave

Employees who spend more than 50% of their work time in DC may take PFL for:

- Up to ***eight weeks for paid parental leave*** to bond with a new child ("parental leave") which can be taken within 52 weeks of the date of birth, adoption, or foster care placement of a child;
- Up to ***six weeks of paid family leave*** to care for a covered family member (defined very broadly) with a "serious health condition" ("family leave"); and
- Up to ***two weeks of paid medical leave*** to care for the employee's own "serious health condition" ("medical leave").

Employees may take a combination of parental, family, and/or medical leave up to the limits stated above in a single 52-week period. However, the combined total of leave taken during a 52-week period ***may not exceed 8 weeks***. PFL leave may be taken intermittently.

Benefit Payments

The Act provides eligible employees with partial wage replacement. The PFL benefit is determined by the DC Department of Employment Services ("DOES") on a sliding scale based on the employee's reported wages during the highest 4 out of 5 calendar quarters immediately preceding a qualifying event. The combined amount from those 4 quarters is then divided by 52 to derive the employee's average weekly wage. Employees will receive 90% of their average weekly wage up to a maximum of $1,000 (which will be adjusted annually for inflation beginning October 1, 2021), for each week they are on leave.

Benefit Funding

As we previously reported, PFL benefits are funded by a 0.62 percent quarterly payroll tax on employees' total wages, which the DC government began collecting on July 1, 2019. Although the tax is calculated based on employees' quarterly wages, the cost cannot be deducted from employee pay.

Benefit Application Process

PFL benefits are paid by the DC government. Employees may apply for PFL benefits using paper forms or online through a portal on the DOES website, which, according to DOES, will be live on July 1, 2020. When applying, employees will need to provide basic information to prove their identify and indicate the kind of claim they wish to make.

Once DOES receives the employee's application for benefits, it will notify the employee's employer. Within 10 days of the submission of an application, DOES will notify the employee of its decision. If DOES approves the employee's claim for benefits, it will send the employee a determination letter containing the following information:

- The date the employee's leave will start;
- Whether the leave will be continuous or intermittent;
- If the leave is intermittent, the dates for which the employee was approved for PFL benefits;
- The date the employee's leave will end; and
- The employee's weekly benefit amount and, if the employee's leave is intermittent, the employee's daily benefit amount.

DOES will also send a determination letter to the employee's employer. However, unless the employee specially gives DOES permission, DOES will not provide the employer with the employee's benefit amount.

Once an employee is approved for PFL benefits, there is a 7-calendar day waiting period beginning on the date of the qualifying leave event. During this waiting period, the employee may not receive PFL benefits. An employee who has multiple qualifying events during a 52-week period will only have one waiting period during that time.

Employee Notice to Employers

The Act's implementing regulations provide that employees "shall, to the extent practicable, provide written notice to his or her employer of the need to use [PFL] benefits before taking leave." Specifically, when for PFL is "foreseeable", employees must provide such written notice 10-business days in advance of the leave. However, if leave is "unforeseeable", the employee "shall provide a notification in writing, or orally in exigent circumstances, before the start of the work shift for which the individual intends to take [PFL]." When an emergency prevents an employee from providing "notice before the start of the work shift for which the individual intends to take [PFL], the [employee], or another individual on behalf of the [employee], shall notify the eligible [employee's] employer of the need for leave in writing, or orally in exigent circumstances, within forty-eight (48) hours after the emergency occurs."

The employee's written or oral notice to his or her employer must specify:

- The type of qualifying leave requested;
- The expected duration of the leave;
- The expected start and end dates of the leave; and
- Whether the PFL benefits will initially be used continuously or intermittently.

Coordination with Other Leave and Benefits

DOES will not reduce benefits based on other paid leave provided by the employee's employer. The Act's implementing regulations indicate that employers may amend any existing paid leave policies to account for PFL benefits. For example, given that employers have already paid the cost of the PFL benefit through payroll taxes, employers who already provide non-statutorily mandated paid leave for any of the reasons covered by the Act may wish to specify in their policies that existing benefit amounts will be offset by any PFL benefits the employee receives, and include requirements that employees apply for and provide PFL benefit award information to the employer.

The Act and its implementing regulations provide that PFL leave "shall run concurrently with, and not in addition to, leave taken under [FMLA or DCFMLA]." Otherwise eligible individuals who are receiving unemployment compensation or long-term disability benefits are not eligible for PFL benefits.

Notice to Employees

As we previously reported, the Act has a notice requirement which requires employers provide notice to employees on multiple occasions. The DC government has published a notice that provides employees with information about the Act, including covered employees and events, how to apply for PFL benefits, and benefit amounts.

Employers with employees in DC must post this notice in "a conspicuous place" at their worksites, which, for the purposes of the Act, are "location[s] where business is conducted or where services or industrial operations are performed." Importantly, especially during the COVID-19 pandemic, employers must "send a poster to covered workers who work remotely or predominately telework so that they can hang the posters at their individual worksites."

Employers must also provide this notice directly to employees: (1) at the time of hiring; (2) at least once between February 1, 2020 and February 1, 2021 and a least once a year every following year; and (3) whenever the employer "receives direct notice" of an employee's need to take leave for an event that could qualify for PFL benefits.

Failure to comply with the Act's notice requirements can result in civil penalties up to $100 for each covered employee to whom the notice was not delivered.

Reinstatement and Anti-Retaliation

The Act prohibits retaliation by an employer because an employee:

- "Opposes any practice made unlawful by [the] [A]ct;"
- "Files or attempts to file a charge [pursuant to the Act];"
- "Institutes or attempts to institute a proceeding [pursuant to the Act];
- "Facilitates the institution of a proceeding [pursuant to the Act];
- "Requests, applies for, or uses [PFL] benefits; or"
- "Gives any information or testimony in connection with an inquiry or proceeding related to [the] [A]ct."

The Act provides "an eligible individual . . . may bring a civil action against any employer to enforce the provisions of [the] [A]ct in any court of competent jurisdiction." The statute of limitations to bring such a claim is one year "after the occurrence or discovery of the alleged violation." The remedies available to an individual aggrieved in violation of the Act are the same as those available under the DCFMLA. They include damages "in an amount equal to . . . [a]ny wages, salary, employment benefits, or other compensation denied or lost to the employee due to the violation plus interest" and costs and reasonable attorney's fees.

The Act expressly states it does not "provide job protection to any eligible individual beyond that to which an individual is entitled under [DCFMLA]."

DCPFL and COVID-19

In light of the fact PFL benefits are becoming available while the District is still in the midst of the COVID-19 pandemic, DOES has published guidance regarding the impact of COVID-19 on PFL. The guidance clarifies, among other things, that:

- PFL benefits are *not* available to individuals who are quarantined due to COVID-19 but are not experiencing symptoms and have not received an official diagnosis of COVID-19.
- "An individual who receives benefits from another source can receive PFL benefits for the same qualifying event, except for unemployment compensation and long-term disability compensation."
- "[A]n individual may file a claim for PFL benefits to provide care or companionship to a family member diagnosed with COVID-19."
- An individual must be employed at of July 1, 2020 to be eligible to file a claim for PFL benefits.

View Original

Related Professionals

- **Guy Brenner**
  Partner