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D.C. Requires Employers To Provide Paid and Unpaid COVID-19 Leave

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Quick Hit: Employees in the District of Columbia are currently eligible for paid and unpaid COVID-19 related leave under measures that temporarily expand the D.C. Family and Medical Leave Act ("DCFMLA") and D.C. Accrued Sick and Safe Leave Act ("ASSLA").

Key Takeaway: D.C. employers now must navigate an additional set of paid and unpaid leave requirements. D.C. employers should review these new requirements and update their policies to reflect these temporary measures.

More Detail:

As we previously reported, in March 2020 the District of Columbia passed the D.C. COVID-19 Response Emergency Amendment Act of 2020, which expanded DCFMLA to include leave taken for certain reasons related to COVID-19. Thereafter, on May 27, 2020 and July 7, 2020, Mayor Muriel Bowser signed into law the D.C. COVID-19 Support Emergency Amendment Act and the Coronavirus Support Clarification Emergency Amendment Act of 2020 (collectively, the "CSEA") which replaced all previous COVID-related legislation and temporarily amended the ASSLA and DCFMLA to create new COVID-19 leave. COVID-19 related leave under the CSEA is only available for the duration of the COVID-19 public health emergency, which as of the writing of this article has been extended through October 9, 2020. Additionally, unless it is extended, the CSEA "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))."

ASSLA Expansion: The CSEA requires employers (except for health care providers) with between 50 and 499 employees to provide employees with up to two weeks (for a maximum of 80 hours) of paid "public health emergency leave" for any of the reasons paid leave is available under the Families First Coronavirus Response Act. For part-time employees, employers are required to provide paid leave "for the usual number of hours the employee works in a 2-week period."

In order to be eligible for this leave, the employee must have "commenced work for the employer at least 15 days before the request for leave." Additionally employees may only use this new paid leave benefit "concurrently with or after exhausting any other paid leave to which the employee may be entitled for covered reasons under federal or District law or an employer's policies." The law allows employers to "reduce the monetary benefit of the paid leave provided under [the CSEA] by the amount of the monetary benefit the employee will receive for paid leave taken under federal or District law or the employer's policies" if the employee elects to use paid leave provided under the CSEA concurrently with other paid leave.

DCFMLA Expansion: The CSEA also creates a new temporary category of DCFMLA leave. The expansion of the law allows employees in the District who have worked for 30 days for an employer of any size to take up to 16-weeks of COVID-19 leave "if the employee is unable to work due to:

- A recommendation from a healthcare provider to quarantine or isolate, including because the employee or an employee's household member is high risk for serious illness from COVID-19;
- A need to care for a family member or a member or an individual with whom the employee shares a household who is under a government or health care provider's order to quarantine or isolate; or
- A need to care for a child whose school or place of care is closed or whose childcare provider is unavailable to the employee."

The law permits employers to obtain "reasonable certification of the need for COVID-19 leave," as specifically set forth in the law:

- If the leave is necessitated by the recommendation of a health care provider to the employee, a written, dated statement from a health care provider stating that the employee has such need and the probable duration of the need for leave.
- 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.
- If the leave is needed because a school, place of care, or childcare provider is unavailable, 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.

Like other bases for DCFMLA leave, employees may elect, but are not required to use, other non-statutory paid leave provided by their employer (e.g., vacation time) while on COVID-19 leave. In addition, the expansion provides that employees using the new leave "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 otherwise barred by District or federal law."

Notice Requirement: The D.C. Office of Human Rights issued guidance indicating that employers must post notice regarding the expansion of DCFMLA under the CSEA "in a conspicuous place and transmit it to remote employees." The notice is available here.

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