

# DC Enacts (Another) COVID-19 Emergency Leave Law

**Law and the Workplace Blog** on **December 1, 2021**

DC Mayor Muriel Bowser signed into law the [COVID Vaccination Leave Emergency Amendment Act of 2021](#) (“Emergency Act”), which requires employers to provide paid leave to employees and their children for time spent obtaining and, if needed, recovering from side effects of a COVID-19 vaccine, and unpaid leave for other COVID-19 related absences. The Emergency Act took effect on November 19, 2021, though certain provisions of the law are retroactive to November 5, and is set to expire on February 3, 2022.

## *Paid Vaccination Leave*

The Emergency Act amends the DC Accrued Sick and Safe Leave Act of 2008 to require all DC employers to provide eligible employees with up to two hours of paid leave for receiving an injection of the COVID-19 vaccine (including boosters) and up to eight hours of paid leave during the 24-hour period following such injection. In addition, eligible employees are permitted to take vaccination leave or vaccination recovery leave to care for their child who receives the COVID-19 vaccine (including boosters), for a total of 48 hours of leave in a year. For the purposes of the law, “child” means a child under the age of 18 who lives with the employee and for whom the employee permanently assumes and discharges parental responsibility or a foster child under the age of 18 years.

To be eligible for vaccination leave, an employee must be employed by the employer for at least 15 days before the request for leave. Employers may not require employees to provide more than 48 hours’ notice of the need to use such leave or identify replacement workers and, in the event of an emergency, must allow an employee to provide “reasonable notice.” Employees may be required to provide reasonable documentation upon return to work of the need for leave, which may include “a vaccination record or other documentation attesting to the date and time of the vaccination injection.”

Employers must provide paid vaccination leave in addition to any other paid leave they provides employees under an existing leave policy, including under an existing contract or collective bargaining agreement (“CBA”); however, if the employer has a paid leave policy that exclusively and expressly provides for COVID vaccination and recovery leave in the amounts greater or equal to the amounts provided by the Emergency Act, and does not reduce other available paid leave, the employer is not required to provide additional leave. Employers and unions are not be permitted to waive or reduce the amount of vaccination leave an employer is required to provide under the Emergency Act through a CBA.

In addition to existing enforcement provisions under the District’s Sick and Safe Leave Act, the mayor is permitted to enforce violations of the paid vaccine leave requirements through investigation and administrative proceedings voluntarily or in response to an administrative complaint. If the mayor takes an administrative action on a complaint, the employer must be promptly given written notice of the alleged violation, and five business days from receiving the notice to cure the alleged violation.

#### *Unpaid COVID-19-Related Leave*

The Emergency Act also amends the DC Family and Medical Leave Act (DC FMLA) to allow employees to take up to 16 weeks of unpaid leave beginning November 5, 2021 for a two-year period, if they are unable to work because the employee:

- has tested positive for COVID-19 or is caring for a family member or individual with whom the employee shares a household who has tested positive for COVID-19 and must quarantine pursuant to Department of Health guidelines;
- has a recommendation from a health care provider or a directive from an employer that the employee isolate or quarantine due to COVID-19, including because the employee or an individual with whom the employee shares a household is at high risk for serious illness from COVID-19;
- must care for a family member or an individual with whom the employee shares a household, who is isolating or quarantining pursuant to Department of Health guidance, the recommendation of a health care provider, or the order or policy of the family member’s or individual’s school or childcare provider; or
- must care for a child whose school or place of care is closed or whose childcare provider is unavailable to the employee due to COVID-19.

If the employee elects to use any paid leave provided by an employer to use for COVID-19 leave purposes, the time taken may count against the 16 total workweeks. Employees are not required, but may elect, to use this new leave entitlement before other leaves the employee is entitled to under federal or DC law or an employer's policies. Although employers may not diminish such rights by any CBA or any employment benefit program or plan, there is an exception for clauses on family or medical leave in a CBA in force as of November 5, 2021 for the time that the agreement is in effect.

Employers may require employees to provide reasonable advance notice of the need for leave; except that in the event of an emergency or an unforeseen need to use the leave, an employer may only require notice be provided as soon as reasonably practicable after the leave is taken, but in no event fewer than 24 hours after leave is taken. Employers may also require reasonable certification of the need for COVID-19-related leave as follows:

- If the leave is needed due to a positive COVID-19 test, a copy of the relevant test results with the date;
- If the leave is necessitated by the recommendation of a healthcare provider to an employee's family member or individual with whom the employee shares a household, a written, dated statement from the healthcare provider stating that the individual has such need and the probable duration of the condition;
- If the leave is necessitated because of Department of Health guidance, a copy of such guidance or other supporting documentation that demonstrates the need for leave at the time it is taken or requested;
- If the leave is needed because a child must quarantine due to school or childcare provider policy or orders, a copy of that policy or a dated statement from the head or administration of the school or childcare provider stating such need to quarantine or isolate or providing information and a dated copy of a communication to or from the school or childcare provider indicating the child had to quarantine; or
- If the leave is needed because a school, place of care or childcare provider is unavailable due to COVID-19, 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.

An employer who willfully violates the COVID-19-related leave provisions of the law are subject to a civil penalty of \$1,000 for each offense.

Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. Visit our [Coronavirus Resource Center](#) for guidance on risk management measures, practical steps businesses can take and resources to help manage ongoing operations.

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