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## DC Bill Would Provide Most Generous Paid Leave Benefits in the Nation

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On October 6, 2015, the District of Columbia Council introduced legislation that would establish a universal paid leave system for all DC residents and workers who are employed in DC but live elsewhere. The Universal Paid Leave Act of 2015 ([Bill B21-0415](#)) ("the Act") would provide covered workers with up to 16 weeks of annual paid family and medical leave. Additionally, the Act would amend the existing DC Family and Medical Leave Act of 1990 ("DC FMLA") to shorten the waiting period for new employees to qualify for DC FMLA benefits.

### Leave Entitlements

The Act would entitle an eligible individual to receive up to 16 weeks of paid family and medical leave benefits in a 12-month period. The paid leave amount would equal 100% of the eligible individual's average weekly wages up to \$1,000 per week plus 50% of the average weekly wages over \$1,000, up to a maximum weekly benefit of \$3,000. Covered employees could also be paid while taking leave on a reduced leave or intermittent leave schedule.

The Act defines a "covered employee" as any individual who has the status of an employee and was employed by a covered employer during some or all of the 52 calendar weeks immediately preceding the qualifying event, and who either spends more than 50% of his/her work time for a covered employer in the District of Columbia, or an individual whose employer is a registered business holder in the District of Columbia and who does not spend more than 50% of his or her working time for the covered employer in a jurisdiction other than the District of Columbia. A "covered employer" means any individual, partnership, general contractor, subcontractor, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to a covered employee.

Employees would be paid from the Family and Medical Leave Fund ("Fund"), which the Act would establish. Each year covered employers would be required to contribute to the Fund an amount equal to the contribution rate (0-1% based on annual salary of each covered employee employed by the covered employer) multiplied by the wages paid by the covered employer to each covered employee. If the covered employee earns over \$150,000, the contribution rate would be capped at 1% of such covered employee's salary. Every DC resident who earns wages would be required

to contribute to the Fund in a similar manner to the way individual income taxes are paid under DC law. This requirement would apply also to self-employed individuals who have not opted out of coverage.

Under the terms of the Act, "qualifying events" for paid leave include:

- The birth of the employee's child;
- The legal placement of a child with the employee (such as through adoption, guardianship, or foster care);
- The placement with the employee of a child for whom the employee permanently assumes and discharges parental responsibilities; or
- The care of a family member of the employee who has a serious health condition.

The Act further provides paid leave for "qualifying exigencies" that would enable an employee to take up to 16 weeks of paid time off to provide care for a family member who is a service member, or to attend events related to the family member's military service (active duty and call to active duty). Additionally, the Act would permit eligible individuals who become unable to perform the functions of their position because of a "serious health condition" to take paid leave. A "serious health condition" means a physical or mental illness, injury, impairment, condition, pregnancy, or post-partum recovery period that involves either inpatient care in a hospital, hospice, or residential health care facility; or continuing treatment or supervision at home by a health care provider.

If the Act becomes law, the mayor will provide covered employers with a notice that must be provided to employees at the time of hiring, annually, and when the employer knows that the leave is needed. Covered employers would be required to post and maintain the mayor-issued notice in a conspicuous place. The Act would also prohibit any person from interfering with, restraining, or denying the exercise of or the attempt to exercise any right provided by the Act, and it would prohibit employers from retaliating against any person who opposes any practice made unlawful by the Act, files a charge, or gives any information or testimony in connection with an inquiry or proceeding related to the Act. In addition, the Act would give the mayor investigative authority and provide for administrative and civil enforcement.

## DC FMLA Amendments and Interactions

Notably, the Act proposes to amend the definition of "employee" under the DC FMLA to mean any individual employed by the same employer for six months without a break in service (except for regular holiday, sick, or personal leave granted by the employer) and who has worked at least 500 hours during the 12-month period immediately preceding the request for family or medical leave. Under existing law, an individual must have been employed for one year with a break in service and must have worked at least 1,000 hours during the 12-month period immediately preceding the request for leave.

If the paid leave were to qualify for job-protected leave under the federal and DC FMLA, the paid leave would run concurrently with leave taken under federal and DC FMLA.

## Future Updates

Littler will follow this legislation closely. Even if it is passed by DC Council and signed by the mayor, it will be subject to review by Congress.

In a related action, in neighboring Prince George's County, Maryland, the County Council will soon vote on a bill ([CB 65-2015](#)) that would entitle each employee in the county to accrue sick and safe leave for work performed in the county. The benefits would be paid at the same rate and with the same benefits as the employee normally earns. If it passes, Prince George's County will become the second county in Maryland to require paid sick leave.<sup>1</sup> Littler will follow this legislation and provide an update if it passes.

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<sup>1</sup> See S. Libby Henninger and Michael L. Childers, [Montgomery County, Maryland Joins the Jurisdictions Requiring Paid Sick Leave, Alters the Employer Tip Credit](#), Littler Insight (July 7, 2015).