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DC Sick and Safe Leave Act Amendments Take Effect; DC Issues Revised Poster

By Nancy Delogu and Libby Henninger

Revisions to the District of Columbia's Accrued Sick and Safe Leave Act ("the Act") adopted last February have become fully effective following the District's adoption of a 2015 budget. The District of Columbia Department of Employment Services (DOES) has published a revised "Official Notice" that must be posted in affected workplaces across the District of Columbia. The revisions accelerate workers' ability to take paid sick leave from one year to 90 days after starting work, allow former temporary workers to claim credit for time worked with their employer on a trial basis, and require employers to reinstate accrued leave banks for individuals who transfer to work locations outside the District and return within one year. The new law also extends paid sick and safe leave benefits to both temporary workers and tipped employees not covered in the original 2008 legislation. (Littler published an ASAP describing the new legislation soon after the D.C. Council adopted revisions to the law, which is accessible [here](#).)

Employers are advised to review their paid time off policies to ensure compliance with the amended law if they have not done so already, as it dramatically increases the penalties for noncompliance, creates a private right of action to enforce the law (in addition to the existing administrative remedy), and creates a rebuttable presumption that any employee who experiences an adverse employment action within 90 days of taking leave or protesting her employer's implementation of the paid leave benefit has been a victim of retaliation.

Revised Poster Issued Clarifying Interpretation of Law

The revised Official Notice incorporates many of the changes made to the Act by the Earned Sick and Safe Leave Amendment Act of 2013, and can be accessed here: [Accrued Sick and Safe Leave Act of 2008—Revised 2014 Poster](#). Employers covered by the Act must post the updated Notice in a conspicuous location where it can be easily read by employees.

Of particular note, the Official Notice states that an employer must carry over each employee's accrued unused paid sick leave from year to year, but that the employer need not treat the accrued leave as wages that must be paid out upon termination or resignation. The Earned Sick and Safe Leave Amendment Act of 2013 eliminated the original Act's provisions explicitly requiring some carryover of accrued leave, although the new requirement that individuals who leave their employment and are re-hired, or who are transfer out of the District and return, are entitled to have accrued leave credited back to them, suggests that carryover is still necessary. In addition, the

original Act's provision limiting an employee's right to take only as much paid leave as he or she could accrue in a year was removed by the revisions to the Act. However, all three provisions remain in the Act's implementing regulations. Therefore, it appears that DOES will interpret the law to permit employers to limit an individual's ability to take paid leave to the maximum number of days that employees could accrue per year, provided notice of the employer's policy is made clear to the employee.

Earned Sick and Safe Leave Amendment Act of 2013 Expands Number of Covered Workers

The central requirement to provide paid sick and safe leave to eligible employees employed in the District has not changed:

- An employer with 100 or more employees must provide one hour of paid leave for every 37 hours an employee works, not to exceed 7 days a year;
- An employer with 25 to 99 employees must provide one hour of paid leave for every 43 hours an employee works, not to exceed 5 days a year; and
- An employer with 24 or fewer employees must provide one hour of paid leave for every 87 hours an employee works, not to exceed 3 days a year.

However, the new law expands the group of covered workers to include tipped restaurant employees and temporary workers, regardless of the employer's size. Restaurant employees are now eligible to earn one hour of paid leave for every 43 hours worked, not to exceed five days per year. Significantly, the Official Notice states that the accrual provisions of the law are retroactive to February 22, 2014. This means that any covered employee who has worked 90 days or more as of that date presumably will be eligible to use any leave accrued prior to that date, and newly covered employees (i.e., tipped employees and temporary workers) will be able to draw on leave accrued since February 22.

Finally, the Official Notice reiterates the expanded enforcement provisions and penalties for noncompliance with the Act, which include both administrative remedies and the right to seek a remedy in court. Employers must keep records relating to their administration of their Sick and Safe Leave Act policy for at least three years to ensure compliance with audit requests and to limit their potential liability for alleged failures to meet the law's requirements, and longer if they fail to post the required notice.

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