MARCH 25, 2019 | STATE & LOCAL TRENDS

D.C. Paid Family Leave Law Advances Towards Implementation

D.C. is moving forward with proposed final regulations to implement its Paid Family Leave law, the Universal Paid Leave Amendment Act of 2016, effective April 7, 2017 (D.C. Official Code 32-541.02(b)(2)). The Rules are intended to create a regulatory framework for employers to register, opt-in, and opt-out for D.C.'s Paid Family Leave program.

As discussed in a prior blog post, all D.C. employers need to begin to prepare for the implementation of the program because starting July 1, 2019, the District will begin to collect quarterly taxes to fund the Paid Family Leave benefit, in the amount of .62 percent of the wages of its covered employees, based on wages beginning April 1, 2019. The payroll tax will apply even if employers already provide paid leave benefits to its workers.

Our firm has received several questions about the new rules, and below are some frequently asked questions about the Paid Family Leave law:

1. ***Does the law apply to all employers in D.C.?***

Yes. Any sized employer doing business in D.C. is covered by this law, including small businesses, non-profit organizations, and self-employed individuals who opt into the program.

2. ***I have employees who work in D.C. and other states outside of D.C., which employees are covered by this law?***

Any employee who spends more than 50% of their work time in D.C. will be covered, and the employer must count their wages as subject to the payroll tax.

3. ***Do wages include tips, commissions and other types of pay?***

Wages will have the same meaning as provided for in D.C.'s unemployment compensation act, so all income will be counted as wages.

4. ***Is there a minimum number of hours an employee must work before they are eligible for paid leave?***

An employee is eligible for paid leave benefits as soon as they are hired, regardless of the number of hours worked for the employer, subject to a one week waiting period before benefits are paid.

5. ***How much of paid leave is an employee entitled?***

Starting on July 1, 2020, employees are entitled to paid leave benefits in the amount of eight (8) weeks for parental leave, six (6) weeks for those taking care of sick family members; and two (2) weeks for medical leave. An employee can receive benefits under any one or a combination of paid leave provided under the Act. However, employees are only entitled to receive payment for a maximum of 8 workweeks in a 52-workweek period, regardless of the number of qualifying leave events that occurred during that period.

For example, if an employee receives parental leave following the birth of twins, the employee is only entitled to 8 weeks of paid leave, not 16. Also, if an employee receives 4 weeks of paid medical leave to care for a sick family member, and then takes parental leave a few months later, the employee is only entitled to an additional 4 weeks of paid leave within the 52-workweek period.

6. ***Are there notice and record-keeping requirements?***

Yes, employers are required to provide employees a notice (1) at the time of hiring; (2) annually; and (3) at the time the employer is aware that the leave is needed. The notice must explain the employees' right to paid leave benefits under the Act and the terms under which such leave may be used; that retaliation for requesting, applying for, or using paid leave benefits is prohibited; that an employee who works for an employer with under 20 employees shall not be entitled to job protection if he or she decides to take paid leave pursuant to the Act; and that the covered employee has a right to file a complaint and the complaint procedures established by the Mayor for filing a complaint.

Covered employers are also required to develop and maintain records pertaining to their obligations under the Act for no less then three years.

An employer that violates the notice requirement may be subject to a $100 civil penalty for each covered employee to whom individual notice is not delivered and $100 for each day that the covered employer fails to post notice in a conspicuous place.

7. ***How does the Paid Family Leave law interact with the DCFMLA and existing employer paid leave policies?***

The DC Family Medical Leave Act (DCFMLA), which provides for 16 weeks of unpaid leave, remains unchanged under the Act. Therefore, employees are still eligible to take unpaid leave under DCFMLA. When paid leave taken pursuant to the Act also qualifies for leave under the DCFMLA, the paid leave taken under the Act will run concurrently with, not in addition to, leave taken under other acts such as DCFMLA. Nothing in the act provides job protection to any eligible individual beyond that to which an individual is entitled to under DCFMLA.

Eligible employers are not prohibited from providing individuals with leave benefits in addition to those provided under the Act but employers are still required to provide the paid leave benefits under the Act. The provision of supplemental or greater paid leave benefits does not exempt the covered employer from providing or prevent an eligible employee from receiving benefits under the Act.

If your company employs workers in the District of Columbia, you should begin preparing for the tax collection now. If you have any questions about this new law, contact one of our labor & employment attorneys in D.C.