

JANUARY 23, 2020 | STATE & LOCAL TRENDS

DC Paid Family Leave: February 1st Posting/Notice Requirement and More

As of July 1, 2020, eligible employees in the District of Columbia (“DC”) will be entitled to paid leave up to a designated period depending on the qualifying leave event. Covered employers should have begun making paid family leave contributions beginning July 1, 2019. Specifically, covered employers must contribute a quarterly payroll tax of 0.62% of covered employees’ total gross wages from the immediate past quarter. In addition to paying the required quarterly payroll tax, there are several other aspects of the law of which employers should be aware. Here, we review and highlight important aspects of DC’s Paid Family Leave law, including the February 1st posting/notice deadline. For additional discussion on the DC Paid Family Leave law and frequently asked questions, please also see our prior [post](#).



Covered Events and Applicable Leave Periods

As you may know, the DC Paid Family Leave law provides leave benefits to eligible employees for three types of leave: (1) parental leave; (2) family leave; and (3) medical leave. “Parental leave” includes events associated with the birth of a child, placement of a child with the employee for adoption or foster care, and placement of a child with an employee who legally assumes and fulfills parental responsibility for the child. “Family leave” is leave taken to care for a family member with a diagnosis or occurrence of a serious health condition. And “medical leave” is leave taken to attend to one’s own diagnosis or occurrence of a serious health condition.

The maximum leave periods for each type of event are as follows:

- **Parental Leave – 8 weeks in a year**
- **Family Leave – 6 weeks in a year**
- **Medical Leave – 2 weeks in a year**

If an employee experiences one or a combination of these events, she must apply for benefits directly with the Office of Paid Family Leave through its online portal. If an employee experiences more than one qualifying event, the law limits use of paid leave to a maximum of 8 weeks in a one-year period.

Eligible Employees and the Leave Benefit

Employees who work for a covered employer are generally eligible for benefits under this law as long as:

- They spend more than 50% of their work time for a covered employer working in DC during all or some of the 52 weeks immediately preceding a qualifying leave event; or
- They work for a covered employer based in DC and spend a substantial amount of their work time in DC – they cannot work more than 50% of their time in another jurisdiction in some or all the 52 weeks immediately preceding the qualifying leave event.

This includes temporary or seasonal employees who meet the criteria depending on when the employer reports wages and when the employee experiences the qualifying event. Importantly, an eligible individual must be employed by the covered employer at the time he or she applies for paid leave benefits and have had their wages previously reported.

The size of the paid family leave benefit an employee will receive while out on qualifying leave differs based on the individual's average weekly wage. The current maximum weekly benefit for an individual employee is \$1,000 per week. The law permits leave to be taken incrementally, but it must be taken in at least one-day increments.

A covered employer must provide the paid leave benefits required by the DC Paid Family Leave law even if it has its own paid leave policy that offers greater paid leave benefits. The paid leave benefit required under DC law can run concurrently with any paid leave already provided by the employer. Similarly, if the leave taken under the DC Paid Family Leave law also qualifies as protected leave under the District of Columbia Family and Medical Leave Act ("DCFMLA"), paid leave runs concurrently with the DCFMLA leave.

Posting and Notice Requirements

A number of posting and notice requirements kick in as of **February 1, 2020** – only 9 days away. First, employers must post the Paid Family Leave employee notice in their workplaces by **February 1, 2020**. The notice is available [here](#). In addition, employers must provide a copy of the notice in electronic or physical form as follows:

- To all employees at least once between **February 1, 2020 and February 1, 2021**, and then once a year every year thereafter;
- To all new employees at the time of hire for those hired **after February 1, 2020**; and
- To individual employees when the employer gets direct notice **after February 1, 2020** of the employee's potentially qualifying need for leave.

The Paid Family Leave law also requires an eligible employee to provide notice to her employer of the pending use of paid leave to the extent practicable. Specifically, the law mandates that, where the need for leave is foreseeable, an employee provide written notice at least 10 days in advance of the paid leave. If the need for leave is unforeseeable, an employee should provide notice as soon as possible, but at least prior to the start of the relevant work shift. For emergency use, the employee or another individual on her behalf must give oral or written notification to the employer of her intent to use paid leave within 48 hours of the emergency occurring.

Anti-Retaliation Provisions

The DC Paid Family Leave law prohibits employers from retaliating against an employee who applies for or claims the benefits provided by the law. More generally, the law makes clear that employers cannot take action against an employee who (1) opposes a practice that is unlawful under the Act; (2) pursues or attempts to pursue

a complaint against the employer related to the Act; or (3) participates in a proceeding related to the Act. The Paid Family Leave law does not provide job protection for employees using paid leave benefits required by the law. However, if the leave is also covered by the DCFMLA and/or federal FMLA, the job protections required by those laws would apply.

Conclusion

In preparing for employees to start taking paid leave as of July 1, 2020, employers should review their applicable leave policies to determine how they will interact with this new law and whether changes need to be made to meet and/or incorporate the requirements of the law. Employers should also ensure they have a system in place to track eligible employee use of the paid leave benefits and that those who will be charged with administering these benefits understand the law's requirements, particularly when and how to provide the required notice. Again, the Paid Family Leave notice to employees must be posted and distributed by or before **February 1, 2020**.