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Washington, D.C. Passes New Paid Sick Leave Law

What your nonprofit needs to know

This spring, Washington, D.C. enacted the Accrued Sick and Safe Leave Act (the "ASSLA") which requires employers, including nonprofit employers, to provide their employees with paid sick leave for the employee's absences because of physical or mental illness or medical appointments. ASSLA also provides an employee paid leave in order to care for a child, a parent, a spouse, domestic partner, or any other family member who has a physical or mental illness or needs medical care.

ASSLA also provides "safe leave" for absences related to incidents of domestic violence or sexual abuse. Employers will be required to post a notice of ASSLA's provisions in all languages necessary to accommodate their employees. (The D.C. Government has not yet provided sample language for that notice.) ASSLA goes into effect on November 13, 2008.

Paid Leave Requirements

Employees will receive paid leave credit under ASSLA based upon two factors:

- the number of hours the employee has worked, and
- the number of employees the employer has in total.

ASSLA establishes three categories using these two factors:

- **Group 1: An employer with 100 or more employees.** These employers must provide at least one hour of paid leave for every 37 hours an employee works, but no more than seven days total per calendar year.
- **Group 2: An employer with at least 25, but no more than 99, employees.** These employers must provide at least one hour of paid leave for every 43 hours an employee works, but no more than five days total per calendar year.
- **Group 3: An employer with 24 or fewer employees.** These employers must provide at least one hour of paid leave for every 87 hours worked, but no more than three days per calendar year.

In determining their total number of employees, the employer should use the average number of employees per month for the prior calendar year. An employee is defined as any employee who is employed for 1,000 hours or more during the year.

ASSLA is silent on one point -- how to count an employer's total number of employees. It is not clear whether an employer with workers both inside and outside of the District of Columbia should count all of its employees or only those based in the District. The D.C. Family Medical Leave Act counts only employees working in D.C., and this appears to have been the intended rule.

The District of Columbia Department of Employment Services ("DOES") is responsible for administering ASSLA and for promulgating regulations to clarify the law. Before the Act becomes applicable in November, the Director of DOES plans to hold public meetings with members of the labor and business communities to receive their input on how best to craft regulations.

Procedures for Using Leave

Employees begin to accrue paid leave on their first day of work. However, the employer can require that the employee only begin to use that leave time after completing a waiting period. Paid leave that is not used in one year rolls over into the following year. In any given year, however, the employer can require that an employee use only the maximum amount of leave that he or she could earn in that year. For example, a Group 1 employer can provide that an employee use no more than seven days of paid leave in one year.

ASSLA provides that, except in cases of emergency or unforeseeable need, employees must give at least ten days--or the earliest possible--written notice before

taking paid leave. An employee may also be required to provide appropriate documentation to his or her employer to certify that leave was used properly. An employee who takes leave for medical appointments must make a reasonable effort to schedule leave so that it does not unduly disrupt the operations of the employer.

Waiting Periods

As mentioned earlier, the employer can require an employee to satisfy a waiting period before using any of the paid leave. ASSLA is not completely clear about how long an employer can require an employee to wait before accessing his or her accrued paid leave. The legislative history states the employee must be employed a year during which he or she works at least 1,000 hours of service before the employee is eligible to use any of the paid leave. However, one section of the law suggests the waiting period may be as short as 90 days. We expect the forthcoming regulations to clarify this point.

Employer Exemptions

There are significant exemptions to the paid leave requirements in ASSLA. For example, ASSLA does not apply to most student work-study arrangements, health care workers who opt for premium pay programs in lieu of benefits, or to independent contractors. In addition, under forthcoming regulations, individual employers will be able to apply for a hardship exemption from the requirements of ASSLA.

Impact on Existing Paid Leave Policies

Employers who already offer paid leave can continue with their existing policies provided the policy provides employees with an equal or greater benefit than required by ASSLA. Otherwise, the

employer must ensure their employees can choose terms of leave at least as generous as those of ASSLA, including access to safe leave. (Employees covered under a collective bargaining agreement will receive the paid leave benefits provided in the agreement, but the agreement must provide a minimum of three days of paid leave.)

ASSLA does not require employers to reimburse employees for any unused paid leave accrued when they leave the organization.

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