

Morgan Lewis  
**DISTRICT OF COLUMBIA PAID  
FAMILY LEAVE 101 — WHAT  
SMALL EMPLOYERS SHOULD  
KNOW**

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# Agenda

DC PFL Basics

Covered Employers and  
Employees

Employer Responsibilities

Qualifying Events

Interactions with Other Leave  
Laws and Benefits

Questions?

# DC Paid Family Leave Basics

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# Paid Family Leave Overview

- The Paid Family Leave (PFL) program is administered by the DC Office of Paid Family Leave (OPFL) within the Department of Employment Services (DOES).
- Employees will apply for PFL benefits, receive their eligibility determinations, and then obtain benefit awards from OPFL.



# Paid Family Leave Overview

- Employers and employees **use an online portal** to interact with OPFL and receive information.
  - Employers will use the portal to pay contributions and record employee wages.
  - Employees will use it to file and monitor their benefit claims.
- Self-employed individuals will use the portal for paying contributions, recording their income, and filing for benefits.

# Covered Employers and Employees

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# Who Is a Covered Employer?

- John owns a small accounting firm with three full-time employees and two part-time employees. Does John need to be concerned with the DC PFL Leave law?



# Covered Employers

- **Yes! John is a covered employer.**
- The law defines covered employers to include:
  - Anyone **who controls the wages, hours, or working conditions** of an employee and **is required to pay Unemployment Insurance (UI) tax in DC for its employees.**
  - The leave benefits are funded by covered employers through a **0.62% quarterly payroll tax** on covered employee wages.
    - Covered employers must pay the tax even if they provide additional leave benefits to their employees.

# Who Is a Covered Employee?

- Susan works for John's accounting firm on a part-time basis. She works 20 hours a week. Prior to COVID she came to the firm's office downtown, but now she is working from home. Does John need to withhold the PFL tax on Susan's wages?



# Covered Employees

- **Yes! Susan would be considered a covered employee.**
- Covered employees include all employees who (predominantly) worked in DC before they experienced a covered event.
- **Almost every DC employee** will be eligible to receive benefits.
  - If an employer pays UI tax on an employee for any quarter of a calendar year, the employee is presumed covered.

# Covered Employees

- “Predominantly” means the employee **spends more than 50%** of his or her work time in another single jurisdiction outside of DC.
- Employers must also show that any work time spent outside of DC is not:
  - Incidental in nature,
  - Temporary or transitory in nature, or
  - Consisting of isolated transactions.
- DOES has put out guidance noting that employees currently teleworking outside of DC **who were working in DC pre-pandemic are covered**, so long as the telework is temporary and expected to end after the public health emergency.

# Employer Responsibilities

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# Key Employer Responsibilities

- Register and use their DOES account on the Employer Self-Service Portal
- Provide notice about PFL to their employees
- File wage reports and pay contributions
- Keep records

# Key Employer Responsibilities

- Employers are required to use **an online portal** where they can access information related to PFL
  - <https://essp.does.dc.gov/DOES%20ESSP%20Employer%20Landing%20Page.html>
  - It is the same portal as used for UI
- Through the portal employers:
  - File wage reports (similar to the UC-30)
  - Pay contributions
  - Receive notifications
  - Verify employee wage information
  - Update business information, including changes in ownership

# Wage Reports and Tax Payments

- Employers use the portal to submit **quarterly wage reports and tax payments**
  - PFL benefit payments are funded by a 0.62% quarterly payroll tax based on the immediate past quarter of gross or total wages paid, much like the UI tax.
  - Wage reports and contributions are due the day after a quarter ends.
  - Reports and contributions will be considered late and subject to penalties if they are not **filed by the last day of the month following the close of a quarter.**

# Employer Notice Obligations

- **Post an employee notice.** The notice about PFL must be posted in a place that is accessible to all employees.
  - A template poster is [provided by DOES](#)

## NOTICE TO EMPLOYEES

### New Benefit Available Beginning in July 2020 Information on Paid Family Leave in the District of Columbia

#### Covered Workers

In order to receive benefits under the Paid Family Leave program, you must have worked for an employer in DC before you experienced a covered event. Your employer should have reported your wages to the Department of Employment Services and paid taxes based on the wages they paid to you. To find out if you are a covered worker, you can ask your employer or contact the Office of Paid Family Leave using the information below. Your employer is required to tell you if you are covered by the Paid Family Leave program. You should receive information about Paid Family Leave from your employer at these three (3) times:

1. At the time you were hired (if you were hired after January 2020);
2. At least once a year starting in 2020; and
3. If (in 2020 or later) you ever asked your employer for leave that could qualify for benefits under the Paid Family Leave program.

#### Covered Events

There are three (3) kinds of events for which you may be eligible for Paid Family Leave benefits. Each kind of leave has its own eligibility rules and its own limit on the length of time you can receive benefits in a year. No matter how many different types of leave you may take in a year, you may receive no more than **8 weeks** of Paid Family Leave benefits in a year. The three types of leave for which you may receive benefits are:

1. Parental leave - receive benefits to bond with a new child for up to 8 weeks in a year;
2. Family leave - receive benefits to care for a family member for up to 6 weeks in a year; and
3. Medical leave - receive benefits for your own serious health condition for up to 2 weeks in a year.

#### Applying for Benefits

If you have experienced an event that may qualify for parental, family, or medical leave benefits, you can learn more about applying for benefits with the Office of Paid Family Leave at [dcpaidfamilyleave.dc.gov](https://dcpaidfamilyleave.dc.gov).

#### Benefit Amounts

Paid Family Leave benefits are based on the wages your employer paid to you and reported to the Department of Employment Services. If you believe your wages were reported incorrectly, you have the right to provide proof of your correct wages. Effective July 1, 2020 through October 1, 2021, the maximum weekly benefit amount is \$1,000.

#### Employee Protection

The Paid Family Leave program does not provide job protection to you when you take leave and receive Paid Family Leave benefits. However, you may be protected against actions taken by your employer that are harmful to you if those actions were taken because you applied for or claimed Paid Family Leave benefits. When these harmful actions were taken because you applied for or claimed Paid Family Leave benefits, they are known as "retaliation." If you believe you have been retaliated against, you may file a complaint with the DC Office of Human Rights (OHR), which receives complaints at the following web address: [ohr.dc.gov](https://ohr.dc.gov).

You may be eligible for job protection under the DC Family and Medical Leave Act (DCFMLA). For more information on DCFMLA, please visit the following web address: [hr.dc.gov](https://hr.dc.gov).

For more information about Paid Family Leave, please visit the Office of Paid Family Leave's website at [dcpaidfamilyleave.dc.gov](https://dcpaidfamilyleave.dc.gov), call 202-899-3700, or email [does.osfl@dc.gov](mailto:does.osfl@dc.gov).

# Notice Scenario

- Mohammad owns a small chain of restaurants with two locations in Maryland, three in Virginia, and two in DC. He has a small back-office team that works out of a leased office in DC. Mohammad posts the PFL notice in each of his DC restaurants but not the leased office. Is this ok?



# Notice Scenario

- **No.**
- Employers are required to post a notice at each worksite.

# Employer Notice Obligations

- **Inform your employees about PFL.**

- Provide notice to employees of their rights to benefits:
  - To each new employee within 30 days of hire;
  - To all employees annually; and
  - To individual employees when the employer receives direct notice from the employee that leave is needed for a qualifying event

# Employer Recordkeeping Obligations

- Employers must keep **all records** related to PFL for **three years**.
- Covered Employee Wage Information:
  - Name and Social Security or tax identification number;
  - Beginning and end date of each pay period;
  - Wages paid each pay period;
  - Method of payment;
  - Dates of employment;
  - Earnings; and
  - Dates paid their wages.
- Covered Employee PFL Information:
  - Dates they took covered leave;
  - Copies of leave notices they gave their employer; and
  - Records of disputes between them and their employer regarding PFL.

# Employee Notification Obligations

- **Employee notification:** The PFL law requires **at least 10 days' notice** from employees to employers of the need for leave when the employee knows that he or she will need leave.
  - However, if an employee is unable to provide the employer with notice 10 days before the need for leave because the situation is an emergency, the employee must provide notice as soon as possible.
  - If the employee is physically unable to provide notice before missing work, someone on his or her behalf must give notice to the employer no more than two days after the emergency happened.

# Notification Given?

- While out running Saturday, Susan trips and tears ligaments in her knee. She needs surgery and will be out of work for the next three weeks. On Sunday evening she emails her employer, John, stating that she is injured and will not be working on Monday. What are John's responsibilities under the Paid Family Leave Act?



# Notification Given?

- This appears to be a covered event so John must notify Susan of her eligibility for PFL.
  - Employers are on notice when they receive direct communication from an employee that PFL **leave may be necessary.**
  - This notice **doesn't need to be a formal request or even in writing.**
- Employees also don't need to be aware that their leave event qualifies for PFL or even know if they will take time off work yet.

## Notice Given?

- Same scenario as before but rather than contact John, Susan doesn't show up to work on Monday morning and does not return John's calls. The next day, a family member contacts John to let him know that Susan had surgery and is in the hospital recovering. John does not take any steps to give Susan or her family the PFL notice because he has not heard from Susan herself. **Is this ok?**

# Notice Given?

- **No.** Although Susan didn't tell John herself, he should consider this direct notice from Susan.
- Employers have the burden of proving compliance with the PFL notice requirements.
- Violations of the notice requirements may result in a civil penalty of:
  - \$100 for each covered employee who didn't receive individual notice; and/or
  - \$100 for each day that a covered employer failed to post the notice in a conspicuous place at each worksite.
- Employers can establish compliance for providing individual notice to their employees by showing email receipts or signed statements from their employees acknowledging delivery.

# Qualifying Events

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# Qualifying Events



- **8 weeks** to bond with a new child
- **6 weeks** to care for a family member with a serious health condition
- **2 weeks** to care for employee's own serious health condition



# Medical Leave

- Employees can take medical leave for their own serious health condition that **prevents them from working, attending school, or performing the regular activities of daily living.**
- “Serious health condition” means:
  - the condition involved at least an overnight stay in a hospital, hospice, or residential medical care facility; or
  - the condition caused the inability to work, attend school, or perform other regular daily activities for at least three full days and also required attention of a medical provider within 10 days of the onset or on two separate occasions within 30 days of the onset; or
  - the condition is chronic or incurable; or
  - the condition requires multiple treatments by medical providers to avoid an occurrence; or
  - the employee is pregnant and unable to work, attend school, or perform other regular daily activities due to pregnancy or needs leave to attend prenatal appointments.

# Family Leave

- Employees can receive family leave benefits if:
  - one of their family members experiences a serious health condition **and**
  - that family member requires care or companionship from the employee.
- Eligible family members include:
  - **Children** (employee's biological, adopted, foster or stepchild, legal ward, child of domestic partner or child to whom employee stands *in loco parentis*)
  - **Parents** (biological, adopted, foster, stepparent, parent-in-law, legal guardian or person who stood *in loco parentis* to employee)
  - **Siblings** (biological, adopted, foster, half-sibling, step-sibling, or siblings-in-law)

# Who Determines Eligibility?

- DOES will determine leave amounts for personal medical leave or leave to care for a family member based on the doctor's recommendation.
- Just like disability insurance claims, employers can't appeal claim determinations.
- DOES will inform the employer if an employee's claim is approved or denied.

# **Interaction with Other Leave Laws and Benefits**

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# Interaction with Other Leave Laws

- PFL doesn't change requirements of other laws.
- If an employer is required to provide leave or accommodations under the Family and Medical Leave Act (FMLA), District of Columbia Family and Medical Leave Act (DCFMLA), Accrued Sick and Safe Leave Act (ASSLA), Americans with Disabilities Act (ADA), etc., then **the employer must still comply with those laws.**
- The PFL Act provides paid leave benefits for the same events as the FMLA and DC FMLA.
  - However, employee eligibility for PFL is portable and not dependent on the length of time working for a certain employee.

# Interaction with Other Paid Leave Benefits

- The PFL Act **does not impose any restrictions** on an employer's own paid leave plans.
- Employers are **free to adjust their existing plans**.
  - Employers may want to consult with their benefits provider to see how PFL interacts with their plans.
- Employers cannot interfere with an employee's right to access the PFL benefits.

# Benefit Amount

- Covered employees will receive PFL benefits determined on a sliding scale based on their reported income, **up to 90% of their average weekly wage** and a **max of \$1,000, for each week they are on leave.**
- Employers are not required to pay the difference between the PFL benefit and their employee's salary.
  - However, employers can choose to coordinate their own paid leave with DC's PFL to help their employees receive 100% wage replacement.
- Employees may receive no more than a total of eight weeks of PFL benefits per year.

## Benefit Amount Scenario

- Robert had a personal medical leave event in May for which he received PFL benefits for one week. The next month he had another personal medical event that lasted two weeks. Would Robert be eligible for PFL benefits for all three weeks?

## Benefit Amount Scenario

- **No.** The maximum amount of PFL benefits Robert can receive in a year for his own serious health condition is two weeks.
- Note that Robert may still be eligible for FMLA or other leave benefits.

# Rules About Working While on Leave

- When receiving PFL benefits on continuous leave, employees must not earn any income from working at their regular job.
  - This does not include paid-leave benefits employers may provide, such as parental leave, temporary disability pay, or sick pay.
- When receiving PFL benefits on an intermittent leave schedule, benefits are on a daily basis and employees cannot work and receive benefits on more days than there are in their normal workweek.

# Return From Leave – Employer Obligations

- The PFL Act does **not require that an employer return the employee to his or her previous job when the benefits end.**
  - However, many employees on PFL may be covered by the FMLA or DC FMLA, which does provide job protection.
- Although there is no job protection, **employers may not take adverse action *because the employee received* PFL benefits.**

# Questions??

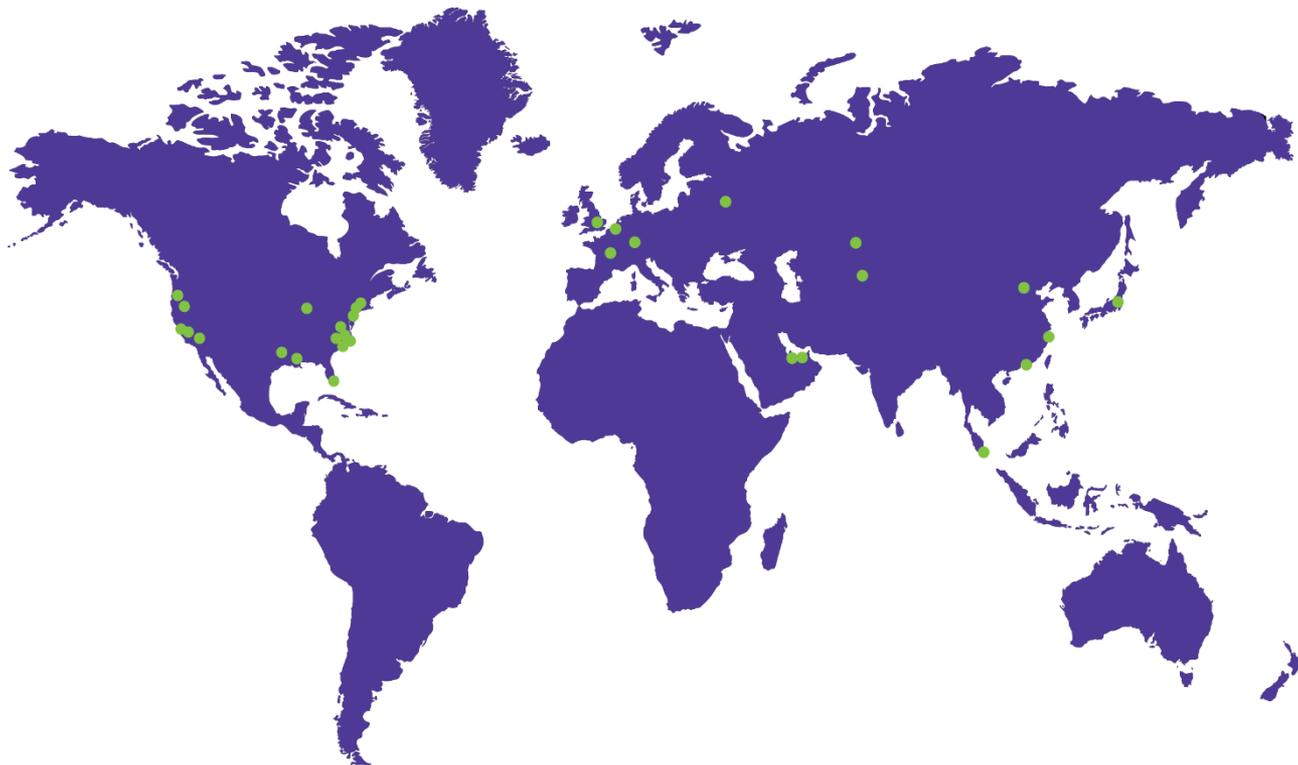
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