

Lay of the Land: An Introduction to Employment Law Requirements for New D.C. Employers

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Nonprofit & Small Business Legal Assistance Programs

D.C. Bar Pro Bono Center



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D.C. Bar Pro Bono Center – About Us

- We sponsor trainings, webinars, and podcasts on important, real-world legal issues facing nonprofits and small businesses
- We provide written resources and archived training sessions on our website: <https://www.lawhelp.org/dc/npsb>
- We host virtual & in-person legal clinics to address specific issues (e.g. governance, risk management, intellectual property) and rolling clinics/office hours to address more general legal needs
- *Nonprofits* – we match D.C.-serving nonprofits with pro bono counsel for larger legal projects

Scope & Purpose of Today's Presentation

- Not everyone has an HR professional or department within their organization – but the scale of employment laws can be overwhelming
- *Our goal:* A high-level survey identifying 31 employment law topics that small, new employers should be aware of
- We will not be going into significant detail on any particular topic
 - Use this as a “checklist” for further reading/education/support
 - Purpose today is to build awareness, not to fully education you on topics
- Check out www.lawhelp.org/dc/npsb for additional resources, links to brief advice services, and additional learning opportunities
 - When in doubt, consult a lawyer about your individual situation

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Initial Pre-Hiring Considerations & Hiring Process

A. Employee Classification: Employee vs. Independent Contractor

- Most of the laws we'll cover today apply to “employees”, not independent contractors
- Misclassifying an employee as an independent contractor can trigger retroactive liability for payroll tax, withholdings, benefits, overtime pay, and other consequences
- Distinction affects the kind of screening and reporting you're required to perform at the hiring/onboarding stage
 - *Independent Contractors*: Form W-9 (requesting tax ID); Form 1099-NEC (reporting payments over \$600)
 - *Employees*: I-9, W-2, and other forms covered in this presentation

A. Employee Classification: Employee vs. Independent Contractor

- Employee/contractor distinction revolves around the worker’s economic “independence”; key factors include:
 - Behavioral: Does the company control what the worker does and how the worker does his or her job? Control over hours, presence, etc.? Degree of training, oversight, discipline, and evaluation?
 - Financial: Are the business aspects of the worker’s job controlled by the employer? (E.g. how worker is paid, whether expenses are reimbursed, who provides tools/supplies, flat project fee vs. hourly payment, freedom to have other projects/clients, etc.)
 - Type of Relationship: Are there written contracts or employee-type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue? Is the work performed a key aspect of the business?
- Doesn’t matter what the employer or the employee call the position – employee vs. contractor distinction is an objective test based on the actual job duties and relationship between parties

A. Employee Classification: Employee vs. Independent Contractor

Resources

- [Independent Contractors - Compliance Issues & Best Practices](#) (Webinar)
- [New IRS Form 1099-NEC Required for Independent Contractors](#) (Newsletter Article)
- [Department of Labor Fact Sheet on Independent Contractor Factors](#)
- [DOL Webpage on Contractor Misclassification](#)

B. Employee Classification: Overtime Eligible vs. Exempt

- Under federal Fair Labor Standards Act (FLSA), employees who work more than 40 hours a week are entitled to 1.5x pay for each excess hour worked (overtime)
 - Hourly employees and employees making under \$35,568 a year (\$684/week) are *always eligible for overtime*
 - "Blue-collar" manual laborers and in-field police/fire/first responders are also *always eligible for overtime*
 - "White-collar" workers making over \$35,586 a year are also overtime-eligible by default; only exempt if they fall into certain statutory categories
- Private employers **cannot** offer comp time in lieu of overtime for overtime-eligible workers (even if workers prefer this arrangement!)

B. Employee Classification: Overtime Eligible vs. Exempt

Overtime-exempt categories (salaried employees making over \$35,568):

- Executive – managing the enterprise or a recognized department/subdivision; direct at least 2 FTEs; power to control/strongly influence hiring & firing of other employees
- Administrative – officer/non-manual worker directly related to management/general business operations & "discretion and independent judgement with respect to matters of significance"
- Professional – learned professionals (advanced degrees in a field of science or learning + intellectual work involving discretion/judgement) or creative professionals ("invention, imagination, originality or talent in a recognized field of artistic or creative endeavor")
- "Highly Compensated" Employees - employees making over \$107,432 can meet exec/admin/professional exemptions more easily

B. Employee Classification: Overtime Eligible vs. Exempt

Overtime-exempt categories (salaried employees making over \$35,568):

- Computer – systems analysts, programmers, software engineers, and similar skilled workers with specific high-skill duties; some fee/hourly employees can qualify
- Outside Sales – primarily making sales/securing contracts & orders outside of the employer's place of business
- D.C. Exemptions – D.C. recognizes local exemptions for live-in domestic workers, certain commission-based salespeople, ship & rail workers, parking lot attendants, newspaper home delivery workers, and third-party car dealership employees

B. Employee Classification: Overtime Eligible vs. Exempt

Resources

- [Exempt or Non-Exempt – That is the Question: A Webinar About Employee Overtime](#)

C. Employee Classification: At-Will Employment Status

- In D.C. and most other states, employees are considered "at-will" by default
 - Employees can be terminated for any/no reason* and can quit at any time without providing cause/notice - provides maximum flexibility for all involved
 - * Exceptions for terminations based on (i) discrimination, (ii) retaliation re: reporting/uncovering discrimination, and (iii) "public policy" exceptions (ie. terminations for refusing to break the law/doing something affirmatively required by law) - these can result in wrongful termination lawsuits
- In contrast, employees can be covered by express or implied contracts that guarantee them employment for a certain term and/or only allow them to be terminated for cause
 - Conversely, also possible to contractually require employees to provide notice before quitting, etc.; but be careful when contracting around at-will norm (e.g. unintended consequences, enforceability)
- To maintain at-will status, do not provide employment contracts, create implied/explicit promises of guaranteed-term employment, or include for-cause removal in offer letters, manuals, etc.

D. Employee Classification: In-Person vs. Remote vs. Hybrid

- Many organizations are shifting in-person positions to remote or hybrid positions
- Full-time remote workers working outside of D.C. may trigger complex new employment law reqs from the state in which they work – UI registration, tax withholding, workers' comp, licensing/qualifications reqs, different wage/hour laws, state-specific benefit programs, etc.
 - Always know where your fully remote employees are working and be prepared to comply with the employment laws of their states
 - You can have a remote work policy that limits remote work to select jurisdictions
- Hybrid work policies that require employees to report to D.C. and establish D.C. as the org's operational/management hub can keep employees from being classified as out-of-state workers, depending on specific rules/circumstances

E. Minimum Wage & Other Wage/Hour Requirements

Minimum Wages

- Minimum wage in D.C. is currently \$16.10/hour
- Base minimum wage for tipped employees is \$5.35, but tipped employees are still entitled to at least \$16.10/hour - employers pay the difference (averaged out per week) if necessary
- Government contractors and grantees receiving over \$100,000 from D.C. need to pay minimum living wage, currently \$16.50
- Newly hired youth employees (<20 y/o) can be paid a 90-day training wage of \$4.25 (certain work-study programs must pay more)

E. Minimum Wage & Other Wage/Hour Requirements

Supplies and Breaks

- Must pay for purchasing/washing required employee uniforms or pay minimum wage premium (+8-15 cents/hour) if employees are responsible for purchasing and/or washing their own uniforms
- No requirement for meal periods/breaks; however, if they're provided, breaks must be paid (typically under 20 minutes); meals periods (>30 minutes) don't need to be paid if employees are free during the period

Wage Payment

- Almost all employees must be paid at least twice a month on regular, pre-set pay days (certain administrative, executive, and professional employees can be paid once a month)
- When an employee is terminated, their final paycheck is due the next regular business day; when an employee quits/resigns, last check is due earlier of 7 days or the next scheduled pay date
financial penalties for noncompliance

E. Minimum Wage & Other Wage/Hour Requirements

Resources

- [Compensable Time: What Nonprofits Need to Know Regarding Their Non-Exempt Employees](#) (Legal Alert)
- [D.C. Wage Theft Prevention Act of 2014](#) (Legal Alert)

F. Setting Nonprofit Executive Compensation

- IRS has special rules to prevent nonprofits from unreasonably *overcompensating* nonprofit executives
- Nonprofit executive compensation should be set by a designated body without any conflicts of interest; the body should use salary data from comparator organizations (with similar size, budget, geography, sector, etc.) to determine a reasonable compensation package
- Overcompensation can become an "excess benefit transaction" that subjects both the org and individual directors/officers to IRS penalties

F. Setting Nonprofit Executive Compensation

Resources

- [Board Basics - Setting Compensation for Nonprofit Executives](#) (Webinar)

G. Non-Discrimination in Hiring

- The D.C. Human Rights law prohibits discrimination based on 23 traits in employment, including at hiring stage
- *Traits:* Age, race, color, religion, sex, sexual orientation, gender identity/expression, credit information, disability, family responsibilities, genetic information, homeless status, marital status, matriculation, national origin, personal appearance, political affiliation, victim of DV/sexual offence/stalking
 - Avoid language or comments in job descriptions, hiring ads, application forms, interview questions, etc. that may implicate a protected trait
 - Beware of less common categories (e.g. family responsibilities, marital status, matriculation, personal appearance, political affiliation, national origin)

G. Non-Discrimination in Hiring

- D.C. Criminal Record Screening Restriction ("Ban the Box")
 - For employers with >10 employees, cannot (i) ask about past arrests, (ii) ask about past convictions until after a conditional job offer is made, and (iii) use criminal history against applicants absent "legitimate business reason" (ie. prove that past conviction is actually relevant to job reqs/performance)
 - Exemptions for some jobs, including those working with minors/vulnerable adults
- Credit Checks – Except in very limited circumstances (e.g. certain jobs at financial institutions), employers cannot ask for or use credit information/credit history during application/hiring process

G. Non-Discrimination in Hiring

Resources

- [Using Criminal Records In Employment Decisions \(Legal Alert\)](#)
- [The Fair Credit in Employment Amendment Act of 2016 \(Legal Alert\)](#)
- [The District of Columbia Fair Criminal Record Screening Amendment Act of 2014 \(Legal Alert\)](#)

H. Hiring Procedures & Documentation

Offer Letters

- For non-contract employees, employers may (but are not required) to provide an offer letter
- If you provide offer letters, provide one to everyone at the same level of employment – i.e., give a letter to all new employees hired at the manager level or assistant manager level, and not just a select few
- Offer letter should address:
 - Job title and job duties
 - Confirmation of at-will status
 - Start date (& end date, for temporary positions)
 - Compensation structure
 - PT/FT status & hours of employment
 - Benefits
 - Background check & other contingencies
 - Cross-references to other policies (employee handbook, confidentiality policies, etc.)
- If the letter describes benefits, it should specify that compensation and benefits are subject to change and that the employer can amend or terminate its employee benefit plans at any time

H. Hiring Procedures & Documentation

D.C. Notice of Hire Forms

- Under DC law, the employer must provide a notice to all new employees that sets forth:
 - The employer's name (and any "doing business as" names);
 - The phone number and physical and mailing address of the employer's main office;
 - The employee's rate of pay and the basis of the rate (including allowances claimed as part of wages, such as tips, meals, lodging, etc.);
 - Whether the employee is exempt from the overtime pay requirements, and if so, the basis for the exemption;
 - If the employee is not exempt, the overtime rate of pay; and
 - The employee's regular payday
- The form must be signed by the employee and employer, and a copy given to the employee. The employee must be given an updated notice whenever any of this information changes (e.g. when they receive raises).
- The D.C. government provides a template notice form. See: <https://does.dc.gov/page/office-wage-hour-employers>

H. Hiring Procedures & Documentation

I-9 Verification

- All new employees must provide evidence that they are eligible to work in the U.S., either because they are citizens/LPRs or because they have a work visa
- Employers must complete form I-9 within 3 business days of commencing employment and retain the form for as long as they employ the person (and then for another year or for 3 years after the commencement of employment, whichever is longer)
- Store I-9s separately from other employee files and destroy them after the retention period has elapsed

H. Hiring Procedures & Documentation

Resources

- [Do You Have to Provide Your Employees with an Updated Notice of Hire? \(And Have You Done So?\)](#) (Legal Alert)
- [On-Boarding New Employees](#) (Webinar)
- [New Form I-9](#) (Legal Alert)

I. Employment Policies & Notices

Written Policies, Manuals and/or Handbooks

- In addition to position-specific information contained in offer letters, you can also adopt org-wide policies, manuals, and/or employee handbooks to document other employment rules & practices
- Handbooks & polices can cover most of the topics in today's presentation – especially useful for communicating policies around workplace safety, confidentiality/non-disclosure, benefits/PTO, attendance/remote work, termination/performance management, etc.
- Get written acknowledgment that employees have reviewed the policies/manuals

I. Employment Policies & Notices

Employment Law Notices & Posters

- Employers are required to post numerous employment law posters in their physical work sites under D.C. (~14) and federal (~10) law
- For remote-only workers, making the posters available online is allowed as an alternative
- All posters are available for free on government websites; also possible to purchase “all-in-one” posters from third-party vendors
- Check for updates annually or whenever the underlying law changes

I. Employment Policies & Notices

Resources

- [Employee Handbooks - A Guide for Employers](#) (Webinar)
- [Does Your Nonprofit Meet D.C. Employment Law Posting Requirements?](#) (Article)

J. Special Note: Interns & Volunteers

Volunteers

- For-profit, private sector employees cannot "volunteer" to work for their employers
- On the other hand, people can volunteer for public sector organizations (ie. nonprofits and government entities) without being classified as employees or being owed compensation
 - In certain nonprofit circumstances – for example, demanding volunteer positions that are similar to paid positions in other organizations – it's prudent to have volunteers sign a written volunteer agreement indicating that they agree to be acting as bona fide volunteers

J. Special Note: Interns & Volunteers

- It's possible to have unpaid interns/trainees, but only if the intern receives enough educational/career benefit from the experience that they are deemed the "primary" beneficiary of the relationship – courts and labor departments will look at factors like:
 1. Whether there was any expectation of compensation;
 2. The extent to which the internship provides training similar to in-school clinical or vocational education;
 3. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit;
 4. The extent to which the internship accommodates the intern's academic commitments/calendar;
 5. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning;
 6. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern;
 7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship
- *** Paid interns are just regular employees! *** (E.g. W-2s; "stipends" must meet minimum wage; etc.)

Post-Hire & Ongoing Obligations

A. Tax Withholding & Remittance

DC

- Income tax
- Unemployment insurance
- Paid family leave

Accounts for taxes established when registering for DC business tax accounts, Form FR500, which must be done online

Payments made to Office of Tax & Revenue and Department of Employment Services

Federal

- Income tax withholding
- Social Security
- Medicare
- Federal unemployment tax

Paid to IRS monthly (most small employers) or semi-weekly, except for federal unemployment

File forms 941 & 940 with IRS

File & Issue W-2s

A. Tax Withholding & Remittance

Resources

DC

- [DC Office of Tax & Revenue Online Portal](#)
- [DC Income Tax Withholding Tables & Instructions](#)
- [Employer Self-Service Portal](#)

Federal

- [Payroll Taxes: A Webinar to Help Your Nonprofit Understand What It Needs to Know About FICA Taxes and Income Tax Withholding \(Webinar\)](#)
- [IRS Employment Taxes](#)
- [IRS Understanding Employment Taxes](#)
- [IRS Employment Tax Due Dates](#)
- [IRS Depositing and Reporting Employment Taxes](#)
- [IRS E-File Employment Tax Forms](#)

B. Limits on Non-Compete Agreements

- Most DC non-compete agreements signed on or after October 1, 2022, are invalid. Restrictions also apply to workplace policies prohibiting concurrent employment and operating own business (“moonlighting”)
- Major exceptions:
 - Medical professional earning more than \$250,000 per year
 - Other employees earning more than \$150,000 per year
 - Even when non-compete agreements are permitted, employers must follow specific procedures and the length of the agreements is capped
- Employer **cannot take an adverse action** against employee for:
 - refusing to sign non-compete that is prohibited by the law;
 - asking, informing, or complaining about a non-compete or workplace policy;
 - failing to comply with unlawful non-compete or workplace policy;
 - requesting information about the non-compete ban; or
 - requesting a copy of the proposed or executed non-compete agreement
- There are notice requirements!
- Federal government currently exploring a non-compete ban also

B. Limits on Non-Compete Agreements

Resources

- [Legal Alert: Most Non-Compete Agreements Banned in the District of Columbia](#)
- [Webinar: Understanding D.C.'s New Ban on Non-Compete Agreements](#)

C. Confidentiality and Non-Disclosure Agreements

- Essential documents to protect organization's intellectual property, customers/clients, and comply with relevant professional standards
- Make sure that all contractual
- Nondisclosure agreements more important now with DC's non-compete ban
- Must be reasonable to be enforced by a court!
 - Information actually be kept confidential
 - Must be limited in scope and duration
 - Cannot ask employee to do something illegal

D. Anti-Harassment

- Have written policy prohibiting harassment– including sexual harassment
 - Define
 - How to report & procedures
 - Consequences
 - Confidentiality and limitations
 - Anti-retaliation
- Train employees on policy annually
- If employer knows of harassment, ***you must do something about it!***

E. Workplace Safety & Security

- Occupational Safety and Health Act requires employers to:
 - Maintain conditions or adopt practices reasonably necessary and appropriate to protect workers on the job
 - Be familiar with and comply with standards applicable to their establishments; and
 - Ensure that employees have and use personal protective equipment when required for safety and health
 - Report work-related fatalities within 8 hours and all inpatient hospitalizations, amputations, and losses of an eye within 24 hours
- Keep workplace free of known dangers!
- DC Smoke Free Workplace Act requires workplace to be smoke-free except designated, ventilated areas
 - Smoke free areas include work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, and employer-owned vehicles
- Must report job-related illness or injury to DC
- Breaks and meal periods not legally required but offer them and have a policy!

F. Whistleblower & Anti-Retaliation

- Whistleblower = person who reports illegal, fraudulent, unsafe, or unethical conduct
- Have a written whistleblower policy with clear instructions on who to report to
- Do not punish employees for whistleblowing and encourage a culture of accountability where employees feel safe to speak up
- Cannot retaliate against employee for exercising legally protected right
 - Termination, demotion, pay decrease, less favorable schedule, etc
- **Having policies is not enough; follow them!**

F. Whistleblower & Anti-Retaliation

Resources

- [Tax-Exempt Organization Alert: Whistleblower Policies](#) (Legal Alert)
- [Board Basics: Whistleblower Policies & Nonprofit Transparency](#) (Webinar)

G. The Americans with Disabilities Act

- Employees with disabilities are entitled to reasonable accommodations; no magic words or formal request required
- Employers then engage in *interactive process* to determine accommodations that could allow person to perform essential job functions
- Examples of reasonable accommodations:
 - Additional breaks
 - Adjusted work hours
 - Transfer certain physical tasks to other employees
 - Remote work
 - Provide ASL interpreter
- *Cost alone generally insufficient to deny accommodation; need to show that accommodations would cause “undue hardship” on business operations*

G. The Americans with Disabilities Act

Resources

- [Managing Employee Leaves of Absence and Accommodation Requests for Non-Profits \(Webinar\)](#)
- [Employers' Practical Guide to Reasonable Accommodations Under the ADA \(Article\)](#)
- [Employers and the ADA: Myths and Facts \(Article\)](#)

H. Breastfeeding Accommodations

- Cannot discriminate against DC employee for breastfeeding!!
- Provide reasonable daily unpaid break-time, as required by employee so, to express breast milk for their child to maintain milk supply and comfort
- Provide sanitary room or other location in close proximity to the work area, other than a bathroom or toilet stall, where an employee can express their breast milk in privacy and security

H. Breastfeeding Accommodations

Resources

- [The Protecting Pregnant Workers Fairness Act of 2014](#) (Legal Alert)

I. Additional Non-Discrimination

DC Human Rights Act

- Age; Color; Credit Information; Disability; Family responsibilities; Gender identity & Expression; Genetic information; Homeless Status; Marital Status; Matriculation; National origin; Personal appearance; Political Affiliation; Race; Religion; Sex; Sexual Orientation; and Status as a Victim or Family Member of a Victim of Domestic Violence, a Sexual Offense, or Stalking

DC Protecting Pregnant Workers Fairness Act

- Must provide reasonable accommodations to employee limited in performing job duties due to pregnancy, childbirth, breastfeeding, or related medical condition

Age Discrimination in Employment Act

- Protects employees 40+ years old against age discrimination in hiring, promotion, discharge, compensation, or terms, conditions or privileges of employment

Pregnancy Discrimination Act

Civil Rights Act

- Race
- Color
- National origin
- Sex
- Religion

J. Performance Management

- Annual or other regularly scheduled performance reviews are good but if a performance issue is identified, should not wait to address
- Focus on job-related matters and avoid personality traits
- Provide employee with copy and provide opportunity to discuss and ask questions
- Consistency in how employees are evaluated is key; train managers and use the same assessment tool for employees
- Establish clear policies for what happens when poor performance identified
 - Performance improvement plan or probationary period
 - Circumstances under which immediate termination warranted
- Document poor performance as it happens and in regularly scheduled reviews

J. Performance Management

Resources

- [Best Practices for Nonprofits - Managing Personnel Files and Preparing Employee Documentation](#) (Webinar)

K. Terminations

- Verify that employee is at-will prior to termination – Notice of Hire form
- Practical steps:
 - Have witness present
 - Cut off employee's computer and account access
 - Facilitate return of employer property – cannot withhold from final paycheck to cover unreturned equipment
 - Have a safe, private path for employee to exit workplace
- Issue final paycheck next business day
 - Or earlier of next regular payday or within seven days if employee quits
- Pay out unused vacation & sick time (unless explicit prior agreement not to)

K. Terminations

Resources

- [What to Do When You Have to Lay Off an Employee - What Every Nonprofit Should Know \(Legal Alert\)](#)
- [What to Do about Severance Pay and Benefits During Reductions in Force \(Legal Alert\)](#)

L. Training

- Require regular training on harassment, workplace procedures, employer or industry-specific topics, risk management/mitigation
 - Have a set schedule of mandatory annual trainings
 - Ensure that employee schedules and duties are flexible enough for all employees to attend
- Generally speaking, if you do not train employees on something, cannot expect them to know it
 - If workers perform tasks that may impact safety or well-being of others (e.g., preparing food, treating sick individuals, supervising contact sports, handling funds), make sure to train them on what to do and not do
- Training helps employees *and* protects employers
- Consider developing a policy on non-mandatory trainings to encourage employees to seek out additional training related to their job
- Remember that mandatory training is “time worked” for wage & hour purposes

M. Insurance

- Employer legally responsible for acts or omissions of employees within scope of their job
- Employer also faces risks associated with not following employment laws
- Common policies covering employers:
 - General liability
 - Employment practices liability
 - Professional liability insurance
 - Directors & officers liability insurance
 - Commercial property insurance
 - Commercial automobile insurance
 - Workers compensation insurance (mandatory!)
- Most D.C. nonprofits required to carry minimum insurance coverage to benefit from statutory protections/satisfy indemnification requirements

M. Insurance

Resources

- [Do We Have Insurance for That? An Overview of Employment-Based Insurance](#) (Article)
- [Small Business Guide to Risk Management and Insurance](#)
- [A Nonprofit's Guide to Risk Management and Insurance](#)

Employee Leave & Benefits

A. DC Mandatory Leave Laws

DC Family & Medical Leave Act (FMLA)

- Applies to: Employers with 20 or more employees
- Eligible employees get up to 16 weeks of *unpaid* family leave and 16 weeks of *unpaid* medical leave during a 24-month period
 - Can substitute with available paid leave
- Eligible employees worked for the employer for 12 months in the preceding 7 years and worked at least 1,000 hours during the last 12 months

A. DC Mandatory Leave Laws

Accrued Sick & Safe Leave (ASSLA)

- All DC employees entitled to paid leave for:
 - physical or mental illness, medical appointments, obligations related to being a victim of sexual assault, stalking, or domestic violence
- Amount of leave based on employer size and employee hours worked
 - 100 + employees: 1 hour of leave per 37 hours worked, up to 7 days per calendar year
 - 25 to 99 employees: 1 hour of leave per 43 hours worked, up to 5 days per calendar year
 - 1 to 24 employees: 1 hour of leave per 87 hours worked, up to 3 days per calendar year
 - Tipped employees working for a sub-minimum base wage: 1 hour of leave per 43 hours worked, up to 5 days per calendar year

A. DC Mandatory Leave Laws

Parental Leave

- Unpaid (or paid) leave for specified family members of school-aged child
 - Biological parent
 - Legal guardian or custodian
 - Aunt or uncle
 - Spouse or domestic partner of the above
- Up to 24 hours per year for school related activities such as:
 - Parent-teacher conferences
 - Concerts
 - Plays
 - Rehearsals
 - Sporting events
 - Other activities where the child is a participant or the subject of the event
- If foreseeable, notify employer 10 days in advance

A. DC Mandatory Leave Laws

Resources

- [D.C. Leave Comparison Chart](#)
- [D.C. Sick and Safe Leave Law: What Your Nonprofit Needs to Know](#) (Legal Alert)
- [Washington, D.C. Paid Sick Leave Law](#) (Legal Alert)

B. DC Paid Family Leave

- DC-administered leave program for all DC non-governmental workers
- Paid leave of up to:
 - 2 weeks to care for pregnancy
 - 12 weeks to bond with a new child
 - 12 weeks to care for a family member with a serious health condition
 - 12 weeks to care for own serious health condition
- Total of 12 weeks/year of any combination of last three above (+2 weeks of pregnancy leave)
- Employers pay into PFL fund through Unemployment Insurance portal; employees apply for benefits through DC and are paid salary replacement by D.C. government (max weekly benefit currently \$1,049)
- You can have additional leave benefits that supplement or coordinate with PFL, but cannot prevent an employee from taking PFL
 - E.g. more time; salary gross-ups; additional non-serious medical leave (sick/mental health days)

B. DC Paid Family Leave

Resources

- [DC Paid Family Leave Website](#)
- [Webinar: Highlights of the DC Paid Family Leave Act for Nonprofit & Small Business Employers](#)
- [Webinar: Introduction to DC's Paid Family Leave Law for Childcare Business Owners](#)
- [Webinar: Attention All DC Employers - Are You Ready for Paid Family Leave in July 2019?](#)
- [D.C. Paid Family Leave Workplace Navigators Fact Sheet for Employers](#)

C. Unemployment Insurance

- DC (or state)-administered wage replacement insurance for workers who lost their job and are unemployed or under-employed
 - Not intended for workers fired for cause
 - Generally unavailable to workers who willingly quit
- Funded by employer-paid tax
 - Reports and tax payments submitted to the DC Department of Employment Services (DOES)
 - Employer tax rate can vary based on number of claims made by former employees
- Process:
 - Employee applies
 - Employer verifies information
 - DOES makes determination on employee eligibility
 - Employer or former employee can challenge DOES determination
- D.C. nonprofits can self-insure instead of paying into the public system – but risky!

D. Workers Compensation

- Mandatory for all DC employers
- No-fault insurance for work-related injuries and illnesses
 - Employer generally must pay even if injury is the employee's fault
 - Employee generally can't sue even if employer caused the accident
- Workers' compensation system
- Establish clear system for employees to report work injuries and require employees to report injuries
- Do not punish employees for their injuries or otherwise retaliate!

E. Vacation, Holidays & Other Personal PTO

- No legally-required paid vacation or holiday leave for private employers in D.C.
- If you provide PTO:
 - You must provide whatever you promise in your employee contracts, handbooks, and/or policies
 - Default is that accrued leave is paid out upon termination of employment
 - Default is that there is no cap/rollover limits on accrued vacation time
 - You can have alternative policies that limit these payout/rollover rules, but need to get employee agreement in writing - have a specific acknowledgment/form for this

F. Health Benefits

- Employers with under 50 FTEs do not have to provide health insurance to employees, but can choose to do so
 - Coverage must comply with the ACA; D.C. Health Link has a small employer marketplace
 - Small Business Health Care Tax Credit can cover up to 50% of premium contribution costs for small businesses (under 25 FTEs/, additional rules/limitations apply)
 - If providing coverage, must maintain and distribute plan documents and Summary Plan Descriptions to new hires
 - Employees also have option to continue coverage for 18-36 months after employment ends (Federal COBRA coverage, >19 employees) or 3 months (D.C. "mini-COBRA" for smaller employers)
 - Employer does not have to provide subsidy for COBRA coverage
 - Notification requirements under COBRA – be sure to provide to departing employees
- All employees must receive notice of coverage options under the ACA Exchanges within 14 days of hire, whether or not you provide coverage: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/coverage-options-notice>
- Other plans (dental, vision, etc.) also optional; will trigger ERISA rules around documentation and disclosure if you offer them

G. Transit Benefits

- D.C. employers with more than 20 employees are required to provide transit benefits to employees who work 50% or more of their time in D.C.
- Can be (i) pre-tax fringe benefits that employees deduct and use for vehicle/transit costs (up to \$260/month), (ii) employer-paid direct subsidy of monthly commuting costs (up to \$260/month), (iii) or employer-provided transit services
 - Subsidized parking & bikeshare benefits do not comply

H. Retirement Benefits

- No legal requirement to provide retirement benefits in DC
- If you offer retirement benefits, must comply with tax code/ERISA requirements re: documentation, availability/eligibility, and other considerations

Questions?

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