



## **D.C. Sick and Safe Leave Law**

### *What a Nonprofit Needs to Know*

In 2008, 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. The law was amended recently in the beginning of 2014. The amendment makes several changes to the ASSLA, which include:

- A requirement that new employees must begin to accrue paid sick leave immediately upon hire, and may access it after 90 days;
- Protection against retaliation for employees who exercise their rights under the ASSLA;
- New record keeping requirements;
- New enforcement provisions, including penalties on employers for non-compliance; and
- A repeal of the provisions that limited an employee’s right to carry over his or her accrued sick leave from year to year and an employee’s right to receive a payout of the employee’s accrued sick leave upon termination.

#### **Paid Leave Requirements**

Under ASSLA, employees are entitled to receive paid sick and safe leave as part of their employment benefits. The amount of paid leave an employee is entitled to receive is based upon two factors:

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

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 the total number of its employees, the employer is expected to use the average number of its employees per month for the prior calendar year. This number is computed by adding the total number of full-time equivalent employees employed in the District of Columbia at the beginning of each month of the preceding calendar year and dividing by 12.

For example, suppose an employer had 25 employees on the first day of the month four times last year, and 30 employees on the first day of one month last year and 26 employees on the first day of the month seven times last year. Under the ASSLA rules, the employer would add up the number of employees it had the first day of each month in the prior year, or in this case:  $30 + 26 + 26 + 26 + 26 + 26 + 26 + 26 + 25 + 25 + 25 = 312$ . This number is then divided by 12 months to determine the average number of employees per month ( $312 \div 12 = 26$ ). In this example the employer had an average of 26 employees per month.

Under the ASSLA rules, the employer would fall into Group 2, and 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.

### Who is an Employee?

The ASSLA defines an employee as:

1. Any individual employed by an employer; and

2. Either:
  - a. spends more than fifty percent (50%) of his or her working time in the District of Columbia, or
  - b. is based in the District of Columbia and spends a substantial part of his or her time working in the District and does not spend more than fifty percent (50%) of his or her work-time in any other particular state.

The term “employee” does not include:

- an independent contractor;
- a student;
- health care workers who choose to participate in a premium pay program;
- individuals who volunteer to engage in the activities of educational, charitable, religious, or nonprofit organizations;
- lay officers within the discipline of any religious organization who are engaged in religious functions; or
- casual babysitters employed in or around the residence of the employer.

The ASSLA provides special rules for restaurant wait staff and bartenders, who are now covered by the ASSLA.

### Procedures for Using Leave

Employees begin to accrue paid leave on the first day of employment and may begin to access it after 90 days of service. An employer may permit an employee to carry over any unused sick leave to the following year.

The 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.

The ASSLA permits employees to use the paid leave in order to care for themselves as well as a child, parent, spouse, domestic partner or any other family member who has a physical or mental illness or needs medical care. The ASSLA also provides “safe leave” for absences related to incidents of domestic violence or sexual abuse.

Under the ASSLA, an employee’s accrued paid sick leave carries over from year to year. However, the ASSLA does not require employers to reimburse employees for any unused paid leave accrued when they leave the organization. Therefore, it is important for an employer to make clear whether an employee is entitled to unused sick leave when their employment is terminated.

### **Retaliation Protections**

ASSLA protects employees from interference with, restraint, or denial of rights provided by ASSLA as well as from discrimination for using sick leave. ASSLA also includes provisions that protect employees from retaliation for:

- (i) complaining to the employer about a violation of his or her rights under ASSLA;
- (ii) filing a complaint with the Department of Employment Services;
- (iii) filing a civil complaint;

- (iv) informing any person about an alleged violation;
- (v) cooperating with the DOES or another person’s investigation or prosecution of an alleged violation;
- (vi) opposing any policy, practice, or act that is unlawful under the ASSLA; or
- (vii) informing any person of his or her rights under ASSLA<sup>1</sup>

Under ASSLA, if adverse action is taken within 90 days of an employee engaging in any of the above activities, there is a rebuttable presumption that the employer violated ASSLA. Furthermore, under the ASSLA, it is unlawful to count sick leave as an absence for purposes of discipline, discharge, demotion, suspension, or any other adverse employment action.

### **Notice and Record Keeping Requirements**

The ASSLA requires an employer to post a notice of the law’s provisions in all languages necessary to accommodate their employees.

In addition, D.C. employers must retain records for three years documenting the number of hours worked by an employee and any paid leave used by the employee. These records must be accessible by the Office of the District of Columbia Auditor. Failure to maintain records creates a rebuttable presumption that the employer violated ASSLA.

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<sup>1</sup> “Any person” includes a coworker, a family member, the press, or an attorney.

## **Enforcement and Penalties**

Employees can bring a civil action or an administrative action through Department of Employment Services for back pay, reinstatement, or injunctive, compensatory, or punitive relief under ASSLA. The employer is liable for \$500 for every day an employee was denied leave and required to work. The employer is also liable for attorney's fees in case a violation is found. Finally, an employer that commits a willful violation of the law is subject to a civil penalty of \$1,000 for the first offense, \$1,500 for the second offense, and \$2,000 for any subsequent offense. A violation of the notice-posting requirement is considered a willful violation.

## **Additional Resources**

The following resources may be of assistance to your organization:

- [The Accrued Sick and Safe Leave Act](#)
- [Earned Sick and Safe Leave Amendment Act of 2013](#)
- [Accrued Sick Leave Poster](#)

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