

UNIVERSAL PAID LEAVE

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TOPICS

- Regulatory Update
- What is Universal Paid Leave?
- What does Universal Paid Leave mean for employers?
 - Employer Contribution
 - Notice
 - Recordkeeping
 - Claims Process
 - Appeals
 - Erroneous Payments
 - Prohibited Acts, Complaints, and Investigations

REGULATORY UPDATE

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- The Universal Paid Leave Amendment Act (“Act”) requires DOES to issue implementing rules and submit them to the Council for a 45-day review period, excluding weekends, holidays, and recess.
- DOES issued proposed rules to implement the entire Act on April 6, 2018, but subsequently decided to do two separate rulemakings instead.
- The first proposed rules cover employer contributions and responsibilities and were issued on July 6, 2018.
- The second proposed rules will cover benefits and claims administration and are expected to be issued in September 2018.
- **Information in this presentation accounts only for DOES’s proposed employer contribution rules. It is subject to change by subsequent final rulemakings.**

WHAT IS UNIVERSAL PAID LEAVE?

WHAT IS UNIVERSAL PAID LEAVE?

- The Act allows certain employees—generally, those working for private employers in the District—and opting-in self-employed individuals to receive paid leave benefits after a qualifying medical, family, or parental leave event.
- The maximum benefit period is 2 weeks for medical leave, 6 weeks for family leave, and 8 weeks for parental leave.
- The weekly benefit is 90% of average weekly wages up to 150% of 40 times the minimum hourly wage, and 50% of average weekly wages above 150% of 40 times the minimum hourly wage, up to a maximum of \$1,000.
- Benefits are paid for by a tax on covered employers equal to .62% of wages.
- Claims must be filed with DOES.

WHICH EMPLOYERS MUST PARTICIPATE?

- A **covered employer** is any entity that employs or exercises control over the wages, hours, or working conditions of an employee and is required to pay D.C. unemployment insurance on behalf of its employees.
- A self-employed individual who chooses to opt in to the program is also considered to be a covered employer.
- **The federal government, D.C. government, and any other entity that the District is prohibited from taxing under federal law or treaty are excluded.**

WHO IS ELIGIBLE FOR BENEFITS?

- An **eligible individual** is a person who, during some or all of the preceding 52 weeks, spends more than 50% of his or her work time for a covered employer working in the District, or whose employment is based in the District and spends no more than 50% of his or her work time for the covered employer in another jurisdiction.
- A self-employed individual who chooses to opt-in to the program is also considered to be an eligible individual.
- **Employees of the federal government, D.C. government, and any other entity that the District is prohibited from taxing under federal law or treaty are not eligible.**

WHAT'S THE BENEFIT?

- An individual may receive paid-leave benefits as follows:
 - 2 weeks for a **qualifying medical leave event**: the diagnosis of a serious health condition of an eligible individual
 - 6 weeks for a **qualifying family leave event**: the diagnosis or occurrence of a serious health condition of a family member of an eligible individual
 - 8 weeks for a **qualifying parental leave event**: events, including bonding, associated with the birth or adoption, foster, or legal placement of a child with an eligible individual
- The weekly benefit is 90% of average weekly wages, up to 150% of 40 times the minimum hourly wage, and 50% of average weekly wages above 150% of 40 times the minimum hourly wage, up to a maximum weekly benefit of \$1,000.
- There is a 1-week waiting period after a qualifying event to receive benefits.

WHAT IS A SERIOUS HEALTH CONDITION?

- A **serious health condition** is a physical or mental illness, injury, or impairment that requires inpatient care in a hospital, hospice, or residential care facility, or continuing treatment or supervision at home by a health care provider or other competent individual.
- It includes continuing treatment for a period of:
 - Incapacity greater than 3 months and subsequent treatment
 - Incapacity due to a chronic health condition
 - Incapacity due to a permanent or long-term condition that may not be treatable
 - Absence to receive multiple treatments for restorative surgery for an injury, or for a condition that would result in incapacitation for more than 3 months.

HOW IS IT PAID FOR?

- Each covered employer must pay a .62% tax on wages into the Universal Paid Leave Implementation Fund, beginning July 1, 2019.
- A self-employed individual who opts in must pay .62% of annual self-employment income, beginning July 1, 2019.
- A covered employer must contribute even if it has a paid leave policy that supplements or provides greater benefits than those required by the Act.

WHAT'S THE RELATIONSHIP WITH FMLA AND OTHER BENEFITS?

- Benefits run concurrently with, and not in addition to, leave taken under the federal or D.C. Family and Medical Leave Act (FMLA).
- D.C. FMLA's job-protection benefits continue to apply only to employers with 20 or more employees.
- An individual receiving unemployment or long-term disability is not eligible for benefits under the Universal Paid Leave Act.
- An employer may provide paid leave benefits in addition to the Act's requirements.

WHAT ABOUT SELF-EMPLOYED INDIVIDUALS?

- A self-employed individual may opt in within 90 days of the District beginning collection of contributions to the Universal Paid Leave Fund.
- Afterward, an individual may only opt in or out during an open enrollment period.
- To opt in, the individual must provide DOES a basic or general business license, and, if applicable, an occupation or professional license.
- Once enrolled, the individual must remain enrolled and make contributions for 3 consecutive years, so long as he or she remains self-employed.
- If an individual opts out, he or she is ineligible for benefits for 1 year.
- If an individual opts out 2 or more times, he or she may not participate for 5 years.

WHAT DOES UNIVERSAL PAID LEAVE MEAN FOR EMPLOYERS?

ARE EMPLOYER CONTRIBUTIONS MANDATORY?

- The .62% tax applies to the same wages that are subject to the District's unemployment insurance tax.
- An employer's failure to pay the tax is subject to the same notice requirements, procedures, interest, penalties, and remedies that apply to unemployment insurance.

WHAT DOES IT MEAN FOR MY EMPLOYEES?

Employee's Annual/Weekly Wage	Employer's Annual Tax	Employee's Weekly Benefit*
\$20,000/\$384	\$124	\$346
\$30,000/\$577	\$186	\$519
\$40,000/\$769	\$248	\$692
\$50,000/\$962	\$310	\$841
\$60,000/\$1,153	\$372	\$1,000**
\$70,000/\$1,346	\$434	\$1,000
\$80,000/\$1,538	\$496	\$1,000

* Assumes a \$15 per hour minimum wage, which will take effect on July 1, 2020.

** After October 1, 2021, the maximum weekly benefit will increase with the CPI for All Urban Consumers, Washington-Baltimore Metropolitan Area.

HOW ARE EMPLOYEES NOTIFIED?

- An employer must notify employees of the program:
 - By posting and maintaining a DOES notice in a conspicuous place at each worksite
 - At the time of hire
 - Annually to all employees
 - Again at the time the employer is aware that the employee needs paid leave

WHAT RECORDS MUST BE KEPT?

- A covered employer must develop maintain, and make available to DOES records relating to the program, including:
 - Paystubs, personal checks, cash receipts, or bank deposits
 - Work schedules
 - Communications between the employer and employee
 - Any circumstantial evidence regarding an employee's eligibility
 - Any other record as requested by DOES
- An employer must maintain the records for 3 years.

HOW DO EMPLOYEES ACCESS THIS BENEFIT?

HOW DO EMPLOYEES USE LEAVE?

- An eligible individual must provide notice to his or her employer of the need to use paid leave as follows:
 - If the paid leave is foreseeable, written notice at least 10 days in advance
 - If the paid leave is unforeseeable, oral or written notice before the start of the work shift
 - In the case of an emergency, oral or written notice within 48 hours
- The notice must include:
 - Reason for the absence
 - Expected duration of paid leave

HOW DO EMPLOYEES MAKE A CLAIM?

- Claims go to DOES and must include:
 - For medical leave:
 - Proof of serious health condition
 - Length of leave expected based on industry standards
 - For family leave:
 - Proof of serious health condition
 - Length of leave expected based on industry standards
 - Affirmation that leave will be used to provide care to a family member with a serious health condition
 - Description of the care to be provided
- Additional claims application requirements are expected to be included in the next DOES proposed rulemaking.

HOW IS A CLAIM PROCESSED?

- Within 3 business days after the filing of a claim, the DOES hearing examiner must notify the employer of the filing.
- If the employer does not respond, the claim must be processed using available information. DOES may reprocess if the employer later provides the information.
- DOES must issue an initial determination within 10 days of filing and make the first benefit payment within 10 days of the determination.
- Additional DOES review procedures are expected to be included in the next DOES proposed rulemaking.

CAN AN APPLICANT APPEAL?

- An applicant may appeal an initial determination to the Office of Administrative Hearings (OAH) within 60 days of receipt.
- The appeal may challenge DOES's determination regarding eligibility for benefits, the weekly amount of benefits, and the duration of benefits.
- OAH must consider documents such as paystubs, checks, cash receipts, and bank deposits, work schedules, communications between the employer and employee, and circumstantial evidence.
- If an employer has failed to keep or provide an employee with required employment records or pay the required tax, there is a rebuttable presumption that the employee is eligible for benefits.

CAN AN EMPLOYER APPEAL?

- The Act does not expressly provide for employer appeals of DOES claims determinations.
- However, the Act expands the jurisdiction of OAH to include adjudication cases under the Act. Therefore, an employer should request a hearing with OAH if it disagrees with DOES's determination.
- If either party disagrees with OAH's determination, it may petition for review in the D.C. Court of Appeals under the D.C. Administrative Procedure Act.

WHAT ABOUT ERRONEOUS PAYMENTS?

- If an applicant makes a false or misleading representation in order to obtain benefits, he or she is disqualified from receiving benefits for 3 years.
- If benefits are paid erroneously or as a result of willful misrepresentation, or if the claim is later rejected, DOES may seek repayment from the individual.
- If DOES seeks repayment, it must distribute a proportional share of the recovered amount to each covered employer for the period that the individual improperly obtained benefits.

HOW ARE COMPLAINTS & INVESTIGATIONS HANDLED?

- The Act prohibits interference with the exercise or attempted exercise of any right under the Act, retaliation, and the provision of intentionally false statements in order to obtain benefits.
- For an alleged violation, an eligible individual may either bring a civil action in court, or file a complaint in the D.C. Office of Human Rights. DOES and the Attorney General may also bring a civil action.
- Complaints must be filed within 1 year of the occurrence or discovery of an alleged violation.
- DOES may undertake investigations and, with notice, inspections, and issue subpoenas in order to ensure compliance.

WHO CAN I ASK FOR MORE INFORMATION?

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