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District of Columbia Official Code

**DC CODE § 32-131.01**
Chapter 1A. Employee Sick Leave.



**§ 32-131.01. Definitions.**

For the purposes of this chapter, the term:

(1) "Domestic violence" means an intrafamily offense as defined in § 16-1001(5).

(2)(A) "Employee" shall have the same meaning as provided in § 32-501(1).

(B) The term "employee" shall not include:

(i) An independent contractor;

(ii) A student;

(iii) Health care workers who choose to participate in a premium pay program; or

(iv) Restaurant wait staff and bartenders who work for a combination of wages and tips.

(3)(A) "Employer" means a legal entity (including a for-profit or nonprofit firm, partnership, proprietorship, sole proprietorship, limited liability company, association, or corporation), or any receiver or trustee of an entity (including the legal representative of a deceased individual or receiver or trustee of an individual), who employs an employee.

(B) The term "employer" shall include the District government.

(4) "Family member" means:

(A)(i) A spouse, including the person identified by an employee as his or her domestic partner, as defined in § 32-701(3);

(ii) The parents of a spouse;

(iii) Children (including foster children and grandchildren);

(iv) The spouses of children;

(v) Parents;

(vi) Brothers and sisters; and

(vii) The spouses of brothers and sisters.

(B) A child who lives with an employee and for whom the employee permanently assumes and

discharges parental responsibility; or

(C) A person with whom the employee shares or has shared, for not less than the preceding 12 months, a mutual residence and with whom the employee maintains a committed relationship, as defined in § 32-701(1).

(5) "Paid leave" means accrued increments of compensated leave provided by an employer for use by an employee during an absence from employment for any of the reasons specified in § 32-131.02(b).

(6) "Premium pay program" means a plan offered by an employer pursuant to which an employee may elect to receive extra pay in lieu of benefits.

(7) "Sexual abuse" means any offense described in Chapter 30 of Title 22.

(8) "Student" means an employee who:

(A)(i) Is a full-time student, as defined by an accredited institution of higher education;

(ii) Is employed by the institution at which the student is enrolled;

(iii) Is employed for less than 25 hours per week; and

(iv) Does not replace an employee subject to this chapter; or

(B) Is employed as part of the Year Round Program for Youth, as established by the Department of Employment Services.

**§ 32-131.02. Provision of paid leave.**

(a)(1) An employer with 100 or more employees shall provide for each employee not less than one hour of paid leave for every 37 hours worked, not to exceed 7 days per calendar year.

(2) An employer with at least 25, but not more than 99, employees shall provide for each employee not less than one hour of paid leave for every 43 hours worked, not to exceed 5 days per calendar year.

(3) An employer with 24 or fewer employees shall provide not less than one hour of paid leave for every 87 hours worked, not to exceed 3 days per calendar year.

(4) For the purposes of paragraphs (1) through (3) of this subsection, the number of employees of an employer shall be determined by the average monthly number of full-time equivalent employees for the prior calendar year. The average monthly number shall be calculated by adding the total monthly full-time equivalent employees for each month and dividing by 12.

(5) In the case of employees who are exempt from overtime payment under section 213(a)(1) of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 *et seq.*), employees shall not accrue leave for hours worked beyond a 40-hour work week.

(b) Paid leave accrued under this section may be used by an employee for any of the following:

(1) An absence resulting from a physical or mental illness, injury, or medical condition of the employee;

(2) An absence resulting from obtaining professional medical diagnosis or care, or preventive medical care, for the employee, subject to the requirement of subsection (d) of this section;

(3) An absence for the purpose of caring for a child, a parent, a spouse, domestic partner, or any other family member who has any of the conditions or needs for diagnosis or care described in paragraph (1) or (2) of this subsection; or

(4) An absence if the employee or the employee's family member is a victim of stalking, domestic violence, or sexual abuse; provided, that the absence is directly related to social or legal services pertaining to the stalking, domestic violence, or sexual abuse, to:

(A) Seek medical attention for the employee or the employee's family member to recover from physical or psychological injury or disability caused by domestic violence or sexual abuse;

(B) Obtain services from a victim services organization;

(C) Obtain psychological or other counseling;

(D) Temporarily or permanently relocate;

(E) Take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence or sexual abuse; or

(F) Take other actions to enhance the physical, psychological, or economic health or safety of the employee or the employee's family member or to enhance the safety of those who associate or work with the employee.

(c)(1) Paid leave under this section shall accrue in accordance with the employer's established pay period. An individual shall accrue paid leave when he or she qualifies as an employee.

(2) An employee's unused paid leave accrued during a 12-month period shall carry over annually. An employee shall not use in one year more than the maximum hours as allowed in subsection (a)(1), (2), and (3) of this section, unless the employer chooses otherwise. Unused paid leave accrued under this chapter shall not be reimbursed upon the termination or resignation of any employee.

(3) Repealed.

(4) Upon mutual consent by the employee and the employer, an employee who chooses to work additional hours or shifts during the same or next pay period in lieu of hours or shifts missed, shall not use paid leave; provided, that the employer does not require the employee to work such additional hours or shifts.

(d) An employee shall make a reasonable effort to schedule paid leave under subsection (b) of this section in a manner that does not unduly disrupt the operations of the employer.

(e) If an employee does not suffer a loss of income when absent from work, for the number of days up to the days of paid leave provided for in subsection (a)(1), (2), and (3) of this section, an employer shall not be required to provide paid leave for such employee in accordance with this chapter. Notwithstanding the foregoing sentence, the provisions of § 32-131.08 shall apply to employees who do not suffer a loss of income when absent from work.

(f) If employees of beauty, hair, and nail salons are paid by commission (whether commission only or base wage plus commission), the sick leave rate of pay shall be calculated as follows: divide the employee's total earnings in base wages and commissions for the prior calendar year by the total hours worked as a commissioned employee during the prior calendar year. If employees do not have a prior calendar year's work history, divide the employee's total earnings in base wages and commissions since the employee's date of hire by the total hours worked as a commissioned employee since that date.

**§ 32-131.03. Notification.**

Paid leave shall be provided upon the written request of an employee upon notice as provided in this section. The request shall include a reason for the absence involved and the expected duration of the paid leave. If the paid leave is foreseeable, the request shall be provided at least 10 days, or as early as possible, in advance of the paid leave. If the paid leave is unforeseeable, an oral request for paid leave shall be provided prior to the start of the work shift for which the paid leave is requested. In the case of an emergency, the employer shall be notified prior to the start of the next work shift or within 24 hours of the onset of the emergency, whichever occurs sooner.

**§ 32-131.04. Certification.**

(a)(1) An employer may require that paid leave under § 32-131.02(b) for 3 or more consecutive days be supported by reasonable certification.

(2) Reasonable certification may include:

(A) A signed document from a health care provider, as defined in § 32-501(5), affirming the illness of the employee;

(B) A police report indicating that the employee was a victim of stalking, domestic violence, or sexual abuse;

(C) A court order; or

(D) A signed statement from a victim and witness advocate, or domestic violence counselor, as defined in § 14-310(a)(2), affirming that the employee is involved in legal action related to stalking, domestic violence, or sexual abuse.

(3) If certification is required by an employer, the employee shall provide a copy of the certification to the employer upon the employee's return to work.

(b)(1) This chapter shall not require a health care professional to disclose information in violation of section 1177 of the Social Security Act, approved August 21, 1996 (110 Stat. 2029; 42 U.S.C. § 1320d-6), or the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (110 Stat. 2033; 42 U.S.C. § 1320d-2, note).

(2) All information provided to the employer under § 32-131.02 shall not be disclosed by the employer, except to the extent that the disclosure is:

(A) Requested or consented to by the employee;

(B) Ordered by a court or administrative agency; or

(C) Otherwise required by applicable federal or local law.

**§ 32-131.05. Current paid leave policies.**

(a) An employer with a paid leave policy providing paid leave options, such as a paid time-off program or universal leave policy, shall not be required to modify such policy if the policy offers an employee the option, at the employee's discretion, to accrue and use leave under terms and conditions that are at least equivalent to the paid leave prescribed in this chapter.

(b) The terms and conditions of an employer's policy shall be presumed equivalent if they allow an employee to:

(1) Access and accrue paid leave at least at the same rate as or greater than the hours of paid leave provided in § 32-131.02(a)(1), (2), and (3); or

(2) Use the paid leave for the same purposes as those set forth in § 32-131.02(b), including unscheduled leave.

**§ 32-131.06. Effect on existing employment benefits.**

(a) This chapter shall not diminish the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan that provides greater paid leave rights to employees than the rights established under this chapter.

(b) The paid leave requirements under this chapter shall not be waived for less than 3 paid leave days by the written terms of a bona fide collective bargaining agreement.

**§ 32-131.07. Encouragement of more generous paid leave policies.**

This chapter shall not prevent an employer from the adoption or retention of a paid leave policy more generous than the one required by this chapter.

**§ 32-131.08. Prohibited acts.**

(a) A person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided by this chapter.

(b) An employer shall not discharge or discriminate in any manner against an employee because the employee:

(1) Opposes any practice by an employer made unlawful by this chapter;

(2) Pursuant or related to this chapter:

(A) Files or attempts to file a charge;

(B) Institutes or attempts to institute a proceeding; or

(C) Facilitates the institution of a proceeding;

(3) Gives any information or testimony in connection with an inquiry or proceeding related to this chapter; or

(4) Uses paid leave provided under this chapter.

(c) Nothing in this chapter shall prohibit an employer from establishing and enforcing a lawful policy relating to improper use of paid leave or from seeking more frequent certifications from an employee if there is evidence of a pattern of abuse of paid leave.

**§ 32-131.09. Posting requirement.**

(a) The Mayor shall prescribe, and the Mayor shall provide to employers, and an employer shall post and maintain in a conspicuous place, a notice that sets forth excerpts from or summaries of the pertinent provisions of this chapter and information that pertains to the filing of a complaint under this chapter. The notice shall be published in all languages spoken by 3% of or 500 individuals in the District of Columbia population, whichever is less.

(b)(1) An employer who willfully violates this section shall be assessed a civil penalty not to exceed $100 for each day that the employer fails to post the notice; provided, that the total penalty shall not exceed $500.

(2) No liability for failure to post notice will arise under this section if the Mayor has failed to provide to the business the notice required by this section.

(c) An employer shall post the notice in English and all languages spoken by employees with Limited or no-English Proficiency, as defined in § 2-1931(5).

(d) Employers shall be furnished copies or summaries of this chapter prepared by the Mayor on request.

**§ 32-131.10. Administration.**

This chapter shall be administered by the Department of Employment Services.

**§ 32-131.11. Effect on other laws.**

This chapter shall not:

(1) Supersede any provision of law or contract that provides greater employee paid leave rights than the rights established under this chapter; or

(2) Modify or affect any federal or District law prohibiting discrimination on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, or political affiliation.

**§ 32-131.12. Penalties.**

Except as provided in § 32-131.09(b), an employer who willfully violates the requirements of this chapter shall be subject to a civil penalty of $500 for the 1st offense, $750 for the 2nd offense, and $1000 for the 3rd and each subsequent offense.

**§ 32-131.13. Rules.**

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this chapter within 60 days after May 13, 2008. If rules are promulgated, the Mayor shall submit the proposed rules to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within this 30-day review period, the proposed rules shall be deemed approved.

**§ 32-131.14. Hardship exemption.**

The Mayor shall exempt, by rule, businesses that can prove hardship as a result of this chapter. The Mayor shall submit the proposed hardship exemption rules to the Council for a 45-day period of review, excluding Saturdays, Sunday, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within the 45-day review period, the proposed rules shall be deemed disapproved.

**§ 32-131.15. Report by the District of Columbia Auditor.**

The District of Columbia Auditor shall prepare and submit to the Mayor and Council, annually, a report of this chapter's economic impact on the private sector. Among other things, the District of Columbia Auditor shall audit a sample of District businesses to determine:

(1) The compliance level of businesses with the posting requirements; and

(2) Whether companies are utilizing staffing patterns to circumvent the intention of this chapter.

**§ 32-131.16. Applicability.**

(a) This chapter shall apply 6 months after May 13, 2008.

(b) In the case of a collective bargaining agreement in effect on the effective date set forth in subsection (a) of this section, this chapter shall apply on the earlier of the date of the termination of the agreement or the date that occurs 18 months after the effective date set forth in subsection (a) of this section.

**§ 32-131.17. Appropriations contingency.**

This chapter shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

Current through January 11, 2012

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