



# 10 Steps to Implement D.C.'s Accrued Sick and Safe Leave Act of 2008

April 2012

## Background

The Accrued Sick and Safe Leave Act of 2008 (“the Act”)(D.C. Code § 32.131.01-32.131.16) went into effect in 2008, but many are still unaware of its existence or its requirements. There has been little public outreach or education on the issue, leaving many businesses in the dark about their responsibilities under the Act. The Act applies to employers with one or more employees in the District of Columbia. It requires these employers to provide paid leave to each employee in D.C. for absences due to illness or abusive situations experienced by employees or their family members. There are exemptions for certain categories of workers, including independent contractors, some student workers, some healthcare workers and restaurant wait staff and bartenders who work for tips. Specific rules implementing this Act are included in Chapter 32 to Title 7 (Employment Benefits) of the District of Columbia Municipal Regulations.

If you have an existing paid time off, universal leave, sick, or other paid leave policy, you may not need to provide more paid leave time to your employees, but you may need to revise the wording of your policy to ensure compliance with the Act. If you do not have an existing policy, you will need to adopt one (a sample is attached). Employers are free to use policies that are more generous than the law requires.

It is important to note that the following information is provided for educational purposes only. Please consult with a lawyer about the details of your policy’s compliance with the Act.

## Reviewing and Revising Your Existing Policy

The Act allows you to use your existing policy to satisfy its requirements as long as employees are able to accrue and use leave as set forth in the Act.

Employers with existing policies may want to evaluate whether the following ten updates are necessary to ensure compliance with the Act. This list is not exhaustive, however.

**1. Broaden the reasons for leave beyond individual illness to include the reasons specified under the Act. The Act provides that leave can be used for:**

- an employee’s own illness, injury, or medical condition or doctor’s appointments
- an employee’s need to care for a family member for the family member’s illness, injury, or medical condition or doctor’s appointments. “Family member” means:

- a spouse (including a domestic partner), the parents of a spouse, children (including foster children and grandchildren), the spouses of children, parents, brothers and sisters, the spouses of brothers and sisters, a child who lives with an employee and for whom the employee acts as a parent, and a person with whom the employee shares a mutual residence and with whom the employee maintains a committed relationship.
- an absence occurring when the employee or the employee's family member is a victim of stalking, domestic violence, or sexual abuse

**2. Allow employees to use leave on short notice if the reason for leave was unforeseeable (for example, the flu).**

**3. Allow all employees to accrue and use leave, whether full-time or part-time.**

**4. Allow enough sick leave under the Act, depending on the size of your business (see chart below).<sup>1</sup>**

<b>If an employer has...</b>	<b>Employees accrue...</b>	<b>Not to Exceed...</b>
100 or more employees	1 hour per 37 hours worked	7 days per calendar year
25 to 99 employees	1 hour per 43 hours worked	5 days per calendar year
Less than 25 employees	1 hour per 87 hours worked	3 days per calendar year

**5. Ensure your accrual system complies with the Act and your policy adequately reflects this.**

- If your employees accrue leave each pay period, they must accrue it at the same rate as indicated above, or faster: one hour for x number of hours worked. For full-time employees at larger businesses, this results in an accrual of approximately half a day per month.
- If your employees get a lump sum of paid time off (quarterly, yearly, or at some other regular interval), you should either make sure that employees are getting the minimum number of leave days required above under the accrual system or consider changing to an accrual system.

**6. Allow leave to carry over annually. It is optional for you to permit employees to use more than the days stated above in one year. Payment for leave upon termination is not required.**

<sup>1</sup> The number of employees is determined by looking at the average number of monthly full-time equivalent employees employed in the preceding calendar year. If you have employees in other locations, they are covered by the Act if they spend more than 50 percent of their working time for you in D.C.

7. Ensure that employees will not experience retaliation, including discharge or discrimination, for using paid leave in accordance with the law.
8. Reasonable certification by a health care provider may be required of an employee only after three or more consecutive days of absence.
9. Analyze other issues specific to your business.
10. Display the “Official Notice” poster explaining the provisions of the Accrued Sick and Safe Leave Act of 2008.<sup>2</sup>

## Additional Resources

### D.C. Department of Employment Services, Office of Wage-Hour

The DOES is responsible for enforcing employment laws in D.C. Their website has information about wage and hour laws including the Accrued Sick and Safe Leave Act of 2008.

### D.C. Bar Pro Bono Program's Community Economic Development Project

The Community Economic Development Project conducts legal trainings and offers pro bono services for community based nonprofits, small businesses and entrepreneurs.

### D.C. Employment Justice Center

D.C. EJC promotes workplace justice in D.C. and runs a Workers' Rights Clinic where employees can obtain free legal assistance.

### Restaurant Opportunities Center United of Washington, D.C.

ROC-DC is a worker center dedicated to improving the conditions and raising industry standards for all Washington, DC restaurant workers. They offer assistance and resources to restaurant owners who want to promote sustainable best practices that improve wages and working conditions.

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<sup>2</sup> The poster is available on the D.C. Department of Employment Services website at [http://www.does.dc.gov/does/frames.asp?doc=/does/lib/does/info/ASSLAPoster\\_Final10\\_7\\_10.pdf](http://www.does.dc.gov/does/frames.asp?doc=/does/lib/does/info/ASSLAPoster_Final10_7_10.pdf).

## Sample Basic Sick and Safe Time Policy

*\*Please note that the following sample leave policy contains only the minimum requirements under the current law. Employers are encouraged to adopt more generous policies. For employers who want to be more expansive, a few suggestions on how to do so are noted in italics.<sup>3</sup>*

Eligible employees are entitled to accrue up to \_\_\_ days [Fill in 3, 5, or 7 days depending on employer size] of paid time off per year for the illness of the employee or a family member, or to help ensure the safety of the employee or a family member as provided below. [*Consider increasing the amount of paid time per year.*] Employees begin to accrue and are able to use leave under this policy after they work for 12 months without a break in service and after working 1000 hours in the 12 months preceding the leave. [*Consider substituting "Employees begin to accrue leave under this policy at the start of employment and can use leave anytime thereafter."*] One hour of paid sick or safe time accrues for each \_\_\_ hours worked by the employee, up to a maximum of \_\_\_ days per year. [Fill in 37/43/87 days and 3, 5, or 7 days, depending on employer size.] All employees are eligible to accrue and use sick and safe time leave regardless of whether they are full-time, part-time or temporary workers, once they meet the eligibility requirements.

Sick or safe time can be used for:

- (1) The employee's own illness, injury, or medical condition;
- (2) The employee's need to obtain diagnosis or treatment or preventive care (i.e., doctor's appointments);
- (3) The employee's need to care for a family member for reasons covered by Nos. (1) and (2), above;
- (4) An absence resulting from the employee or a family member becoming a victim of stalking, domestic violence, or sexual abuse.

For more information about which absences qualify for sick or safe time leave, please contact \_\_\_\_\_ [Human Resources or employer representative in charge of employee absences].

A "family member" includes:

- (1) A spouse, including a domestic partner;
- (2) Parents of a spouse;
- (3) Children (including foster children and grandchildren);
- (4) Spouses of children;

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<sup>3</sup> Many law firms in the area offer guidance on the D.C. Accrued Sick and Safe Leave Act of 2008. Jackson Lewis LLP prepared a sample policy that serves as the basis for this sample policy. It is available at <http://counsel.cua.edu/DClaw/Employment/safeleave.cfm>.

- (5) Parents;
- (6) Brothers and sisters;
- (7) Spouses of brothers and sisters;
- (8) A child who lives with an employee and for whom the employee permanently assumes and discharges parental responsibility;
- (9) 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 by the Act.

For more information about who counts as a “family member,” please contact \_\_\_\_\_ [Human Resources or employer representative in charge of employee absences].

Sick or safe time leave under this policy carries over at the end of each calendar year. However, an employee cannot use, in any one calendar year, more than his/her maximum annual accrual of \_\_\_ days [Fill in 3, 5, or 7 days depending on employer size]. Sick or safe time leave is not paid out on termination of employment.

In the case of an unforeseen need to take leave, for example, the illness of an employee or his or her family member or in the case of an emergency, no written request for leave is required. Notice should be given as soon as possible, either prior to the start of the next work shift or within 24 hours of the onset of an emergency. If a request for leave is foreseeable, an employee should request the leave in writing stating a reason for the absence and its expected duration. This request should be made as early as possible or at least 10 days prior to the absence.

No documentation will be required before three consecutive days of absence. Employees who take sick or safe time leave for three or more consecutive days may be required to provide reasonable certification of the need for leave including, for example, a signed document from a health care professional. An employer may not require disclosure of information relating to domestic abuse, sexual assault, or stalking, or the details of an employee’s medical condition as a condition of providing paid sick and safe time leave. If an employer possesses such information, it shall be treated as confidential, as shall the employee’s request for paid sick and safe time leave.

When providing certification, no health care provider shall be required to provide information protected by the Social Security Act or the Health Insurance Portability and Accountability Act (HIPAA).

Employees will not face retaliation or reprisal for requesting or using leave or asserting rights under this policy.

The company will not interfere with, restrain, or deny an eligible employee’s right to request and use leave under this policy, attempt to request or use leave under this policy, or assert rights under this policy. Employees may raise concerns regarding this policy, including by opposing any unlawful practice or filing a charge or supporting an investigation, and seek redress for those concerns, without fear of discrimination or discharge. Any employee who believes he or she has been treated in violation of this paragraph should immediately inform

the [Human Resources Department or representative in charge of employee absences], his/her supervisor, or any other supervisor or manager.

[For employers with absence control policies, it is advisable to revise your policy to reflect that sick or safe time leave taken under this law does not count as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action, and that the use of paid sick and safe time leave will not count as a negative factor in hiring, evaluation or promotion.]

*THIS DOCUMENT DOES NOT CONSTITUTE OR PURPORT TO OFFER LEGAL ADVICE; PLEASE CONSULT YOUR ATTORNEY WITH SPECIFIC QUESTIONS ABOUT WHETHER YOUR BUSINESS COMPLIES WITH THE DC ACCRUED SICK AND SAFE LEAVE ACT.*

*For questions about this document, please contact Andrea Lindemann at [alindemann@clasp.org](mailto:alindemann@clasp.org).*