



## Background

D.C.'s Accrued Sick and Safe Leave Act of 2008 ("The Act," D.C. Code § 32.131.01-32.131.16) went into effect in 2008. In 2013, D.C. Council made some key changes to the Act by passing the Earned Sick and Safe Leave Amendment Act ("the Amendment") which went into effect February 22, 2014. This brief provides guidance to employers who are implementing the city's earned sick days law. Whether you have been providing sick days to employees since 2008 or are newly affected by the law, the following guidelines will help you determine what is required of you under the law and how to comply. However, it is important to note that the following information is provided for educational purposes only. *This document is for educational purposes only – please consult a lawyer for further information.*

## Who is Covered Under the Law

The Act applies to employers with one or more employees in the District of Columbia. It requires employers to provide paid leave to D.C. employees for absences due to illness or situations in which employees or their family members are victims of stalking, domestic violence, or sexual abuse. There are exemptions for certain categories of workers, including independent contractors, some student workers, and some healthcare workers. Specific rules implementing this Act are included in Chapter 32 to Title 7 (Employment Benefits) of the District of Columbia Municipal Regulations.

**Major changes:** Following passage of the 2013 Amendment, the Act now requires employers to include tipped restaurant workers in their sick and safe days policy. Workers begin accruing leave on the first day of employment and may now begin using the accrued time after 90 days of employment. Employers are now required to keep records of time worked and sick and safe time used. For a comprehensive comparison of the original Act and the Amendment, see the appended chart.

## Key Requirements of the Law

In order to comply with the law, you must have a written policy that meets the following requirements. (A sample policy is appended.) Additional requirements may apply in some circumstances. You should consider any unique features of your business or industry that require attention under the law.

1. Employees can use leave for the following reasons:

- 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. Employees may use leave on short notice if the reason for leave is unforeseeable (for example, the flu).
  3. Employees are allowed to accrue and use leave, whether full-time or part-time. Accrual begins on the first day of employment. Employees may use accrued leave beginning 90 days after the start of employment.
  4. Rate of accrual depends 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
Tipped restaurant employees*	1 hour per 43 hours worked	5 days per calendar year

\*Note: Tipped workers are compensated at the regular minimum wage when they are sick.

5. Your accrual system must meet the following requirements to comply with the Act. Compliance should be evident in your policy.
  - 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. Employees are permitted to carry-over leave annually. Payment for leave upon termination is not required.
7. You must keep records of employees' hours worked and sick time used.
8. It is illegal to retaliate against an employee (including by discharging or discriminating against him or her)

<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.

for using paid leave in accordance with the law. If the employer takes any adverse action against an employee within 90 days of the employee using or requesting sick or safe time, the burden will fall on the employer to prove that he or she was not acting in violation of the law.

9. You may require employees to provide reasonable certification from a health care provider only after three or more consecutive days of absence.
10. Display the “Official Notice” poster explaining the provisions of the Act and the Amendment.<sup>2</sup>

## Options for Going Beyond the Letter of the Law

Many employers decide to enable their employees to earn more sick time than is required under the law. Employers do this to better compete for the best employees; because they believe the legal requirements set a floor that is too low for their workers; or because they believe additional leave time may make their workplace healthier and more productive. You may wish to:

- Allow employees to use accrued sick and safe time before the 90 day waiting period.
- Permit employees to accrue sick and safe time at a faster rate than required under the law.
- Allow employees to carryover more leave time than the maximum days per year required under the law.
- Dispense with any requirements for certification from health care professionals, which may be costly and inconvenient for workers.

## Modifying Existing Policies

If you have an existing paid time off, universal leave, sick, or other paid leave policy, you may not need to provide additional paid leave time to your employees. However, to comply with the Act, you may need to revise the wording of your policy and/or its provisions. 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. Verify that your existing policy meets the requirements listed above (and any others that specifically apply to your business or industry).

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<sup>2</sup> To download poster, see [http://does.dc.gov/sites/default/files/dc/sites/does/page\\_content/attachments/ASSLA%20Poster%20-%20English%20Spanish%20Combo%20-%20FINAL.pdf](http://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/ASSLA%20Poster%20-%20English%20Spanish%20Combo%20-%20FINAL.pdf)

## 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 Act and the Amendment.

### 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.

## Appendix A. Changes to D.C.'s Sick and Safe Leave Law

*As enacted by the Earned Sick and Safe Leave Amendment Act of 2013*

### Key Changes

- Removes one year waiting period for use and accrual of sick days.
- Removes exemption for tipped restaurant workers.
- Strengthens anti-retaliation provisions and enforcement mechanisms.

### All Changes

2008 Law	2013 Amendment
Employers do not have to provide paid sick days until the employee has been employed for one year and worked at least 1000 hours.	Employees begin accruing leave the first day on the job and may begin using the accrued time after 90 days of employment.
Tipped restaurant workers are ineligible for paid sick days.	Tipped restaurant workers are eligible for with paid sick days. They accrue at least one hour of paid leave for every 43 hours worked, up to 5 days a year.
Employers are not required to provide paid sick days to independent contractors, students, and health care workers participating in a premium pay program.	The amendment keeps these provisions and also adds exemptions for casual babysitters, lay members of religious organizations, and volunteers.
No specific provision for staffing agencies.	Amendment specifies that temporary services and staffing agencies must provide paid sick days.
No specific provision for transfers.	Employees who are transferred to a different division or location keep their accrued leave.
Collective bargaining agreements (CBAs) can waive paid sick days requirements under the law, as long as the agreement includes at least 3 paid sick days.	The amendment keeps these provisions, and allows for building and construction employees to completely waive paid sick days requirements, as long as the CBA is clear about this waiver.
Employer cannot discriminate against employee for filing a charge, instituting, or helping to institute proceedings against the employer.	Amendment further adds that employer may not discriminate against employee who complains to the employer, helps with an investigation, or informs others of their sick leave rights.
Burden of proof is on employees who believe they were fired or discriminated against for exercising their sick leave rights.	If the employer's adverse action (i.e. firing, disciplining, discriminating, etc.) happens within 90 days of the employee exercising his or her right to sick days, the burden is on the employer to prove that it did not violate the act.
Penalty against employer for not posting required information about the Act will not be over \$500.	Penalty against employer for not posting required information about the Act can exceed \$500 if they done willfully.

Employer who willfully violates the Act will be fined \$500 for first offense, \$750 for second offense, and \$1000 for third and each other offense.	Raises penalty amount so that each employer who willfully violates the Act will be fined \$1000 for first offense, \$1500 for second offense, and \$2000 for third and each other offense.
Only enforcement mechanism is civil penalty.	Gives employees who are denied sick days the ability to file an administrative claim or sue in court. Employees are entitled to \$500 per day, as well as interest, reinstatement, and attorney's fees, if it is found that they were denied use of sick leave.
No record keeping requirement.	Employers must keep records of hours worked and paid leave taken by employees.
No public outreach requirement.	Dept. of Employment Services will develop an outreach program to inform employees of their paid sick days rights under the law.

For reference, please see the [2008 Act](#) and the [2013 Amendment](#).

## Appendix B. 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 leave at the start of employment and are able to use leave after 90 days of employment. [*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;
- (5) Parents;
- (6) Brothers and sisters;
- (7) Spouses of brothers and sisters;

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- (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 Liz Ben-Ishai, [lbenishai@clasp.org](mailto:lbenishai@clasp.org).*