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LEAVE AND DISABILITY REGULATORY COMPLIANCE

Summary of legislative and regulatory changes

Private employer sector | July 2024

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District of Columbia

B 875 (Emergency measure: Universal Paid Leave Act)

Enacted July 15

Effective July 15

The District of Columbia's budget for fiscal year 2025 makes amendments to certain employment-related laws, including employer contributions under the Universal Paid Leave Act.

In order to fund the Universal Paid Leave program, both employers and employees contribute to the district-run fund from which leave benefits are administered. These amendments modify the employer contribution provisions. The district required employers to contribute 0.62% of wages of each of its covered employees to the district — or a lower rate, if employers' projected contribution rate necessary to maintain the benefit durations required by the act was lower than 0.62%. Under the amendments, all employers must contribute 0.75% of wages of each covered employee.

The mayor was required to notify employers at least 60 days before implementing any paid-leave benefit expansion or employer contribution rate change. Under the amendments, the mayor is no longer required to provide 60-day notice to employers in advance of contribution rate changes.

District of Columbia

B 784 (Universal Paid Leave Act amendments)

Enacted July 26

Effective following approval by the mayor, a 30-day congressional review and publication in the DC Register.

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In order to fund the Universal Paid Leave program, both employers and employees contribute to the district-run fund from which leave benefits are administered. These amendments modify the employer contribution provisions. The district required employers to contribute 0.62% of wages of each of its covered employees to the district — or a lower rate, if employers' projected contribution rate necessary to maintain the benefit durations required by the act was lower than 0.62%. Under the amendments, all employers must contribute 0.75% of wages of each covered employee.

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Oregon

OAR Chapter 839 (final rule regarding OFLA and sick leave)

Enacted June 28

Effective July 1

Oregon has amended its rules related to the Oregon Family Leave Act (OFLA), which provides unpaid leave for employees to care for a sick child, a child whose school or childcare provider has been closed during a public health emergency, for bereavement purposes and for an employee's pregnancy-related disability. As a reminder, effective July 1, OFLA and Paid Leave Oregon (PLO) (the state's paid family and medical leave act) were amended and many of OFLA's leave provisions were consolidated under PLO. These amendments to the OFLA regulations largely conform with the statutory amendments that became effective in July 2024.

The amendments add the federal Pregnant Workers' Fairness Act to the list of various pregnancy-related laws under which an employee may be eligible for leave rights in the state's employment discrimination rules. The amended rules also require employers to consider the reasonable accommodations they may provide to an employee on pregnancy disability leave while determining whether the employee can return to work. The amendments also repeal OFLA rules that applied only to public school teachers.

Pennsylvania: Pittsburgh

City Code Ch. 626 (final rules regarding paid sick leave)

Enacted July 2

Effective July 2

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Pittsburgh has amended the administrative rules that implement the city's Paid Sick Days Act. The new rules update how employers may access information about the act and these rules online. The webpage is found at https://pittsburghpa.gov/mayor/paidsickleave. The rules also refer to the Mayor's Office of Equity (MOE) as the city agency responsible for administrating and enforcing the act. However, throughout the amended rules, the administrative and enforcement body is called the Mayor's Office of Equal Protection (OEP), rather than the MOE.

The amended rules remove the definition of independent contractor. However, the amendments provide that a worker's status as an employee or independent contractor is determined by the Pennsylvania common law. If misclassification has been alleged, a finding by the IRS creates a rebuttable presumption as to the individual's status.

Importantly, the amended rules provide that employers must adopt a policy or policies addressing paid sick time accrual that comply with the act. The rules provide that covered employees of employers with 15 or more employees may accrue no more than 40 hours of paid sick time in a calendar year. Employees of smaller employers (those with fewer than 15 employees) may accrue no more than 24 hours of unpaid sick time. The amendments clarify that, in determining the number of employees, employers should use the highest number of workers employed at any one time in the preceding year.

For carryover of sick time, the rules provide that accrued, unused sick time is carried over from one calendar year to the next up to the applicable accrual cap for a covered employee. Alternatively, if the employer provides for at least the maximum number of paid sick time mandated by the act to be available at the beginning of the calendar year (frontloading), it is not required to carry over the employee's unused accrued sick time from the previous calendar year. However, the new rules clarify that to frontload, the employer must provide for at least the minimum number of paid sick time hours mandated by the act, presumably because employers may permit employees to accrue more hours than the minimum required under the act.

Successor employers at the same location must honor all previously earned sick time accrued by covered employees. The amendments clarify that a new employer that acquires the business of a prior employer must honor all previously earned sick time accrued by covered employees who remain employed.

The rules provide that employers must continue to allow a covered employee to use previously earned sick time after transferring to a separate division, entity or location for the same employer outside the city. The amendments stipulate that the employers must allow the continued use but for an employee who makes such transfer to a location *within* the city.

The rules state that employers must provide reasonable notification to employees of their accrued sick time, including by using pay stubs or an online system where employees can access the information. The amendments clarify that if using an online system, employees should be able to regularly access the information.

The amendments clarify that employers must display the notice of rights under the act at all times. If display of a sign is not feasible, including where the employee works remotely or does not have a regular workplace, employers must provide the notice on an individual, ongoing basis in the employee's primary language in a physical or electronic format that is reasonably conspicuous and accessible. Violations of the notice requirement are subject to a fine of up to $100 for each offense. The amendments specify that failure to post the notification in a covered employee's primary language is a violation. Further, each day that an employer fails to notify an individual covered employee constitutes a single violation.

The amendments also clarify that the OEP's failure to provide a written notice does not relieve employers of their notice obligation. The OEP may contact employers to determine compliance. A complaint is not required. If the OEP determines that an employer is not in compliance or does not respond to inquiries, it may open an investigation to determine whether the violation is willful.

The amendments specify that a finding of retaliation against a covered employee is considered a violation of the act and the OEP may impose the appropriate fine and/or relief including, but not limited to, full restitution to the employee for all lost wages and benefits. The employee may also be reinstated if the violation of the act included termination from their position.

Generally, complainants must have standing, or some cognizable harm, for the OEP to begin an investigation. However, the amended rules provide that where the complainant is acting as a whistleblower, the OEP may anonymize the complainant's identity. The amendments clarify that nothing in the act requires a complainant to have personally lost accrued sick time for the city to investigate violations.

The amended rules also add a guideline on public information. The OEP must provide notices of compliance to compliant employers, which must be posted in employers' places of business as appropriate. A designation as a "safe workplace" is applied to businesses meeting the requirements of the act. A designation as a "thriving workplace" is applied to businesses exceeding ordinance requirements. Businesses that do not meet the law's requirements are designated "non-compliant."

The information contained within this document is intended to provide summary level information on proposed or enacted laws related to family and medical leave. It is not intended to provide guidance on the application of these legal requirements or as an update to your company's attendance and/or leave policies. We recommend you consult with legal counsel to determine what changes, if any, should be applied to company policy.

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