

# District of Columbia Accrued Safe and Sick Leave Act

“DCASSLA”

D.C. Code §§ 32-531.01 – 32-531.17

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**§ 32-531.01. Definitions.**

For the purposes of this subchapter, the term:

- (1) “Domestic violence” means an intrafamily offense as defined in § 16-1001(5) [now (8)].
- (2) “Employee” means any individual employed by an employer, but shall not include:
  - (A) Any individual who, without payment and without expectation of any gain, directly or indirectly, volunteers to engage in the activities of an educational, charitable, religious, or non-profit organization;
  - (B) Any lay member elected or appointed to office within the discipline of any religious organization and engaged in religious functions;
  - (C) Any individual employed as a casual babysitter, in or about the residence of the employer.
  - (D) An independent contractor;
  - (E) A student;
  - (F) Health care workers who choose to participate in a premium pay program; or
  - (G) A substitute teacher or a substitute aide who is employed by District of Columbia Public Schools for a period of 30 or fewer consecutive work days.
- (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 directly or indirectly or through an agent or any other person, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of 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 § 32-531.02(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 [§ 22-3001 *et seq.*]
- (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 subchapter; or
  - (B) Is employed as part of the Year Round Program for Youth, as established by the Department of Employment Services.
- (9) “Substitute aide” means an individual who is employed by District of Columbia Public Schools to provide instructional assistance (general, specialized, or concentrated) to students on a temporary basis when the regular instructional aide is unavailable. The term “substitute aide” does not include an individual employed by District of Columbia Public Schools on a term or full-time assignment.

- (10) “Substitute teacher” means an individual who is employed by District of Columbia Public Schools to work as a classroom teacher on a temporary basis when the regular teacher is unavailable. The term “substitute teacher” does not include an individual employed by District of Columbia Public Schools on a term or full-time assignment.

### **§ 32-531.02. 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 subchapter shall accrue in accordance with the employer's established pay period. An individual shall accrue paid leave at the beginning of his or her employment. An employee may begin to access paid leave after 90 days of service with his or her employer.
  - (2) If an employee is transferred to a separate division, entity, or location within the District, or transferred out of the District and then transferred back to a division, entity, or location within the District, but remains employed by the same employer, the employee shall be entitled to all paid leave accrued at the prior division, entity, or location and shall be entitled to use all paid leave as provided in this subchapter.
  - (3) When there is a separation from employment and the employee is rehired within one year of separation by the same employer, previously accrued unused paid leave shall be reinstated. The employee shall be entitled to use accrued paid leave and accrue additional paid leave immediately upon the re-commencement of employment; provided, that the employee had previously been eligible to use paid leave. If there is a separation of more than one year, an employer shall not be required to reinstate accrued paid leave

and the rehired employee shall be considered to have newly commenced employment.

- (4) An employee who is discharged after the completion of a probationary period of 90 days or more, and is rehired within 12 months, may access paid leave immediately.
- (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 subchapter. Notwithstanding the foregoing sentence, the provisions of § 32-531.08 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.
- (g) Notwithstanding the requirements in subsections (a)(1)-(4) of this section, for an employee of a restaurant or bar who regularly receive [sic] tips, commissions, or other gratuities to supplement a base wage that is below the minimum wage as established in § 32-1003(a), the employer shall provide the employee not less than one hour of paid leave for every 43 hours worked, not to exceed 5 days per calendar year. The paid leave shall be compensated in accordance with the District minimum wage, as established in § 32-1003(a).

### **§ 32-531.03. 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.

#### **§ 32-531.04. Certification.**

- (a)
- (1) An employer may require that paid leave under § 32-531.02(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 subchapter 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 § 32-531.02 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.

#### **§ 32-531.05. 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 subchapter.

- (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 § 32-531.02(a)(1), (2), and (3); and
  - (2) Use the paid leave for the same purposes as those set forth in § 32-531.02(b), including unscheduled leave.

### **§ 32-531.06. Effect on existing employment benefits.**

- (a) This subchapter 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 subchapter.
- (b) The paid leave requirements under this subchapter shall not be waived for less than 3 paid leave days per calendar year by the written terms of a bona fide collective bargaining agreement; provided, that the paid leave requirements under this subchapter shall not apply to any employee in the building and construction industry covered by a bona fide collective bargaining agreement that expressly waives the requirements in clear and unambiguous terms.

### **§ 32-531.07. Encouragement of more generous paid leave policies.**

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

### **§ 32-531.08. 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 subchapter.
- (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 subchapter;
  - (2) Pursuant or related to this subchapter:
    - (A) Complains to the employer;

- (B) Files a complaint with the Department of Employment Services;
  - (C) Files a civil or administrative complaint alleging a violation of any provision of this subchapter;
  - (D) Informs any person about an employer's alleged violation of this subchapter;
  - (E) Cooperates with the Department of Employment Services or another person's investigation or prosecution of any alleged violation of this subchapter;
  - (F) Opposes any policy, practice, or act that is a violation of this subchapter; or
  - (G) Informs any person of his or her rights under this subchapter.
- (3) Gives any information or testimony in connection with an inquiry or proceeding related to this subchapter; or
- (4) Uses paid leave provided under this subchapter.
- (c) Nothing in this subchapter 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.
- (d) An employer taking an adverse action against an employee within 90 days of any of the actions set forth in subsection (b)(2) of this section shall raise a rebuttable presumption that the employer has violated this subchapter.
- (e) It shall be unlawful for an employer's absence control policy to count paid leave taken under this subchapter as an absence that may lead to, or result in, discipline, discharge, demotion, suspension, or other adverse action.

### **§ 32-531.09. 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 subchapter and information that pertains to the filing of a complaint under this subchapter. 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 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 unless the ongoing violation is willful.

- (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 subchapter prepared by the Mayor on request.

### **§ 32-531.10. Administration.**

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

### **§ 32-531.10a. Statute of limitations.**

All civil or administrative complaints brought under this subchapter shall be filed within 3 years of the event or final instance of a series of events on which the complaint is based, except the 3-year period shall be tolled for the duration of any period during which the employer does not post the notice required under § 32-531.09, or, for civil complaints, when an administrative complaint is filed.

### **§ 32-531.10b. Employer records.**

- (a) Employers shall retain records documenting hours worked by employees and paid leave taken by employees for a period of 3 years or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this subchapter, whichever is greater, and shall allow the Mayor and the Office of the District of Columbia Auditor access to the records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this subchapter.
- (b) When an issue arises as to an employee's entitlement to paid leave under this subchapter, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid leave taken by the employee, or does not allow the Mayor or the Office of the District of Columbia Auditor reasonable access to the records, there shall be a rebuttable presumption that the employer has violated this subchapter.

### **§ 32-531.11. Effect on other laws.**

This subchapter shall not:

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

### **§ 32-531.12. Enforcement and penalties.**

- (a)
  - (1) An employee or similarly situated employees injured by a violation of this subchapter shall be entitled to maintain a civil action or an administrative action.
  - (2) When an administrative complaint is filed against any employer or other person alleged to have violated this subchapter, a hearing by an administrative law judge shall be scheduled following the same procedure available in § 32-1308.01 for a violation of Chapter 13 of this title [§ 32-1301 *et seq.*].
- (b) If an employer fails to allow an employee to use paid leave as required by this subchapter, the employer shall pay \$500 in additional damages to the employee for each accrued day denied, regardless of whether the employee takes unpaid leave or reports to work on that day.
- (c) Except as provided in § 32-531.09(b), an employer who willfully violates the requirements of this subchapter shall be subject to a civil penalty for each affected employee of \$1,000 for the 1st offense, \$1,500 for the 2nd offense, and \$2,000 for the 3rd and each subsequent offense.
- (d) If the Mayor determines that an employer has violated any provision of this subchapter, the Mayor shall order the employer to provide affirmative remedies including:
  - (1) Back pay for lost wages caused by the employer's violation of this subchapter;
  - (2) Reinstatement or other injunctive relief;
  - (3) Compensatory damages, punitive damages, and additional damages as provided in subsection (b) of this section; and
  - (4) Reasonable attorney's fees and costs of enforcement.
- (e) An action may be maintained against any employer in a court of competent jurisdiction by any one or more employees for and on behalf of himself or themselves. An employer who violates the provisions of this subchapter shall be liable to the employee or employees affected for:
  - (1) Back pay for lost wages caused by the employer's violation of this subchapter;

- (2) Reinstatement or other injunctive relief;
  - (3) Compensatory damages, punitive damages, and additional damages as provided in subsection (b) of this section; and
  - (4) Reasonable attorney's fees and costs.
- (f)
- (1) Where compliance with this subchapter or regulations enacted to implement this subchapter is not forthcoming, the Mayor shall take any appropriate enforcement action to secure compliance, including initiating a civil action and, except where prohibited by another law, revoking or suspending any registration certificates, permits or licenses held or requested by the employer or person until the violation is remedied.
  - (2) To compensate the District for the costs of investigating and remedying the violation, the Department of Employment Services may also order the violating employer or person to pay to the District a sum of not more than \$500 for each day or portion thereof and for each employee or person as to whom the violation occurred or continued. The funds recovered by the District under this subchapter shall be allocated to offset the costs of implementing and enforcing this subchapter.
- (g) In any administrative or civil action brought under this subchapter, the Mayor or court shall award interest on all amounts due and unpaid at the rate of interest specified in § 28-3302(b) or § 28-3302(c).
- (h) Any money awarded to an employee under this subchapter shall be enforceable by the employee to whom the debt is owed or may be collected by the District on behalf of the employee.
- (i) The administrative fines and penalties collected under this section shall be deposited into the Wage Theft Prevention Fund, established by § 32-1307.01.

### **§ 32-531.13. Rules.**

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this subchapter. 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.

### **§ 32-531.14. Hardship exemption.**

The Mayor shall exempt, by rule, businesses that can prove hardship as a

result of this subchapter. 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.

### **§ 32-531.15. Report by the District of Columbia Auditor.**

The Department of Employment Services shall prepare and submit to the Mayor and Council, annually, a report of this subchapter's economic impact on the private sector. Among other things, the Department of Employment Services shall obtain a sample of statistics on District businesses to determine:

- (1) The compliance level of businesses; and
- (2) Whether companies are utilizing staffing patterns to circumvent the intention of this subchapter.

### **§ 32-531.15a. Public education and outreach.**

- (a) The Department of Employment Services shall develop and implement a multilingual outreach program to inform employees of the availability of paid leave under this subchapter.
- (b) The program shall include the distribution of notices and other written materials in English and in other languages to all childcare and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers within the District.

### **§ 32-531.16. Applicability.**

- (a) This subchapter 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 subchapter 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.

### **§ 32-531.17. Appropriations contingency. [Repealed].**

Repealed.