



## District of Columbia Universal Paid Leave Memo

- (1) Individuals who have been “covered employees” during some or all of the 52-week period preceding the occurrence of a qualifying event OR
- (2) Self-employed individuals who have opted into the paid leave program and spent more than 50 percent of their work time in D.C. during some or all of the 52-week period preceding the occurrence of a qualifying event.<sup>1</sup>

The Act defines “**covered employers**” as:

- (1) Any individual, partnership, general contractor, subcontractor, association, corporation, business trust, or group of persons who employs or exercises control over employees and is required to pay D.C. unemployment insurance on the employees’ behalf OR
- (2) Self-employed individuals who opt into the paid-leave program.<sup>2</sup>

Churches, church-run organizations, and Federal and D.C. governments are exempt from this definition.<sup>3</sup>

The Act defines “**covered employees**” as employees of covered employers who:

- (1) Spend more than 50 percent of their work time in D.C. working for that employer; OR
- (2) Who regularly spend a substantial amount of time working for that employer in D.C., and who do not spend more than 50 percent of their work time for that employer in another jurisdiction.<sup>4</sup>

### **COVERAGE & BENEFITS**

The Act provides for three types of paid leave benefits; parental paid leave, family paid leave, and medical paid leave.<sup>5</sup> Employees can claim up to eight weeks of paid leave per year in any combination of the following.

- (1) Parental paid leave: Employees are entitled to up to eight weeks of paid parental leave. This leave may be taken within one year following the birth of a child, placement of a child for adoption or foster care, or placement of a child where the eligible individual legally assumes and discharges parental responsibility.
- (2) Family paid leave: Employees are entitled to up to six weeks of paid family leave under the act so the employee can provide care or companionship to a family member who has a diagnosis or occurrence of a serious health condition.

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<sup>1</sup> <https://code.dccouncil.us/dc/council/code/titles/32/chapters/5/subchapters/IV/>

<sup>2</sup> <https://code.dccouncil.us/dc/council/code/titles/32/chapters/5/subchapters/IV/>

<sup>3</sup> [https://does.dc.gov/sites/default/files/dc/sites/does/page\\_content/attachments/Paid%20Leave%20Notice%20to%20Employers%20and%20Employees.pdf](https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/Paid%20Leave%20Notice%20to%20Employers%20and%20Employees.pdf)

<sup>4</sup> <https://code.dccouncil.us/dc/council/code/titles/32/chapters/5/subchapters/IV/>

<sup>5</sup> <https://www.shrm.org/ResourcesAndTools/legal-and-compliance/state-and-local-updates/Pages/How-Washington,-D.C.-Paid-Leave-Law-May-Impact-Businesses.aspx>

- (3) Medical paid leave: Eligible employees are entitled to two weeks of paid medical leave following his or her diagnosis or occurrence of a serious health condition.<sup>6</sup>

The Act defines “**family member**” as including:

- (1) A biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or a person to whom an eligible individual stands in loco parentis;
- (2) A biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to an eligible individual when the eligible individual was a child;
- (3) A person to whom an eligible individual is related by domestic partnership or marriage;
- (4) A grandparent of an eligible individual; OR
- (5) A sibling of an eligible individual.

The Act defines “**serious health condition**” as a physical or mental illness, injury, or impairment that requires inpatient care in a hospital, hospice, or residential health care facility, or continuing treatment or supervision at home by a health care provider or other competent individual.<sup>7</sup>

### **ACCESSING PAID LEAVE**

Employees may begin to access paid leave beginning in July 2020. An eligible individual may submit a claim for payment for any period during which he or she does not perform work because of a qualifying event.

Eligible individuals are required to provide written notice to his or her employer of the need to use paid leave under the Act. The written notice must include:

- a. Reason for the absence AND
- b. The expected duration of leave.<sup>8</sup>

If the leave is foreseeable, the written notice must be provided at least 10 days before the start of leave. If leave is not foreseeable, an oral or written notification must be provided prior to the start of the work shift for which the leave is being used. In the case of an emergency, the employee or another individual on behalf of the employee must notify the employer of the need for leave within 48 hours of the emergency occurring.<sup>9</sup>

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<sup>6</sup> <https://www.winston.com/en/thought-leadership/d-c-s-universal-paid-leave-act-takes-effect-but-uncertainty.html>

<sup>7</sup> <https://code.dccouncil.us/dc/council/code/sections/32-541.01.html>

<sup>8</sup> <https://code.dccouncil.us/dc/council/code/sections/32-541.07.html>

<sup>9</sup> <https://code.dccouncil.us/dc/council/code/sections/32-541.07.html>

## **BENEFIT PAYMENTS**

Upon the occurrence of a qualifying family leave event, qualifying medical leave event, or qualifying parental leave event (qualifying event), eligible employees may file a claim for paid leave benefits with the Department of Employment Services (DOES). The eligible individual shall wait for one week during which no benefits are payable.

Following the filing of a claim and the one-week waiting period, an eligible individual shall be entitled to receive payment of his or her paid-leave benefits.

Any eligible individual who earns an average weekly wage that is equal to or less than 150 percent of the District's minimum wage (\$14.00 per hour) shall be entitled to weekly paid-leave benefits at a rate that equals 90 percent of the eligible individual's average weekly wage rate.

Any eligible individual who earns an average wage that is greater than 150 percent of the District's minimum wage shall be entitled to weekly paid-leave benefits that equals:

- a. 90 percent of the 150% of the District's minimum wage multiplied by 40; plus
- b. 50% of the amount of which the eligible individual's average weekly wage exceeds 150% of the District minimum wage.<sup>10</sup>

The maximum weekly benefit amount shall be \$1,000 before October 1, 2021. This cap will increase in proportion to the annual average increase beginning October 1, 2021.<sup>11</sup>

## **FUNDING SOURCE**

The paid leave program will be funded through a payroll tax on all covered D.C. employers. The taxed amount will amount to 0.62 percent of the wages paid to each eligible individual. The tax collection began on July 1, 2019.<sup>12</sup>

## **NOTICE REQUIREMENTS**

Beginning on February 1, 2020, employers with employees in the District were required to post a notice published by the D.C. government in "a conspicuous place" at their worksites.

Employers must send a poster of the notice to covered employees who work remotely or predominately telework so they can hang the posters at their individual worksites. Employers must also provide employees with the notice in electronic or physical form at:

- (1) The time of hiring;

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<sup>10</sup> <https://code.dccouncil.us/dc/council/code/titles/32/chapters/5/subchapters/IV/>

<sup>11</sup> <https://code.dccouncil.us/dc/council/code/sections/32-541.04.html>

<sup>12</sup> <https://code.dccouncil.us/dc/council/code/sections/32-541.03.html>

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- (2) At least once between February 1, 2020, and February 1, 2021, and at least once a year every following year; AND
- (3) Whenever the employer “receives direct notice” of an employee’s need to take leave for an event that could qualify for benefits under the Act.

Employers’ failure to comply with the notice requirements can result in civil penalties of up to \$100 for each covered employee whom the notice was not delivered to and \$100 for each day that the employer fails to post the notice in a conspicuous place.<sup>13</sup>

### **INTERACTIONS WITH OTHER LAWS AND POLICIES**

- The provision of equivalent or more generous paid leave benefits by a covered employer does not exempt the employer from making contributions to the Fund.
- Eligible individuals receiving benefits under the District Unemployment Fund shall not be eligible to receive the benefits provided for in this Act.
- Eligible individuals receiving long-term disability payments are not eligible to receive benefits provided for in this Act.
- Any period of paid leave taken under the Act by eligible individuals shall run concurrently with any leave entitled under the Family and Medical Leave Act (FMLA) or the D.C. FMLA.
- Employers are still required to provide all employees with paid sick leave at rates set by the DC Sick and Safe Leave Act of 2008.

### **FMLA**

The Family and Medical Leave Act provides certain employees with up to 12 weeks of unpaid, job-protected leave per year.

#### Covered Employers

The FMLA only applies to covered employers who are defined as:

- (1) Private-sector employers, with 50 or more employees in 20 or more workweeks in the current or preceding calendar year;
- (2) Public agencies, including a local, state or federal government agency; or
- (3) Public or private elementary or secondary schools, regardless of the number of its employees.

These covered employers must provide eligible employees with leave for any of the following reasons

- (1) Birth and care of the newborn child of an employee;

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<sup>13</sup> <https://www.lawandtheworkplace.com/2020/01/dc-employers-must-provide-paid-family-leave-law-notice-by-february-1-2020/>

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- (2) Placement of a child with an employee for adoption or foster care;
- (3) To care for an immediate family member with a serious health condition; OR
- (4) To take medical leave when the employee is unable to work because of a serious health condition

The FMLA defines immediate family member is defined as a spouse, child, or parent.

The FMLA defines serious health condition as an illness, injury, impairment, or physical or mental condition that involved inpatient care or continuing treatment by a health care provider.

### Eligible Employees

To be eligible to take leave under the FMLA, employees must be considered eligible. Eligible employees are those who

- (1) Work for a covered employer;
- (2) Have worked for at least 12 months, OR
- (3) Have worked at least 1,250 hours over the past 12 months, AND
- (4) Work at a location where the company employs 50 or more employees within 75 miles.<sup>14</sup>

### Job Protection

Upon return from FMLA leave, an eligible employee must be restored to the same job or an “equivalent job”.<sup>15</sup>

### Amount of leave

Eligible employees’ FMLA leave entitlements are limited to a total of 12 workweeks during any 12-month period.<sup>16</sup>

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<sup>14</sup> [https://www.ecfr.gov/cgi-bin/retrieveECFR?n=pt29.3.825#se29.3.825\\_1104](https://www.ecfr.gov/cgi-bin/retrieveECFR?n=pt29.3.825#se29.3.825_1104)

<sup>15</sup> <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs28a.pdf>

<sup>16</sup> [https://www.ecfr.gov/cgi-bin/retrieveECFR?n=pt29.3.825#se29.3.825\\_1104](https://www.ecfr.gov/cgi-bin/retrieveECFR?n=pt29.3.825#se29.3.825_1104)

**FMLA & UNIVERSAL PAID LEAVE ACT QUICK COMPARISON**

	<b>FMLA</b>	<b>DC Paid Leave Act</b>
Type of leave	Unpaid	Paid
Funding Source	N/A	Payroll tax
Amount of Leave	A total of 12 workweeks during any 12-month period.	<ul style="list-style-type: none"> <li>• Parental paid leave: 8 weeks</li> <li>• Family paid leave: 6 weeks</li> <li>• Medical paid leave: 2 weeks</li> </ul>
Covered Employers	<p>Covered employers are defined as:</p> <ol style="list-style-type: none"> <li>(1) Private-sector employers, with 50 or more employees in 20 or more workweeks in the current or preceding calendar year;</li> <li>(2) Public agencies, including a local, state or federal government agency; or</li> <li>(3) Public or private elementary or secondary schools, regardless of the number of its employees.</li> </ol>	<p>Covered employers are:</p> <ol style="list-style-type: none"> <li>(1) Any individual, partnership, general contractor, subcontractor, association, corporation, business trust, or group of persons who employs or exercises control over employees and is required to pay D.C. unemployment insurance on the employees' behalf OR</li> <li>(2) Self-employed individuals who opt into the paid-leave program.</li> </ol>
Covered Employees	<p>Eligible employees are those who:</p> <ol style="list-style-type: none"> <li>(1) Work for a covered employer;</li> <li>(2) Have worked for at least 12 months, OR</li> <li>(3) Have worked at least 1,250 hours over the past 12 months, AND</li> <li>(4) Work at a location where the company employs 50 or more employees within 75 miles.</li> </ol>	<p>Eligible individuals include:</p> <ol style="list-style-type: none"> <li>(1) Individuals who have been “covered employees” during some or all of the 52-week period preceding the occurrence of a qualifying event OR</li> <li>(2) Self-employed individuals who have opted into the paid leave program and spent more than 50 percent of their work time in D.C. during some or all of the 52-week period preceding the occurrence of a qualifying event.</li> </ol>

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<p>Coverage and Benefits</p>	<p>Covered employers must provide eligible employees with leave for any of the following reasons:</p> <ul style="list-style-type: none"> <li>(1) Birth and care of the newborn child of an employee;</li> <li>(2) Placement of a child with an employee for adoption or foster care;</li> <li>(3) To care for an immediate family member with a serious health condition; OR</li> <li>(4) To take medical leave when the employee is unable to work because of a serious health condition</li> </ul>	<p>Employers must provide eligible employees with leave for any of the following reason</p> <ul style="list-style-type: none"> <li>(1) Parental paid leave: This leave may be taken within one year following the birth of a child, placement of a child for adoption or foster care, or placement of a child where the eligible individual legally assumes and discharges parental responsibility.</li> <li>(2) Family paid leave: employee provides care or companionship to a family member who has a diagnosis or occurrence of a serious health condition.</li> <li>(3) Medical paid leave: Eligible employees are entitled to two weeks of paid medical leave following his or her diagnosis or occurrence of a serious health condition</li> </ul>
<p>Job Protection</p>	<p>Upon return from FMLA leave, an eligible employee must be restored to the same job or an “equivalent job”.</p>	<p>N/A</p>