



DOES

Department of
EMPLOYMENT SERVICES



DEPARTMENT OF EMPLOYMENT SERVICES

**ACCRUED SICK AND SAFE LEAVE ACT OF 2008
&
EARNED SICK AND SAFE LEAVE AMENDMENT ACT OF 2013**

PUBLIC EDUCATION CAMPAIGN

**D.C. Office of Wage-Hour
Labor Standards Bureau**



**District of Columbia
Muriel Bowser, Mayor**

**Department of Employment Services
Dr. Unique Morris-Hughes, Director**

ABOUT THE MODERATOR

- Your moderator for today is a compliance specialist with the D.C. Department of Employment Service, Office of Wage-Hour
- The **Office of Wage-Hour** conducts compliance audits and works to recover unpaid wages for employees who have not been paid pursuant to DC wage laws, either administratively or through court action.
- **Wage-Hour compliance** involves ensuring adherence to the wage laws of the District of Columbia by holding employers accountable when wages are not paid to employees who have performed work in the District.

AGENDA

- I. Purpose of the Acts
- II. Employer Requirements
- III. Employee Requirements
- IV. Enhanced Penalties for Violators Under the Wage Theft Prevention Amendment Act of 2014

PURPOSE OF THE ACTS

- To enable full-time and part-time employees who spend 50% or more of their time working in the District of Columbia to receive paid leave for absences resulting from:
 - **A medical condition or to care for ill family members**
 - **To receive medical care for themselves or their family members**
 - **Issues pertaining to domestic violence or sexual abuse**

**Section 3 (b) of the 2008 Act contains the entire list*

HOW DOES PAID LEAVE ACCRUE?

- Employees begin accruing leave on the first day of their employment. Accrued leave is tallied based on the employer's established pay period.

EXEMPT EMPLOYEES

- Employees who are exempt from overtime payment shall not accrue leave for hours worked beyond a 40-hour work week.
- Exempt employees are classified under one of the following categories:
 - Executive
 - Administrative
 - Professional
 - Outside Sales

TIPPED EMPLOYEES

- Tipped employees working in restaurants or bars must be paid no less than **five days** of paid leave at a rate of:
 - **1 hour** of paid leave **for every 43 hours** worked
- An employer must pay a tipped employee the full minimum wage, currently **\$13.25**, for each hour of approved paid leave.

EMPLOYEES NOT COVERED BY THESE ACTS

- Independent contractors
- Students
- Healthcare workers who choose to participate in a premium pay program
- Volunteers who work in non-profit organizations, charitable, religious or educational establishments
- Appointed or elected lay members engaged in religious functions in any religious organization
- Employees in the construction or building industry covered by a bona fide collective bargaining agreement
- Casual babysitters

DEFINITION OF “FAMILY MEMBERS”

- A spouse or domestic partner
- The parents of either the employee or the spouse
- Children, including grandchildren and foster children
- Brothers and sisters of either the employee or the spouse
- A residing child for whom the employee has parental responsibility
- A person who has co-habitated with the employee for no less than 12 months

EMPLOYER REQUIREMENTS

If an employer has...	Employees accrue...	Not to exceed...
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
1 to 24 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

***An employee means any individual employed by an employer**

HOW DOES AN EMPLOYER DETERMINE THE NUMBER OF EMPLOYEES EMPLOYED IN THE DISTRICT OF COLUMBIA?

The 2008 law states that 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.

****Found in Section 3(a) (4) of the 2008 Act***

HOW DOES AN EMPLOYER DOCUMENT THE USE OF PAID LEAVE UNDER THE ACTS?

An employer is required to maintain accurate time and payroll records that reflect the use of paid leave for no less than three years.

**Found in Section 11(b) of the 2013 Act*

**EMPLOYERS DO NOT HAVE TO CHANGE
THEIR CURRENT LEAVE POLICIES IF THE
POLICIES ALLOW EMPLOYEES TO:**

(1) Accrue and access paid leave at the same rate or greater than the hours of paid leave provided in the 2008 Act

(2) Use the paid leave for the same purposes as those set forth in both Acts, including unscheduled leave.

****Found in Section 6 of the 2008 Act***

HOW DOES AN EMPLOYEE INFORM AN EMPLOYER THAT HE/SHE WANTS TO USE PAID LEAVE?

- If the paid leave is foreseeable, the request shall be provided in writing to the employer 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.
- An employer may require that paid leave for **3** or more consecutive days be supported by reasonable certification supplied by an employee.

**Review Section 4 of the 2008 Act*

EMPLOYER CERTIFICATION

An employer may require “reasonable” certification for an employee’s absence of **3 or more days** which can comprise of:

- A signed document from a health care provider pursuant to § 2(5) of the DC Family and Medical Leave act of 1990
- A police report indicating that the employee was a victim of sexual abuse, stalking or domestic violence or
- A signed statement from a domestic violence advocate/counselor verifying that the employee is involved in litigation related to sexual abuse, stalking or domestic violence.

***See Section 5 of the 2008 Act**

WHEN DOES AN EMPLOYEE HAVE TO TURN IN CERTIFICATION REQUIRED BY THE EMPLOYER?

- The employee shall submit a copy of the certification from the health care provider, police, or court as soon as the employee returns to work.

**Found in Section 5 (a)(3) of the 2008 Act*

WHEN CAN AN EMPLOYEE START USING ACCRUED LEAVE FOR THE PURPOSES OF THE ACTS?

- When the employee has been employed for 90 calendar days, the employee can use leave that has been accrued.
- Note that employees can use leave in one-hour increments (ex- a quick doctor's visit).

**Found in Section 3 (c)(1) of the 2013 Act*

WHAT HAPPENS TO AN EMPLOYEE'S PAID LEAVE BALANCE WHEN THE EMPLOYMENT ENDS?

Unpaid leave is not required to be paid when an employee resigns or is terminated or laid off. However...

- If an employee has an unpaid leave balance (per the Acts), and returns within one year, the leave will be reinstated.
- If an employee has been separated for one year or longer, the leave balance will expire and the employee will be considered a “new hire” with a new leave accrual

**Review Section 2 of the 2013 Act*

WHAT HAPPENS TO AN EMPLOYEE'S UNUSED ACCRUED LEAVE BALANCE AT THE END OF THE COMPANY'S CALENDAR YEAR?

- The carryover of accrued leave is still in force pursuant to Section 3(c)(2) of the 2008 Act.
- Employers must carry over unused leave accrued, during a 12-month period, annually.

**Found in Section 3(c)(2) of the 2008 Act*

WAGE THEFT PREVENTION AMENDMENT ACT OF 2014

- The Wage Theft Prevention Amendment Act of 2014 (WTPAA) went into effect **February 26, 2015**.
- The WTPAA was created to amend the following D.C. wage laws:
 - Wage Payment and Wage Collection Law
 - Minimum Wage Act Revision Act (Current rate: \$10.50 per hour)
 - **Accrued Sick and Safe Leave Act**
 - Living Wage Act (Upholds previous 2013 amendment. Current rate: \$13.80 per hour)

CHANGES TO SICK LEAVE LAWS DUE TO WTPAA

- When the employer is a subcontractor and is alleged to have failed to pay an employee any wages earned, the subcontractor and the general contractor shall be **jointly** and **severally liable** to the subcontractor's employees for violations of the Living Wage Act, and the Sick and Safe Leave Act.
- When employers fail to comply with the laws the penalties range from \$1,000 to \$5,000 per affected employee plus up to triple the damages of the wages found due to an employee.

**Review Section 2 (b)(2) of the Wage Theft Prevention Amendment Act of 2014*

CHANGES TO SICK LEAVE LAWS UNDER THE WTPAA

(c) Section 7(b) (D.C. Official Code § 32-131.06(b)) is amended to read as follows: “(b) The paid leave requirements under this act 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 act 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.”

**Review Section 4 of the Wage Theft Prevention Amendment Act of 2014*

CHANGES TO SICK LEAVE LAWS UNDER THE WTPAA

“Sec 4 The Accrued Sick and Safe Leave Act of 2008 is amended as follows;

(a) Section 7(b)(DC Official Code § 32-131 06(b)) now states: “The paid leave requirements under this chapter 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 chapter shall not apply to any employee in the building and construction industry covered by a bona fide collective bargaining agreement.”

****Review Section 4 of the Wage Theft Prevention Amendment Act of 2014***

Retaliation

It shall be unlawful for any employer to discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee or person because that employee or person has:

- Made or is believed to have made a complaint
- Initiated or is about to initiate a proceeding
- Provided information to the Mayor, the DC Attorney General
- Testified or is about to testify in an investigation or proceeding under this act

***Review Section 10a of the WTPAA**

Retaliation

- An employer taking an adverse action against an employee within 90 days of any of the actions set forth in the law shall raise a rebuttable presumption that the employer has violated this act.
- It shall be unlawful for an employer's absence control policy to count paid leave taken under this act as an absence that may lead to, or result in, discipline, discharge, demotion, suspension, or other adverse action.

***Review Section 9 of the 2013 Act**



Employer Question

- What rate do I pay tipped employees per hour for paid leave under these acts?

Employer Answer

- Tipped employees must be paid for every hour of leave at the full DC minimum wage, currently \$13.25.

Employer Question

If I have less than 50 employees and offer 5 days of paid vacation after an employee works a year, do I also have to offer a separate leave category of sick leave?

Employer Answer

No, you do not have to have a separate leave category, but your vacation policy must be modified so that employees can use accrued leave for the purposes of the Acts after 90 calendar days of employment.

Employer Question

My company has a paid time off policy for full-time employees, but not for part-time employees. Is that a problem?

Employer Answer

Yes. The 2008 Act covered employees who worked at least 1,000 hours per year. The 2013 Amendment includes all employees who work in DC, regardless of the total number of hours they work daily, weekly or annually.



Employer Question

Are part-time employees entitled to be paid 8 hours of sick leave even when they work less hours in a day?



Employer Answer

An employee is paid leave based upon the average number of hours he/she works per day.



Employer Question

My employees do not work a consistent schedule and regularly do not work entire pay periods. Do I have to allow them to accrue leave even when they do not work?



Employer Answer

Employees will accrue leave based upon the actual hours they work. If they do not work, they do not accrue leave.

ADDITIONAL INFORMATION

For the complete text of the Accrued Sick and Safe Leave Act of 2008, the Earned Sick and Safe Leave Amendment Act of 2013, or the Wage Theft Prevention Amendment Act of 2014, please visit:

www.does.dc.gov

For questions or concerns, please contact the
D.C. Office of Labor Law and Enforcement at **202-671-1880**.

or

Email: OWH.ASK@dc.gov

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