

DEPARTMENT OF EMPLOYMENT SERVICES

NOTICE OF PROPOSED RULEMAKING

The Director, District of Columbia Department of Employment Services, pursuant to the authority set forth in Sections 11, 14 and 15 of the Accrued Sick and Safe Leave Act of 2008 (Act), effective May 13, 2008, (D.C. Law 17-0152; D.C. Official Code §§32-131.01-.16 (2010 Repl.)) and Mayor's Order 2008-153, dated November 6, 2008, hereby gives notice of the intent to amend Chapter 32, entitled "Accrued Safe and Sick Leave", of Title 7 (Employment Benefits) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days after publication of this rulemaking in the *D.C. Register*.

The rulemaking is necessary to implement Section 15 of the Act to establish the criteria for the granting of a hardship exemption from the requirements of the Act. The purpose of the Act is to require employers in the District of Columbia to provide leave for illness and absences associated with domestic violence and sexual abuse.

The proposed rule, Section 3218, was first published in the *D.C. Register* on December 19, 2008 (55 DCR 12707). It was transmitted to the Council of the District of Columbia on December 11, 2008 as part of a Proposed Rulemaking for the Act. The 45-day period of Council review expired on January 24, 2009 without action taken by the Council. Section 3218 was withdrawn from the Council on February 27, 2009.

This rulemaking proposes a new Section 3218 and will be transmitted to the Council for a 45-day review, as required by D.C. Official Code § 32-131.14.

A new Section 3218 is added to Chapter 32, of Title 7 DCMR, to read as follows:

3218 HARDSHIP EXEMPTION

- 3218.1 An employer may apply to the Associate Director of the Office of Labor Standards of the Department of Employment Services for an exemption from the provisions of the Act, pursuant to Section 15 of the Act (D.C. Official Code § 32-131.14).
- 3218.2 The application shall be in writing and shall include a narrative fully explaining the basis for the request and shall be accompanied by supporting documentation sufficient to demonstrate that the hardship has been or will be created by complying with the Act.
- 3218.3 Hardship means a negative impact caused or to be caused by the Act that:
- (a) Threatens or will threaten the financial viability of the employer;
 - (b) Jeopardizes the ability of the employer to sustain operations;

- (c) Significantly degrades the quality of the employer's operations; or
- (d) Creates a significant negative financial impact on the revenues or income of the employer.

- 3218.4 After receipt of an application, the Associate Director may request additional information from the employer and designate a date by which such information shall be provided. Failure of the employer to provide the additional information by the date designated by the Associate Director may provide a basis for an unfavorable determination of the application.
- 3218.5 If the employer establishes that the Act has caused or will cause hardship, the Associate Director shall approve the application, exempt the employer from application of the Act, and establish the time period during which the exemption shall apply.
- 3218.6 The time period during which the exemption applies shall be consistent with the time period during which the hardship is likely to exist; provided, if the time period is greater than one (1) year, the employer may be required to reapply for the exemption after one (1) year.
- 3218.7 The Associate Director shall issue a written decision within twenty-one (21) days after receiving a complete application, including any additional information requested pursuant to § 3218.4. The written decision shall fully explain the reasons for approving or rejecting the application and for establishing the specific time period during which the exemption shall apply.
- 3218.8 The employer may appeal the decision of the Associate Director to the Director within ten (10) days after the issuance of the decision. An appeal shall be in writing and shall provide a clear explanation of the basis of the appeal.
- 3218.9 The Director shall issue a decision on the appeal within thirty (30) days after receiving the appeal.

All persons desiring to comment on the subject matter of this prepared rule making should file comments in writing to Tonya Sapp, General Counsel, D.C. Department of Employment Services, 4058 Minnesota Avenue, N.E, Suite 5800, Washington, D.C. 20019. Comments must be received no later than thirty (30) days after the publication of this notice in the *D.C. Register*. Copies of this proposal may be obtained, at cost, by writing to the above address.