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One Minute Memo®

D.C. Council Passes the Accrued Sick and Safe Leave Act

On March 4, 2008, the D.C. Council passed the Accrued Sick and Safe Leave Act (ASSLA). Although the D.C. Council has passed the ASSLA, it does not have the effect of law until the Mayor approves it and after a Congressional review period of 30 "legislative days" has expired without Congress acting on the bill. If the ASSLA becomes law, the District of Columbia will be the second jurisdiction in the United States to require employers to provide paid sick leave. In 2006, San Francisco enacted legislation requiring employers to provide paid sick leave to employees.

First introduced in May 2007, the ASSLA would require employers in the District of Columbia to provide paid leave to employees for physical or mental illness, preventive medical care, family care, and certain absences associated with domestic violence or sexual abuse. The amount of leave that an employer would be required to provide would vary depending on the size of the employer: Employers with 100 or more employees would be required to provide employees with up to seven (7) days per calendar year. Those with 25 to 99 employees would have to provide up to five (5) calendar days per year and those with 24 or fewer employees would have to provide up to three (3) calendar days per year. Under the ASSLA, employers would not have to pay employees for unused leave upon termination or resignation of employment.

By its terms, the ASSLA would apply to all employers in the District of Columbia, including non-profit and for-profit entities. However, after heavy lobbying from the business community, the D.C. Council amended the final bill to allow the Mayor, by regulation, to exempt certain businesses that can demonstrate "hardship" as a result of the law. In addition, not all employees would be covered by the ASSLA. The law would not apply to independent contractors or students; certain classes of employees, such as restaurant wait staff and bartenders who receive a combination of tips and wages, would be exempted.

Significantly, employees would not automatically be entitled to the paid leave provided by the ASSLA. The final form of the bill passed by the D.C. Council states that, in order to be entitled to paid leave under the law, employees will need to be employed for one year and have worked at least 1000 hours during the 12-month period immediately preceding the request for leave. Moreover, the ASSLA would place certain burdens on

employees who seek to take the leave provided under the law. If a qualifying event for paid leave is foreseeable, an employee would be required to provide the employer with a written request at least 10 days in advance of the proposed leave date or as early as possible. If the need for paid leave is unforeseeable, an employee will be required to provide an oral request for leave prior to the start of his or her work shift. In addition, if an employee has taken three or more consecutive days of paid leave, the employer will be able to require the employee to provide a certification in support of the leave.

The ASSLA would also make it unlawful for employers to discriminate or retaliate against employees who use the paid leave it provides or who file a charge or institute a proceeding under the law. Employers who willfully violate the law would be subject to a civil penalty of $500 for the first offense, $750 for the second offense, and $1000 for every subsequent offense. The ASSLA would be administered by the Department of Employment Services (DOES).

If the ASSLA becomes law, employers will need to examine their current leave policies and collective bargaining agreements and take the necessary steps to bring them into compliance with the ASSLA's requirements. If you have any questions regarding the ASSLA, please contact the Seyfarth Shaw attorney with whom you work or any Labor & Employment attorney on our website, www.seyfarth.com.