

A BILL

20-480

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA



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To amend the Accrued Sick and Safe Leave Act of 2008 to expand the definition of employees protected by the act, strengthen remedies and procedures available to employees under the act, establish an outreach program to inform the public about the act, and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Earned Sick and Safe Leave Amendment Act of 2013".

Sec. 2. The Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code § 32-131.01 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 32-131.01) is amended as follows:

(1) Paragraph (2) is amended to read as follows:

“(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 nonprofit organization;

(B) Any lay member elected or appointed to office within the discipline of any religious organization and engaged in religious functions;

1 (C) Any individual employed as a casual babysitter, in or about the
2 residence of the employer.

3 (D) An independent contractor;

4 (E) A student; or

5 (F) Health care workers who choose to participate in a premium pay
6 program.".

7 (2) Paragraph (3) is amended by striking the phrase "who employs" and inserting
8 the phrase "who directly or indirectly or through an agent or any other person, including through
9 the services of a temporary services or staffing agency or similar entity, employs or exercises
10 control over the wages, hours, or working conditions of" in its place.

11 (b) Section 3 (D.C. Official Code § 32-131.02) is amended as follows:

12 (1) Subsection (c) is amended to read as follows:

13 "(c)(1) Paid leave under this act shall accrue in accordance with the employer's
14 established pay period. An individual shall accrue paid leave at the beginning of his or her
15 employment. An employee may begin to access paid leave after 90 days of service with his or
16 her employer.

17 "(2) If an employee is transferred to a separate division, entity, or location within
18 the District, or transferred out of the District and then transferred back to a division, entity, or
19 location within the District, but remains employed by the same employer, the employee shall be
20 entitled to all paid leave accrued at the prior division, entity, or location and shall be entitled to
21 use all paid leave as provided in this act.

1 “(3) When there is a separation from employment and the employee is rehired
2 within one year of separation by the same employer, previously accrued unused paid leave shall
3 be reinstated. The employee shall be entitled to use accrued paid leave and accrue additional paid
4 leave immediately upon the re-commencement of employment; provided, that the employee had
5 previously been eligible to use paid leave. If there is a separation of more than one year, an
6 employer shall not be required to reinstate accrued paid leave and the rehired employee shall be
7 considered to have newly commenced employment.

8 “(4) An employee who is discharged after the completion of a probationary period
9 of 90 days or more, and is rehired within 12 months, may access paid leave immediately.”.

10 (c) A new subsection (g) is added to read as follows:

11 “(g) Notwithstanding the requirements in subsection (a)(1)-(4) of this section, employees
12 of restaurants or bars that regularly receive tips, commissions or other gratuities to supplement a
13 base wage that is below the minimum wage as established in section 4(a) of the Minimum Wage
14 Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-
15 1003(a)) (“1992 Act”); the employer shall provide for each employee not less than one hour of
16 paid leave for every 43 hours worked, not to exceed 5 days per calendar year. The paid leave
17 shall be compensated in accordance with the District minimum wage, as established in section
18 4(a) of the 1992 Act.”.

19 (d) Section 7(b) (D.C. Official Code § 32-131.06(b)) is amended to read as follows:

20 “(b) The paid leave requirements under this act shall not be waived for less than 3 paid
21 leave days per calendar year by the written terms of a bona fide collective bargaining agreement;

1 provided, that the paid leave requirements under this act shall not apply to any employee in the
2 building and construction industry covered by a bona fide collective bargaining agreement that
3 expressly waives the requirements in clear and unambiguous terms.”.

4 (e) Section 9 (D.C. Official Code § 32-131.08) is amended as follows:

5 (1) Paragraph (2) of subsection (b) is amended to read as follows:

6 “(2) Pursuant or related to this act:

7 “(A) Complains to the employer;

8 “(B) Files a complaint with the Department of Employment
9 Services.

10 “(C) Files a civil complaint alleging a violation of any provision of
11 this act;

12 “(D) Informs any person about an employer’s alleged violation of
13 this act.

14 “(E) Cooperates with the Department of Employment Services or
15 other persons investigation or prosecution of any alleged violation of this act;

16 “(F) Opposes any policy, practice, or act that is unlawful under this
17 act; or

18 “(G) Informs any person of his or her rights under this act.”.

19 (2) New subsections (d) and (e) are added to read as follows:

1 “(d) An employer taking an adverse action against an employee within 90 days of
2 any of the actions in subsection (b)(2) of this section shall raise a rebuttable presumption that the
3 employer has violated this act.

4 “(e) It shall be unlawful for an employer’s absence control policy to count paid
5 leave taken under this act as an absence that may lead to, or result in, discipline, discharge,
6 demotion, suspension, or other adverse action.”.

7 (f) Section 10(b)(1) (D.C. Official Code § 32-131.09(b)(1)) is amended to read as
8 follows:

9 “(b)(1) An employer who violates this section shall be assessed a civil penalty not to
10 exceed \$100 for each day that the employer fails to post the notice; provided, that the total
11 penalty shall not exceed \$500 unless the ongoing violation is willful.”.

12 (g) New sections 11a and 11b are added to read as follows:

13 “Sec. 11a. Statute of limitations.

14 “All civil complaints brought under this act shall be filed within 3 years of the event on
15 which the complaint is based, except that the 3-year period shall be tolled when an administrative
16 complaint is filed, or for any period during which the employer does not post the notice required
17 under section 10.

18 “Sec. 11b. Employer records.

19 “Employers shall retain records documenting hours worked by employees and paid leave
20 taken by employees, for a period of 3 years, and shall allow the Mayor and the Office of the
21 District of Columbia Auditor access to the records with appropriate notice and at a mutually

1 agreeable time, to monitor compliance with the requirements of this act. When an issue arises as
2 to an employee's entitlement to paid leave under this act, if the employer does not maintain or
3 retain adequate records documenting hours worked by the employee and paid leave taken by the
4 employee, or does not allow the Mayor or the Office of the District of Columbia Auditor
5 reasonable access to the records, there shall be a rebuttable presumption that the employer has
6 violated this act.”.

7 (h) Section 13 (D.C. Official Code § 32-131.12) is amended to read as follows:

8 “Sec. 13. Enforcement and Penalties.

9 “(a) An employee or similarly situated employees injured by a violation of this act shall
10 be entitled to maintain a civil action or an administrative action.

11 “(b) If an employer fails to allow an employee to use paid leave as required by this act,
12 the employer shall pay \$500 in additional damages to the employee for each accrued day denied,
13 regardless of whether the employee takes unpaid leave or reports to work on that day.

14 “(c) Except as provided in section 10(b), an employer who willfully violates the
15 requirements of this act shall be subject to a civil penalty of \$1,000 for the 1st offense, \$1,500
16 for the 2nd offense, and \$2,000 for the 3rd and each subsequent offense.

17 “(d) If the Mayor determines that an employer has violated any provision of this act, the
18 Mayor shall order the employer to provide affirmative remedies including:

19 “(1) Back pay for lost wages caused by the employer’s violation of this act;

20 “(2) Reinstatement or other injunctive relief;

1 “(3) Compensatory or punitive damages, including at least \$500 for every day an
2 employee who was denied access to paid leave was required to work; and

3 “(4) Reasonable attorney’s fees and costs of enforcement.

4 “(e) An action may be maintained against any employer in a court of competent
5 jurisdiction by any one or more employees for and on behalf of himself or themselves. An
6 employer who violates the provisions of this act shall be liable to the employee or employees
7 affected for:

8 “(1) Back pay for lost wages caused by the employer’s violation of this act;

9 “(2) Reinstatement or other injunctive relief;

10 “(3) Compensatory damages or punitive damages, including at least \$500 for
11 every day an employee who was denied access to paid leave was required to work; and

12 “(4) Reasonable attorney’s fees and costs.

13 “(f) Where compliance with this act or regulations enacted to implement this act is not
14 forthcoming, the Mayor shall take any appropriate enforcement action to secure compliance,
15 including initiating a civil action and, except where prohibited by another law, revoking or
16 suspending any registration certificates, permits or licenses held or requested by the employer or
17 person until the violation is remedied. In order to compensate the District for the costs of
18 investigating and remedying the violation, the Department of Employment Services may also
19 order the violating employer or person to pay to the District a sum of not more than \$500 for
20 each day or portion thereof and for each employee or person as to whom the violation occurred

1 or continued. The funds recovered by the District under this act shall be allocated to offset the
2 costs of implementing and enforcing this act.

3 “(g) In any administrative or civil action brought under this act, the Mayor or court shall
4 award interest on all amounts due and unpaid at the rate of interest specified in D.C. Official
5 Code §§ 28-3302(b) or 28-3302(c).

6 “(h) Any money awarded to an employee under this act shall be enforceable by the
7 employee to whom the debt is owed or may be collected by the District on behalf of the
8 employee.”.

9 (i) Section 14 (D.C. Official Code § 32-131.13) is amended by striking the phrase “after
10 May 13, 2008.”.

11 (j) Section 16(1) (D.C. Official Code § 32-131.15(1)) is amended by striking the phrase
12 “with the posting requirements”.

13 (k) A new section 16a is added to read as follows:

14 “Sec. 16a. Public education and outreach.

15 “(a) The Department of Employment Services shall develop and implement a
16 multilingual outreach program to inform employees of the availability of paid leave under this
17 act.

18 “(b) The program shall include the distribution of notices and other written materials in
19 English and in other languages to all childcare and elder care providers, domestic violence
20 shelters, schools, hospitals, community health centers, and other health care providers within the
21 District.”.

1 Sec. 3. Applicability.

2 This act shall apply upon the inclusion of its fiscal effect in an approved budget and
3 financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in
4 a certification published by the Council in the District of Columbia Register.

5 Sec. 4. Fiscal impact statement.

6 The Council adopts the fiscal impact statement in the committee report as the fiscal
7 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
8 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

9 Sec. 5. Effective date.

10 This act shall take effect following approval by the Mayor (or in the event of veto by the
11 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
12 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
13 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
14 Columbia Register.