

RECENT CHANGES IN DC EMPLOYMENT LAWS

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DISCLAIMER

This presentation is for informational purposes only, and is not intended to provide legal advice. The presentation also may not include all relevant information for any particular legal situation. If you have specific questions, please consult an attorney.

RECENT LAWS

- D.C. Earned Sick and Safe Leave Amendment Act of 2013 (currently effective)
- Fair Criminal Record Screening Act of 2014 (currently effective)
- D.C. Wage Theft Prevention Act of 2014 (effective February 26, 2015)
- Protecting Pregnant Workers Fairness Act of 2014 (effective March 3, 2015 and applicable @ October 1st)

D.C. SICK AND SAFE LEAVE ACT

Amendments -- Coverage & Eligibility

- Applies to all D.C. employers regardless of workforce size
- All employees begin accruing leave immediately upon hire
- After 90 days of employment, all employees may take earned leave
- No exceptions for temporary, part-time, or seasonal employees once 90 days have passed
- Employer is responsible for compliance if it “directly or indirectly” employs or exercises control over the wages, hours, or working conditions of employment, including through use of temporary workers or a staffing agency

D.C. SICK AND SAFE LEAVE ACT

Accruals

- Minimum sick leave accruals range from 3-7 days annually depending on size of employer:
 - 1-24: 1 hr/ 87 hrs worked, not to exceed 3 days per calendar year
 - 25-99: 1 hr/43 hrs worked, not to exceed 5 days per calendar year
 - 100+: 1 hr/ 37 hrs worked, not to exceed 7 days per calendar year



D.C. SICK AND SAFE LEAVE ACT

Uses for Leave

- Leave must be available to an employee for:
 - illness, injury, or health care appointments
 - care of an ill or injured family member or to help a family member with health care appointments
 - obtaining certain medical, social, or legal services or pursuing actions arising from stalking, domestic violence or sexual abuse or to help a family member with such services or actions.

D.C. SICK AND SAFE LEAVE ACT

Definition Of Family Member

- Family member broadly includes:
 - spouses
 - domestic partners
 - parents
 - siblings
 - children (foster children, grandchildren, and other children living with the employee for whom permanent parental responsibility is discharged)
 - in-laws (parent, sibling, children)
 - a person with whom the employee shares or has shared, for not less than the preceding 12 months, a mutual residence and with whom the employee maintains a committed relationship

D.C. SICK AND SAFE LEAVE ACT

Other Provisions

- **Certification:** Employers may request certification of the need for paid leave for absences of 3 or more consecutive days or if there is evidence of a pattern of abuse of paid leave
- **Carry-over:** Employees must be allowed to carry over unused leave from one year to the next, up to the maximum amount of the required yearly accrual.
- **No pay-out:** Unused leave need not be paid out on termination
- **Leave type:** Any paid leave program (vacation, sick, personal) that meets the requirements of the law is acceptable.

D.C. SICK AND SAFE LEAVE ACT

Notice Requirements

- Employee Notice:

- At least 10 days notice, where the need for paid leave is foreseeable
- Notice prior to the start of the next work shift or within 24 hours, whichever is sooner, where there is an emergency need for leave

- Employer Notice:

- Updated required poster

http://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/ASSLA%20Poster%20-%20English%20Spanish%20Combo%20-%20FINAL.pdf



D.C. SICK AND SAFE LEAVE ACT Amendments -- Enforcement

- Expanded enforcement provisions
 - Continued ability to file administrative complaint within 60 days of offense
 - New ability to bring civil court action within 3 years of the offense
 - Employee has choice of whether to pursue action administratively or in court
 - Additional time to bring complaint if employer fails to provide required notice or administrative action is pending

D.C. SICK AND SAFE LEAVE ACT Amendments - Penalties and Relief

- Expanded penalties and relief:
 - Civil penalties for failure to post required notice apply to *any violation*, not just willful violations
 - Increased civil penalties for willful violations: for each affected employee, \$1,000 for 1st offense, \$1,500 for 2nd offense, \$2,000 for 3rd and each subsequent offense
 - Liquidated additional damages of \$500 for each accrued day denied leave, regardless of whether the employee takes unpaid leave or reports to work on that day
 - Other remedies now include back pay for lost wages, reinstatement or other injunctive relief, compensatory or punitive damages, reasonable attorney's fees, costs, and interest

D.C. SICK AND SAFE LEAVE ACT Amendments -- Retaliation

- Expanded protections against retaliation
 - Protects complaints to employer, agency, or court or participation in or cooperation with any proceeding
 - Protects informing any person about violations of or rights under the law
 - Rebuttable presumption of retaliation if an adverse action is taken against an employee within 90 days of using leave taken under the law
 - Prohibits using leave taken under the law as a basis for discipline, discharge, demotion, suspension, or other adverse action



D.C. SICK AND SAFE LEAVE ACT Amendments -- Recordkeeping

- New recordkeeping requirements:
 - Records documenting hours worked and paid leave taken by employees must be retained for 3 years
 - DC government has right to access and audit records
 - Failure to retain records leads to a rebuttable presumption of a violation when an issue arises as to an employee's entitlement to paid leave

FAIR CRIMINAL RECORD SCREENING ACT

Applicability & Exemptions

- Applies to employers of ten or more D.C.-based employees
- Exemption for businesses and facilities:
 - which provide programs, services, or direct care to children or vulnerable adults
 - which are required by law to consider an applicant's criminal history
 - for a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories



FAIR CRIMINAL RECORD SCREENING ACT

Prohibitions

- Prohibited inquiries of and about applicants:
 - Arrest record
 - Criminal accusations that are not pending
 - Criminal convictions, except after a conditional offer of employment has been made



FAIR CRIMINAL RECORD SCREENING ACT

Withdrawal Of Offer

- Conditional offer of employment may only be withdrawn because of an applicant's criminal conviction for a legitimate business reason, considering:
 - The specific duties and responsibilities of the position;
 - The bearing of the offense on the applicant's fitness to perform one or more duties or responsibilities;
 - The time which has elapsed since the offense occurred;
 - The applicant's age at the time of the occurrence of the offense;
 - The frequency and seriousness of the offense;
 - Any information produced by the applicant, or produced on his or her behalf, regarding rehabilitation and good conduct since the occurrence of the offense.

FAIR CRIMINAL RECORD SCREENING ACT

Applicant Rights

- If a conditional offer is withdrawn or it is believed other adverse action was taken, applicants may request from the employer within 30 days:
 - A copy of the records considered by the employer and
 - A notice of the applicant's right to file an administrative complaint with the D.C. Office of Human Rights



FAIR CRIMINAL RECORD SCREENING ACT

Enforcement & Penalties

- **Enforcement Mechanism:**
 - Filing an administrative complaint with the D.C. Office of Human Rights
 - Exclusive remedy for applicants
- **Penalties:** Fines of up to \$1,000, \$2,500, or \$5,000, may be imposed, depending on size of employer.



D.C. WAGE THEFT PREVENTION ACT

- Applies to all D.C. employers, regardless of size
- Effective February 26, 2015



D.C. WAGE THEFT PREVENTION ACT

Amends DC Wage Payment & Collection Act

- Expands Coverage of D.C. Wage Payment and Collection Act:
 - Expanded to also apply to exempt employees
 - Holds contractor jointly responsible for violations of subcontractor
 - Holds employer jointly responsible for violations of temporary staffing firm

D.C. WAGE THEFT PREVENTION ACT

DC Wage Payment & Collection Act Obligations

- Frequency of payment:
 - At least twice a month on regular paydays designated in advance
 - Not more than 10 working days can elapse between end of pay period and designated payday
 - Payment may be once a month for
 - Exempt employees
 - If consistent with contract or custom
 - If consistent with a collective bargaining agreement



D.C. WAGE THEFT PREVENTION ACT

DC Wage Payment & Collection Act Obligations

- Payment on separation from employment for all employees
 - For discharged employees:
 - On working day following discharge
 - Within 4 days following discharge if employee is responsible for employer monies
 - For resigning employees:
 - The earlier of the next regular payday or 7 days following resignation
 - Within 4 days following resignation if employee is responsible for employer monies
 - Applies to wages and vacation owed under employer policies

D.C. WAGE THEFT PREVENTION ACT

Amends DC Wage Payment & Collection Act

- Adds prohibition on retaliation:
 - For complaints to the employer, the DC government, or any other person about violations of the act or the Living Wage Act
 - For initiating a proceeding ,testifying in a proceeding, or being about to do either
 - For providing information to the DC government or other individual regarding a violation, investigation, or proceeding
- Need not make explicit reference to law
- Rebuttable presumption of retaliation if an adverse action is taken against an employee within 90 days of engaging in protected activity

D.C. WAGE THEFT PREVENTION ACT

Amends DC Wage Payment & Collection Act

- Expands enforcement mechanisms:
 - Administrative or court action available for violations of the Act (including claims of retaliation), of the Minimum Wage Revision Act, of the Sick and Safe Leave Act, or of the Living Wage Act
 - Actions must be brought within 3 years of the violation or of the last occurrence if the violation is continuous
 - Additional time to bring court action if administrative complaint is filed, until it is resolved or withdrawn by the employee, whichever is sooner
 - Additional time to bring administrative or court action during any period that employer fails to provide actual or constructive notice of the employee's rights
 - Expanded formal administrative complaint and hearing process, which finally adjudicates the merits of claims of alleged violations
 - Burden of proof shifts to employer where employer's records of hours worked or compensation are problematic

D.C. WAGE THEFT PREVENTION ACT

Amends DC Wage Payment & Collection Act

- Expands penalties and remedies:
 - Continued availability of liquidated damages of 10 percent of unpaid wages per day after separation from employment
 - Criminal liability for misdemeanor, punishable by fine, for *negligent* violations of the act or of Living Wage Act
 - Increased criminal fines for willful violations of the act or of Living Wage Act
 - Increased administrative penalties
 - Available remedies through administrative process or court include back wages, injunctive relief, attorneys' fees, costs, interest
 - Allows denial of any application for license to do business for willful violations

D.C. WAGE THEFT PREVENTION ACT

Amends Minimum Wage Revision Act

- Expands employer responsibility under Minimum Wage Revision Act:
 - Contractor jointly responsible for violations of subcontractor
 - Employer jointly responsible for violations of temporary staffing firm



D.C. WAGE THEFT PREVENTION ACT

Amends Minimum Wage Revision Act

- Expands record keeping requirements of Minimum Wage Revision Act:
 - Must track “precise time worked” by nonexempt employees, rather than hours worked each day and each workweek
 - Employers must track actual hours, including exact time nonexempt employees start and finish work and take lunch and other substantial break time



D.C. WAGE THEFT PREVENTION ACT

Amends Minimum Wage Revision Act

- Expands employer notice obligations
 - Continue to post required poster provided by D.C. government
 - Must also provide written notice to new employees at the time they are hired, and to current employees within 90 days of the Act's effective date and whenever any of the information required in the notice changes
 - Must keep a copy of the notice signed and dated by both the employer and the employee acknowledging receipt of the notice
 - Notice must be provided in English and in the employee's primary language or in the language that the employee requests, if the Mayor has made available a relevant translation of the notice

D.C. WAGE THEFT PREVENTION ACT

Amends Minimum Wage Revision Act

- Form of notice for distribution is now available:
http://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/Notice%20of%20Hire-English_OWH%20Revised.pdf
- Information that must be included:
 - Employer's official name and any DBA names
 - Physical address of employer's principal place of business, and mailing address, if different
 - Employer's telephone number
 - Employee's regular designated paydays
 - Employee's rate of pay and the basis of their rate of pay, which can include:
 - Whether employee is paid by the hour, shift, day, week or piece, through salary, or on commission
 - Any allowances claimed as part of minimum wage compensation, including tip, meal, or lodging allowances
 - Overtime rate of pay and any exemptions from overtime pay
 - D.C. living wage, exemptions from the living wage, and applicable prevailing wages (for DC and federal government contractors)



D.C. WAGE THEFT PREVENTION ACT

Amends Minimum Wage Revision Act

- Adds prohibition on retaliation
- Tolls statute of limitations for bringing administrative or court claim if employer fails to post required poster or provide required notice
- Subjects negligent, as well as willful, violations to criminal fines
- Increases administrative fines

PROTECTING PREGNANT WORKERS FAIRNESS ACT

Effective Date & Applicability

- Effective date is March 3, 2015, but law is not applicable until its fiscal effect is included in an approved budget and financial plan with a certification published by the D.C. Council in the D.C. Register, likely no earlier than October 1st
- Applies to all D.C. employers regardless of workforce size



PROTECTING PREGNANT WORKERS FAIRNESS ACT Requirements

- Requires employers to provide reasonable accommodations to known limitations of pregnant employees, employees recovering from childbirth, and nursing mothers
- Expands obligations under existing laws on nondiscrimination, accommodation of disabilities, and provision of family and medical leave
- Retaliation is prohibited against employees requesting or using a reasonable accommodation



PROTECTING PREGNANT WORKERS FAIRNESS ACT

Accommodations

- Types of accommodations required:
 - More frequent or longer breaks
 - Unpaid time off to recover from childbirth, even if employee is not DCFMLA eligible or if the organization is not covered by DCFMLA
 - Acquisition or modification of equipment or seating
 - Temporary transfer to less strenuous or less hazardous position
 - Other job restructuring, including light duty or modified work schedule
 - No heavy lifting
 - Providing non-bathroom space for expressing breast milk

PROTECTING PREGNANT WORKERS FAIRNESS ACT

Process

- **Interactive process:** Employers must engage in the interactive process with an employee who **requests or needs** a reasonable accommodation
- **Undue hardship:** Reasonable accommodation can only be denied for undue hardship
- **Certification:** Employers can request certification of the medical need for a reasonable accommodation if they request it for those with other temporary disabilities
- **No mandatory leave:** Employers cannot force employees to take leave if another reasonable accommodation can be provided
- **Reinstatement:** Employers must reinstate employees to the original job or an equivalent position once the need for reasonable accommodation ceases

PROTECTING PREGNANT WORKERS FAIRNESS ACT

Notice Requirements

- Multiple notice requirements:
 - Posted notice in both English and Spanish
 - Written notice, including a translation if required, to:
 - New employees at start of employment;
 - Existing employees within 120 days of effective date of act;
 - An employee who notifies the employer of her pregnancy or related medical condition within 10 days
 - No requirement that District of Columbia government develop standard notice

PROTECTING PREGNANT WORKERS FAIRNESS ACT

Enforcement & Remedies

- Employees may bring an administrative or civil action to enforce the law
- Act suggests that employees may first have to exhaust administrative remedies before going to court, but language is unclear
- Remedies for violation of the act include:
 - Back pay
 - Reinstatement and other injunctive relief
 - Attorneys' fees, costs, and interest
 - Civil penalties for willful violations of up to \$2,000 per offense
 - Penalties for failure to post the required notice of \$50 per day up to \$250 unless the ongoing violation is willful, in which case penalties can continue to accrue at \$50 per day



NOTICE OF HIRE – EMPLOYMENT STATUS AND ACKNOWLEDGEMENT OF WAGE RATE(S)

Notice of Hire (Check only one)

At Hire Current Employee Annual–Current Date _____ Change in pay rate(s) or payday

Effective Date: ____/____/____

Section 1

Employer

Company Name: _____
DBA: _____
Permanent Address: _____
Street Line 2: _____
City: _____ State: _____
Zip Code: _____
Mailing Address: Same as Physical Address

Street Line 2: _____
City: _____ State: _____ Zip Code: _____
Phone: (____) _____ - _____

Employee

Employee Name: _____
Physical Address: _____
City: _____ State: _____
Zip Code: _____
Mailing Address: Same as Physical Address

Street Line 2: _____
City: _____ State: _____ Zip Code: _____
Phone: (____) _____ - _____

Section 2

Pay Frequency and Payday

Pay Frequency: _____ Designated Pay Day: _____
(Weekly, bi-weekly, semi-monthly, monthly, etc.) (Day of week when wages are payable/available)

Section 3

Allowances Claimed As Part of Wages: None, or:

Tips \$ _____ per hour
 Meals \$ _____ per meal
 Lodging \$ _____ per _____
 Other \$ _____ per _____

Section 4

Tipped Employees

As of January 1, 2005, the minimum wage required to be paid by any employer in the District of Columbia to any employee who receives gratuities shall be **\$2.77** an hour, provided that the employee actually receives gratuities in an amount at least equal to the difference between the hourly wage paid and the minimum wage. Also, all gratuities received by the employee must be retained by the employee. This employee (*will or will not*) participate in the following company tip pool:

Tip Pool Policy: (*Explain if applicable*)

Section 5

Basis of Wage Payment

- Minimum Wage** **Living Wage** **Living Wage Exempt** **Employer Determined Wage Rate**

Pay Basis: _____ (hourly, shift, day, week, salary, piece, commission)

Hourly

Multiple Rates or Basis (for each type of basis)

Rate of Pay: _____ per hour

Overtime Rate of Pay* _____ per hour

Overtime Pay Exemption for bona fide

Administrative

Executive

Professional

Rate of Pay: _____ per _____ Overtime Rate: _____

Rate of Pay: _____ per _____ Overtime Rate: _____

Rate of Pay: _____ per _____ Overtime Rate: _____

*No employer shall employ any employee for a workweek that is longer than 40 hours, unless the employee receives compensation for employment in excess of 40 hours at a rate not less than 1 ½ times the regular rate at which the employee is employed.

Section 6

Prevailing Rate (if Applicable)

Prevailing Rate Jobs: Your rate of pay will be the posted rate for the classification(s) listed.

Classification 1: _____ Prevailing Rate: _____

Classification 2: _____ Prevailing Rate: _____

Classification 3: _____ Prevailing Rate: _____

Section 7

The Department of Employment Services, specifically the Office of Wage-Hour (OWH), is to be contacted as that office is the designated enforcement agency for the concerns about safety, wage and hour, or discrimination. The OWH can be contacted at 202-671-1880 or via e-mail at owh.ask@dc.gov. The office is located at 4058 Minnesota Avenue, NE, Suite 4300 Washington, D.C. 20019. The office is open Monday –Thursday 8:30-4:30 and Friday 9:30-4:30.

Section 8

Employee Acknowledgement: By signing below, I acknowledge that I have received the foregoing information regarding my pay and my Employer. I told my employer what my primary language is:

Check one:

English

I have been given this pay notice in English.

Other Language

_____. I have been given this pay notice in English only, because Office of Wage-Hour does not yet offer a pay notice form in my primary language.

Employee's Signature: _____ Date ____/____/____

Employer's Signature: _____ Date ____/____/____

The Department of Employment Services provides templates for several common types of pay agreements, including dual language notices and acknowledgements in English and Spanish. If any other languages are needed, please contact the Office of Wage-Hour at 202-671-1880. Employers may create their notices, use or adapt the notice provided by The Department of Employment Services, as long as:

- The required information appears in English and the employee's primary language
- The employee receives a copy
- The employee signs an acknowledgment of receipt and identifies their primary language to the employer
- The employer keeps a copy of the notice and acknowledgement form

The Instructional Guide of how to complete this notice is found below:

Instructional Guide

Notice Given

Indicate the reason the form is being provided to the employee.

Section 1

Employer and Employee

Complete all fields.

Section 2

Pay Frequency and Pay Day

Indicate the frequency (e.g., weekly, bi-weekly, etc.) for when regularly scheduled wage payments will be paid and also indicate the specific payday.

Section 3

Allowances Claimed as Part of Wages

Indicate any allowances claimed as part of the minimum wage, including tips, meals, and/or lodging allowances.

Section 4

Tipped Employees

This section provides tipped employees the required notice under § 32-1003(f).

Note: Employers should also provide the company's tip pool policy in this section or as an attachment.

Section 5

Basis of Wage Payment

Employer must specify whether the employee is paid minimum wage, living wage (or living wage exempt), or if the wage rate is an employer-determined rate above minimum wage.

Specify the basis as hour, shift, day, week, salary, piece, and/or commission.

Provide the actual rate for each type of basis the employee will be paid.

Note: Employers must also provide employees with their overtime rate for each basis paid or given notice that they are exempt from overtime. (Specify the reason for the exemption is for bona fide Administrative, Executive, or Professional)

Section 6

Employees Paid Based on Prevailing Rates or other Jobs.

Complete this section when the employee will be paid a prevailing wage rate such as those specified under the Davis Bacon Act or the Service Contract Act.

Employers must specify the classification(s) the employee will work and the related Wage Rate and any Fringe Benefit applicable. Also, explain any overtime rates that will be paid for the work performed over 40 hours in a work week under each prevailing rate.

Section 7

According to WTPAA, information about how to contact the designated enforcement agency for concerns about safety, wage and hour, or discrimination is to be on this notice.

Section 8

Employee Acknowledgement

The employee must acknowledge that he/she has disclosed his/her primary language by checking one of the two boxes and that the employee has received the form by signing and dating the form.

Note: Employees have a right to receive this notice in a language other than English but only for those languages for which the DOES Office of Wage-Hour has developed its own dual-language notice. Notices will be available from Office of Wage-Hour in English and Spanish. If you need the forms translated in other languages, please contact our office at 202-671-1880.

If an employee refuses to sign the notice, an employer should still give the notice to the employee and note the employee's refusal on its copy of the notice.