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CLIENT ALERT

D.C. Issues Final Regulations for Accrued Sick & Safe Leave Act

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The District of Columbia recently issued the final regulations implementing the Accrued Sick and Safe Leave Act of 2008 ("ASSLA" or "the Act"). When the ASSLA went into effect on November 13, 2008, two key questions remained unanswered: 1) which employees are covered under the Act; and 2) when do employees begin to accrue and access leave under the Act? The final regulations answer these questions by clarifying the definition of "employee," especially for those who do not consistently work in the District of Columbia, and confirming that only "employees" (the definition of which was clarified) are eligible to accrue and access paid leave under the Act.

As we reported when the ASSLA went into effect (click here for the Client Alert detailing the key provisions of the ASSLA), the Act requires employers to provide a minimum amount of paid sick and "safe" leave hours to their employees based on the number of employees the employers have and the number of hours an employee works. Specifically, employers with 24 or fewer employees must provide one hour of paid leave for every 87 hours worked, not to exceed 3 days per year; employers with 25 to 99 employees must provide one hour of paid leave for every 43 hours worked, not to exceed 5 days a year; and employers with more than 100 employees must provide employees with one hour of paid leave for every 37 hours worked not to exceed 7 days a year. Employees that are exempt from overtime payment under the FLSA are not entitled to accrue sick leave for hours worked beyond 40 hours in a workweek.

The Act and its proposed regulations left unresolved, though, the issues of who is an "employee" under the Act and when leave begins to accrue. Specifically, as a result of a last minute amendment, one section of the Act stated that an employee may begin accruing leave immediately upon hire and such leave could be used after 90 days of service, while another section of the Act stated that an employee is not covered under the Act until the employee has a minimum of one year and at least 1,000 hours of service. In addition, there was also ambiguity surrounding the scope of coverage for employees of covered employers who do not consistently perform their work within the District of Columbia. The recently published final regulations resolve these issues as follows:

Who Is Covered Under the Act?

The final regulations define an "employee" as an individual who has been continuously employed by the same employer for at least one year and who has worked at least 1,000 hours for that employer during the previous 12 month period. In addition, in order to be an "employee" under the Act, a worker employed by the employer in more than one location must spend more than 50% of his or her working time working in the District of Columbia. The definition of "employee" also includes workers based in the District of Columbia who regularly spend a substantial amount of their time working for the employer in the District of Columbia and do not spend more than 50% of their work-time working for the employer in any particular state. Independent contractors, students, and health care workers who choose to participate in a premium pay program, and restaurant wait staff and bartenders who work for a combination of wages and tips are specifically excluded from the definition of "employee."

When Does a Worker Start to Accrue Leave?

Under the final regulations, a worker begins to accrue paid leave when he or she satisfies the definition of "employee" described above, not from the date of hire or 90 days after the date of hire.

What Should Employers Be Doing Now?

With these clarifications in mind, employers should immediately review their existing leave policies to ensure that the policies comply with the Act and its final regulations. It is important to keep in mind that the final regulations did not alter the "safe haven" provision for pre-existing paid leave policies. Under this provision, existing policies that allow accrual and usage of leave that are at least equivalent to the paid leave prescribed in the Act are not required to be modified. In addition, employers should bear in mind that the ASSLA requires employers to post in a conspicuous place a notice published by the Department of Employment Services ("DOES") detailing the pertinent provisions of the Act. However, DOES has not yet developed the poster and does not expect to have it prepared for several months. In the meantime, information about the ASSLA is included on the Minimum Wage Poster that employers should already have displayed.

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