

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, the Accrued Sick and Safe Leave Act of 2008 to provide paid time off for COVID vaccinations and recovery; the District of Columbia Family and Medical Leave Act of 1990 to extend and update existing unpaid leave available for COVID-related purposes; and the Coronavirus Support Temporary Amendment Act of 2021 to make conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “COVID Vaccination Leave Emergency Amendment Act of 2021”.

Sec. 2. The Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code § 32-531.01 *et seq.*), is amended as follows:

(a) Section 2(5) (D.C. Official Code § 32-531.01(5)) is amended to read as follows:

“(5) “Paid leave” means:

“(A) Accrued increments of compensated leave provided by an employer for use by an employee during an absence from employment for any of the reasons specified in section 3(b); and

30 “(B) Compensated leave required to be provided by an employer to an
31 employee pursuant to section 3a or 3b.”.

32 (b) Section 3(c)(1) (D.C. Official Code § 32-531.02(c)(1)) is amended by striking the
33 phrase “Paid leave under” and inserting the phrase “Except as provided in section 3a or 3b, paid
34 leave under” in its place.

35 (c) A new section 3b is added to read as follows:

36 “Sec. 3b. Paid vaccination leave requirement.

37 “(a)(1) In addition to paid leave otherwise provided under this act, an employer,
38 including the District government, shall provide paid leave to an employee pursuant to this
39 section for an absence from work related to COVID-19 vaccination.

40 “(2) An employer shall provide paid leave to an employee in the following
41 amounts, but shall not be required to provide more than 56 hours of leave in total in one calendar
42 year:

43 (A) For vaccination leave, up to 4 hours per injection; and

44 (B) For vaccination recovery leave, up to 16 hours per injection.

45 “(3)(A) Subject to subparagraph (B) of this paragraph, an employer shall
46 compensate an employee for leave provided pursuant to this section at the employee’s regular
47 rate of pay. In the case of an employee who does not have a regular rate of pay, the employee’s
48 rate of pay shall be determined by dividing the employee’s total gross earnings, including all
49 tips, commission, piecework, or other earnings earned on an irregular basis for the most recent 2-
50 week period that the employee worked for the employer, by the number of hours the employee
51 worked during that 2-week period.

52 “(B) In no case shall an employee’s rate of pay fall below the minimum
53 wage established by section 4(a) of the Minimum Wage Act Revision Act of 1992, effective
54 March 25, 1993 (D.C. Law 9-248; D.C. Code Official Code § 32-1003(a)).

55 “(4) An employer shall provide paid leave under this section to any employee
56 who commenced work for the employer at least 15 days before the request for leave.

57 “(b)(1) Notwithstanding any other provision of this act, the remedies available under the
58 District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March
59 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), shall be the exclusive remedies
60 available to a District government employee for a violation of this section.

61 “(2) For complaints filed by non-District government employees, before taking
62 any other administrative action on a complaint filed pursuant to section 13, the Mayor shall
63 promptly provide the employer with written notice of the alleged violation, in a form or manner
64 to be determined by the Mayor, and give the employer 5 business days to cure the alleged
65 violation. The time to cure the violation shall run from the date the employer receives the notice.

66 “(c) Notwithstanding any other provision of this act:

67 “(1) The paid leave required to be provided under this section shall be in addition
68 to any other paid leave an employer provides an employee under an existing leave policy,
69 including under an existing contract or collective bargaining agreement; and

70 “(2) Parties to a collective bargaining agreement may not waive or reduce the
71 amount of leave an employer is required to provide pursuant to this section.

72 “(d) For the purposes of this section, the term:

73 “(1) “Child” means a child under the age of 18 years who lives with an employee
74 and for whom the employee permanently assumes and discharges parental responsibility, or a
75 foster child.

76 “(2) “Vaccination leave” means leave taken from employment by an employee to
77 receive an injection, or for an employee’s child to receive an injection, of a COVID-19
78 vaccination approved by the federal Food and Drug Administration, including a booster injection
79 approved for the employee or child by the Centers for Disease Control.

80 “(3) “Vaccination recovery leave” means leave taken from employment by an
81 employee to recover, or for an employee to care for a child recovering, from side effects from a
82 COVID-19 vaccination approved by the federal Food and Drug Administration, including a
83 booster injection approved for the employee or child by the Centers for Disease Control, which
84 preclude an employee from performing his or her work.”.

85 (c) Section 4 (D.C. Official Code § 32-531.03) is amended as follows:

86 (1) The existing text is designated as subsection (a).

87 (2) New subsections (b) and (c) are added to read as follows:

88 “(b) An employer may not require an employee who seeks to use paid leave pursuant to
89 section 3a to:

90 “(1) For any reason, provide more than 48 hours' notice of the need to use such
91 leave;

92 “(2) In the event of an emergency, provide more than reasonable notice of the
93 employee's need to use such leave; or

94 “(3) Search for or identify another employee to perform the work hours or work
95 of the employee using paid leave.

96 “(c) An employer may not require an employee who seeks to use paid leave pursuant to
97 section 3b to search for or identify another employee to perform the work hours or work of the
98 employee using the paid leave.”.

99 (d) Section 5 (D.C. Official Code § 32-531.04) is amended as follows:

100 (1) A new subsection (a-2) is amended to read as follows:

101 “(a-2) An employer may require that an employee who uses paid leave pursuant to
102 section 3b to provide documentation upon return to work of the date and time of the vaccination
103 injection.”.

104 (2) Subsection (b)(2) is amended by striking the phrase “under section 3” and
105 inserting the phrase “under sections 3, 3a, or 3b” in its place.”.

106 Sec. 3. The District of Columbia Family and Medical Leave Act of 1990, effective
107 October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-501 *et seq.*), is amended by adding a
108 new section 3a to read as follows:

109 “Sec. 3a. COVID-19 leave.

110 “(a) Beginning on the effective date of the COVID Vaccination Leave Emergency
111 Amendment Act of 2021, passed on emergency basis on October 5, 2021 (enrolled version of
112 Bill 24-___), an employee shall be entitled to leave if the employee is unable to work because the
113 employee:

114 “(1) Has tested positive for COVID-19 or is caring for a family member or
115 individual with whom the employee shares a household who has tested positive for COVID-19;

116 “(2) Previously tested positive for COVID-19 and has long-term effects of the
117 virus, as verified by a health care provider;

118 “(3) Has a recommendation from a health care provider that the employee isolate
119 or quarantine due to COVID-19, including because the employee or an individual with whom the
120 employee shares a household is at high risk for serious illness from COVID-19;

121 “(4) Must care for a family member or an individual with whom the employee
122 shares a household, who is isolating or quarantining pursuant to Department of Health guidance,
123 the recommendation of a health care provider, or the order or policy of the family member or
124 individual’s school or childcare provider;

125 “(5) Must care for a child whose school or place of care is closed or whose
126 childcare provider is unavailable to the employee due to COVID-19; or

127 “(6) Must supervise or care for a child who is receiving virtual learning because
128 the child is at risk of serious illness from COVID-19 as verified by a health care provider.

129 “(b) An employee may use no more than 16 weeks of leave pursuant to this section in the
130 2-year period beginning on the effective date of the COVID Vaccination Leave Emergency
131 Amendment Act of 2021, passed on emergency basis on October 5, 2021 (enrolled version of
132 Bill 24-___).

133 “(c) An employer may require reasonable certification of the need for COVID-19 leave,
134 including as follows:

135 “(1) If the leave is needed due to a positive COVID-19 test of the employee or
136 employee’s family or household member, a copy of such test results with the date;

137 “(2) If the leave is necessitated by the recommendation of a health care provider
138 to the employee or due to long-term effects of a previous COVID-19 infection, a written, dated
139 statement from a health care provider stating that the employee has such need and the probable
140 duration of the need for leave;

141 “(3) If the leave is necessitated by the recommendation of a health care provider
142 to an employee’s family member or individual with whom the employee shares a household, a
143 written, dated statement from a health care provider stating that the individual has such need and
144 the probable duration of the condition;

145 “(4) If the leave is necessitated because of Department of Health guidance, a copy
146 of such guidance and other supporting documentation that demonstrates the need for leave at the
147 time it is taken or requested;

148 “(5) If the leave is needed because a child must quarantine due to school or
149 childcare provider policy or orders, a dated statement from the head or administration of the
150 school or childcare provider stating such need to quarantine or isolate or providing information;

151 “(6) If the leave is needed because a school, place of care, or childcare provider is
152 unavailable due to COVID-19, a statement by the head of the agency, company, or childcare
153 provider stating such closure or unavailability, which may include a printed statement obtained
154 from the institution’s website; or

155 “(7) If the leave is needed for supervision or care for a child who is receiving
156 virtual learning, a written, dated statement from a health care provider stating that the child
157 should receive virtual learning due to risk of serious illness from COVID-19.

158 “(d) Notwithstanding section 17, this section shall apply to any employer regardless of
159 the number of persons in the District that the employer employs.

160 “(e)(1) Except as provided in paragraphs (2) and (3) of this subsection, leave under this
161 section may consist of unpaid leave.

162 “(2) Any paid leave provided by an employer that the employee elects to use for
163 leave under this section shall count against the 16 workweeks of allowable leave provided in this
164 section.

165 “(3) If an employer has a program that allows an employee to use the paid leave
166 of another employee under certain conditions and the conditions have been met, the employee
167 may use the paid leave and the leave shall count against the 16 workweeks of leave provided in
168 this section.

169 “(4) An employee shall not be required, but may elect, to use leave provided
170 under this section before other leave to which the employee is entitled under federal or District
171 law or an employer’s policies, unless barred by District or federal law.

172 “(f) The provisions of section 6 shall apply to an employee who takes leave pursuant to
173 this section.

174 “(g) An employer who willfully violates subsections (a) through (e) of this section shall
175 be assessed a civil penalty of \$1,000 for each offense.

176 “(h) The rights provided to an employee under this section may not be diminished by any
177 collective bargaining agreement or any employment benefit program or plan; except, that this
178 section shall not supersede any clause on family or medical leave in a collective bargaining
179 agreement in force on the applicability date of this section for the time that the collective
180 bargaining agreement is in effect.

181 “(i) For the purposes of this section, the term “COVID-19” means the disease caused by
182 the novel coronavirus SARS-CoV-2.”.

183 Sec. 4. The Coronavirus Support Temporary Amendment Act of 2021, effective June 24,
184 2021 (D.C. Law 24-9; 68 DCR 6913), is amended as follows:

185 (a) Section 104(b) is repealed.

186 (b) Section 105(a) is amended as follows:

187 (1) Paragraph (1) is repealed.

188 (2) Paragraph (3) is repealed.

189 Sec. 5. Fiscal impact statement.

190 The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact
191 statement required by section 4a of the General Legislative Procedures Act of 1975, approved
192 October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

193 Sec. 6. Effective date.

194 This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor,
195 action by the Council to override the veto), and shall remain in effect for no longer than 90 days,
196 as provided for emergency acts of the Council of the District of Columbia in section 412(a) of
197 the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C.
198 Official Code § 1-204.12(a)).