

# DISTRICT OF COLUMBIA: EMPLOYEE BENEFIT CONSIDERATIONS

Employers doing business in the District of Columbia must consider DC's unique laws regarding leave policies, continuation of benefits, disability and family leave insurance, transportation plans, and coverage of domestic partners. Some of these laws apply even when the employer is headquartered in another state and has only one employee working or residing in DC.

This publication provides an overview of employee benefit considerations that affect employers that do business in DC or have employees who reside in DC. In connection with the section on Paid Family (and Medical) Leave below, it includes a chart of rates, limits, and other key information in Appendix A, **District of Columbia (DC) Universal Paid Family Leave Program**.

Note that this publication is limited to employee benefit considerations and does not cover labor and employment law considerations.

*Employers doing business in the District of Columbia must consider the district's unique laws, many of which apply even when only one employee works or resides in DC.*

## SMALL EMPLOYER MARKET

DC-based small employers with 1 to 50 full-time employees, including full-time equivalents, must obtain group coverage through the DC Health Link when purchasing health coverage. There is no private small group market available. Employers must meet a minimum participation requirement of at least two-thirds of employees enrolling in coverage through the DC Health Link or waiving coverage with other qualifying coverage. Further, at least one enrollee must be a non-owner. DC-based employers subject to the small employer coverage requirement must contribute at least 50% toward the premium cost of employee-only coverage under the DC Health Link plan.

For more information, see:

[Small Business Resources, DC Health Link](#)

## CONTINUATION OF BENEFITS

Generally, DC's continuation of benefits provision, called "mini-COBRA," provides up to three months of continuation coverage on a self-pay basis for DC employees and their spouses/ domestic partners and dependents. DC's coverage continuation provision applies to group medical policies issued in DC and for which federal COBRA doesn't apply. Thus, it applies to policies issued to groups with fewer than 20 employees (including full-time equivalents) or church plans not subject to COBRA.

Employers are required to provide notice to covered employees within 15 days after the date that coverage terminates under the group plan. Employees who wish to elect DC "mini-COBRA" coverage must pay the required premium within 45 days after the date the coverage would otherwise terminate.

For more information, see:

[Bulletin 02-LG-009-4/1](#)

## COVERAGE FOR DOMESTIC PARTNERS

Employers with fully insured group health plans that cover DC residents must provide coverage for registered domestic partners. The domestic partners must be registered in DC or registered in a similar legally recognized relationship in another jurisdiction certified in the DC Register. This requirement is extraterritorial, which means that it applies regardless of where the policy is issued.

To register as a domestic partnership in DC, the couple must meet all of the following criteria:

- Both are competent to enter a contract
- Neither is married
- Neither is a party to another partnership
- Both are at least 18 years of age
- They share a mutual permanent residence

Employers with self-insured plans are not required to cover domestic partners.

Coverage provided to domestic partners must be on the same terms and conditions as that offered to spouses. The cost of coverage for a registered domestic partner is not subject to DC taxation. However, the federal government does not recognize domestic partners. Thus, if the domestic partner is not the employee's tax dependent, the cost of coverage is subject to federal taxation (imputed income).

If an employer does not request relationship documentation (e.g., marriage certificate) from married employees, it should not make a domestic partner's coverage conditional upon submission of evidence of the domestic partnership. For further information about domestic partner benefits considerations, including best practices for calculating and processing domestic partner cost of coverage imputed income, see the PPI publication [Domestic Partner Benefits: A Guide for Employers](#).

## INDIVIDUAL MANDATE REPORTING

Effective beginning 2019, DC residents must maintain minimum essential coverage or pay a tax penalty. Employers of all sizes with self-insured (including level-funded) group health plans, and employers with 50 or more full-time employees (including full-time equivalents) with fully insured plans, must file Form 1095-B or 1095-C (as applicable) for DC residents with the DC Office of Tax and Revenue if they have at least one employee who resides in DC. There is no paper filing option available; forms must be filed electronically through the [MyTax.DC.gov](#) website. The reporting deadline is 30 days following the March 31 IRS submission deadline (including any extensions granted by the IRS), which is April 30 unless any extensions apply.

Additionally, employers must furnish a statement to their DC residents. Compliance with the federal requirement to distribute Forms 1095-B or 1095-C to individuals satisfies the DC requirement. For further information about state individual mandate reporting, see the PPI publication [State Individual Mandate Reporting Requirements](#).

For more information, see:

[Instructions for Electronic Filing and FAQs, DC Office of Tax and Revenue](#)

## PREGNANCY AS A QUALIFYING EVENT

A DC ordinance established a special enrollment period for pregnant individuals to enroll in coverage midyear. The ordinance applies exclusively to fully insured plans issued in DC. For group health insurance coverage, the enrollment period is for 30 days following the date of pregnancy confirmation, as certified by a healthcare professional. The event extends to any individual eligible under the group health plan who becomes pregnant, including the employee, domestic partner, spouse, or child.

Importantly, pregnancy is not a recognized midyear election change event under IRC Section 125, which governs cafeteria plans. Thus, if an employee adds coverage midyear under this DC ordinance, any associated employee contributions will likely need to be deducted on a post-tax basis until the earlier of the next open enrollment effective date or the birth (which is a HIPAA Special Enrollment event).

For more information, see:

[D.C. Law 23-135](#)

## PAID FAMILY (AND MEDICAL) LEAVE

Private employers with at least one employee working in DC are subject to the requirements of the DC Paid Family Leave Program (DC PFL). DC PFL coverage is funded through employer contributions. Effective July 1, 2023, the employer contribution rate is 0.26% of earnings with no maximum wage cap. (Contribution rate adjustments are announced by March each year, to take effect the following July 1.)

Employers subject to the DC PFL requirement must participate in the DC plan. There is no private plan option.

Employees are eligible for benefits if they perform at least 50% of their job duties in DC (including telework) and are on leave from work due to one or more of the following qualifying events:

- Birth or adoption of a new child
- Employee's own serious health condition
- Caring for a family member with a serious health condition
- Pregnancy

Employees are eligible for a combined total of 12 weeks of benefits per year. However, the qualifying event of pregnancy entitles an eligible employee to two additional weeks of prenatal care leave.

Effective October 1, 2023, the weekly benefit, which is payable as of the first day of qualified leave, is calculated as 90% of earnings to a maximum of \$1,118.

Prior to February 1, 2024, employers must post an updated Notice to Employees (see link immediately below) at each worksite in a conspicuous place where labor notices are customarily posted and send the notice to covered workers who work remotely for posting at their individual worksites. In addition to posting the notice, covered employers must also provide it in paper or electronic form annually to all workers within 30 days of hiring and whenever they are aware DC PFL may be needed.

For further information about DC PFL, see Appendix A, **District of Columbia (DC) Universal Paid Family Leave Program**.

For more information, see:

[Notice to Employees](#)

[Employer Resources, DC Paid Family Leave](#)

[Employer Toolkit, DC Paid Family Leave](#)

## DISTRICT OF COLUMBIA FAMILY AND MEDICAL LEAVE ACT

The District of Columbia Family and Medical Leave Act (DCFMLA) is the district's version of FMLA. It applies to employers with 20 or more employees who perform at least 50% of their job duties in DC. Within a 24-month period, the law provides up to 16 weeks of unpaid leave for an employee with a serious health condition (medical leave) and a separate 16 weeks for an employee who has a new child (through birth, adoption, or foster placement) or is caring for a family member with a serious health condition (family leave). To be eligible, the employee must have at least 12 months of service with the employer and have worked at least 1,000 hours within the last 12 months. When applicable, DCFMLA runs concurrently with federal FMLA.

Employers must continue benefits during a DCFMLA leave at the same level and same cost as if the employee were still actively at work. DCFMLA provides job-protected leave, which means that the employee must be returned to the same or equivalent job following the leave of absence.

DC issues a model **DCFMLA Notice** annually in October. Employers must post the notice in the worksite and distribute it to employees annually, upon hire, and when DC PFL is requested.

For more information, see:

[DCFMLA Notice](#)

## COMMUTER BENEFITS

### Employer Commuter Benefits Requirement

Employers with 20 or more employees working in DC for 50% or more of their job duties must offer access to one or more of the following transit benefit options:

- Employee pays pre-tax contributions for transit benefits
- Employer pays transit benefit costs for employees (either through reimbursement or the provision of pre-paid metro cards)
- Employer provides transportation through a shuttle or vanpool

To comply, employers must do all of the following:

- Notify employees of the available transit benefit program
- Provide information to covered employees on how to apply for and receive benefits
- Issue benefits to covered employees who request or apply for them
- Maintain records to establish compliance with the requirements
- Record that notice was given to employees
- Provide records showing that elected benefits were provided

For more information, see:

### Employer Commuter Benefits Toolkit

### Clean Air Transportation Fringe Benefit (Cashout Law)

The Cashout Law applies to employers with 20 or more employees working in DC that offer free or subsidized parking benefits to employees. (Employers that do not offer a free or subsidized transportation benefit are exempt from implementing a compliance option but are not exempt from the reporting requirement, as noted below.) To comply, covered employers must implement one of the following three compliance options that are designed to encourage commuting using sustainable transportation options instead of driving to work:

- Offer a Clean Air Transportation Fringe Benefit. Offer the equivalent value in benefits to covered employees who do not drive to work in the form of a transit subsidy, increased compensation and/or a healthcare contribution.
- Implement a transportation demand management (TDM) plan. Create a District Department of Transportation (DDOT)-approved TDM plan and reduce employees' commuter trips made by car by at least 10% year over year until 25% or less of employees' commuter trips are made by car.
- Pay a Clean Air Compliance fee to DDOT. Pay \$100 per employee per month for employees offered a parking benefit.

All DC employers with 20 or more covered employees must report their compliance option or exemption status with the District Department of Transportation by January 15 of odd-numbered years (starting with 2023).

For more information, see:

### Cashout Law Information and Reporting

## SUMMARY

Employers with one or more employees who work or reside in the District of Columbia should be well informed about the range of benefit requirements that pertain to such employees.

## APPENDIX A

The summary guidance below is excerpted from the PPI publication [Quick Reference Chart: Statutory Disability & Paid Family and Medical Leave Programs](#).

### DISTRICT OF COLUMBIA (DC) Universal Paid Family Leave Program: Effective 7/1/2020

Disability

PFL

#### Covered Employers

All private ERs with at least one EE working in DC.

#### Funding for the Program

100% paid by ERs

Rate: 0.26% quarterly payroll tax based on the immediate past quarter of gross or total wages paid

#### Eligibility to Take Leave

EEs must spend more than 50% of the time working in DC, including teleworking or telecommuting for a covered ER. EEs don't have to work a certain amount of time to become eligible for the benefit, but must be currently employed by a covered ER in DC.

#### Qualified Reasons for Leave

- EE's own non-work-related serious health condition (e.g., illness, injury, pregnancy, childbirth recovery)
  - Medical leave also covers medical care related to miscarriage (defined as loss of a pregnancy before 20 weeks' gestation), stillbirth (defined as loss of a pregnancy after 20 weeks' gestation), prenatal care, treatment for pregnancy complications, and pregnancy loss coverage
- For an eligible EE to:
  - Care for a family member with a serious health condition
  - Bond with a new child (by birth, adoption, or fostering) within 52 weeks of the date of the qualifying event

#### Qualifying Family Members

Spouse, **domestic partner**, child (biological, adopted, foster child, or stepchild), parents, **parent-in-law**, **grandparent**, **grandchild**, **sibling**.

*Note: Family relationships displayed in bold are not recognized under federal FMLA.*

#### Maximum Benefits Amount

- 90% of EE's average weekly wage up to a max of \$1,118/week (2023); \$1,118/week (2024)

#### Maximum Benefits Duration

- 12 weeks to bond with a newly born, adopted, or foster child (parental leave)
- 12 weeks to care for a family member with a serious health condition (family leave)
- 12 weeks to care for an EE's own serious health condition
- 2 weeks for prenatal care
- Leave can be taken continuously or intermittently in full-day increments

*Note: The max leave period for any combination of parental, family, and medical leave is 12 weeks per year. Exception: when both prenatal and parental leave are taken, total leave time is up to 14 weeks per year.*

#### Waiting Period

- None

#### Job Protection & Health Plan Continuation Requirements

- Not included
- Unpaid job- and benefit-protected leave may be available and run concurrently through federal FMLA and/or the DC FMLA for the same qualified reasons

#### Plan Options

State-administered only. No private plan option.

#### Key Dates/Updates:

- Contribution rate adjustments are announced by March each year, to take effect the following July 1.
- The model notice is released annually in October, and ERs are required to display the latest notice and distribute it to EEs annually, upon hire, and when DC PFL is requested. It can be found [here](#). For additional information about the notice/posting requirements, please see the [DC PFL Employer Toolkit](#) (Pages 9 – 11).
- Fully insured STD benefits cannot be offset by DC PFL benefits.

**Official Site:** [DC Paid Family Leave](#)