Engage PEO Client Alert:

District of Columbia Enacts Paid Family Leave And Bans Non-Compete Agreements

As of July 1, 2020, DC employees were eligible to receive benefits under the DC Paid Family Leave ("DC PFL") law, D.C. Code § 32-541.01, et seq.

Reasons for Leave

Parental Leave allows eligible employees to take up to a maximum of eight workweeks of leave within a 52-workweek period to bond with a newborn or a child placed for adoption, foster care, or in loco parentis. Parental leave must be taken within one year of (but not before) the child's birth or placement.

Family leave allows eligible employees to take up to a maximum of six workweeks of leave within a 52-workweek period to provide care or companionship to a family member (1) because of the diagnosis or occurrence of a "serious health condition" (2) of an employee's family member. An individual may file a claim for leave to provide care or companionship to a family member diagnosed with COVID-19.

Medical Leave allows eligible employees to take up to a maximum of two workweeks of leave within a 52-workweek period following the diagnosis or occurrence of a serious health condition of the employee. Medical leave must be taken within one year of the qualifying medical leave event. Benefits will not be paid to individuals who are quarantined but have not received an official diagnosis of COVID-19.

The maximum amount of leave is eight weeks during a 52-workweek period, regardless of the types of qualifying events during the period.

Notice

Covered employers must post this Notice/Poster, linked here, in a conspicuous place accessible to employees at each worksite by February 1, 2021. Employers are also required to send copies to remote workers.

Additionally, by February 1, 2021, employers must provide employees with the notice in electronic or physical form: (1) at the time of hiring; (2) at least once between February 1, 2020 and February 1, 2021, and a least once a year thereafter; and (3) whenever the employer "receives direct notice" of an employee's need to take leave for an event that could qualify for benefits under the Paid Family Leave program. Failure to post the notice at the worksite carries a $100 fine for each day of noncompliance.

- **The Notice/Poster in languages other than English can be found here:**

When feasible, employees, must provide their employer written notice about the need for paid leave. When the leave is foreseeable, employees must give at least 10 days' advance notice. When the need for leave is unexpected, shorter notice periods apply.

Eligibility and Exception Process

Any employer paying DC unemployment insurance taxes for one or more employees is covered by the Act. Employees of a covered employer have paid leave rights if they spend at least 50 percent of their work time—whether full time or part time—in the city.

- **A sample paid family leave policy can be accessed here.**

Employers can visit this link for more information on paid family leave obligations under the DC PFL.

Ban to Non-Compete Agreements

Also affecting DC, is the Ban on Non-Compete Agreements Amendment Act of 2020 (the "Act") which was passed on December 15, 2020 by the District of Columbia Council. If it is not vetoed, the Act will prohibit the enforcement of covenants not to compete. The Act will make void and unenforceable non-compete agreements that are entered into after the effective date of the law. The Act applies to all employees who perform work in DC and prospective employees that employers reasonably anticipate may perform work in DC. The primary exception to the prohibition is for "medical specialists," defined as licensed physicians who have completed a medical residency and are paid at least $250,000 per year.

The Act does not apply to confidentiality and non-disclosure agreements, which are still enforceable. However, the Act does not address non-solicitation provisions that prohibit employees from working with the employer's customers or recruiting its employees.

Employers may not implement off-duty "anti-moonlighting" policies that prevent employees from working for other employers even during their employment.

Employers will be required to provide written notice of the Act to their employees. Specifically, employers must provide to employees in writing, the following language from the Act: "No employer operating in the District of Columbia may request or require any employee working in the District of Columbia to agree to a non-compete policy or agreement, in accordance with the Ban on Non-Compete Agreements Amendment Act of 2020."

Employers may not retaliate against employees for exercising any of their rights under the Act.

Finally, violations of the Act permit employees a private right of action to recover attorney's fees and statutory remedies of $500 to $3,000 per violation in cases of prohibited agreements. The D.C. government can also bring enforcement actions.

If you have any questions, please contact your Engage HR Consultant.