The ERISA Industry Committee

Driven By and For Large Employers

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May 3, 2019

The Honorable Phil Mendelson
Chairman
The Honorable Elissa Silverman
At Large Councilmember
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

RE: Washington D.C. Universal Paid Leave Amendment Act Regulations – Program Contributions

Dear Chairman Mendelson and Councilmember Silverman:

The ERISA Industry Committee ("ERIC") is writing to the Council of the District of Columbia Committee of the Whole and Committee on Labor and Workforce Development ("Committee") to comment on the Final Rules regulating the implementation of the Universal Paid Leave Amendment Act of 2016 ("Final Rules") relating to establishing program contributions. ERIC is the only national association that advocates exclusively for large employers on health, retirement, and compensation policies at the federal, state, and local levels. ERIC's members provide comprehensive paid leave programs that benefit millions of workers and their families across the country. ERIC has a strong interest in proposals and regulations, such as the Final Rules, that would affect its members' ability to continue to provide quality and uniform paid leave benefits to their employees.

ERIC is particularly concerned about the problematic program commencement timeline, the punitive penalties and fees posed, and the burdensome reporting standards required by the Final Rules as currently drafted. We encourage the Committee to consider our comments and ensure that the Universal Paid Leave Program is administered in a way that takes the unique concerns of our members—who currently provide generous benefits—into consideration.

ERIC's Interest in the Proposed Legislation

ERIC shares the same goal of increasing employee access to paid family and medical leave benefits; however, we strongly encourage the adoption of regulatory language that minimizes administrative and compliance burdens on employers who already provide paid leave benefits to their

employees and that does not hinder large employers' ability to operate and administer their own generous paid leave benefits while also satisfying the intent of the District of Columbia's Universal Paid Leave Program.

We appreciate the opportunity to provide comments on the Final Rules currently under consideration, as well as to discuss ways in which burdensome administrative impacts can be minimized for employers attempting to comply with the provisions of this program.

Comments

I. The Current Collection Liability Period Does Not Leave Adequate Time for Employers to Comply and Should be Delayed to July 1

Section 3400.2 of the Final Rules states that contribution collection is scheduled to begin on July 1, 2019 but the reality is that employer responsibility and liability for compliance with and contribution to the Universal Paid Leave Program on April 1 of this year. Because contributions are collected retroactively for employee wages earned over the last calendar quarter and are supposed to be based upon records and reports made by employers throughout the applicable contribution period, employers ought to have already started keeping these employee records since April 1. However, the short time between the issuance of the final regulation and the liability period has made it difficult for some employers to comply. In addition, the fact that the Final Rule is still being discussed and clarified demonstrates that more times is needed to ensure that all parties are clear about their responsibilities under the Final Rule.

Due to the need for more education and clarification surrounding the Final Rules, we encourage the Council to delay the initial contribution collection liability period from the currently scheduled calendar quarter of April 1 – July 1 and to instead begin contribution collection for the period of July 1 – October 1.

II. DOES Should Provide a Grace Period from the Punitive Penalties Imposed by The Final Rules to Allow Sufficient Time for Employers to Understand and Comply with the Final Rules

Under the current Final Rules, employers struggling to understand or comply with the various recordkeeping, reporting, notice, and contribution requirements are faced with staggering fees and penalties should they not immediately comply with the standards of the Universal Paid Leave Program. For example, Section 3404.9 of the Final Rules stipulates that, should an employer fail to remit their owed contribution or to submit a quarterly wage report within one month of the scheduled due date, a fee of 10 percent of the amount owed will be added.

Similarly, Section 3407.4 assesses a penalty of $100 dollars per employee per day on employers that do not provide adequate notice of the Universal Paid Leave Program and its operation to their employees. This requirement would be extremely burdensome on employers unaware of or not fully versed in the responsibilities required of them by the Final Rules. Furthermore, Section

3405.18 of the Final Rules allows DOES to place a levy on property belonging to employers who have been unable to comply with the contribution or reporting requirements of the Universal Paid Leave Program.

These penalties open the door for extreme financial hardship for employers and place the operation and financial security of businesses in jeopardy. Posing such steep assessments on employers after such a relatively short education period could result in massive losses for employers and ultimately work against the Universal Paid Leave Program's goal of providing quality paid leave benefits to employees throughout the District.

We therefore encourage the Council to direct DOES to waive the posed penalties and fees for a period of six months after the commencement of contribution collection to provide a grace period during which employers can be allowed to become familiar with the requirements of the Universal Paid Leave Program.

III. The Current Recordkeeping and Reporting Requirements Reach Beyond What is Necessary or Reasonable for Administration of the Program

In addition to the commencement of contribution collection, the upcoming July 1 deadline also signals the beginning of employer responsibility to submit quarterly wage reports to DOES. While much of the information contained in these reports are sets of data critical to the organization and operation of the Universal Paid Leave Program, such as the names, earnings, and social security numbers of employees, other required information is not connected to or necessary for the operation of the program and instead will only place further recordkeeping costs on employers.

The reporting information stipulated by Sections 3408(j) and 3408(k) requires employers to track, record, and report information that would already have been stored in the records of DOES through the operation and administration of the Universal Paid Leave Program' benefits. Section 3408(j) requires that employers provide DOES with all documents describing employee benefits, including short- and long-term disability policies, sick leave, vacation leave, and other employer paid and unpaid leave policies and practices. Because the Universal Paid Leave Program is government-administered and does not interact with private leave benefits, employers are allowed to operate and provide private leave benefits at their own discretion. These private leave benefits vary in complexity and design and have nothing to do with the Universal Paid Leave Program.

Similarly, Section 3408(k) requires employers to report to DOES all records of disputes between the employer and the employee regarding the Universal Paid Leave Program or its underlying law. Because the Universal Paid Leave Program's benefits are administered solely by DOES and DOES makes determinations as to benefit dispersal, the main area of dispute regarding an employee's benefits would be between the employee and DOES and not with their employer. Because Section 3405.2 further provides that appeals based on an employee's benefits under the Universal Paid Leave Program would be handled by DOES, any records of dispute or appeal would already be kept in their records.

These reporting sections cover information that would already be available to DOES and therefore should not be additionally asked of employers are already burdened by extensive recordkeeping requirements. We therefore encourage the Council to direct DOES to remove these reporting requirements from the quarterly reports under in the Final Rules.

Conclusion

Ultimately, ERIC shares the goal of increasing access to paid family and medical leave benefits for District of Columbia employees. However, we believe that adherence to the problematic program commencement timeline; the punitive penalties and fees posed; and the burdensome reporting standards required by the Final Rules as currently drafted will serve to detract from the overall goal of increasing employee access to quality paid family and medical leave throughout the District. Therefore, we encourage the Council to take into serious consideration the array of challenges and burdens that employers will face when attempting to comply with the requirements of the Universal Paid Leave Program.

ERIC appreciates your consideration of our concerns. If you have any questions concerning our comments, or if we can be of further assistance, please contact us at (202) 789-1400 or arobinson@eric.org.

Sincerely,

Aliya Robinson
Senior Vice President, Retirement and Compensation Policy