

September 9, 2019

Dr. Unique N. Morris-Hughes
Director, District of Columbia
Department of Employment Services
4058 Minnesota Avenue, NE
Washington, DC 20019

**RE: Washington D.C. Universal Paid Leave Amendment Act Regulations – Program
Benefit Administration**

Dear Director Dr. Unique N. Morris-Hughes,

The ERISA Industry Committee (“ERIC”) is writing to the District of Columbia Department of Employment Services (“Department”) to comment on the proposed Universal Paid Leave (“UPL”) Program regulations (“Proposed Rules”) relating to the administration and management of paid leave benefits available under the Universal Paid Leave Amendment Act of 2016. 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 Proposed Rules, that would affect its members’ ability to continue to provide generous and uniform paid leave benefits to their employees.

ERIC is particularly concerned about coordination of UPL benefits with available paid sick leave benefits, designation of employer points of contact to communicate with the Department, disclosure of UPL benefits received by employees, and standards surrounding prohibited employer retaliation. We encourage the Department 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 paid leave 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 UPL Program.

We appreciate the opportunity to provide comments on the Proposed 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. Coordination of UPL Benefits with Available Paid Sick Leave Benefits Should be Clarified

We strongly support the language contained in Section 3513.1 of the Proposed Rules which coordinates UPL leave benefits with those available under both federal FMLA and D.C. FMLA. Similarly, we appreciate the discretion given to employers to coordinate UPL leave benefits with employer-provided paid leave benefits in accordance with employer policies under Section 3513.5. However, the Proposed Rules do not address interactions between UPL benefits and paid sick leave benefits established under the D.C. Earned Sick and Safe Leave Amendment Act of 2013 that will almost certainly arise when UPL benefits become available to D.C. employees.

Employees that receive wage replacement from UPL benefits in an amount less than their ordinary base wages may want to supplement UPL benefits with available paid sick leave time to achieve full wage replacement. On the other hand, employers may want to establish policies requiring employees to exhaust available paid sick leave time before applying for or making use of UPL paid leave benefits. Due to the potential conflicts that may develop in this area, we encourage the Department to address this issue in the Proposed Rules and clarify the coordination of UPL benefits with available paid sick leave benefits.

II. Employers Should be Able to Appoint a Point of Contact of Their Choosing to Handle Communications Between the Department and the Employer

Under Section 3501.6(g) of the Proposed Rules, an applicant for UPL benefits must provide the contact information of the applicant's supervisor. While this contact information is useful and applicable to questions that may arise through the application process, we want to make sure that communications between the Department and employers are able to be consolidated and streamlined through a single point of contact or communication process appointed by employers. In large companies, having a single point of contact will be less confusing for both employees and the employer by eliminating dozens of different potential contacts between the Department and the employer.

Due to the administrative and compliance difficulties that would arise if various supervisors individually handled the communications relating to each and every employee that worked under them, we encourage the Department to clarify the role of supervisors provided by

applicants and clarify the ability of employers to identify points of contact who will be responsible for handling communication between the Department and the employer.

III. Employers Should be Informed of Wage Replacement Information Provided Under the UPL Program.

Under the current structure of UPL administration, employers are not provided with information related to the amount of wage replacement that an employee receives as a result of his or her use of UPL benefits. This is an issue for employers that are interested in supplementing UPL benefits with employer-provided paid leave benefits that would ensure that employees receive the entirety of their average weekly wages instead of being limited to the maximum weekly benefit amounts provided by UPL. Employers interested in supplemental paid leave benefits would need to have an understanding of the wage replacement that an employee is receiving from UPL in order to avoid wage replacement for an employee in an amount that is actually greater than their ordinary weekly wages.

Due to the negative impact that lack of this UPL wage replacement disclosure to employers would have on employer programs seeking to provide paid leave benefits that are more generous than those available under UPL, we strongly encourage the Department to create a secure and private process to disclose this information to employers and open the door for supplemental paid leave benefits.

IV. Clarification is Needed Regarding Employer Retaliation Standards and the Process by Which Employers Disprove Retaliation

The legislative language of the Universal Paid Family Leave Amendment Act of 2016 prohibits employers from retaliating against employees for applying for, or making use of, UPL benefits that are available to them. Section 101(18) of the Act also provides a basic definition that outlines several examples of employer actions that would qualify as retaliation. Section 3516 of the Proposed Rules, however, only makes brief reference to the complaint submission process for employees. The Proposed Rules do not fully illustrate the extent to which employer actions can be construed as retaliatory and are silent as to the standard and process by which employer actions must be proven to actually be retaliatory and not unrelated or coincidental.

Due to the enforcement and liability implications that potential cases of employer retaliation would have on employees, employers, and the Department, we encourage the Department to clarify the definition of employer retaliation and clearly establish the process and standards by which a claim of employer retaliation would be handled if received.

Conclusion

Ultimately, ERIC shares the goal of increasing access to paid family and medical leave benefits for D.C. employees. However, we believe that clarification regarding coordination of UPL benefits with paid sick leave benefits, designation of employer points of contact to communicate with the Department, disclosure of benefits received by employees, and clear standards surrounding prohibited employer retaliation will improve 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