



Effects of the District's Sick and Safe Leave Act

May 28, 2015

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A Report by the Office of the District of Columbia Auditor
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May 28, 2015

Included herein is the Office of the District of Columbia's report entitled "Effects of the District's Sick and Safe Leave Act". This audit was conducted as required by the Accrued Sick and Safe Leave Act (the Act). The objectives of this audit were to determine what the economic impact of the law has been on the private sector; whether the Department of Employment Services (DOES) and the Department of Human Resources (DCHR) implemented recommendations we made in our previous audit report on this same subject; and whether District businesses were in compliance with the requirement to display a notice that sets forth a summary of the Act and provides information about how to file a complaint under the Act.

We would like to thank staff and management at both DOES and DCHR for their assistance and cooperation during this audit. We look forward to working with DOES and DCHR in the future.

Sincerely,

A handwritten signature in blue ink that reads 'Kathleen Patterson'. The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Kathleen Patterson
District of Columbia Auditor



May 28, 2015

Effects of the District's Sick and Safe Leave Act

Why ODCA Did This Audit

The Audit was conducted per the Accrued Sick and Safe Leave Act, which requires an annual audit to determine the Act's economic impact on the private sector.

What ODCA Recommends

1. DOES should resubmit the hardship exemption rules and the District Council should review these rules and either affirmatively approve or disapprove them. If the Council disapproves the rules, we urge them to work with DOES to develop rules that satisfy the requirements of the law or to amend the law as they see fit.
2. DCHR should notify all current District employees who are or were WAE employees that they are entitled to sick leave as of the date the Act became effective and explain how and when they will be credited with this leave.
3. DOES should develop a comprehensive program to ensure that all District businesses are aware of the requirements under the Act. The agency should also consider devoting additional resources to inspections and enforcement of the Act.

What ODCA Found

The Accrued Sick and Safe Leave Act was passed by the District Council in 2008. It requires that all employers in the District provide paid sick leave to their employees. Employees may use this sick leave for their own illness or medical treatments, to take care of sick family members, or for issues related to domestic violence, stalking, or sexual abuse.

The Act assigns responsibility for administering the law to the Department of Employment Services (DOES). DOES hear complaints brought under the law and can hand down rulings based on these complaints. In addition, DOES sends information to every District employer about the Act and a poster to display in their place of business.

Because District government is also subject to the Act, certain types of employees who did not used to receive paid sick leave must now be granted such leave. The Department of Human Resources (DCHR) has been involved in modifying existing payroll systems to allow for paid sick leave to be granted to these employees.

We found that the Sick and Safe Leave Act is having minimal impact on employers. Our survey of District businesses showed that fewer than 10 percent of survey respondents reported a negative impact on their profitability. More than 50 percent reported that it had no impact or actually improved profitability.

In our on-site survey of District businesses, we found a very poor rate of compliance with the requirement that they display information about the Act where employees could see. This may mean that DOES should make greater efforts to educate District businesses about this requirement and also to increase their efforts at monitoring and enforcement.

Both DOES and DCHR have demonstrated progress in implementing the recommendations we made in our 2013 report entitled "Audit of the Accrued Sick and Safe Leave Act of 2008." However, work remains to be done for both to demonstrate that these recommendations have been fully implemented and that both agencies are now fully in compliance with the requirements of the Act.

For more information regarding this report, please contact Anovia Daniels, Communications Analyst/ANC Outreach, at Anovia.Daniels@dc.gov or 202-727-3600.

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Background

In 2008, the District of Columbia became the second jurisdiction nationwide to require that employers provide paid sick leave to their employees. The Accrued Sick and Safe Leave Act (the Act), which became effective May 13, 2008, was the first in the nation to require that sick days be available to victims of domestic violence, sexual assault, or stalking who need time off work to seek medical care, psychological or other counseling, take legal, or other actions.

The Accrued Sick and Safe Leave Act at a Glance

- Employers must provide a minimum number of sick leave hours that varies depending on how many employees they have:
 - An employer with 100 or more employees must provide one hour of paid leave for every 37 hours worked, not to exceed 7 days per year;
 - An employer with between 25-99 employees must provide one hour of paid leave for every 43 hours worked, not to exceed 5 days per year;
 - An employer with fewer than 25 employees must provide one hour of paid leave for every 87 hours worked, not to exceed 3 days per year.
 - Leave can be used for:
 - Caring for themselves, including seeing a doctor;
 - Caring for family members who require care or medical treatment; or
 - Seeking medical, legal, or other services as needed to cope with the effects of domestic violence, sexual assault, or stalking.
 - Leave does not have to be provided for:
 - Independent contractors;
 - Students;
 - Premium pay program health care workers.
 - Employers must post in a “conspicuous” place a notice that describes the requirements of the Act
 - Penalties on employers for violations of the Act can reach \$1,000 per day if the violation is deemed willful.
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Since the District passed its law, other jurisdictions, including Portland, OR; New York City; Seattle; Massachusetts, and Connecticut have passed similar laws. Campaigns are underway in other cities and states around the country.

Administration of the Act

The Department of Employment Services (DOES) is tasked with administering the District's wage and labor laws. This includes hearing complaints brought by employees of violations of the Act. When an employee brings a complaint, DOES will typically schedule a fact-finding conference with the employee and the employer. This conference functions as an administrative hearing and typically results in a finding in favor of one party or the other. If the employer is ordered to pay and refuses, the case would be referred to the District's Office of the Attorney General for prosecution.

In addition, DOES states that they visit employers to hand out required postings and educate them about the requirements of the Act and other wage laws. Businesses may also contact DOES directly to request a poster with the required Act information.

The Department of Human Resources (DCHR) is involved in providing a variety of personnel-related services to District government agencies. DCHR is comprised of several divisions, including the Business Operations Group (BOG), whose mission is to support business processes by ensuring there are adequate information systems to ensure the effective delivery of services. BOG works with the Office of the Chief Technology Officer, among others, to build and maintain the IT systems necessary to manage payroll operations for most District government agencies. These systems also track leave, including sick leave, for District government employees.

Objectives, Scope and Methodology

Objectives

The audit was conducted per the Accrued Sick and Safe Leave Act of 2008¹, requiring this office to prepare an annual report on the economic impact of the law on the private sector. The objectives of the audit were to determine:

1. What the economic impact of the law has been on the private sector; and
2. Whether DOES and DCHR implemented the recommendations made in our previous audit report on this same subject; and
3. Whether District businesses were in compliance with the requirement to display a notice that sets forth a summary of the Act and provides information about how to file a complaint under the Act.

Scope

To determine whether DOES and DCHR implemented the recommendations we made in our last audit report, we examined current practices at both agencies. Our examination of business compliance with the posting requirements of the Act involved site visits conducted in the fall of 2014.

We also surveyed District businesses about the economic impact of the Act in December 2014. While most questions asked for information about current conditions, some questions asked business representatives to consider what conditions were like in 2009 and share how things had changed since then.

Methodology

To assess what progress DOES and DCHR made in implementing our recommendations, we conducted interviews with management of both

¹ The Accrued Sick and Safe Leave Act of 2008 (D.C. Code § 32-131.01 et seq.) was amended by the Earned Sick and Safe Leave Amendment Act of 2013. (See D.C. Law 20-89, effective February 22, 2014.) Among other things, the amendment eliminates the exclusion of tipped workers and allows workers to start accruing leave immediately and use it after a probation period. It also strengthens enforcement, establishes mandatory record retention and establishes additional public outreach. All references to the D.C. Code in this report refer to the original Accrued Sick and Safe Leave Act of 2008, prior to the amendments.

agencies and reviewed corroborating documentation provided to us. Our assessment of District businesses compliance with the requirement to display information about the Act involved unannounced visits to businesses randomly chosen from a Department of Consumer and Regulatory Affairs database of businesses license holders in the District. We identified ourselves as auditors with the Office of the District of Columbia Auditor and asked to be shown the posted information.

To gain information about the economic impact of the law on District businesses, we conducted a survey of District businesses. An invitation to complete the survey was sent via email to businesses. Invitations were sent to over 6,000 District businesses. We sent two follow-up emails, reminding businesses of the invitation. Businesses were invited to click on a link in the email we sent them. The link took them to a secure online survey website where they were asked a series of demographic questions and then 16 questions about what kind of benefits they provided, whether they had changed benefits, and what their experiences were with employees using sick leave. We also asked them to assess the overall economic impact of the Act on their business.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Survey Results

We attempted to learn about the economic impact of the Sick and Safe Leave Act by conducting a survey of District businesses. To do this, we used an online survey website to conduct the survey. We obtained a list of current business license holders from the Department of Consumer and Regulatory Affairs. Using emails contained in this list, we emailed over 6,000 District businesses and included a link to the survey website where participants could complete the survey. We left the survey open for two weeks and received 261 total responses. Of this total, 72 businesses reported having no employees. Because these businesses would not be subject to the Sick and Safe Leave Act, we did not include their responses in our analysis. This left 189 responses.

The U.S. Census Bureau, in their annual County Business Patterns survey of 2012², reported 21,592 total business establishments in the District of Columbia. Our sample of 189 businesses is not large enough to provide a statistically valid representation of the 21,592 businesses in the District. Therefore, we do not present this data as truly representative of the opinions or practices of District businesses. Instead, we present it here as it is – the results of our unscientific survey. We feel that, while not statistically valid, the data obtained still presents useful information for discussions about the economic impact of the Sick and Safe Leave Act. While we cannot interpret any one number as being accurate, we can note the broad patterns found in the data and offer our analysis.

In summary, the Act does not appear to have had a significant impact on the profitability of District businesses. Less than 10 percent of survey respondents reported a negative impact on their profitability. Fully 50 percent reported that it produced no change (48 percent) or actually improved profitability (3.6 percent).

Most Employers Provide Leave

Among those who responded to our survey, we found that close to 9 in 10 employers were providing some sort of paid leave to their employees. The Act allows for leave plans that do not specify certain days as sick days and other days as vacation days. These plans, which nearly 4 in 10 employers said they used, instead provide undesignated leave, or Paid Time Off (PTO). Employees are granted a number of PTO days a year and can use them for sick leave or vacation as they wish.

² The 2012 figures were the most recent available at the time of writing.

Number of Responses by Industry

Industry	Number Responding
Construction	19
Manufacturing	1
Wholesale Trade	2
Retail Trade	16
Transportation and Warehousing	0
Information	4
Finance and Insurance	0
Real Estate and Rental and Leasing	4
Professional, Scientific, and Technical Services	36
Management of Companies and Enterprises	1
Administrative and Support and Waste Management and Remediation Services	1
Accommodation and Food Service	11
Educational Services	11
Health Care and Social Assistance	17
Arts, Entertainment and Recreation	7
Other Services	59

Certain industries showed markedly lower rates of firms that provide any kind of leave. In the construction industry, for example, only 3 of 4 firms who responded to the survey indicated that they provided paid leave. In the retail industry, only 7 of 10 provide any paid leave. In the arts, entertainment, and recreation industry,³ slightly fewer than 3 of 4 firms provide paid leave.

When we asked about whether or not employees could take leave if they or a family member was a victim of stalking, domestic abuse, or sexual abuse, we found that only about 1 in 10 said that they could not. However, another 2 in 10 answered “don’t know,” which could indicate confusion about what the question meant. If so, this may point to a need for additional employer education on the part of DOES.

³ Some examples of businesses in this industry include: theaters, gyms, and museums.

Which of the following do you offer to your employees? (Check all that apply)

	Paid Sick Days	Undesignated Leave or "PTO" (Paid Time Off)	Paid Vacation Leave	Stalking, Domestic Violence, or Sexual Abuse Leave	None of the Above	Number of Answers Received⁴
All firms	58.2%	38.6%	56.1%	6.9%	13.8%	189
Number of Employees						
1-25	55.4%	33.9%	51.2%	5.8%	19.8%	121
26-50	58.3%	41.7%	66.7%	4.2%	0.0%	24
51-100	66.7%	55.6%	66.7%	5.6%	5.6%	18
100+	65.4%	46.2%	61.5%	15.4%	3.8%	26
Industry						
Construction	42.1%	21.1%	63.2%	5.3%	26.3%	19
Retail	68.8%	12.5%	56.3%	0.0%	31.3%	16
Professional, scientific, and technical services	52.8%	47.2%	50.0%	11.1%	11.1%	36
Accommodation and food services	54.5%	45.5%	36.4%	18.2%	0.0%	11
Educational services	54.5%	45.5%	54.5%	0.0%	18.2%	11
Health care and social assistance	47.1%	47.1%	52.9%	0.0%	5.9%	17
Arts, entertainment, recreation	71.4%	14.3%	42.9%	0.0%	28.6%	7
Other services	71.2%	37.3%	66.1%	10.2%	11.9%	59

⁴ Note: Respondents were not required to answer all questions, so the number of answers received will sometimes vary from question to question.

Under your paid leave policy, may employees take time off if the employee or the employee’s family member is a victim of stalking?

	Yes	No	Don't Know	N/A (don't offer paid leave)	Number of Answers Received
All firms	53.0%	8.6%	20.5%	17.8%	185
Number of Employees					
1-25	55.5%	6.7%	17.6%	20.2%	119
26-50	41.7%	16.7%	25.0%	16.7%	24
51-100	61.1%	5.6%	27.8%	5.6%	18
100+	45.8%	12.5%	25.0%	16.7%	24
Industry					
Construction	31.6%	5.3%	26.3%	36.8%	19
Retail	37.5%	18.8%	12.5%	31.3%	16
Professional, scientific, and technical services	63.9%	11.1%	13.9%	11.1%	36
Accommodation and food services	63.6%	9.1%	18.2%	9.1%	11
Educational services	54.5%	0.0%	18.2%	27.3%	11
Health care and social assistance	58.8%	11.8%	17.6%	11.8%	17
Arts, entertainment, and recreation	57.1%	0.0%	14.3%	28.6%	7
Other services	51.8%	8.9%	25.0%	14.3%	56

Employers Do Not Report Having to Make Significant Changes

We asked employers how they had changed their sick leave policy since the law went into effect. Fewer than 2 out of 10 who responded reported having made any significant changes. Not surprisingly, when looking just at those businesses open since 2009, the number is less than 1 out of 10 who report having made any changes to their sick leave policy.

Certain industries reported much higher rates of change. In the construction industry, for example, approximately 1 in 4 firms reported making changes since the law went into effect. In the retail industry, it was more than 1 in 3 who reported making changes, including 1 in 5 who had implemented a new paid sick leave policy. Almost half of the accommodation and food services industry respondents reporting making some changes, including more than 1 in 4 who reported having to implement a new paid sick leave policy since November 2009.

Changes made since November 2009?

	Implemented a New Paid Sick Leave Policy	Increased Accrual Rates for Paid Sick Leave	Expanded Sick Leave Eligibility for Employees who Previously Did Not Have it	Workers Can Now Use Sick Leave to Care for their Family	None of the Above	Don't Know/Don't Remember	Number of Answers Received
All firms	6.7%	.6%	5.0%	5.6%	63.7%	22.3%	179
Open Date							
2009 and earlier	7.9%	.9%	7.9%	7.0%	60.5%	21.1%	114
Since 2009	4.6%	0.0%	0.0%	3.1%	69.2%	24.6%	65
Number of Employees							
1-25	7.8%	0.0%	1.7%	5.2%	69.6%	19.1%	115
26-50	4.2%	4.2%	8.3%	8.3%	58.3%	25.0%	24
51-100	5.6%	0.0%	5.6%	5.6%	50.0%	33.3%	18
100+	4.5%	0.0%	18.2%	4.5%	50.0%	27.3%	22
Industry							
Construction	10.5%	0.0%	10.5%	5.3%	47.4%	31.6%	19
Retail	20.0%	0.0%	6.7%	6.7%	73.3%	6.7%	15
Professional, scientific, and technical services	0.0%	0.0%	0.0%	2.9%	88.6%	11.4%	35
Accommodation and food services	27.3%	0.0%	9.1%	9.1%	18.2%	36.4%	11
Educational services	0.0%	0.0%	10.0%	20.0%	40.0%	40.0%	10
Health care and social assistance	0.0%	0.0%	0.0%	0.0%	81.3%	18.8%	16
Arts, Entertainment, and recreation	14.3%	0.0%	14.3%	0.0%	71.4%	0.0%	7
Other services	5.6%	1.9%	5.6%	7.4%	55.6%	27.8%	54

Minimal Negative Consequences Since 2009

When asked whether any steps had been taken to reduce benefits to employees since November 2009, fewer than 2 of 10 employers responded affirmatively. Of these, more than half reported reducing salaries, raises, or bonuses. Since this period includes a significant national recession, it is difficult to say that compensation was reduced directly as a result of the new requirements of the Sick and Safe Leave Act. It is

possible that these businesses were compelled to take action based solely on economic conditions not related to the Act.

Since November 2009, have you taken any of the following steps?

	Decreased Vacation Time	Converted Paid Vacation Time to PTO or Paid Sick Days	Reduced Salaries, Raises, or Bonuses	Don't Know	None of the Above	Number of Answers Received
All firms	0.6%	5.5%	8.3%	6.1%	82.3%	181
Number of Employees						
1-25	0.0%	1.7%	8.5%	4.3%	86.3%	117
26-50	4.2%	12.5%	16.7%	4.2%	75.0%	24
50-100	0.0%	22.2%	5.6%	5.6%	72.2%	18
101+	0.0%	4.5%	0.0%	18.2%	77.3%	22
Industry						
Construction	0.0%	5.3%	5.3%	5.3%	84.2%	19
Retail	0.0%	0.0%	13.3%	0.0%	86.7%	15
Professional, scientific, and technical services	0.0%	2.9%	14.3%	8.6%	74.3%	35
Accommodation and Food Service	9.1%	27.3%	18.2%	0.0%	63.6%	11
Educational services	0.0%	0.0%	9.1%	9.1%	81.8%	11
Health care and social assistance	0.0%	18.8%	18.8%	0.0%	81.3%	16
Arts, entertainment, and recreation	0.0%	0.0%	0.0%	14.3%	85.7%	7
Other services	0.0%	1.8%	1.8%	9.1%	87.3%	55

Overall Impact of Sick and Safe Leave Act on Employers

Employers were asked questions intended to reveal the impacts of providing sick leave to their employees. In general, the answers appeared to reveal that employers noticed minimal impact, and often the impact has been more positive than negative. For example, when asked whether employees performed better or worse after being given sick leave, about 1 in 15 said “better” while only about 1 in 100 said “worse”. Half of respondents answered with “N/A” and this could be because either they do not give sick leave or because they have always provided sick leave to their employees.

Did your employees perform better, about the same, or worse after being given sick leave?

	Much Better	Better	About the Same	Worse	Much Worse	Don't Know	N/A	Number of Answers Received
All firms	4.1%	2.9%	32.9%	.6%	.6%	7.1%	51.8%	170
Number of Employees								
1-25	3.5%	2.7%	31.9%	0.0%	.9%	8.8%	52.2%	113
26-50	4.8%	0.0%	38.1%	0.0%	0.0%	0.0%	57.1%	21
51-100	11.1%	5.6%	38.9%	5.6%	0.0%	5.6%	33.3%	18
101+	0.0%	5.6%	27.8%	0.0%	0.0%	5.6%	61.1%	18
Industry								
Construction	0.0%	0.0%	41.2%	0.0%	0.0%	5.9%	52.9%	17
Retail	0.0%	0.0%	28.6%	7.1%	0.0%	21.4%	42.9%	14
Professional, scientific, and technical services	6.1%	3.0%	12.1%	0.0%	0.0%	3.0%	75.8%	33
Accommodation and food services	0.0%	0.0%	72.7%	0.0%	0.0%	9.1%	18.2%	11
Educational Services	9.1%	9.1%	18.2%	0.0%	9.1%	9.1%	45.5%	11
Health care and social assistance	6.3%	6.3%	31.3%	0.0%	0.0%	6.3%	50.0%	16
Arts, entertainment, and recreation	0.0%	0.0%	40.0%	0.0%	0.0%	0.0%	60.0%	5
Other services	5.7%	3.8%	37.7%	0.0%	0.0%	5.7%	47.2%	53

Was your employee turnover rate in 2013 higher or lower than in 2008?

	Higher	Lower	No Difference	Don't Know	Number of Answers Received
All firms	9.6%	6.6%	55.1%	28.7%	167
Number of Employees					
1-25	4.5%	3.6%	63.6%	28.2%	110
26-50	19.0%	9.5%	57.1%	14.3%	21
51-100	16.7%	27.8%	27.8%	27.8%	18
101+	22.2%	0.0%	27.8%	50.0%	18
Industry					
Construction	5.9%	0.0%	64.7%	29.4%	17
Retail	6.7%	0.0%	46.7%	46.7%	15
Professional, scientific, and technical services	3.1%	3.1%	78.1%	15.6%	32
Accommodation and food services	10.0%	0.0%	60.0%	30.0%	10
Educational services	0.0%	10.0%	50.0%	40.0%	10
Health care and social assistance	13.3%	6.7%	53.3%	26.7%	15
Arts, entertainment, and recreation	20.0%	0.0%	60.0%	20.0%	5
Other services	13.2%	9.4%	43.4%	34.0%	53

Sick and Safe Leave Act has Minimal Impact on Profitability

Only 1 in 10 businesses surveyed answered by saying that the Sick and Safe Leave Act had hurt their profitability. Nearly half said that it had no effect on their profitability and another 39 percent said they didn't know whether it had improved or harmed profitability. Almost 4 percent said that it had improved the profitability of their business.

Effect of the Sick and Safe Leave Act on Profitability

	Improved Profitability	No Change in Profitability	Decrease in Profitability	Don't Know	Number of Answers Received
All firms	3.6%	47.9%	9.7%	38.8%	165
Number of Employees					
1-25	1.9%	51.9%	8.3%	38.0%	108
26-50	0.0%	47.6%	23.8%	28.6%	21
51-100	16.7%	33.3%	5.6%	44.4%	18
100+	5.6%	38.9%	5.6%	50.0%	18
Industry					
Construction	0.0%	41.2%	5.9%	52.9%	17
Retail	0.0%	28.6%	21.4%	50.0%	14
Professional, scientific, and technical services	3.1%	53.1%	6.3%	37.5%	32
Accommodation and food services	0.0%	63.6%	27.3%	9.1%	11
Educational services	0.0%	36.4%	18.2%	45.5%	11
Health care and social assistance	21.4%	21.4%	14.3%	42.9%	14
Arts, entertainment, and recreation	0.0%	60.0%	0.0%	40.0%	5
Other services	3.9%	51.0%	5.9%	39.2%	51

Implementation of Recommendations Made in our 2013 Audit

We found that DOES and DCHR have made progress in implementing the recommendations issued in our 2013 report. There are additional steps that must be taken before they will have completed full implementation of these recommendations.

The D.C. Council has not taken action to approve required hardship exemption regulations

The Act calls for the Mayor to exempt from the requirements of the law any business that can prove hardship as a result of compliance. Proposed rules describing the process for seeking and granting an exemption are to be sent to the District of Columbia Council for approval. The Council must approve these proposed rules within 45 days by affirmative action. If no action is taken, they are to be deemed disapproved.⁵

In 2013, we recommended that DOES publish the final hardship exemption rules in the District of Columbia Register. As of the date of this report, DOES has not published the final hardship exemption rules.

DOES has submitted proposed hardship rules to the Council of the District of Columbia on at least four occasions since 2008. In each instance, because the Council did not act affirmatively to approve these proposed rules, they were deemed disapproved and therefore not adopted.⁶

According to the Deputy Director for Labor Standards at DOES, the agency is taking steps to publish anew and to submit them again to the Council for review and approval.

Recommendation:

1. DOES should resubmit the hardship exemption rules and the D.C. Council should review these rules and either affirmatively approve or disapprove them. If the Council disapproves the rules, we urge them to work with DOES to develop rules that satisfy the requirements of the law or to amend the law as they see fit.

⁵ D.C. Code § 32-131.14

⁶ The proposed hardship exemption rules were referred to the following committees of the D.C. Council: in December 2008, February 2010, and June 2010, to the Committee on Housing and Workforce Development; in May 2013, to the Committee on Workforce and Community Affairs.

DOES has taken action to review employer compliance with the provisions of the Act

In our 2013 report on the Sick and Safe Leave Act, we recommended that DOES “establish a process to review employer compliance” with the provisions of the Act. DOES has informed us that they have taken steps to improve their education and oversight of District employers. According to the agency, they have sent Sick and Safe Leave Act posters to 19,000 employers in the District this year and do so every year. In addition, DOES informed us that they routinely send teams of investigators to visit businesses to educate them about the requirements and to enforce compliance with the District’s wage laws, including the Sick and Safe Leave Act. We did not conduct any testing to verify that these visits are actually happening.

In addition, DOES conducts investigations of employer compliance whenever an employee brings notice of alleged violations. These investigations are turned over to the Office of the Attorney General when prosecution is necessary.

We are pleased to note these actions taken by DOES to implement our recommendations.

DCHR needs more time to provide back leave owed to employees

In our 2013 audit, we discovered that not all District government employees were receiving sick leave as required by the Act. Specifically, so-called “intermittent employees” were not accruing sick leave. Intermittent employees, also called “When Actually Employed” (WAE) employees, are those who serve on an intermittent basis, that is, non-full-time without a prescheduled regular tour of duty.⁷

As part of the 2013 audit, we issued two recommendations to address the fact that intermittent District government employees were not (and had not) received sick leave in accordance with the Act. We recommended that DCHR establish an accrual system to allow for the tracking and award of sick leave to intermittent employees. We also recommended that DCHR identify those employees who were owed sick leave.

All District employees (including WAE employees) should have been receiving sick leave starting on the effective date of the Act. DCHR has been unable to provide a clear or consistent answer about who will be provided back leave owed and when it will be provided. When the law passed, DCHR’s systems for tracking leave for government employees could not accommodate granting leave for this category of employees.

While conducting this audit, we learned that DCHR has been working with several other District agencies (including the Office of the Chief Technology Officer) to upgrade payroll systems to track sick leave for all types of District employees, including WAE employees. This upgrade went into effect in September 2014 and WAE employees are now accruing sick leave in accordance with the Act.

This effort has also involved the identification of employees who were owed back leave. According to DCHR, as of September 2014, there were 4,756 District government employees with the WAE designation eligible to begin receiving sick leave. As of April 2015, 2,102 of the 4,756 were no longer employed by the District and approximately 800 had moved into other employment categories (e.g., full-time). That left 1,854 owed back sick leave from the start of their WAE assignment up to the date that sick leave started to be tracked in September 2014. DCHR has said that this back leave for those 1,854 WAE employees will be credited to their account on April 17, 2015.

Recommendation:

2. DCHR should notify all current District employees who are or were WAE employees that they are entitled to sick leave as of the date

⁷ Examples of intermittent employees include substitute teachers, camp counselors, and laborers hired for short-term duties such as snow removal.

the Act became effective and explain how and when they will be credited with this leave.

District business' compliance with posting requirements of the Act is poor

During unannounced site visits to District businesses, we discovered a high rate of non-compliance with the requirement that they post a summary of the Sick and Safe Leave Act in a place where all employees may see it.⁸ The required posting also includes information about how employees may file a complaint against their employer if they are not in compliance with the Act. In our site visits to a sample of 26 District businesses, we found 50 percent were not displaying this summary. This raises questions about whether all District employees know about the law. If not, then it is highly unlikely that they can bring complaints against their employers who are not providing sick leave.

Recommendation:

3. DOES should develop a comprehensive program to ensure that all District businesses are aware of the requirements under the Act. The agency should also consider devoting additional resources to inspections and enforcement of the Act.

⁸ D.C. Code § 32-131.09

Audit Results Summary

Finding	Recommendation
The D.C. Council has not taken action to approve required hardship exemption regulations	1. DOES should resubmit the hardship exemption rules and the D.C. Council should review these rules and either affirmatively approve or disapprove them. If the Council disapproves the rules, we urge them to work with DOES to develop rules that satisfy the requirements of the law or to amend the law as they see fit.
DOES has taken action to review employer compliance with the provisions of the Act	
DCHR needs more time to provide back leave owed to employees	2. DCHR should notify all current District employees who are or were WAE employees that they are entitled to sick leave as of the date the Act became effective and explain how and when they will be credited with this leave.
District business' compliance with posting requirements of the Act is poor	3. DOES should develop a comprehensive program to ensure that all District businesses are aware of the requirements under the Act. The agency should also consider devoting additional resources to inspections and enforcement of the Act.

Conclusion

The Sick and Safe Leave Act involves significant requirements of District employers. All businesses, with even one employee in the District, must provide paid sick leave to their employees. When this law was passed in 2008, the District was only one of a handful of jurisdictions in the country with such a mandate.

The District Council instructed this office to conduct an annual audit to determine the economic impact of the law on the private sector. Our survey work done as part of this audit has provided evidence that the impact on District businesses has been minor. Very few businesses have reported a negative effect on their bottom line and some have even reported a positive effect.

However, because so many District businesses are not displaying information about the Act where employees can see it, it is possible that incidences of non-compliance with the law are going unreported. We recommend that DOES do more to ensure that both employers and employees are aware of their rights and responsibilities under the Act.

DCHR has yet to demonstrate conclusively that they will provide sick leave to all District employees, as required by the Act. We urge them to fully implement the recommendations we made to them in our 2013 audit and the ones we have made in this report. District employees deserve to receive the benefits to which they have been entitled since the law went into effect.

Sincerely,

A handwritten signature in blue ink that reads "Kathleen Patterson". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Kathleen Patterson
District of Columbia Auditor

Agency Comments

On April 28, 2015, we sent a draft copy of this report to the Directors of DCHR and DOES for review and written comment. We did not receive comments from DCHR.

We did receive comments from DOES. Those comments are included, in their entirety, with this report. We are grateful for these comments and are pleased to note an effort that DOES is already making to implement our recommendations.

As part of their comments, DOES asked that we note that for the agency to address individual complaints, an employer or employee must bring that concern to the agency's attention. We did not add that language because we believe it was already apparent from the earlier text.

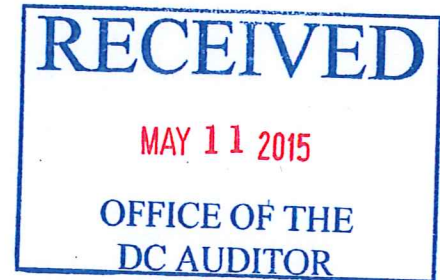
GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR



May 11, 2015

Kathleen Patterson
District of Columbia Auditor
717 14th Street, N.W., Suite 900
Washington, D.C. 20005

Dear Ms. Patterson:

This is in response to your April 28, 2015 letter, concerning the draft report on the District's Sick and Safe Leave Act. We have thoroughly reviewed the report and provide the following remarks:

1. *Page 3 - Administration of the Act, add to end of 2nd paragraph:*

The administrative process requires that both parties, i.e. employees and employers, have a right under the Wage Theft Prevention Amendment Act to request a formal hearing before an Administrative Law Judge within the Department of Employment Services; however, an election of the process has to be exercised by the parties.

2. *Page 15 - Recommendation (The D.C. Council has not taken action to approve required hardship exemption regulations):*

Reference is made to the recommendation that DOES publish final hardship exemption rules in the D.C. Register. Although DOES published proposed rules on three occasions, the City Council did not affirmatively approve them and by law, they were not adopted. DOES will review the rules and resubmit to the City Council.

3. *Page 16 - DOES has taken action to review of Employer Compliance with the Provisions of the Act:*

Improvements include sending our Sick and Safe Leave Act posters to 19,000 employers, sending a team of investigators to employer sites to verify compliance, as well as supplying posters as needed. DOES continues to enhance the education and oversight of District employers through its Zip Code Project.

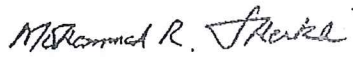
4. *Page 19 - Recommendation (District business' compliance with posting requirements is poor):*

DOES will provide additional resources to continue its educational and enforcement efforts, through visiting and providing posters to achieve full compliance.

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Thank you for the opportunity to offer comments. We are available to meet with you to further discuss the pertinent contents of the report at a date and time convenient for you and your team. Should you have any questions, please let us know. Again, thank you.

Sincerely,



Mohammad R. Sheikh
Deputy Director

cc: Deborah C. Carroll, Director, DOES