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May 3, 2018

Dr. Unique N. Morris-Hughes
Interim Director
Department of Employment Services
4058 Minnesota Avenue NE
Washington, D.C. 20019

Dear Dr. Morris-Hughes,

This letter is in response to the Notice of Proposed Rulemaking published by the Department of Employment Services in the *D.C. Register* on April 6th, 2018 about Universal Paid Leave Regulations. While District hospitals are committed to providing comprehensive benefits to employees, we have concerns with the regulations as proposed. The following sections outline our concerns.

I. ELIGIBILITY FOR PAID LEAVE BENEFIT (SECTION 3400)

The proposed regulations largely follow the definition of “eligible individual” found in the legislation. DCHA and other businesses are concerned that the proposed rule is silent on whether an eligible individual needs to maintain eligibility for the duration of paid leave benefits. While determining initial eligibility is important, we believe that continued eligibility is just as critical and should be included in the regulation.

DCHA recommends the inclusion of language into the final regulations, requiring an eligible individual to maintain eligibility as a condition for the continued receipt of paid leave benefits. DCHA suggests the following language:

- 3400.2 An individual’s continued eligibility to receive paid leave benefits is contingent upon the individual meeting the conditions contained within 7 DCMR Chapter 34, as well as the conditions contained in the eligible individual’s application for paid leave benefits, as approved by DOES.

- 3400.3 An eligible individual shall communicate to DOES any material changes in circumstances, impacting the individual’s eligibility for paid leave benefit, within three days, or within the next weekly report as required by section 3404.5, whichever is sooner.

II. FILING A CLAIM FOR PAID LEAVE BENEFITS (SECTION 3401)

As published the regulations include language that requires “each eligible individual applying for paid-leave benefits” to “certify that the claim for paid-leave benefits and all information provided in support of the claim for paid-leave benefits are true and accurate.” The proposed regulations should also hold any individual who provides intentionally false statements in support of a claim for paid-leave benefits accountable.

DCHA respectfully requests that Section 3401.7 of the Proposed Regulation be amended to read as follows:

3401.7 Each eligible individual applying for paid-leave benefits shall certify that the claim for paid-leave benefits and all information provided in support of the claim for paid-leave benefits are true and accurate. In addition, any documentation provided to DOES from any other individual in support of a claim for paid-leave benefits shall certify that the contents of such documentation are true and accurate. All certifications, required under this section, shall state that:

“Under penalty of perjury, I, the undersigned, certify that the above information is true, accurate and complete. I understand that any false statement, misrepresentation, or concealment of any information requested in this document may subject me to liability under civil and criminal laws, including, but not limited to, D.C. Code § 22-2405 (penalties for false statements).”

In addition, DCHA is concerned that section 3401.7 is vague when it states that eligible individuals must certify that the information in their claim is correct and accurate. DCHA requests that final regulatory language be updated to reflect the steps that employees must take to certify that the claim for paid-leave benefits and all information provided in support of the claim for paid-leave benefits are true and accurate.

III. CALCULATION OF WEEKLY BENEFITS AMOUNT (SECTION 3402)

The Act and proposed rule establish the method for calculating an eligible individual’s weekly benefit. While it is implied that an individual’s weekly benefit is based on wages earned in the District from covered employers, the Proposed Rule is not explicit. Accordingly, in order to avoid any confusion, DCHA asks that section 3402.1(a) be amended to read:

3402.1(a) The wages used to calculate the weekly benefit amount shall be limited to wages paid to the eligible employee by covered employers in the District of Columbia.

The proposed rule is silent on the subject of whether the paid leave benefits are subject to income taxation, which should be clarified. As such, DCHA respectfully suggests that the following language be included in the final regulations:

3402.4 The benefits paid under this section shall be considered income for purposes of taxation. As part of the application process for paid leave benefits, DOES shall communicate this fact to eligible individuals.

**IV. LIMIT ON NUMBER OF WEEKS OF PAID LEAVE BENEFITS;
INTERMITTENT USE OF PAID LEAVE; REPORTING USE OF LEAVE
(Section 3404)**

DCHA is concerned that the term “workweek” as used in this section is vague. As such, DCHA requests that DOES include a definition of the term in the finalized version of this regulation.

V. EMPLOYEE NOTICE TO EMPLOYER (SECTION 3406)

Hospital staffing is complex and dynamic. Unlike most businesses our facilities must be staffed 24 hours a day, 365 days a year by highly skilled staff members essential to ensuring the care our patients receive continues to be world class. Employers must have timely notice of an eligible individual’s “need for the use of paid-leave benefits.” Failure to have this timely notice can have very serious implications for our hospitals, other staff members and patients. Accordingly, DCHA requests the inclusion of the provisions below to address these concerns:

3406.3 An eligible individual shall not be entitled to receive any paid leave benefits until the eligible individual’s application has been approved by DOES, pursuant to section 3407.

3406.4 Once an eligible individual’s application for paid leave has been approved by DOES, pursuant to section 3407, the eligible individual is required to comply with the notice requirements as contained in sections 3406.1 and 3406.2.

VI. PROCESSING CLAIMS FOR PAID LEAVE (SECTION 3407)

Given the complex nature of running businesses, especially large complex organizations, the agency must be responsible for determining that a business has received the notice of a paid leave claim. DCHA believes the following sections will prove particularly difficult to administer:

- 3407.2 The covered employer shall submit the requested proof of employment within two (2) business days after receipt of the request from the claims examiner.
- 3407.3 If the covered employer fails to provide the requested proof of employment within (2) business days, the claim for paid leave shall be processed using the available information; provided, that, if the covered employer later files proof that the eligible individual is not a covered employee of the employer, DOES may reprocess the claim, taking into account the additional information.

DCHA believes that it should be up to the employees to ensure that eligible individual's claim is complete. We don't believe that the Act requires the processing of incomplete claims filed by eligible individuals.

Based on the above, DCHA respectfully requests that the Department substitute the language in section 3407 of the Proposed Rule and replace it with the following provisions:

- 3407.1 To apply for paid leave benefits, an individual shall submit a "Claim for Paid Leave Benefits" with DOES, and provide documentation required in this section as part of the application.
- 3407.2 A Claim for Paid Leave Benefits shall be deemed filed when all documentation and certifications required under this section are completed, properly executed, and attached to the application. The application and accompanying materials shall be reviewed by DOES for a determination of eligibility.
- 3407.3 No later than 10 business days after an eligible individual files a Claim for Paid Leave Benefits, DOES shall make and notify the individual of, an initial determination consistent with Section 106 (d) of the Act.
- 3407.4 As a condition for receiving paid leave benefits, an eligible individual's "Claim for Paid Leave Benefits" shall include proof that a qualifying event has occurred within the last twelve (12) months, or will likely occur in the next twelve (12) weeks, by submitting one (1) of the following:

- (a) For the birth of a child:
 - (i) A certificate of live birth listing the eligible individual as a legal parent or other reliable documentation evidencing the birth of the eligible individual's child; or
 - (ii) A completed Certification of Pregnancy, pursuant to section 3407.5(a), on a form supplied by DOES;
- (b) For legal placement of a child:
 - (i) A certified copy of the court order granting the eligible individual legal custody of the child; and
 - (ii) A Certification of Placement, pursuant to section 3407.5(b) on a form supplied by DOES;
- (c) For non-legal placements of a child:
 - (i) Two (2) official records establishing the eligible individual as a named caregiver to the child (such as school enrollment, insurance records, or medical records); and reliable documentation as to the date when the placement occurred (such as insurance records and certificates of death); and
 - (ii) A Certification of Placement, pursuant to section 3407.5(b) on a form supplied by DOES;
- (d) For the care of a family member with a serious health condition:
 - (i) Government or other reliable documentation establishing a family relationship (including but not limited to, birth certificate, marriage license, court order, joint lease, and joint bank account statement). In addition, the eligible individual shall attest to the relationship on a form supplied by DOES;

- (ii) The application must include a signed attestation from the family member who will be receiving the care or companionship from the eligible individual, if possible, requesting the assistance of the eligible individual, on a form supplied by DOES;

VII. APPEALS (SECTION 3408)

DCHA is concerned that employers do not have an option for appeal under this section. As such, DCHA requests the section be amended to read as follows.

3408.1 If the covered employer, applicant or eligible individual disagrees with all or any part of the initial determination, the covered employer, applicant or eligible individual has the right to appeal the initial determination to the Office of Administrative Hearings.

VIII. CONTRIBUTIONS BY COVERED EMPLOYERS TO THE UNIVERSAL PAID LEAVE IMPLEMENTATION FUND (SECTION 3411)

DCHA believes that clarifying language outlining how the collection of the .62% would be carried out be included in the final regulations. It is our hope that additional language would give needed clarification is needed on the collection, remittance and operational aspects of the process.

If you have questions, please feel free to reach out to me at (202) 289-6212 or jpalmer@dcha.org.

Sincerely,



Justin Palmer
Vice President, Government Relations