

# Briefing Paper



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## Recommendations for an Evaluation of the District of Columbia's Paid Sick Days Law

By Kevin Miller, Ph.D.

This briefing paper presents recommendations for the evaluation and report on the Accrued Sick and Safe Leave Act of 2008.<sup>1</sup> One provision of the Act, which mandates that employers in the District of Columbia provide paid sick days to some employees, requires the Auditor of the District of Columbia to prepare and submit a report on the Act's impact.

Information about the law's implementation and compliance with its provisions will allow the District government to reach informed conclusions about the law's effects on businesses, workers, as well as on its overall effectiveness. It will also allow the District government to plan outreach to educate employers and workers about the policy, if that is needed. As only the second jurisdiction to pass a law requiring paid sick days, D.C. may serve as a test case or example for other jurisdictions seeking to enact similar laws. This paper provides recommendations both for meeting the minimum evaluation requirements specified in the law as well as suggestions for going beyond those basic requirements to provide a more complete picture of the law's overall effects.

### Background

Research suggests that paid sick days bring a range of economic, social, and health benefits for employers, workers, and communities. Cost-benefit analyses of paid sick days laws published by IWPR include estimates of probable monetary savings resulting from paid sick days, for both employers and workers (see Lovell 2004; Miller and Williams 2012). The benefits of paid sick leave for employers include improvements in productivity, reductions in workplace contagion, and reduced worker turnover.

In jurisdictions without paid sick days laws, workers in professional and higher-income professions are more likely to receive sick days, and low-income workers usually lack access to sick leave (Bureau of Labor Statistics 2012). Workers without paid sick days are forced to make difficult decisions between attending work while sick and risking their job or income to care for themselves or a sick family member. Workers with access to paid sick days are more likely to be

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<sup>1</sup> Available at <http://dcclims1.dccouncil.us/images/00001/20080311113451.pdf>.

able to address health care needs promptly, rather than delaying care or using hospital emergency departments (Miller, Williams, and Yi 2011). By improving health and employment outcomes, paid sick days can support the economic security of working families and reduce a community's health care costs.

The issue of presenteeism (attending work while ill) has led many advocates and lawmakers to stress the potential public health and employer benefits of paid sick days laws: Workers without access to paid sick days are more likely to attend work while ill, increasing the threat of contagion for co-workers, customers, and the general public. In addition to the firm- or institution-level effects of providing paid sick leave, both the private sector and the general public may benefit from reduced transmission of contagious illnesses such as seasonal influenza and other common illnesses.

Research also shows that workers who attend work sick perform at less than full productivity and that workers with paid sick days are more attached to employers, suggesting significant employer benefits to employee paid sick days (Miller and Williams 2012).

In March 2008, the D.C. Council passed the Accrued Sick and Safe Leave Act, making D.C. the second jurisdiction in the nation (after San Francisco) to enact a law requiring employers to provide paid sick days. In addition, the District's law was the first to require that sick days be usable by victims of domestic violence, sexual assault, or stalking who need time off work to seek medical care, shelter, counseling, a court order, or other services. Since passage of the D.C. law, similar laws have been passed in the state of Connecticut and the city of Seattle, and campaigns to pass similar laws are underway in cities and states across the country and in the United States Congress.

## **Summary of the D.C. Accrued Sick and Safe Leave Act**

The District of Columbia's Accrued Sick and Safe Leave Act requires that employers provide workers with earned paid leave they can use for medical or domestic violence related purposes.

- Employees must be able to use leave for the purposes of:
  - Caring for themselves or seeking medical treatment, including preventive care;
  - Providing for family members who require care or medical treatment; or
  - Seeking medical, legal, or other services as needed to address the effects of domestic violence, sexual assault, or stalking.
- Accrual of and access to leave begins after an employee has been on the job for one year (without any breaks in service) and has worked at least 1,000 hours.
- The amount of leave that the law requires varies by employer size:
  - Firms with 100 or more employees must provide one hour of leave per 37 hours worked (or 7 days per year for a full-time employee);
  - Firms between 25 and 99 employees must provide one hour of leave per 43 hours worked (or 5 days per year for a full-time employee); and
  - Smaller businesses must provide one hour of leave per 87 hours worked (or 3 days per year for a full-time employee).
- Employers are not required to provide leave to some types of employees:

- Independent contractors;
- Health-care workers who choose to participate in a premium pay program;
- Full-time students working less than 25 hours a week at a college or university that they attend; and
- Bar and restaurant workers who work for a combination of wages and tips.
- Employers are required to post the provisions of the law in a “conspicuous place” accessible to employees.
- The law protects workers from retaliation for use of the leave, but also allows employers to require certification of the need for leave if a worker uses 3 or more days in a row.
- Regulations specify that complaints may be brought within 60 days of a violation of the law, provided no 60-day period shall commence until the employer has posted notice of the law as legally required.
- The D.C. Auditor will prepare an annual report on the Act’s economic impact on the private sector, to include an audit of a sample of District businesses for the purposes of determining compliance with posting and whether companies are utilizing staffing patterns to circumvent the intent of the act.

## **Recommendations for the Evaluation of the D.C. Accrued Sick and Safe Leave Act**

### ***What the Law Requires: A Survey of Employers and a Report on the Economic Impact of the Law on the Private Sector***

Among the provisions of the Act is a requirement that the Auditor of the District of Columbia prepare and submit a report on the Act’s impact on the private sector. Among other things, the study is to report the result of an audit of a sample of District businesses to determine both the level of compliance with the law and whether companies are utilizing staffing patterns to circumvent the Act (e.g., by hiring full-time students, maintaining high levels of employee turnover, or converting employees to independent contractors).

Although the law specifically requires the Auditor only to determine levels of compliance with posting requirements and attempts to circumvent the law through changes in staffing patterns, the evaluation provision states that the overall goal is to assess the economic effects of the law on the private sector.

To meet these requirements, the Auditor’s office should consider exploring, through an employer survey:

- Awareness and implementation of the law.
  - Posting requirements met? (sec. 16(1))
- Difficulty of complying with various aspects of the law.
- Changes to policies (including addition of paid sick days).
  - How often are employers requiring employee certification of illness?
  - For employers with existing policies: have there been any changes? Can the Auditor determine whether these policies meet the requirements of the law?

- Reductions in other benefits or wages, including raises and bonuses.
- Effects on employee performance and morale.
- Changes in staffing patterns (sec. 16(2)).
  - How are employers distinguishing health care workers with premium pay programs from other workers (sec 2(b)(iii))?
  - Are educational employers replacing non-student workers with students (sec. 2 (8)(a)(iv))?
  - Are restaurants and bars changing compensation of any of their employees from wages to a combination of wages and tips (sec. 2(2)(B)(iv))?
- Do collective bargaining agreements comply with the law (sec. 7(b))?
- Are employers suspending or firing fewer workers for taking sick leave than before the Accrued Sick and Safe Leave Act went into effect?

Appendix A (see page 7) contains example items that could be included in a survey of employers in order to address some of the questions listed above. The sample questions are derived in part from surveys administered as part of an IWPR project to evaluate the effects of the San Francisco paid sick days law (see Drago and Lovell 2011).

### ***Recommendations for a More Comprehensive Evaluation***

The Auditor could capture a more complete picture of the implementation of the law by including a worker survey and analysis of existing government-sponsored data sources to capture broader economic effects. The District government could also attempt to assess whether compliance with the law has resulted in benefits to the District as a whole due to reduction in disease transmission or in the use of emergency rooms by workers with paid sick days. Improvements in health outcomes are likely to represent real economic benefits as a result of reduced health expenditures and insurance costs, as well as improved productivity.

#### **Broader Employment and Business Impacts: Existing Sources of Data**

In addition to surveying employers and workers, the D.C. Auditor's office or its partners could utilize existing data sources to evaluate the impacts of the Act. Among these are the National Establishment Time-Series (NETS) database, a proprietary dataset with a census of the creation, dissolution, and relocation of businesses throughout the United States. This dataset would allow for the examination of whether the paid sick days law appeared to have any net effect on the number of businesses and employees in the District. A NETS analysis could consider both changes over time and changes in comparison to surrounding counties and cities in the D.C. metropolitan area in order to distinguish any effects of the Act from broader economic trends or patterns.

Changes in employment from year to year could also be evaluated, as in IWPR studies of employment change in San Francisco relative to surrounding counties (Miller and Towne 2011).

## **Assessing the Effects on Workers**

A survey of workers, in addition to an employer survey, would provide the District government with valuable information about the effectiveness of the Act and employers' compliance with its requirements. An IWPR study of the experiences of employees in San Francisco, conducted in early 2010, three years after implementation of that city's paid sick days law, suggested that some employers and some employees were still unaware of the law's requirements (Drago and Lovell 2011). If some employers are attempting to circumvent the intention of the Act by changing staffing patterns or if employers are otherwise not in compliance with the law, employees' experiences may offer important insights that the Auditor may be unable to determine through a survey of employers. A survey of workers could be conducted either directly by the Auditor, through an intermediary, or in partnership with interested organizations.

Among the topics that a survey of workers might illuminate are:

- Awareness of the law and access to paid sick days.
- Changes in worker/family health outcomes, work/life balance, and stress.
- Reductions in other benefits or wages.
- Effects on employee performance (including presenteeism, morale).
- Experiences of punishment or loss of employment due to use of paid sick days, as prohibited in sec. 9(b).
  - If they have experienced any negative consequences or punishment for using sick days, did they file a complaint with the Department of Employment Services? If so, with what result?
- Changes to policies (including addition of paid sick days).
  - How often are employers requiring doctor certification?
  - Are workers experiencing difficulties regarding certification requirements?
- Changes in staffing patterns (sec. 16(2)).
  - How are employers distinguishing health care workers with premium pay programs from other workers (sec. 2(b)(iii))?
  - Employment of students: Are educational employers replacing non-student workers with students (sec. 2 (8)(a)(iv))?
  - Are restaurants and bars changing compensation of any of their employees from wages to a combination of wages and tips (sec. 2(2)(B)(iv))?

Appendix B (see page 9) contains example questions that could be included in a survey of workers in order to address some of the questions above. The example questions are derived in part from surveys administered as part of the IWPR project to evaluate the effects of the San Francisco paid sick days law.

## ***Creation of an Advisory Committee***

The Auditor's office may choose to conduct an analysis of the scope that IWPR recommends in collaboration with academic researchers, local or national research organizations, or other branches of the District government. IWPR recommends that an advisory committee be created to assist in the evaluation of the Act, in order to ensure that the Office of the D.C. Auditor has

easy access to existing methodologies and researcher expertise and to provide support in evaluating the broader impacts of interest to policymakers and advocates.

Potential experts to include in an advisory committee include representatives of D.C. agencies such as the Department of Employment Services; local and national experts in paid sick leave policy from organizations such as the D.C. Employment Justice Center (DCEJC) or the National Partnership for Women and Families (NPWF); experts in policy evaluation or survey methodology drawn from policy research organizations, academic institutions, or the business sector; representatives of the District's workers or worker organizations and of the business community; and others that might be suggested by an initial task force if one were created to organize the advisory committee.

## Appendix A: Example Questions for a Survey of Employers

- 1) Do you provide paid time off for vacation or sick leave to any of your employees?
  - No, neither.
  - Paid time off that can be used for either.
  - Separate vacation and sick leave.
  - Just vacation time.
  - Just sick leave.
  
- 2) Please answer each of the following questions as applied to each substantial classification of your employees:
  - a) How long must employees work before they are able to accrue sick leave?
  - b) How long must employees work before they are able to use leave they have accrued?
  - c) For workers with at least 1 year of service, what is the rate of sick leave accrual (if multiple rates across employee classes, report the lowest rate)?
  
- 3) Was your absenteeism rate in 2011 higher or lower than in 2009?
  
- 4) Did you offer paid sick leave in 2009?
  
- 5) Did your sick leave benefits policy change in 2011 as compared to 2009?
  
- 6) How did your sick leave policy change from 2009 to 2011? Please answer all that apply.
  - Workers are now paid while on sick leave.
  - Workers can now use sick leave to care for family members.
  - More classes of employees were eligible in 2011.
  - Fewer classes of employees were eligible in 2011.
  - Higher accrual rate in 2011 (more days provided in 2011).
  - Lower accrual rate in 2011 (fewer days provided in 2011).
  - Shorter waiting period in 2011.
  - Longer waiting period in 2011.
  - Switched from paid vacation leave to a general Paid Time Off (PTO) program that includes paid sick leave.
  
- 7) If you operate a restaurant or bar, in 2011, did you offer paid sick leave to tipped employees? What about non-tipped restaurant workers such as cooks, cleaners, and front of the house workers who did not have a tip jar?
  - All employees earn paid sick leave.
  - Solely non-tipped employees earn sick leave.
  - Solely tipped-employees earn sick leave.
  - No employees earn sick leave.
  - Not applicable - we are not a restaurant or bar.

8) Did your vacation accrual rates change between 2009 and 2011?

Yes, vacation increased.

Yes, vacation decreased.

No, vacation is same.

9) How has employee performance at this location changed in the past year for workers who now have paid sick leave and previously did not? Would you say much better, better, about the same, worse, or much worse?

Employee morale.

Absenteeism.

Customer service.

Workers coming to work while sick [a response of “better” means fewer workers do this; “worse” means that workers are now MORE likely to go to work when sick].

## Appendix B: Example Questions for a Survey of Workers

[Preliminary questions should establish eligibility for protection by the Act, including employment in the District of Columbia, length of employment at the same employer, hours worked in the past year, and other key employment information.]

1) Does your employer provide any of the following benefits? Please say yes to each of the benefits you have.

- Paid sick leave.
- Paid vacation time.
- Paid leave that can be used for either purpose.

2) Has your employer changed its sick time benefits in the past two years? If so, how?

3) Has your employer changed its vacation time benefits in the past two years? If so, how?

4) In the past 12 months, have you taken any sick leave?

- About how many days of leave did you take?
- Where you paid for the leave you took? If so, for how many?

4a) (Answer if yes for question 4.) For what reasons did you take paid sick leave? Please say yes to each reason that you took leave.

- Personally sick.
- Care for a child.
- Care for an adult.
- Other (list).

4b) (Answer if yes for question 4.) Have you ever been required to provide documentation of a reason for the use of sick leave?

If yes, was it because you used three or more consecutive days, or for some other reason?

4c) (Answer if yes for question 4.) Have you ever been required to work additional days to “make up” for your absence?

4d) (Answer if yes for question 4.) Do you fear that taking sick leave will affect future promotions or employment opportunities?

5) In the past 12 months, did you ever need—but not take—paid sick leave at your job?

If yes, why were you unable to take leave?

6) Are you aware of a District of Columbia law requiring employers to provide most employees with paid sick time?

- If yes, how did you become aware of this law?
  - Poster in workplace.
  - Employer/manager.
  - Coworkers.

Friends.  
Family.  
Media.  
Worker organizations.  
Other (list).

7) In the last 12 months, did you ever go to the hospital emergency room because you were unable to take off from work to get medical care for yourself or a family member during your normal job hours?

Yes, to seek care for myself.  
Yes, to seek care for a family member.  
Yes, both for myself and for a family member.  
No.

8) In the last 12 months, did you ever delay seeking medical care for yourself or a family member because you were unable to take off from work during your normal job hours?

Yes, I delayed care for myself.  
Yes, I delayed care for a family member.  
Yes, both for myself and for a family member.  
No.

9) Do you have children under the age of 18 living at home?

(If yes) In the last 12 months, did you ever have to send a sick child to school or daycare because you could not take off from work?

(If yes) Were you ever asked to pick up a sick child from school, but not been able to leave work?

10) In the past 12 months, have you ever had to use your vacation time for your own health problems or the health problems of your loved ones?

11) Are you able to get preventive care, such as check-ups at a doctor for yourself or your family, during regularly scheduled work hours?

12) In the past 12 months, have you ever had to go to work when you had a contagious illness, such as the flu or a viral infection?

13) In what industry do you work?

14) If you worked in the restaurant/food service industry, did you receive a substantial part of your income from tips?

Yes, I received a substantial amount from tips.  
I received some tips from a tip jar or tip pool, but not a substantial part of my income.  
No, I did not receive tips.

15) (Answer if yes for question 2). In the past two years, have changes in your employer's policy regarding paid sick time had any of the following impacts?

Made you feel more or less committed to your employer? If so, which?

Changed employee morale in your workplace for better or for worse? If so, which?

Made it easier or harder for you to take care of your health? If so, which?

Made it easier or harder for you to take care of the health needs of a family member? If so, which?

[Demographic and health-related questions – age, gender, race and ethnicity, zip code, marital status, home ownership, educational background, health insurance coverage, chronic conditions, caretaking responsibilities.]

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