



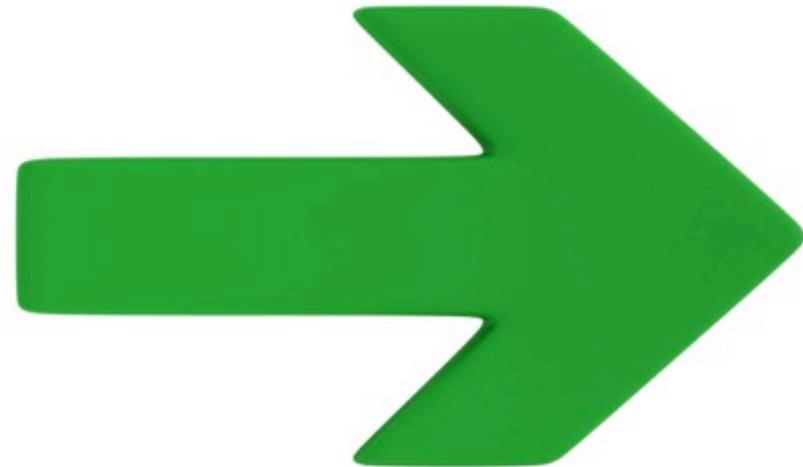
“Not Protected...Not so Fast!”

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Leave Laws



Family and Medical Leave Act

- **Federal Family and Medical Leave Act**
- **District of Columbia Family and Medical Leave Act**
- **Virginia, West Virginia and Maryland follow the Federal FMLA**



DC FMLA vs. Federal FMLA



Leave Laws

FEDERAL

DC

Employer Covered

- Private Employers of 50 or more Employees in at least 20 weeks of the current or preceding year
- Public agencies, including state, local, and Federal Employers
- Local education agencies covered under special provisions

- A private employer shall be covered if it maintains twenty (20) or more employees on the payroll during twenty (20) or more calendar workweeks (whether consecutive or not) in either the current or the preceding calendar year

Employees Eligible

- Worked for Employer for at least 12 months - which need not be consecutive; worked at least 1,250 hours for Employer during 12 months preceding leave

- Not the US Government
- Have worked for one year with same Employer without a break in service except for regular holidays, sick or personal leave granted by Employer with at least 1000 hours service during the past 12-month period prior to leave request

Leave Laws

FEDERAL

DC

Leave Amount

- Up to a total of 12 weeks during a 12-month period; however, leave for birth, adoption, foster care, or to care for a parent with a serious health condition must be shared by spouses working for same Employer

- 16 weeks during 24-month period for family leave (care for family member); 16 weeks for medical leave (employee's own serious health condition)
- Leave rights for birth or placement expire 12 months after birth of child or placement
- Leave must be shared by family members working for the same Employer

Type of Leave

- Unpaid leave for birth, placement of child for adoption or foster care, to provide care for Employee's own parent (including individuals who exercise parental responsibility under state law), child, or spouse with serious health condition, or Employee's own serious health condition

- Similar to Federal provisions, but applied in terms of "family membership," defined to include a person to whom the employee is related by blood, legal custody, or marriage, sharing mutual residence and committed relationship with the Employee. Also includes a child who lives with an employee and for whom the employee permanently assumes and discharges parental responsibility

Leave Laws

FEDERAL

DC

Health Care Provider

- **Doctors of medicine or osteopathy authorized to practice medicine or surgery; podiatrists, dentists, clinical psychologists, clinical social workers, optometrists, chiropractors (limited to manual manipulation of spine to correct subluxation shown to exist by x-ray), nurse practitioners, and nurse-midwives, if authorized to practice under State law and consistent with the scope of their authorization; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, MA; any provider so recognized by the Employer or its group health plan's benefits manager; and any health provider listed above who practices and is authorized to practice in a country other than the United States**
- **Any person licensed under Federal, State, or District of Columbia law to provide health care services**

Leave Laws

FEDERAL

DC

Intermittent Leave

- Permitted for serious health condition when medically necessary
 - Not permitted for care of newborn or new placement by adoption or foster care unless Employer agrees
- Intermittent leave may be taken when a family member or the Employee himself or herself has a serious health condition

Substitution of Paid Leave

- Employees may elect or Employers may require accrued paid leave to be substituted in some cases
 - No limits on substituting paid vacation or personal leave
 - An Employee may not substitute paid sick, medical, of family leave for any situation not covered by any Employers' leave plan
- Employee may elect accrued paid family, vacation, personal, or compensatory leave to be substituted, plus the Employee may utilize program run by Employer to use paid leave of another Employee under certain conditions that have been met

Leave Laws

FEDERAL

DC

Reinstatement Rights

- Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment

- Similar to Federal provision, with the addition that if the Employee accepted alternative employment with Employer throughout the duration of the serious health condition, the Employee shall be returned to his or her original employment upon their return from leave

Key Employee Exception

- Limited exception for salaried Employees if among highest paid 10%, within 75 miles of worksites, restoration would lead to grievous economic harm to Employer, and other conditions met

- Similar to Federal provision but for Employers with less than 50 Employees, Employment restoration may be denied to a salaried Employee if the Employee is among the 5 highest paid Employees of an Employer

Leave Laws

FEDERAL

Medical Certification May Be Required by Employer for

- Request for leave because of serious health condition
- To demonstrate Employee's fitness to return to work from medical leave where Employer has a uniformly applied practice or policy to require such certification

Executive, Administrative, and Professional Employees

- Such individuals are entitled to FMLA benefits
- However, their use of FMLA leave does not change their status under the Fair Labor Standards Act (FLSA), i.e., an Employer, does not lose its exemption from the FLSA's minimum wage and overtime requirements

DC

- Similar to Federal provision
- No provision relating to certification of fitness to return to work

- No provision regarding effect on exempt status under the District of Columbia minimum wage and overtime law

DC Employer Tips and Takeaways

FAMILY AND MEDICAL LEAVE

1. Do not think your company is too small for DC FMLA.
2. Remember that Federal FMLA still applies, so if employee takes 16 weeks in one year under DC FMLA, employee is eligible for 12 weeks under Federal the following year assuming all qualifications are met (e.g. if employer is big enough).
3. Employee may take up to 44 weeks in a two year period if a serious health condition for self and family member. (e.g. bed rest for pregnancy and then following birth).
4. Check your STD policies. DC does not allow you to require employees to use their accrued leave.



District of Columbia's Accrued Safe and Sick Leave Act ("ASSLA")



ASSLA

- **D.C. Code § 32-131.01 et seq**
- **Employers must provide paid sick leave to an employee if he/she, or a family member, is sick provided the employee has worked for the employer for at least 90 days.**
- **Employers must also provide paid leave if the employee or the employees family member is the victim of stalking, domestic violence or for sexual assault, including court time.**

ASSLA

- **D.C. Code § 32-131.01 et seq**
- **“Employee” means any individual employed by an employer, but shall not include:**
 - (A) Volunteers for an educational, charitable, religious, or nonprofit organization;**
 - (B) Any lay member elected or appointed to office within the discipline of any religious organization and engaged in religious functions;**

ASSLA

- **D.C. Code § 32-131.01 et seq**
- **“Employee” means any individual employed by an employer, but shall not include:**
 - (C) Any individual employed as a casual babysitter, in or about the residence of the employer;**
 - (D) Independent contractors;**
 - (E) Students;**

ASSLA

- **D.C. Code § 32-131.01 et seq**
- **“Employee” means any individual employed by an employer, but shall not include:**
 - (F) Health care workers who choose to participate in a premium pay program;**
 - (G) A substitute teacher or a substitute aide who is employed by District of Columbia Public Schools for a period of 30 or fewer consecutive work days.**

ASSLA

- **D.C. Code § 32-131.01 et seq**
- **Eligible employees are not only those who work in DC.**
- **Those who also work in Virginia, Maryland, or West Virginia may still be eligible under ASSLA as it only requires that an employee spend more than 50% of their time working in DC.**
- **Employees are also eligible if they spend less than 50% of their time in DC, but do not work in any other state for more than 50% of their time so long as DC is their primary place of employment.**

ASSLA

- **D.C. Code § 32-131.01 et seq**
- **Definition of “Employer”**
 - **A legal entity, including:**
 - **For-profit or nonprofit firm**
 - **Partnership**
 - **Proprietorship or sole proprietorship**
 - **Limited liability company, association, or corporation**

ASSLA

- **D.C. Code § 32-131.01 et seq**
- **Definition of “Employer”**
 - **Who directly or indirectly or through an agent or any other person, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of an employee.**

ASSLA

- **D.C. Code § 32-131.01 et seq**
- **Definition of “Family Member”**
 - **Spouse**
 - **Domestic Partner**
 - **Spouse’s Parents**
 - **Children**
 - **Foster Children**
 - **Grandchildren**
 - **Children’s Spouses**
 - **Parents**
 - **Step Children**
 - **Brothers and Sisters**
 - **Brothers and Sisters’ Spouses**

ASSLA

- **D.C. Code § 32-131.01 et seq**
- **Definition of “Family Member”**
 - **A child who lives with an employee and for whom the employee permanently assumes and discharges parental responsibility.**
 - **A person with whom the employee shares or has shared, for not less than the preceding 12 months, a mutual residence and with whom the employee maintains a committed relationship, as defined in § 32-701(1).**

ASSLA

- **D.C. Code § 32-131.01 et seq**
- **Employers with 1-24 employees must provide:**
 - 1 hour of sick leave for every 87 hours worked or a maximum of 3 days per year of paid sick leave.
- **Employers with 25-99 employees must provide:**
 - 1 hour of sick leave for every 43 hours worked or a maximum of 5 days per year of paid sick leave.

ASSLA

- **D.C. Code § 32-131.01 et seq**
- **Employers with over 100 employees must provide:**
 - **1 hour of sick leave for every 37 hours worked or a maximum of 7 days per year of paid sick leave.**
- **Carry over – amount of leave accrued but unused in previous 12 months.**
- **Do not need to pay out upon termination.**

ASSLA

- **D.C. Code § 32-131.01 et seq**
- **ASSLA amendments require that Employers now keep records of three years of hours worked and paid leave taken for employees.**
- **The amendments have also created a private cause of action for employees to bring against employers under ASSLA.**
- **If the employee quits and returns within 12 months the leave bank is reinstated.**

DC Parental Leave

- **D.C. Code § 32-521.01-32-521.06**
- **Requires DC employers to allow 24 hours of unpaid leave per year to attend school related events (e.g. where child participating, not just spectating).**
- **Applies to parents, guardians, grandparents, aunts and uncles.**
- **Notice must be given 10 days prior to event.**
- **Employee can elect to use accrued paid leave.**

District of Columbia's Universal Paid Leave Amendment Act



DC Universal Paid Leave Amendment

- Starting on July 1, 2020, employees can take up to 6 work weeks of paid leave a year to provide care or companionship to a family member with a serious health condition.
- Serious health condition in the law is defined the same as under FMLA.
- Employees may also take up to 2 work weeks a year of paid leave for their own serious health condition.



DC Universal Paid Leave Amendment

- Employees may also take up to 8 work weeks a year of paid leave to bond with a newborn or a child placed for adoption, foster care, or in *loco parentis*.
- Parents have one year from birth or placement to take such leave.
- The law provides that this paid leave is job-protected to the extent it runs concurrently with DC FMLA.



DC Universal Paid Leave Amendment

- Employers will not be required to pay employees under the law as all private DC employers will pay a payroll tax equal to 0.62% of the wage of each of their covered employees starting July 1, 2019.
- Employees can receive payment beginning July 1, 2020.



DC Universal Paid Leave Amendment

- **Covered Employers:**
 - Any individual or entity required to pay unemployment insurance on behalf of its employees in accordance with D.C. Code.
 - This does not include the U.S. or D.C. government, or any employer who the D.C. government is not authorized to tax under federal law or treaty.



DC Universal Paid Leave Amendment

- Covered Employees:
 - Any employee who spends more than 50% of his or her work time working in D.C. for a covered employer.
 - **General Rule**: If your company has employees working the majority of their work time in D.C., then your organization is almost definitely covered by the law.
 - In other words, those employees that do not live in the District, but work in the District and meet the criteria for coverage will be eligible.

Maryland Paid Leave Act



Maryland Paid Leave Act

- **MD Code, Labor and Employment § 3-802**
- **Allows an employee of an employer to use leave with pay to care for an immediate family member who is ill under the same conditions and policy rules that would apply if the employee took leave for the employee's own illness.**



Maryland Paid Leave Act

- **MD Code, Labor and Employment § 3-802**
- **An employee of an employer:**
 - **May only use leave with pay under this section that has been earned.**
 - **Who earns more than one type of leave with pay may elect the type and amount of leave with pay to be used under this section.**



Maryland Paid Leave Act

- **MD Code, Labor and Employment § 3-802**
- **If employment policy or CBA provides for more benefit than the law, the policy or CBA controls.**
- **MPLA has anti-retaliation provisions.**



Maryland Family Military Leave

- **MD Code, Labor and Employment § 3-803**
- An employee may take unpaid leave from work on the day that an immediate family member of the employee is leaving for, or returning from, active duty outside the United States.
- An employer may not require an employee to use accrued leave.
- An employer may require proof.
- Employer **50+** employees; employee 1250 hours within 12 months; worked for prior 12 months.

Maryland Healthy Working Families Act

- MD Code, Labor and Employment § 2-106 et seq.
- Employers with **15** or more employees must provide up to 40 hours annually of paid sick and safe leave to eligible employees.
- Employers with **14** or less employees must provide up to 40 hours annually of unpaid leave to eligible employees.
- Act applies regardless of whether the employees are full-time, part-time, temporary or seasonal.



Maryland Healthy Working Families Act

- **MD Code, Labor and Employment § 2-106 et seq.**
- **“Family Member” includes the following, regardless of whether relationship is biological, step, adopted or foster:**
 - **Child**
 - **Parent of employee or spouse**
 - **Grandparent**
 - **Grandchild**
 - **Sibling**



Maryland Healthy Working Families Act

- **MD Code, Labor and Employment § 2-106 et seq.**
- **“Family Member” includes:**
 - **A child for whom the employee has legal or physical custody or guardianship.**
 - **A child for whom the employee stands in loco parentis, regardless of child’s age.**
 - **The legal guardian of the employee.**



Maryland Healthy Working Families Act

- **MD Code, Labor and Employment § 2-106 et seq.**
- **“Family Member” includes:**
 - **An individual who acted as a parent or stood in loco parentis to the employee or the employee’s spouse when the employee or spouse was a minor.**
 - **The spouse of the employee.**



Maryland Healthy Working Families Act

- **MD Code, Labor and Employment § 2-106 et seq.**
- **Eligible Employees:**
 - **Over 18 years of age by beginning of the year and regularly works 12 hours or more in the week.**



Maryland Healthy Working Families Act

- **MD Code, Labor and Employment § 2-106 et seq.**
- **Excluded from Eligible Employees:**
 - **Independent contractors.**
 - **Individuals who work on as-needed basis in the health or human services industries who can reject or accept a shift offered by an employer are not guaranteed any set hours and are not employed by a temporary agency.**
 - **Some construction industry workers covered by a CBA.**



Maryland Healthy Working Families Act

- **MD Code, Labor and Employment § 2-106 et seq.**
- **Employees may take the leave for:**
 - **Their own physical or mental illness.**
 - **Their family members' physical or mental illness.**
 - **Maternity or paternity leave.**
 - **Cases of domestic violence or sexual assault against the employee or a family member.**



Maryland Healthy Working Families Act

- **MD Code, Labor and Employment § 2-106 et seq.**
- **An employee's use of sick/safe leave cannot be counted as an absence under an employer's absenteeism policy.**
- **Employers must provide 1 hour of sick leave for every 30 hours worked or a maximum of 40 hours per year of paid sick leave.**
- **If paid, the rate must be the employee's regular rate of pay.**



Maryland Healthy Working Families Act

- **MD Code, Labor and Employment § 2-106 et seq.**
- **Tipped employees:**
 - **The prevailing minimum wage rate, either the state or the county, whichever is higher.**
 - **Not at the sub-minimum wage rate that may be paid to tipped workers.**



Maryland Healthy Working Families Act

- **MD Code, Labor and Employment § 2-106 et seq.**
- Employees can carry over up to 40 hours of paid leave into the next year, but employers can cap the accrual at 64 hours.
- Employers are not required to pay employees for unused sick leave if an employee is terminated.
- If the employer does not pay the employee for sick leave and the employee is rehired within 37 weeks of their termination, the employer must reinstate the unused leave.



Maryland Healthy Working Families Act

- **MD Code, Labor and Employment § 2-106 et seq.**
- **Employers are permitted to prohibit employees from using paid leave until they have worked 106 calendar days.**
- **Require an employee to provide seven days' notice for foreseeable leave.**
- **Employers can require verification of the use of the leave if abuse is suspected.**



Maryland Adoption Leave Act

- **MD Code, Labor and Employment § 3-801**
- **This law states that employers who provide leave with pay to an employee following the birth of the employee's child shall provide the same leave with pay to an employee when a child is placed with the employee for adoption.**



Virginia and West Virginia

- Do *not* have any laws that require employers to provide paid or unpaid sick leave and do not have any rights for family leave beyond FMLA.



Leave Law Tips and Takeaways

- Before you discipline for attendance, check the reasons.
- Check your policies to be clear as to whether unused leave will be paid out on termination.
- Check other leave policies to see how the mandatory leave or paid leave laws affect them (e.g. STD and maternity leave policies).
- Rehire records must be clear whether paid leave is reinstated.
- Check your postings.



Local FEP/Human Rights Laws



Federal Law: Protected Classes

- Race
- Color
- National Origin/Ancestry
- Religion or Creed
- Disability
- Genetic Information
- Sex
- Veteran Status



DC Human Rights Act: Protected Classes

- Applies to all DC employers
- Cannot discriminate in any terms of employment on basis of:
 - Marital Status – including domestic partnership
 - Sexual Orientation
 - Gender Identity or Expression
 - Personal Appearance



DC Human Rights Act: Protected Classes

- **Protected statuses (continued):**
 - **Matriculation**
 - **Family Duties**
 - **Political Affiliation**
 - **Credit Information**
 - **Tobacco Use**
 - **Status as Unemployed**



DC Human Rights Act: Protected Classes

- **One year to file claim (if straight to Superior Court)**
- **Individual Liability**
- **Mandatory Mediation (if filed with Human Rights Office)**



Maryland Human Rights Act

- **Covered Employers:**
 - Employers with **15+** employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, public and private employers, employment agencies, labor organizations, publication or advertisements.



Maryland Human Rights Act

- **Protected Statuses:**
 - **Marital Status**
 - **Sexual Orientation**
 - **Gender Identification**



Maryland Human Rights Act

- The Maryland Commission on Civil Rights accepts complaints within 300 days.
 - Maryland Commission conducts mandatory “Fact Finding Sessions.”
- Can file in Circuit Court if:
 - 180 days in MCCR passed, and:
 - No more than 2 years from date of discrimination.



Maryland Counties

PRINCE GEORGE'S	MONTGOMERY
Race	Race
National Origin	National Origin
Religion	Religion
Color	Color
Age	Age
Sex	Sex
Political Opinion	
Personal Appearance	
Marital Status	Marital Status
Family Status	Genetic Status
Mental or Physical Disability	Mental or Physical Disability
Genetic Information	
Sexual Orientation	Sexual Orientation
Gender Identity	Gender Identity
Occupation	
Pregnancy	
	Ancestry
	Family Responsibilities

Virginia Human Rights Act

- **5-14** Employees (except 5-19 for age)
- Protected Statuses:
 - Same as Federal



Virginia Counties

FAIRFAX Fairfax County Code § 11-1-5 4+ Employees (not family)	ARLINGTON Arlington County Code § 31-3(B) 4+ Employees (not family)	PRINCE WILLIAM Prince William County Rules of Conduct § 10.5 1+ Employees	ALEXANDRIA Alexandria Code of Ordinances §12-4-1 4+ employees (not spouse, parent or children)
Race	Race	Race	Race
Color	Color	Color	Color
Religion	Religion	Religion	Religion
Sex	Sex	Sex	Sex
	Sexual Orientation		Sexual Orientation
Marital Status	Marital Status	Marital Status	Marital Status
National Origin	National Origin	National Origin	National Origin
Age 40+	Age 40+	Age 40+	Age 18+
Disability	Disability	Disability	Disability

Richmond

- **No Human Rights Commission as of June 2018.**
- **If established, it will protect the same statuses as the Virginia Human Rights Act, plus:**
 - **Sexual Orientation**
 - **Gender Identity or Expression**
 - **Transgenderism**



Damages



Recovery by State

District of Columbia Human Rights Act	Maryland Human Rights Act
Reinstatement (with or without backpay)	Equitable Relief
Compensatory Damages (no cap)	Compensatory Damages (no cap)
Attorneys Fees	Attorneys Fees
Civil Penalties (\$10,000 to \$50,000)	Civil Penalties (up to \$2,500)
Costs	
Individual Liability	Punitive Damages
	Backpay (up to 2 years)

Recovery by County (MD)

Montgomery County	Prince George's
Compensatory Damages (no cap)	
Humiliation/Embarrassment (up to \$500,000)	Emotional Damages (up to \$100,000.00)
Lost Wages	Back pay
Equitable Relief	Equitable Relief
Civil Penalties (up to \$5,000)	

Recovery by County (VA)

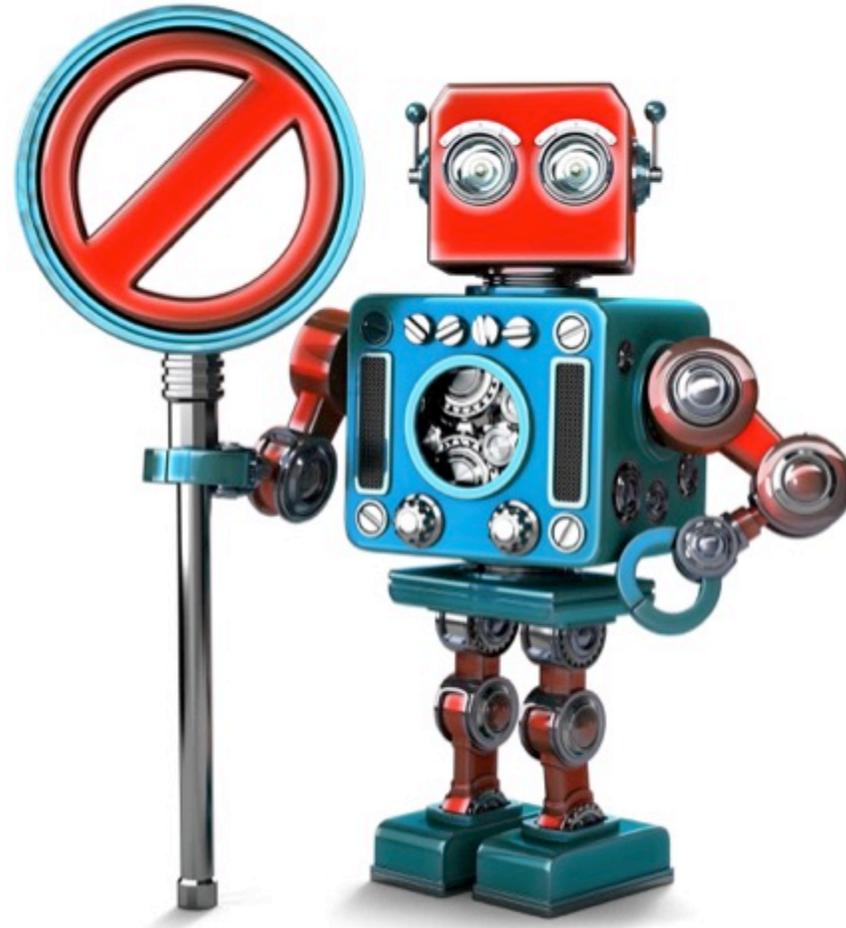
Arlington	Alexandria	Fairfax
Compensatory Damages (no cap)	Compensatory Damages (no cap)	Compensatory Damages (no cap)
Injunctive Relief	Equitable Damages	Injunctive Relief
NO Attorneys Fees	NO Attorneys Fees	NO Attorneys Fees
NO Civil Penalties	NO Civil Penalties	If case brought by County Attorney and pattern/practice or public interest penalties can be up to \$100,000.00 per subsequent violation
	Punitive Damages	

Human Rights Laws Tips and Takeaways

- Never ignore the local ordinances.
- Always check the statute of limitations.
- Documentation is critical.
- Management training is essential.
- Bottom line: Judge only on work performance.



“Ban the Box”/Background Checks



“Ban the Box” DC Law 20-152

- An employer **(10 or more employees)** may not make an inquiry about or require an applicant to disclose or reveal:
 - An arrest; or
 - A criminal accusation made against the applicant, which:
 - Is not then pending against the applicant; or
 - Did not result in a conviction.



“Ban the Box” DC Law 20-152

- An employer may not make an inquiry about or require an applicant to disclose or reveal a criminal conviction until after making a conditional offer of employment.



“Ban the Box” DC Law 20-152

- **Exception:** Where a federal or District law or regulation requires the consideration of an applicant’s criminal history for the purposes of employment:
 - To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories; or,
 - To any facility or employer that provides programs, services, or direct care to minors or vulnerable adults.



“Ban the Box” DC Law 20-152

- Following the extension of a conditional offer of employment, an employer may only withdraw the conditional offer to an applicant or take an adverse action against an applicant for a legitimate business reason.



“Ban the Box” DC Law 20-152

- The employer’s determination of a legitimate business reason must be reasonable in light of the following factors:
 - The specific duties and responsibilities related to the employment sought or held by the applicant.
 - The bearing, if any, of the criminal offense will have on his or her fitness or ability to perform one or more such duties or responsibilities.
 - The time that has elapsed since the criminal offense.



“Ban the Box” DC Law 20-152

- **Considerations (continued)**
 - **The age of the applicant at the time of the occurrence of the criminal offense.**
 - **The frequency and seriousness of the criminal offense.**



“Ban the Box” DC Law 20-152

- If an applicant believes that adverse action was taken on the basis of a criminal conviction, the applicant may request, **within 30 days after the termination or adverse action**, that the employer provide the applicant:
 - A copy of any and all records procured by the employer in consideration of the applicant, including criminal records.
 - A notice that advises the applicant of his or her opportunity to file an administrative complaint with the Office of Human Rights.



“Ban the Box” Penalties

- If the Commission on Human Rights finds that a violation of this subchapter has occurred, the commission shall impose the following penalties, of which half shall be awarded to the complainant:
 - Employers that employ **11 to 30** employees: Up to \$1,000
 - Employers that employ **31 to 99** employees: Up to \$2,500
 - Employers that employ **100+** employees: Up to \$5,000



Maryland “Ban the Box” Laws

- MD “Ban the Box” State Law Passed in 2013 but applies to government positions only.
- Localities with individual ordinances:
 - Baltimore City
 - Montgomery County
 - Prince George’s County



Virginia and West Virginia “Ban the Box” Laws

- VA and WV do not have statewide “Ban the Box” legislation. Always check local ordinances, as many ban if a government position.
- City of Alexandria and Fairfax, Arlington and Prince William Counties outlaw questions about felony convictions on county employment applications.
- OK to ask during interviews.



Maryland Counties' "Ban the Box" Laws

- **Baltimore City:**
 - Applies to any person that employs **10** or more full-time equivalent employees in the city of Baltimore.
 - Contractual, temporary, and seasonal work, as well as employment procured through the services of an agency, are included in the definition of “employment.”
 - Government entities are not considered to be covered employers.



Maryland Counties' "Ban the Box" Laws

- **Montgomery County:**
 - Applies to anyone doing business in, and employing **15** or more full-time persons in, the County.
 - Includes County government, but not the United States, any State or any other local government.



Maryland Counties' "Ban the Box" Laws

- **Prince George's County:**
 - Applies to anyone doing business in, and employing **25** or more full-time persons in, the County.
 - Includes County government, but not the United States, any State or any other local government.



When can you inquire in Maryland?

- **Baltimore City:**
 - **Employer may not, at any time before a conditional offer of employment has been extended:**
 - 1) **Require the applicant to disclose or reveal whether he or she has a criminal record or has had criminal accusations against her or him;**
 - 2) **Conduct a criminal-record check on the applicant;**
 - 3) **Make any inquiry to others about #1 or #2.**



When can you inquire in Maryland?

- In Montgomery County and Prince George's County:
 - Employer may not, **at any time before the conclusion of a first interview:**
 - 1) Require an applicant to disclose whether the applicant has an arrest record or conviction record, or otherwise been accused of a crime;
 - 2) Conduct a criminal record check on the applicant.



Withdrawing a Conditional Offer of Employment

- Baltimore City: **Does not specify.**
- In both Montgomery and Prince George's Counties the employer must:
 - 1) Provide the applicant with a copy of any criminal record report;
 - 2) Notify the applicant **in writing** of the intention to rescind the conditional offer and the items that are the basis rescission, and;
 - 3) Provide **7** days to allow employee to correct inaccuracies.



“Ban the Box” Exceptions

- The following circumstances make respective “Ban the Box” laws inapplicable:
 - Employers who provide programs, services, or direct care to minors, or to vulnerable adults.
 - Criminal inquiry is explicitly authorized or required by law or regulation (whether federal, state, or local).
 - Some jurisdictions for government clearance or certain public positions.



“Ban the Box” Laws Tips and Takeaways

- Take the question off your applications.
- Unless you are exempt, if you are going to do background checks, make conditional offer of employment first.
- Do not make blanket rules of disqualification.
- Before you withdraw a conditional offer of employment, go through the analysis and document why the conviction rendered the **specific** applicant unfit for the **specific** position.
- Consider how you will deal with other employees when they express “fear” of co-worker.



Unemployment, Workers Compensation, and Payment of Wages



Unemployment

- **District of Columbia**
 - Max of 26 weeks @ \$430/week (1+ employees)
- **Maryland**
 - Max of 26 weeks @ \$425/week (1+ employees)
- **Virginia**
 - Max of 26 weeks @ \$996/week (2+ employees)



Workers Compensation*

- **District of Columbia**
 - Max of \$1,466.29/week (1 or more employees)
- **Maryland**
 - Max of \$1,037.00/week (1 or more employees)
- **Virginia**
 - Max of \$996.00/week (2 or more employees)



**Collection of Workers Compensation bars litigation in all 3*

Payment of Wages upon Termination

- **District of Columbia**
 - **If involuntary termination:**
 - **Within 24 hours (4 days if handling money)**
 - **If voluntary termination:**
 - **Within 7 days or next pay day (whichever is sooner)**
- **Failure to comply – amount owed plus 3 times amount owed plus attorney fees and costs.**



Payment of Wages upon Termination

- Maryland and Virginia
 - On or before next pay day
- Maryland Failure to Comply:
 - **3 times** the amount owed plus attorneys fees and costs
- Virginia Failure to Comply:
 - Amount owed plus interest at **8%**



Any Questions?

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