

1 **Amendment in the Nature of a Substitute**
2 **October 6, 2016**

8 A BILL

9 21-415

10 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

11
12
13
14 To establish a universal medical and family paid leave system for individuals employed in the District of
15 Columbia; to require the Department of Insurance, Securities, and Banking to issue a request for
16 proposal and enter into a contract with an insurance company to serve small and medium
17 employers; to utilize available funding to lower the costs of premiums for the small and medium
18 business insurance program; to establish a Commission on Paid Family and Medical Leave; to
19 require employers to annually certify that they are complying with the requirements of providing
20 paid family and medical leave and establish penalties for non-compliance; to provide the timeline
21 for applicability; to establish prohibited acts and enforcement; and to make conforming
22 amendments.

23
24 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this Act may
25 be cited as the “Universal Paid Leave Act of 2016”.

26 **TITLE I. ESTABLISHMENT OF PAID FAMILY AND MEDICAL LEAVE**

27 Sec. 101. Definitions.

28 For the purposes of this title, the term:

29 (1) “Covered employer” means any individual, partnership, general contractor,
30 subcontractor, association, corporation, business trust, or any other person or group of persons acting
31 directly or indirectly in the interest of an employer in relation to a covered employee, but shall not include

1 the United States, the District of Columbia, or employers the District of Columbia is not authorized to tax
2 under federal law or treaty.

3 (2) "D.C. FMLA" means the District of Columbia Family and Medical Leave Act of 1990,
4 effective March 14, 1991 (D.C. Law 8-181; D.C. Official Code § 32-501 *et seq.*).

5 (3) "Eligible individual" means any individual who has the status of an employee, and:

6 (A) Either spends more than 50% of the individual's work time for a covered
7 employer in the District of Columbia, or whose employer is a registered business holder in the District of
8 Columbia and spends the majority of their work time in the District of Columbia; provided, that the term
9 eligible individual shall not include:

10 (i) An employee of the District of Columbia or the federal government;

11 (ii) A short-term employee, hired for less than 90 days

12 (iii) A student employee; or

13 (iv) A self-employed person;

14 and

15 (B) Has been employed by the same covered employer for 1 year without a break in
16 service except for regular holiday, sick, or personal leave granted by the employer and has worked at least
17 1,250 hours during the 1-year period immediately preceding the request for family or medical leave.

18 (4) "Family and medical leave benefits" means the benefits provided pursuant to this title.

19 (5) "Family member" means:

20 (A) A person to whom the eligible individual is related by legal custody, domestic
21 partnership, or marriage; or

22 (B) A foster child.

23 (6) "Health care provider" shall have the same meaning as provided in section 2(5) of the
24 District of Columbia Family and Medical Leave Act of 1990, effective March 14, 1991 (D.C. Law 8-181;
25 D.C. Official Code §32-501(5)).

- 1 (7) “Large employer” means a covered employer that employs 50 or more eligible
2 individuals.
- 3 (8) “Small employer” means a covered employer that employs 19 or fewer eligible
4 individuals.
- 5 (9) “Qualifying event” means one of the following:
- 6 (A) The birth of a child of the eligible individual;
- 7 (B) The legal placement of a child with the eligible individual (such as through
8 adoption, guardianship, or foster care);
- 9 (C) The care of a family member of the eligible individual who has a serious health
10 condition; or
- 11 (D) The care of oneself due to the occurrence of a serious health condition.
- 12 (10) “Serious health condition” means one of the following, that, due to the condition,
13 treatment of the condition, or recovery from the condition, results in an incapacity that makes
14 the individual unable to work, attend school or perform other regular daily activities:
- 15 (A) An illness, injury, impairment or physical or mental condition that involves:
- 16 (i) Inpatient care in a hospital, hospice, or residential health care facility; or
- 17 (ii) Continued treatment at home by a licensed health care provider; or
- 18 (B) Pregnancy complications or post-partum recovery period when medically
19 ordered.
- 20 (C) The existence of a “serious health condition” shall be evaluated under standards
21 consistent with the standards in D.C. Municipal Regulations implementing the D.C. FMLA at D.C.M.R.
22 4-1605.
- 23 (11) “Medium employer” means a covered employer that employs at least 20 but fewer than
24 50 eligible individuals.
- 25 (12) “Student employee” means an employee who:

- 1 (A)(i) Is a full-time student, as defined by an accredited institution of higher education;
- 2 (ii) Is employed by the institution at which the student is enrolled;
- 3 (iii) Is employed for less than 25 hours per week; and
- 4 (iv) Does not replace an employee subject to this title; or
- 5 (B) Is employed as part of the Year Round Program for Youth, as established by the
- 6 Department of Employment Services pursuant to § 32-241(a)(1).

7 Sec. 102. Requirement for covered employers to provide family and medical leave benefits.

8 (a) Covered employers shall provide to all employees who are eligible individuals 8 weeks
9 of family and medical leave benefits that can be used by that eligible individual for leave taken for a
10 qualifying event. Covered employers may provide such leave through any form of paid leave benefit,
11 including without limitation vacation, sick leave, paid time off (“PTO”), personal days, new parent leave,
12 short-term disability benefits, or other salary-replacement benefits, or any combination thereof, provided
13 that such benefits provide eligible individuals with paid family and medical leave benefits for up to 8
14 weeks per 12-month period under this title, and further provided that the individual’s leave accrued over
15 the 12-month period preceding the qualifying event under the D.C. Accrued Sick and Safe Leave Act, as
16 amended (“ASSLA”), shall not be counted towards the 8 weeks of leave under this title. A covered
17 employer with a paid leave policy or policies providing paid leave options, such as a paid time-off
18 program or universal leave policy, shall not be required to
19 modify such policies if the policies, as supplemented if necessary by other paid leave benefits, offer an
20 eligible employee the option, at the employee’s discretion, to use such paid leave under terms and
21 conditions that are at least equivalent to the paid leave benefits prescribed in this title.

22 (b) Family and medical leave benefits shall be provided at the eligible individual’s full rate
23 of pay.

24 (c) Upon the occurrence of a qualifying event, an eligible individual shall be entitled to paid
25 family and medical leave benefits during the 12-month period following the qualifying event; provided,

1 that regardless of the number of qualifying events that occur, an eligible individual shall not be entitled to
2 receive payment under this title for more than 8 workweeks within a 52-week period.

3 (d) Notwithstanding the requirement in subsection (b) of this section, if employees are paid
4 by commission (whether commission only or base wage plus commission), the family and medical leave
5 benefit shall be compensated at a rate no less than the District minimum wage, as established in §32-
6 1003(a).

7 (e) Notwithstanding the requirement in subsection (b) of this section, if employees are paid
8 by an hourly wage, the family and medical leave benefit shall be compensated by an amount equal to the
9 average weekly pay over the 1 year period immediately preceding the qualifying event.

10 (f) Leave authorized under this section shall run concurrently with, and not in addition to,
11 leave authorized by the D.C. FMLA, federal Family and Medical Leave Act, or any other statute
12 authorizing leave on the basis of the qualifying event, except for accrued leave taken pursuant to ASSLA.

13 (g) A covered employer may condition paid leave benefits on adequate certification of the
14 qualifying event and adequate notice of leave by the eligible individual. Certification and notice that
15 would satisfy certification and notice requirements under the D.C. FMLA shall be deemed adequate under
16 this title.

17 Sec. 103. Small and medium employer paid leave implementation.

18 (a) The Department of Insurance, Securities, and Banking shall issue a request for proposal
19 and enter into a contract with an insurer for the provision of paid leave to eligible individuals who are
20 employed by small and medium employers no later than 6 months after the effective date of this act.

21 (1) Nothing in this Act shall be read to preclude large employers from electing to
22 contract with this insurer.

23 (b) Subject to the requirements of Section 105(b) of this Act, small and medium employers
24 shall:

- 1 (1) Purchase paid leave insurance coverage for all eligible individuals that they
2 employ; or
- 3 (2) Certify pursuant to the mandatory employer certification requirements of Section
4 105 of this Act that they are in compliance with Section 102 of this Act.
- 5 (3) Small employers shall not be subject to the requirements of Sections 102 and
6 103(b) until the later of (i) the effective date established by Section 106(b) or (ii) sixty (60) days after
7 paid leave benefits are made available for purchase by small employers by an insurer with a contract from
8 Department of Insurance, Securities, and Banking.

9 (c) Section 1152(b) of the Fiscal Year 2017 Budget Support Act of 2016 (Bill 21-669,
10 approved on final reading June 21, 2016), shall be amended to read as follows:

- 11 “(b) There shall be deposited into the fund:
- 12 “(1) \$20,039,000 of local funds in Fiscal Year 2016; and
- 13 “(2) Insurance premiums paid by employers to provide paid leave to the eligible
14 individuals that they employ.”.

15 (d) Subject to approval in a budget and financial plan, \$2,039,000 in one-time local funds
16 shall be made available to the Department of Insurance, Securities, and Banking from the Universal Paid
17 Leave Implementation Fund in Fiscal Year 2017 to fund any program start-up costs.

18 (e) Beginning October 1, 2017, the District shall appropriate a minimum of \$6 million
19 annually in recurring local funds to offset premium costs paid by small and medium employers. Funding
20 shall be allocated during the financial plan period (Fiscal Years 2018, 2019, and 2020), from the
21 Universal Paid Leave Implementation Fund.

22 Sec. 104. Establishment of the Commission on Paid Family and Medical Leave.

23 (a) There is established a Commission on Paid Family and Medical Leave (“Commission”),
24 to assess the provision of paid leave benefits in the District and prepare a comprehensive report and
25 recommendations to the Council and the Mayor to address any identified issues.

- 1 (b) The Commission shall have 15 voting members, who shall be appointed as follows:
- 2 (1) The Director of the District of Columbia Department of Insurance, Securities,
- 3 and Banking;
- 4 (2) The Director of the District of Columbia Department of Small and Local
- 5 Business Development;
- 6 (3) The Director of the District of Columbia Department of Employment Services;
- 7 (4) 12 members with expertise in at least one of the following areas:
- 8 (A) District of Columbia small business community;
- 9 (B) Labor unions;
- 10 (C) Development of paid family and medical leave benefit policies;
- 11 (D) District of Columbia business community;
- 12 (E) Regional economic analysis; or
- 13 (F) Insurance policies.
- 14 (i) Six voting members shall be appointed by the Council.
- 15 (ii) Six voting members shall be appointed by the Mayor.
- 16 (c) The Commission shall have the following non-voting members:
- 17 (1) The Chief Financial Officer, or his or her designee;
- 18 (2) Two District residents shall be appointed by the Council; and
- 19 (3) Two District residents shall be appointed by the Mayor.
- 20 (d) Within three years of the effective date of this Act, the Commission shall publish a report
- 21 to the Council and the Mayor that analyzes:
- 22 (1) Whether the parameters for the length of paid family and medical leave, amount
- 23 of wage replacement, and types of qualifying events are appropriate;
- 24 (2) Whether the employer mandate model is effective;

- 1 (3) Whether the benefit is accessible and useful to employees, in particular low-
2 income working families;
- 3 (4) The impact of paid family and medical leave policies on small employers and
4 medium employers;
- 5 (5) Mechanisms for shared employee and employer contributions;
- 6 (6) Whether and how to provide similar benefits to self-employed individuals who
7 are D.C. residents;
- 8 (7) Data collected pursuant to Section 105 of this Act;
- 9 (8) How to preserve regional competitiveness;
- 10 (9) Any vulnerabilities in the paid family and medical leave program to employer or
11 employee fraud or mismanagement.

12 Sec. 105. Mandatory employer certification.

13 (a) On an annual basis, covered employers shall provide certification to the Mayor regarding
14 their provision of paid family and medical leave benefits. This certification shall include:

- 15 (1) A unique identifier for each eligible individual that requested paid family and
16 medical leave;
- 17 (2) The number of eligible individuals that requested paid family and medical leave;
- 18 (3) The number of eligible individuals that were granted paid family and medical
19 leave;
- 20 (4) The type of qualifying event or events for requested and/or granted paid family
21 and medical leave;
- 22 (5) The length of leave requested and taken;
- 23 (6) The eligible individual's salary; and
- 24 (7) The eligible individual's residency.

1 (b) To the extent possible, the Mayor shall align the reporting system with existing employer
2 reporting requirements.

3 (c) The Mayor is authorized to establish and enforce a system of fines for failure to comply
4 with the requirements of this section.

5 Sec. 106. Applicability.

6 The rights and responsibilities established by this title shall apply:

7 (a) One year after the effective date of this title, to large employers;

8 (b) Two years after the effective date of this title, to small and medium employers.

9 Sec. 107. Effect on existing employment benefits.

10 (a) Nothing in this title shall diminish an employer's obligation to comply with any
11 collective bargaining agreement or any employment benefit program or plan that provides greater family
12 or medical leave benefits to an employee than the family and medical leave benefits provided under this
13 title.

14 (b) The rights provided to an employee under this title may not be diminished by any
15 collective bargaining agreement or any employment benefit program or plan, except that this title shall
16 not supersede any clause on family or medical leave benefits in any collective bargaining agreement in
17 force before the effective date of this act, for the time that the collective bargaining agreement is in effect.

18 (c) Nothing in this title shall be construed to discourage an employer from the adoption or
19 retention of family and medical leave benefits more generous than the family and medical leave benefits
20 required by this title.

21 Sec. 108. Prohibited acts.

22 (a)¶ It shall be unlawful for any person to take an adverse employment action against any
23 individual in retaliation for exercising or attempting in good faith to exercise any right provided by this
24 title.

1 (b) It shall be unlawful for an employer to discharge or discriminate in any manner against
2 any person because the person:

3 (1) Opposes any practice made unlawful by this title;

4 (2) Pursuant or related to this title:

5 (A) Files or attempts to file a charge;

6 (B) Institutes or attempts to institute a proceeding; or

7 (C) Facilitates the institution of a proceeding; or

8 (3) Gives any information or testimony in connection with an inquiry or proceeding
9 related to this title.

10 (c) An eligible employee has no greater right to reinstatement by a covered employer or to
11 other benefits and conditions of employment than if the employee had been continuously reporting to
12 work during the period the employee used paid leave benefits under this title. An action taken by an
13 employer based solely on factors other than the person's engaging in activities protected by this title shall
14 not constitute a prohibited act under this title.

15 Sec. 109. Administrative enforcement procedure; relief.

16 (a) The Mayor shall provide an administrative procedure within the Office of Human Rights,
17 pursuant to which a person claimed to be aggrieved under this title may file a complaint against an
18 employer alleged to have violated this title. A complaint shall be filed within 1 year of the occurrence or
19 discovery of the alleged violation of this title.

20 (b) The administrative procedure shall include, but not be limited to:

21 (1) An investigation of the complaint and an attempt to resolve the complaint by
22 conference, conciliation, or persuasion;

23 (2) If the complaint is not resolved, a determination on the existence of probable
24 cause to believe a violation of this title has occurred;

1 (3) If there is a determination that probable cause exists, the issuance and service of
2 a written notice and a copy of the complaint to the employer alleged to have committed the violation that
3 requires the employer to answer the charges of the complaint at a formal hearing;

4 (4) A hearing conducted in accordance with procedures that the Mayor shall
5 promulgate pursuant to § 2-501;

6 (5) A decision and order accompanied by findings of fact and conclusions of law;

7 (6) If there is a determination that an employer committed a violation of this title, the
8 issuance of an order that requires the employer to pay the employee damages in an amount equal to:

9 (A) Any family and medical leave benefits denied or lost to the employee
10 due to the violation, plus interest on the amount calculated at the rate prescribed in § 28-3302(b) or (c);
11 and

12 (B) An amount equal to the greater of:

13 (i) The amount determined under subparagraph (A) of this
14 paragraph; or

15 (ii) Consequential damages not to exceed an amount equal to 3 times
16 the amount determined under Subparagraph (A) of this paragraph plus any medical expenses not covered
17 by the health insurance of the employee; or

18 (C) A reduction in damages, within the discretion of the trier of fact, for an
19 employer who violates this title and proves that the violation occurred in good faith and that the employer
20 had reasonable grounds to believe that the employer's action or omission was not in violation of this title;
21 and

22 (7) A provision that authorizes the award of costs and reasonable attorney's fees to
23 the prevailing party in addition to other relief awarded under this title.

24 (c) Any person who is adversely affected or aggrieved by an order or decision issued
25 pursuant to subsection (b) of this section is entitled to judicial review of the order or decision in

1 accordance with § 2-510, upon filing a written petition for review in the District of Columbia Court of
2 Appeals.

3 (d)(1) If the Mayor determines that the employer has not complied with an order after 20 days
4 following service of the order, the Mayor shall certify the matter to the Office of the Attorney General
5 and to any other agency as may be appropriate for enforcement.

6 (2) The Office of the Attorney General shall institute, in the name of the District, a
7 civil proceeding that may include seeking injunctive relief, as is necessary to obtain complete compliance
8 with the order.

9 (3) An enforcement action shall not be instituted pending judicial review as provided
10 in subsection (c) of this section.

11 (e) The entire administrative enforcement procedure outlined in subsections (a) and (b) of
12 this section, including the formal hearing, shall take no longer than 150 days to complete from the date
13 the complaint is filed. If the Mayor fails to make a reasonable effort to comply with the deadline
14 requirements of the administrative enforcement provisions prescribed by this subsection and the rules
15 promulgated by the Mayor, the person who initiated the administrative enforcement procedure against the
16 employer may file a civil action against the employer pursuant to § 32-510.

17 Sec. 110. Enforcement by civil action.

18 (a) Subject to the provisions in subsection (b) of this section, an employee or the Mayor may
19 bring a civil action against any employer to enforce the provisions of this title in any court of competent
20 jurisdiction. An employer may also bring a civil action against an employee who has fraudulently
21 obtained benefits under this title.

22 (b) No civil action may be commenced more than 1 year after the occurrence or discovery of
23 the alleged violation of this title.

24 (c) If a court determines that an employer violated any provision of this title, the damages
25 provision prescribed in § 32-509(b)(6) and § 32-509(b)(7) shall apply.

1 (d) If a court determines that an employee fraudulently obtained benefits under this title, the
2 employer shall be entitled to an award of an amount equal to the fraudulently obtained benefit payments
3 plus interest on the amount calculated at the rate prescribed in § 28-3302(b) or (c), plus costs and
4 reasonable attorney's fees.

6 TITLE II. CONFORMING AMENDMENTS

7 Sec. 201. The D.C. Family and Medical Leave Act of 1990, effective March 14, 1991 (D.C. Law
8 8-181; D.C. Official Code § 32-501), is amended as follows:

9 (a) Section 2 is amended as follows:

10 (1) Subparagraph (B) is amended by striking the word "or".

11 (2) Subparagraph (C) is amended by striking the period and inserting the phrase "
12 or" in its place.

13 (3) A new subparagraph (D) is added to read as follows:

14 "(D) A foster child."

16 TITLE III. FISCAL IMPACT STATEMENT

17 The Council adopts the fiscal impact statement in the committee report as the fiscal impact
18 statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December
19 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

21 TITLE IV. EFFECTIVE DATE

22 This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor,
23 action by the Council to override the veto), a 30-day period of Congressional review as provided in
24 section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813;
25 D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.