Thank you for this opportunity to comment on proposed and existing regulatory requirements affecting the competitive position of employers and employees in the District of Columbia. On behalf of itself and its members, the American Society of Association Executives (“ASAE”) urges the Mayor to work with the D.C. Council to enact the Employer Mandate paid family and medical leave bill proposed by the D.C. Chamber of Commerce and a broad coalition of employer groups. A copy of the proposed Employer Mandate bill was distributed to the Mayor and Councilmembers on October 6, 2016, and is attached for your reference. The Employer Mandate bill is better for both D.C. employees and D.C. employers than the payroll tax-based, government administered Universal Paid Leave bill (Bill 21-415) currently under consideration by the Council. Both in manageability of administration and in cost burden to employers, the Employer Mandate model would place D.C. employers at less of a competitive disadvantage compared to employers in surrounding jurisdictions than the Universal Paid Leave bill, while still providing D.C. employees with the guarantee of paid leave for family and medical absences.

1. About ASAE

ASAE is a Washington, D.C.-based membership organization that represents more than 21,000 association executives and industry partners, from more than 10,000 nonprofit organizations across the United States and in more than 50 countries. ASAE members manage nonprofit 501(c)(6) trade and professional associations, individual membership societies, and voluntary organizations. The nonprofit organizations managed by ASAE’s members include many 501(c)(3) tax-exempt charities and educational organizations, as well as religiously affiliated organizations, grant making and giving services, social advocacy organizations, and civic and social organizations. ASAE provides resources, education, ideas and advocacy to enhance the power and performance of the association and nonprofit community.

The nonprofit associations that are led by ASAE members range in size from local organizations with tiny budgets and just one or two employees to large national or international membership organizations with thousands of employees and millions of members. According to 2013 Bureau of Labor Statistics (“BLS”) data, associations in the Washington, D.C., metropolitan region employ approximately 37,000 employees. The 2014 IRS Business Master File lists 35,661 501(c)(3) organizations and 2,916 501(c)(6) organizations registered in the Washington, D.C. metropolitan area. Examples of large nonprofit membership associations based in Washington, D.C., include AARP, the National Retail Federation, and the YMCA. Examples of small associations in the District that nonetheless do important work include American Academy of Nursing, The National Association of Minority Architects, and the National Association for Bilingual Education. ASAE itself employs approximately 120 employees at its D.C. headquarters office.

ASAE can therefore speak to the concerns of D.C. employers of all sizes. Association employers, like ASAE and the organizations managed by ASAE’s members, recognize that their
employers are their strength and greatest asset, and associations therefore typically provide generous benefit packages, including paid leave. ASAE is concerned that the 1% payroll tax imposed by the Universal Paid Leave bill would preclude continuation of existing voluntary benefit packages by association employers and would make administration of employee absences and benefits unreasonably difficult by inserting the D.C. government into decisions about and administration of paid leave requests. This would hurt both employers and employees. If that bill is enacted, ASAE predicts that many association employers and other businesses, particularly small businesses, will relocate to Maryland or Virginia rather than contend with a disruptive and costly new regulatory scheme.

2. The Employer Mandate Paid Family and Medical Leave Bill Would Benefit Both Employees and Employers

The Employer Mandate bill would require all covered D.C. employers – small, medium, and large – to provide eight weeks of paid leave per year to eligible employees who experience qualifying events. Qualifying events would include the birth, adoptive placement, or foster placement of a child; leave taken for the employee’s own serious physical or mental health condition, or to care for a spouse, partner, or child with a serious health condition. The effective date for large employers would come one year sooner than for small employers (with 1-19 employees) and medium employers (with 20-49 employees), but no employer would be exempt from coverage based on size. The Employer Mandate bill also would require the D.C. government to contract with an insurer to provide a paid leave insurance product to small and medium employers in the District, so these employers would have an affordable way to meet their obligation to ensure paid leave for their employees who need to take family or medical leave. The eight weeks of paid leave in the Employer Mandate bill matches the D.C. government’s paid family and medical leave program for its own employees.

The Employer Mandate bill’s effectiveness lies in its simplicity. Most D.C. employers already offer a variety of paid leave benefits to their employees, and these benefits, alone or in combination, provide employees with salary continuation for leave taken for a qualifying event. Under the Employer Mandate bill, any of these existing paid leave benefits will count towards the eight-week entitlement for eligible employees with a qualifying event. The only exception is accrued leave under the D.C. Accrued Sick and Safe Leave Act (“ASSLA”), which employees will have the right to access in addition to their eight weeks of paid family or medical leave. No D.C. employer will have to change their existing benefit policies, but they will be required to supplement them, as needed, to guarantee eligible employees with a qualifying event up to the full eight weeks of salary continuation to which they are entitled.

Under the Employer Mandate bill, D.C. employees would have the assurance of a financial safety net and 100% salary continuation for up to eight weeks for any qualifying event. Moreover, the Employer Mandate bill provides this safety net directly from the employer, without requiring employees with a qualifying event to submit an application for benefits to a new bureaucracy and wait several weeks for their application to be processed and the benefit check to be issued. The Employer Mandate bill is also beneficial to the majority of employees who will not have new babies or need for a long medical leave for themselves or their families in any given year. Because the Employer Mandate model preserves existing benefit packages, all D.C. employees can still benefit from their employers’ generous paid leave benefits to use for vacation, other commitments that are not covered by the bill, or other personal absences. By contrast, as discussed below, the Universal Paid Leave bill’s payroll tax approach will force
many employers to slash their existing voluntary benefits packages for D.C. employees in order to fund the paid family and medical leave system.

Importantly for D.C. employers, the Employer Mandate model preserves the existing relationship between employers and employees, without inserting a D.C. government bureaucracy into administration of leave benefits. It is far less disruptive to D.C. employers than the proposed Universal Paid Leave bill, allowing employers flexibility to offer a variety of benefits and to have consistent benefit policies across jurisdictions. It is less costly to D.C. employers than a 1% payroll tax, as supplemental salary continuation benefits would only have to be extended to those eligible employees who actually experience a qualifying event that requires an absence of a longer duration than covered under the employer’s existing policies. Based on the paid leave benefit usage levels of D.C. government employees, only an estimated 14% of employees would need the eight weeks of benefits each year. The ease of the administration and the relative cost of the Employer Mandate bill thus is greatly superior to the Universal Paid Leave bill’s approach.

3. The Proposed Universal Paid Leave Bill Would Be Harmful to Both D.C. Employees and D.C. Employers

As Chairman Mendelson and other Councilmembers have acknowledged in public hearings on the payroll tax Universal Paid Leave bill, all drafts of that bill currently under consideration have failed to address how the proposed government-administered but employer-funded paid leave program would coordinate with existing paid leave policies offered by employers. All versions of the bill that have been shared publicly provide no credit to employers for the benefits they already provide. The reality is that most employers would not be able to afford to continue offering paid time off, vacation, new parent leave, and short-term disability benefits to their D.C. employees if they are also paying a 1% payroll tax to provide similar paid leave benefits to those employees through a government-administered program. If the Universal Paid Leave bill is enacted in any form similar to its current form, District employees will find that many of their existing benefits disappear. For the majority of D.C. employees who will not experience a qualifying event in a given year, the Universal Paid Leave bill is a losing proposition, as they will see reduced or eliminated benefit packages in order to fund a new system they don’t need. Even employees who do experience a qualifying event will be worse off, and they won’t have the salary continuation system of the Employer Mandate model. Instead, they will be left to hope that a brand new D.C. government bureaucracy will reliably, promptly, and accurately process and pay their applications for paid leave benefits.

Moreover, whether all qualifying employees will receive their paid leave benefits is an open question under the Universal Paid Leave model. The Council has yet to provide a definitive statement of whether the 1% payroll tax will be sufficient to fund the new bureaucracy and the benefit payments. The D.C. government may also find that it needs to redirect the payroll tax proceeds from the paid leave benefit fund to other priorities. The promise of the Universal Paid Leave bill will be an empty one if there are inadequate funds to cover the benefit payments.

In addition, employers with offices both in the District and in other jurisdictions would be in the uncomfortable position of having to offer different levels of paid leave benefits to their employees, depending on where those employees sit. The Universal Paid Leave bill entails more disruption for employers, and could subject them to long absences by new employees and by key staff of small employers. Any business without a compelling need to locate in D.C. would be
prudent to locate across the border in Virginia or Maryland instead to avoid these problems and costs.