

1 **Amendment in the Nature of a Substitute**
2 **November 8, 2016**

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

A BILL

21-415

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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

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

TITLE I. ESTABLISHMENT OF PAID FAMILY AND MEDICAL LEAVE

Sec. 101. Definitions.

For the purposes of this title, the term:

- (1) “Covered employer” means any individual, partnership, general contractor, subcontractor, association, corporation, business trust, or any other person or group of persons acting 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:

26 (A)(i) Is a full-time student, as defined by an accredited institution of higher education;

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

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

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

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

23 (c) Upon the occurrence of a qualifying event, an eligible individual shall be entitled to paid
24 family and medical leave benefits during the 12-month period following the qualifying event; provided,
25 that regardless of the number of qualifying events that occur, an eligible individual shall not be entitled to
26 receive payment under this title for more than 8 workweeks within a 52-week period.

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

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

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

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

15 **Sec. 103. Small and medium employer paid leave implementation.**

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

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

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

23 (1) Purchase paid leave insurance coverage for all eligible individuals that they
24 employ; or

25 (2) Certify pursuant to the mandatory employer certification requirements of Section
26 105 of this Act that they are in compliance with Section 102 of this Act.

1 (3) Small employers shall not be subject to the requirements of Sections 102 and
2 103(b) until the later of (i) the effective date established by Section 106(b) or (ii) sixty (60) days after
3 paid leave benefits are made available for purchase by small employers by an insurer with a contract from
4 Department of Insurance, Securities, and Banking.

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

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

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

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

16 (b) The Commission shall have 15 voting members, who shall be appointed as follows:

17 (1) The Director of the District of Columbia Department of Insurance, Securities,
18 and Banking;

19 (2) The Director of the District of Columbia Department of Small and Local
20 Business Development;

21 (3) The Director of the District of Columbia Department of Employment Services;

22 (4) 12 members with expertise in at least one of the following areas:

23 (A) District of Columbia small business community;

24 (B) Labor unions;

25 (C) Development of paid family and medical leave benefit policies;

26 (D) District of Columbia business community;

- 1 (E) Regional economic analysis; or
- 2 (F) Insurance policies.
- 3 (i) Six voting members shall be appointed by the Council.
- 4 (ii) Six voting members shall be appointed by the Mayor.
- 5 (c) The Commission shall have the following non-voting members:
- 6 (1) The Chief Financial Officer, or his or her designee;
- 7 (2) Two District residents shall be appointed by the Council; and
- 8 (3) Two District residents shall be appointed by the Mayor.
- 9 (d) Within three years of the effective date of this Act, the Commission shall publish a report
- 10 to the Council and the Mayor that analyzes:
- 11 (1) Whether the parameters for the length of paid family and medical leave, amount
- 12 of wage replacement, and types of qualifying events are appropriate;
- 13 (2) Whether the employer mandate model is effective;
- 14 (3) Whether the benefit is accessible and useful to employees, in particular low-
- 15 income working families;
- 16 (4) The impact of paid family and medical leave policies on small employers and
- 17 medium employers;
- 18 (5) Mechanisms for shared employee and employer contributions;
- 19 (6) Whether and how to provide similar benefits to self-employed individuals who
- 20 are D.C. residents;
- 21 (7) Data collected pursuant to Section 105 of this Act;
- 22 (8) How to preserve regional competitiveness;
- 23 (9) Any vulnerabilities in the paid family and medical leave program to employer or
- 24 employee fraud or mismanagement.

25 **Sec. 105. Mandatory employer certification.**

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

3 (1) A unique identifier for each eligible individual that requested paid family and
4 medical leave;

5 (2) The number of eligible individuals that requested paid family and medical leave;

6 (3) The number of eligible individuals that were granted paid family and medical
7 leave;

8 (4) The type of qualifying event or events for requested and/or granted paid family
9 and medical leave;

10 (5) The length of leave requested and taken;

11 (6) The eligible individual's salary; and

12 (7) The eligible individual's residency.

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

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

17 **Sec. 106. Applicability.**

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

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

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

21 **Sec. 107. Effect on existing employment benefits.**

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

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

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

8 **Sec. 108. Prohibited acts.**

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

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

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

15 (2) Pursuant or related to this title:

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

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

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

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

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

26 **Sec. 109. Administrative enforcement procedure; relief.**

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

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

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

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

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

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

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

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

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

20 and

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

22 (i) The amount determined under subparagraph (A) of this
23 paragraph; or

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

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

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

7 (c) Any person who is adversely affected or aggrieved by an order or decision issued
8 pursuant to subsection (b) of this section is entitled to judicial review of the order or decision in
9 accordance with § 2-510, upon filing a written petition for review in the District of Columbia Court of
10 Appeals.

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

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

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

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

25 **Sec. 110. Enforcement by civil action.**

