

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish a paid-leave system for individuals employed in the District of Columbia; and to amend the Office of Administrative Hearings Establishment Act of 2001, the D. C. Family and Medical Leave Act of 1990, and the Universal Paid Leave Implementation Fund Act of 2016 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 Amendment Act of 2016”.

Title I. Establishment of Paid-Leave Program

Sec. 101. Definitions.

For the purposes of this title, the term:

(1) “Average weekly wage” means the total wages subject to contribution under section 103 earned by an eligible individual during the 4 out of the 5 quarters immediately preceding the qualifying event during which the eligible individual’s wages were highest, divided by 52.

(2) “Bonding” means the formation of a close emotional and psychological relationship between a parent or primary caregiver and an infant or child.

(3) “Covered employee” means an employee of a covered employer:

(A) Who spends more than 50% of his or her work time for that employer working in the District of Columbia; or

(B) Whose employment for the covered employer is based in the District of Columbia and who regularly spends a substantial amount of his or her work time for that covered employer in the District of Columbia and not more than 50% of his or her work time for that covered employer in another jurisdiction.

(4) “Covered employer” means:

(A) Any individual, partnership, general contractor, subcontractor, association, corporation, business trust, or any group of persons 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 and is required to pay unemployment insurance on behalf of its

employees by section 3 of the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 947; D.C. Official Code § 51-103); provided, that the term “covered employer” shall not include the United States, the District of Columbia, or any employer that the District of Columbia is not authorized to tax under federal law or treaty; or

(B) A self-employed individual who has opted into the paid-leave program established pursuant to this act.

(5) “D.C. FMLA” means the District of Columbia Family and Medical Leave Act of 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-501 *et seq.*).

(6) “Eligible individual” means a person whose claim for paid-leave benefits is not based on employment for the United States, the District of Columbia, or an employer that the District of Columbia is not authorized to tax under federal law or treaty, who meets the requirements of this act and regulations issued pursuant to this act and:

(A) Has been a covered employee during some or all of the 52 calendar weeks immediately preceding the qualifying event for which paid leave is being taken; or

(B) Is a self-employed individual who has:

(i) Opted into the paid-leave program established pursuant to this act; and

(ii) Earned self-employment income for work performed more than 50% of the time in the District of Columbia during some or all of the 52 calendar weeks immediately preceding the qualifying event for which paid leave is being taken.

(7) “Family member” means:

(A) A biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or a person to whom an eligible individual stands in loco parentis;

(B) A biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to an eligible individual when the eligible individual was a child;

(C) A person to whom an eligible individual is related by domestic partnership, as defined by section 2(4) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(4)), or marriage;

(D) A grandparent of an eligible individual; or

(E) A sibling of an eligible individual.

(8) “Health care provider” shall have the same meaning as provided in section 2(5) of the District of Columbia Family and Medical Leave Act of 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-501(5)).

(9) “Intermittent leave” means paid leave taken in increments of no less than one day, rather than for one continuous period of time.

(10) “Open enrollment period” means:

(A) The first 90 days after the date on which the Mayor, pursuant to section 103, begins to collect contributions to the Universal Paid Leave Implementation Fund;

(B) The 60 days following the commencement of business in the District of Columbia by a self-employed individual; or

(C) Beginning with calendar year 2020 and in each calendar year thereafter, the months of November and December.

(11) "Paid-leave benefits" means the monetary benefits provided pursuant to this act.

(12) "Qualifying family leave" means paid leave for up to a maximum amount of 6 workweeks within a 52-workweek period that an eligible individual may take in order to provide care or companionship to a family member because of the occurrence of a qualifying family leave event.

(13) "Qualifying family leave event" means the diagnosis or occurrence of a serious health condition of a family member of an eligible individual.

(14) "Qualifying medical leave" means paid leave for up to a maximum of 2 workweeks within a 52-workweek period that an eligible individual may take following the occurrence of a qualifying medical leave event.

(15) "Qualifying medical leave event" means the diagnosis or occurrence of a serious health condition of an eligible individual.

(16) "Qualifying parental leave" means paid leave for up to a maximum of 8 workweeks within a 52-workweek period that an eligible individual may take within one year of the occurrence of a qualifying parental leave event.

(17) "Qualifying parental leave event" means events, including bonding, associated with:

(A) The birth of a child of an eligible individual;

(B) The placement of a child with an eligible individual for adoption or foster care; or

(C) The placement of a child with an eligible individual for whom the eligible individual legally assumes and discharges parental responsibility.

(18) "Retaliate" means to:

(A) Commit any form of intimidation, threat, reprisal, harassment, discrimination, or adverse employment action, including discipline, discharge, suspension, transfer or assignment to a lesser position in terms of job classification, job security, or other condition of employment;

(B) Reduce pay or hours or deny an individual additional hours;

(C) Inform another employer that the person has engaged in activities protected by this act; or

(D) Report, or threaten to report, the actual or suspected citizenship or immigration status of an employee, former employee, or family member of an employee or former employee, to a federal, state, or local agency.

(19) "Self-employment income" means gross income earned from carrying on a trade or business as a sole proprietor, an independent contractor, or a member of a partnership.

(20) "Serious health condition" means a physical or mental illness, injury, or impairment that requires inpatient care in a hospital, hospice, or residential health care facility, or continuing treatment or supervision at home by a health care provider or other competent individual. For the purposes of this definition:

ENROLLED ORIGINAL

(A)(i) The term “treatment” includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition.

(ii) Treatment does not include routine physical examinations, eye examinations, or dental examinations.

(iii) A regimen of continuing treatment such as the taking of over-the-counter medications, bed rest, or similar activities that can be initiated without a visit to a health care provider is not, by itself, sufficient to constitute continuing treatment for the purposes of this act.

(B) The term “inpatient care” is the care of a patient in a hospital, hospice, or residential medical care facility for the duration of one overnight period or longer, or any subsequent treatment in connection with such inpatient care.

(C) The term “incapacity” means inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment of the serious health condition, or recovery from the serious health condition.

(D) Conditions for which cosmetic treatments are administered are not serious health conditions; provided, that procedures related to an individual’s gender transition shall not be considered cosmetic treatments for the purposes of this subparagraph.

(E) A serious health condition involving continuing treatment by a health care provider means any one or more of the following:

(i) A period of incapacity of more than 3 consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:

(I) Treatment of 2 or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider. For the purposes of this sub-subparagraph, “extenuating circumstances” means circumstances beyond an individual’s control that prevent the follow-up visit from occurring as planned by the health care provider;

(II) The first, or only, in-person treatment visit within 10 days after the first day of incapacity if extenuating circumstances exist; or

(III) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider;

(ii) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(I) Requires 2 or more periodic visits annually for treatment by a health care provider or by a nurse under direct supervision of a health care provider;

(II) Continues over an extended period of time, which shall include recurring episodes of a single underlying condition; and

(III) May cause episodic rather than a continuing period of incapacity;

(iii) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The family member of an eligible individual must be under continuing supervision of, but need not be receiving active treatment by, a health care provider; or

(iv) Any period of absence to receive multiple treatments (including any period of recovery from the treatments) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:

(I) Restorative surgery after an accident or other injury; or

(II) A condition that would likely result in a period of incapacity of more than 3 consecutive, full calendar days in the absence of medical intervention or treatment.

(21) “Uniform Paid Leave Implementation Fund” means the Uniform Paid Leave Implementation Fund established by section 1152 of the Universal Paid Leave Implementation Fund Act of 2016, effective October 8, 2016 (D.C. Law 21-160; 63 DCR 10775).

(22) “Wages” shall have the same meaning as provided in section 1(3) of the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 946; D.C. Official Code § 51-101(3)); provided, that the term “wages” also shall include self-employment income earned by a self-employed individual who has opted into the paid-leave program established pursuant to this act.

Sec. 102. Establishment of a paid-leave program; rules.

(a) The Mayor shall establish a paid-leave program to administer the paid-leave benefits provided for in this act.

(b)(1) Within 180 days after the effective date of this act, the Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this act.

(2) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 45-day period, the proposed rules shall be deemed approved.

Sec. 103. Contributions to the Universal Paid Leave Implementation Fund

(a) A covered employer shall contribute an amount equal to 0.62% of the wages of each of its covered employees to the Universal Paid Leave Implementation Fund in a manner prescribed by the Mayor.

(b) A covered employer who is a self-employed individual who has opted-in to the paid-leave program established pursuant to this act shall contribute an amount equal to 0.62% of his or her annual self-employment income to the Universal Paid Leave Implementation Fund in a manner prescribed by the Mayor.

(c) Within 180 days after the effective date of this act, the Mayor shall provide public notice to covered employers regarding the manner in which the Mayor shall collect contributions to the Universal Paid Leave Implementation Fund.

(d) By July 1, 2019, the Mayor shall begin to collect contributions to the Universal Paid Leave Implementation Fund from covered employers.

(e) Upon a self-employed individual's becoming a covered employer by opting into the paid-leave program established pursuant to this act, the Mayor shall provide notice to that individual regarding the manner in which contributions to the Universal Paid Leave Implementation Fund shall be collected from the individual.

(f) A covered employer who fails to contribute any amount required by this section to the Universal Paid Leave Implementation Fund shall be subject to the same notice requirements, procedures, interest, penalties, and remedies set forth in section 4 of the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 948, D.C. Official Code § 51-104).

Sec. 104. Duration and amount of benefits.

(a) Upon the occurrence of a qualifying family leave event, qualifying medical leave event, or qualifying parental leave event, an eligible individual may file a claim for benefits to be paid pursuant to this act.

(b) After the occurrence of a qualifying family leave event, qualifying medical leave event, or qualifying parental leave event, an eligible individual shall wait one week during and for which no benefits are payable before being entitled to receive payment of his or her paid-leave benefits; provided, that regardless of the number of qualifying events for which an eligible individual files a claim for paid-leave benefits, he or she shall only have one waiting period during and for which no benefits are payable within a 52-week period.

(c) Following the filing of a claim and the one-week waiting period, if applicable, an eligible individual shall be entitled to receive payment of his or her paid-leave benefits; provided, that the payment of such benefits shall be made in the amount and manner set forth in the Mayor's initial determination made pursuant to section 106, as modified by the result of any appeal brought pursuant to section 108, and otherwise shall be subject to the provisions of this act.

(d) An eligible individual may submit a claim for payment of his or her paid-leave benefits for a period during which he or she does not perform his or her regular and customary work because of the occurrence of a qualifying family leave event, qualifying medical leave event, or qualifying parental leave event; provided, that an eligible individual shall not be entitled to receive payment for more than 8 workweeks total of paid-leave benefits in a 52-workweek period regardless of the number of qualifying leave events that occurred during that period.

(e) The International Classification of Diseases, Tenth Revision (ICD-10), or subsequent revisions by the World Health Organization to the International Classification of Diseases, along with the health care provider or caretaker assessments, shall be used to determine the appropriate length of paid family leave an eligible individual is entitled to, up to a maximum of 6

workweeks, based on the serious health condition of the eligible individual's family member, or medical leave an eligible individual is entitled to, up to a maximum of 2 workweeks, based on the serious health condition of the eligible individual.

(f) An eligible individual may receive payment for intermittent leave; provided, that the total amount of intermittent leave shall not exceed 6 workweeks in a 52-workweek period for a qualifying family leave event, 2 workweeks in a 52-workweek period for a qualifying medical leave event, or 8 workweeks in a 52-workweek period for a qualifying parental leave event.

(g)(1) An eligible individual who earns an average weekly wage that is equal to or less than 150% of the District's minimum wage multiplied by 40 shall be entitled to weekly paid-leave benefits that shall equal 90% of that eligible individual's average weekly wage.

(2) An eligible individual who earns an average weekly wage that is greater than 150% of the District's minimum wage multiplied by 40 shall be entitled to payment of weekly paid-leave benefits that shall equal:

(A) 90% of 150% of the District's minimum wage multiplied by 40; plus

(B) 50% of the amount by which the eligible individual's average weekly wage exceeds 150% of the District's minimum wage multiplied by 40; provided, that no eligible individual shall be entitled to payment of paid-leave benefits at a rate in excess of the maximum weekly benefit amount.

(3) If an eligible individual has multiple sources of income, his or her wages may be combined to determine his or her average weekly wage; provided, that if an individual's combined wages result in an average weekly wage more than the maximum weekly benefit amount, the individual shall be entitled to no more than the maximum weekly benefit amount.

(4) Medical, family, and parental leave benefits for partial weeks of leave shall be prorated.

(5) Before October 1, 2021, the maximum weekly benefit amount shall be \$1,000.

(6)(A) On October 1, 2021, and on October 1 of each successive year, the maximum weekly benefit amount provided in this subsection shall increase in proportion to the annual average increase, if any, in the Consumer Price Index for All Urban Consumers, Washington-Baltimore Metropolitan area published by the Bureau of Labor Statistics of the United States Department of Labor for the previous calendar year; provided, that the Chief Financial Officer of the District of Columbia shall certify that funds are sufficient in the Universal Paid Leave Implementation Fund each year before the maximum weekly benefit amount increases pursuant to this paragraph.

(B) Any increase under this paragraph shall be adjusted to the nearest multiple of \$1.

(h) By September 30, 2017, and quarterly thereafter, the Mayor shall submit to the Council a project plan that explains in detail the timeline, including specific dates by which milestones of the project will be accomplished, for the development of all software necessary to administer the paid-leave system established pursuant to this act.

(i) By December 30, 2017, and quarterly thereafter, the Mayor shall submit to the Council a requirements document that explains in detail the requirements needed in order to

develop all software necessary to administer the paid-leave system established pursuant to this act.

(j) By July 1, 2020, the Mayor shall commence the payment of paid-leave benefits provided for in this act.

(k) Covered employers are not responsible for collecting or tracking any taxes from individuals related to paid-leave payments received pursuant to this act from the District of Columbia government.

Sec. 105. Self-employed individuals.

(a)(1) An individual who earns self-employment income and who opts into the paid-leave program established pursuant to this act shall remain continuously enrolled in the program until such time as he or she elects to opt out; provided, that an individual who earns self-employment income who has opted into the program may only opt out of the program during an open enrollment period.

(2) If an individual who earns self-employment income has chosen not to opt into the paid-leave program established pursuant to this act, he or she shall only be permitted to enroll, or re-enroll, in the program during an open enrollment period in a manner prescribed by the Mayor and shall make contributions to the Universal Paid Leave Implementation Fund for no less than 3 consecutive years.

(b) If an individual who earns self-employment income withdraws from the paid-leave program established pursuant to this act 2 or more times, he or she shall be barred from re-enrolling in the program for a period of 5 years from the date of his or her withdrawal from the program.

(c) Beginning on January 1, 2020, an individual who earns self-employment income who previously opted out of or withdrew from the paid-leave program established pursuant to this act shall not be eligible to receive benefits pursuant to this act for the first year after enrolling or reenrolling in the program.

(d)(1) If an individual who earns self-employment income does not make a timely payment required by this act, the District shall notify the individual of the payment due. After notice has been given, and if payment is not received, the individual shall be disenrolled and shall not be eligible for paid-leave benefits pursuant to this act.

(2) An individual who has been disenrolled pursuant to this subsection may re-enroll consistent with requirements of this section following the payment of any amounts due to the District pursuant to this act.

Sec. 106. Administration of the paid-leave program.

(a) The Mayor shall establish reasonable procedures and forms for filing claims for benefits under this act and shall specify the supporting documentation necessary to support a claim for benefits, including, for qualifying family leave or qualifying medical leave, proof of a serious health condition and the length of leave expected based on industry standards used by health care professionals to label diagnosis of medical conditions and treatments.

(b) Claims for paid-leave benefits shall be made in accordance with this act and any regulations that the Mayor may prescribe for administration of the program established pursuant

to this act; provided, that, for qualifying family leave, the Mayor shall require an applicant to affirm that he or she will be taking the leave in order to provide care or companionship for a family member with a serious health condition and submit a description of the care or companionship to be provided.

(c) The Mayor shall notify the eligible individual's employer within 3 business days of the filing of a claim for benefits under this act.

(d) No later than 10 business days after an eligible individual files a claim for benefits under this act, the Mayor shall make, and notify an individual of, an initial determination as to:

(1) Whether an eligible individual may receive benefits pursuant to this act;

(2) The weekly amount of benefits payable to the eligible individual;

(3) The date on which payment to the eligible individual shall commence;

(4) The number of weeks for which the eligible individual shall receive benefits and the dates on which the corresponding payments shall be made; provided, that the Mayor shall employ the International Classification of Diseases, Tenth Revision (ICD-10), or any subsequent revision by the World Health Organization to the International Classification of Diseases, along with health care provider or caretaker assessments, when making this determination for purposes of qualifying family leave or qualifying medical leave; and

(5) The right to appeal to the Office of Administrative Hearings if an eligible individual does not agree with one or more of the determinations made by the Mayor pursuant to this subsection.

(e) If an individual is determined eligible to receive paid-leave benefits provided for under this act, the Mayor shall make the first payment to the eligible individual within 10 business days of the determination of eligibility and subsequent payments shall be made biweekly thereafter.

(f) The Mayor may use information sharing and integration technology to facilitate the disclosure of relevant information or records so long as an individual consents to the disclosure as required under District law.

(g)(1) The Mayor shall create a user-friendly, online portal for the submission and management of forms and documents necessary to administer the paid-leave program established pursuant to this act.

(2) The portal shall be accessible to the public via the Internet, and shall be designed with a privacy protected, user-friendly, interactive, searchable interface that provides information relevant to claimants, employers, and the public.

(3) No individual information shall be posted on this portal.

(4) The portal shall be compliant with Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (Pub. L. No. 104-191; 110 Stat. 1936).

(5) The components of the portal accessible to the general public shall include at a minimum, real-time, searchable parameters for the purpose of collection of reportable data, tracking program use, and to use data to reduce the cost of the program and to integrate the program with existing District benefit programs.

(6) The portal, and all associated software necessary to administer the paid-leave program established pursuant to this act, shall be designed to be able to handle the benefits

provided for in this act and future changes to the parameters of the program, including the maximum number of weeks an eligible individual may claim for a qualifying leave event or the formula for calculating weekly benefits.

(h) Information contained in the files and records pertaining to an individual under this act are confidential and not open to public inspection, other than to public employees in the performance of their official duties. An individual or an authorized representative of an individual may review his or her own records or receive specific information from his or her own records. All documents may be accepted and distributed electronically pursuant to D.C. Official Code § 28-4917.

(i)(1) The Mayor shall prescribe and provide to covered employers a notice explaining:

- (A) The employees' right to paid-leave benefits under this act and the terms under which such leave may be used;
- (B) That retaliation by the covered employer against the covered employee for requesting, applying for, or using paid-leave benefits is prohibited;
- (C) That an employee who works for a covered employer with under 20 employees shall not be entitled to job protection if he or she decides to take paid leave pursuant to this act; and

(D) That the covered employee has a right to file a complaint and the procedures established by the Mayor for filing a complaint.

(2) The notice shall comply with the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931 *et seq.*).

(3) Each covered employer shall, at the time of hiring and annually thereafter, and at the time the covered employer is aware that the leave is needed, provide this notice to each covered employee. Each covered employer shall also post and maintain the notice in a conspicuous place in English and in all languages in which the Mayor has published the notice.

(4) A covered employer who violates this notice requirement shall be assessed a civil penalty not to exceed \$100 for each covered employee to whom individual notice was not delivered and \$100 for each day that the covered employer fails to post the notice in a conspicuous place. No liability for failure to post notice will arise under this section if the Mayor has not prescribed the notice required by this section.

(j)(1) The Mayor shall conduct a public-education campaign, which shall be paid for out of the Universal Paid Leave Implementation Fund, to inform individuals of the benefits provided for in this act; provided, that no more than 0.25% of annual revenue deposited into the Universal Paid Leave Implementation Fund shall be used for this purpose.

(2) The Mayor shall coordinate with the Office of Human Rights and other agencies the Mayor deems appropriate to create an awareness campaign for the paid-leave program established pursuant to this act.

(3) All outreach information shall comply with the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931 *et seq.*).

Sec. 107. Coordination of benefits.

(a)(1) To the extent practicable, an eligible individual shall provide written notice to his or her employer of the need for the use of paid-leave benefits provided in this act before taking leave.

(2) The written notice shall include a reason for the absence involved, within the parameters of the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (Pub. L. No. 104-191; 110 Stat. 1936), and the expected duration of the paid leave.

(3) If the paid leave is foreseeable, the written notice shall be provided at least 10 days, or as early as possible, in advance of the paid leave.

(4) If the paid leave is unforeseeable, a notification, either oral or written, shall be provided before the start of the work shift for which the paid leave is being used.

(5) In the case of an emergency, the eligible individual, or another individual on behalf of the eligible individual, shall notify the eligible individual's employer, either orally or in writing, within 48 hours of the emergency occurring.

(6) Nothing in this subsection shall be construed to deny an eligible individual paid-leave benefits to which he or she is otherwise entitled pursuant to this act.

(b) If paid leave taken pursuant to this act also qualifies as protected leave pursuant to the Family and Medical Leave Act of 1993, approved February 5, 1993 (107 Stat. 6; 29 U.S.C. § 2601 *et seq.*), or D.C. FMLA, the paid leave taken pursuant to this act shall run concurrently with, and not in addition to, leave taken under those other acts.

(c) Nothing in this act shall be construed to provide job protection to any eligible individual beyond that to which an individual is entitled under D.C. FMLA.

(d) A covered employer may provide an eligible individual with leave benefits in addition to those provided by this act; provided, that the provision of such benefits, including a paid-leave program, shall not exempt the covered employer from making contributions under section 103 or an eligible individual from receiving benefits pursuant to this act.

(e) An eligible individual receiving benefits pursuant to the District of Columbia Unemployment Compensation Amendment Act, effective August 28, 1935 (49 Stat. 946; D.C. Official Code § 51-101 *et seq.*), shall not be eligible to receive the benefits provided for in this act.

(f) If an eligible individual is receiving long-term disability payments, he or she shall not be eligible to receive the benefits provided for in this act.

(g)(1) If an individual concurrently earns self-employment income and is a covered employee employed by a covered employer, the individual shall not be entitled to receive double payments.

(2) If the self-employed individual has opted into the paid-leave program established pursuant to this act, his or her benefit payment amount shall be based on the combined wages from covered employment and self-employment.

(h) This act shall not:

(1) Supersede any provision of law, collective-bargaining agreement, or other contract that provides paid-leave rights in addition to the rights established pursuant to this act; or

(2) Prevent a covered employer from adopting or retaining a paid-leave policy that supplements or otherwise provides greater benefits than are required by this act.

(i)(1) An individual's right to benefits provided for in this act shall not be diminished by a collective-bargaining agreement or other contract entered into or renewed after December 31, 2017.

(2) An individual's right to benefits provided for in this act shall not be diminished by an employer policy.

(3) Any agreement by an individual to waive his or her rights under this act is void as against public policy.

Sec. 108. Appeals.

(a) No later than 60 days after an individual who has submitted a claim for paid-leave benefits pursuant to this act is notified that a determination has been made by the Mayor regarding his or her claim, the individual may appeal the claim determination to the Office of Administrative Hearings, including with respect to his or her eligibility for benefits, the weekly amount of benefits to be provided, or the duration of the time period during which benefits are to be paid.

(b) In connection with an appeal made pursuant to subsection (a) of this section, the Office of Administrative Hearings shall consider as evidence documentation including but not limited to: paystubs; personal checks, cash receipts, or bank deposits; work schedules; communications between employer and employee; and any circumstantial evidence regarding the employee's eligibility.

(c) In any case in which an employer has failed to keep or provide an employee with employment records as required under District law or has failed to make contributions on wages paid to an employee as required under this act, the Office of Administrative Hearings shall consider, as a rebuttable presumption, that the employee is eligible and shall consider broadly evidence of the employee's eligibility for the benefit.

(d) A complaint, other than a claim determination, shall be filed within one year of the occurrence or discovery of the alleged violation of this act, whichever is later.

(e) For complaints, other than a claim determination, that arise under this act, the administrative enforcement procedure and relief shall be the same as that in D.C. FMLA.

(f) Notwithstanding any other provision of this act:

(1) All correspondence, notices, determinations, or decisions required for the administration of this act may be transmitted to claimants, employers, or necessary parties by electronic mail or other means of communication as the claimant, employer, or necessary party may select from the alternative methods of communication approved by the Mayor. The Mayor shall issue a list of such approved methods of communication within 180 days after the effective date of this act.

(2) All correspondence, notices, determinations, or decisions issued by the Mayor may be signed by an electronic signature that complies with the requirements of D.C. Official Code § 28-4917 and Mayor's Order 2009-118, issued June 25, 2009 (56 DCR 6867).

Sec. 109. Erroneous payments and disqualification for benefits.

(a) An individual who intentionally makes a false statement or misrepresentation regarding a material fact, or who intentionally fails to report a material fact, to obtain a benefit under this act is disqualified from receiving paid-leave benefits under this act for a period of 3 years.

(b) If paid-leave benefits provided for in this act are paid erroneously or as a result of willful misrepresentation, or if a claim for paid-leave benefits is rejected after benefits are paid, the Mayor shall seek repayment of benefits from the recipient; provided, that the Mayor may exercise his or her discretion to waive, in whole or in part, the amount of any such payments when the recovery would be against equity and good conscience.

(c)(1) If the Mayor obtains repayment of benefits from an individual who has made a willful misrepresentation or otherwise perpetrated fraud to obtain paid-leave benefits provided for in this act, the Mayor shall distribute a proportional share of the recovered amount to each covered employer who paid into the Universal Paid Leave Implementation Fund on behalf of that individual during the period that he or she improperly obtained benefits.

(2) For the purposes of paragraph (1) of this subsection, a covered employer's proportional share of the recovered amount shall be equal to the amount paid into the Universal Paid Leave Implementation Fund by that covered employer on behalf of the individual during the period that he or she improperly obtained benefits, expressed as a percentage of the total amount paid into the Universal Paid Leave Implementation Fund by all covered employers on behalf of the individual during the period that he or she improperly obtained benefits.

Sec. 110. Prohibited acts.

(a) It shall be unlawful for any person to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by this act.

(b) It shall be unlawful for an employer to retaliate in any manner against any person because the person:

(1) Opposes any practice made unlawful by this act;

(2) Pursuant to or related to this act:

(A) Files or attempts to file a charge;

(B) Institutes or attempts to institute a proceeding;

(C) Facilitates the institution of a proceeding; or

(D) Requests, applies for, or uses paid-leave benefits; or

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

(c) It shall be unlawful for any individual to provide intentionally false statements in order to obtain paid-leave benefits.

Sec. 111. Investigative authority.

(a) An employer shall develop, maintain, and make available to the Mayor records regarding the employer's activities related to this act that the Mayor may prescribe by rule.

(b) To ensure compliance with the provisions of this act, the Mayor, consistent with constitutional guidelines, may:

(1) Investigate and gather data regarding any wage, hour, condition, or practice of employment related to this act; and

(2) Enter or inspect any place of employment or record required by this act after written notice has been given.

(c) For the purpose of any investigation provided for in this section, the Mayor may exercise the subpoena authority provided in section 3 of the Independent Personnel Systems Implementation Act of 1980, effective September 26, 1980 (D.C. Law 3-109; D.C. Official Code § 1-301.2)1.

Sec. 112. Enforcement by civil action.

(a) Subject to the provisions in subsection (b) of this section, an eligible individual, the Attorney General of the District of Columbia, or the Mayor may bring a civil action against any employer to enforce the provisions of this act in any court of competent jurisdiction.

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

(2) This one-year limitations period shall be tolled during the course of any administrative proceedings or during any period when a covered employer has failed to comply with the notice provisions of this act.

(c) If a court determines that an employer violated any provision of this act, section 10(b)(6) and (7) of D.C. FMLA shall apply.

Title II. Conforming Amendments

Sec. 201. Section 6 of the Office of Administrative Hearings Establishment Act of 2001, effective March 2, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03) is amended by adding a new subsection (b-12) to read as follows:

“(b-12) In addition to those adjudicated cases listed in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), (b-5), (b-6), (b-7), (b-8), (b-9), (b-10), and (b-11) of this section, this act shall apply to all adjudicated cases that arise under the Universal Paid Leave Act of 2016, passed on 2nd reading on December 20, 2016 (Enrolled version of Bill 21-415).

Sec. 202. Section 2(4) of the D.C. Family and Medical Leave Act of 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-501(4)), is amended as follows:

(a) Subparagraph (B) is amended by striking the word “or”.

(b) Subparagraph (C) is amended by striking the period and inserting the phrase “; or” in its place.

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

“(D) A foster child.”

Sec. 203. Section 1152 of Universal Paid Leave Implementation Fund Act of 2016, effective October 8, 2016 (D.C. Law 21-160; 63 DCR 10775), is amended to read as follows:

“Sec. 1152. Universal Paid Leave Implementation Fund.

“(a) There is established as a special fund the Universal Paid Leave Implementation Fund (“Fund”), which shall be administered by the Chief Financial Officer in accordance with subsections (b), (c), (d), (e), (f), (g), (h), (i), and (m) of this section.

“(b) Money in the Fund shall be used to fund the implementation of the Universal Paid Leave Act of 2016, passed on 2nd reading on December 20, 2016 (Enrolled version of Bill 21-415) (the “Act”), which shall include paying for benefits, public education, and administrative costs required pursuant to the Act; provided, that no more than 10% of the funds deposited into the Fund shall be used to pay for the administration of the Act for each fiscal year.

“(c)(1) The money deposited into the Fund, and interest earned, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of the fiscal year, or at any other time.

“(2) Subject to authorization in an approved budget and financial plan, any funds appropriated in the Fund shall be continually available without regard to fiscal year limitation.

“(d) There shall be deposited into the Fund \$20,039,000 of local funds in Fiscal Year 2016.

“(e) Revenue from the following sources shall be deposited into the Fund:

“(1) Monies collected pursuant to section 103 of the Act;

“(2) Annual appropriations, if any;

“(3) Interest earned upon the money in the Fund; and

“(4) All other money received for the Fund from any other source.

“(f) Money in the Fund may not be used other than for the purposes of the paid-leave program established pursuant to the Act.

“(g) Beginning with October 1, 2017, and quarterly thereafter, the Chief Financial Officer of the District of Columbia shall certify the balance of the Fund.

“(h) Claims paid pursuant to the Act shall not be administered from the Fund until:

“(1) At least one year after the effective date of the Act; and

“(2) After the Chief Financial Officer of the District of Columbia certifies that the Fund will remain solvent for at least one year after claims have begun to be paid from the Fund.

“(i) The balance in the Fund shall not fall below the equivalent of 9 months of benefits provided pursuant to the Act, at any time during a fiscal year. If the Chief Financial Officer determines that the balance in the Fund will fall below the equivalent of 9 months of benefits during a fiscal year, the Chief Financial Officer shall promptly notify the Mayor and the Council and present a plan, including recommended legislative changes, if any, to address the shortfall. If the balance in the Fund falls below the equivalent of 6 months of benefits, the District shall immediately cease any further payments of benefits. If payment of benefits is ceased in accordance with this section, payment of benefits shall not resume until the Fund balance is equal to the equivalent of 12 months of benefits.

“(j) By December 30, 2017, the Mayor, in coordination with the Office of the Chief Financial Officer, shall provide an update to the Council as to the funds that have thus far been

deposited into the Fund and the expected timeline for beginning to make payment of claims under the Act.

“(k) By October 1, 2018, and annually thereafter, the Mayor shall submit a report to the Council about the financial management, claim management, operation, and use of the Fund and the paid-leave program established pursuant to the Act.

“(l) By October 1 of the year following the first 3 full years of implementation of the Act, the Chief Financial Officer shall review the status of the Fund and compare that status against original projections. If the Fund is running an annual surplus, the Chief Financial Officer shall issue a report to the Council that outlines options for bringing the Fund’s annual revenues and expenditures into balance, including a reduction in the employer contribution rate and changes to benefits under the paid-leave program established pursuant to the Act.

“(m) After benefits begin to be paid pursuant to the Act, no funds from any contingency fund or any other local funds shall be transferred to the Fund to be used for the paid-leave program established pursuant to the Act.”.

Title III. Applicability, Fiscal Impact, and Effective Date.

Sec. 301. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 302. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 303. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as

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provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia