ALL COUNCILMEMBERS

FROM: Chairman Phil Mendelson
       Committee of the Whole

DATE: December 6, 2016


The Committee of the Whole, to which Bill 21-415, the “Universal Paid Leave Amendment Act of 2016” was referred, reports favorably thereon with amendments, and recommends approval by the Council.

CONTENTS

I. Background And Need ...................................................... 1
II. Legislative Chronology .................................................... 16
III. Position Of The Executive .............................................. 16
IV. Comments Of Advisory Neighborhood Commissions ........ 17
V. Summary Of Testimony .................................................... 18
VI. Impact On Existing Law .................................................. 30
VII. Fiscal Impact ............................................................... 30
VIII. Section-By-Section Analysis ......................................... 31
IX. Committee Action ........................................................ 32
X. Attachments .................................................................. 34

I. BACKGROUND AND NEED

Bill 21-415, the “Universal Paid Leave Amendment Act of 2016,” creates a paid leave program for the vast majority of individuals working in the District’s private sector. Eligible individuals may receive up to two weeks of paid medical (self-care) leave, as well as up to six weeks of paid family leave to care for their parents, children, spouses (or domestic partners), or grandparents. Additionally, it provides eight weeks of paid parental leave to bond with a newborn, adopted or foster child, or with a child for whom an eligible individual has assumed legal guardianship. Bill 21-415 will establish one of the most progressive paid leave programs in the country with a wage replacement of 90% for individuals earning 150% of the minimum wage or below annually.

Although a benefits program for workers, a fundamental policy in the design of this legislation is that this bill gives a competitive edge to businesses in the District vis-à-vis the region or other markets. If the thrust was instead to benefit District residents (not businesses) then the bill would be limited to benefitting only District residents employed by District businesses (or, as
introduced, District residents wherever they work). The theory — amply justified in practice — is that employee benefits attract potential workers and retain actual employees. This is why an increasing number of large corporations, law firms, and high-technology companies are offering paid leave for family care, self, care, and newborn bonding: they see this as creating a competitive edge. Extrapolate this experience from individual companies to all businesses located in the District.

Offsetting the advantage Bill 21-415 gives to businesses is the burden it places on them—a new .62% payroll tax, disruption due to employee absences, and sometimes the need to pay for temporary replacement workers. However, the Committee believes the Committee Print strikes a viable balance. The payroll tax is substantially less than earlier-suggested rates that some businesses said would have been unacceptable; and the maximum paid leave also has been substantially reduced (from 16 weeks to 2 weeks self-care, 6 weeks family care, and 8 weeks for infant bonding). Moreover, leave programs for these purposes exist already in the law—albeit unpaid leave—through the District’s Family and Medical Leave Act (DCFMLA). Also discussed below, a great many countries have required for years paid family and medical leave, and there was testimony or comments to the Committee that this has been harmful to businesses.

Currently, the United States (“US”) has no program that provides paid family or parental leave benefits. In 2013, 186 countries were examined in an analysis of the World Policy Analysis Centre Adult Labour Database, which found that 96 percent of the countries surveyed provide some pay to women during maternity leave. Nearly every member country of the European Union provides at least 14 weeks of job-guaranteed paid maternity leave, during which workers receive at least two-thirds of their regular earnings.1 81 countries extend paid leave to new fathers through paternity leave, parental leave that can be taken by either parent, or through some combination of the two.2 The US is the only high-income industrialized country, and one of only eight countries in the world that does not mandate paid leave for mothers of newborns.3

Because the US has not established a national paid leave policy for either parental leave, family care leave, or medical leave (self-care), individual states have taken on the task of establishing their own paid leave programs. California (2004), New Jersey (2008), and Rhode Island (2012) have approved and implemented programs, which provide paid medical,4 parental,

---


4 Each of these states have provided paid medical leave, or self-care, through a public temporary disability insurance program that has existed in each of the three states for decades.
and family care leave to individuals who work in the respective states. Additionally, New York approved providing employees who work in the state paid family and parental leave this year, with expected payout of benefits to begin in 2018. This recent passage has come amongst an increased interest in paid family and parental leave across the country.

Over the past two years, there has been a significant increase in states and private companies offering some type of paid family leave coverage with benefits of up to a year and full wage replacement. President Obama also called for paid family and parental leave in his 2015 and 2016 State of the Union speeches. Providing such leave would enable women to participate more in the workforce and allow individuals to take time off to care for a loved one or a new child without the fear that doing so will lead to financial hardship. In the United States, half of all households with children under 18 have a breadwinner mother, who is either a single mother who heads a household, irrespective of earnings, or a married mother who provides at least 40 percent of the couple’s joint earnings. Women are more likely than men to shoulder unpaid care-giving responsibilities and many women, especially women of color, are more likely to be balancing work and care without any additional income share or support. The lack of work-family supports plus the high cost of child care, places an additional burden on low-income women and women of color, who are the least likely to have employer-provided paid leave.

The importance of paid family leave reflects both an economic and social need. It maintains women and persons of a child-bearing or child-adoption age participating in the local economy. Moreover, a direct correlation exists between offering paid family and parental leave benefits and retaining women in the workforce, as well as encouraging fathers and partners to take leave to bond with their children. Additionally, paid family and parental leave has led to decreased infant and maternal mortality rates, increased breastfeeding rates, improved mental health of the mother and father, elevated parent-child bonding, and better management of post-partum depression and health care. There is also evidence that paid leave programs positively influence development in early childhood learning and social and emotional development and

10 Id.
12 World Health Organization recommendation of six months. See http://www.who.int/topics/breastfeeding/en/.
reduce the amount of childcare costs and employees calling out or taking sick leave. Further, studies have also shown both in the District of Columbia region and nationwide that paid leave benefits increase workplace productivity because employees are able to take leave to care for themselves or their families without worrying about job security. Most employees will not take the full amount of time offered and have a desire to return to work afterwards.

In addition to the national research, research is also available on the impact of paid family and parental leave in California, New Jersey, and Rhode Island. In 2014, six years after the program in New Jersey was implemented, a study found that the state’s paid family and parental leave program had little impact on how employers do business in the state, and interestingly noted that not a single instance of abuse by employees had been reported up to that point. A 2014 study of California’s paid family and parental leave program demonstrated that the program has seen a gradual increase in the number of claims filed and a discernible increase in the number of men participating in the program. Given that California’s program had existed for 10 years by the time the study was conducted, this study provides a more long-term analysis of the impact of a paid family and parental leave program. Finally, a 2016 study found that the Rhode Island paid family and parental leave program had few significant effects on employers, particularly in terms of productivity or perceptions of employee morale, cooperation, or attendance. A comprehensive chart with the status of each state and jurisdiction is regularly updated by the National Partnership for Women and Families (“Partnership”) and is publicly available on the Partnership’s website.

Federal Medical Leave Act

While the United States does not have a paid medical, family, or parental leave law, the first law President Bill Clinton signed after he took office in 1993 was the Family and Medical Leave Act (“FMLA”). It is a national policy designed to help employees navigate the complex system of workplace benefits and workers’ rights. The need for this legislation was brought to the forefront by the influx of women into the workforce. The FMLA was introduced in every

---

18 Assessing Rhode Island’s Temporary Caregiver Insurance Act: Insights from a Survey of Employers. Columbia Business School, 2016. See https://www.dol.gov/asp/evaluation/completed-studies/AssessingRhodeIslandTemporaryCaregiverInsuranceAct_InsightsFromSurveyOfEmployers.pdf. This study was conducted after the Rhode Island program had been in effect for a year.
20H.R. 1, Family and Medical Leave Act of 1993 of the 103rd Congress introduced January 5, 1993. Provided that employers with 50 or more employees grant up to 12 weeks of unpaid family and medical leave.
21 Lenhoff, Donna R. and Bell, Lisa “Government Support for Working Families and for Communities: Family and Medical Leave as a Case Study” National Partnership for Women & Families at
Congress from 1984 to 1990, and was finally passed in 1991, but was vetoed twice by President George H.W. Bush in 1991 and 1992.

The FMLA provides certain individuals a guarantee of unpaid job-protected leave for up to 12 weeks so that an individual may take care of him or herself if the individual has a serious health condition, needs to care for an immediate family member with a serious health condition, or has either given birth to or adopted a child. However, only individuals who work for a public agency, a business with 50 or more employees, or a public or private school are entitled to the unpaid, job-protected leave. In addition, an individual must have worked for the business, agency, or school for at least a year. This makes the FMLA only available to half of the United States labor force, and many who are covered cannot afford to take the leave since it is unpaid.\textsuperscript{22}

The need for more comprehensive family leave has continued to rise as the influx of women into the United States labor force has demonstrated a need for a greater focus on the familial unit. By 2010, women were 47 percent of the civilian workforce and between 1975 and 2010 the rate of mothers with children under the age of three rose from 34 percent to 61 percent.\textsuperscript{23} Today, mothers are more likely to be in the labor force than women generally.\textsuperscript{24} Moreover, because women tend to be the caregiver within a family unit, more flexibility is needed for them to care for aging parents or other family members. Yet, the need for more flexibility has also increased due to the fact that more men are also devoting considerable time to caring for aging family members and children.\textsuperscript{25}

FMLA is estimated to have assisted more than 35 million employees since it went into effect in August 1993.\textsuperscript{26} The FMLA is frequently used for employees’ own serious health conditions – 58 percent of male leave takers and 49 percent of women leave takers take time off for that purpose.\textsuperscript{27} During the first decade of the FMLA’s implementation, the United States economy was in a sustained period of growth, and the chilling effects on the economy predicted by opponents did not occur.\textsuperscript{28} National studies of the FMLA’s impact on business have also shown that the FMLA has either no or only a small effect on business productivity, profitability, and costs. Further, in its 1998 Business Work-Life Study, the Families and Work Institute found that the benefits of providing leave, such as decreased turnover and absenteeism, either outweigh or offset any costs associated with providing the leave.\textsuperscript{29}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{23} Id. at 2.
\item \textsuperscript{24} Id. and U.S. Department of Labor 2011a, 4-5, 19.
\item \textsuperscript{25} Id.
\item \textsuperscript{27} Id at p. A-2-5.
\item \textsuperscript{28} Id. and U.S. Department of Labor, pp. A-2-58, A-2-62
\item \textsuperscript{29} Id. and Business Work-Life Study (New York, NY: Families and Work Institute, 1998).
\end{itemize}
\end{footnotesize}
D.C. Family and Medical Leave Act

On October 3, 1990, three years prior to congressional enactment of the FMLA, the Council of the District of Columbia ("Council") approved the "District of Columbia Family and Medical Leave Act of 1990" ("DCFMLA").\(^{30}\) The 1990 Committee Report acknowledges the work being done on the federal level, but recognized a need for the Council to act without waiting for congressional action. It states in its comments the need for workers’ protections and the need to value the families of DC.

...the [bill] is an important and far-reaching piece of legislation that, if approved by Council, would continue to demonstrate the Council’s belief in the essential role of the family in the fabric of our society. Through its recognition of benefits to be derived by allowing employees, including District government employees to attend to family members in the time of need, Bill 8-82 will further the goal of solidifying families and thereby contribute in the effort to alleviate some of our society’s vexing problems.\(^{31}\)

DCFMLA provides 16 weeks of unpaid, job-protected leave – far more than the eventual 12 weeks of leave included in the federal FMLA. Additionally, while the federal FMLA law applies to employees who work for a business with 50 or more employees, beginning in 1993, DCFMLA provided unpaid job-protected leave to individuals who worked for a business with 20 or more employees. Despite the discussion on why leave was needed and the benefit of such leave, the Committee Report for Bill 8-82 does not include a reasoning for why 16, instead of 12, weeks was put in the bill or an explanation for why job protection was included for businesses with 20 or more employees. In describing the testimony received at a hearing on Bill 8-82, the report does note that testimony was given that 16 weeks is the appropriate time needed for the “minimum bonding between a parent and a child and to permit parents to locate a child care provider with whom the parents feel comfortable.”\(^{32}\)

DC Government Paid Family and Parental Leave Program

On March 24, 2014, Councilmembers Grosso, Catania, Wells, and McDuffie co-introduced Bill 20-734, the "Fair Leave Act of 2014."\(^{33}\) The bill, as introduced, would have amended DCFMLA by providing District government employees “their entire wage compensation for up to six workweeks” under their family leave entitlement. Subsequently, on April 3, 2014, Bill 20-750, the “Fiscal Year 2015 Budget Support Act of 2014” was introduced by Chairman Mendelson at the request of Mayor Vincent Gray and included a subtitle, entitled the “Family Bonding Leave Program Amendment Act of 2014.” As introduced, this subtitle authorized paid leave of up to six


workweeks within a 12-month period to District employees for the birth, adoption or placement of a child, which could be used intermittently in increments of one week or more. The proposed subtitle stated that if two employees within the same agency shared the birth, adoption or placement of a child, the two employees could collectively receive eight workweeks divided as they deemed appropriate. Further, the proposed subtitle included language directing the Mayor to "issue rules to implement [the leave program] to promote the bonding between an eligible employee and the child and . . . to set appropriate limits to the family leave benefit."

The Council expanded the subtitle to include care of a family member with a serious health condition as an additional qualifying event that would allow a District employee to exercise leave under the District government’s paid leave program. Additionally, the Council increased the maximum number of eligible weeks from six workweeks to eight workweeks and eliminated the requirement that two employees in the same agency be limited to only eight workweeks of paid leave if they were taking the paid leave for the same qualifying event. Further, the Council amended the subtitle to allow an individual to take intermittent leave in increments of one-day, as opposed to one-week period. Thus, the District government paid family and parental leave program gives a District employee, on his or her very first day of employment, the right to take eight weeks of paid leave.

The Office of the Chief Financial Officer ("OCFO") indicated, at the time, that the government paid family and parental leave program would be fiscally neutral. However, because of the 100 percent wage replacement and the lack of program controls, the take up rates for the District government program have been higher than predicted. If the program had more stringent administration controls and rules put around the program, it is believed the take-up rates, and thus the cost of the program, would be reduced.


On October 6, 2015, Councilmembers Grosso and Silverman, along with Councilmembers Allen, Nadeau, May, McDuffie, and Cheh introduced Bill 21-415, the “Universal Paid Leave Act of 2015.” The goal expressed by the co-introducers of the legislation was to ensure that paid leave benefits were not only available to higher wage workers but also to low-income individuals, as they are often the ones who do not receive such benefits through their employers.

As introduced, Bill 21-415 proposed to establish a Paid Family Medical Leave Insurance ("PFMLI") program, which would be financed as follows:

- Private sector employers pay contributions to PFMLI on behalf of their employees;
- District government program is included in the PFMLI with District government employees eligible to take 16 weeks of paid medical, family, or parental leave;
- Self-employed individuals pay in to PFMLI unless they opt-out; and

---

35 Id. and see Gibson Testimony page 6.
36 Id.
• District residents who work outside for the District government or for the federal government will be required to pay into the program without the option of opting-out of the program.

This financial structure differed from the funding mechanisms in California, New Jersey, and Rhode Island. While their PFMLI programs are either paid through employee or employer/employee contributions, unique restrictions placed on the District’s government by Congress prevents employee contributions, i.e. a “commuter tax,” from being levied on any individual who does not live in the District.\textsuperscript{37} Thus, the introduced version of Bill 21-415 established a PFMLI program financed by levying a payroll tax on employers who have employees working in the District.

Additionally, the introduced version of Bill 21-415 required all District residents who worked outside of the District or for the federal government to pay into the fund. This requirement was included to ensure that the pool of individuals or businesses paying into the PFMLI was large enough to cover the benefits that would be paid out of the program without imposing a tax higher than one percent.\textsuperscript{38} Likewise, self-employed individuals would be automatically included in the program unless they opted out during a discrete time period outlined in the bill.

The original benefit structure would allow workers in DC and District residents to receive up to 16 weeks of paid leave for a qualifying life event, such as birth or adoption of a child regardless of the eligible individual’s gender, caring for a sick or injured family member, or for one’s own medical care. Individuals making $52,000 or less annually would receive a 100 percent wage replacement weekly, and individuals making above $52,000 could receive a percentage of his or her salary up to a maximum amount of $3,000 per week. Further, the introduced version of the bill included an overly expansive definition of family.

Administration of the PFMLI and associated Fund are left to the Mayor without delineating which agency would administer the program but does indicate that the OCFQ would administer the Fund and would determine if funds are sufficient in the Fund to pay out benefits and to tax on a sliding scale rate from 1% down to .05% depending on the business and payroll size. The introduced version also included language for the appeals process, violations of the bill, coordination of benefits, determination of claims, and the appeals process. While these sections closely tracked language in the DC FMLA, other portions of the introduced version of the bill are

\textsuperscript{37} D.C. Code § 1-206.02(a)(5). Home Rule Act’s prohibition on a non-resident income tax. Passed in 1975, the Act provides that the D.C. Council “shall have no authority to … impose any tax on the whole or any portion of the personal income, either directly or at the source thereof, of any individual not a resident of the District.” No other state or territory is barred by Congress from imposing taxes on non-resident income. This unique exception to the universal “source” rule of taxing income at its location is a significant revenue restraint for the District, where about two-thirds of all income is earned by non-residents. The U.S. Government Accounting Office (2003 Report) has characterized the prohibition as the leading cause of a “structural deficit” carried by the District, leaving D.C. unable to deliver adequate government services even after taxing the one-third of income earned within its borders by D.C. residents at the highest rates in the region. This prohibition on D.C.’s ability to tax non-resident income can be found in \textit{Banner v. U.S.}, 303 F. Supp. 2d 1 (D.D.C. 2004), aff’d 2005 U.S. App. LEXIS 23828 (D.C. Cir., Nov. 4, 2005).

\textsuperscript{38} Information provided by the D.C. Office of Tax and Revenue: Private & wage salary: 481,451 (60.2%); 186,634 are D.C. residents; Self-employed: 44,558 (5.6%); Local government: 42,722 (5.3%); Federal government: 230,973 (28.9%).
either overly expansive or deviate from what is done by the Office of Administrative Hearings, for example, in other proceedings. Further, the introduced version left the majority of the administration of the program to the Mayor to determine in regulations, so much of the information about administration of the program was not included in that version of the bill.

**Universal Paid Leave Amendment Act of 2016 - Committee Print Changes:**

The Committee of the Whole has spent over a year garnering input from advocates both in support of and in opposition to the legislation. Given the importance of Bill 21-415, the Committee took an unprecedented step of convening three public hearings to receive input on the bill. Using testimony presented at the first two hearings, as well as feedback received up until the middle of January 2016, the Committee released a draft discussion print in February 2016, prior to the third public hearing, in an effort to narrow the discussion surrounding the bill. Since February 2016, the Committee has continued to receive feedback on the bill and worked with the OCFO, proponents and opponents of the bill, and the Executive to create a paid leave program that not only provides needed paid leave to employees working in the private sector in the District, but a program that will also benefit District businesses by enabling them to provide a benefit to their employees that employers located in Virginia and Maryland are not necessarily able to provide. The following discussion highlights the changes made between the introduced version and the Committee Print of Bill 21-415.

**Duration of Leave:**

As discussed above, the introduced version of Bill 21-415 provided for 16 weeks of paid family (including parental) and medical, or self-care, leave. However, the Committee recommends reducing the number of weeks as follows: eight weeks of parental leave, six weeks of family care leave, and two weeks of medical leave. While the Committee would prefer to include at least 12 weeks of parental leave and eight weeks of family care and medical leave in Bill 21-415, the current financial constraints surrounding Bill 21-415 make it untenable to do so at this time.

Simply put, more weeks of leave equals more revenue needed to fund the paid leave program. Data from the states that currently provide paid medical leave through a public temporary disability insurance program ("TDI") reveals that approximately two-thirds of the cost associated with paid leave programs emanates from the paid medical leave portion of the program. Moreover, states that offer both a public TDI system and paid family and parental leave created their TDI programs decades ago. Thus, these states had decades worth of data to use in predicting the take-up rates (i.e. the percentage of eligible individuals who will avail themselves of the paid leave) when they expanded their paid leave programs to include paid family and parental leave within the last decade. However, because the District does not have a public TDI system, the only comparable system that the OCFO has to determine the take up rate is the District government's paid family and parental leave system. As this program was implemented with very little controls or oversight, the take-up rate for the District government's program in fiscal year 2015 was approximately eight percent – several times higher than the take-up rates in any of the other states that have implemented paid leave programs. As such, the OCFO is estimating much higher take-up rates than the Committee believes will occur. Until the District amasses its own data to demonstrate to the OCFO that its take-up rates are exorbitant and has thus led to much higher cost.
estimates than have occurred in other states, the Committee is faced with having to reduce the number of weeks in all three leave categories.

As noted above, medical leave is by far the costliest type of leave to provide. While California, New Jersey, and Rhode Island offer maximum medical leave of 52 weeks, 26 weeks, and 30 weeks, respectively, through their public TDI systems, offering 16 weeks of medical leave in the District would require a much higher tax than one percent and would eliminate the availability of parental leave or family care leave because any tax above one percent would have been untenable for District businesses. Thus, the Committee supports two weeks of medical leave in Bill 21-415, as it allows for a tax rate significantly below one percent, as well as enabling six weeks of family care and eight weeks of parental leave. While two weeks of medical leave is not ideal, these two weeks are still crucial for individuals who are facing their own health crises. To allow individuals to take off to care for their family members but not for themselves creates an unfair dichotomy, particularly for women who are often the caregivers for ill family members. Thus, the Committee believes that it is vital to include some amount of medical leave in Bill 21-415.

In determining how many weeks of paid leave would be provided for parental leave, the Committee determined that more weeks of parental leave was necessary to allow parents, regardless of gender, to bond with their children. Throughout the 14 month public and transparent process the Committee has undertaken to determine the proper balance in Bill 21-415, the Committee heard from dozens of constituents and numerous experts about the need for parents to be able to have a significant amount of bonding time with their children. This time can result in more well-adjusted children and is needed so that mothers can establish the needed relationship and bond with the baby in terms of breastfeeding, as numerous studies have documented the benefit of breastfeeding a child. Additionally, the Committee wanted to ensure that males received an equal number of weeks to bond with their children as bonding should not be something simply left to mothers or one partner in a relationship over others. The eight weeks of parental leave will allow fathers the needed time to also bond with their children, which may have significant, positive effects later in the child’s life.

The Committee wants to make clear that the eight weeks of parental leave do not solely apply to bonding but are also meant to be available for parents to use for events associated with adding a new child to a family. For example, if an individual is adopting a child and must fly overseas as part of the adoption process, the Committee intends for that leave to be covered under the paid parental leave provided for in Bill 21-415. Likewise, if a mother suffers complications during her pregnancy and is ordered to bedrest, the Committee intends for this complication to be covered under parental leave and would allow a mother (or his or her significant other) to take parental leave for that time period. However, taking this leave does not extend the parental leave that individuals would then receive after the child is born. Thus, in this scenario, the mother and her significant other would have to choose whether they would want to take a portion of their eight

---

weeks of paid parental leave during the pregnancy or wait to use the full eight weeks after the child is born to bond with the child.

In terms of the six weeks of family care, the Committee also received numerous testimony as to the needed requirement that individuals be able to take care of their families, particularly ailing parents as individuals often referred to as “baby boomers” are now increasing in age with a longer life expectancy and requiring more care. As noted above, the District’s demographics also demonstrate a need to care for the senior citizen population in the District. Thus, the Committee recommends six weeks of paid family leave to allow individuals time off to care for their loved ones without worrying about their finances and removes the choice that many individuals have to make right now between their finances and their families.

Definition of family member:

While the introduced version of Bill 21-415 had an expansive definition of family member, the Committee recommends following the lead of California, which has had a paid family and parental leave program the longest of any state, and limiting the definition of family member to include: 1) any form of a son or daughter, including a stepson or stepdaughter and a person to whom the eligible individual stands in loco parentis; 2) a parent, including parent-in-laws, stepparents, and legal guardians; 3) an eligible individual’s spouse or domestic partner; and 4) the grandparent of an eligible individual. Narrowing the definition to these four categories, which are very similar to California’s paid family and parental leave law, enables the OCFO to use California’s data in order to estimate the costs associated with Bill 21-415. While the original California law did not include grandparents in the definition of family member, the Committee felt that the demographics of the District made it important to include grandparents in the family member definition. With a sizeable portion of the District’s baby boomers aging and becoming seniors, being able to provide care for these individuals will be crucial. Thus, the Committee included grandparents in the definition of family member. Doing so has a de minimus impact on the cost of benefits associated with the paid leave program in Bill 21-415.

Providing a narrower definition of family member than California does not produce any cost-savings, as the OCFO cannot determine how the narrower definition will affect take-up rates. On the other hand, broadening the definition of family member has a cost associated with it, as a broader definition leads to a higher estimated take-up rate. Thus, the Committee recommends the narrower definition of family. The Committee does acknowledge that the narrower definition may present challenges for individuals who do not have a “typical” familial structure or who are no longer in contact with their biological families. Yet, the Committee believes that the more prudent option at this point is to proceed with the narrower definition of family and to examine closely the various options that are available for broadening the definition of family in the future.

Eligible individuals and Self-employed individuals:

The Committee recommends redefining what individuals are eligible to receive benefits under the paid leave program established in Bill 21-415. Specifically, the Committee proposes eliminating federal workers and reverse commuters (i.e. individuals who live in the District but work in a different state like Virginia or Maryland) from being considered an eligible individual.
As introduced, Bill 21-415 had competing interests, making it difficult to discern the purpose of the bill and which individuals should be eligible to receive paid leave benefits under the paid leave program. The Committee believes that the program should apply to employees working in the private sector in the District, as doing so will enable businesses to provide a benefit that other jurisdictions do not help businesses provide. This will allow businesses to attract top-quality employees that may have otherwise chosen to work in Virginia or Maryland. Many young professionals have noted that benefits – including paid family and parental leave – does influence their decision on where or for whom they will work. The Committee recognizes that this approach does provide benefits to individuals who reside in jurisdictions other than the District, but any District-wide benefit such as minimum wage also leads to the same outcome. The Council just recently passed a bill providing for an increased minimum wage over the next four years – such a bill has the same effect as Bill 21-415 – providing benefits to a large number of individuals who reside outside the District. Thus, the Committee does not believe that this reasoning should alter who is considered an eligible individual under Bill 21-415.

In addition to the discussed above reasoning, allowing federal workers and reverse commuters who are District residents, regardless of whether they are required to pay in or are provided a choice to opt-in or out of the program, presents a complex problem of administration and could result in District residents actually facing discrimination from employers who do not want to provide this benefit and thus do not hire individuals who are District residents. During the first hearing on Bill 21-415, numerous individuals representing several business associations in the District warned that this result could occur if Bill 21-415 is applied to federal workers or reverse commuters. Additionally, their testimony highlighted the fact that even if individuals are hired, including federal workers and reverse commuters would create a perverse situation in which one individual working the same job with the same duties would have greater benefits than the individual seated next to that individual. Such a situation could result in animosity and create a difficult work environment. Given this testimony and the intent of the bill to enable District businesses to provide a greater benefit than businesses in other jurisdictions, the Committee has excluded federal workers and reverse commuters from Bill 21-415.

It should be noted that eligible individual includes self-employed individuals who choose to opt-in to the paid leave program and pay the 0.62% of their wages to participate in the program. In the introduced version of the bill, self-employed individuals had the option to opt-out of the program in hopes of creating a wider pool base. However, the Committee has decided to allow self-employed individuals to opt-in, as the Committee believes such an approach presents a fairer situation for self-employed individuals who may have been included in the program under the introduced version because they did not realize that they needed to opt-out. Allowing them to opt-in provides them with greater choice and more flexibility.

**Tax rate:**

The introduced version of Bill 21-415 proposed that the benefits outlined in the introduced version could be covered by a one percent tax on District employers, with the tax rate changing to a sliding scale once the program was fully funded and under the way of being administered.

---

However, estimates provided at the second public hearing on Bill 21-415 indicated that the program in the introduced version of Bill 21-415 would actually require at least a three percent tax on businesses. Such a tax is completely untenable on the District's business community. Moreover, at the second hearing, Jerry Widdicombe, Executor Director of the Downtown Business Improvement District, testified that he believed a paid leave program would be acceptable if the tax rate was between 0.3 – 0.5%. The Committee was cognizant of this recommendation in determining the appropriate tax rate for the paid leave program and determined that a 0.62% tax rate was still tenable for District businesses and could provide a significant number of weeks of paid leave. The Economic Impact Analysis done by the Council's Budget Office\(^\text{41}\) also verified this. Thus, the Committee proposes a fixed 0.62% payroll tax to fund the paid leave program provided for in Bill 21-415.

Notably, businesses have expressed frustration over the fact that Bill 21-415 requires District employers, and not employees, to pay into the Universal Paid Leave Implementation Fund to finance the paid leave program in Bill 21-415. However, the District sits in a unique situation in which it is not allowed to tax any individual who lives outside the District (i.e. cannot enforce a "commuter tax"). This prohibition presented a unique and difficult challenge in determining not only the tax rate but also the benefits that would be provided through Bill 21-415. If the District had statehood like other comparable jurisdictions in the United States, then we would not be facing this issue. Thus, this bill provides a poignant example of why the District needs statehood.

\textit{Wage replacement and Maximum Weekly Benefit:}

The introduced version of Bill 21-415 called for a 100% wage replacement up to a $1,000 per week and then 50% of an individual’s salary on top of the $1,000 up to a maximum weekly benefit. As noted above, the wage replacement and maximum weekly benefit, coupled with the 16 weeks and a broader definition of family, led some economists to determine that the introduced version of the bill would require at least a three percent tax. Thus, the Committee determined that both the wage replacement and the maximum weekly benefit would need to be reduced in the final version of Bill 21-415.

At the second public hearing on Bill 21-415, the Committee heard numerous testimonies from experts who indicated that a high wage replacement was necessary in order to allow low-income workers, who are often employed on a part-time basis, the ability to participate in the program. The experts noted that many low-income workers in California, New Jersey, and Rhode Island, cannot avail themselves of the states' paid leave programs, because they cannot take a hit to their paychecks since these states do not currently have wage replacement rates above 66%. Additionally, the experts noted that since low-income workers often are the individuals who do not have access to any TDI or paid family or parental leave through their employers, it is vital that Bill 21-415 maintained a high wage replacement.

Given the District's demographics – approximately 1 in 3 children in the District live in a household that is considered below the poverty line and many of the households in the District are single-parent families – the Committee believed that it was crucial to maintain a high wage

\(^{41}\) Attached to this report.
replacement. Thus, the Committee determined that a wage replacement of 90% up to 150% of the minimum wage was crucial to allow low-income workers in the District the opportunity to participate in the program. Instead of putting a distinct number in Bill 21-415, the Committee has chosen to say 150% of the minimum wage to allow for flexibility since the minimum wage is set to increase in the coming years and to allow for inflation and other fiscal changes that may occur. The District has seen with other benefits, such as unemployment insurance, that flexibility in wage replacement is necessary so that the Mayor does not have to come to the Council repeatedly to ask for a change in the wage replacement threshold. Also, it is worth noting that in an effort to deter individuals from committing fraud under the paid leave program in Bill 21-415, the Committee believes that it is necessary to provide for a 90% wage replacement as opposed to the 100% wage replacement provided for in the introduction.

In addition to the 90% wage replacement up to 150% of the minimum wage, an individual making more than this threshold is able to receive benefits for an additional 50% of his or her average weekly income up to a maximum weekly amount of $1,000. This allows individuals who make approximately $66,000 a year to be able to receive benefits similar to their normal salary while out on paid leave. Individuals whose annual income is above the approximate $66,000 threshold will receive a maximum of $1,000 each week, regardless of whether their income is $70,000 or $170,000. While the Committee believes that the District's paid leave program should be the one of first-resort, it is aware that individuals who make higher incomes in the District may receive a supplement from their employers to make up the difference in income. The Committee believes that an employer should be able to do this, so Bill 21-415 makes it clear that an employer can provide greater benefits but that any collective bargaining agreement entered into after December 31, 2017 cannot bargain around or below the paid leave benefits being provided for in Bill 21-415. Notably, since individuals who are in higher-paying jobs are more likely to have an employer who will supplement the benefits offered through the District's program, the Committee felt that the $1,000 weekly benefit was reasonable at this time. Should data show the Council over the next several years that the $1,000 maximum weekly benefit is not adequate, the maximum weekly benefit amount could be revisited.

*Administration of the program and the Challenges of imposing an employer mandate:*

Unlike the introduced version of Bill 21-415, the Committee Print fleshes out the administration of the paid leave program, setting forth timelines and a process by which the Mayor must pay out benefits to eligible individuals and aligning the appeals process with the current practices of the Office of Administrative Hearings. However, in developing these administrative procedures, the Committee does not opine on which agency should administer the paid leave program. Instead, Bill 21-415 simply indicates that the Mayor shall establish and administer the program. This allows the Mayor to determine whether the program should be administered through the Department of Employment Services ("DOES"), through a different District agency like the Department of Insurance, Securities, and Banking ("DISB"), or through the creation of a new agency tasked solely with administering the paid leave program.

Over the past 14 months, the Committee has heard numerous concerns from the District's business community as to whether the District government can handle the administration of the paid leave program being established in Bill 21-415. Specifically, businesses have noted that their
interactions with various agencies within the District government, such as the Department of Consumer and Regulatory Affairs ("DCRA") or DOES, often leaves them frustrated and that the multiple barriers imposed by District agencies make it harder, not easier, and more costly to operate a business in the District. Thus, several business associations have recommended that businesses be allowed to administer their own paid family (including parental) and medical leave programs through an employer mandate akin to the District’s Sick and Safe Law.\textsuperscript{42}

While the Committee applauds the business community’s willingness to provide, and understanding of the need for, paid leave benefits greater than the traditional sick leave (which is what the District’s Sick and Safe Law provides to individuals who previously lacked this type of leave) or annual leave, the employer mandate model recommended by the business community raises serious concerns for the Committee. Since the introduction of Bill 21-415, the Committee has heard from numerous small businesses (ranging from business that have as few as five employees to businesses have as many as 100 employees) who support Bill 21-415 because it provides paid leave in a manner that is affordable to them. Employees who work for a small business are often left out of the conversation surrounding medical, family, and parental leave, whether it is paid or unpaid, because businesses in the District with under 20 employees do not have to provide any type of medical, family, or parental leave to their employees. Moreover, those businesses who want to do so despite not being required to do so currently under DCFLMA cannot afford a program that would require the business to provide a 100% wage replacement for an individual who needs to take leave. While a small business employee would not receive job protection under Bill 21-415, the individual would at least be able to be paid when he or she takes leave, and the small business would not have to come up with 100% of the funds to do so.

However, under the employer mandate model, individuals who work for an employer with 50 or more employees would be the only employees who would be able to benefit and receive paid family, parental, or medical leave. Employees who worked for an employer with under 50 employees would have to wait an extra year before they could participate, and their employer would either have to obtain TDI and a family leave policy or pay 100% of the individual’s wage replacement. Neither of these options is viable for these smaller employers. Doing so could result in the loss of small businesses throughout the District. While the employer mandate model also provides for a “shared risk insurance pool” as a third alternative for employers with under 50 employees, this model would still need to be funded. Those backing the employer mandate model indicate that the District government should have to pay for that pool, but funds to do so have to come from somewhere in order to make it sustainable. Thus, the very businesses who now have to pay for paid leave under the employer mandate would either end up paying for small businesses through some sort of other tax or some other benefit to District residents would have to be cut. Bill 21-415 does not require the Council to make this choice. Instead, it provides for a large pool to spread the risk and creates a sustainable program that allows individuals in the private sector to participate regardless of the number of employees that an individual’s employer has. Additionally, Bill 21-415 covers worker regardless of the number of hours they work, thereby covering part-time workers, whereas the employer mandate would require a year long wait before an individual

could participate and would only apply to individuals who have worked an average of 24 hours a week through that year. As individuals who work part-time are the least likely to be eligible for paid leave, it is crucial that they be covered under any paid leave program adopted, making Bill 21-415 a much more desirable choice for part-time workers and small businesses.

II. LEGISLATIVE CHRONOLOGY

October 6, 2015  Bill 21-415, “Universal Paid Leave Act of 2015” is introduced by Councilmembers Grosso, Nadeau, McDuffie, Silverman, Allen, May, and Cheh and is referred to the Committee of the Whole.

October 9, 2015  Notice of Intent to Act on Bill 21-415 is published in the District of Columbia Register.

November 13, 2015 Notice of the First Public Hearing on Bill 21-415 is published in the District of Columbia Register.

December 2, 2015 The Committee of the Whole holds the first public hearing on Bill 21-415.

December 11, 2015 Notice of the Second and Third Public Hearings on Bill 21-415 is published in the District of Columbia Register.

January 14, 2016 The Committee of the Whole holds a second public hearing on Bill 21-415.

February 8, 2016 The Committee of the Whole releases a “discussion draft” of Bill 21-415.

February 11, 2016 The Committee of the Whole holds the third public hearing on Bill 21-415.

November 29, 2016 The Committee of the Whole circulates the draft Committee Print of Bill 21-415.

December 1, 2016 The Council’s Budget Office releases an Economic Impact Statement on the effects of Bill 21-415.

December 6, 2016 The Committee of the Whole marks-up Bill 21-415.

III. POSITION OF THE EXECUTIVE

Rashad Young, City Administrator of the District of Columbia, Ventris Gibson, Director, District Department of Human Resources, and Deborah Carroll, Director, Department of Employment Services all testified on behalf of the Executive with regard to Bill 21-415.

According to Mr. Young, the Executive supports the notion of a paid leave program but has significant concern that the benefits of the program will exceed the revenues collected via the
payroll tax. Additionally, Mr. Young indicated that the Executive believed that implementing a universal paid leave program would have significant start-up costs, as well as high annual administrative costs, estimating that the annual administrative costs would range from $25-$50 million dollars. Further, Mr. Young indicated that the Executive was concerned that Bill 21-415 could result in slower or negative job growth within the District.

Ms. Gibson, the Director of the District’s Department of Human Resources (“DCHR”), testified about the various leave laws and programs at play for District employees. Ms. Gibson suggested that the number of weeks available under DCFMLA should be reduced from 16 to 12 so that it mirrors the federal FMLA law. Additionally, Ms. Gibson noted that the District government needed to revise its training programs with regard to the family medical leave offered to District employees, as virtually every individual who asked to take leave under the District government’s paid leave program was approved to do so for the full eight weeks without DCHR doing follow-up to ensure that an individual needed to be on paid leave for the entire time.

In addition to Mr. Young and Ms. Gibson, Ms. Carroll, Director of the Department of Employment Services (“DOES”), testified about the grant that DOES received from the United States Department of Labor (“DOL”) to determine the feasibility of expanding DCFMLA to a paid family and medical leave law. Ms. Carroll described the results of the feasibility study, but she did note that the feasibility study commissioned by DOES as part of the DOL grant did not include an analysis of the paid leave program included in the introduced version of Bill 21-415. Additionally, Ms. Carroll questioned what impact the introduced version of Bill 21-415 would have on small businesses.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The following Advisory Neighborhood Commissions (ANC) adopted resolutions regarding Bill 21-415. Copies of the resolutions can be found in the public record for Bill 21-415.

ANC 1B approved a resolution on October 6, 2016 supporting legislation that provides a universal paid leave system in the District.

ANC 1C approved a resolution on September 7, 2016 supporting legislation that provides a universal paid leave system in the District.

ANC 1D approved a resolution on November 28, 2016 supporting legislation that provides a universal paid leave system in the District.

ANC 2A approved a resolution on July 20, 2016 supporting legislation that provides a universal paid leave system in the District.

ANC 2B approved a resolution on August 10, 2016 supporting legislation that provides a universal paid leave system in the District.
ANC 3C approved a resolution on May 16, 2016 supporting legislation that provides a universal paid leave system in the District.

ANC 3F approved a resolution on March 15, 2016 supporting legislation that provides a universal paid leave system in the District.

ANC 4A approved a resolution on June 7, 2016 supporting legislation that provides a universal paid leave system in the District.

ANC 4B approved a resolution on May 23, 2016 supporting legislation that provides a universal paid leave system in the District.

ANC 4C approved a resolution on April 14, 2016 supporting legislation that provides a universal paid leave system in the District.

ANC 5E approved a resolution on October 8, 2016 supporting legislation that provides a universal paid leave system in the District.

ANC 6D approved a resolution on October 17, 2016 supporting legislation that provides a universal paid leave system in the District.

ANC 7D approved a resolution on January 12, 2016 supporting legislation that provides a universal paid leave system in the District.

ANC 8E approved a resolution on July 11, 2016 supporting legislation that provides a universal paid leave system in the District.

V. SUMMARY OF TESTIMONY

The Committee of the Whole held three public hearings on Bill 21-415: Wednesday December 2, 2015; Thursday, January 14, 2016; and Thursday, February 11, 2016. The testimony summarized below is from those hearings. Copies of written testimony can be found in the public record for Bill 21-415.

Wednesday, December 2, 2015

Jim Dinegar, President, Greater Washington Board of Trade, testified in opposition to the Bill stating that by extending the benefits to Maryland and Virginia residents the Act creates an imbalance that favors Maryland and Virginia over the District.

Charles Miller, General Counsel, Federal City Council, testified in opposition to the Bill. He argued that the Act would place large burdens on employers, create the likelihood of employee abuse of the system, negatively affect employees who already have paid leave benefits greater than the proposal and discourage businesses from settling in the District.

Cailey Lockclair Tolle, Maryland Retailers Association, testified in opposition to the Bill due to the added burdens placed on employers that would discourage their hiring of DC residents,
would cause confusion for employers outside of the District, or would cause District employers to relocate.

Chris Coleman, President, Tri-State Jewelers Association, testified in opposition to the Bill because of the difficulty it would create for small businesses including having to give paid leave to both employees on leave and the temporary employees who replace them.

Jacob Feinspan, Executive Director, Jews United for Justice, testified in support of the Bill in particular the requirement to hold an employee's job and the recognition of family relations beyond parent-child.

Ed Lazere, Executive Director, DC Fiscal Policy Institute, testified in support of the Bill because it will decrease poverty, unemployment and income inequality in the District. He also testified that the provision of fringe benefits would allow small businesses and non-profits to compete with larger and government employers.

Nikki Lewis, Executive Director, DC Jobs with Justice, testified in support of the Bill and spoke on behalf of 70 local progressive community, student, labor, and faith organizations who endorsed the Bill. Ms. Lewis testified about the importance of granting workers paid leave to manage health-related issues and believed that businesses will be able to make space in their budgets for a 1% payroll tax towards paid leave.

Lisa Raymond, Deputy Director, DC Action for Children testified in support of the Bill and cited ample data showing the positive effects paid leave would have on child development and health, especially within low-income families.

Harry Wingo, President and CEO, DC Chamber of Commerce testified in opposition to the Bill stating that small businesses would be negatively burdened, and DC businesses would be less competitive in the region.

Deriece Pate Bennett, Vice President of Government Affairs, Maryland Chamber of Commerce, testified in opposition to the Bill. Ms. Pate Bennett questioned the legality of a mandate on non-District employers to contribute to the fund.

Kathy E. Hollinger, President and CEO, Restaurant Association of Metropolitan Washington testified in opposition to the Bill citing the negative impact a 1% tax on employers would have on the already thin profit margins of restaurant operators. Ms. Hollinger suggested that if the legislation is enacted, only employees who have been at the job for at least a year should qualify for leave.

Solomon Keene, President, Hotel Association of Washington, D.C. testified in opposition to the Bill due to the perceived significant hardships it may place on employers. Mr. Keene also expressed concern over the interaction between paid leave and existing benefit programs including those negotiated under a collective bargaining agreement.
Lisa Mallory, Chief Executive Officer, DC Building Industry Association, testified in opposition to the bill stating that it is too expensive for small businesses to participate in and that it would place District companies at a competitive disadvantage when bidding on projects because the added cost of benefits would necessarily cause bid prices to rise.

Joslyn Williams, President, Metropolitan Washington Council, AFL-CIO, testified in support of the Bill, stating that its enactment will encourage gender equity and reduce the economic disparities between high- and low-wage earners.

Dyana Forester, Community and Political Lead Representative, United Food Commercial Workers Union, Local 400, testified in support of the Bill. Ms. Forester testified that the legislation will make the District a competitive place to do business and a great place for working people and their families to live and thrive.

Xiomara Flores, Field Representative, SEIU 32BJ, testified in support of the Bill stating that low-wage workers would no longer have to choose between their wages and taking time to care for themselves and their families.

Edward Smith, Executive Director, DC Nurses Association, testified in support of the Bill stating that paid leave helps to recruit and retain healthcare professionals who struggle to balance their work with their own family and healthcare concerns. Mr. Smith also testified that paid leave improves the health outcomes of patients who benefit from being cared for by healthy nurses.

Dr. John Cavanaugh, President and CEO, Consortium of Universities of the Washington Metropolitan Area, testified in opposition to the Bill as introduced arguing that the Bill’s “one size fits all” approach undermines employers existing responsive benefit programs for their employees. Dr. Cavanaugh also testified that it is unfair for District residents working outside of the District to be taxed for the same benefit that District residents working within the District would receive for free. Finally, Dr. Cavanaugh questioned the District government’s ability to oversee the program and legally mandate participation by non-District employers.

Carrie Thornhill, President, DC Early Learning Collaborative, testified in opposition to the Bill, stating that further economic impact analysis was needed.

Julia Judish, Outside Counsel to the American Society of Association Executives, testified in opposition to the Bill stating that it would burden employers with the task of replacing well-trained employees while on leave, place added pressure on employees who will have to shoulder more family responsibilities like elder care since their out-of-state siblings are unlikely to have paid leave of their own, and encourage abuse of paid leave benefits.

Scott Hoffman, Co-Owner and Treasurer, Howard & Hoffman Insurance Agency, testified in opposition to the Bill stating that the Bill failed to include an exemption or specific considerations for the needs of small businesses.
Kathy Logan, Board Member, DC Breastfeeding Coalition, testified in support of the Bill because the 16 week benefit would allow mothers the opportunity to bond with their newborns, establish breastfeeding, and attend doctors’ visits without fear of job loss or lost wages.

Marcia St. Hilaire-Finn, Owner and Managing Director, Bright Start Childcare and Preschool, testified in support of the Bill, stating that as a business owner she could absorb the cost of the payroll tax by reducing her employees yearly 2-3% raise to 1% and adding paid leave. Ms. St. Hilaire-Finn stated that her employees are more favorable towards this proposed option.

Dr. Jennifer Tender, Board Member and Breastfeeding Coordinator, DC Chapter American Academy of Pediatrics, testified in support of the Bill, stating that studies show that paid family leave has positive effects on children’s health and development.

Sally White, Executive Director, IONA Senior Services, testified in support of the Bill, citing the increasing numbers of working adults who take unpaid leave to care for a child or an aging parent.

David Wilmot, Executive Director, District of Columbia Association of Health Plans, testified in opposition to the Bill, stating that it failed to consider current leave programs already offered by District employers. Mr. Wilmot also stated that these added costs would reduce the number of employees hired by District employers.

Sandy Douglass, Legislative Committee Chair, District of Columbia Healthcare Association, testified in opposition to the Bill stating that healthcare providers cannot pass the cost of the tax onto their customers and would be further burdened by efforts to find capably trained replacement workers.

Justin Palmer, Chief Government Relations and Health Policy Officer, District of Columbia Hospital Association, testified in opposition to the Bill. Mr. Palmer recommended that the Council conduct a review of all leave programs currently offered to employees and convene a roundtable of employers to reimagine the proposed legislation.

Martin Janis, President, Washington Parking Association, testified in opposition to the bill, stating that it failed to include employer perspectives in its drafting. Mr. Janis also stated that by overburdening District employers, the Bill fails to consider that the District competes with Maryland and Virginia for business.

Gerry Widdicombe, Director of Economic Development, Downtown BID, testified in opposition to the Bill encouraging the Council to conduct a full analysis of its fiscal and economic impact.

Nicola Whiteman, Senior Vice President of Government Affairs, Apartment and Office Building Association of Metropolitan Washington, testified in opposition to the Bill. Ms. Whiteman testified that the Bill would make the District a less desirable and competitive place to do business.
Eric Jones, Associate Director of Government Affairs, Associated Builders & Contractors of Metro Washington, testified in opposition to the Bill. Mr. Jones testified that the Bill would put DC employers at a competitive disadvantage and it would require employers to grant brand-new employees very generous benefits. Mr. Jones also stated that the Bill complicates compliance with the First Source Law as employers cannot reasonably anticipate which workers will be out on leave and for how long.

Andrew Porter, Chairman, Alliance for Construction Excellence, testified in opposition to the Bill stating that construction workers regularly move across jurisdictional lines and this could complicate the Bill’s requirement to give notice and estimate payments to the Fund. Mr. Porter also raised concerns over the interaction between paid leave and collective bargaining agreements, asking for exemption for employers covered by collective bargaining agreements.

Mark Lee, Executive Director, D.C. Nightlife Hospitality Association, testified in opposition to the Bill citing the thin profit margins customary to small business hospitality establishments.

Kirk McCauley, Director of Member Relations and Government Affairs, WMDA Service Station & Automotive Repair Association, testified in opposition to the bill stating that it would overburden small businesses. Mr. McCauley stated that a 1% tax is hefty for small business as is the requirement to replace employees on leave.

Thursday, January 14, 2016

Dr. Ruth Milkman, Professor of Sociology, City University of New York Graduate Center/Research Director, Murphy Institute, CUNY/President, American Sociological Association, testified in favor of Bill 21-415. Dr. Milkman has studied California's Paid Family Leave program since its implementation in 2004. She said her research indicates the biggest benefit of a strong paid family leave program is that it is a counterweight to the inequality between low-wage workers and their higher paid counterparts. She also stated the California program has proven paid family leave had either no effect or a positive effect on the vast majority of businesses, including small businesses, in regard to profitability/performance, productivity, employee turnover, and employee morale.

Victoria Shabo, Vice President, National Partnership for Women & Families, testified in support of the bill. Ms. Shabo stated the National Partnership has expertise in both federal and state policy development and believes the District's proposed paid family leave program would strengthen the local economy because it benefits businesses with employee loyalty and productivity.

Heather Boushey, Executive Director and Chief Economist, Washington Center for Equitable Growth, testified in favor of the bill. She produced information from her book Finding Time: The Economics of Work-Life Conflict, where she states that smoothing and securing people's participation in the economy is good for families, good for firms, and good for the economy.
Sarah Jane Glynn, Director of Women’s Economic Policy, Center for American Progress, testified in support of the bill stating current access to paid leave in the U.S. is uneven. She stated that her research indicates high-income workers are more than five times as likely to have access to paid family leave compared with low-income workers. This means too many families have to put their economic security at risk when they face family caregiving responsibilities. Additionally, Ms. Glynn testified that a paid family leave program should be crafted in a way that reduces inequality, promotes both short- and long-term economic security, and promotes greater gender equality.

Joseph Henchman, Vice President of State Projects, Tax Foundation, did not take a positive or negative position on the bill. Instead, he offered the following comments for the program: program costs will likely outstrip the revenue stream, better program design options exist for paid leave, and the proposed tax will have a tremendous negative impact on the District’s tax competitiveness.

Harry J. Holzer, McCourt School of Public Policy, Georgetown University, testified in favor of expanding paid family leave in the District and noted the positive effects state-run paid family leave programs can have on individuals and society as a whole. Mr. Holzer, however raised the following concerns about the bill as written: it appears to be fiscally underfunded in its current form, it will impose serious costs on workers as well as businesses, and it will add to a cumulative burden of mandates and regulations recently imposed on employers in the District relative to nearby jurisdictions such as Arlington, VA.

Norton Francis, Senior Research Associate, Urban Institute/Urban-Brookings Tax Policy Center, testified that he believes the bill provides an important benefit to people who live in the District but that it has two significant challenges. He believes those challenges are that cross-state flows of employees and residents will make administering the program difficult and that it would be very expensive. He suggested limiting the types of employers subject to the law and limiting duration of the benefit to correct the flaws he believes the program has.

Jodie Levin-Epstein, Deputy Director, Center for Law and Social Policy, testified in favor of the bill saying she believes it would lessen the District’s dramatic inequities, increase workforce participation and wages especially among women, improve access to preventive health care, reduce household and community economic hardship, and would expand paid leave to all employees, even those working for smaller businesses.

Dr. Heidi Hartmann, President and founder, and Dr. Jeffrey Hayes, Program Director, Job Quality and Income Security, Institute for Women’s Policy Research, did not take a positive or negative position on the bill. Instead, they provided the following findings based on their extensive research on the subject of paid family leave and their evaluation of the legislation: the total number of family and medical leaves taken would likely increase nearly 10%, the average length of leave would increase by about 6 days to 6.6 weeks, and that the estimates should dispel fears about very large increases in the number of leave takers or lengthy extensions of leave-taking due to a paid leave program.
James Diffley, Senior Director, IHS Economics, did not take a position on the bill and testified that IHS had been asked to provide a fiscal analysis of the bill as introduced. According to Mr. Diffley, the bill would generate a shortfall of contributions and that the expected cost would exceed the expected revenue from the payroll tax. Specifically, IHS estimated that the initial revenue would be approximately $338 million and the estimated expenditures of the program would total approximately $728 million.

Jeffrey DeWitt, Chief Financial Officer, Office of the Chief Financial Officer of the District of Columbia, testified with regard to the financial implications of the introduced version of Bill 21-415. Specifically, Mr. DeWitt indicated that the introduced version of the bill would likely exceed the revenue brought in through the payroll tax, thereby making the program outlined in the introduced version of Bill 21-415 untenable if the benefits in the bill were not decreased and/or the payroll tax in the bill was not increased. Additionally, Mr. DeWitt noted that in order for Bill 21-415 to obtain a clean fiscal impact statement, a provision needed to be added to the legislation that made clear that the District would not be responsible for any program shortfalls and that funds would have to be identified to cover program administrative costs.

Thursday, February 11, 2016:

Rachel Dubin, Public Witness, testified in support of Bill 21-415.

Justino Gomez, member, Many Languages One Voice, testified in support of Bill 21-415.

Alonso Guardado, member, Many Languages One Voice, testified in support of Bill 21-415.

Dalia Catalan, member, Many Languages One Voice, testified in support of Bill 21-415.

Margaret Singleton, Interim President/CEO, DC Chamber of Commerce, recommended changes to Bill 21-415.

Kathy E. Hollinger, President and CEO, Restaurant Association Metropolitan Washington, testified in opposition to Bill 21-415.

Elizabeth Davis, President, Washington Teachers Union, testified in support of Bill 21-415.

Patria Harrell, Public Witness, testified in support of Bill 21-415.

Sasha Bruce, Senior Vice President for Campaigns and Strategy, NARAL Pro-Choice America, testified in support of Bill 21-415.

Melanie L. Campbell, President and CEO, National Coalition on Black Civic Participation, testified in support of Bill 21-415.

Ariel Cetrone, Public Witness, testified in support of Bill 21-415.
Victoria Hougham, Public Witness, testified in support of Bill 21-415.

Dr. Yanira Cruz, President and CEO, National Hispanic Council on Aging, testified in support of Bill 21-415.

Roger Horowitz, Owner, Pleasant Pops, testified in support of Bill 21-415.

Travis Ballie, Public Witness, testified in support of Bill 21-415.

Daniel Turner, Founder and CEO, TCG, testified in support of Bill 21-415.

Chanda Davis, Public Witness, testified in support of Bill 21-415.

Kristin Garrity Sekerci, Public Witness, testified in support of Bill 21-415.

Howard F. White, Public Witness, testified in support of Bill 21-415.

Zeke Reich, Public Witness, testified in support of Bill 21-415.

Amanda Steinberg, Public Witness, testified in support of Bill 21-415.

Jessica Lott, Public Witness, testified in support of Bill 21-415.

Lindsay Dupertuis, Public Witness, testified in support of Bill 21-415.

Sabrina Sussman, Public Witness, testified in support of Bill 21-415.

Elizabeth Kanter, Public Witness, testified in support of Bill 21-415.

Morgan Gross, Public Witness, testified in support of Bill 21-415.


Ke’sha Scrvnner, Public Witness, testified in support of Bill 21-415.

Kory Goodwine, Public Witness, testified in support of Bill 21-415.

Aaron Fanwick, Public Witness, testified in support of Bill 21-415.

Laura Brown, Executive Director, First Shift Justice Project, testified in support of Bill 21-415.

Morgan Leighton, Public Witness, testified in support of Bill 21-415.
Mark Lee, Executive Director, D.C. Nightlife Hospitality Association, testified in opposition to Bill 21-415.

Mike Salamon, Public Witness, testified in support of Bill 21-415.

Abby Levine, Public Witness, testified in support of Bill 21-415.

Mary Laura Calhoun, Public Witness, testified in support of Bill 21-415.

Jessica Champagne, Public Witness, testified in support of Bill 21-415.

Sarah Alcid, Associate Campaign Director, MomsRising, testified in support of Bill 21-415.

Luc Brami, principal, Gelberg Signs, testified in opposition to Bill 21-415.

Cicely Fadel, pediatrician, DC Chapter American Academy of Pediatrics, testified in support of Bill 21-415.

Angelo Thompson, Public Witness, testified in support of Bill 21-415.

Andrew Hunt, principal, AGH Consulting, testified in support of Bill 21-415.

Geoff Silverstein, Founding Partner, Friendly Design Co., testified in support of Bill 21-415.


Julie Yoder, owner, The English Teacher Collective, testified in support Bill 21-415.

Marcia St. Hilarie-Finn, Managing Director, Bright Start Childcare, testified in support of Bill 21-415.

Shira A. Bergstein, Public Witness, testified in support of Bill 21-415.

Sally Kram, Director of Public and Governmental Affairs, Consortium of Universities of the Washington Metropolitan Area, testified in opposition to Bill 21-415.

Danielle Lewis, Partner, Springboard Partners, testified in support of Bill 21-415.

Naomi Shachter, Public Witness, testified in support of Bill 21-415.

Doug Foote, Public Witness, testified in support of Bill 21-415.
Sharon Rose Goldtzvik, Founder and CEO, Uprise, testified in support of Bill 21-415.

Robert Coomber, Public Witness, testified in support of Bill 21-415.

Julia Judish, Outside Counsel of the American Society of Association Executives, recommended changes to Bill 21-415.

Sherice A. Muhammad, Public Witness, testified in support of Bill 21-415.

Josephine Kalipeni, Director of Policy and Partnerships, Caring Across Generations, testified in support of Bill 21-415.

Tania Lown-Hecht, Public Witness, testified in support of Bill 21-415.

Russ Synder, President and CEO, Volunteers of America Chesapeake Inc, recommended changes to Bill 21-415.

Kirk McCauley, Director of Member Relations and Government Affairs, WMDA Service Station Association, testified in opposition to Bill 21-415.

Emily Goodstein, Owner, Emily Goodstein Photography, testified in support of Bill 21-415.

Matt Erickson, Founding Partner, 76 Words, testified in support of Bill 21-415.

Veronica Brown, Public Witness, testified in support of Bill 21-415.

Sade Moonsammy-Gray, Navigator and State Outreach Coordinator, Young Invincibles, testified in support of Bill 21-415.

Valencia Campbell, Leader of DC Action Team, 9to5, National Association of Working Women, testified in support of Bill 21-415.

Norma Byrd, Vice President, Business Promotion Consultants, testified in opposition to Bill 21-415.

Jordan Bleck, Public Witness, testified in support of Bill 21-415.

Farah Fosse, Public Witness, testified in support of Bill 21-415.

Sean Siperstien, Public Witness, testified in support of Bill 21-415.

Jesse Blumin, Public Witness, testified in support of Bill 21-415.


Marjorie Middleton, Public Witness, testified in support of Bill 21-415.

Hannah Lantos, Public Witness, testified in support of Bill 21-415.

Emily Schondelmyer, Public Witness, testified in support of Bill 21-415.

Ashe McGovern, Policy Analyst, Center for American Progress testified in support of Bill 21-415.

Jeronique Bartley, Public Witness, testified in support of Bill 21-415.

Christine Tschiderer, Fellow, Washington Lawyers’ Committee for Civil Rights and Urban Affairs testified in support of Bill 21-415.

Preston Van Vliet, National Campaign Organizer, Family Values @ Work testified in support of Bill 21-415.

Michelle McGrain, Public Witness, testified in support of Bill 21-415.

Aaron Litz, Public Witness, testified in support of Bill 21-415.

Susanna Murley, Public Witness, testified in support of Bill 21-415.

Kelsey Ryland, Policy Manager, Unite for Reproductive & Gender Equity (URGE) testified in support of Bill 21-415.

Kirk Wilson, Public Witness, testified in support of Bill 21-415.

Hollande Levison, Public Witness, testified in support of Bill 21-415.

Danielle Paulson, Public Witness, testified in support of Bill 21-415.

Sara Fatell, Owner, Grassroots Gourmet testified in support of Bill 21-415.

Rabbi Elizabeth Richman, Program Director, Jews United for Justice testified in support of Bill 21-415.

Joanna Blotner, Campaign Manager, DC Paid Family Leave Campaign testified in support of Bill 21-415.

Ramesh Butani, President, HRGM Corp. testified in opposition to Bill 21-415.

Zach Komes, Roosevelt Institute, George Washington University testified in support of Bill 21-415.
David Wasserstein, Public Witness, testified in support of Bill 21-415.

Jane Emily Hayashi, Public Witness, testified in support of Bill 21-415.


Hannah Kane, Worker Justice Organizer, Many Languages One Voice testified in support of Bill 21-415.


Adam Graubert, Roosevelt Institute, George Washington University testified in support of Bill 21-415.

Thomas Marr, Owner, Pete’s New Haven Style Pizza testified in opposition to Bill 21-415.

Jeremiah Lowery, Ombudsman, DC for Democracy testified in support of Bill 21-415.

Andrew Kline, General Counsel, Restaurant Association of Metropolitan Washington testified in opposition to Bill 21-415.

Camille Harris, Public Witness, testified in support of Bill 21-415.

Emily Hecht-McGowan, Interim Executive Director, Family Equality Council testified in support of Bill 21-415.


Matthew Hanson, Campaign Director, DC Working Families testified in support of Bill 21-415.

Greg Casten, Partner, Tony and Joe’s Seafood Place testified in opposition of Bill 21-415.

Stewart Newbold, Director of Operations, Jose Andres ThinkFood Group testified in opposition of Bill 21-415.

Ed Lazere, Executive Director, DC Fiscal Policy Institute testified in support of Bill 21-415.

Linda Benesch, Public Witness, testified in support of Bill 21-415.

Donald Stuart Cameron, Public Witness testified in opposition to Bill 21-415.
Boo Kim, Director of Operations, Passion Food Hospitality testified in opposition to Bill 21-415.

Michael Visser, Owner, Flying Fish Coffee and Tea testified in support of Bill 21-415.

Hannah Weibacher, Public Witness, testified in support of Bill 21-415.


Ruth Gresser, Owner/Chef, Pizza Paradiso testified in opposition to Bill 21-415.

VI. IMPACT ON EXISTING LAW

Bill 21-415 creates a paid leave program and provides for a 0.62% payroll tax on employers in order to finance the program. Individuals who are self-employed have the choice to opt-in to the program within certain bounds as outlined in Bill 21-415. Bill 21-415 also has conforming amendments to allow for the proper implementation and oversight of the paid leave program, including a shut off reserve clause should benefits start to exceed revenue in order to protect the District from being faced with the challenge of paying for the program, as the program in Bill 21-415 is designed to be self-sustaining.

VII. FISCAL IMPACT

The attached December 2, 2016 Fiscal Impact Statement from the Chief Financial Officer ("CFO") states that implementation of Bill 21-415 estimates a $238 million per year payroll tax that will be funded by a .62% payroll tax on District of Columbia employers. The CFO states that funds are not sufficient in the fiscal year 2017 through 2020 budget and financial plan for the $40 million capital project start-up costs ($22 million for Phase I and $18 million for Phase II). The estimated revenue for Year 1 is zero; Year 2 is $125,626,838; Year 3 is $253,766,213; and Year 4 is $258,841,537.\(^{43}\) The estimated benefit cost in Year 1 is zero; in Year 2 is zero; in Year 3 is $118, 547,648; and in Year 4 is $239,456,150.\(^{44}\) Year 2 for estimated annual benefit is zero because the tax must be collected and be in reserve prior to benefits being paid out to beneficiaries.

The $40 million estimate for completion is adequate per discussions with the Chief Technology Officer.\(^{45}\) The fiscal impact statement articulates that this cost amount is to cover both Phases of the program build. It also includes costs for the salaries for 113 FTEs; real estate; and ongoing IT maintenance and licensing fees. The Committee would like to note that in other jurisdictions that costs for infrastructure and implementation of paid leave programs was substantially lower than the CFO's cost estimate. It is likely that the expense for administering this program will be much less, but the CFO must factor in the costs required for the District’s

\(^{43}\) FIS at page 5.

\(^{44}\) Id. at 7.

\(^{45}\) Id. at 8.
Certified Business Expenditures ("CBE") and costs related for the Contract Appeals Board ("CAB") and the D.C. Office of Contracts and Procurement ("OCP").

The Committee notes that in the Fiscal Year 2017 Budget Support Act of 2016, the D.C. Council established the Universal Paid Leave Implementation Fund and placed approximately $20 million in the Fund for start-up costs associated with Bill 21-415. However, the Council did not authorize appropriations authority to spend this initial $20 million. Hence, these funds cannot be utilized until the Council provides appropriations authority, which it will do during the fiscal year 2018 budget process.

VIII. SECTION-BY-SECTION ANALYSIS

Title 1- Creates Paid Leave Program

Section 101 Sets forth the definitions to be used under the paid leave program established in the bill.

Section 102 Establishes the paid medical, family, and parental leave program.

Section 103 Outlines the contributions that employers or self-employed individuals who have chosen to opt-in shall make to fund the paid leave program established in this bill. Specifically, it indicates that a 0.62% payroll tax will be assessed and mandates that the Mayor shall begin to collect contributions to the Paid Leave Fund by March 1, 2019.

Section 104 Describes the amount and duration of the benefits that an eligible individual is entitled to receive under the paid leave program. Additionally, this section requires the Mayor to begin paying benefits to eligible individuals who are entitled to receive them by March 15, 2020.

Section 105 Explains the requirements and criteria that self-employed individuals must adhere to if they want to opt-in to participate in the paid leave program established in Bill 21-415.

Section 106 Depicts the administration of the paid leave program, outlining timelines and criteria that the Mayor shall follow when implementing this bill.

Section 107 Coordinates the benefits provided for in Bill 21-415 and details when an individual may or may not be able to receive paid leave under Bill 21-415 if an individual receives benefits from another District program and/or is subject to a collective bargaining agreement with his or her employer.

Section 108 Describes the appeals process and aligns it with the practices already being followed by the Office of Administrative Hearings, who will be responsible for hearing appeals.
Section 109 Outlines the action the Mayor shall take if an erroneous payment is made to an individual. Additionally, this section notes that if the Mayor collects repayment due to benefits being made to an individual who made a willful misrepresentation or perpetrated fraud to obtain the benefit, the Mayor shall distribute a proportional share of the funds recovered to the individual’s employer(s).

Section 110 Indicates the acts that are prohibited under Bill 21-415.

Section 111 Provides investigative authority to the Mayor when determining whether an employer should have made a contribution or to determine if an individual should or should not have received a payment of benefits pursuant to this bill.

Section 112 Allows enforcement by civil action

Title II – Conforming Amendments

Section 201 Provides OAH authority to hear appeals cases associated with the paid leave program established in this bill.

Section 202 Indicates that DCFLMA can also be taken now when an eligible individual fosters a child.

Section 203 Amends the Fiscal Year 2017 Budget Support Act of 2016 to flesh out the implementation and utilization of the Universal Paid Leave Implementation Fund. At the request of the OCFO, this section also includes a reserve clause that describes the action the OCFO shall take if reserves in the Universal Paid Leave Implementation Fund dip to the equivalency of nine months of benefits or six months of benefits.

Title III – Fiscal Impact Statement and Effective Date

Section 301 Includes a subject to appropriations clause.

Section 302 States the Fiscal Impact of Bill 21-415.

Section 303 Effective date.

IX. COMMITTEE ACTION

On December 6, 2016, the Committee met to consider Bill 21-415, the “Universal Paid Leave Amendment Act of 2016.” The meeting was called to order at 11:55 a.m., and Bill 21-415 was item III-C on the agenda. After ascertaining a quorum (Chairman Mendelson and
Councilmembers Alexander, Allen, Bonds, Cheh, Evans, Grosso, May, McDuffie, Nadeau, Silverman, Todd, and White present), Chairman Mendelson moved the committee print with leave for staff to make technical and conforming changes.

Councilmember Silverman offered an amendment, which added two weeks of medical (self-care) leave and reduced the number of weeks for family care and parental leave from eight to six and eleven to eight weeks, respectively. Councilmembers Grosso, Cheh, and Nadeau spoke in support of the amendment. During the discussion on the amendment, Councilmembers Cheh and Nadeau also spoke in support of the underlying measure. Specifically, Councilmember Cheh noted that inclusion of medical leave in Bill 21-415 led to her decision to support the bill. Councilmember Nadeau stated that she believed that the process surrounding Bill 21-415 had allowed everyone to be heard, though not everyone may agree on specific portions of the bill. The amendment was approved unanimously (Chairman Mendelson and Councilmembers Alexander, Allen, Bonds, Cheh, Evans, Grosso, May, McDuffie, Nadeau, Silverman, Todd, and White voting aye) by a voice vote.

Councilmember Grosso voiced his support for Bill 21-415 and discussed his reasons for introducing Bill 21-415. Councilmember Allen also stated his support for the bill and indicated that he believed the bill was about time – time to spend with a loved one who may be dying or time to spend with a new child – and fairness, as paid leave in the District currently only exists for individuals who are lucky enough to be offered it by their employers. Further, Councilmember White expressed his strong support for Bill 21-415.

Councilmember Evans expressed his opposition to Bill 21-415, describing three issues with the bill: 1) amount of costs that the District may face in the future; 2) inequities in the bill because residents who live in Wards 4, 5, 7, and 8 receive the least amount of total funds; and 3) raising a tax to fund the program. Chairman Mendelson responded to Councilmember Evans’ perceived inequity in Bill 21-415 by describing the percentage of wage replacement by ward – individuals who live in wards 7 and 8 will receive an average wage replacement of 90%, while individuals who live in ward 3 will receive an average wage replacement of 72%. Additionally, Chairman Mendelson noted that Bill 21-415 was designed to favor heavily individuals who are low-income. Councilmember Bonds indicated that she did not see much of a difference between 72% and 90% and expressed concern about the cost of the bill. Councilmember Todd indicated that he supported the idea of paid family leave but had questions about the bill. Chairman Mendelson responded to Councilmember Todd’s question about whether the Chief Financial Officer’s estimates would be off by noting the fact that the CFO’s take-up rates are significantly higher by a factor of 3 to 15.5. Further, Chairman Mendelson noted that the program in Bill 21-415 is fully balanced and that the trigger included in Bill 21-415 was included to address the CFO’s concerns. Chairman Mendelson also responded to Councilmember Todd’s other questions by noting that Bill 21-415 purposefully leaves flexibility to the Mayor with regard to what agency will administer the paid leave program and outlined the findings from the Economic Impact Analysis done by the Council’s Budget Office. Councilmember McDuffie indicated that he supports Bill 21-415 and stated that this is not the first time the Council has looked at paid leave, as it approved a paid leave program for District government employees a few years ago. Councilmember Alexander stated that she had a problem with a majority of the benefits going to non-District residents and challenged paid leave supporters to support DC Statehood. Councilmember May indicated that she has been consistent in
supporting ward 8 and that she was not against the concept of paid leave. Councilmember Silverman responded to concerns by noting that paid leave reduces infant mortality and turnover within businesses. Additionally, she agreed that more funds should go to District residents.

Councilmember Evans moved an amendment in the nature ("ANS") of a substitute that would change the funding and administration of the paid leave program to an employer mandate model. Chairman Mendelson clarified that the ANS would benefit all District employees regardless of where they live and would have a hit on the general fund since there is no mechanism within the ANS to fund the costs associated with it. Additionally, Chairman Mendelson noted that an economic impact analysis was done on Bill 21-415 but no economic impact analysis has been done on the ANS to determine the impact of the employer mandate. Further, Chairman Mendelson stated that he believed that an employer mandate model would have an adverse impact on small businesses and would result in an unfunded mandate on small businesses. Councilmember Evans then withdrew the ANS.

Councilmember Evans moved seven amendments—amendment (1) applies only to family care leave and limits the leave to only one eligible individual at a time; amendment (2) applies only to family care leave and would require proof that the care is needed and that the eligible individual is the person providing care; amendment (3) would set a minimum employment requirement before an individual could receive paid leave benefits; amendment (4) would limit the OAG as the only entity who could enforce provisions of the bill; amendment (5) would prevent employment while taking the leave; amendment (6) would subject limit the amount of income subject to the payroll tax; and amendment (7) would prevent double-dipping. Councilmember Grosso indicated that he would be willing to work with Councilmember Evans on amendments (2), (4), and (5) between first and second reading. Councilmember Evans agreed to pause on moving the amendments on first reading and to work with Chairman Mendelson and Councilmembers Grosso and Silverman between first and second reading. Councilmember Bonds requested that amendment (3) also be looked at between first and second reading.

After an opportunity for further discussion, the vote on the print was 12-1 (Chairman Mendelson and Councilmembers Alexander, Allen, Bonds, Cheh, Grosso, May, McDuffie, Nadeau, Silverman, Todd, and White voting aye; Councilmember Evans voting no). The Chairman then moved the report with leave for staff to make technical, conforming, and editorial changes. After an opportunity for discussion, the vote on the report was 11-1 (Chairman Mendelson and Councilmembers Alexander, Allen, Bonds, Cheh, Grosso, May, McDuffie, Nadeau, Silverman, Todd, and White voting aye; Councilmember voting no). The meeting adjourned at 4:38 p.m.

X. ATTACHMENTS

1. Bill 21-415 as introduced.
4. Legal Sufficiency Determination for Bill 21-415.
5. Comparative Print for Bill 21-415.
6. Committee Print for Bill 21-415.
Memorandum

To: Members of the Council
From: Nyasha Smith, Secretary to the Council
Date: October 06, 2015
Subject: Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Legislative Meeting on Tuesday, October 6, 2015. Copies are available in Room 10, the Legislative Services Division.


INTRODUCED BY: Councilmembers Grosso, Nadeau, McDuffie, Silverman, Allen, May, and Cheh

The Chairman is referring this legislation to the Committee of the Whole with comments from the Committee on Business, Consumer, and Regulatory Affairs the Committee on Finance and Revenue and the Committee on Judiciary.

Attachment

cc: General Counsel
    Budget Director
    Legislative Services
A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish a universal paid leave system for all District residents and for workers who are employed in the District of Columbia and to allow for 16 weeks of paid family and medical leave; to amend the D.C. Family and Medical Leave Act of 1990 to increase job protection status for some employees; and to amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to allow government employees with serious health conditions or who qualify for family leave to take paid leave of up to 16 weeks.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Universal Paid Leave Act of 2015”.

Title I. Establishment of Paid Family and Medical Leave

Sec. 101. Definitions.
For the purposes of this title, the term:

(1) "Application period" means the 12-month period beginning on the first day of the calendar week in which an individual's benefit for family or medical leave begins.

(2) "Average weekly wages" means the total wages subject to contribution under section 106 of this title or owed by the District of Columbia during the 4 quarters out of the 5 quarters immediately preceding the qualifying event during which the individual’s wages were highest divided by 52.

(3) "Covered employee" means any individual who has the status of an employee and was employed by a covered employer during some or all of the 52 calendar weeks immediately preceding the qualifying event, and either spends more than 50% of the individual’s work time for a covered employer in the District of Columbia or whose employer is a registered business holder in the District of Columbia and who does not spend more than 50% of his or her working time for the covered employer in a state other than the District of Columbia.

(4) "Covered employer" means any individual, partnership, general contractor, subcontractor, association, corporation, business trust, or any 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 the United States or the District of Columbia.


(6) "Eligible individual" means a person who is not a current employee of the District of Columbia, who meets the administrative requirements of this title and regulations issued pursuant to this title, and:
(A) Who was a covered employee during some or all the 52 calendar weeks immediately preceding the qualifying event;

(B) Who is a resident of the District of Columbia for some or all of the 52 calendar weeks immediately preceding the qualifying event who earned wages in a capacity other than as a covered employee; or

(C) A self-employed resident of the District of Columbia who, during some or all of the 52 calendar weeks immediately preceding the qualifying event, earned self-employment income and has not opted out of coverage under this title.

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

(8) "Family member" shall have the same meaning as provided in section 1203c(g)(3) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 1-612.03c(g)(3)).

(9) "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 March 14, 1991 (D.C. Law 8-181; D.C. Official Code § 32-501(5)).

(10) "Intermittent leave" means leave taken in separate periods of time due to a qualifying event, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

(11) "Qualifying event" shall have the same meaning as provided in section 1203c(g)(4) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective
March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-612.03c(g)(4)), except that it shall also include any qualifying exigency.

(12) "Qualifying exigency" means leave for the family member of a service member for any of the following reasons:

(A) Leave needed because of notice given 7 or fewer days in advance of deployment;

(B) Leave to attend military events and related activities;

(C) Leave to attend child care and school activities only if the leave is required, indirectly or directly, due to the active duty call or active duty status of the family member;

(D) Leave to make financial and legal arrangements for the service member’s absence or because of the absence;

(E) Leave to attend counseling provided by someone other than a healthcare provider, provided that the need for counseling arises from the active duty or call to active duty status of a covered military member;

(F) Leave to spend time with a service member who is on short-term, temporary rest and recuperation leave during the period of deployment. Eligible individuals may take up to five days of leave for each instance of rest and recuperation;

(G) Leave to attend post deployment activities;

(H) Any leave related to issues that arise out of active duty or a call to active duty that a covered employer and covered employee agree should be covered;

(I) Any leave to care for a qualifying service member who is the eligible individual’s next of kin as defined under the Family and Medical Leave Act of 1993.
(13) "Retaliate" means to 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, reduction in pay or hours or denial of additional hours, informing another employer that the person has engaged in activities protected by this title, or reporting or threatening to report the actual or suspected citizenship or immigration status of an employee, former employee or family member of an employee to a federal, state or local agency, because the employee or former employee exercises a right under this title.

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

(15) "Serious health condition" means a physical or mental illness, injury, impairment, condition, pregnancy, or post-partum recovery period that involves:

(A) Inpatient care in a hospital, hospice, or residential health care facility; or

(B) Continuing treatment or supervision at home by a health care provider.

(16) "Wages" shall have the meaning given 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)), except that self-employment income shall be treated as wages if the self-employed individual has not opted out of coverage under this title.

Sec. 102. Establishment of a family and medical leave program.

(a) The Mayor shall establish and administer a paid family and medical leave program and pay family and medical leave benefits as specified in this title.
(b) The Mayor shall establish procedures and forms for filing claims for benefits under this title. The Mayor shall notify the employer within 5 business days of a claim being filed pursuant to this title.

(c) The Mayor shall 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. The Mayor shall create a user-friendly, online portal for the submission and management of forms and documents. 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. No individual information shall be posted on this portal. 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.

(d) Information contained in the files and records pertaining to an individual under this title are confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, 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.

(e) The Mayor shall issue rules as necessary to implement this title.

(f)(1) The Mayor shall prescribe and provide to covered employers a notice explaining:
(A) The employees' right to family and medical leave benefits under this title 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 family and medical leave benefits is prohibited; and

(C) 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 be published in all languages spoken by 3% or 500 individuals in the District of Columbia population, whichever is less.

(g) 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.

(h) A covered employer who violates subsection (g) of this section 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.

(i) The Mayor shall conduct a public education campaign to inform covered employees and employers and eligible individuals regarding the availability of paid family and medical leave. In the first 2 years after the program is established, the Mayor shall use .5% of the funds collected for the paid family and medical leave program in a given year to pay for the public
education program. In subsequent years, the Mayor shall use .25% of the funds collected for the paid family and medical leave program to pay for the public education program.

(1) The Mayor shall coordinate with the Office of Human Rights and other agencies the Mayor deems appropriate to create an awareness campaign for the program established by this title.

(2) The Mayor shall make a quarter of the funds allocated under this subsection available by grant to non-profit health advocacy and employment justice advocacy groups to create a public awareness campaign for the program created by this title.


Sec. 103. Eligibility for benefits and administrative process for determining benefits.

(a) An eligible individual may claim family and medical leave benefits for a qualifying event

(b) Family and medical leave benefits shall be paid to an individual who is not currently employed, but who is an eligible individual meeting one of the requirements listed in subsection (a) of this section.

Sec. 104. Amount and duration of benefits.

(a) An eligible individual shall be entitled to receive up to 16 weeks of paid family and medical leave benefits in each application period, which may be divided among more than one qualifying event. The cumulative nature of family and medical leave benefits shall be identical to the D.C. FMLA. Subject to the provisions of this title, any eligible individual who becomes
unable to perform the functions of their position because of a serious health condition shall be
entitled to medical leave benefits for as long as the individual is unable to perform the functions,
except that medical leave benefits shall not exceed 16 workweeks during any application period.
Subject to the provisions of this title, any eligible individual who is caring for a family member
with a serious health condition or experiencing a qualifying exigency shall be entitled to family
leave benefits for as long as the individual’s family member for whom the individual is
providing care has a serious health condition or qualifying exigency, or in the case of a new
child, at any time during the application period, except that family leave benefits under this title
shall not exceed 16 workweeks during any application period.

(b) Subject to section 108(b), the amount of family and medical leave benefits shall equal
100% of the eligible individual’s average weekly wages up to $1,000 per week plus 50% of
average weekly wages in excess of $1,000 up to a maximum weekly benefit $3,000. Benefits for
partial weeks of leave shall be prorated.

(c) Family and medical leave benefits shall not be payable for the first 5 consecutive days
on which an individual would otherwise be scheduled to work in an application period, unless
the eligible individual uses 5 or more days of family and medical leave benefits in the application
period, after which time the eligible individual will be paid for the 5 day waiting period. The
waiting period shall only be served once for each qualifying event. Covered employees may use
accrued leave, such as vacation or sick leave, during the waiting period, prior to applying for
family and medical leave benefits, or after the benefits have been exhausted.

(d) The first payment of benefits shall be made to an eligible individual no later than 2
weeks after the claim is filed and subsequent payments shall be made biweekly thereafter.
(e) A covered employee shall be entitled, at the option of the covered employee, to take this leave on a reduced leave or intermittent leave schedule in which all of the leave authorized under this title is not taken sequentially.

(f) The covered employee shall make a reasonable effort to schedule leave under this section so as not to disrupt unduly the operations of the covered employer and to provide the covered employer with prior notice of the schedule on which the covered employee will be taking the leave.

(g) Covered employees with a chronic condition shall be exempt from section 104(c) of this title if the Mayor annually certifies that their condition requires the individual to take intermittent leave.

Sec. 105. Family and medical leave account fund establishment and investment.

(a) There is established as a special fund the Family and Medical Leave Fund ("Fund"), which shall be administered by the Office of the Chief Financial Officer in accordance with this title.

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

(1) Covered employers in the District of Columbia;

(2) The District of Columbia government;

(3) Eligible individuals;

(4) Interest earned upon the money in the Fund; and

(5) All other money received for the Fund from any other source.
(c) Money in the Fund shall be used only for the purposes of the paid family and medical leave program, including paying for benefits, public education, and administrative costs required pursuant to this title.

(d) Whenever, in the judgment of the Mayor, there shall be in the Family and Medical Leave Fund account funds in excess of that amount deemed by the Office of Chief Financial Officer to be sufficient to meet the current expenditures properly payable there from, the Mayor shall have full power to invest, reinvest, manage, contract, sell, or exchange investments acquired with such excess funds in the manner prescribed by section 106 of this title. However, in no case shall the Mayor authorize use of any of the funds in the Fund for purposes other than those authorized under this title.

(e) Claims under section 104 of this act cannot be administered from the Fund until one year after the effective date or when the Chief Financial Officer certifies that the Fund can begin paying out claims for benefits under section 104 while remaining solvent.

(f) The Mayor shall provide an annual report to the Council about the financial management, claim management, operation, and use of the Fund and program established in this title.

Sec. 106. Contributions to the Fund.

(a) The Chief Financial Officer shall certify whether the balance of the Fund on the final day of the District's fiscal year is greater than one year of the Fund's projected expenses. If the balance is not certified to exceed one year of projected expenses, the percentage contribution rate shall be 1%. If the balance is certified to exceed one year of projected expenses, the contribution
rate shall be based on the following percentages or a scaled percentage to be determined by the
Chief Financial Officer as follows:

<table>
<thead>
<tr>
<th>Individual Annual Salary</th>
<th>Percent Paid into Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0.01 under $10,000</td>
<td>0%</td>
</tr>
<tr>
<td>$10,000 under $20,000</td>
<td>.5%</td>
</tr>
<tr>
<td>$20,000 under $50,000</td>
<td>.6%</td>
</tr>
<tr>
<td>$50,000 under $150,000</td>
<td>.8%</td>
</tr>
<tr>
<td>$150,000 and over</td>
<td>1%</td>
</tr>
</tbody>
</table>

(b) Each covered employer shall contribute to the Fund in a manner and form prescribed
by the Mayor under this title an amount equal to the contribution rate multiplied by the wages
paid by that covered employer to each covered employee. If a covered employee does not
receive income evenly throughout the year, the estimated payment shall be calculated by
annualized income installment method that annualizes the amount at the end of each period
based on a reasonable estimate of income, deductions, and other items relating to events that
occurred from the beginning of the tax year through the end of the period.

(c) Covered employers' contributions shall be made in the same manner and violations
shall be subject to the same procedures, interest, penalties, and remedies as unemployment
contributions pursuant to section 4 of the District of Columbia Unemployment Compensation
Act, effective August 28, 1935 (49 Stat. 948, D.C. Official Code § 51-104), except that the
Mayor may choose a different designee to prescribe regulations and otherwise implement this
section.
(d) Each resident of the District of Columbia who earns wages in a capacity other than as a covered employee shall contribute to the Fund in a manner and form prescribed by the Mayor under this title an amount equal to the contribution rate multiplied by his or her wages earned and paid in a capacity other than as a covered employee, including, in the case of a self-employed individual who has not opted out of coverage under this title, self-employment income. (e) Contributions required by subsection (d) of this section shall be made in the same manner and violations shall be subject to the same procedures, interest, penalties, and remedies as individual income taxes pursuant to D.C. Official Code §§ 47–1801.01 et seq. This requirement shall be incorporated into subchapter II of chapter 15 of title 47, District of Columbia Code, for purposes of agreements with federal agencies entered into in accordance with 5 U.S.C. 5516.

(f) The District of Columbia shall contribute to the Fund an amount determined by the Chief Financial Officer to:

(1) Establish an agency or an office within an agency designated by the Mayor with a staff of the appropriate number of employees to fully implement and administer this title;

(2) Allow for the provisions of this title to go into effect one year following the effective date.

Sec. 107. Self-employed individuals.

(a) An individual who earns self-employment income shall be continuously enrolled in the Paid Family and Medical Leave Program unless that individual has elected not to receive coverage during an open enrollment period or within 60 days of the commencement of their business.
(b) Open enrollment periods shall extend for 60 days after the effective date of this title and for the months of November and December during each subsequent calendar year. Coverage shall automatically continue each year unless an individual opts out and contributions shall be paid in monthly installments.

(c) If an individual who earns self-employment income who has previously opted out wishes to reenroll in the Family and Medical Leave Program, the individual shall do so for an initial period of not less than 3 years by providing written application of such reenrollment to the Mayor. After 3 years, the individual may withdraw from coverage during any open enrollment period. Any individual who previously opted out of coverage shall not be eligible for benefits for the first year after reenrolling in the Program.

(d) If an eligible individual who earns self-employment income does not make a timely payment then the District shall notify them of the payments due and after notice has been given and payment is still not received then the eligible individual’s policy shall be cancelled and they may re-enroll only pursuant to section 107(c) of this title.

Sec. 108. Coordination of benefits.

(a) If paid leave taken under this title also qualifies for protected leave under the Family and Medical Leave Act, 29 U.S.C. 2601, or the D.C. FMLA, paid leave provided pursuant to this title shall run concurrently with leave taken under those acts.

(b) If an eligible individual is eligible for short-term disability insurance offered by a covered employer, this does not exempt the covered employer or eligible individual from this title.

(c) This title 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 under this title; or

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

(d) An individual’s right to benefits under this title may not be diminished by a collective bargaining agreement, other contract, or an employer policy. Any agreement by an individual to waive his or her rights under this title is void as against public policy.

Sec. 109. Determination of claims; hearing; appeal; witness fees.

(a) Claims for benefits shall be made in accordance with such regulations as the Mayor may prescribe in accordance with this title. The Mayor shall not require any individual to provide a social security number in order to apply for or obtain benefits under this act. In any case where an employer has failed to keep or provide an employee with employment records as required under D.C. law or has failed to make contributions on wages paid to an employee as required under this Act, the Office of Administrative Hearings shall presume the employee eligible and shall consider broadly evidence of the employee’s eligibility for the benefit. The Office of Administrative Hearings shall consider as evidence of eligibility documentation including but not limited to: paystubs; documentation of wages in the form of personal checks, cash receipts, or bank deposits; work schedules; communications between employer and employee; and any circumstantial evidence of the employee’s eligibility.

(b) Within 10 days after an individual has filed a claim for benefits, an agent of the Mayor designated for such purpose shall make an initial determination with respect to whether or not the individual is eligible for benefits, whether such benefit may be payable, and if payable,
the week with respect to which payments will commence, the maximum duration thereof, and the
weekly benefit amount. If this determination is appealed, the agent shall promptly transmit such
claim to an appeal tribunal which shall make a decision thereon after such investigation as it
deems necessary, and after affording the claimant opportunity for fair hearing in accordance with
subsection (e) of this section, and the claimant shall be given notice thereof and permitted to
appeal therefrom to the Office of Administrative Hearings and the courts. An initial
determination may, for good cause, be reconsidered. The claimant shall be promptly notified of
the initial determination or any amended determination and the reasons therefor. Benefits shall
be denied or, if the claimant is otherwise eligible, paid promptly in accordance with such initial
determination except as hereinafter otherwise provided. The Office of Administrative Hearings
shall promptly notify the claimant of its determination, and such determination shall be final
within 15 calendar days after the mailing of notice thereof to the claimant’s last-known address
or in the absence of such mailing, within 15 calendar days of actual delivery of such notice. The
15-day appeal period may be extended if the claimant shows excusable neglect or good cause. If
an appeal tribunal affirms an initial determination allowing benefits, such benefits shall be paid
regardless of any appeal which may thereafter be taken. If, subsequent to such initial
determination, benefits with respect to any week for which a claim has been filed are denied for
reasons other than matters included in the initial determination, the claimant shall be promptly
notified of the denial and the reasons therefor, and may appeal therefrom in accordance with the
procedure herein described for appeals from initial determinations.

(c) To hear and decide appealed claims, the Office of Administrative Hearings shall
appoint one or more appeal tribunals to hold hearings in accordance with regulations prescribed
by the Office of Administrative Hearings at which all parties shall be given opportunity to
present evidence and to be heard. In the conduct of such hearings, the parties shall not be bound
by common law or statutory rules of evidence or other technical rules of procedure, but the
appeal tribunal shall use due diligence to ascertain the true facts of the case.

(d) Each appeal tribunal shall consist of an examiner regularly employed by the Office of
Administrative Hearings on a salaried basis. No person acting in any case on behalf of the Mayor
shall have any interest, direct or indirect, in the case.

(e) An appeal tribunal, after affording the parties reasonable opportunity for fair hearing,
shall, unless such appeal is withdrawn, affirm or modify the finding of facts and the initial
determination. The parties shall be duly notified of the decision of such appeal tribunal, together
with the reasons therefor. Any decision of an appeal tribunal is final for all purposes.

(f) A full and complete record shall be kept of all proceedings in connection with an
appealed claim. All testimony at every hearing on any such claim shall be taken down by a
stenographer or recording device, but shall not be transcribed except upon order of the Office of
Administrative Hearings or in the event of an appeal pursuant to this title. Upon any such appeal,
a copy of all the testimony and of the findings of fact upon which the Office of Administrative
Hearings’s decision was based shall be filed with the court, and the facts so found shall, if
supported by evidence, be binding on the court.

(g) Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by
the Office of Administrative Hearings. Such fees shall be deemed part of the expense of
administering this title.

(h) The Mayor shall establish and administer a Claimant Paid Family and Medical Leave
Advocacy Fund, funded with monies collected as interest and penalty payments from employers
due to their late filing of wage reports and late payment of employer contributions. The Claimant
Paid Family and Medical Leave Advocacy Fund shall be used exclusively to support the
provision of assistance to and legal representation for claimants involved in administrative
appeals of claim determinations made by the Office of Administrative Hearings. The Fund shall
be split equally to support the provision of such assistance and representation for claimants at an
organization capable of handling employment claims determined by the Mayor and for an
Employer Advocacy Fund pursuant to D.C. Official Code § 51-111(h).

(i) Testimony in hearings arising under this title may be given and received by telephone
or internet.

(j) Any finding of fact or law, determination, judgment, conclusion, or final order made
by a claims examiner, hearing officer, appeals examiner, the Mayor, or any other person having
the power to make findings of fact or law in connection with any action or proceeding under this
title, shall not be conclusive or binding in any separate or subsequent action or proceeding
between an individual and his present or prior employer brought before an arbitrator, court, or
judge of the District of Columbia or the United States, regardless of whether the prior action was
between the same or related parties or involved the same facts.

(k) Notwithstanding any other provision of this title:

(1) All correspondence, notices, determinations, or decisions required for the
administration of this title 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 45 days after the effective
date of this title.

(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

Sec. 110. Erroneous payments and disqualification for benefits.

(a) An individual is disqualified from family and medical leave benefits for one year if
the individual willfully made a false statement or misrepresentation regarding a material fact, or
willfully failed to report a material fact, to obtain benefits under this title.

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

Sec. 111. 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 chapter.

(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 title;
(2) Pursuant or related to this chapter:

(A) Files or attempts to file a charge;

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

(C) Facilitates the institution of a proceeding; or

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

Sec. 112. Investigative authority.

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

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

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

(2) Enter or inspect any place of employment or record required by this chapter.

(c) For the purpose of any investigation provided for in this section, the Mayor may exercise the subpoena authority provided in D.C. Law 3-109, § 3, 27 DCR 3785.

Sec. 113 Administrative enforcement procedure; relief.

(a) The Mayor shall provide an administrative procedure pursuant to which a person claimed to be aggrieved under this chapter may file a complaint against an employer alleged to
have violated this chapter. A complaint shall be filed within 3 years of the occurrence or
discovery of the alleged violation of this chapter, whichever is later.

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

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

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

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

(4) A hearing conducted in accordance with procedures that the Mayor shall
promulgate pursuant to subchapter I of Chapter 5 of Title 2;

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

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

(A) Any wages, salary, employment benefits, or other compensation denied or lost
to the covered employee due to the violation plus interest on the amount calculated at the rate
prescribed in section 104 of this title; and

(B) An amount equal to the greater of:
(i) The amount determined under subparagraph (A) of this paragraph; or

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

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

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

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

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

(2) The Attorney General shall institute, in the name of the District, a civil proceeding that may include seeking injunctive relief, as is necessary to obtain complete compliance with the order.
(3) An enforcement action shall not be instituted pending judicial review as provided in subsection (c) of this section.

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

Sec. 114 Enforcement by civil action.

(a) Subject to the provisions in subsection (b) of this section, a covered employee, eligible individual, or the Mayor may bring a civil action against any employer to enforce the provisions of this chapter in any court of competent jurisdiction.

(b) No civil action may be commenced more than 3 years after the occurrence or discovery of the alleged violation of this chapter. This 3 year 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 title.

(c) If a court determines that an employer violated any provision of this chapter, the damages provision prescribed in section 109 of this title shall apply.

Title II D.C. FMLA amendments

Sec. 201. Section 2 of the D.C. Family and Medical Leave Act of 1990, effective March 14, 1991 (D.C. Law 8-181; D.C. Official Code § 32-501) is amended as follows:
(a) Paragraph (1) is amended to read as follows:

“(1) "Employee" means any individual who has been employed by the same employer for 6 months without a break in service except for regular holiday, sick, or personal leave granted by the employer and has worked at least 500 hours during the 12-month period immediately preceding the request for family or medical leave.”.

(b) Paragraph (4) is amended as follows:

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

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

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

“(D) A foster child.”.

(c) The lead-in text to paragraph (9) is amended to read as follows:

“(9) “Serious health condition” means a physical or mental illness, injury, impairment, condition, pregnancy, or post-partum recovery period that involves:”.

Title III. Government Comprehensive Merit Personnel Act

Sec. 301. Section 1203c of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 1-612.03c), is amended as follows:

(a) Subsection (a) is amended by striking the number 8 and inserting the number 16 in its place.

(b) Subsection (g)(4) is amended as follows:

(1) Subparagraph (C) is amended by striking the word “or”. 

24
(2) Subparagraph (D) is amended by striking the period and inserting the phrase “;
or” in its place.

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

“(E) The employee becoming unable to perform the functions of the
employee’s position because of the employee’s own serious health condition paid and benefits
owed under this section shall be covered by the government.”

(c) Subsection (g) is amended by adding a new paragraph (5) to read as follows:

“(5) “Serious health condition” means a physical or mental illness, injury,
impairment, condition, pregnancy, or post-partum recovery period that involves:

“(A) Inpatient care in a hospital, hospice, or residential health care facility; or

(B) Continuing treatment or supervision at home by a health care provider.”

Title IV Fiscal impact and effective date.

Sec 401. Applicability.

(a) Title I and Title II of 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.
Government of the District of Columbia
Office of the Chief Financial Officer

Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
FROM: Jeffrey S. DeWitt
Chief Financial Officer
DATE: December 2, 2016
REFERENCE: Bill 21-415, Committee Print given to the Office of Revenue Analysis on November 29, 2016

Conclusion

Funds are not sufficient in the fiscal year 2017 through fiscal year 2020 budget and financial plan to implement the bill. Although the tax rate is estimated to be sufficient to cover the benefits of the program and a reserve requirement and shut-off provisions have been included to safeguard the District in the event that the tax is not sufficient in any given year to cover the benefits, adequate resources have not been fully identified nor appropriated to cover the start-up and system implementation costs.

The bill establishes a $238 million per year parental and family care benefit program funded by a 0.62% payroll tax on District employers. On the basis of information provided by the Office of the Chief Technology Officer and the evaluation of comparable projects, the total cost for the IT system could be as high as $80 million. For the bill to be fiscally sufficient, a $40 million capital project must be established in an approved budget and financial plan before the project commences to ensure completion of Phase I of the project. Phase I includes specification development, system design, procurement, software licensing, staffing and programming through the payroll tax collection function. The remaining cost to develop the benefits functions of the system, and $18 million for ongoing personnel and administrative expenses can be funded from the revenues generated by the payroll tax after the Phase I of the IT system is completed.

This is a significant bill proposing benefits more generous than other existing state programs. As a result, it presents multiple risk factors that may impact timeline and cost. These factors relate to implementation, enforcement and participation levels resulting from higher wage replacement relative to other programs (55% wage replacement in California and Rhode Island, and 66% in New Jersey, versus the 90% for those earning up to 150% of minimum wage as outlined in the bill). The
The Honorable Phil Mendelson

...bill also leaves many details to be determined, and requires the Mayor to establish rules and regulations for the administration of the program.

As noted above, the major risk factors are:

- Very high wage replacement levels relative to other states making the estimation of benefits difficult, particularly for family leave. Even a small change in participation levels could impact the solvency of the program
- Undefined regulations (to be determined by the Mayor) causing enforcement and administrative uncertainties
- Determining the timeframe for the technology without an established agency or defined regulatory requirements
- Potential timing mismatch of revenue flows and benefit claims
- Changing demographics in the long term may result in unexpected increases in participation rates in the future
- Technology costs exceeding the estimate would result in a delay in the payment of benefits.

Background

The bill requires the Mayor to establish a paid family and parental leave program that allows covered employees\(^1\) in the District to receive a paid benefit when taking leave from their job for a qualifying family leave or parental leave event. A qualifying parental leave event includes the birth of a child, adoption of a child, or placement of a child for whom the individual assumes parental responsibility. A qualifying family leave event is the diagnosis of a serious health condition\(^2\) of a family member\(^3\) of a covered employee.

The program will be funded by a 0.62% payroll tax on covered employers, which includes any entity that employs an individual and is required to pay unemployment insurance\(^4\), except the United States Government, the District of Columbia Government or any employer the District is not authorized to tax. Self-employed individuals can opt into the program, and if they do, must contribute 0.62% of annual income. The revenue will be deposited in a Paid Family and Parental Leave Fund ("Fund") from which benefits and administration costs will be paid. Administration costs cannot exceed 5% of the funds deposited. (Please note, the forecast estimates these costs will exceed 7%, requiring this part of the bill to be addressed.)

---

\(^1\) Covered employees are anyone who spends more than 50% of his or her time working in the District for any District employer required to pay unemployment insurance. Covered employers do not include the U.S. Government, the Government of the District of Columbia, or any other employer that the District is not authorized to tax.

\(^2\) Serious health condition is defined as 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. Section 101(18) of the bill further defines incapacity, treatment, inpatient care, and continuing treatment.

\(^3\) Family member is defined as a biological, adopted or foster son, daughter, parent, parent-in-law, step-parent, legal guardian, stepson or stepdaughter, legal ward, son or daughter of a domestic partner, or person to whom an eligible individual stands in loco parentis.

\(^4\) Per D.C. Official Code Section 51-101 et seq.
The Honorable Phil Mendelson

Following a one-week waiting period, covered employees who experience a qualifying event may claim a paid benefit for up to 11 weeks of parental leave and 8 weeks of family care leave. They may claim only one qualifying event in a 52 week period. The amount of the benefit cannot exceed $1,000 per week and is calculated in two parts:

1) On wages earned up to 150% of the District's minimum wage, the claimant will receive 90% of the claimant's average weekly wage.

2) On wages earned above 150% of the District's minimum wage, the claimant will also receive 50% of the claimant's average weekly wage

Self-employed individuals who opt into the program will remain enrolled continuously until they expressly opt out during a designated open enrollment period. Individuals who opt in, after having previously opted out, will not be eligible to receive benefits in their first year. If a self-employed individual opts out two or more times, he or she cannot enroll for five years from the date of the last withdrawal.

Upon passage of the bill, the Mayor must issue rules within 180 days and submit the rules to Council for a 45-day review period. The bill requires the Mayor to establish reasonable procedures for filing a claim, including rules regarding supporting documentation to claim benefits and proof of a serious health condition to determine appropriate leave lengths. It requires the Mayor to notify employers within 5 business days of a claim being filed. Within 10 business days after an individual files a claim, the claimant must be notified as to the determination of benefits, and their right to appeal the determination with the Office of Administrative Hearings. Once eligibility is determined, payment must be made within 10 business days. The Mayor must provide covered employers a notice explaining the rights of employees under the Act, and the employers in turn must notify the employees of their rights.

The bill requires that the Mayor create a "user-friendly, online portal" for submitting claim forms and supporting documentation. It must be privacy-protected, searchable, and provide relevant information to claimants, employers and the public. The bill requires that the software utilized be able to handle any expansion of benefits in the future.

The bill requires the Mayor to conduct a public education campaign to be paid out of the Fund, but not to exceed 0.25% of the annual fund revenue. Within 180 days of the effective date of the bill, the Mayor must provide notice to covered employees how contributions into the Fund can be made, and by March 1, 2019, the Mayor must begin to collect the payroll tax revenue from employers and self-employed individuals who have opted into the program.

The bill requires eligible individuals to provide written notice to an employer as to when they intend to utilize parental or family leave benefits under the bill. The notice must be given at least 10 days in advance, when it is foreseeable. If the leave taken is eligible leave pursuant to the Family and Medical Leave Act or the District of Columbia Family and Medical Leave Act, then the leaves must run concurrently. There are no additional job protections provided by the bill beyond what is

---

5 The bill requires that the International Classification of Diseases by the World Health Organization be used to determine how many weeks an individual may take to care for a family member, based on the type of serious health condition being experienced by that family member.

6 The Average Weekly Wage is defined as the total wages subject to taxation by a covered employer during four out of five quarters immediately preceding the qualifying event, divided by 52.
entitled by the FMLA laws. There is also no prohibition on employers providing additional parental and family benefits, provided they will not interfere with the benefits provided under the bill.

The bill prohibits individuals from receiving the benefit while simultaneously receiving long-term disability payments, unemployment insurance payments, or self-employment income.

Claimants may appeal benefit determinations to the Office of Administrative Hearings no later than 60 days after a determination has been made. Individuals who make false statements or misrepresentations to obtain a benefit will be barred for three years from receiving benefits under the bill. If benefits are received erroneously, the Mayor must seek repayment of benefits from the recipient.

The Office of the Chief Financial Officer is required to certify the balance of the Fund quarterly beginning on October 1, 2017, and by December 1, 2017 provide a report to the Council as to the funds that have been deposited and the expected timeline for beginning to make benefit payments. Claims cannot be paid until at least one year after the effective date of the Act and after the OCFO certifies solvency of the fund.

Financial Plan Impact

The bill establishes a $238 million per year parental and family care benefit program funded by a 0.62% payroll tax on District employers. On the basis of information provided by the Office of the Chief Technology Officer and the evaluation of comparable projects, the total cost for the IT system could be as high as $80 million. For the bill to be fiscally sufficient, a $40 million capital project must be established in an approved budget and financial plan before the project commences to ensure completion of Phase I of the project. Phase I includes specification development, system design, procurement, software licensing, staffing and programming through the payroll tax collection function. The remaining cost to develop the benefits functions of the system, and $18 million for ongoing personnel and administrative expenses can be funded from the revenues generated by the payroll tax after the Phase I of the IT system is completed.

I. Estimating the Revenue

The bill requires each covered employer to contribute 0.62% of a covered employee's salary to the Fund. Covered employers include nearly every employer in the District, except the federal government, the District government, and other employers the District is not authorized to tax under federal law or treaty.

The number of employees fitting the broad criteria of this definition is approximately 541,376 people (36% reside in the District, 39% reside in Maryland, and 25% reside in Virginia)\textsuperscript{7} with a total wage base of $39.7 billion. This figure includes self-employed individuals who, under the bill, are eligible to opt out. From this base, we expect total annual revenue capacity of approximately $238 million in year one (the table below reflects annual growth rate at 2% per year. No revenue will be collected for the first eighteen months while Phase I of the system is being developed. See Section IV for more details.).

\textsuperscript{7} 2015 American Community Survey data for Maryland, Virginia and the District.
The Honorable Phil Mendelson

<table>
<thead>
<tr>
<th>Estimated revenue generation based on 0.62% payroll tax</th>
<th>First four years of program – based on assumed implementation timeline</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Year 1</td>
</tr>
<tr>
<td>0.62% payroll tax collections**</td>
<td>$125,626,838</td>
</tr>
</tbody>
</table>

*assumes 2% annual growth in wage base
**Chart reflects assumed timeline of program implementation discussed in Section IV below

The payroll tax on District employers will generate $238 million in revenue. See the chart below for comparison to other District taxes and fees based on the lastest available actual data (FY2015).

II. Estimating the Cost of the Benefit

The bill provides wage replacement for eligible individuals taking parental leave for the birth, adoption or legal placement of a child, or caring for a family member with a serious health condition. Individuals will receive 90% of their wages up to 150% of the minimum wage, and 50% of wages over that amount, to a maximum of $1,000 per week. Based on the distribution of salaries for District employment, approximately 48% of eligible employees would receive 90% wage replacement, driving District participation levels above those of other state programs. Individuals will be entitled to 11 weeks within a 52-week period for parental leave, or 8 weeks within a 52-week period when caring for a family member.

Using fertility rate data from the Centers for Disease Control National Vital Statistics, on the number of births per 1,000 women, we calculate the percentage of eligible workers likely to have a baby in each age group of the workforce. The chart below shows how participation rates vary by age. The rate is reduced as the wage of the worker increases, because we assume that participation decreases as wage replacement decreases.

---

9 The rate of decrease is based on a regression equation estimated using participation data by income level provided by the State of Rhode Island for its paid family leave program.
We apply the same methodology to determine participation rates for men. It is important to note that unlike other states with a Paid Family Leave benefit, many spouses and partners of District male workers live outside of the District, in jurisdictions without paid family leave benefits. This makes it more likely that males in the workforce will take the District’s bonding benefit. Using these participation assumptions, we estimate that 23,878 (or 4.4% of the workforce) individuals will take leave annually for bonding with a child.

The data available to calculate the participation rate for family leave is not as reliable as fertility rates from the National Vital Statistics Report used to estimate participation rates for parental leave. There are no similar reliable data sources available to determine expected participation rates for care of a family member. Furthermore, there are several reasons why the participation rates observed in nearby states will not apply to the District. First, the wage replacement rate in this bill is much higher than in other states (55% wage replacement in California and Rhode Island and 66% in New Jersey, versus 90% for those earning up to 150% of minimum wage in the District as outlined in the bill). Second, other states with this benefit also have short-term or temporary disability benefits, which in certain circumstances may lessen the need for a family care benefit. Third, the ability of workers to take leave to care for relatives living in other nearby states could affect participation rates in the District.

The estimate of the participation rates for family care makes two assumptions: older people will be more likely to care for a family member than younger people, and those making above $75,000 will participate at the lower rates experienced by other states because of lower wage replacement. For those making less than 150% of minimum wage, whose wage replacement will be closest to those seen under the District government paid family leave program, we apply a range of participation rates based on age. We apply the District government experience rate of approximately 5% for the oldest workers, and scale down to 1% for the youngest workers. For high-wage workers whose wage replacement rates more closely reflect benefit levels seen in California, Rhode Island, and New Jersey, we use those participation rates. Based on these assumptions, we estimate that a total of 10,972 (or 2% of the eligible workers) employees will claim the benefit each year to care for an ailing family member.
The Honorable Phil Mendelson

Based on the experience of other states, we assume that men will take 25% fewer weeks than women. To estimate the benefit by income groups, we multiply the number of people in each income group who will receive the benefit by the number of weeks they are expected to take the benefit. We then sum across the cost of the benefit for each income group to get the total cost of the benefit. The resulting cost is shown in the chart below.

<table>
<thead>
<tr>
<th></th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3*</th>
<th>Year 4*</th>
<th>Four year Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parental Leave Benefits</td>
<td></td>
<td></td>
<td>$88,965,183</td>
<td>$179,709,671</td>
<td>$268,674,854</td>
</tr>
<tr>
<td>Family Care Benefits</td>
<td></td>
<td>$29,577,465</td>
<td></td>
<td>$59,746,479</td>
<td>$89,323,944</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$0</td>
<td>$0</td>
<td>$118,547,648</td>
<td>$239,456,150</td>
<td>$357,998,798</td>
</tr>
</tbody>
</table>

*assumes 2% annual growth
**Chart reflects expected timeline of program implementation discussed in Section IV below.

III. Estimated Administrative Costs

The two main areas of administrative costs are information technology, and the personnel required to administer the Family and Parental Paid leave program. While some data exist on systems throughout the District, a new integrated information technology system must be developed to accomplish the specific needs of this program. It must accomplish many tasks including, but not limited to:

- Collecting the payroll tax from all eligible employers – perhaps as many as 40,000 - currently withholding taxes
- Collecting taxes separately from self-employed workers
- Tracking the history of wages and payments from employers as well as the paid benefits that are associated with their employees
- Linking with systems throughout the District including SOAR (the OCFO system of financial management and accounting), DOES unemployment records, and perhaps other program databases to ensure there is no overlapping of benefits
- Establishing separate web portals for tax administrators, employers, claimants, and physicians (for submitting documentation to confirm eligibility)
- Issuing checks and/or bank transfers to claimants
- Ensuring that proper tax withholding is made and appropriate annual 1099 forms issued to claimants, since these are taxable benefits

The precise cost of the system will be dependent on the specifications required by rules and regulations and programmatic needs that arise during design and development. There are complexities around each phase of a large-scale information technology project. In design, the core requirements and interfaces will need to be determined. Additionally, complexities could arise with the integration of other District systems.

---

10 We make calculations by income group so that we can apply different participation rates to different income groups and also calculate the likely weekly benefit payment they will receive.
The Honorable Phil Mendelson  

Other states with paid family leave programs built their systems on top of existing short-term disability program systems. The District does not have a short-term disability program and must build a new information technology system, which makes direct cost comparisons unreliable. We can look at similar-sized information technology projects in the last decade such as the District’s Medicare system, the OCFO’s new tax information system, and the health benefit exchange system—all cost well in excess of $40 million. When the state of Massachusetts upgraded its unemployment insurance system, they were able to use existing source code for free from the state of Minnesota, and the system still cost approximately $50 million.

Based on these comparisons and the complexities and uncertainties previously discussed, the system could cost as much as $80 million. However, in discussions with the Chief Technology Officer $40 million is adequate to ensure completion of all upfront costs, which include specification, design, procurement, licensing, staffing, and programming through development of revenue collection. If the project costs go to the higher estimate, tax collection from the initial phase can be used to complete the project. However, costs above $40 million would delay the implementation of benefits.

<table>
<thead>
<tr>
<th>Estimated Information Technology Costs - Startup</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Year 1</td>
</tr>
<tr>
<td>IT Development startup</td>
<td>$40,000,000</td>
</tr>
</tbody>
</table>

Personnel costs were estimated by looking at the claim to staff ratio for unemployment insurance. Based on an assumed ratio of claims to employee, the estimate approximately 113 FTEs will be required including—claims specialists, customer service, medical/insurance experts, management, administrative law judges, and tax processors. Real estate costs involve obtaining office space for the new agency that will administer this program (estimated at 22,000 square feet at $52 per square foot). IT costs include fees for annual software licenses and IT support. (Please note, the forecast estimates that administrative costs will exceed 7%, which will exceed the 5% limitation in the bill as written.)

| Estimated Personnel and Administration Costs For the New Program |  |
|                                                               | Year 1 | Year 2 | Year 3* | Year 4* | Four-year Total |
| Salaries for 113 FTEs                                         | $5,428,500 | $11,073,000 | $11,296,000 | $27,797,500 |
| Real Estate                                                   | $1,376,000 | $1,194,000 | $1,218,000 | $3,788,000 |
| Ongoing IT maintenance and licensing fees                    | $0 | $4,097,653 | $6,573,410 | $10,671,063 |

| TOTAL                                                        | $6,804,500 | $16,364,653 | $19,087,410 | $42,256,563 |

*assumes 2% annual growth  
**Chart reflects expected timeline of program implementation discussed in Section IV of this letter.

11 Claims to staff ratios in states vary from approximately 400 claims per staff member to 700. We assume 500 claims, and then add managers, experts in medical and insurance fields, attorneys, and administrative law judges to handle appeals.
IV. **Assumed Timeline**

The figures used in this estimate assume the following timeline:

**Year 1:** Information Technology System is developed to collect revenue from employers.
**Year 2:** Midway through year 2, revenue begins to be collected when the system is finalized. Half a year of revenue will be collected.
**Year 3:** Midway through year 3, a one-year reserve is set aside, and benefits can begin to be paid.

V. **Program Fund Reserve and Shut-down Procedures**

As discussed previously, the bill requires a one-year reserve equal to the expected benefits. If reserves drop below what is required to cover nine months of expected benefits, the bill requires the Office of the Chief Financial Officer to propose changes to make the program solvent. If a reserve levels drop to only six months of total expected benefits, then benefit payments will cease. Because of the many uncertainties and risk factors discussed above, this element of the bill is the most essential in our determination of the fiscal viability of this program. The program must be self-sustaining on an ongoing basis. These provisions are required to ensure that the program is self-sustaining and does not adversely affect the District’s other programs and financial position.
VI. Sources and Uses
Below is a summary of revenues and costs that reflects the expected timeline of the program - including development of an information technology system to process revenue collections and claims, and the need to build a one-year reserve prior to issuing benefits.

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Year 1</td>
</tr>
<tr>
<td>Revenue (0.62% payroll tax)</td>
<td>$125,626,838</td>
</tr>
<tr>
<td>TOTAL SOURCES</td>
<td>$125,626,838</td>
</tr>
<tr>
<td>Expected Benefits</td>
<td></td>
</tr>
<tr>
<td>Technology Startup Costs</td>
<td>$40,000,000*</td>
</tr>
<tr>
<td>Personnel costs* assumes 50% in year 2 and 100% in year 3</td>
<td>$5,428,500</td>
</tr>
<tr>
<td>Real Estate for new Administration (est. 22k sq ft $52 per sq ft)</td>
<td>$1,376,000</td>
</tr>
<tr>
<td>Information Technology Maintenance and License Fees</td>
<td>$4,097,000</td>
</tr>
<tr>
<td>Public Education Campaign Requirement</td>
<td>$297,976</td>
</tr>
<tr>
<td>Required Reserve Funding</td>
<td>$118,524,362</td>
</tr>
<tr>
<td>TOTAL USES</td>
<td>$0</td>
</tr>
<tr>
<td>Surplus / (Deficit)</td>
<td>($40,000,000)</td>
</tr>
</tbody>
</table>

*Currently, $20,039,000 has been placed in a reserve designated for universal paid leave, but has not yet been appropriated in a formal budget process and, therefore, is not available for use.

December 2, 2016

Research Team:
Susanna Groves, Senior Budget Analyst
John MacNeil, Senior Budget Analyst
with Joseph Wolfe, Senior Budget Analyst

Report by the Office of the Budget Director of the Council of the District of Columbia
Jennifer Budoff, Budget Director
Economic and Policy Impact Statement

District of Columbia Council Rule 308 provides that the Council Budget Director may, at his or her discretion, prepare an economic-impact analysis on permanent bills beginning January 1, 2016. The Office of the Budget Director is implementing this rule by preparing analyses on permanent pieces of legislation that are expected to have a fiscal impact of at least 0.1 percent of the District’s gross domestic product (GDP), or $123 million, and as staffing resources permit. The purpose of these statements is to offer Councilmembers an independent, data- and evidence-based resource for weighing the policy implications and economic costs and benefits of major pieces of legislation. These statements do not make policy recommendations, and their findings and conclusions are non-binding.

This report is the Office of the Budget Director’s first policy and economic impact statement. Copies of this report and supporting documents can be found at: http://dccouncil.us/news/entry/economic-and-policy-impact-statement-universal-paid-leave

The economic and policy impact statement is not a substitute for the Chief Financial Officer’s (CFO) fiscal impact statements, which the CFO is required for to produce for every piece of legislation. These statements address the impact of legislation on the District’s budget and four-year financial plan.

Acknowledgements

The Office of the Budget Director extends its sincerest gratitude to the members of the Economic and Policy Impact Statement Research Advisory Board for lending their precious time and deep expertise to this study: Francis Norton of the Urban Institute, Professor Haydar Kurban of Howard University, and Dr. Alan van der Hilst.

The Office of the Budget Director also extends its thanks to Jesus Ranon of the Bureau of Labor Statistics, Jamie Lantinen and Dr. Yi Geng of the District of Columbia Office of the Chief Financial Officer’s Office of Revenue Analysis, and Dr. Frederick Treyz, Chris Brown, and Scott Nystrom of REMI, Inc.
# Table of Contents

Executive Summary .................................................................................................................. 5
Introduction ............................................................................................................................. 10
   1.1  Businesses .................................................................................................................... 12
   1.2  Women’s Labor Force Participation and the Gender Pay Gap ..................................... 15
   1.3  Infant Mortality ............................................................................................................. 18
   1.4  Breastfeeding Rate and Duration ................................................................................ 20
   1.5  Long-Term Effects on Children’s Educational Outcomes and Future Earnings .......... 21
   1.6  Bonding with Baby and Parental and Caregiver Well Being ...................................... 21
   1.7  Fertility Rate ............................................................................................................... 23
2  Benchmarking: Paid Leave Programs in Other U.S. Jurisdictions ....................................... 24
   2.1  Benefit Structure ....................................................................................................... 25
   2.2  Funding Structure ....................................................................................................... 31
   2.3  Uptake Rates .............................................................................................................. 34
   2.4  Administrative Expenses ........................................................................................... 38
   2.5  Employer and Employee Eligibility ........................................................................... 40
   2.6  Qualifying Events ...................................................................................................... 41
3  Policy Context: District Workers’ Access to Unpaid and Paid, Job-Protected Leave ............ 43
   3.1  Paid Family Leave ...................................................................................................... 44
   3.2  Paid Medical Leave .................................................................................................... 45
   3.3  Paid Sick Days, Vacation Days, and Other Forms of Paid Time Off .............................. 45
4  Economic Model .................................................................................................................. 48
   4.1  Methodology ............................................................................................................. 48
   4.2  Behavioral Response Scenarios ................................................................................ 49
   4.3  Technical Assumptions ............................................................................................ 50
   4.4  Results ....................................................................................................................... 52
Conclusion ............................................................................................................................. 58
Appendix A. Summary of the “Universal Paid Leave Amendment Act of 2016” (B21-415) ......... 59
Appendix B. Summary of State Paid Family and Medical Leave Programs ............................. 60
Appendix C. State Paid Leave Funds’ Benefits and Tax Rates (2003-16) ................................. 62
Appendix D. Family and Medical Leave Fund Balance (2006–15) .......................................... 63
Appendix E. Adults’ Self-Reported Health Status (2014) .................................................................................................................... 66
Appendix F. REMI Model Description ..................................................................................................................................................... 67
Works Cited ............................................................................................................................................................................................ 68
Notes ........................................................................................................................................................................................................... 84

Figure 1: Women’s Labor Force Participation Rate Relative to Men, Percent Difference (2009-14) .............................................................. 15
Figure 2: Population Sex Ratio: Males per 100 Females ............................................................................................................................ 15
Figure 3: Women’s Earnings per $1 in Men’s Earnings (2009-14) ................................................................................................................ 18
Figure 4: Infant Mortality, Deaths per 1,000 Births (2014) .......................................................................................................................... 19
Figure 5: Family Leave Benefits, Wage Replacement Rate ....................................................................................................................... 27
Figure 6: Maximum Weekly Benefit Payment (2003-16) ............................................................................................................................... 29
Figure 7: Birth Rate, Annual Births per 1,000 Residents (2002-14) .............................................................................................................. 37
Figure 8: Fertility Rate, Births per 1,000 Women Aged 15-44 (2002-14) ........................................................................................................... 37
Figure 9: Age Dependency Ratio: Children & Senior Citizens per 100 Working-Age Residents (2010-14) .......................................................... 38
Figure 10: UPLAA Program Structure ......................................................................................................................................................... 48
Figure 11: Predicted Impact on Private Sector Employment in DC (2014-27) ............................................................................................. 54
Figure 12: Predicted Impact on DC Private-Sector Employment’s Cumulative Percent Growth (2016-27) ..................................................... 54
Figure 13: Predicted Impact on DC’s Private Sector Employment, Relative to Baseline Job Growth (thousands of jobs, 2016-27) ................. 56
Figure 14: Predicted Impact on DC’s GDP, Relative to Baseline Economic Growth (percent change, 2016-27) ............................................. 56
Figure 15: Job Migration if Firms Absorb Payroll Tax (Percent Change in Employment, 2016-27) ................................................................. 57
Figure 16: Job Migration if Employees Absorb Payroll Tax (Percent Change in Employment, 2016-27) ....................................................... 57

Table 1: Glossary of Key Terms ................................................................................................................................................................. 10
Table 2: Family and Medical Leave Benefits Structure ........................................................................................................................ 26
Table 3: State Plans’ Definitions of Base Period ....................................................................................................................................... 28
Table 4: Weekly Benefit Amount and Wage Replacement Rate by Annual Salary ......................................................................................... 29
Table 5: State Plans’ Funding Structure .................................................................................................................................................... 32
Table 6: State Family and Medical Leave Fund Solvency ............................................................................................................................ 34
Table 7: Uptake of State Paid Family and Medical Leave Plans (2015) ....................................................................................................... 35
Table 8: Family Leave Uptake Rates, by Bonding and Caregiving Claims ................................................................................................. 35
Table 9: Administering Family and Medical Leave (2015) .......................................................................................................................... 39
Table 10: Coverage Rates (2015) ................................................................................................................................................................. 40
Table 11: Employee Eligibility Criteria ...................................................................................................................................................... 41
Table 12: Qualifying Family Members for Caregiving Leave ........................................................................................................................ 42
Table 14: Summary of Variables and Assumptions (2020) .......................................................................................................................... 50
Table 15: Summary of UPLAA’s Forecasted Cumulative Impacts on DC’s Economy (2027) ................................................................. 55

4
Executive Summary

For significant legislation under consideration during Council Period 21, the Office of the Budget Director may prepare an Economic and Policy Impact Statement that offers Councilmembers an independent, evidence-based resource for weighing the legislation’s policy implications and economic costs and benefits.

The subject of the first Economic and Policy Impact Statement is the “Universal Paid Leave Amendment Act of 2016” (UPLAA), which would create a paid family leave benefit for all private sector workers in the District of Columbia. The proposed legislation would replace up to 90 percent of qualifying workers’ wages for 11 weeks of parental leave or 8 weeks of caregiving leave over a 52-week period. (Appendix A provides a full summary of the bill, as scheduled to be marked up by the Committee of the Whole on December 6, 2016.)

To analyze the policy implications of UPLAA, the Budget Office undertook a review of more than 170 peer-reviewed studies and government reports on paid family leave’s impacts on the health and well-being of individuals, households, the labor market, and businesses. In order to project the potential economic impacts of UPLAA on the District of Columbia, the Office developed a forecasting model tailored to the specifics of the legislation. It relies upon a 70-sector regional economic model built by REMI, Inc. and customized to the Washington, DC Metropolitan Statistical Area.


Based on a review of the academic research, the Budget Office found that after public paid family leave programs were implemented in other states, most managers that participated in follow-up surveys reported that the program had either negligible or positive effects on their business. Still, the effects of providing paid family leave may vary across different firms and employees. Given the immense variety in firms’ structure, function, needs, and labor costs, it is impossible to generalize about how all businesses are impacted by paid family leave programs. Firms that employ higher percentages of professionals and women may have a stronger relationship between the provision of work-life benefits, such as paid family leave, and productivity.

Employers reported in a 2008 survey that their two greatest barriers to implementing work-life initiatives such as paid family leave were cost (30 percent) and potential loss of productivity (11 percent). Other surveys of businesses located in California, Rhode Island, and New Jersey suggest that overall paid family leave entitlements have a positive or negligible impact on firms’ profitability or performance. A handful of studies concluded that family-friendly policies can have positive impacts on companies and individuals’ productivity by increasing employee satisfaction. This can result in improved customer service, reduced employee turnover, and lower recruitment and training costs. However, some of these savings may be offset by added costs associated with shifting a leave taker’s duties to other employees. Paid family leave programs may also allow firms to draw upon a larger talent pool when hiring, because there is substantial evidence linking paid family leave programs with increasing women’s labor force participation.

Some firms may pass along the costs of offering paid family or medical leave to their workers in the form of lower wages. In upstate New York, employers who offered benefits like flexible scheduling policies
and childcare tended to pay lower entry-level wages than their competitors and experienced less turnover. A separate study indicated that workers in Britain and Australia would accept as much as 20 percent lower wages to work at a firm with family-friendly practices.

Evidence suggests that paid family leave can reduce the average amount of time that mothers and family caregivers spend out of the workforce, in part by decreasing their need to change jobs in order to fulfill their parental or familial obligations. In reducing the amount of time women spend out of the workforce and increasing the chances that they will return to their same employer following the leave period, paid family leave also has the potential to narrow the gender wage gap. Numerous studies have found that mothers of small children with access to moderate lengths of paid leave tend to go back to work sooner. Strengthening women’s attachment to the labor force would raise their total work experience and accumulated job-specific human capital, both of which are factors in career advancement and wage growth.

Paid family leave has been shown to increase the average length of time that new parents spend at home with their infants and improve family health and well-being. Research has linked paid parental leave rights to reductions in child and infant mortality. In addition, breastfeeding’s health benefits to children and mothers are well documented, and paid maternity leave has been shown to increase its rate and duration. After California implemented its paid family leave program, the state’s exclusive breastfeeding rate rose 3 to 5 percentage points and by 10 to 20 percentage points at several key developmental moments. Many reports have also found that new mothers who return to work later tend to exhibit better general health, fewer symptoms of depression, and less anxiety. Paid family leave can provide those caring for ailing relatives with economic stability and reduce their likelihood of experiencing depression.

New fathers are also more likely to take paternity leave and stay out for more days when the leave is paid, especially with higher wage replacement rates. Studies examining the effects of California’s paid family leave program found that it raised the chances that men would go on paternity leave by 46 percent, and it extended the average length by nearly a week. Research has shown a positive association between more frequent fathers’ engagement with their children and enhanced cognitive development as well as decreased behavioral problems.

2. Benchmarking: Paid Family and Medical Leave Programs in Other U.S. Jurisdictions

California created the nation’s first state paid family leave program in 2004, followed by New Jersey in 2009, and Rhode Island in 2014. New York will begin its paid family leave program in 2018. All of these states also have paid medical leave programs, as do Hawaii and Puerto Rico. San Francisco has a paid parental leave mandate that will supplement the California state program starting in 2017.

All of the existing state paid family and medical leave plans function as insurance regimes. California, New Jersey, and Rhode Island rely on government agencies to administer their family leave plans. In contrast, states take three different approaches to administering their medical leave plans: 1) a competitive model that allows employers to choose a government plan or a private plan that provides equal or better coverage; 2) a private model that requires employers to self-insure or privately secure a plan that meets state guidelines; and 3) a public model.

San Francisco is the only jurisdiction that has a paid parental leave ordinance, which will function quite differently than any of the state programs. Rather than creating a government-administered insurance
fund or directing employers to purchase a private insurance plan, employers will be required to directly compensate workers when they take leave to bond with a new child.

Paid family and medical leave programs’ benefit structures differ from one another according to their wage replacement rate, the minimum and maximum weekly benefit payment, the benefit period, and how family and medical leaves interact with one another. Wage replacement rates range from a low of 50 percent in New York to a high of 100 percent in San Francisco. All of the existing state programs currently have a flat wage replacement rate, meaning that low- and high-income workers receive the same share of their wages in benefits up to the replacement ceiling. However, California and New York are moving towards a tiered system that will scale claimants’ wage replacement rate to their income.

All jurisdictions with paid family leave and short-term disability plans limit the amount of leave that workers can qualify for each year. California and New Jersey allow for up to six weeks of paid family leave, while Rhode Island insures wages for up to four weeks. New York’s family leave program will initially provide eight weeks of paid family leave and increase to 12 weeks in 2021, as its fund balance allows. In addition, short-term disability and family leave benefits can be stacked in California, New Jersey, and Rhode Island, which means that an eligible person can qualify to use both types of paid leave over the course of a year.

Levying a payroll tax is the most common way that states fund their paid leave programs, but each state uses a different formula for determining their tax’s incidence. Employees in California and Rhode Island bear the statutory tax obligation at the 2016 rate of 0.9 and 1.2 percent, respectively. In contrast, New Jersey and Puerto Rico divide the tax obligation between employers and employees. Administrative expenses in California, New Jersey, and Rhode Island represent between 4.3 and 6.4 percent of their net benefits paid. Some states allow employers to self-insure or acquire private insurance and opt out of the disability insurance tax.

3. **Policy Context: District Workers’ Access to Unpaid and Paid, Job-Protected Leave**

Local and federal laws guarantee many workers in the District access to unpaid, job-protected family and medical leave. Under the federal Family and Medical Leave Act of 1993 (FMLA) and the District of Columbia Family and Medical Leave Act of 1990 (DCFMLA), eligible workers can qualify for up to 12 weeks of unpaid family leave and 12 weeks of unpaid medical leave in any 12-month period, or 16 weeks in any 24-month period. District law also guarantees workers some paid sick days, which for full-time workers means three to seven days per year.

However, many people cannot afford to exercise their rights under the DCFMLA/FMLA. During 2012, 4.6 percent of U.S. workers needed but could not take FMLA leave. Financial strain was the leading reason why employees forewent leave, accounting for 46 percent of unmet leave. More than 8 percent of low-income employees who needed family or medical leave in the prior year did not take it or took less time than they required, a rate two and a half times greater than for high-income workers. When workers took FMLA leave with partial or no pay, two-thirds said that they found it somewhat to very difficult to make ends meet. Thirty percent of unpaid and partially paid leave takers had to borrow money, and 15 percent went on public assistance.

Further, not all workers qualify for job-protected DCFMLA/FMLA leave. The right is circumscribed by the employer’s size and the worker’s tenure and number of hours worked in the previous year. The DCFMLA has a lower qualifying standard than the FMLA, but even so, approximately 30 percent of the District’s
private industry workers – or 147,400 people – are not protected under the DCFMLA because of their firm’s size and job tenure.

Among private-sector employees in the South Atlantic, about 14 percent have some form of paid family leave. Across the U.S., worker salaries are closely and positively associated with access to paid family leave. While a quarter of the highest 10 percent of wage earners had this benefit in 2015, only 3 percent of the lowest 10 percent of wage earners received it. Work schedules, employer size, occupation, and industry also seem to be factors in access to paid leave. Workers in the District may be, on average, more likely to have family leave benefits than other U.S. workers. This is because managerial, professional, financial, and information occupational groups have some of the highest rates of paid family leave and are also overrepresented in DC’s workforce. In addition, full-time District government employees are eligible for up to eight weeks of paid family leave per year. Many federal government workers can use up to six weeks of advanced sick leave during a qualifying FMLA leave.

4. Economic Model
To evaluate the potential impacts of UPLAA on the District’s economy, the Budget Office developed an economic model of the legislation’s costs and benefits, to the extent that these factors could be quantified. The study compares the projected economic conditions under the “baseline” economic forecast, in which the District continues to have no requirement for paid family leave, to the projected economic conditions under the “policy” forecast, which captures the impact of the legislation if implemented. The analysis assumes that the paid family leave fund would begin collecting payroll taxes in 2019 and start paying benefits in 2020. The study estimates the differences between the baseline and policy forecasts over a ten-year time horizon, beginning in 2017.

Since uncertainty is inherent to any forecasting exercise, the study evaluates the impact of the proposed legislation under three different behavioral response scenarios.

- Employees Absorb the Tax: This behavioral response scenario assumes that businesses would primarily manage the cost of the payroll tax by shifting it on to their employees in the form of eliminated or delayed salary and benefit increases. It assumes that individual firms would choose to lower their per employee labor costs by the amount of the tax, but the number of employees they hire would be the same as the baseline forecast.

- Firms Absorb the Tax: This behavioral response scenario assumes that businesses would mostly absorb the payroll tax primarily by reducing their labor cost. Firms would also react by raising the prices they charge for their goods and services. Per employee labor costs would be the same as they would be under the baseline forecast, but some businesses would react by shrinking the relative size of their workforce.

- Hybrid Tax Absorption: This behavioral response scenario assumes that firms would respond to the new tax by shifting approximately half of it on to employees and absorbing the rest. Some firms also react by raising their prices.

The study finds that implementing the proposed legislation would have a minimal impact on the District’s labor market and economy over a ten-year period (2016-2027). Since the magnitude of the program’s impact on employment and GDP is minor, it is unlikely to alter the current upward trajectory of the District’s economy. Some businesses and industries might experience the impacts of the proposed
legislation more sharply than others, but this study estimates that its effects on the District economy as a whole would be small. The study projects that if the proposed legislation is implemented:

- The paid family leave program would pay out $242 million in benefits during its first 12 months, which the Budget Office assumes would occur in 2020.

- Women’s labor force participation in the District would increase.

- The District’s infant mortality rate would decrease.

- The cumulative impact of the legislation on the District’s GDP would range from a gain of $15 million to a loss of $122 million by 2027. This means that over the next 10 years, the District’s GDP would grow at an average annual rate of 1.913 to 1.921 percent, rather than 1.920 percent. To put this in context, under the baseline forecast, GDP for the District is projected to grow from $123.9 billion in 2016 to $152.1 billion in 2027.

- The cumulative impact of the legislation on the District’s private sector employment would range from a decrease of 90 to 1,300 jobs by 2027. This means that over the next ten years, private sector employment in the District would increase at an average annual rate of 1.340 to 1.358 percent, rather than 1.359 percent. To put this in context, under the baseline forecast, private sector employment for the District is projected to grow from 534,000 jobs in 2016 to 621,000 jobs in 2027.

If businesses absorb all of the payroll tax, the model forecasts that the District’s economy would support approximately 1,300 fewer jobs by 2027 compared to the baseline economic forecast. In contrast, if the payroll tax incidence falls on employees, the model predicts that the District economy would support approximately 90 fewer jobs by 2027 than the baseline economic forecast. To put this in perspective, the Office of the Chief Financial Officer reported that employment in the District increased by an average of 11,039 jobs per year between 2013 and 2015. Thus, a loss of 1,300 jobs is about the number of jobs that the District typically adds in 6 weeks, whereas a loss of 90 jobs is equal to about three days of average job growth.

If employers shift half of the payroll tax incidence on to employees, the model forecasts an impact on GDP and the economy that falls between the two scenarios described above.

One limitation of the proposed legislation’s economic forecast is that its costs are more readily quantifiable than its benefits. The bill specifies the payroll tax rate and would redistribute a predictable amount of money across the economy. However, many of the bill’s estimated health, family, and social equality benefits cannot be readily assigned a monetary value, especially over the long term. For example, the time that one spends with a dying parent may be deeply meaningful on a personal level, but there is no widely accepted method for translating this experience into economic terms. Even when there is substantial evidence of similar programs providing specific health and wellness benefits that can generate economic benefits, such as promoting infant health by raising breastfeeding rates, there may not be a straightforward way to assign a monetary value. Thus, the proposed legislation’s impact on economic forecasts should be considered alongside its other estimated non-monetary impact.
Introduction

The Council of the District of Columbia is considering the “Universal Paid Leave Amendment Act of 2016” (UPLAA), which would create a paid family leave benefit for all private sector workers in the District of Columbia. The proposed legislation would insure workers against wage loss when they take time off from work to bond with a new child or care for a family member with a serious health condition. The paid leave insurance fund would replace up to 90 percent of qualifying workers’ wages for 11 weeks of parental leave or 8 weeks of caregiving leave over a 52-week period. Appendix A provides a full summary of the bill, as scheduled to be marked up by the Committee of the Whole on December 6, 2016.

To fulfill its responsibilities under District of Columbia Council Rule 308, the Office of the Budget Director has prepared an Economic and Policy Impact Statement of the UPLAA. Unlike a Fiscal Impact Statement, which the Office of the Chief Financial Officer must prepare as an estimate of a bill’s impact on the District’s four-year financial plan, the Budget Office’s Economic and Policy Impact Statement is an analysis of the policy implications and economic costs and benefits of the UPLAA.

The study begins by evaluating the empirical evidence on how individuals and employers respond to paid family leave programs in Section 1. It then considers the policy context: Section 2 analyzes how other U.S. states and cities’ paid leave programs function; and Section 3 describes District residents’ current access to paid leave. The study continues in Section 4 with an outline of the economic model’s technical approach, core assumptions, and the legislation’s projected economic impacts. Six appendices summarize the proposed legislation, provide details of how the legislation and policy landscape compares to other states with paid leave programs, and offer a full account of modeling assumptions.

Table 1: Glossary of Key Terms

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child bonding leave (also known as parental leave)</td>
<td>Leave that is available around the time of childbirth, adoption, or legal assumption of parenting duties (such as becoming a foster care parent or guardian). Maternity and paternity leave are types of child bonding leave. This type of leave is a subset of family leave.</td>
</tr>
<tr>
<td>DC Family and Medical Leave Act; U.S. Family and Medical Leave Act (DCFMLA; FMLA)</td>
<td>Local and federal laws that guarantee qualifying workers access to job-protected, unpaid family and medical leave for qualifying events.</td>
</tr>
<tr>
<td>Family leave</td>
<td>Leave that is taken to bond with a new child or provide family caregiving.</td>
</tr>
<tr>
<td>Family caregiving leave</td>
<td>Leave that is taken to provide care for a seriously ill family member. This is a subset of family leave.</td>
</tr>
<tr>
<td>Job-protected leave</td>
<td>Dismissal is prohibited during the leave, and the leave taker is guaranteed reinstatement at the end of the leave period.</td>
</tr>
<tr>
<td>Leave stacking</td>
<td>A provision of leave policies that allows worker to qualify for multiple forms of leave that do not run concurrently. For example, a pregnant woman could take four weeks of medical leave to rest before and after childbirth and then four more weeks of family leave to bond with her new child.</td>
</tr>
<tr>
<td>Maternity leave</td>
<td>Leave that is only available to mothers at the time of either childbirth or adoption. This is a form of child bonding leave, parental leave, and family leave.</td>
</tr>
</tbody>
</table>
Medical leave: Leave that is taken for several weeks to a year to receive treatment for or recover from one’s own serious medical condition, which can include pregnancy. Differs from sick leave, compensation for workplace-related injuries or conditions, and long-term disability benefits.

Paid leave mandate: A law that requires that employers provide compensation while their workers are on leave. This differs from a social insurance fund.

Paternity leave: Leave that is only available to fathers around the time of childbirth or adoption. This is a form of child bonding leave, parental leave, and family leave.

Sick days: Time off from work for a passing illness, such as influenza, which typically lasts several days to a week.

Short-term disability insurance (also known as temporary disability insurance): Insures workers against lost wages and salary while taking medical leave.

Social insurance fund: A publicly or privately administered fund that employers or employees pay into at a set rate. When employees take leave for a qualifying event, they can apply to the fund to claim wage replacement benefits. Social insurance funds differ from employer mandates.

Uptake rate: The rate at which individuals insured by paid leave plans take paid leave.

Wage replacement rate: The percentage of workers’ average wage or salary that is disbursed by a paid leave fund during a leave event.

The Budget Office analyzed more than 170 peer-reviewed studies and government reports on paid family leave’s impacts on the health and well-being of individuals, households, the labor market, and businesses. The Office also considered studies released as white papers or presented at academic conferences and, when appropriate, those published by independent research institutions or media outlets. The Office used this evidence to inform its economic model. Section 1 synthesizes these research findings and relates them to the people and economy of the District of Columbia using data collected by the U.S. Census Bureau, the U.S. Bureau of Labor Statistics, the Centers for Disease Control and Prevention (CDC), and others. Most of the U.S. experience with paid family leave is drawn from California, since this is the only state that has had a plan for at least a decade.

Low- and moderate-income families in the District stand to benefit the most from a paid leave mandate. Adults in these families tend to be the least likely to have employer-provided paid leave or flexible workplaces, and may be least able to afford to take unpaid time off from work (see Section 3). Low-income households are also more likely to suffer economic hardship as a result of an unpaid absence from work. It is also possible that a paid leave mandate may reduce the District’s significant racial disparities in health outcomes (Georgetown University School of Nursing, 2016).

1.1 Businesses

Employers reported in a 2008 survey that their two greatest barriers to privately providing work-life initiatives such as paid family leave were cost (30 percent) and potential loss of productivity (11 percent) (Gomby & Pei, 2009). As Kathy Hollinger, President and CEO of the Restaurant Association of Metropolitan Washington testified before the Committee of the Whole on December 2, 2015, many small business owners in the District “are really just treading water trying to stay afloat.” Restaurants balance “razor thin profits” against “increased competition, astronomical rent prices, higher labor and food costs, and new or amended legislation which result in administrative and financial burdens.”

Based on a review of the academic research, the Budget Office found that after public paid family leave programs were implemented in other states, most managers that participated in follow-up surveys reported that the program had either negligible or positive effects on their business. Still, the effects of providing paid family leave may differ across firms and employees. Given the immense variety in firms’ structure, function, needs, and labor costs, it is impossible to generalize about how all businesses are impacted by paid family leave programs. Firms that employ higher percentages of professionals and women may have a stronger relationship between the provision of work-life benefits, such as paid family leave, and productivity (Konrad & Mangel, 2000).

A handful of studies concluded that family-friendly policies can have positive impacts on companies and individuals’ productivity, which may in large part be a result of reducing employee turnover (Clifton & Shepard, 2004; Konrad & Mangel, 2000; OECD, 2007). Substantial research shows that workers at firms with these benefits expressed greater intention to remain at their current employer, higher levels of job satisfaction, and were more committed to their employer, whether or not they themselves would be likely to use the policy (Baughman, et al., 2003; Lyness, et al., 1999; Butts, et al., 2013; Grover &
Crooker, 1995; Thomas & Ganster, 1995; Gomby & Pei, 2009). For instance, when Aetna Insurance raised the amount of maternity leave they offered and provided flexible work options, the company increased retention of its highest performing workers from 77 to 91 percent. Employee satisfaction can also be good for business. A 1997 study conducted at Sears found a 5 percentage point increase in employee satisfaction with improved customer service and a 1.6 percent increase in revenue growth the following quarter (Gomby & Pei, 2009). Employers and employees who are assured of an ongoing working relationship might also be more likely to invest in training (OECD, 2007; Tzannatos, 1998).

Not only is replacing workers expensive, but productivity can fall if the replacement employee lacks job-specific skills. The Congressional Budget Office (2009) projected that offering a four week paid parental leave benefit to federal employees “may enhance the [...] government’s ability to retain employees after the birth or adoption of a child and thereby lower recruitment and training costs.” Employee turnover costs businesses thousands of dollars. The Center for American Progress estimated that businesses spend about one-fifth of an employee’s annual salary to replace that worker (Boushey & Glyn, 2012). A panel survey of California businesses in 2003 and 2008 found that $4,000 was the average cost of replacing a worker. Businesses spent about $2,000 to hire a replacement blue collar or manual labor worker while their replacement costs for professional and managerial employees soared as high as $7,000 (Dube, et al., 2010). Another report examining employee replacement costs for hotels found an average range of $4,000 to $9,000 per employee. The researchers found that productivity loss was the biggest cost, which was mostly caused by the inexperience of new employees (Tracey & Hinkin, 2006). Paid family leave programs may also allow firms to draw upon a larger talent pool when hiring, because there is substantial evidence linking paid family leave programs with increasing women’s labor force participation, as discussed in Section 1.2.

Some studies suggest that companies which provide family-friendly benefits report stronger growth, profitability, or performance (Lau & May, 1998; Lau, 2000; Perry-Smith & Blum, 2007; Dex & Smith, 2002; Gray, 2002). Two papers also reported that the stock market reacted positively to Fortune 500 companies’ adoption of work-family human resource policies. Shareholder returns tended to be higher in the day following the policy announcement (Arthur, 2003; Arthur & Cook, 2004). Nevertheless, other research indicates that firms with paid family leave programs do not outperform businesses without them (Preece & Filbeck, 1999; Heiland & Macpherson, 2005). However, providing such benefits at the firm-level may be less efficient than public provision, since employees who anticipate that they may need such benefits in the future may find themselves locked to a job that they do not enjoy so that they can have paid time off when baby arrives or an ailing relative requires care. This could potentially lead to decreases in productivity and profitability for the economy as a whole as well as the company offering these benefits (Gomby & Pei, 2009). Moreover, publicly providing paid family leave rather than privately reduces the risks born by any individual business.

Since the UPLAA would create a publicly-provided paid family leave benefit, DC firms that already privately offer this benefit could offset the cost of the new payroll tax by coordinating their benefits with the public program (Appelbaum & Milkenman, 2006). For example, an employer that currently provides eight weeks of maternity leave at full pay could decide to shift this benefit on to the public program or pay leave takers the difference between their full salary and the wage replacement benefit that they could claim from the public insurance fund. Employer-provided paid time off is among the most expensive benefits that employees in private industry offer. Paid leave benefits represented 6.9 percent of private employers’ compensation costs in 2015 (Bureau of Labor Statistics, 2015a). Still, not all firms
might realize these savings. Some firms may not change their employee benefit programs in reaction to the public benefit, especially in the short term. One year after Rhode Island implemented its family leave program, an employer survey found no evidence of changes to employee benefits or policies (Bartel, et al., 2016). Further, the Congressional Budget Office (2009) noted that a paid parental leave benefit for federal employees might create costs if leave substitution occurs. Employees who would use their vacation or sick leave when welcoming a new child might instead choose to use this new form of paid leave and continue to save their accrued vacation or sick leave, which could impose additional costs to the organization.

Nevertheless, surveys of businesses located in California, Rhode Island, and New Jersey suggest that paid family leave entitlements generally have a positive or negligible impact on individual firms’ profitability or performance. Six years after California’s family leave program began, 91 percent of employers sampled reported that the program had either no noticeable effect or a positive effect on their firm’s profitability, performance, or turnover rates. A minority of employers (13.1 percent) reported that the program increased their costs, typically as a result of added hiring or training expenses. Nearly all (98.6 percent) employers surveyed in California reported that paid family leave had either a positive or no effect on overall employee morale (Appelbaum & Milkman, 2011). Two-thirds of New Jersey employers also reported that their state’s plan had no impact on their business’s profitability or performance. Small businesses in the state were more likely than medium or large businesses to say that the paid family leave plan had a negative effect on their profitability or performance (Rodriguez, 2012). In contrast, a series of interviews conducted with New Jersey employers found that the family leave program helped boost the morale of the individual worker taking leave, and to some extent, the morale of their co-workers (Lerner & Appelbaum, 2014). A study on Rhode Island employers also found that the state’s policy led to no significant changes in productivity or perceptions of employee morale, cooperation, or attendance (Bartel, et al., 2015).³

Firms already use a number of strategies to minimize the impact of an employee’s absence due to medical or family leave. How employers choose to cover the work often depends on the ability of colleagues to substitute for one another, the length of the leave, and workload. Substantial research shows that employer’s most common response is to temporarily reassign work (Abt Associates Inc., 2014; Appelbaum & Milkman, 2011; Rodriguez, 2012; Lerner & Appelbaum, 2014). Shifting a leave taker’s duties to other employees sometimes results in higher overtime pay costs for businesses. However, only 4 percent of leave takers in Rhode Island said that their absence was covered by their colleagues putting in overtime hours, and researchers in Connecticut observed similar results. Another approach is to hire a temporary or permanent replacement worker, although this strategy may not be commonly used: one survey found that 3.2 percent of worksites hired a temporary replacement worker while 0.1 percent hired a permanent replacement worker. Employers may also manage an employee’s leave by putting the person’s work on hold until they return. This strategy was also used by about 3 percent of U.S. worksites, while 9.4 percent of leave takers in Rhode Island reported that their worksite took this approach (Abt Associates Inc., 2014; Silver, et al., 2015; Trzcinski & Finn-Stevenson, 1991).

Some firms have also been shown to pass along the costs of offering paid family or medical leave to their workers in the form of lower wages. In upstate New York, employers who offered benefits like flexible scheduling policies and child care tended to pay lower entry-level wages than their competitors and experienced less turnover (Baugham, et al., 2003). A separate study indicated that workers in Britain and Australia would accept as much as 20 percent lower wages to work at a firm with family-
friendly practices (Heywood, et al., 2007). Another researcher found that having paid parental leave significantly increased employee-reported satisfaction with pay (Gray, 2002).

1.2 Women's Labor Force Participation and the Gender Pay Gap

The labor force participation rate has great influence over an area’s economic vitality, and women’s labor force participation may be especially critical. According to the World Bank, women’s growing participation in the labor force is instrumental to reducing extreme poverty (Pack, 2014; World Bank, 2012). Increasing women’s attachment to the labor force would also raise their total work experience and accumulated job-specific human capital, both of which are factors in career advancement and wage growth. Further, in lifting artificial constraints placed on women’s labor supply, the economy would benefit from full utilization of women’s labor while ameliorating gender wage inequality and promoting social justice (Tzannatos, 1998). As one study noted, “women’s labor force status relative to that of men is an important benchmark of their status in society” (Mammen & Paxson, 2000). At a more basic level, women’s employment is the most important factor in keeping many households out of poverty (OECD, 2007; Heintz, 2006).

Figure 1: Women’s Labor Force Participation Rate Relative to Men, Percent Difference (2009-14)

Figure 2: Population Sex Ratio: Males per 100 Females (2009-14)
The District’s labor market and economy may be especially sensitive to policy changes that affect women’s employment and earnings. Women comprised more than half (51.0 percent) of DC’s labor force in 2015, versus 45.8 percent of the U.S. workforce. The District is also more heavily female than any other state. Between 2010 and 2014, 53 percent of residents were women, compared to 51 percent of the U.S. population. Still, Figure 2 demonstrates that sex ratios vary widely across wards (Howden & Meyer, 2011; U.S. Census Bureau, 2015b; Bureau of Labor Statistics, 2016b).

At least one cross-national study found that the U.S. women’s labor force participation rate has fallen relative to other OECD countries and that a substantial share (28 to 29 percent) of the decline is attributable to the U.S.’s lack of family-friendly social insurance programs, including paid parental leave and guaranteed access to part-time work schedules (Blau & Kahn, 2013). U.S. women reached peak labor force participation in 1999 at a rate of 60 percent and subsequently declined (Bureau of Labor Statistics, 2015c). A District woman’s odds of being in the workforce were 9 percent lower than a man’s between 2009 and 2014, with significant variation between wards (U.S. Census Bureau, 2015).

The higher unpaid household work burden that typically falls upon women constrains their ability to earn a living (Elborough-Woytek, et al., 2013). Women in the U.S. are responsible for most family caregiving. Two-thirds of U.S. family caregivers are women and on average spend more time providing this care than male caregivers (AARP and the National Alliance for Caregiving, 2015; Bureau of Labor Statistics, 2015b; U.S. Department of Labor, 2015; Bittman, et al., 2007). Mothers typically devote twice as many hours per week caring for their children and 91 percent more time performing other unpaid household work, such as cooking and cleaning, than fathers (Krantz-Kent, 2009). Working mothers are 13 times more likely than working fathers to take time off to stay home when their child is sick (Ranji & Salganicoff, 2014). Inequitable division of paid employment and unpaid household and caregiving work between women and men is a social construct that reinforces established gender dynamics (Heintz, 2006; Tzannatos, 1998). Paid paternity leave is one policy lever that has been shown to improve gender equity in unpaid household work, as discussed in Section 1.6.

Parental leave policies have also been associated with lowering the “child penalty” in mothers’ employment patterns (Gornick, et al., 1998). Numerous reports also show that women in the U.S. face significant wage penalties for childbearing—perhaps as much as a 7 percent income drop—which may persist long after the baby is born. It is common for mothers that switch employers after childbirth to be offered less pay than their previous job. In contrast, some evidence suggests that fatherhood may be associated with a wage boost (Budig & England, 2001; Avellar & Smock, 2003; Wilde, et al., 2010; Waldfogel, 1998; Waldfogel, 1997; Reitman & Schneer, 2005; Goldin & Katz, 2008). The majority of mothers with an infant are in the labor force, most of whom work full time (Bureau of Labor Statistics, 2016a). However, married women in the U.S., especially those with young children, are particularly vulnerable to falling out of the labor force (Cohany & Sok, 2007). About one in five U.S. women quit their job before or shortly after the birth of their child (Laughlin, 2011; Han, et al., 2008). Women with the least resources—including those who are unmarried, have low levels of educational attainment, or are younger—are more likely to return to work within two months of childbirth than more resourceful women (Han, et al., 2008). Thirty-six percent of mothers of young children were not in the labor force, compared with 7 percent of fathers. Women who are not in the labor force are about 50 percent more likely than men to be prevented from actively job searching by family responsibilities (Miller & Alderman, 2014; Bureau of Labor Statistics, 2015; 2016c). Being out of the workforce for long periods of time results in reductions in total work experience and human capital depreciation, which may be
especially true for highly skilled workers (Anderson, et al., 2002; OECD, 2007). For example, a U.S. mother with a young child’s odds of being unemployed are 86 percent higher than for fathers (7.8 versus 4.2 percent). As of December 2015 it took an average of 27.7 weeks for an unemployed person to secure a new position (Bureau of Labor Statistics, 2016d; 2015).

Higher caregiving rates is one of the major reasons women tend to have lower lifetime earnings than men. Working-age caregivers are more likely to earn less money, reduce their hours of work or leave the labor force than non-caregivers. Over the course of a lifetime, women caregivers lose about $274,044 in wages and Social Security benefits, as well as $50,000 in pension income. Other studies suggest that family caregiving duties tend to more negatively impact employment outcomes of female than male caregivers in terms of ability to continue working, number of hours worked, and performance (Keene, 2005; AARP and the National Alliance for Caregiving, 2015; Lee & Tang, 2015; MetLife and the New York Medical College, 2011).

Paid family leave benefits that are contingent upon labor force participation can increase the incentives for women to rejoin the labor market after childbirth or a family caregiving event, since only those who are working are eligible for the benefit (Elborg-Woytek, et al., 2013). One study found that an additional week of guaranteed paid leave boosted the rate at which young women were employed or actively seeking paid employment by about 0.60 to 0.75 percentage points (Winegarden & Bracy, 1995). Research suggests that paid family leave can reduce the average amount of time that mothers and family caregivers spend out of the workforce, in part by decreasing their need to change jobs in order to fulfill their parental or familial obligations (Ruhm, 1998; Brugiavani, et al., 2013; Toledo, et al., 2015; Council of Economic Advisers, 2015; Pavalko & Henderson, 2006).

Numerous studies have found that mothers of small children with access to moderate lengths of paid leave tend to go back to work sooner (Lyness, et al., 1999; Schott, 2012) (Council of Economic Advisers, 2015; Kenjo, 2005; Waldfogel, et al., 1999; Waldfogel & Berger, 2004; Kluve & Tamm, 2012; Laughlin, 2011). California’s paid leave program was associated with raising the odds that a woman would be employed 9 to 12 months after childbirth (Baum & Ruhm, 2014). Another report found that young women in the Golden State participated in the workforce at higher rates relative to young women in states without this benefit (Das & Polacheck, 2015). Similar results were observed in Canada, where its maternity leave program decreased the proportion of women who quit their jobs after childbirth and increased the probability of employment for women with young children by 3 to 4 percent (Baker & Milligan, 2005; ten Cate, 2003). Other studies link access to paid leave with more hours worked per week and more weeks worked. For instance, evidence from California’s program suggests that it raised new mothers’ hours and weeks of work by as much as 19 percent during the second year of the child’s life (Kluve & Schmitz, 2014; Goldin, 2014; Rossin-Slater, et al., 2013; Baum & Ruhm, 2014).

By reducing the amount of time women spend out of the workforce and increasing the chances that they will return to their same employer following the leave period, paid family leave also has the potential to reduce the gender wage gap. Women in the U.S. working full-time, year-round civilian jobs between 2009 and 2014 earned 79 cents for every dollar men were paid, while District women earned 88 cents. The District’s gender wage gap was among the smallest in the nation—12 percentage points—but still significant. Women living in DC were paid on average $8,474 less per year than their male counterparts. The chasm was widest in Wards 2 and 3. However, Figure 3 shows that the average earnings of employed women surpassed men in Wards 4, 5, and 7 (U.S. Census Bureau, 2015c). Working
age U.S. women are also 23 percent more likely to be in poverty than men, but in the District their odds are 31 percent higher. Poverty is more common for women than men in every ward. The gender poverty gap is particularly wide east of the Anacostia River, as working age women in Wards 7 and 8 are 8 and 13 percentage points more likely than men to live at or below the federal poverty line, respectively (U.S. Census Bureau, 2015a).

Some economists argue that closing the gender wage gap will require altering the labor market to enhance temporal flexibility options. The fact that earnings differences by sex expand greatly with age and that women without children are almost equal to those of comparable men suggests that life cycle events may be largely responsible for the gender wage gap (Goldin, 2014; Adda, et al., 2011). The right to paid time off means that parents and other caregivers no longer have to quit their job and give up seniority and earnings in order to be with their new child or ailing relative. Thirty-one percent of women who switched employers after childbirth saw a decline in their pay level, compared with 3 percent of women who returned to the same employer (Laughlin, 2011). One study found that 64 percent of U.S. mothers with paid maternity leave returned to their employer within a year after childbirth, compared with 43 percent who did not have this benefit. A second survey of California employers revealed that 95 percent of those who took paid family leave returned to work at the end of the leave period, and four-fifths returned to the same employer. (Hofferth & Curtin, 2006; Waldfogel, et al., 1999). Other examinations of California’s program have found evidence that linked women’s access to paid leave to a 7 percent higher hourly wage after childbirth (Rossin-Slater, et al., 2013; Baum & Ruhm, 2014). Another less robust analysis of national survey data found that mothers who took at least 30 paid family days off from work were 54 percent more likely to report a wage increase in the year following childbirth than women who did not take family leave (Houser & Vartanian, 2012). Nevertheless, other studies identified links between paid leave entitlements that are nine months or longer and reductions in women’s wages and workforce attachment (Ruhm, 1998; Schönberg & Nudstock, 2007).

1.3 Infant Mortality

Research has linked paid parental leave rights to reductions in child and infant mortality. According to a 141 cross-country comparison, increasing paid maternity leave by 10 weeks was associated with a 10 percent decline in neonatal and infant deaths and a 9 percent reduction in mortality among children under age five (Heymann, et al., 2011). Other economists found that infant mortality fell by about 0.5
deaths per 1,000 live births for each additional week of publicly-available paid maternity leave (Winegarden & Brady, 1995). The CDC identified differences in death rates immediately before and after birth as one of the leading causes of the racial gap in life expectancy (Kochanek, et al., 2015). Some studies also indicate a possible link between availability of paid parental leave and earlier achievement of developmental milestones, more regular attendance at well-baby doctors’ visits, and higher vaccination rates (Mohammad, et al., 2015; Berger, et al., 2005; Winston, 2014; Brooks-Gunn, et al., 2002). Further, most parents of children with special health care needs report that taking leave had positive effects on their child’s physical (81 percent) and emotional (85 percent) health, with stronger effects noted by parents that received full pay during their leave than those who took unpaid leave (Schuster, et al., 2009).

![Figure 4: Infant Mortality, Deaths per 1,000 Births (2014)](image)

Without wage replacement new parents are reluctant to take parental leave, and, perhaps consequently, access to unpaid family leave has not been found to have substantial effects on infant mortality rates. One study found that the right to paid parental leave in Europe led to a 2.5 to 3.4 percent decline in infant mortality, while unpaid leave had no impact. The researcher estimated that a year of job-protected paid parental leave is associated with a 20 percent decline in deaths of babies between 2 and 12 months old, and a 15 percent decrease in deaths of children age 1 to 5 (Ruhm, 2000). Two subsequent cross-national studies confirmed these results, finding that job protected paid leave of 10 weeks and longer resulted in declines in infant mortality, but unpaid or non-job protected leave had no effect (Tanaka, 2005; Shim, 2015). Another report found that the right to unpaid leave under the FMLA only reduced infant mortality among the children of college-educated, married women, perhaps because they were the only group of mothers that could qualify for FMLA leave and afford to take it (Rossin, 2013). Refer to Section 3 for more information on access to FMLA leave.

The District’s infant mortality rate continued to surpass the national average (7.6 versus 5.82) in 2014, and DC has among the country’s highest rates of perinatal deaths. Seventy-two DC infants died that year. Save the Children (2015) highlighted the District as an example of a city in which the overall infant mortality rate masks huge disparities between children in its richest and poorest households. Infant mortality rates vary significantly in DC by neighborhood and race, as seen in Figure 4 (DC Department of Health, 2016). Babies born to non-Hispanic black mothers in the District have far greater odds of dying within their first year of life than those born to white or Hispanic mothers. Between 2011 and 2013, the
mortality rate for babies born to non-Hispanic black mothers in DC was 11.12 per thousand births, comparable to Romania and Bulgaria. In contrast, the infant mortality rate for babies born to Hispanic mothers was 5.51, similar to Canada and New Zealand. There were so few deaths among babies born to white mothers that the CDC did not estimate the infant mortality rate for this racial group (Matthews, et al., 2015; World Bank, 2016; Kochanek, et al., 2016).

1.4 Breastfeeding Rate and Duration

Paid maternity leave has been shown to improve child health by increasing the rate and duration of breastfeeding. Empirical research has repeatedly found that women who take maternity leaves of six weeks or longer are significantly more likely to start and maintain breastfeeding, and women with longer maternity leaves continue to breastfeed after returning to work at higher rates (Ogbruaru, et al., 2011; Guendelman, et al., 2009; Canen, 2007; Arthur, et al., 2004; Fein & Roe, 1998; Baker & Milligan, 2007). After California implemented its paid family leave program, the state’s rate for exclusive breastfeeding rose three to five percentage points and by 10 to 20 percentage points at several key developmental moments (Huang & Yang, 2015). A separate analysis showed that every additional week of maternity leave extended breastfeeding by half a week (Roe, et al., 1999).

Breastfeeding’s health benefits to children and mothers are well documented (American Academy of Pediatrics, 2016; World Health Organization, 2002). It has also been found to confer broader societal and economic advantages. One study predicted that the United States would save $13 billion annually and prevent 740 infant deaths if 90 percent of families complied with the medically recommended six-month exclusive breastfeeding period (Bartick & Reinhod, 2010; American Academy of Pediatrics, 2016). If families in Louisiana met these same standards, researchers estimated that the state could save $216 million and prevent 18 infant deaths (Ma, et al., 2013). The CDC explains that since increasing breastfeeding rates and duration would lead to better infant health, it would translate into “fewer health insurance claims, less employee time off to care for sick children, and higher productivity, all of which concern employers” (U.S. Department of Health and Human Services, 2011). Switching to breastfeeding could also reduce economic strain on families with young children, as one year’s supply of infant formula costs about $1,500 (Bartick, 2011).

Once new mothers return to work, it is often challenging for them to continue breastfeeding, especially for those who hold low-wage jobs. For example, hourly workers might have to clock out to use a breast pump, and they are less likely to have access to a private space at their worksite and less control over their work day than salaried professionals (U.S. Department of Health and Human Services, 2011; Centers for Disease Control and Prevention, 2007a). In DC, 30.5 percent of workers are paid hourly. They are more likely to be women, low-income, African American, young, or have less than a high school education than salaried workers (DC Department of Health, 2015a). The Surgeon General reported that differing access to maternity leave may contribute to socioeconomic and racial disparities in breastfeeding (U.S. Department of Health and Human Services, 2011). The CDC has repeatedly documented that U.S. babies born to low income, less educated, unmarried, and younger mothers were the least likely to be breastfed. The agency has also identified persistently lower rates of breastfeeding among African American mothers. While 80 percent of Hispanic mothers and 75 percent of white mothers who gave birth in 2008 attempted to breastfeed, this was true of only 59 percent of African American mothers. African American mothers were also about 16 percentage points less likely than Hispanic or white mothers to breastfeed for the medically recommended period.
New mothers in the District start breastfeeding their babies at a lower rate and are less likely to breastfeed for the recommended length of time than the national average. A quarter of new DC mothers never attempt breastfeeding. While 45 percent of mothers still breastfeed at six months, fewer than 15 percent of them do so exclusively (Centers for Disease Control and Prevention, 2013).

1.5 Long-Term Effects on Children’s Educational Outcomes and Future Earnings

Possible long-term development effects of paid leave on children are difficult to isolate, as benefits may not manifest themselves until many years later, and they are challenging to measure in most large-scale data sets (Ruhm, 2011). The bulk of the research does not find evidence that increasing the length of paid parental leave has long-term effects on children’s educational outcomes or future earnings. Whatever gains that can be quantified are least pronounced in places where high-quality, subsidized childcare is also available (Ruhm & Waldfogel, 2012; Lowenstein, 2011; Liu & Nodström Skans, 2009; Rasmussen, 2010; Dahl, et al., 2013). Still, one paper from Norway found that children of mothers who were eligible for paid leave showed a 2.7 percentage point increase in high school completion rate, a 3.6 percentage point increase in college attendance, and slightly elevated IQ scores (Carniero, et al., 2010).

1.6 Bonding with Baby and Parental and Caregiver Well Being

Paid family leave has been shown to increase the average length of time that new parents spend at home with their infants. Studies consistently show that access to paid parental leave delays parents’ return to work after childbirth (Ruhm, 2000; Waldfogel, 1999; Schönberg & Nudsteck, 2007). In fact, the most important determinant of whether parents take leave is if the leave is paid or job-protected (Gomby & Pei, 2009). Women in states with paid temporary disability insurance or paid family leave are twice as likely to take paid family leave after the birth of a child, taking an average of 22 more paid leave days (Houser & Vartanian, 2012). Two separate groups of researchers found that California’s right to paid family leave doubled the average length of maternity leave in the state from three to six weeks. Other studies showed that California boosted the proportion of mothers on leave by as much as 15 percentage points in the first six weeks after childbirth. Six to 13 weeks after childbirth, new mothers were 18 to 30 percentage points more likely to be on leave than before the program was implemented (Baum & Ruhm, 2014; Bartel, et al., 2015; Rossin-Slater, et al., 2013).

Research has repeatedly shown that new fathers are also more likely to take paternity leave and stay out for more days when the leave is paid, especially when the wage replacement rate is higher (Harrington, et al., 2014; Han, et al., 2007; Huerta, et al., 2013; O’Brien, 2009; Han & Waldfogel, 2003). Two studies examining the effects of California’s paid family leave program found that it raised the chances that men would go on paternity leave by 46 percent, and it extended the average length by nearly a week. The policy was also found to boost fathers’ solo leave taking (Baum & Ruhm, 2014; Bartel, et al., 2015). Despite the high demands of infant care, U.S. fathers typically return to work shortly after welcoming their new child. About 70 percent of new fathers take 10 days or less of paternity leave, and approximately 1 in 10 men do not take any time off (Abt Associates Inc., 2014; Nepomnyaschy & Waldfogel, 2007; Harrington, et al., 2014). One survey of white collar professional fathers working at Fortune 500 companies found that three-quarters of men stayed out for one week or less after the birth of their most recent child, and 16 percent took no time at all (Harrington, et al., 2011). Men of color may be more likely to take paternity leave than white men. Fathers with stable social positions and healthy lifestyles may also be more likely to use paternity leave (Armenia & Gerstel, 2006; Fredlund, et al., 2010). Several studies have found that men often decide not to take paternity leave, even when their
employer provides it, with many fathers expressing fear that it could damage their careers. The consensus among U.S. fathers is that paternity leave should last two to four weeks. Even when employers offer four to six weeks of paid leave, a significant number of fathers only take two weeks (Harrington, et al., 2014; Malin, 1998; Coltrane, et al., 2013). Workplace norms may reinforce men’s anxiety about paternity leave, perhaps mirroring U.S. workers’ reluctance to use all of their vacation days (Abt Associates Inc., 2014; Neighmond, 2016).

California’s program has also been linked with increases in the amount of time mothers spend caring for their children, with the strongest effects among less educated women (Goodman, 2012). Two other studies found that length of leave appears to influence the strength of the mother-child relationship (Gomby & Pei, 2009). Paid parental leave may also help fathers establish relationships with their newborns and stay involved as their child grows. A number of research teams have found that fathers who take longer leaves perform more childcare activities than fathers who do not, although one study from Germany disputes this conclusion (Nepomnyaschy & Waldfogel, 2007; Sakiko & Waldfogel, 2007; Haas & Hwang, 2008; Huerta, et al., 2013; Tanaka & Waldfogel, 2007; O’Brien, 2009; Klüve & Tamm, 2009). Research has shown a positive association between more father-child engagement and enhancement in cognitive development as well as decreased behavioral problems (Sarkadi, et al., 2008; Nepomnyaschy & Waldfogel, 2007).

Other reports show that paid paternity leave benefits mothers. Paternity leave has also been associated with increased mother’s well-being three months after childbirth in England; while a French study found that when paternity leave facilitates caregiving by fathers, women were less likely to experience postpartum depression (Redshaw & Henderson, 2013; Séjourné, et al., 2012). This type of leave can reshape gender norms around division of childcare duties (Patnaik, 2016). When fathers take on more household duties such as childcare, women have greater latitude to participate in paid employment. Women whose partners took longer paternity leave used fewer sick days, and a Swedish study found that mothers’ earnings rose by 6.7 percent for each additional month of paternity leave their partner took (Bratberg & Naz, 2014; Johansson, 2010).

Studies have shown paid family leave to have positive health effects on new mothers and other family caregivers. Many reports have found that new mothers who return to work later tend to exhibit better general health, fewer symptoms of depression, and less anxiety (Chatterji & Markowitz, 2005; 2012; Aitken, et al., 2015; Dagher, et al., 2014; Avendano, et al., 2015). When parents take unpaid leave, they are significantly more likely to report that it caused them emotional stress than if the leave was paid (Schuster, et al., 2009). Moreover, maternity leave has also been found to prolong the gestation period and reduce the chances of a caesarean delivery, especially among workers in physically demanding jobs (Guendelman, et al., 2009). Caesarean delivery is far more expensive than vaginal delivery ($12,739 versus $9,048 for private health insurers in 2010), and it can put both the mother and the baby’s health at risk (Kozhimannil, et al., 2013). Further, one study from Sweden found that fathers who took paternity leave had lower mortality risk than those that did not, producing net savings of €11 million (Månsdotter, et al., 2007).

Family caregivers are becoming increasingly important as the U.S. population ages and health insurance companies promote shorter hospital stays. Paid family leave can help provide caregivers with economic stability while they balance family and professional duties. Some or all of the negative physical and mental health effects of family caregiving have also been shown to be offset for both men and women
when paid leave is available and a supervisor is supportive (Earle & Heymann, 2011). Caregivers often face significant emotional strain, and the rate of depression among them is high. They are also more likely to miss days of work, which may leave them financially vulnerable. Family caregivers can face significant time costs and out-of-pocket expenditures that can amount to a sizeable financial burden (Ho, et al., 2005). One study estimated that family caregivers of cancer patients spend an average of 8.3 hours per day providing care for 13.7 months, and bear an economic burden over the course of cancer of $7,028 during the first year following diagnosis, $19,701 in the year to six months before the patient’s death, and $14,234 in the terminal phase (Northouse, et al., 2012).

1.7 Fertility Rate

Some contend that the proposed legislation could increase the District’s fertility rate, thereby driving up the use of costly public services such as pre-K through 12th grade school enrollment. The empirical research suggests that workers covered by the proposed legislation are unlikely to change their childbearing plans in response to the bill’s passage, although it is possible that people who already intended to have children will find the District a relatively more attractive place to live and work. Currently, DC residents with children are more likely to move out of the District than those without children (Moores & Metcalf, 2016).

It is unlikely that the proposed legislation would have much effect on fertility, given other countries’ experience with similar social insurance programs and the relative modesty of the proposed benefit (Ruhm, 2011). Several countries have implemented paid family leave entitlements in the hopes of raising fertility rates or stemming their decline with limited success. Such policies tend to influence birth spacing, or the length of time that parents wait between conceptions, rather than the number of children born per family (Björklund, 2006; Gupta, et al., 2008; Lalive & Zweimüller, 2009; Matysiak & Ivett, 2014; Winegarden & Bracy, 1995; Cannonier, 2014). Empirical evidence of the impact on fertility of the unpaid leave provided under FMLA is limited and inconclusive (Rossin, 2013; Averett & Whittington, 2001).

Women in the District are less likely to have children than women living elsewhere in the U.S. but are more likely to bear children later in life. If the District were a state, it would have the country’s 47th lowest fertility rate. Out of every 1,000 women in DC of childbearing age (15 to 44 years old), 53.6 gave birth in 2014, versus 62.9 nationally. Fertility rates in DC and the U.S. are below the population replacement rate of 2.1 children born per woman. In 2014, there were approximately 1.5 children born per DC woman and 1.8 per U.S. woman (Matthews & Hamilton, 2016; Hamilton, et al., 2015; Philips, 2013). More information on birth and fertility rates in the District can be found in Section 2.3.
2 Benchmarking: Paid Leave Programs in Other U.S. Jurisdictions

Federal law does not guarantee U.S. workers the right to wages when taking family or medical leave. Nevertheless, four states, one local government, and one territory have created their own paid family and medical leave insurance program or mandate that employers provide paid leave. While there are many similarities across these public plans, there are variations in benefit structure, funding mechanism, eligibility criteria, and definitions of qualifying events. These plans can serve as useful points of comparison for the proposed legislation, which are also summarized in Appendix B.

California, New Jersey, and Rhode Island are the only U.S. jurisdictions that currently have both paid family and medical leave programs. New York’s paid family leave plan will begin disbursing benefits in 2018, but the state’s paid medical leave program dates back to 1948. San Francisco’s mandate supplements the California state program and is the only jurisdiction that has a paid parental leave ordinance. The “Universal Paid Leave Amendment Act” would make the District the only U.S. jurisdiction to have paid family leave without paid medical leave. None of the District’s neighboring jurisdictions entitle workers to paid family or medical leave. However, Maryland recently established a task force to study family and medical leave insurance, which is required to report its findings by December 2017.

Since the 1960s, Hawaii and Puerto Rico have provided stand-alone paid medical leave plans, also known as state short-term or temporary disability insurance. Their programs offer partial wage replacement to qualifying individuals when a serious illness or medical condition prevents them from working for several weeks or months. Short-term disability insurance is not intended to replace workers’ compensation programs, which offer benefits for workplace-related injuries (U.S. Department of Labor, 2016). Neither is paid medical leave a substitute for the federal disability benefits program, Social Security Disability Insurance (SSDI), which pays monthly cash benefits to those who are unable to work for a year or more.

All of the state paid family and medical leave plans function as insurance regimes, meaning that employees and/or employers pay into a state or privately-administered fund, and when an employee has to take a leave of absence for a qualifying event, money is drawn from the fund to fully or partially replace their lost wages.

California, New Jersey, and Rhode Island rely on government agencies to administer their family leave plans, but states’ medical leave plans take three different approaches. California and New Jersey provide short-term disability insurance through a competitive model. Employers in these states can choose to either enroll in the government’s plan or purchase a private plan that provides equal or better coverage. Private disability plans insure approximately 3 percent of workers in California and 20 percent of workers in New Jersey. In recent years, enrollment in the Garden State’s public plan has gone up, particularly among small employers. The New Jersey legislature explained that many insurers have chosen not to compete with the state’s plan (CA Employment Development Department, 2016a; NJ Legislature, 2016).

In contrast, New York and Hawaii use a private model. They require employers to privately secure a plan that meets state guidelines. Employers also have the choice to self-insure, meaning that they pay their
employees out of pocket during a disability leave. Rhode Island and Puerto Rico are the only jurisdictions that employ a purely public disability insurance model (Rhode Island Public Expenditure Council, 2015).

San Francisco’s parental leave ordinance functions quite differently than any of the state programs. First, it supplements the benefits that employees receive under California’s paid family leave plan. Second, rather than creating a government-administered insurance fund or directing employers to purchase private insurance, the city mandates that employers directly compensate workers when they take parental leave. Third, the ordinance only applies to leave taken when bonding with a new child. San Francisco is the only known instance of a U.S. city or county that has created its own public paid family or paid medical leave benefit. It passed its parental leave ordinance in April 2016, which the Office of Labor Standards Enforcement will implement over a two-year period beginning in January 2017.

States with paid short-term disability laws all began their programs before 1970, whereas paid family leave and parental leave laws were implemented more recently. California created the nation’s first state paid family leave program in 2004, followed by New Jersey in 2009, Rhode Island in 2014, and New York, which will begin paying benefits in 2018.

No jurisdiction has simultaneously created a short-term disability and family leave plan or built a stand-alone family leave plan. All of the state paid family leave programs expanded upon existing medical leave programs, which in turn generally stemmed from federal and state unemployment insurance laws. Thus, states’ family and medical leave programs are often framed by the “Federal Unemployment Tax Act” (FUTA) eligibility requirements and statutory language as well as the state’s own unemployment insurance program (Williamson, 2016). Unemployment insurance and paid leave plans tend to have similar eligibility requirements and benefits structure. They are typically administered under a single agency. However, their funding mechanisms and benefits period often differ.

Although few states currently have paid family and medical leave plans, interest is mounting. In 2015, paid leave bills were introduced to state legislatures in Connecticut, Maryland, New Mexico, Vermont, and Wisconsin (National Partnership for Women and Families, 2016). The U.S. House of Representatives also considered creating a national paid family and medical leave insurance program that year, and President Obama mentioned it during his State of the Union address. Further, the two major political parties’ presidential candidates in 2016 both supported a national paid family leave program. President-elect Donald Trump proposed creating six weeks of paid leave for new mothers, which he planned on paying for by reducing unemployment insurance fraud (Donald J. Trump for President, Inc., 2016). In contrast, Secretary Hillary Clinton’s campaign platform included a pledge to create a paid family and medical leave program that provided up to 12 weeks of leave benefits and replaced at least two-thirds of wages up to a ceiling. Secretary Clinton intended to pay for the program by increasing taxes on the wealthy (Hillary for America, 2016).

2.1 Benefit Structure
State paid leave programs’ benefit structures differ from one another according to their wage replacement rate, the minimum and maximum weekly benefit payment, the benefit period, and how family and medical leaves interact with one another (see Table 2).

California has the country’s most generous state leave benefit due to a combination of its relatively high maximum weekly benefit and long medical leave period. Currently, an individual worker in California can qualify for up to $58,708 in paid disability benefits or $6,774 in paid family leave in a single year.
Further, many workers in San Francisco will also be entitled to additional salary replacement from their employer when taking parental leave. Workers whose annual salary is below $106,740 will be able to receive 100 percent of their weekly salary for up to six weeks.

In contrast, the greatest annual benefit available to workers in Rhode Island is roughly 50 percent lower than California’s statewide program. The Bay State will pay up to $23,850 in disability benefits and $3,180 in paid family leave per year. With dependents, the annual ceiling rises to $32,190 and $4,292, respectively. Individuals employed in New Jersey can receive up to $15,990 in disability benefits and $3,690 in family leave benefits in a single year. In Hawaii, the highest possible annual disability benefit is $14,280. The maximum annual disability benefits in New York and Puerto Rico lie below $4,500.

<table>
<thead>
<tr>
<th>Medical Leave Length</th>
<th>Family Leave Length</th>
<th>Wage Replacement Rate</th>
<th>Min. Weekly Benefit</th>
<th>Max. Weekly Benefit</th>
<th>Waiting Period</th>
<th>Intermittent Leave</th>
</tr>
</thead>
<tbody>
<tr>
<td>UPLAA</td>
<td>Parental: 11 weeks</td>
<td>90% up to 150% of minimum wage and 50% above threshold</td>
<td>--</td>
<td>$1,000</td>
<td>1 week</td>
<td>Yes, period unspecified</td>
</tr>
<tr>
<td>CA</td>
<td>52 weeks</td>
<td>55%*</td>
<td>$50</td>
<td>$1,129</td>
<td>1 week</td>
<td>1 hour</td>
</tr>
<tr>
<td>SF</td>
<td>6 weeks</td>
<td>45%</td>
<td>$50</td>
<td>$924</td>
<td>1 week</td>
<td>1 hour</td>
</tr>
<tr>
<td>HI</td>
<td>26 weeks</td>
<td>58%</td>
<td>$14</td>
<td>$570</td>
<td>1 week</td>
<td>--</td>
</tr>
<tr>
<td>NJ</td>
<td>26 weeks</td>
<td>66.67%</td>
<td>--</td>
<td>$615</td>
<td>1 week</td>
<td>1 day</td>
</tr>
<tr>
<td>NY</td>
<td>26 weeks</td>
<td>50%**</td>
<td>$20</td>
<td>SDI: $170</td>
<td>1 week</td>
<td>1 day</td>
</tr>
<tr>
<td></td>
<td>8-12 weeks</td>
<td></td>
<td></td>
<td>PFL: 50% of NY avg. weekly wage**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PR</td>
<td>26 weeks</td>
<td>65%</td>
<td>$12</td>
<td>$133†</td>
<td>1 week</td>
<td>--</td>
</tr>
<tr>
<td>RI</td>
<td>30 weeks</td>
<td>4 weeks</td>
<td>4.62% of wages in highest 4 of 5 quarters††</td>
<td>$89</td>
<td>$795</td>
<td>--</td>
</tr>
</tbody>
</table>

* State plans to raise rate to 60-70% in January 2018; ** State plans to raise rate to 67% by 2021; † Farm workers have a maximum weekly benefit of $55. †† Does not include a benefit for each of the worker’s dependents worth $10 per week or 7% of base benefit payment (whichever is greater) for up to five dependents.

2.1.1 Wage Replacement Rate and Base Period

This term defines the percentage of an eligible individual’s average wages that they can receive in paid leave benefits. The higher the wage replacement rate, the more a program will cost. For example, under California’s 55 percent wage replacement rate, someone whose usual salary is $1,000 per week can qualify for a weekly benefit of $550. Jurisdictions’ wage replacement rates range from a low of 50 percent in New York to a high of 100 percent in San Francisco. Rhode Island is the only state or territory to provide a higher wage replacement to claimants with dependents. California workers ranked the wage replacement rate as their most important consideration when deciding to take leave for a qualifying event (CA Employment Development Department, 2015b).

All state programs have a flat wage replacement rate, meaning that low- and high-income workers receive the same share of their salary and wages in benefits up to the replacement ceiling, as seen in Figure 5. In contrast, the District’s proposed legislation would replace a greater share of low- and
medium-income workers’ lost earnings. Under the UPLAA, 90 percent of workers’ salaries and wages would be replaced up to 150 percent of the minimum wage, while 50 percent of earnings above this level would be replaced. California is also moving toward a tiered wage replacement system. Beginning in 2018, the state will scale claimants’ wage replacement rate to their income. Workers in the Golden State who earn less than a third of the statewide average quarterly wage will qualify for 70 percent wage replacement. Those with earnings above that threshold will qualify for 60 percent wage replacement or 23.3 percent of the state’s average weekly wage, whichever amount is greater, up to a maximum of $1,129 (CA State Legislature, 2016). New York is also planning to institute a tiered wage replacement system for its paid family leave program.

California’s policy change comes in the wake of a legislative report showing that low wage earners file disability insurance and paid family leave claims at a far lower rate than high wage earners (Sherriff, 2007). The legislature asserted that low-income workers find it especially challenging to absorb the pay cut imposed by the current 55 percent wage replacement rate, especially when coupled with the increased financial burden of welcoming a new child or recuperating from a serious medical problem (California State Assembly, 2016). The Board of Supervisors in San Francisco cited similar concerns as justification for creating its own paid parental leave ordinance (City and County of San Francisco, 2016).

The vast majority (91 percent) of private industry workers in the U.S. with employer-provided short-term disability insurance also have plans that pay a set share of their salary in benefits. Workers with such plans receive an average wage replacement of 60 percent (Bureau of Labor Statistics, 2015a).
Determining how much of a claimants’ wages and salary should be replaced by a paid leave program also depends on how the program calculates the claimants’ normal wages and salary. The UPLAA would define the base wage as the average weekly wage subject to the contribution during the highest earning four of the five quarters immediately preceding the qualifying event, as do California and Hawaii. In effect, this means that claimants who have worked in the jurisdiction for less than a year would qualify for a lower benefit payment than those who had worked longer. Table 3 summarizes how each state defines its base period.

<table>
<thead>
<tr>
<th></th>
<th>UPLAA</th>
<th>CA</th>
<th>HI</th>
<th>NJ</th>
<th>PR</th>
<th>RI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average weekly wage subject to the contribution during 4 of the 5 highest earning quarters immediately preceding the qualifying event</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average weekly wage subject to the contribution during first 4 of the last 5 completed calendar quarters before the claim</td>
<td></td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Earnings in the 8 calendar weeks before the claim</td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2.1.2 Maximum and Minimum Weekly Benefit Amount

All state and local benefit programs set a maximum weekly benefit payment. This means that the plan does not replace wages above a certain threshold, as shown in Figure 5 and Table 4. Wage replacement caps help bring program costs down, because they put a valve on how much any one claimant can receive. For example, New Jersey’s program replaces two-thirds of an applicant’s weekly wages up to $615. Consequently, the applicant’s average weekly wages that exceed $992.50 are not insured. The UPLAA sets a maximum weekly benefit at $1,000. A benefit ceiling allows low-income workers to qualify for a proportionately higher payment relative to their regular wage or salary than high-income workers.

Three-quarters of private-industry workers with disability insurance coverage also face a maximum weekly benefit, which was an average of $595 in 2015. People with a plan that has among the lowest 10 percent of benefit ceilings face an average weekly cap of $170, compared to $2,500 for people with the highest 10 percent of benefit ceilings (Bureau of Labor Statistics, 2015a). Appendix B and Figure 6 show how states have adjusted their maximum weekly benefit levels over time.

California, Rhode Island, New York, Hawaii, and Puerto Rico also set minimum weekly benefit payments. This program feature guarantees that all eligible claimants will receive benefit payments at or above the plan’s floor. Establishing a minimum weekly benefit means that extremely low income workers can qualify for a higher wage replacement rate than they otherwise would. For example, if Rhode Island did not have a minimum weekly benefit of $89, a worker in the state whose annual income is $6,000 would receive a weekly paid leave benefit of $69. With the floor in place, the same worker’s weekly payment rises to $89, and their wage replacement rate increases from 60 to 77 percent. The UPLAA does not specify a minimum weekly benefit.

California, Hawaii, New Jersey, and Rhode Island determine their maximum and minimum weekly benefit level annually, often basing it on their statewide average wage. Since 2003, California has increased its nominal maximum weekly benefit by 47 percent, while Rhode Island has increased its benefit by 34 percent and New Jersey by 27 percent (see Figure 6 and Appendix B). Over this time period, the Consumer Price Index, a national measure of inflation, rose 31 percent (Bureau of Labor
Statistics, 2016). San Francisco's benefit cap is pegged to the state's maximum weekly benefit. The UPLAA automatically increases benefits of low- and medium-income workers by tying it to the minimum wage, which DC law stipulates is to be raised annually, but it does not have any provision for adjusting the maximum weekly benefit.

Table 4: Weekly Benefit Amount and Wage Replacement Rate by Annual Salary

<table>
<thead>
<tr>
<th>Annual Salary</th>
<th>UPLAA $11.50 minimum wage</th>
<th>UPLAA $15 minimum wage</th>
<th>CA</th>
<th>SF Base CA benefit in gray, total benefit in bold</th>
<th>NJ</th>
<th>NY</th>
<th>RI</th>
</tr>
</thead>
<tbody>
<tr>
<td>$25k</td>
<td>$433</td>
<td>$433</td>
<td>$264</td>
<td>$264 + $317 = $481</td>
<td>$321</td>
<td>$322</td>
<td>$289</td>
</tr>
<tr>
<td>$50k</td>
<td>$757</td>
<td>$841</td>
<td>$529</td>
<td>$529 + $433 = $962</td>
<td>$615</td>
<td>$644</td>
<td>$578</td>
</tr>
<tr>
<td>$75k</td>
<td>$997</td>
<td>$1,000</td>
<td>$793</td>
<td>$793 + $649 = $1,442</td>
<td>$615</td>
<td>$848</td>
<td>$795</td>
</tr>
<tr>
<td>$100k</td>
<td>$1,000</td>
<td>$1,000</td>
<td>$1,058</td>
<td>$1,058 + $865 = $1,923</td>
<td>$615</td>
<td>$848</td>
<td>$795</td>
</tr>
<tr>
<td>$125k</td>
<td>$1,000</td>
<td>$1,000</td>
<td>$1,129</td>
<td>$1,129 + $924 = $2,053</td>
<td>$615</td>
<td>$848</td>
<td>$795</td>
</tr>
<tr>
<td>$150k</td>
<td>$1,000</td>
<td>$1,000</td>
<td>$1,129</td>
<td>$1,129 + $924 = $2,053</td>
<td>$615</td>
<td>$848</td>
<td>$795</td>
</tr>
<tr>
<td>$175k</td>
<td>$1,000</td>
<td>$1,000</td>
<td>$1,129</td>
<td>$1,129 + $924 = $2,053</td>
<td>$615</td>
<td>$848</td>
<td>$795</td>
</tr>
</tbody>
</table>

| $25k          | 90%                       | 90%                    | 55% | 55% + 45% = 100% | 67% | 67% | 60% |
| $50k          | 79%                       | 87%                    | 55% | 55% + 45% = 100% | 64% | 67% | 60% |
| $75k          | 69%                       | 69%                    | 55% | 55% + 45% = 100% | 43% | 59% | 55% |
| $100k         | 52%                       | 52%                    | 55% | 55% + 45% = 100% | 32% | 44% | 41% |
| $125k         | 42%                       | 42%                    | 47% | 47% + 38% = 85% | 26% | 35% | 33% |
| $150k         | 35%                       | 35%                    | 39% | 39% + 32% = 71% | 21% | 29% | 28% |
| $175k         | 30%                       | 30%                    | 34% | 34% + 27% = 61% | 18% | 25% | 24% |
| $200k         | 26%                       | 26%                    | 29% | 29% + 24% = 53% | 16% | 22% | 21% |

Figure 6: Maximum Weekly Benefit Payment (2003-16)
In contrast, New York and Puerto Rico do not regularly update their benefit payment maximums and minimums. The difference in maximum benefit payments between states that do and do not set their weekly benefit levels annually is stark. While applicants to California’s leave program can receive up to $1,129 per week, Puerto Rico caps non-farm workers’ benefits at $133 and farm workers at $55. New York’s current statutory maximum benefit per week for medical leave is low at $170. Empire State employers have the option to provide benefits above this level by purchasing Enriched Disability Benefits Insurance. When its family leave program goes into effect, the plan’s weekly maximum benefit will be pegged to New York’s average weekly wages.

Some states place additional restrictions on benefit payments. For example, New Jersey prohibits an individual’s total benefits from exceeding one-third of their total wages during the base period. California does not pay paid family and medical leave benefits to claimants that are currently using employer-paid sick days.

2.1.3 Duration of Paid Leave Benefit
All jurisdictions with paid family leave and short-term disability plans limit the amount of leave that workers can qualify for each year, as shown in Table 2. Placing limits on the number of weeks that a claimant can receive benefits helps control program costs.

California and New Jersey allow for up to 6 weeks of paid family leave, and Rhode Island insures wages for up to 4 weeks. New York’s family leave program will provide eight weeks of paid family leave, although state law specifies that the benefit period will increase to 10 weeks in 2019 and 12 weeks in 2021, as its fund balance permits. The UPLAA would allow eligible claimants to receive up to 11 weeks of paid parental leave and 8 weeks of paid family caregiving leave.

California, Rhode Island, and New Jersey’s benefit period for medical leave claims is greater than their period for family leave. Workers can claim up to 52 weeks of paid short-term disability leave in California; 30 weeks in Rhode Island; and 26 weeks in Hawaii, New Jersey, New York, and Puerto Rico. Among employer-provided short-term disability plans nationally, on average they provide 26 weeks of coverage. Only 10 percent of private sector workers’ plans offer less than 12 weeks of coverage (Bureau of Labor Statistics, 2015a).

Sometimes a claimant is able to return to work on a reduced schedule during their recovery period, or perhaps their treatment only requires them to be absent every third week. All states with paid leave programs build flexibility into their programs, allowing participants to receive the benefit on an intermittent basis. California and New York compensate for leave in full-day increments, whereas in Rhode Island the minimum length is one week. The UPLAA allows for intermittent leave for an unspecified minimum period, as does New Jersey.

Benefit waiting periods are one tool that states use to limit paid leave eligibility to serious events that require an extended absence from work. Waiting periods require claimants to be on leave for a qualifying event for a set period of time before they can start accruing benefits. New Jersey has a seven day unpaid waiting period before paid leave begins, as does California and the UPLAA. New Jersey and California allow applicants to use employer-paid sick or vacation days during the waiting period, so long as they are unable to work during this time. New Jersey will pay benefits for the waiting period if the qualifying event lasts longer than three weeks. California is eliminating its waiting period for paid family leave benefits beginning in 2018, although its waiting period for disability benefits remains in place.
New Jersey and California also give employers the option of requiring employees to use up to two weeks of their paid time off (e.g. sick or vacation days) before claiming the public benefit.\textsuperscript{12} Such measures might help employers limit their unused sick and vacation day liability. They may also be a cost savings measure for the state’s insurance program. New Jersey estimated that employers who exercised this option reduced the state’s total number of family leave benefit weeks by 15.4 percent in 2014 (NJ Department of Labor and Workforce Development, 2016).

San Francisco’s parental leave program also provides that if an employee voluntarily leaves their job within 90 days of the end of their paid leave period, the employer can choose to ask the employee for benefit reimbursement.

States effectively cap multi-year leave taking by setting a minimum period of employment or income in the year preceding the qualifying event.

2.1.4 Stacking Paid and Family Leave

In California, New Jersey, and Rhode Island, short-term disability and family leave benefits can be stacked. This means that an eligible person can qualify to use both types of paid leave over the course of a year. Leave stacking can increase program costs by expanding the potential benefit period. As an analogy, a workplace that provides employees 10 paid sick days and 10 paid vacation days per year allows its leave to be stacked, and workers can receive pay on 20 days in which they are absent. In contrast, a workplace that prohibits stacking offers a total of 10 paid days off per year that employees can use as either sick or vacation days.

Leave stacking is particularly relevant for expectant mothers. In California, New Jersey, and Rhode Island, pregnant women can qualify for both paid family and medical leave. A new mother can use paid medical leave if her pregnancy and delivery interferes with her ability to work. After the baby is born and the woman has physically recovered, she can qualify for paid family leave benefits to stay home and bond with her new child.\textsuperscript{13} For example, a California woman with a normal pregnancy and delivery is usually entitled to 16 to 18 weeks of paid leave benefits, comprised of 4 weeks of pre-natal medical leave, 6 to 8 weeks of postnatal medical leave, and 6 weeks of child bonding family leave. On the other hand, a non-childbearing parent in the state would only be eligible for 6 weeks of child bonding leave (CA Employment Development Department, 2016b). The UPLAA would not allow claimants to stack parental and family caregiving leave.

2.2 Funding Structure

Levying a payroll tax is the most common way that states fund their paid leave programs. California, Rhode Island, New Jersey, and Puerto Rico all use this method. However, each state uses a different formula for determining which party is statutorily obligated to pay the tax. Further, California and New Jersey allow employers to self-insure or acquire private insurance and opt out of the disability insurance tax. Table 5 summarizes these differences.

Employees in California and Rhode Island bear the statutory tax obligation at the 2016 rate of 0.9 and 1.2 percent, respectively. New York’s family leave program will also be funded by a payroll tax levied on employees, although the state has yet to set its rate. A similar employee-levied tax on District workers’ income might not be legally allowable, given the Home Rule Act’s prohibition on taxing commuters’ income (DC Official Code § 1-206.02). Under the proposed legislation, private sector employers in the District would be statutorily responsible for a 0.62 percent payroll tax.
In contrast, New Jersey and Puerto Rico divide the tax obligation between employers and employees. In 2016, New Jersey levied a 0.5 percent payroll tax on employers for the state’s disability insurance plan, while levying on employees a 0.2 percent payroll tax for disability insurance and a 0.08 percent payroll tax for family leave. Puerto Rico equally divides its 0.6 percent tax obligation between employers and employees. Appendix C shows how states have adjusted these tax rates over time.

Table 5: State Plans’ Funding Structure

<table>
<thead>
<tr>
<th>State</th>
<th>Employer-Obligated Tax Rate</th>
<th>Employee-Obligated Tax Rate</th>
<th>Taxable Wage Ceiling</th>
<th>Max. Employer Annual</th>
<th>Max. Employee Annual</th>
</tr>
</thead>
<tbody>
<tr>
<td>UPLAA</td>
<td>0.62%</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>CA</td>
<td>--</td>
<td>SDI &amp; PFL: 0.9%</td>
<td>SDI &amp; FL: $106,742</td>
<td>--</td>
<td>SDI &amp; PFL: $961</td>
</tr>
<tr>
<td>SF</td>
<td>PFL: Benefit paid out-of-pocket</td>
<td>--</td>
<td>PFL: $106,742</td>
<td>$5,544</td>
<td>--</td>
</tr>
<tr>
<td>HI</td>
<td>SDI: Plan balance</td>
<td>SDI: 0.5%</td>
<td>$49,464</td>
<td>--</td>
<td>SDI: $255</td>
</tr>
<tr>
<td>NJ</td>
<td>SDI: 0.5%</td>
<td>SDI: 0.5%</td>
<td>$32,600</td>
<td>SDI: $163</td>
<td>SDI: $65</td>
</tr>
<tr>
<td></td>
<td>PFL: 0.08%</td>
<td>PFL: TBD</td>
<td>SDI: $6,200</td>
<td>--</td>
<td>SDI: $31</td>
</tr>
<tr>
<td>NY</td>
<td>SDI: Plan balance</td>
<td>SDI: 0.3%</td>
<td>SDI: $9,000</td>
<td>SDI: $27</td>
<td>SDI: $27</td>
</tr>
<tr>
<td>RI</td>
<td>--</td>
<td>SDI &amp; PFL: 1.2%</td>
<td>SDI &amp; PFL: $66,300</td>
<td>--</td>
<td>SDI &amp; PFL: $796</td>
</tr>
</tbody>
</table>

All of the states using the payroll tax funding mechanism place a ceiling on taxable wages. In other words, only earnings up to the threshold can be taxed to fund the state’s paid leave insurance program. In 2016, the taxable wage ceiling is $106,742 in California; $66,300 in Rhode Island; $32,600 in New Jersey; and $9,000 in Puerto Rico. Therefore, the amount of taxes collected for paid leave programs per covered worker in 2016 cannot exceed $961 in California, $796 in Rhode Island, $254 in New Jersey, or $54 in Puerto Rico. In contrast, the UPLAA does not create a ceiling on taxable wages. Other social insurance programs including Medicare, Medicaid, and Social Security apply a taxable wage ceiling. Taxable wage ceilings are considered regressive, since the effective tax rate of low-income workers is greater than that of high-income workers.

States’ paid leave tax rates and maximum tax bill per employee tend to fluctuate over time while their taxable wage ceilings steadily grow. Tax rates and tax bills do not appear to be closely tied with changes in a state program’s eligibility requirements or its definition of a qualifying event. In fact, in the years after California, New Jersey, and Rhode Island expanded their disability insurance programs to include family leave, their paid leave tax rates fell. Further, each state’s current paid leave tax rate is lower than before its program expanded (see Appendices C and D).

Part of the reason for this phenomenon may be that states tend to overestimate the amount of tax revenue that they will need to support a new family leave program. For example, New Jersey’s Office of Legislative Services anticipated that the state’s family leave program would cost about one-third of its temporary disability plan. The Office relied on demographic and survey data to arrive at this estimate. In actuality, family leave usage rates in the Garden State were far lower than what was projected, with usage rates consistent with those observed in California. In 2014, New Jersey’s family leave plan cost one-fifth of its short-term disability plan. Revenues for the Garden State’s family leave program greatly
exceeded benefits. The legislature responded by creating an adjustable tax rate that set revenues equal to 120 percent of benefit payments and 100 percent of administrative costs (NJ Legislature, 2016).

Figure 7: Maximum Tax Bill per Employee, (2003-2016)

States can also supplement their short-term disability insurance plan through their unemployment insurance fund. Federal law interprets temporary disability insurance as a complement to unemployment insurance, as the former provides benefits to individuals who are unable to fulfill the latter’s “ability to work” requirement. A 1946 amendment to FUTA authorized states to use employees’ contributions to their unemployment insurance fund to pay for short-term disability benefits. The unemployment fund may only be used to cover short-term disability benefit payments, not its administrative expenses (U.S. Department of Labor, 2016; Social Security Administration, 2015). It is unclear whether the District can exercise this section of the FUTA. First, the District’s unemployment insurance fund does not currently accept contributions from employees. Second, the Home Rule Act’s prohibition on taxing commuters’ income may supersede the FUTA’s disability insurance provision.

California, New Jersey, and Rhode Island each had solvent disability and paid family leave funds from 2006 to 2015. California’s and New Jersey’s paid leave funds’ net income exceeded their net benefits paid in 2015, while Rhode Island’s fund expenditures exceeded revenue by $3.7 million. California considers that maintaining a disability insurance fund balance ranging from 25 to 50 percent of the prior 12 month disbursement is adequate (CA Employment Development Department, 2016c). The three states had fund balances ranging from 55 to 84 percent of disbursements. Over the last ten years, Rhode Island has consistently had a higher fund balance-to-expenditure ratio than New Jersey or California (see Appendix C).

Without adequate controls in place, officials may be tempted to divert money from their disability and family leave funds for other purposes, as happened in New Jersey and California. New Jersey’s elected leaders initially borrowed $100 million from the temporary disability fund in 1994, when its balance nearly exceeded the total benefits paid out that year, and the general fund faced sharp budgetary pressure. This loan was followed by a series of nine more diversions out of the state’s temporary disability fund over a ten year period, totaling $773 million. From 1992 through 2010 the legislature also swept $5.5 billion from the state’s unemployment insurance and workers’ compensation funds. To put
an end to this practice, New Jersey voters amended the state’s constitution in 2010 to require that all payroll taxes be dedicated to worker benefits and ban any future diversions (NJ Legislature, 2016). Similarly, elected officials in California transferred two “loans” totaling $611.7 million from the paid leave trust fund in FY 2011 and 2012 to the state’s general fund. Neither of these loans has been repaid (CA Employment Development Department, 2016a).

Table 6: State Family and Medical Leave Fund Solvency

<table>
<thead>
<tr>
<th></th>
<th>Fund Balance</th>
<th>Net Revenue</th>
<th>Net Benefits Paid</th>
<th>Fund Balance as Percent of Disbursements</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA (2015)</td>
<td>$3,169 M</td>
<td>$5,649 M</td>
<td>$5,419.7 M</td>
<td>58%</td>
</tr>
<tr>
<td>NJ (2014)</td>
<td>$278.5 M</td>
<td>$616.9 M</td>
<td>$506.6 M</td>
<td>55%</td>
</tr>
<tr>
<td>RI (2015)</td>
<td>$151.6 M</td>
<td>$172.2 M</td>
<td>$173.4 M</td>
<td>87%</td>
</tr>
</tbody>
</table>

Rather than maintain a state short-term disability insurance fund or create a payroll tax, New York and Hawaii require that employers either purchase short-term disability insurance for their employees through the private market or self-insure. Both of these states set insurance plan standards and require that self-insurance funds are solvent. Employers in these states have the option to share the costs of purchasing insurance with their employees. Employers in Hawaii and New York can require that workers contribute up to 0.5 percent of their wages up to a weekly cap of $4.91 and $0.60, respectively.

San Francisco’s plan is an outlier, functioning as an employer mandate rather than a social insurance program. Benefits under the city’s parental leave ordinance will be paid by employers, and the city will not be responsible for establishing an insurance fund. When an employee takes leave for a qualifying event, the employer will have to pay out-of-pocket the difference between the California Family Leave benefit and the employee’s usual salary up to the ceiling. By increasing the cost of employing parents, San Francisco’s new employer mandate may inadvertently lead to discriminatory hiring practices (OECD, 2007).

2.3 Uptake Rates

The rate at which an insurance plan’s members file eligible benefits claims, also known as the uptake rate, helps determine how much the plan has to collect in revenues. When insurance plans have high uptake rates, participants have to pay higher premiums. State family and medical leave plans cover tens of millions of workers in California, New Jersey, and Rhode Island, but administrative records show that a small sliver of these workers file benefit claims each year. Uptake rates for short-term disability benefits are consistently higher than family leave (see Table 7). California and New Jersey had nearly three times as many eligible medical as family leave claims. In 2015, Rhode Island’s medical leave insurance received seven times as many claimants as its family leave insurance. These three states’ short-term disability programs have existed for decades while the family leave benefit is relatively new, perhaps explaining some of the difference in their uptake rates.
Table 7: Uptake of State Paid Family and Medical Leave Plans (2015)

<table>
<thead>
<tr>
<th></th>
<th>California</th>
<th>New Jersey</th>
<th>Rhode Island</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workers Covered</td>
<td>17,282,000</td>
<td>Medical: 2,651,326</td>
<td>415,000</td>
</tr>
<tr>
<td></td>
<td>Family: 3,831,200</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medical Leave</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claims paid</td>
<td>633,532</td>
<td>91,163</td>
<td>34,015</td>
</tr>
<tr>
<td>Uptake rate</td>
<td>3.7%</td>
<td>3.4%</td>
<td>8.2%</td>
</tr>
<tr>
<td>Gross benefit payments</td>
<td>$4,760.1 M</td>
<td>$419.6 M</td>
<td>$164.2 M</td>
</tr>
<tr>
<td>Average weekly benefit</td>
<td>$493</td>
<td>$445</td>
<td>$482</td>
</tr>
<tr>
<td>Average total benefit per claimant</td>
<td>$7,514</td>
<td>$4,475</td>
<td>$4,826</td>
</tr>
<tr>
<td>Average weeks</td>
<td>16.1</td>
<td>10.3</td>
<td>10.0</td>
</tr>
<tr>
<td>Family Leave</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claims paid</td>
<td>225,163</td>
<td>32,033</td>
<td>4,941</td>
</tr>
<tr>
<td>Uptake rate</td>
<td>1.5%</td>
<td>0.8%</td>
<td>1.2%</td>
</tr>
<tr>
<td>Gross benefit payments</td>
<td>$659.6 M</td>
<td>$85.8 M</td>
<td>$9.24 M</td>
</tr>
<tr>
<td>Average weekly benefit</td>
<td>$551</td>
<td>$516</td>
<td>$519</td>
</tr>
<tr>
<td>Average total benefit per claimant</td>
<td>$2,929</td>
<td>$2,678</td>
<td>$1,871</td>
</tr>
<tr>
<td>Average weeks</td>
<td>5.4</td>
<td>5.1</td>
<td>3.6</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claims paid</td>
<td>888,695</td>
<td>123,196</td>
<td>38,956</td>
</tr>
<tr>
<td>Uptake rate</td>
<td>5.1%</td>
<td>--</td>
<td>9.4%</td>
</tr>
<tr>
<td>Gross benefit payments</td>
<td>$5,419.7 M</td>
<td>$505.4 M</td>
<td>$173.4 M</td>
</tr>
<tr>
<td>Average weekly benefit</td>
<td>$508</td>
<td>$463</td>
<td>$487</td>
</tr>
<tr>
<td>Average total benefit per claimant</td>
<td>$6,312</td>
<td>$3,990</td>
<td>$4,452</td>
</tr>
<tr>
<td>Average weeks</td>
<td>13.3</td>
<td>8.9</td>
<td>9.2</td>
</tr>
</tbody>
</table>

Table 8: Family Leave Uptake Rates, by Bonding and Caregiving Claims

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Child bonding claims</td>
<td>208,509*</td>
<td>26,778</td>
<td>3,803</td>
</tr>
<tr>
<td>Percent of family leave claims</td>
<td>87.9%</td>
<td>83.6%</td>
<td>77.0%</td>
</tr>
<tr>
<td>Percent of claimants women</td>
<td>65.7%</td>
<td>87.0%</td>
<td>65.7%</td>
</tr>
<tr>
<td>Percent of claimants men</td>
<td>34.0%</td>
<td>13.0%</td>
<td>34.3%</td>
</tr>
<tr>
<td>Bond with biological child</td>
<td>94.2%</td>
<td>99.6%</td>
<td>98.6%</td>
</tr>
<tr>
<td>Bond with foster/adopted child</td>
<td>0.65%</td>
<td>0.4%</td>
<td>1.3%</td>
</tr>
<tr>
<td>Caregiving claims</td>
<td>28,736*</td>
<td>5,245</td>
<td>1,138</td>
</tr>
<tr>
<td>Percent of family leave claims</td>
<td>12.1%</td>
<td>16.4%</td>
<td>25.5%</td>
</tr>
<tr>
<td>Percent of claimants women</td>
<td>65.8%</td>
<td>75.0%</td>
<td>68.4%</td>
</tr>
<tr>
<td>Percent of claimants men</td>
<td>33.7%</td>
<td>25.0%</td>
<td>31.6%</td>
</tr>
<tr>
<td>Caring for spouse</td>
<td>33.5%</td>
<td>32.7%</td>
<td>50.7%</td>
</tr>
<tr>
<td>Caring for domestic partner</td>
<td>1.0%</td>
<td>--</td>
<td>0.8%</td>
</tr>
<tr>
<td>Caring for child</td>
<td>21.4%</td>
<td>24.1%</td>
<td>17.6%</td>
</tr>
<tr>
<td>Caring for parent</td>
<td>32.9%</td>
<td>--</td>
<td>29.4%</td>
</tr>
<tr>
<td>Claim for parent-in-law</td>
<td>--</td>
<td>--</td>
<td>1.1%</td>
</tr>
<tr>
<td>Claim for grandparent</td>
<td>--</td>
<td>--</td>
<td>0.4%</td>
</tr>
<tr>
<td>Caring for all others</td>
<td>11.3%</td>
<td>43.2%</td>
<td>--</td>
</tr>
</tbody>
</table>

* Number of claims filed, not eligible claims.
In 2015 California paid out $4.7 billion in medical leave benefits, New Jersey's claims totaled $419.6 million, and Rhode Island disbursed $164.2 million. The average benefit period for short-term disability was 10 weeks in New Jersey and Rhode Island and 16 weeks in California. On average, weekly benefit payments ranged from $445 in New Jersey to $493 in California. Disability claims represented about 85 percent of California and New Jersey's net benefit payments. District residents are on the whole healthier than residents in California, New Jersey, and Rhode Island. Adults in DC are less likely to rate their health as fair or poor compared to residents of these three other states (see Appendix E).

Approximately 4 percent of covered employees in California and New Jersey and 8 percent in Rhode Island received disability benefits in a 12 month period. According to New Jersey's administrative records, pregnancy and childbirth complications are the primary reasons that claimants received short-term disability benefits, accounting for 26.2 percent of all eligible claims filed in 2015. Other common causes of disability claims include illnesses and conditions affecting bones and organs of movement (18.7 percent); accidents, poisoning, or violence (13.1 percent); cancer (7.7 percent); and problems with the digestive system (6.5 percent). Mental illness represented 5.8 percent of New Jersey's short-term disability eligible claims.

About 1 percent of workers insured by California, New Jersey, and Rhode Island's paid family leave plan used the benefit in 2015. California's program disbursed $659.6 million in family leave benefit payments in 2015, while New Jersey's payments totaled $85.8 million and Rhode Island paid out $9.24 million. Eligible claimants drew an average of 5 weeks of benefit payments in California and New Jersey, and 4 weeks in Rhode Island. Paid family leave beneficiaries in California received an average weekly benefit payment of $551, while the average payment was $516 in New Jersey and $519 in Rhode Island.

The vast majority of family leave claims in California, New Jersey, and Rhode Island were for bonding with a new child. Bonding constituted 87.9 percent of California's family leave claims, and they represented 83.6 percent of New Jersey's claims and 77.0 percent of Rhode Island's claims. Practically all claimants taking bonding leaves in these three states did so for their biological child, while using this benefit for adoptive or fostered children was rare.

Childbearing trends are an important factor in paid family and medical leave uptake rates. More births in a region could also mean that a program would need to collect greater tax revenues. As shown in Figure 7, the District's birth rate surpassed those of California, New Jersey, and Rhode Island between 2008 and 2014. Maryland and Virginia both had birth rates of 12.4 in 2014. In total, 9,509 babies were born to DC residents in 2014. For every 1,000 DC residents, 14.4 babies were born in 2014. The District is tied with South Dakota as having the fourth highest birth rate of any state. In comparison, that year 12.5 babies were born for every 1,000 people in the U.S. population. Since 2004, DC's birth rate has surpassed the national average. The District's relatively high birth rate is the result of having a population that is skewed towards people of childbearing age.15 Nevertheless, Figure 8 shows that DC has a low fertility rate. Women in DC of childbearing age are less likely than women in California and New Jersey to have children, but DC's fertility rate slightly outpaces Rhode Island (Hamilton, et al., 2015). Mothers are more likely to use child bonding leave than fathers, and biological mothers also qualify for pregnancy-related medical leave. Maternity leaves also tend to be longer (refer to Section 1.5).
Family caregiving leave, which provides paid leave to care for an ailing relative, is not a major cost driver in paid leave programs. Few people use California, New Jersey, and Rhode Island’s family caregiving benefit. Less than 30,000 individuals took caregiving leave in California in 2014, and fewer than 5,500 did so in New Jersey in 2015. Barely 1,000 people took advantage of Rhode Island’s paid caregiving insurance in 2015. Across the three states, paid family caregiving leave was most often taken for a seriously ill spouse (RI Department of Labor and Training, 2016a; CA Employment Development Department, 2015a; 2016c; NJ Department of Labor and Workforce Development, 2016; 2016a).¹⁶ Children and the elderly tend to have the greatest healthcare needs, and they are more likely to require caregiving supports from family. California, New Jersey, and Rhode Island each had significantly more children and senior citizens per working-age adult than the District. As seen in Figure 9, DC’s age dependency ratio was 33 percent lower than the national average between 2010 and 2014. However, caregiving responsibilities may vary greatly across all eight wards (U.S. Census Bureau, 2015b).

Differing usage rates between family and medical leave benefits may reflect gaps in public awareness. While California, New Jersey, and Rhode Island each have had state short-term disability programs for decades, their family leave programs are fairly new. Over a decade after the California family leave
program started, general program awareness is low. Researchers reported that misinformation and confusion about its eligibility requirements and the application process are widespread. A large majority of human resource professionals in the state reported that they need further education and clarification about the paid leave program (Andrew Chang & Co, LLC, 2015). Meanwhile, a poll conducted in 2015 found that only 36 percent of California’s registered voters were aware of the state’s paid family leave program. Knowledge of the plan was especially limited among low income households, those with a high school degree or less, Latinos, and African Americans (DiCamillo & Field, 2015). In FY 2016, California continued to budget $3 million to raise awareness and usage (CA Employment Development Department, 2015c). Lack of public awareness has also been shown to impede uptake in New Jersey and Rhode Island (Setty, et al., 2016; Houser & White, 2012; Silver, et al., 2015). One report hypothesized that there may be a greater need for public education campaigns when state and federal provisions concerning leave differ (Gomby & Pei, 2009).

Figure 9: Age Dependency Ratio, Children & Senior Citizens per 100 Working-Age Residents (2010-14)

2.4 Administrative Expenses
States’ paid leave programs tend to be self-sustaining, meaning that program revenues are sufficient to pay for qualifying claims and administrative expenses. The programs therefore do not impose an ongoing burden on states’ general funds. However, beginning a new program may require an initial government investment to get it off the ground. The start-up capital expenses may include building an IT system, and the one-time operating expenses might be for purchasing office equipment or conducting public education campaigns. Unanticipated and costly administrative hurdles may also arise. When California began its paid family leave plan, it faced challenges including difficulty reaching an adequate staffing level in the midst of a state government hiring freeze, insufficient technology to process benefits online, and unanticipated regulatory hurdles concerning the taxability of paid family leave benefits at the state and federal level (Firestein, et al., 2011).

The legislatures of Maryland, Colorado, Connecticut, Washington, and Nebraska issued fiscal notes projecting the start-up costs of their proposed paid family and medical leave programs. Maryland estimated that its implementation costs would be between $5 and $15 million. Colorado predicted that its costs would total $33 million over two years; Connecticut expected to spend $13.6 million over one year; Washington’s estimated its costs to be $16.7 million over two years; and Nebraska believed that it
would need to budget $14.9 million over one year (Glynn, et al., 2016; Connecticut General Assembly, 2016; Maryland General Assembly, 2016). The District’s Office of Revenue Analysis estimated that the proposed legislation would have a $40 million start-up cost. The start-up costs in California, New Jersey, and Rhode Island are not comparable, as they began providing paid medical leave decades ago and simply extended their existing systems when incorporating paid family leave.

Table 9: Administering Family and Medical Leave (2015)

<table>
<thead>
<tr>
<th></th>
<th>California</th>
<th>New Jersey</th>
<th>Rhode Island</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Benefit Payments</td>
<td>$5,419.7 M</td>
<td>$505.4 M</td>
<td>$173.4 M</td>
</tr>
<tr>
<td>Ongoing Administrative Expenses</td>
<td>$238.6 M</td>
<td>$32.5 M</td>
<td>$7.5 M</td>
</tr>
<tr>
<td>Administrative Expenses as Percent of Disbursements</td>
<td>4.4%</td>
<td>6.4%</td>
<td>4.3%</td>
</tr>
<tr>
<td>Number of Claims Filed</td>
<td>932,428</td>
<td>143,689</td>
<td>48,387</td>
</tr>
<tr>
<td>Full-Time Employees (FTEs)**</td>
<td>1,300</td>
<td>--</td>
<td>207*</td>
</tr>
<tr>
<td>Per-Employee Case Load</td>
<td>717</td>
<td>--</td>
<td>N/A</td>
</tr>
<tr>
<td>Family Leave Claim Ineligibility Rate</td>
<td>5.2%</td>
<td>9.2%</td>
<td>7.9%</td>
</tr>
<tr>
<td>Medical Claim Ineligibility Rate</td>
<td>8.9%</td>
<td>15.9%</td>
<td>14.4%</td>
</tr>
<tr>
<td>Combined Ineligibility Rate</td>
<td>7.9%</td>
<td>14.3%</td>
<td>19.5%</td>
</tr>
</tbody>
</table>

*Includes all workers in the Income Support division, such as the unemployment insurance program and police and fire relief benefits.

Administrative expenses in California, New Jersey, and Rhode Island represent between 4 and 6 percent of their net benefits paid (see Table 9 and Appendix D). California spends $238.6 million and employs 1,300 people to operate its paid family and medical leave plan. In contrast, New Jersey and Rhode Island’s programs are far smaller, and their administrative costs are also comparatively low. New Jersey has a staff of 135 employees to monitor family and medical leave claims, a 21 percent decline from 2008. The state appropriated $32.46 million to administer its family and medical leave program in 2016. Rhode Island’s plan costs $7.5 million to manage, and its staff of 207 includes those working for the unemployment insurance plan and other programs within the Income Support division (CA Employment Development Department, 2016c; CA Department of Finance, 2016; State of Rhode Island and Providence Plantations, 2015; 2016; NJ Legislature, 2016; State of New Jersey, 2015).

The Maryland General Assembly recently estimated that the annual administrative costs for its proposed paid family and medical leave insurance plan would be $17.4 million, including salaries and fringe benefits for approximately 234 employees (Maryland General Assembly, 2016). For its part, Connecticut’s legislature projected that administering a paid family and medical leave program would cost $18.9 million annually (Connecticut General Assembly, 2016).

Determining the eligibility of each filed claim is among a paid leave program’s most significant administrative responsibilities. California’s plan employs about one full-time employee for every 717 claims filed annually, and paid 93.4 percent of initial disability insurance benefit claims and 84.5 percent of paid family leave claims within 14 days. In contrast, New Jersey made initial eligibility determinations within 14 days on 44.6 percent of family leave claims and 48.0 percent of medical leave claims.
Administrators in California, New Jersey, and Rhode Island determined that 5 to 16 percent of claims filed are ineligible for benefits. New Jersey reported that its two most common reasons for denying a temporary disability insurance claim were: 1) that the applicant was covered by another program, such as workers’ compensation or a private insurance plan; and 2) that the claimant failed to submit sufficient medical evidence (NJ Department of Labor and Workforce Development, 2016a; CA Employment Development Department, 2015d; 2015a; 2016d; RI Department of Labor and Training, 2016a; NJ Legislature, 2016).

Nevertheless, fraud and abuse in state family and medical leave programs is thought to be minimal. In FY 2014, California filed 25 criminal complaints representing potential fraudulent benefits of $3.2 million. Most of the cases that the state’s fraud monitoring staff investigated pertained to identity theft, altered or forged documents, or medical practitioner fraud (CA Employment Development Department, 2015). Surveys of employers in California and New Jersey also found that plan abuse was rare (Appelbaum & Milkman, 2011; Lerner & Appelbaum, 2014). However, a task force examining Rhode Island temporary disability claims noted that their plan faced “pockets of abuse,” and plan usage spiked around the December holidays and in the late summer (RI Department of Labor and Training, 2005).

2.5 Employer and Employee Eligibility

Not all residents or workers in the benchmarking states are covered by paid family and medical leave plans, nor do all leave events qualify for the cash benefit. In California and Rhode Island approximately 40 percent of the state population participates in their government’s family and medical leave program. In New Jersey, fewer workers are covered by the state’s medical leave program than its family leave program. The robust private short-term disability insurance market empowers employers to opt-out of the New Jersey state plan, whereas there is no evidence of a private market for family leave insurance.

<table>
<thead>
<tr>
<th>Total Resident Population</th>
<th>State Family Leave Covered Employees</th>
<th>% Covered by State Family Leave</th>
<th>State Medical Leave Covered Employees</th>
<th>% Covered by State Medical Leave</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA</td>
<td>39,144,818</td>
<td>17,282,000</td>
<td>44.1%</td>
<td>17,282,000</td>
</tr>
<tr>
<td>NJ</td>
<td>8,958,013</td>
<td>3,831,200</td>
<td>42.8%</td>
<td>2,651,326</td>
</tr>
<tr>
<td>RI</td>
<td>1,056,298</td>
<td>415,000</td>
<td>39.3%</td>
<td>415,000</td>
</tr>
</tbody>
</table>

Existing state family and medical leave plans limit eligibility to employees who have performed work within their borders. Further, they generally require individuals to meet or surpass period of employment and earnings thresholds to be eligible for paid leave benefits. For example, to meet California’s eligibility requirement, one must be employed or looking for work and have earned at least $300 in wages subject to the disability insurance tax during the four preceding quarters. Some states allow both employed and unemployed workers who recently paid into the system to receive benefits.

States with a paid medical or disability leave program cover all private industry worksites, regardless of the number of people that they employ. In contrast, San Francisco’s paid parental leave ordinance has a partially phased-out employer exclusions based on firm size. When the ordinance takes effect, it will only apply to employers with 50 or more workers. The following year the cutoff point will be lowered to firms with 35 or more workers, and by 2018 all employers in San Francisco with 20 or more employees will be required to comply with the ordinance.
Paid family or medical programs tend to exempt certain other types of employers or employees. Federal government workers are excluded from all of these programs, and it is common for them to also exempt state or municipal employees, self-employed persons, those working for religious organizations, salespeople paid only by commission, university students, and other select groups. California and New York allow self-employed individuals and some public employees to opt in to their state’s paid leave plan.

Table 11: Employee Eligibility Criteria

<table>
<thead>
<tr>
<th>Minimum Earnings/Period of Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>UPLAA</strong></td>
</tr>
<tr>
<td><strong>CA</strong></td>
</tr>
<tr>
<td><strong>SF</strong></td>
</tr>
<tr>
<td><strong>HI</strong></td>
</tr>
<tr>
<td><strong>NJ</strong></td>
</tr>
<tr>
<td><strong>NY</strong></td>
</tr>
<tr>
<td><strong>PR</strong></td>
</tr>
<tr>
<td><strong>RI</strong></td>
</tr>
</tbody>
</table>

An employee who is eligible for paid leave benefits might not be eligible for job-protected leave. Thus, in some circumstances, it is legally allowable for an employee to receive paid leave benefits from the state’s plan and be fired from their job for taking the leave. Jurisdictions can avoid this pitfall by passing legislation that expands the FMLA’s guarantee to job-protected leave to all of the same classes of workers that are eligible for its state paid leave benefit.

2.6 Qualifying Events
A “qualifying event” is the set of circumstances that must be present for an eligible employee’s absence to qualify for paid family or medical leave benefits. In general, states require applicants to provide supporting documents related to their family or medical leave event, such as forms completed by a medical provider or proof of a relationship with the family member for whom one is taking caregiving leave, in order to receive the benefit. The definition of a qualifying event differs across the benchmark jurisdictions. The proposed legislation considers qualifying events to be the birth or legal placement of a child and a serious health condition befalling a family member.

2.6.1 Medical Leave
To receive paid medical leave for self-care, states generally require that an applicant’s physical or mental condition prevents them from performing their regular or customary work. All states with paid medical leave exclude from coverage any work related illnesses or injuries and those acquired while perpetrating an illegal act. Hawaii, New Jersey, New York, and Puerto Rico bar medical leave payments for intentional, self-inflicted injuries. California and Puerto Rico’s benefits cannot be used for leave taken for in-patient addiction treatment, whereas this is allowed in the other states. California is unique for
prohibiting payments due to incarceration, and Puerto Rico stands alone for excluding absences related to abortion.

2.6.2 Family Leave for Child Bonding
Parents of newborns or newly adopted children in California, New Jersey, and Rhode Island can use paid family leave to bond with their new child. When their laws go into effect, New York and San Francisco will also consider bonding with a new child as a qualifying event. All of these jurisdictions allow parents to take child bonding leave for the son or daughter of their domestic partner or a child for whom they stand in loco parentis. The child bonding benefit can also be used when an eligible individual welcomes a new foster child into their home. Parents can only take child bonding leave during the first 12 months after their child was born, adopted, or legally placed in their home.

2.6.3 Family Leave for Caregiving
California, New Jersey, and Rhode Island provide benefits for leave taken to care for a seriously ill family member. Once paid family leave is instituted in New York, the state will also consider family caregiving a qualifying event.

California, New Jersey, Rhode Island, and New York adopted similar definitions of a serious illness, injury, or condition that would trigger the paid family leave benefit for caregiving. California and Rhode Island’s paid family leave programs consider serious health conditions to be a physical or mental illness, injury, or condition that requires inpatient care in a hospital, hospice, or residential facility and are similar to what the UPLAA outlines. The four states also allow for time off when a family member’s condition requires continuing treatment or supervision by a healthcare provider. New Jersey specifies that this treatment must involve a period of incapacity of three days or longer and treatments by a healthcare provider or a regimen of continuing treatment under a healthcare provider’s supervision, as does the proposed legislation. Rhode Island requires that the ill family member needs the employee’s care. Each jurisdiction limits the set of family members for whom caregiving leave may be taken, as set forth in Table 12.

No other state besides New York specifies that its paid family leave program may be used for events related to military service. Under the Empire State’s program, applicants will be able to take leave to relieve family pressures when they, their spouse, domestic partner, child, or parent is called to active duty.

<table>
<thead>
<tr>
<th>Table 12: Qualifying Family Members for Caregiving Leave</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child (minor)</td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td>UPLAA</td>
</tr>
<tr>
<td>CA</td>
</tr>
<tr>
<td>SF</td>
</tr>
<tr>
<td>NJ</td>
</tr>
<tr>
<td>NY</td>
</tr>
<tr>
<td>RI</td>
</tr>
</tbody>
</table>

42
Local and federal laws guarantee many workers in the District access to unpaid, job-protected family and medical leave. Under the “District of Columbia Family and Medical Leave Act of 1990” (DCFMLA), eligible workers can qualify for up to 12 weeks of unpaid family leave and 12 weeks of unpaid medical leave in any 12-month period, or 16 weeks of either type of leave in any 24-month period (DC Official Code § 32.501-517). Access to DCFMLA leave is triggered by a serious health condition that the employee suffers; following the birth of a child; when caring for a spouse, child, or parent with a serious health condition; or due to a qualifying exigency for a family member in the military. The District’s “Parental Leave Act of 1994” also requires all employers to provide up to 24 hours of unpaid leave during any 12 month period for their employees to attend or participate in a school-related event for their child (DC Official Code § 32.1201-1206). A dozen other states have also passed unpaid, job-protected family and medical leave laws, but neither Virginia nor Maryland have done so.

The federal “Family and Medical Leave Act of 1993” (FMLA) guarantees eligible workers the right to up to 12 weeks of unpaid, job-protected family and medical leave in any 12-month period (U.S. Code 29 § 2601-2654). It also allows 26 weeks of unpaid, job-protected leave to family members of deployed service members and wounded warriors for qualifying events arising from their relative’s active duty military service. Qualifying events include short-notice deployments or needing to alter financial, legal, or caregiving arrangements due to military service (U.S. Department of Labor, 2008). DCFMLA and FMLA leave is taken simultaneously, and both laws allow leave to be taken intermittently.

It is not uncommon for workers in the District to face DCFMLA/FMLA-qualifying life events. In 2012, 13.1 percent of U.S. workers reported having taken time off because of a qualifying FMLA reason during the past year. The majority of leave takers (55 percent) did so because of their own illness, compared to 21 percent who used it to welcome a new child, and 18 percent who cared for an ailing parent, spouse, or child (Abt Associates Inc., 2014).

However, not all workers qualify for job-protected DCFMLA/FMLA leave. The right is circumscribed by the employer’s size and the worker’s tenure and number of hours worked in the previous year. The DCFMLA has a lower qualifying standard than the FMLA, but even so, approximately 30 percent of the District’s private industry workers – or 147,400 people – are not protected under the DCFMLA because of their firm’s size and job tenure. An unknown number of additional District workers are excluded because of the laws’ minimum-hours-worked requirements and other restrictive clauses (Bureau of Labor Statistics, 2014; U.S. Census Bureau, 2016). Under the proposed legislation, these workers would qualify for paid leave benefits but their employer would still have the right to fire them over the leave or refuse to reinstate them.

Studies have consistently shown that FMLA rights primarily benefit high-income, white, older, married couples. These workers are most likely to be covered by the law and either receive pay during their absence or can afford to take unpaid leave (Han, et al., 2007; Ruhm, 2011; Rossin, 2013; Phillips, 2004; Abt Associates Inc., 2014).
Consequently, many people cannot afford to exercise their rights under the DCFMLA/FMLA. During 2012, 4.6 percent of U.S. workers needed but could not take FMLA leave. Financial strain was the leading reason why employees forewent leave, accounting for 46 percent of unmet leave. U.S. employees who needed but did not take FMLA leave in 2012 were more likely to be low income, racial minorities, women, less educated, unmarried, parents, or in the “sandwich generation.” More than 8 percent of low-income employees (annual earnings below $35,000) that needed family or medical leave in the prior year did not take it or took less time than they required, a rate two and a half times greater than for high-income workers (annual earnings above $75,000). Non-white workers were 76 percent more likely than white workers to have not taken leave. Female employees were twice as likely as their male colleagues to have faced a leave deficit. And those who started but did not complete college were 80 percent more likely to have an unmet need for leave than those that graduated. Hispanic and non-Hispanic black women were less likely to take maternity leave than non-Hispanic white mothers (59.5, 68.7, and 73.0 percent, respectively).

Family structure and age were also found to be linked to unmet FMLA leave. Workers that lived with a child were 85 percent more likely than those who did not to have experienced a leave deficit within the last year, and unmarried employees’ odds were 57 percent greater than those who were married. Employees between ages 34 and 49 may simultaneously care for small children and aging parents, and people in this age group had a higher than average rate of unmet need for FMLA leave (Abt Associates Inc., 2014). For example, only 71 percent of U.S. women who were employed during their last pregnancy reported taking maternity leave (U.S. Department of Health and Human Services, 2011a). Women with the least resources—including those who are unmarried, have low levels of educational attainment, or are younger—are more likely to return to work within two months of childbirth than more resourced women (Han, et al., 2008).

Forgoing DCFMLA/FMLA leave often forces individuals into decisions that may be damaging to their health and their community. A study examining unused FMLA leave found that two of the most common coping strategies were doing without or postponing medical treatment. When workers took FMLA leave with partial or no pay, two-thirds said that they found it somewhat to very difficult to make ends meet. Thirty percent of unpaid and partially paid leave takers had to borrow money, and 15 percent went on public assistance. A second study found that unpaid leave increased New Jersey mothers’ likelihood of receiving food stamps by 40 percent in the year following their child’s birth and increased their chances of relying on other forms of government assistance. Nearly all U.S. workers who took unpaid or partially paid FMLA leave (85 percent) said that they limited their spending, and a third reported that they took fewer days off than they needed (Abt Associates Inc., 2014; Houser & Vartanian, 2012; U.S. Department of Health and Human Services, 2011a).

3.1 Paid Family Leave

Few employees have access to paid family leave. About 14 percent of private-sector employees in the South Atlantic had some form of paid family leave as of 2015, according to the Bureau of Labor Statistic’s National Compensation Survey (NCS). Compared to U.S. private sector workers overall, those in the South Atlantic were slightly more likely to have employer-provided paid family leave benefits.

Across the U.S., worker salaries are closely and positively associated with access to paid family leave. While a quarter of the highest 10 percent of wage earners had this benefit, only 3 percent of the lowest
10 percent of wage earners received it. Full-time workers in the South Atlantic were also three times more likely than part-time workers to have paid family leave benefits. Nationally, paid leave benefits were relatively more common at larger than smaller firms (Bureau of Labor Statistics, 2016e; 2015a). Refer to Table 13 for more detailed information about the distribution of paid family leave benefits across the workforce.

Workers in the District may be, on average, more likely to have family leave benefits than other U.S. workers. This is because managerial, professional, financial, and information occupational groups have some of the highest rates of paid family leave and are also overrepresented in DC’s workforce (U.S. Census Bureau, 2016). In addition, full-time District government employees are eligible for up to eight weeks of paid family leave per year (DC Law 20-155 § 1051-1053). Many federal government workers can use up to six weeks of advanced sick leave during a qualifying FMLA leave (The White House, 2015). Further, access to paid parental leave may be more widespread than caregiving leave. One survey found that 35.1 percent of employees’ workplaces offered paid maternity leave to most or all female employees, compared to 20.0 percent with paid paternity leave (Abt Associates Inc., 2014). Likewise, two other studies reported that maternity leave is a more common workplace benefit than paternity leave (Ross, 2004; Society for Human Resource Management, 2016). When U.S. mothers took maternity leave from 2006 to 2008, they stayed out for an average of 10.3 weeks, and two-thirds received some pay during a portion of their absence (U.S. Department of Health and Human Services, 2011a).

3.2 Paid Medical Leave
Approximately 38 percent of private-sector workers in the South Atlantic region have short-term disability insurance through their employer as of 2015. Nationally, short-term disability insurance access rates were over five times greater for the highest than the lowest paid employees.

In the South Atlantic, workers’ access to short-term disability insurance also varied widely by full-time versus part-time work schedules, firm size, and unionization. Full-time workers in the region were nearly four times as likely to have short-term disability insurance through their employer as those working part time (48 versus 10 percent). Seventy-one percent of workers at companies with 500 or more employees having this benefit versus 20 percent of workers at companies with fewer than 50 employees. Short-term disability insurance was also far more common among unionized than nonunionized private-sector workers, at rates of 78 compared to 36 percent. Table 13 provides a more detailed description of access to paid medical leave benefits across the workforce.

Should national and regional trends on differing rates of short-term disability access by occupational group hold true in the District, its workforce may be more likely to have short-term disability benefits. Managerial and professional occupational groups have among the highest rates of short-term disability insurance participation, and both of these occupational groups are overrepresented in the District (Bureau of Labor Statistics, 2016e).

3.3 Paid Sick Days, Vacation Days, and Other Forms of Paid Time Off
Workers without access to paid family or medical leave often use other forms of accrued paid leave when they have to take time off for a medical emergency or to welcome a new child. However, it might be difficult, if not impossible, for an employee to cobble together paid time off during an extended medical or family leave (Abt Associates Inc., 2014). Overall, 77 percent of private industry workers in the South Atlantic region earned paid vacation days in 2015, and nationally these workers qualified for a
median of 10 paid vacation days per year (Bureau of Labor Statistics, 2016e). District law guarantees workers some paid sick days, which for full-time workers means three to seven days per year.

There also seems to be a mismatch between workers’ need for and access to paid time off. Parents of infants and preschool children and single parents have relatively less access to paid leave (Phillips, 2004).31 Further, higher income working parents are more likely to have childcare and paid sick leave benefits. Fifty-two percent of mothers in households below 200 percent of the federal poverty line must miss work when their child is sick, but only 36 percent have paid sick days. By contrast, 31 percent of working mothers in households above this income threshold must miss work when their child is ill, yet 71 percent have paid sick benefits (Ranji & Salganicoff, 2014).

Access to paid time off is not evenly distributed across the U.S. workforce. Low-wage workers have the least access to paid leave benefits. Nationally, 52 percent of the lowest quarter of wage earners had neither paid vacation days nor paid holidays in 2015. In contrast, paid holidays and vacation days are commonplace among high-wage workers. Ninety-three percent of the highest 25 percent of wage earners are entitled to paid holidays and 91 percent receive paid vacation days.

Work schedules and unionization also seem to be factors in access to paid leave. Part-time workers in the South Atlantic had particularly low levels of access to paid vacation days in 2015, at a rate of 36 percent and compared to 92 percent of full-time workers. Union members in the region were 11 percentage points more likely than non-union members to have paid vacation days at a rate of 88 to 77 percent. Those in unions were also 17 percentage points more likely to have paid holidays (Bureau of Labor Statistics, 2016e; 2015a).

Workers with fewer years of schooling also seem to be less likely to have paid sick leave benefits. One survey found a strong positive relationship between educational attainment and paid leave, finding that workers with college degrees were nearly three times as likely to have this benefit as workers with less than a high school diploma, at rates of 80.8 versus 28.0 percent. Younger workers also tend to have less access to paid leave than older workers. Upon examining these disparities, the Congressional Research Service concluded that uneven access to paid time off “appears to exacerbate wage inequality” (White, 2015; Casselman, 2015; Bureau of Labor Statistics, 2014; 2015; Levine, 2008).32

Most working parents that receive public cash assistance do not receive paid time off (58.6 percent) (Bureau of Labor Statistics, 2015a). The Urban Institute described this situation as “troubling,” explaining that working parents trying to move off of public assistance “may be unable to keep their ties to the labor market in the event of a family crisis, or even just a sick kid” (Phillips, 2004). For more information about access to paid sick days and paid vacation days in the South Atlantic region and across the country, refer to Table 13.
<table>
<thead>
<tr>
<th></th>
<th>Family Leave</th>
<th></th>
<th></th>
<th>Sick Leave</th>
<th></th>
<th></th>
<th>Vacation</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Workers</td>
<td>14%</td>
<td>12%</td>
<td>38%</td>
<td>40%</td>
<td>62%</td>
<td>61%</td>
<td>78%</td>
</tr>
<tr>
<td>Occupational Groups</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Management, professional, related</td>
<td>25</td>
<td>22</td>
<td>55</td>
<td>54</td>
<td>84</td>
<td>81</td>
<td>91</td>
</tr>
<tr>
<td>Management, business, financial</td>
<td>28</td>
<td>28</td>
<td>70</td>
<td>66</td>
<td>85</td>
<td>88</td>
<td>96</td>
</tr>
<tr>
<td>Professional &amp; related</td>
<td>23</td>
<td>19</td>
<td>46</td>
<td>48</td>
<td>83</td>
<td>78</td>
<td>87</td>
</tr>
<tr>
<td>Sales &amp; office</td>
<td>14</td>
<td>13</td>
<td>33</td>
<td>38</td>
<td>65</td>
<td>65</td>
<td>80</td>
</tr>
<tr>
<td>Sales &amp; related</td>
<td>9</td>
<td>8</td>
<td>25</td>
<td>29</td>
<td>54</td>
<td>53</td>
<td>71</td>
</tr>
<tr>
<td>Office &amp; administrative support</td>
<td>18</td>
<td>16</td>
<td>40</td>
<td>45</td>
<td>74</td>
<td>73</td>
<td>88</td>
</tr>
<tr>
<td>Service</td>
<td>6</td>
<td>6</td>
<td>19</td>
<td>20</td>
<td>38</td>
<td>39</td>
<td>54</td>
</tr>
<tr>
<td>Natural resource, construction, maintenance</td>
<td>10</td>
<td>8</td>
<td>37</td>
<td>39</td>
<td>53</td>
<td>53</td>
<td>76</td>
</tr>
<tr>
<td>Production, transportation, material moving</td>
<td>8</td>
<td>6</td>
<td>50</td>
<td>47</td>
<td>29</td>
<td>56</td>
<td>84</td>
</tr>
<tr>
<td>Worker Characteristics</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Part-time</td>
<td>4</td>
<td>5</td>
<td>10</td>
<td>14</td>
<td>23</td>
<td>24</td>
<td>36</td>
</tr>
<tr>
<td>Full-time</td>
<td>17</td>
<td>15</td>
<td>48</td>
<td>49</td>
<td>75</td>
<td>74</td>
<td>92</td>
</tr>
<tr>
<td>Non-union</td>
<td>14</td>
<td>11</td>
<td>36</td>
<td>37</td>
<td>62</td>
<td>60</td>
<td>77</td>
</tr>
<tr>
<td>Union</td>
<td>13</td>
<td>12</td>
<td>78</td>
<td>67</td>
<td>65</td>
<td>73</td>
<td>88</td>
</tr>
<tr>
<td>Average wage</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lowest 25% of wage earners</td>
<td>-</td>
<td>5</td>
<td>-</td>
<td>17</td>
<td>-</td>
<td>31</td>
<td>-</td>
</tr>
<tr>
<td>Lowest 10% of wage earners</td>
<td>-</td>
<td>3</td>
<td>-</td>
<td>13</td>
<td>-</td>
<td>22</td>
<td>-</td>
</tr>
<tr>
<td>Second 25% of wage earners</td>
<td>-</td>
<td>10</td>
<td>-</td>
<td>37</td>
<td>-</td>
<td>66</td>
<td>-</td>
</tr>
<tr>
<td>Third 25% of wage earners</td>
<td>-</td>
<td>14</td>
<td>-</td>
<td>50</td>
<td>-</td>
<td>73</td>
<td>-</td>
</tr>
<tr>
<td>Highest 25% of wage earners</td>
<td>-</td>
<td>23</td>
<td>-</td>
<td>63</td>
<td>-</td>
<td>84</td>
<td>-</td>
</tr>
<tr>
<td>Highest 10% of wage earners</td>
<td>-</td>
<td>25</td>
<td>-</td>
<td>67</td>
<td>-</td>
<td>86</td>
<td>-</td>
</tr>
<tr>
<td>Industry</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction</td>
<td>11</td>
<td>7</td>
<td>21</td>
<td>30</td>
<td>41</td>
<td>41</td>
<td>68</td>
</tr>
<tr>
<td>Wholesale trade</td>
<td>6</td>
<td>9</td>
<td>51</td>
<td>50</td>
<td>75</td>
<td>77</td>
<td>98</td>
</tr>
<tr>
<td>Retail trade</td>
<td>-</td>
<td>7</td>
<td>23</td>
<td>27</td>
<td>51</td>
<td>50</td>
<td>95</td>
</tr>
<tr>
<td>Transportation &amp; warehousing</td>
<td>29</td>
<td>5</td>
<td>52</td>
<td>51</td>
<td>79</td>
<td>74</td>
<td>69</td>
</tr>
<tr>
<td>Information</td>
<td>42</td>
<td>30</td>
<td>84</td>
<td>80</td>
<td>92</td>
<td>92</td>
<td>87</td>
</tr>
<tr>
<td>Finance and insurance</td>
<td>-</td>
<td>36</td>
<td>74</td>
<td>72</td>
<td>93</td>
<td>86</td>
<td>96</td>
</tr>
<tr>
<td>Real estate, rental, &amp; leasing</td>
<td>22</td>
<td>13</td>
<td>-</td>
<td>38</td>
<td>88</td>
<td>72</td>
<td>98</td>
</tr>
<tr>
<td>Professional, scientific, &amp; technical services</td>
<td>-</td>
<td>24</td>
<td>-</td>
<td>55</td>
<td>78</td>
<td>65</td>
<td>90</td>
</tr>
<tr>
<td>Administrative &amp; waste services</td>
<td>16</td>
<td>8</td>
<td>26</td>
<td>24</td>
<td>42</td>
<td>44</td>
<td>92</td>
</tr>
<tr>
<td>Educational services</td>
<td>18</td>
<td>16</td>
<td>36</td>
<td>45</td>
<td>88</td>
<td>72</td>
<td>67</td>
</tr>
<tr>
<td>Junior colleges, colleges, universities</td>
<td>-</td>
<td>17</td>
<td>-</td>
<td>48</td>
<td>-</td>
<td>80</td>
<td>-</td>
</tr>
<tr>
<td>Health care &amp; social assistance</td>
<td>-</td>
<td>15</td>
<td>24</td>
<td>34</td>
<td>73</td>
<td>72</td>
<td>51</td>
</tr>
<tr>
<td>Accommodation &amp; food services</td>
<td>-</td>
<td>4</td>
<td>-</td>
<td>16</td>
<td>27</td>
<td>25</td>
<td>72</td>
</tr>
<tr>
<td>Firm Size</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 to 99 workers</td>
<td>-</td>
<td>8</td>
<td>20</td>
<td>29</td>
<td>-</td>
<td>52</td>
<td>-</td>
</tr>
<tr>
<td>1 to 49 workers</td>
<td>-</td>
<td>8</td>
<td>39</td>
<td>26</td>
<td>-</td>
<td>49</td>
<td>-</td>
</tr>
<tr>
<td>50 to 99 workers</td>
<td>-</td>
<td>10</td>
<td>47</td>
<td>36</td>
<td>-</td>
<td>58</td>
<td>-</td>
</tr>
<tr>
<td>100 or more workers</td>
<td>-</td>
<td>17</td>
<td>71</td>
<td>53</td>
<td>-</td>
<td>72</td>
<td>-</td>
</tr>
<tr>
<td>100 to 499 workers</td>
<td>-</td>
<td>14</td>
<td>20</td>
<td>47</td>
<td>-</td>
<td>67</td>
<td>-</td>
</tr>
<tr>
<td>500 workers or more</td>
<td>-</td>
<td>22</td>
<td>39</td>
<td>63</td>
<td>-</td>
<td>80</td>
<td>-</td>
</tr>
</tbody>
</table>
4 Economic Model

This study projects the economic consequences of providing paid family leave benefits to private sector workers in the District of Columbia, and reflects proposed legislation that is scheduled to be marked up by the Committee of the Whole on December 6, 2016. The study compares the projected economic conditions under the “baseline” economic forecast, in which the District continues to have no requirement for paid family leave, to the projected economic conditions under the “policy” forecast, which captures the impact of the legislation if implemented. The analysis assumes that the paid family leave fund would begin collecting payroll taxes in 2019 and start paying benefits in 2020. The forecasts are calculated using a 70-sector model of the economy of the Washington Metropolitan Statistical Area developed by REMI, Inc. The model incorporates U.S. Bureau of Economic Analysis input-output tables that reflect the region’s unique inter-jurisdictional and inter-industry patterns, which Appendix F discusses in greater detail. The study estimates the differences between the baseline and policy forecasts over a ten-year time horizon, beginning in 2017.

Figure 10: UPLAA Program Structure

4.1 Methodology

The economic forecast begins with an accounting of the paid leave program’s projected flows of costs, benefits, and savings (see Figure 10). The Budget Office mapped these projected flows on to economic variables in the model and quantified their magnitude. Identifying the most appropriate variable to represent an element of the paid leave program at times required a process of trial and error. The Budget Office grappled with questions such as: Which economic actors would ultimately bear the cost of contributing to a new paid leave program funded by a payroll tax, and how would the cost be distributed? Should the cost of the program be treated as a change to wages, taxes, or production costs? The Office managed these and other challenges by adhering to empirical evidence, testing a wide range of assumptions, and consulting outside experts.
The study includes variables for economic or behavioral responses to the program that are well supported in the academic literature. Not all impacts identified in the literature review could be included in the model. In some cases the literature was inconclusive, and in other cases comparable data points for the District were unavailable or the impact could not be assigned an economic value. A more detailed discussion of the methodology underpinning the economic forecast can be found in Appendix F.

4.2 Behavioral Response Scenarios

Since uncertainty is inherent to any forecasting exercise, the study evaluates the impact of the proposed legislation under three different behavioral response scenarios. Each of these three scenarios project slightly different economic impacts, illustrating the range of possible effects.

4.2.1 Employees Absorb Tax

This behavioral response scenario assumes that businesses would manage the cost of the payroll tax by shifting it on to their employees in the form of eliminated or delayed salary and benefit increases. Under this scenario individual firms would choose to lower their per employee labor costs by the amount of the tax, but the number of employees they hire would be the same as under the baseline forecast. Empirical evidence supports this theory, finding that over the long run wage earners bear the majority of the economic incidence of payroll taxes and social security taxes, even when the employer is statutorily obligated to pay the tax (Melguizo & González-Páramo, 2013; Brittain, 1971). Further, there is some evidence that work-life initiatives increase worker satisfaction with their salaries and may make them willing to accept lower pay in exchange for these benefits, as discussed in Section 1.1. Since this scenario assumes that business operations will not be affected by the payroll tax, among the three scenarios it has virtually no impact on the economy and employment. While it allows for employees’ wages to be reduced by the amount of the payroll tax, most of this lost income is returned to workers in the form of paid family leave wage replacement benefits.

4.2.2 Firms Absorb Tax

This behavioral response scenario assumes that businesses would absorb the payroll tax into their bottom line primarily by reducing their labor cost. Firms would also react by raising the prices they charge for their goods and services. Per employee labor costs would be the same as they would be under the baseline forecast, but some businesses would shrink the size of their workforce relative to the baseline economic forecast. Additionally, the scenario assumes that firms do not have the opportunity to recoup the cost of the payroll tax, except in the form of shifting privately-provided benefit costs to the public program as described in Section 4.3.4. Businesses that pay workers at or slightly above the minimum wage are most likely to react as this scenario predicts since they have limited ability to offset the cost of the tax by lowering wages. Since this scenario predicts an increased cost burden on businesses, it projects the most negative impact on the economy and employment in the District of the three scenarios modeled.

4.2.3 Hybrid Tax Absorption

This policy response postulates that firms would respond to the new tax by shifting approximately half of it on to employees and absorbing the rest. Firms could also react by raising their prices. This scenario blends the two response scenarios described above, although in the hybrid tax absorption scenario—unlike the scenario in which firms absorb 100 percent of the tax—businesses experience the increase in payroll tax as an increase to production costs. In the hybrid tax absorption scenario, the model forecasts
an economic impact on the District that is more pronounced than the first scenario but less than the second scenario.

4.3 Technical Assumptions
The study’s three behavioral response scenarios rest upon a core set of technical assumptions on the incidence of the tax, government and consumer spending, and labor market responses. The set of assumptions detailed below is consistent across the three behavioral response scenarios. The Budget Office also considered estimates of the proposed legislation’s potential impact on firms’ efficiency, employee turnover rates, and the nonmonetary value of being insured in the model. Ultimately, however, the Office determined that the evidence base for these additional variables was not sufficiently robust to justify including them in the forecast.

<table>
<thead>
<tr>
<th>Table 14: Summary of Variables and Assumptions (2020)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cost of Doing Business, Private Sector</strong></td>
</tr>
<tr>
<td>Payroll tax</td>
</tr>
<tr>
<td>Administration</td>
</tr>
<tr>
<td>Start-up costs*</td>
</tr>
<tr>
<td>Benefit payments</td>
</tr>
<tr>
<td>Shifting from private to public provision of paid family leave</td>
</tr>
<tr>
<td>Higher women’s labor force participation</td>
</tr>
<tr>
<td>Lower infant mortality</td>
</tr>
</tbody>
</table>

* $20M spent in 2017 and $20M in 2018

4.3.1 Payroll Tax Incidence
The proposed legislation would levy a 0.52 percent payroll tax on all private sector employers in the District. The federal government and the District government would be exempt from the tax, and self-employed people would be exempt unless they choose to opt in to the program. The study relies on REMI baseline economic forecast data to generate an estimate of future payroll tax revenue associated with the 0.62 percent payroll tax in the District. The model estimates that the payroll tax would generate $250.7 million in revenue in 2019. This compares well with the Office of Revenue Analysis’ estimate that the paid leave fund would raise $245.6 million in tax revenue in the first full year of tax collection, and grow by 2 percent in each subsequent year. Each of the three behavioral response scenarios takes a different approach at modeling the incidence of the payroll tax, as described in Section 4.2.

4.3.2 Consumer Spending
The three policy scenarios represent the flow of paid leave benefits into the economy as an increase in consumer spending among covered workers. The benefits would flow to private sector workers employed in the District who reside in the District and other jurisdictions, primarily Maryland and Virginia. To account for place of residence, the model increases consumer spending in all three jurisdictions, based on the number of District workers residing in each jurisdiction as well as their effective wage replacement rate. The REMI model treats increases in consumer spending as a raise in
after-tax income, which it does not offset with decreases in other forms of spending. This approach accounts for evidence that spending patterns for paid leave benefits differ from wage and salary income. While wage earners set aside an average of 5.7 percent of their income for personal savings, the report assumes that claimants will spend all of their paid leave benefit (Bureau of Economic Analysis, 2016). First, the circumstances necessitating family leave, such as welcoming a new child or caring for an ill family member, often coincide with a financial shock to the household (Abt Associates Inc., 2014). Second, even if leave takers do not alter their usual spending habits, their household income would be lower because the paid leave benefit does not replace 100 percent of lost wages, and thus they are less likely to use benefits to bolster savings.

4.3.3 Government Spending
This study assumes that the proposed legislation would have a startup cost of $40 million over 36 months, as estimated by the Chief Financial Officer. These startup costs would pay for capital expenditures such as IT systems and financial management software needed to administer the benefits through the program fund as well as staff training and hiring and public educational campaigns. The proposed legislation also authorizes the District government to dedicate up to 5 percent of the new payroll tax’s revenue to the program’s ongoing administrative expenses, which the Chief Financial Officer takes as a reasonable cost projection. The study estimates an increase of $12.5 million in local government spending for ongoing administrative costs beginning in 2019, increasing by 1.5 percent to 1.8 percent in every subsequent year. The Budget Office considered using the Unemployment Insurance Fund’s administrative expenses to taxes collected ratio as a basis for projecting the paid family leave fund’s administrative costs, but determined that this would not be an adequate reference point since the Unemployment Insurance Fund uses an inefficient legacy IT system that is being replaced.

4.3.4 Employer-Provided Family Leave Benefits
The study assumes that the proposed legislation would reduce businesses’ need to include paid family leave in their compensation packages. Firms that already provide paid family leave benefits could offset the cost of the payroll tax with a reduction in salary payments, since the bill would reduce or eliminate these firms’ need to pay the salaries of workers that are on leave. Instead, during a paid family leave event workers would be compensated through the insurance fund. Regional data from the BLS indicates that only 14 percent of private sector workers have this benefit, and the DOL survey indicates that workers are 50 percent more likely to receive partial pay than full pay when on leave, as discussed in Section 3.1. Based on these BLS figures and data from other federal sources on the availability of paid family leave by industry sector and average length of leaves taken for family or medical reasons, the Budget Office estimated the total offset to District businesses to be $33.2 million in 2020, or approximately 0.08 percent of total wages and salaries.33 The economic model adjusts business operating expenses by that amount as well as workers’ take-home wages. The model does not, however, make adjustments for any businesses that decide to supplement or otherwise provide a more generous paid family leave benefit than provided under the bill.

4.3.5 Labor Market Participation
The study assumes that the proposed legislation would help workers with significant family responsibilities stay in the labor force. Data from the Bureau of Labor Statistics, the Census Bureau, and others indicates that women, particularly mothers of small children, are vulnerable to prematurely exiting the labor market, as discussed in Section 1.2. Substantial research on public paid family leave
programs shows an association with increased women's labor force participation, as described in Section 1.2. The economic model estimates that women of childbearing age's labor force participation in the District would increase by 0.5 percent beginning in the first year the program starts paying benefits. Based on the REMI baseline data, in 2027 there will be 144,410 female residents of the District in the labor force ages 16-54 (in contrast the REMI baseline data indicates that in 2027 there will be 139,420 male residents of the District in the labor force ages 16-54). Using these numbers, and our assumption that the legislation would result in a 0.5% increase in women's labor force participation (for women aged 16-50 years), there would be approximately 720 additional women in the labor force in 2027.

A higher labor supply would benefit businesses by increasing the number of people competing for their jobs, potentially expanding the pool of qualified applicants while lowering labor costs. With more women in the labor force, household income would eventually rise and consequently stimulate economic growth. While some reports suggest that the proposed legislation could increase labor force participation among other family caregivers and raise women’s earnings, there is not sufficient evidence to predict the magnitude of these possible impacts in the economic model.

4.3.6 Infant Mortality

Relying on empirical studies of the effects of paid family leave on child health that are discussed in Section 1.3, this study estimates that the proposed legislation would produce a 3 percent decrease in infant mortality. Lacking evidence on the pace at which the infant mortality rate would likely decline under the proposed legislation, the study assumes that the decrease in infant mortality would take effect immediately after the paid leave program begins paying benefits. The study models this decline by raising the survivorship rate of infants. While other reports indicate that paid leave programs are associated with additional positive developments in child health, such as higher vaccination rates and lower rates of infection and disease, the economic model does not account for them. There is no straightforward way to represent these other potential benefits in the economic model, and there are no other indicators, with the exception of breastfeeding rates, that are as well correlated with paid family leave as reductions in infant mortality.

From an economic perspective, a program that improves infant survival would lead to marginal increases in consumption in the near term—parents must purchase goods and services for the child until they reach adulthood. Over the long term, if the child continues to reside in the District as an adult, an additional worker would enter the local labor market. The magnitude of the economic impact is small, however, because the near-term demographic implications of a 3 percent decrease in infant mortality are small. To put these percentage reductions in perspective, a 3 percent decrease in infant mortality corresponds to a drop in the infant death rate from 7.6 to 7.4 deaths per thousand live births. Any drop in the infant mortality rate is cause for celebration, and in absolute terms, this would correspond to about two fewer infant deaths per year in the District.

4.4 Results

The study’s economic forecast predicts that the proposed legislation would not have a significant impact on the District’s employment growth or GDP. The analysis indicates that implementing the legislation is unlikely to alter the path of the District’s economy or affect its predicted upward employment trajectory relative to the baseline, as shown in Figure 11. The forecasting analysis indicates that the proposed legislation—regardless of the behavioral response scenario—will not materially affect cumulative employment growth (see Figure 12). By 2027, the model forecasts that the District’s private sector
employment levels would be between 99.79 percent and 99.99 percent of levels under the baseline scenario, and the GDP would range from 100.01 percent to 99.92 percent of the baseline forecast.

The model distributes the benefits of the paid family leave program—in terms of wages and salaries paid to employees during the time they take paid family leave—according to an employee’s place of residence (District, Maryland, or Virginia), with adjustment for the percentage of employees in each of the three jurisdictions that fall into specific income groups. Since the replacement wage depends on income (with higher wage replacement for lower income workers), the amount of benefits that would flow to each jurisdiction would depend on the number of workers residing in each jurisdiction as well as their effective wage replacement rate. Based on these estimates, approximately 33 percent of the program’s leave benefits in 2020 would be paid to District residents, while 38 percent would be collected by Maryland residents and 29 percent by Virginia residents. This follows a similar geographic distribution pattern as benefits paid out under the District’s unemployment insurance program. In FY 2016, District residents received 44 percent of the unemployment fund’s benefits, 38 percent went to Maryland residents, 12 percent went to Virginia residents, and 5 percent went to people living in other states.

The model predicts that the paid family leave program would pay out $242 million in benefits during its first 12 months, which the Budget Office assumes would occur in 2020. The model assumes that total benefits would grow in proportion to the baseline economic forecast, and that therefore total benefits from the paid family leave program would grow at an average annual rate of 1.6 percent. With this rate of growth, total benefits paid out in 2027 are approximately $270 million. The proposed legislation’s expected benefit payments outweigh any impact it has on the District’s economy. The model predicts that the bill could influence the District’s GDP in 2027 in the range of a $15 million increase to a $122 million reduction.

Firms that already offer paid family leave benefits stand to fare better under the newly imposed payroll tax, because they would be able to shift a portion of the cost of their existing paid family benefits to the paid family leave fund. However, firms that do not already offer paid family leave benefits would be assessed the payroll tax but have no existing paid family leave costs that they can shift over to the newly established fund. Figures 13 and 14 and Table 15 show with greater precision how the behavioral response scenarios vary from the baseline economic forecast. If businesses absorb the payroll tax, the model forecasts that the District’s economy would support approximately 1,300 fewer jobs by 2027 compared to the baseline economic forecast. In contrast, if the payroll tax incidence falls on employees, the model predicts that the District economy would support approximately 90 fewer jobs by 2027 than the baseline economic forecast. To put this into perspective, the Office of the Chief Financial Officer reported that employment in the District increased by an average of 11,039 jobs per year between 2013 and 2015. Thus, a loss of 1,300 jobs is about the number of jobs that the District typically adds in 6 weeks, whereas a loss of 90 jobs is equal to about three days of average job growth.
Table 15: Summary of UPLAA's Forecasted Cumulative Impacts on DC's Economy (2027)

<table>
<thead>
<tr>
<th></th>
<th>Baseline Forecast (No paid leave)</th>
<th>Employees Absorb Tax</th>
<th>Businesses Absorb Tax</th>
<th>Hybrid Scenario</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GDP, District of Columbia, 2027</strong></td>
<td>$152.1 billion</td>
<td>GDP increases by $15 million</td>
<td>GDP decreases by $122 million</td>
<td>GDP decreases by $46 million</td>
</tr>
<tr>
<td><strong>Private Sector Employment, 2027</strong></td>
<td>621,000 jobs</td>
<td>Employment decreases by 90 jobs</td>
<td>Employment decreases by 1,300 jobs</td>
<td>Employment decreases by 500 jobs</td>
</tr>
</tbody>
</table>

Similarly, the results show that the impact on the District’s GDP will be minimal, as shown in Figure 14. In 2027 these predictions differ by a range of $137 million. If the payroll tax incidence falls on employees, the proposed legislation is expected to increase the area’s GDP by $15 million relative to the baseline. However, should firms absorb the cost of the tax, GDP would decrease by $122 million compared to the baseline in 2027. As context, under the baseline scenario the model expects the District’s GDP to be $152 billion in 2027 (in fixed 2015 dollars). The model predicts that few jobs would migrate out the District to neighboring counties. If the payroll tax’s incidence only falls on firms, as shown in Figure 15, by 2027 the District would sacrifice 0.21 percent of its baseline private sector employment. In contrast, in the scenario in which employees absorb the tax as shown in Figure 16, the model forecasts practically no job migration.

To interpret these results it may be helpful to consider several characteristics of the economic model. First, economic theory suggests that when business costs increase in one region but not in neighboring regions, over time firms will gravitate toward the less expensive regions. The model assumes that the proposed legislation’s payroll tax would begin to be collected in 2019, but benefits would not be paid until the following year. Consequently, the model predicts that employment and GDP in the District would decline in 2019 and rebound in 2020 as the stimulating effect of introducing the spending of benefits counteracts the negative impact of the payroll tax. 34 Thus, over a five to ten-year time horizon, the major costs and benefits of the program act to cancel each other out. Consequently, the model predicts that the proposed legislation would have a relatively small impact on the District’s economy.

Second, some of these assumptions have a greater influence over the model’s predictions about the proposed legislation’s economic impact than others. These four variables are the most influential: payroll tax incidence, consumer spending, government spending, and employer-provided family leave benefits. In contrast, predicted changes to the labor force participation rate and the infant mortality rate have a smaller impact on the District’s economy and private sector job market.

Third, as with any attempt to predict future economic conditions, there is uncertainty. 35 To mitigate these uncertainties, the study is limited to examining the DC-MD-VA regional economy over ten years.
Figure 13: Predicted Impact on DC’s Private Sector Employment, Relative to Baseline Job Growth (thousands of jobs, 2016-27)

Figure 14: Predicted Impact on DC’s GDP, Relative to Baseline Economic Growth (percent change, 2016-27)
Conclusion

The “Universal Paid Leave Amendment Act of 2016” would levy a 0.62 percent payroll tax on private-sector employers in the District of Columbia and generate about $250.7 million in revenue starting in 2019 in order to provide a paid family and parental leave to benefit to private-sector employees. The Council’s Budget Office conducted a policy and economic analysis of this legislation in order to offer Councilmembers an independent, data- and evidence-based resource for weighing the policy implications and economic costs and benefits of the legislation. Empirical evidence of the impact of paid leave programs was used to select and quantify variables used in the economic model. Assuming that businesses would react to the legislation in different ways, three behavioral response scenarios were modeled – one in which businesses absorb the payroll tax, another in which businesses shift the entire cost of the tax to employees, and a third in which half the cost is absorbed by businesses and half is shifted to employees.

In all three scenarios the economic model predicts that employment and GDP in the District would decline in 2019 and rebound in 2020 as the stimulating effect of introducing the spending of benefits counteracts the negative impact of the payroll tax. Over a 10-year period, the proposed legislation would not have a significant impact on the District’s employment growth or GDP.

- The proposed legislation would lower total private sector employment in the District by an estimated 90 to 1,300 jobs over ten years. As a result, employment would increase at an average annual rate of between 1.358 and 1.340 percent, rather than 1.359 percent.

- The impact on the District’s GDP is estimated to range from a gain of $15 million to a loss of $122 million over ten years. The projected GDP would consequently grow at an average annual rate of 1.921 to 1.913 percent, rather than 1.920 percent.

In addition, the empirical research suggests that access to paid family leave would reduce infant mortality in the District. It would also increase women’s labor force participation.
Appendix A. Summary of the “Universal Paid Leave Amendment Act of 2016” (B21-415)

The “Universal Paid Leave Amendment Act of 2016” (UPLAA), as scheduled to be marked up by the Committee of the Whole on December 6, 2016, would establish a paid family leave program for eligible individuals employed in the District of Columbia. The program would provide partial wage replacement when employees take time off for the birth of a child, bonding with a child, or care of a family member who has a serious health condition.

Under the bill, eligible individuals would receive up to 11 weeks of parental leave or 8 weeks of intermittent family leave benefits within a 52-week period. Benefit levels would be set at 90 percent of the eligible individual’s average weekly wage rate up to 150 percent of the District’s minimum wage plus 50 percent of the amount by which the individual’s average weekly wage rate exceeds 150 percent of the District’s minimum wage, provided that the total benefit amount does not exceed $1,000 per week. The proposed legislation defines average weekly wages as the total wages subject to contribution that the individual earned during their four highest paid quarters out of the five quarters immediately preceding the qualifying event divided by 52 weeks. Eligible individuals would not receive wage replacement for the first week of each qualifying event. The paid leave granted by the proposed legislation would run concurrently with leave taken under the federal and District of Columbia Family Medical Leave Acts (DCFMLA and FMLA).

Coverage would be available to workers that spend more than 50 percent of their time working for a covered employer in the District of Columbia during some or all of the 52 calendar weeks preceding the qualifying event. The bill excludes DC government workers, federal employees, and those working for employers that the District is not authorized to tax. Self-employed individuals who earned self-employment income for work performed primarily in DC would have the right to opt in to the program.

The legislation would task the Mayor with administering the program and establishing procedures and forms for filing claims for benefits. The benefit would be funded through a new employer-paid payroll tax capped at 0.62 percent. Claims would not be administered for at least one year after the effective date and not until the Chief Financial Officer certifies that funds are sufficient to pay claims for one year. An online portal would be created for the submission and management of forms and documents.

Workers would not be eligible to receive unemployment insurance and family or parental leave benefits at the same time. If an individual concurrently earns self-employment income and is a covered employee employed by a covered employer, the individual would not be entitled to receive double payments. However, claimants can simultaneously receive employer-provided short-term disability or paid family leave benefits. An individual would be disqualified from family and parental leave benefits for three years if they make a false statement or misrepresentation or willfully fail to report information in order to obtain benefits. Employers would also be prohibited from retaliating against individuals who exercise their rights under the statute. The Mayor would be authorized to spend no more than five percent of the funds generated by the payroll tax for family and parental paid leave program administrative expenses.
## Appendix B. Summary of State Paid Family and Medical Leave Programs

<table>
<thead>
<tr>
<th>Jurisdictions with Paid Family and Medical/Short-Term Disability Leave</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Employee Eligibility</strong></td>
</tr>
<tr>
<td>UPLAA</td>
</tr>
<tr>
<td>CA</td>
</tr>
<tr>
<td>NJ</td>
</tr>
<tr>
<td>RI</td>
</tr>
<tr>
<td>NY</td>
</tr>
<tr>
<td>SF</td>
</tr>
<tr>
<td>HI</td>
</tr>
<tr>
<td>PR</td>
</tr>
</tbody>
</table>
### Appendix C. State Paid Leave Funds’ Benefits and Tax Rates (2003-16)

#### Maximum Weekly Benefit

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>CA</td>
<td>$603</td>
<td>$728</td>
<td>$840</td>
<td>$840</td>
<td>$882</td>
<td>$917</td>
<td>$959</td>
<td>$987</td>
<td>$987</td>
<td>$1,011</td>
<td>$1,067</td>
<td>$1,075</td>
<td>$1,129</td>
<td>$1,129</td>
</tr>
<tr>
<td>NJ</td>
<td>$450</td>
<td>$459</td>
<td>$470</td>
<td>$488</td>
<td>$502</td>
<td>$524</td>
<td>$546</td>
<td>$561</td>
<td>$559</td>
<td>$572</td>
<td>$584</td>
<td>$595</td>
<td>$604</td>
<td>$615</td>
</tr>
<tr>
<td>RI</td>
<td>$543</td>
<td>$561</td>
<td>$607</td>
<td>$607</td>
<td>$625</td>
<td>$652</td>
<td>$671</td>
<td>$694</td>
<td>$700</td>
<td>$719</td>
<td>$736</td>
<td>$752</td>
<td>$770</td>
<td>$817</td>
</tr>
</tbody>
</table>

#### Tax Rate

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>CA</td>
<td>0.90%</td>
<td>1.18%</td>
<td>1.08%</td>
<td>0.80%</td>
<td>0.60%</td>
<td>0.80%</td>
<td>1.10%</td>
<td>1.10%</td>
<td>1.20%</td>
<td>1.00%</td>
<td>1.00%</td>
<td>1.00%</td>
<td>0.90%</td>
<td>0.90%</td>
</tr>
<tr>
<td>NJ</td>
<td>1.00%</td>
<td>1.00%</td>
<td>1.00%</td>
<td>1.00%</td>
<td>1.00%</td>
<td>1.00%</td>
<td>1.09%</td>
<td>1.12%</td>
<td>1.06%</td>
<td>0.78%</td>
<td>0.96%</td>
<td>0.98%</td>
<td>0.84%</td>
<td>0.78%</td>
</tr>
<tr>
<td>Disability (employer)</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
</tr>
<tr>
<td>Disability (employee)</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.50%</td>
<td>0.20%</td>
<td>0.36%</td>
<td>0.38%</td>
<td>0.25%</td>
</tr>
<tr>
<td>Family</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>0.09%</td>
<td>0.12%</td>
<td>0.06%</td>
<td>0.08%</td>
<td>0.10%</td>
<td>0.10%</td>
<td>0.09%</td>
<td>0.08%</td>
</tr>
<tr>
<td>RI</td>
<td>1.70%</td>
<td>1.50%</td>
<td>1.40%</td>
<td>1.40%</td>
<td>1.30%</td>
<td>1.30%</td>
<td>1.50%</td>
<td>1.20%</td>
<td>1.30%</td>
<td>1.20%</td>
<td>1.20%</td>
<td>1.20%</td>
<td>1.20%</td>
<td>1.20%</td>
</tr>
</tbody>
</table>

#### Taxable Wage Ceiling

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>CA</td>
<td>$56,916</td>
<td>$68,829</td>
<td>$79,418</td>
<td>$79,418</td>
<td>$83,389</td>
<td>$86,698</td>
<td>$90,669</td>
<td>$93,316</td>
<td>$93,316</td>
<td>$95,585</td>
<td>$100,880</td>
<td>$101,636</td>
<td>$106,742</td>
<td>$106,742</td>
</tr>
<tr>
<td>NJ</td>
<td>$23,900</td>
<td>$24,300</td>
<td>$24,900</td>
<td>$25,800</td>
<td>$26,600</td>
<td>$27,700</td>
<td>$28,900</td>
<td>$29,700</td>
<td>$29,600</td>
<td>$30,300</td>
<td>$30,900</td>
<td>$31,500</td>
<td>$32,000</td>
<td>$32,600</td>
</tr>
<tr>
<td>RI</td>
<td>$45,300</td>
<td>$46,800</td>
<td>$49,000</td>
<td>$50,600</td>
<td>$52,100</td>
<td>$54,400</td>
<td>$56,000</td>
<td>$57,900</td>
<td>$58,400</td>
<td>$60,000</td>
<td>$61,400</td>
<td>$62,700</td>
<td>$64,200</td>
<td>$66,300</td>
</tr>
</tbody>
</table>
Appendix D. Family and Medical Leave Fund Balance (2006–15)

California

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$3,537.96</td>
<td>$3,212.90</td>
<td>$4,068.90</td>
<td>$5,233.10</td>
<td>$5,566.50</td>
<td>$5,859.00</td>
<td>$5,328.70</td>
<td>$5,565.80</td>
<td>$5,769.23</td>
<td>$5,993.22</td>
</tr>
<tr>
<td>Expenditure</td>
<td>$4,173.16</td>
<td>$4,320.10</td>
<td>$4,745.20</td>
<td>$5,051.60</td>
<td>$5,101.50</td>
<td>$5,129.10</td>
<td>$5,100.90</td>
<td>$5,212.40</td>
<td>$5,628.73</td>
<td>$6,066.05</td>
</tr>
<tr>
<td>Fund Reserve</td>
<td>$2,350.08</td>
<td>$1,570.60</td>
<td>$894.30</td>
<td>$1,075.90</td>
<td>$1,540.90</td>
<td>$2,270.90</td>
<td>$2,498.80</td>
<td>$2,852.20</td>
<td>$3,094.77</td>
<td>$3,021.94</td>
</tr>
</tbody>
</table>

Fund Reserve as Percent of Expenditure

- 56% 36% 19% 21% 30% 44% 49% 55% 55% 50%

Source: Disability Insurance Fund Forecast (2009-2012) [http://www.edd.ca.gov/About_EDD/Archived_EDD_Legislative_Reports.htm](http://www.edd.ca.gov/About_EDD/Archived_EDD_Legislative_Reports.htm)
New Jersey

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$538.14</td>
<td>$568.39</td>
<td>$594.48</td>
<td>$623.78</td>
<td>$635.30</td>
<td>$621.41</td>
<td>$501.20</td>
<td>$532.66</td>
<td>$616.89</td>
<td>$562.31</td>
</tr>
<tr>
<td>Expenditure</td>
<td>$456.96</td>
<td>$470.40</td>
<td>$472.82</td>
<td>$463.77</td>
<td>$522.14</td>
<td>$517.77</td>
<td>$516.57</td>
<td>$523.60</td>
<td>$522.14</td>
<td>$520.74</td>
</tr>
<tr>
<td>Fund Reserve</td>
<td>$207.97</td>
<td>$218.89</td>
<td>$227.89</td>
<td>$298.69</td>
<td>$271.96</td>
<td>$312.36</td>
<td>$257.34</td>
<td>$225.71</td>
<td>$278.45</td>
<td>$285.76</td>
</tr>
<tr>
<td>Fund Reserve as Percent of Expenditure</td>
<td>46%</td>
<td>47%</td>
<td>48%</td>
<td>64%</td>
<td>52%</td>
<td>60%</td>
<td>50%</td>
<td>43%</td>
<td>53%</td>
<td>55%</td>
</tr>
</tbody>
</table>

Rhode Island

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$175.34</td>
<td>$183.58</td>
<td>$170.41</td>
<td>$182.15</td>
<td>$166.06</td>
<td>$164.58</td>
<td>$165.94</td>
<td>$165.73</td>
<td>$171.19</td>
<td>$177.22</td>
</tr>
<tr>
<td>Expenditure</td>
<td>$171.61</td>
<td>$174.16</td>
<td>$179.44</td>
<td>$169.93</td>
<td>$164.54</td>
<td>$163.56</td>
<td>$163.16</td>
<td>$165.42</td>
<td>$169.96</td>
<td>$180.88</td>
</tr>
<tr>
<td>Fund Reserve</td>
<td>$135.76</td>
<td>$145.18</td>
<td>$136.15</td>
<td>$148.36</td>
<td>$149.89</td>
<td>$150.91</td>
<td>$153.70</td>
<td>$154.00</td>
<td>$155.23</td>
<td>$151.57</td>
</tr>
<tr>
<td>Fund Reserve as Percent of Expenditure</td>
<td>79%</td>
<td>83%</td>
<td>76%</td>
<td>87%</td>
<td>91%</td>
<td>92%</td>
<td>94%</td>
<td>93%</td>
<td>91%</td>
<td>84%</td>
</tr>
</tbody>
</table>

http://controller.admin.ri.gov/Financial%20Reports/index.php)
Appendix E. Adults’ Self-Reported Health Status (2014)

<table>
<thead>
<tr>
<th></th>
<th>Fair or Poor Health Status</th>
<th>Diagnosed with Diabetes</th>
<th>Diagnosed with Asthma</th>
<th>Diagnosed with Cardiovascular Disease</th>
<th>Cancer Incidence per 100,000 (age adjusted)</th>
<th>Tobacco Smoker</th>
<th>Overweight or Obese</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S.</td>
<td>17.8%</td>
<td>10.5%</td>
<td>13.5%</td>
<td>6.7%</td>
<td>440.3</td>
<td>17.4%</td>
<td>64.1%</td>
</tr>
<tr>
<td>DC</td>
<td>12.9%</td>
<td>8.4%</td>
<td>17.2%</td>
<td>4.2%</td>
<td>474.9</td>
<td>16.4%</td>
<td>54.9%</td>
</tr>
<tr>
<td>CA</td>
<td>18.1%</td>
<td>10.3%</td>
<td>12.7%</td>
<td>5.4%</td>
<td>410.1</td>
<td>12.9%</td>
<td>59.7%</td>
</tr>
<tr>
<td>HI</td>
<td>14.5%</td>
<td>9.8%</td>
<td>13.5%</td>
<td>5.0%</td>
<td>415.6</td>
<td>14.1%</td>
<td>58.1%</td>
</tr>
<tr>
<td>NJ</td>
<td>16.9%</td>
<td>9.7%</td>
<td>12.4%</td>
<td>6.6%</td>
<td>477.7</td>
<td>15.1%</td>
<td>63.1%</td>
</tr>
<tr>
<td>NY</td>
<td>17.2%</td>
<td>10.0%</td>
<td>15.0%</td>
<td>5.9%</td>
<td>475.8</td>
<td>14.4%</td>
<td>61.1%</td>
</tr>
<tr>
<td>RI</td>
<td>15.2%</td>
<td>9.4%</td>
<td>15.2%</td>
<td>6.4%</td>
<td>484.0</td>
<td>16.3%</td>
<td>62.4%</td>
</tr>
<tr>
<td>PR</td>
<td>35.4%</td>
<td>15.7%</td>
<td>17.1%</td>
<td>11.2%</td>
<td>--</td>
<td>11.3%</td>
<td>65.9%</td>
</tr>
</tbody>
</table>

Appendix F. REMI Model Description

Economic forecasting models help governments, institutions, and private sector firms make informed predictions about how a policy change would affect the regional labor market and economy. Regional economic models are generally founded on one or more of four principles: 1) regional economic activity is governed by input/output multipliers that account for the interrelationships of inputs and outputs between industries; 2) the regional economy can be described by computable general equilibrium model equations that reflect how industries respond to changes in price and demand over time; 3) econometric analysis using observed economic data can improve the accuracy of the model’s predictions about regional economic activity in response to stimuli; and 4) clustering of firms that require specific skill sets and expertise can affect a region’s relative productivity and competitiveness.

After a comprehensive review of forecasting tools, the Budget Office selected the PI+ and Tax-PI software packages developed by Regional Economic Models, Inc. (REMI). The Budget Director chose REMI because it incorporates all four of the elements described above; it is a flexible and customizable tool that can forecast the impact of a wide range of policy changes; and the software is widely accepted as the industry standard.

The Budget Office’s forecasting model is tailored to the District’s unique economic and demographic characteristics, commuting and inter-jurisdictional trade patterns, and tax rates. It includes 70 industry sectors in DC and neighboring counties in Maryland, Virginia, and West Virginia. The jurisdictions and counties incorporated in to the Budget Office’s version of REMI are: 1) District of Columbia; 2) Montgomery, Frederick, Prince George’s, Charles, and Calvert Counties in Maryland; 3) Fairfax, Alexandria, Arlington, Fauquier, Loudoun, Prince William, Stafford, Culpeper, Spotsylvania, Rappahannock, Warren, and Clarke Counties in Virginia; and 4) Jefferson County in West Virginia.

The equations underpinning the model have been vetted in peer-reviewed academic literature, and the data sources and model assumptions are transparent and thoroughly documented. As a validation of the model’s predictive power, REMI predicted with a high degree of accuracy ($R^2 = 0.9939$) actual state-level total employment in 2011 using 2004 data. PI+ and Tax-PI are proprietary software programs that the Budget Office uses public funds to lease. The model builds on historical economic and demographic data and projects future economic performance. It incorporates national, state, and county-level trends with forecasts from the Bureau of Economic Analysis (BEA), the Bureau of Labor Statistics (BLS), and the University of Michigan’s Research Seminar in Quantitative Economics (RSQE) modeling unit. Economic equations, demographic projections, and certain assumptions such as future federal government spending are also built in to its baseline projection. Many jurisdictions and private sector clients use REMI, including the District government’s Office of Revenue Analysis.
Works Cited


California State Assembly, 2016. *03/02/16 Assembly Floor Analysis of AB-908*, Sacramento: California Legislative Information.


Kenjo, E., 2005. New Mothers' Employment and Public Policy in the UK, Germany, the Netherlands, Sweden, and Japan. Labour, 19(1), pp. 5-49.


[Accessed 20 July 2016].


U.S. Census Bureau, 2016c. Table B12007: Median Age at First Marriage, Universe: Population 15 to 54 years, Washington, DC: American FactFinder.


Notes

1 As of 2013, the District was home to over 17,300 private sector businesses and organizations that employed about 491,000 people. Together, their gross revenues totaled $213.46 billion in 2012, and their payrolls totaled $35.13 billion in 2013. While the majority of firms in DC (73 percent) had less than 20 employees, larger enterprises controlled a greater share of the District’s economy. These organizations accounted for 94 percent of DC’s gross receipts in 2012. Further, larger enterprises provided approximately 89 percent of DC’s private-sector jobs (U.S. Census Bureau, 2016). Two industries dominated private sector employment in the District: professional and business services (at 31 percent) and educational and health services (at 25 percent). In comparison, the leisure and hospitality industry made up 14 percent of private sector jobs; and trade, transportation, and utilities and financial services each constituted 6 percent as of May 2016 (Bureau of Labor Statistics, 2016f).

2 It should be noted that these studies are not randomized controlled trials, and companies that choose to provide greater family friendly employment benefits may differ in fundamental but unmeasured ways than companies that did not.

3 It should be noted that these surveys were based on relatively small sample sizes and relied upon managers’ perceptions of the impact of the state programs; therefore, their findings may not accurately reflect the policies’ true impacts or be generalizable.

4 The infant mortality rate measures the number of deaths of children one year old and younger for every 1,000 live births. The infant mortality is an important indicator of a community’s overall health, as it is associated with maternal health, quality and access to medical care, and socioeconomic conditions (MacDorman, et al., 2014).

5 Breastfed babies are at lower risk of contracting a range of common childhood illnesses; serious medical conditions such as type II diabetes, asthma, and childhood obesity; and rare but severe diseases including sudden infant death syndrome and leukemia (U.S. Department of Health and Human Services, 2011; Ip, et al., 2007; Centers for Disease Control and Prevention, 2007b). Studies have found that breastfeeding boosts an infant’s immune system and response to vaccination, and some evidence suggests that it enhances cognitive development (Cai, et al., 2012). Empirical research also suggests that mothers may benefit from lactation. Mothers who did not breastfeed or stopped breastfeeding early were more likely to suffer from postpartum depression (Warner, et al., 1996; Cooper, et al., 1993; Henderson, et al., 2003). Breastfeeding has been linked to lower risks of type II diabetes and breast and ovarian cancer in women (Ip, et al., 2007; Collaborative Group on Hormonal Factors in Breast Cancer, 2002).

6 While District law gives women the right to breastfeed in any location, employers are not required to provide break-time for expression of milk if it would create an undue hardship on the operations of the employer. The law encourages employers to provide a sanitary room to express breast milk in private (DC Official Code § 32-1231.01-15). The Council unanimously passed, yet has not funded, legislation in 2014 to establish a public breastfeeding bank and lactation support center (DC Official Code § 7-881.01-11).

7 Washington State passed paid family leave legislation in 2007 with $6.2 million in start-up funding but without an ongoing funding mechanism. To date, the state has not implemented its program and so will not be considered for benchmarking purposes (Social Security Administration, 2015).

8 Some of the District’s neighboring jurisdictions have considered—and in some cases enacted—paid sick day mandates. Such mandates generally require employers to pay wages to an employee when they take a few days off of work to recover from routine health issues (such as a cold or the flu). In April 2016, the Maryland House of Delegates passed a paid sick leave bill, but it still has to clear the Senate and win the Governor’s support before it can become law. Paid sick leave legislation introduced to the Virginia state legislature died in 2015 without a vote, as did a similar bill before the Prince George’s County Council (Sauers, 2015; Hernández, 2015; Virginia General Assembly, 2015). In contrast, Montgomery County passed a law in June 2015 requiring that businesses with five or more employees provide full-time staff with up to two weeks of paid sick leave per year. Further, the county received a U.S. Department of Labor grant in September 2015 to study the feasibility of implementing paid family and medical leave (U.S. Department of Labor, 2015a).

9 New York is phasing in a 67 percent wage replacement rate for paid family leave benefits.
10 On July 1, 2016 the District raised its minimum wage to $11.50 per hour. The “Fair Shot Minimum Wage Amendment Act of 2016” will progressively increase DC’s minimum wage to $15 an hour by 2020 (DC Law 21-144).

11 Since 2010, employers in New York have had the option to provide their employees with greater disability benefits than the statutory requirement. Employers can choose to enroll in the state’s Enriched Disability Insurance plan, which offers a maximum weekly benefit payment that is up to five times greater than the statutory maximum, or $850 (New York State Insurance Fund, 2016).

12 Employers in California may only require employees to use accrued and unused paid vacation days.

13 Pregnant women in New York, Hawaii, and Puerto Rico may also qualify for paid short-term disability leave if pregnancy or childbirth renders them unable to perform their normal job functions, but, unlike women in states that mandate paid family leave, they are not guaranteed paid time off to bond with their newborn baby.

14 California, New Jersey, and Rhode Island each maintain a single fund covering both their paid disability and family leave benefit programs.

15 People ages 15 to 44 years make up 51.4 percent of the District’s population, as compared to 40.0 percent of the U.S. population.

16 The age patterns among bonding leave and caregiving leave claimants differed. In New Jersey, 99.0 percent of eligible bonding claimants were under the age of 45. The majority of leave takers were between the ages of 25 and 34 (64.4 percent), and 29.5 percent were ages 35 to 44. In contrast, family caregivers skewed older. New Jersey reported that 62.6 percent of eligible caregiving claimants were age 45 and older. Women were more likely than men to use California, New Jersey, and Rhode Island’s state family leave benefit plan. Women made up 65.7 percent of eligible bonding leave beneficiaries in California and Rhode Island, and 87.1 percent in New Jersey. Women also made up the majority of eligible family caregiving claimants. They accounted for 65.8 percent of California’s caregiving leave takers, 74.5 percent of New Jersey’s, and 68.4 percent of Rhode Island’s.

17 Workers excluded from San Francisco’s parental leave ordinance due to their firm’s size would still be covered by the state’s paid leave program.

18 The Ocean State’s temporary disability insurance law defines a caregiver’s role as “providing psychological comfort, arranging third-party care for the family member as well as directly providing, or participating in the medical and physical care of the patient.”

19 California widened its family definition in 2014 in the wake of a study published by the California Senate Office of Research in 2007. The report found that the state had rejected 10 percent of family care claims filed in FY 2005 and 2006 because they were to support a relative outside of the program’s family member definition. Most of California’s denied claims were filed for siblings (35 percent), followed by grandparents (19 percent), and parents-in-law (10 percent) (Sherriff, 2007).

20 The U.S. Department of Defense offers paid medical and parental leave benefits to service members across the joint forces, but this benefit is not available to their family members. This paid time off includes 30 days of medical leave, 12 weeks of maternity leave, 10 days of parental leave, and 21 days of adoption leave. Secretary Ashton Carter has also requested Congress to expand the Department’s paternity leave benefit to 14 days (U.S. Department of Defense, 2016; 2016a).

21 The FMLA requires continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. After returning from leave, the FMLA and DCFMLA give employees the right to return to the same or an equivalent job with the same pay, benefits, and working conditions. Both laws prohibit employers from retaliating against workers for taking leave.

22 Other states with job-protected unpaid family or medical leave laws include California, Connecticut, Hawaii, Maine, Massachusetts, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, Washington, and Wisconsin (National Conference of State Legislatures, 2014).

23 There are three key differences between the DCFMLA and the FMLA. First, the DCFMLA applies to a broader set of employers and workers. The District’s law covers employers with 20 or more employees, whereas the FMLA only applies to employers with 50 or more employees. The DCFMLA extends rights to workers who have served at least 1,000 hours with their current employer during the previous year, in contrast to the FMLA which requires 1,250 hours. Second, the laws take different approaches to leave takers who use both family and medical leave. DCFMLA allows 12 weeks of family leave and 12 weeks of medical leave in any 12-month period, while the FMLA allows for a total of 12 weeks of leave for family and medical leave. Third, the DCFMLA has a more expansive
definition of family. The District’s law includes those related by blood, legal custody, marriage, or sharing a mutual residence and in a committed relationship. In contrast, the FMLA is limited to spouses, children, and parents. In the case of military-related leave, the FMLA’s family definition also includes next of kin.

24 Four in every ten leave takers were out of work for 10 days or less, and only 17 percent of them took leave for more than 60 days. Most workers (60 percent) who took leave for an FMLA-qualifying reason in 2012 received some pay while out of work, usually they did so by applying their paid vacation leave, sick days, or other forms of paid time off. Forty-eight percent of FMLA leave takers reported receiving full pay and another 17 percent received partial pay, but rates of full pay dropped off significantly for leaves of more than 10 days. Full pay was provided for 60 percent of leaves lasting 10 days or less, compared to 40 percent of leaves that were longer than 10 days. The data show that after 10 days of leave, it was common for workers to have run through their accumulated bank of paid vacation and sick days while on FMLA leave (Abt Associates Inc., 2014).

25 Among those excluded are the approximately 56,000 workers employed by firms with less than 20 workers and an estimated 91,400 employees who have worked for their current employer for less than a year. The latter figure was calculated by multiplying the number of those at enterprises with more than twenty employees (435,129 workers) by the Bureau of Labor Statistic’s estimate of the percent of U.S. wage and salary workers that have less than a year tenure with their current employer (21.3 percent). Nationally, 41 percent of employees are ineligible for FMLA leave (Abt Associates Inc., 2014).

26 Among those workers surveyed who went on family or medical leave during the prior 18 months, 46 percent said that they returned to work when they did because their financial strains were too great to stay out any longer. The financial pressure of FMLA leave may be felt by low and high income families alike. Higher income families were more likely to report being unable to afford taking additional unpaid leave than lower income families (53 versus 37 percent) (Abt Associates Inc., 2014).

27 Access to FMLA rights is unevenly distributed across the labor force. Younger workers, black and Latino people, women, and those with part-time jobs are less likely to qualify for DCFMLA/FMLA leave than other workers. One in every four workers (27 percent) ages 25 to 34 years old had been with their current employer for less than a year, compared to just one in every ten (9 percent) workers ages 55 to 64. If the District’s tenure trends mirror national trends, this means that a quarter of working women and men in prime childbearing age in the city could be ineligible for job-protected FMLA leave based on its tenure requirements alone. Workers who are black or Latino were also more likely than white or Asian workers to fail to meet the law’s time-in-job test. While 79 percent of white and 82 percent of Asian workers had tenures of one year or more, this was true of 75 percent of black workers, and 76 percent of Latino workers in the U.S. Across all races, women were 4 percent more likely than men to have been with their current employer for fewer than 12 months (Bureau of Labor Statistics, 2014). Workers of color and workers in low-paying jobs may be more likely to work in smaller firms that are excluded from DCFMLA and FMLA (Levine, 2008). Fewer women than men in the workforce may fulfill the DCFMLA and the FMLA’s threshold for hours worked in the previous 12 months. Women in the District on average work fewer hours per week than men, and nationally women are more likely to balance multiple part-time jobs. Data from the Bureau of Labor Statistics shows that U.S. women are more likely than men to hold multiple jobs, so while their total hours worked might seem to qualify them for job-protected leave they might not be able to clock an average of 20 hours per week with each of their employers to meet the law’s threshold. Working women in DC also tend to clock fewer hours on the job than men. Employed women in the District were also 50 percent more likely than employed men to work part time (14 versus 9 percent) (U.S. Census Bureau, 2016b).

28 The odds that employees in the so-called “sandwich generation” needed more days of leave than they were able to take was 69 percent higher than employees over age 50 and 42 percent greater than those age 33 and younger (Abt Associates Inc., 2014).

29 The South Atlantic Region, as defined by the NCS, includes the District of Columbia, Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, and West Virginia. Due to the limited sample size of the underlying survey, NCS estimates are unavailable for DC or its metropolitan area.

30 The Government Family Leave Program Amendment Act of 2014 applies to all District employees, including those that work for independent agencies, such as the University of the District of Columbia (DC Department of Human Resources, 2015).
Among U.S. working parents, those whose youngest child was 13 years of age or older were 7.9 percentage points more likely to have any paid leave than parents whose youngest child was an infant (84.2 versus 76.3 percent). Employed parents of older children had paid leave benefits at a rate 6.3 percentage points higher than parents whose youngest child was 1 to 3 years old. Further, across the board single working parents were 7.7 percentage points less likely to receive employer-provided paid leave than working parents that were married (73.8 versus 81.5 percent). The Urban Institute reported that working mothers have lower access to any paid leave days than working fathers, at rates of 76.2 versus 83.5 percent. Those working mothers that did receive paid time off also tended to receive fewer weeks of leave than working fathers. For example, 12.9 percent of working mothers had a week or less of paid leave compared with 9.6 percent of working men (Phillips, 2004).

National data reveals that the number of paid vacation days provided to private sector employees is positively correlated with length of service. In other words, the longer that an employee has worked for their current employer the more vacation days they are likely to receive. Younger workers who have had less time in the workforce and may be more prone to moving jobs receive fewer days of paid vacation than older workers.

The Budget Office estimated salary offsets as a percentage of total annual wages and salaries in each industry sector, based on the following formula and using data from various sources about access to paid leave, likelihood of taking paid leave, average length of paid leave. These sources include the National Compensation Survey and the U.S. Department of Labor’s FMLA Survey. \[ \text{Salary spent on workers taking paid leave} = \left(\text{Probability of worker being on FMLA leave}\times\text{Average length of FMLA leave}\right) \times \left(\text{Probability of workers receiving full pay}\right) + \left(\text{Probability of worker being on FMLA leave}\times\text{Average length of FMLA leave}\right) \times 0.5 \times \left(\text{Probability of receiving partial pay}\right) \]

The REMI results showing an immediate loss of jobs in the first year of the program (during which the payroll tax is collected but no benefits are paid out) are not significant, because the strength of the model relates to predictions in the five-year and ten-year timeframes.

The sources of uncertainty fall in to three general categories: 1) uncertainty and potential error with respect to the structure of the model, and its ability to accurately simulate the dynamics of the regional economy; 2) uncertainty in estimates of structural economic parameters; and 3) uncertainty in the forecasts of economic variables needed to drive the model (Giarratani & Houston, 2010).
MEMORANDUM

TO: Chairman Phil Mendelson

FROM: Ellen Efros, General Counsel

DATE: December 6, 2016

RE: Legal sufficiency determination for Bill 21-415, the Universal Paid Leave Amendment Act of 2016

The measure is legally and technically sufficient for Council consideration.

The proposed bill (the "Act") provides for the establishment of a family and parental paid leave system for individuals employed in the District of Columbia and makes certain conforming amendments.

Section 101 provides definitions for terms utilized in the Act.

Section 102 requires the Mayor to establish a family and parental paid leave program to administer the paid family and parental paid leave benefits provided for in the Act. It also requires the Mayor to issue rules within 180 days the Act's effective date to implement the Act and requires that those proposed rules be submitted to the Council for its review and approval or disapproval.

Section 103 requires certain covered employers to contribute 0.62% of their employees' annual salaries or annualized wages into the Universal Paid Leave Implementation Fund. A self-employed individual who opts into the family and parental paid leave program shall contribute the same percentage of his or her self-employment income. It requires the Mayor to begin collecting these contributions no later than March 1, 2019 and provides for notice, procedures, penalties, and remedies for covered employers.

Section 104 provides for the payment of family or parental paid leave benefits to eligible individuals and specifies the criteria for payment as well as the duration and amount of the benefits to paid. It also provides that the Mayor shall begin to pay benefits under the Act no later than March 15, 2020.

Section 105 establishes requirements for self-employed individuals who choose to opt into the family and parental paid leave program, including
restrictions barring self-employed individuals from opting in and out of the program at will.

Section 106 requires the Mayor to establish procedures and forms governing the filing of claims for benefits under the Act and establishes timelines for the Mayor to notify employers and eligible individuals of the status of pending claims. It also establishes requirements regarding the timing of payments to eligible individuals and provides for the electronic sharing of information consistent with applicable privacy protections. It further requires the Mayor to undertake a public education campaign to be paid for out of the Universal Paid Leave Implementation Fund.

Section 107 establishes requirements governing the furnishing of notice to an employer by an eligible individual who pursues a claim under the Act. It also addresses the interrelationship between the benefits available under the Act and benefits available under: 1) the Federal and District of Columbia Family Medical Leave Acts; 2) a covered employer's own employee leave program; 3) unemployment insurance; and 4) long-term disability. It also prohibits double-payment of benefits to self-employed individuals who also work for a covered employer and provides that the benefits available under the Act shall not be diminished by the terms of a collective-bargaining or other agreement, or by an employer's policy.

Section 108 establishes procedures for an eligible individual to appeal to the Office of Administrative Hearings a determination made by the Mayor pursuant to Section 106 regarding his or her claim for benefits under the Act.

Section 109 establishes requirements to police the fraudulent or erroneous payment of benefits under the Act, including provisions permitting the Mayor to seek repayment of benefits under certain circumstances.

Section 110 prohibits interference with, or employee retaliation against, an individual who has taken certain actions consistent with exercising his or her rights under the Act.

Section 111 requires employers to retain records relating to their activities in connection with the Act and authorizes the Mayor to conduct investigations of potential violations of the Act.

Section 112 provides for the bringing of a civil action by the Mayor or an eligible individual to enforce the provisions of the Act against an employer and establishes limitations on such a suit.

Section 201 amends 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), to confer upon the Office of Administrative Hearings jurisdiction over adjudicated cases arising under the Act.
Section 202 amends section 2(4) of the D.C. Family and Medical Leave Act of 1990, effective March 14, 1991 (D.C. Law 8-181; D.C. Official Code § 32-501(4)), to include a foster child within the definition of "family member".

Section 203 amends section 1152 of the Fiscal Year 2017 Budget Support Act of 2016, effective October 8, 2016 (D.C. Law 21-160; 63 DCR 10775), to clarify provisions regarding, and establish certain additional restrictions on, the Universal Paid Leave Implementation Fund, a special, non-lapsing fund created for the purpose of implementing the family and parental paid leave benefit program created pursuant to the Act.

I am available if you have any questions.
§ 2-1831.03. Jurisdiction of the office and agency authority to review cases.

* * *

(a) As of the day that begins the first pay period after 180 days following Council confirmation of the individual who will serve as the first Chief Administrative Law Judge of the Office, this chapter shall apply to adjudicated cases under the jurisdiction of the following agencies:

(1) Department of Health;

(2) Department of Human Services;

(3) Board of Appeals and Review;

(4) Repealed;

(5) All adjudicated cases in which a hearing is required to be held pursuant to § 7-2108(a) and 7-2108(b), including licensing and enforcement matters arising under rules issued by the Child and Family Services Agency;

(6) All adjudicated cases required to be heard pursuant to §§ 8-802 and 8-902;

(7) Repealed;

(8) Department of Banking and Financial Institutions; and

(9) Repealed;

(10) All adjudications involving infractions of subchapter II-A of Chapter 10 of Title 6 [§§ 6-1041.01 through 6-1041.09] and the rules promulgated under its authority.

(11) Repealed.

(b) In addition to those agencies listed in subsection (a) of this section, as of October 1, 2004, this chapter shall apply to adjudicated cases under the jurisdiction of the following agencies:
(1) Department of Employment Services, other than the private workers' compensation function;

(2) Department of Consumer and Regulatory Affairs, except for those cases under the jurisdiction of the Rent Administrator and those cases under the jurisdiction of the Real Property Tax Appeals Commission for the District of Columbia;

(3) Taxicab Commission;

(4) All adjudicated cases of the Office of Tax and Revenue arising from tax protests filed pursuant to § 47-4312; and

(5) All adjudicated enforcement cases brought by the Historic Preservation Office within the Office of Planning.

(b-1) (1) In addition to those agencies listed in subsections (a) and (b) of this section, as of October 1, 2006, this chapter shall apply to adjudicated cases under the jurisdiction of the Rent Administrator in the Department of Consumer Regulatory Affairs.

(2) In preparation for the transfer of jurisdiction of the Rent Administrator's adjudicatory function to the Office, the Rent Administrator of the Department of Consumer and Regulatory Affairs shall submit a plan to the Mayor and Council by December 31, 2004 describing how the Rent Administrator's office will function after its adjudicatory responsibilities are transferred to the Office, the legislative changes needed to prepare the Rent Administrator for its new role, and the resources needed to maintain its non-adjudicatory functions. The plan shall be developed in consultation with the Office.

(b-2) In addition to those adjudicated cases listed in subsections (a), (b), and (b-1) of this section, as of January 1, 2009, this chapter shall apply to all adjudicated cases involving:

(1) The imposition of a civil fine for violation of firearm registrant requirements pursuant to § 7-2502.09(b) [(b) repealed];
(2) The denial or revocation of a firearm registration certificate pursuant to § 7-2502.10;

(3) The denial or revocation of a dealer license pursuant to § 7-2504.06; and

(4) The imposition of a civil fine for violations of Chapter 10 of Title 7 [§ 7-1001 et seq.],
pursuant to § 7-1007.

(b-3) In addition to those cases described in subsections (a), (b), (b-1), and (b-2) of this section,
as of May 5, 2010, this chapter shall apply to adjudicated cases required to be heard pursuant to §
42-3141.06.

(b-4) In addition to those adjudicated cases listed in subsections (a), (b), (b-1), (b-2), and (b-3) of
this section, this chapter shall apply to all adjudicated cases involving the impoundment of a
vehicle pursuant to § 22-2724(a).

(b-5) This chapter shall apply to appeals pursuant to §§ 47-857.09a and 47-859.04a.

(b-6) In addition to those adjudicated cases listed in subsections (a), (b), (b-1), (b-2), (b-3), (b-4),
and (b-5) of this section, this chapter shall apply to all adjudicated cases involving the failure to
report known or reasonably believed child sexual abuse pursuant to subchapter II-A of Chapter
30 of Title 22 [§ 22-3020.51 et seq.].

(b-7) In addition to those adjudicated cases listed in subsections (a), (b), (b-1), (b-2), (b-3), (b-4),
(b-5), and (b-6) of this section, this chapter shall apply to all adjudications involving the
imposition of a civil fine for violations of § 48-1201.

(b-8) In addition to those adjudicated cases listed in subsections (a), (b), (b-1), (b-2), (b-3), (b-4),
(b-5), (b-6), and (b-7) of this section, this chapter shall apply to appeals pursuant to §2-
218.63(g).

(b-9) In addition to those cases described in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), (b-5),
(b-6), and (b-7) [and (b-8)], this chapter shall apply to adjudicated cases under the jurisdiction of
the District Department of Transportation.
Bill 21-415, “Universal Paid Leave Amendment Act of 2016”
Committee of the Whole
Comparative Print

(b-10) In addition to those cases described in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), (b-5), (b-6), (b-7), and (b-8) [and (b-9)], this chapter shall apply to adjudicated cases involving a civil fine or penalty imposed by the Higher Education Licensure Commission under § 38-1312(a-1).

(b-11) In addition to those adjudicated cases described in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), (b-5), (b-6), (b-7), (b-8), (b-9), and (b-10) of this section, this act shall apply to all adjudicated cases that arise from Bill 21-415, the “Universal Paid Leave Act of 2016.”

(c) Those agencies, boards, and commissions that are not included in subsections (a), (b), (b-1), (b-2), or (b-3) of this section may:

1. Refer individual cases to the Office, with the approval of the Chief Administrative Law Judge; or

2. Elect to be covered by this chapter, subject to the approval of the Chief Administrative Law Judge and the Mayor, and upon such terms as the Mayor may set.

(d) Repealed.

(e) Nothing in this chapter shall be construed to grant a right to a hearing not created independently by a constitutional provision or a provision of law other than this chapter, except with regard to the discipline or removal of an Administrative Law Judge or the Chief Administrative Law Judge.

(f) Except as provided in subsection (h) of this section, no agency of the District of Columbia to which this chapter applies shall adjudicate adjudicated cases under the jurisdiction of the Office of Administrative Hearings or employ hearing officers, either full- or part-time, for the purpose of adjudicating cases under the jurisdiction of the Office.

(g) Any case initiated by, or arising from a decision or action of, an agency or a portion of an agency in receivership shall not be heard by the Office unless the receiver has entered a binding agreement that any order issued by the Office in the matter would have the same force, effect,
and finality as it would if the receivership did not exist.

(h) Nothing in this chapter shall be construed to limit the authority of an agency covered in subsections (a), (b), (b-1), (b-2), or (b-3) of this section, if the authority exists pursuant to other provisions of the law, to have an agency head or one or more members of the governing board, commission, or body of the agency adjudicate cases falling within its jurisdiction in lieu of the Office. This authority may not be delegated in whole or in part to any subordinate employees of the agency.

(i) (1) A board or commission with authority to issue professional or occupational licenses may delegate to the Office its authority to conduct a hearing and issue an order on the proposed denial, suspension, or revocation of a license or on any proposed disciplinary action against a licensee or applicant for a license. The Office's order shall be appealable to the board or commission pursuant to § 2-1831.16(b).

(2) A case that was delegated by a board or commission to an administrative law judge or hearing examiner employed by an agency subject to this chapter shall be deemed to have been delegated to the Office pursuant to this section as of the date that the agency's adjudicated cases became subject to this chapter.

(j) A person who has filed a protest of a proposed assessment under § 47-4312 and requested a hearing with the Office shall be deemed to have elected adjudication by the Office as the exclusive means of adjudication of all challenges to the proposed assessment, and to have waived any right to adjudication of a challenge to the proposed assessment in any other forum. Nothing in this subsection limits the right of any person to judicial review of an order of the Office pursuant to § 2-1831.16.
Bill 21-415, “Universal Paid Leave Amendment Act of 2016”
Committee of the Whole
Comparative Print

D.C. FAMILY AND MEDICAL LEAVE ACT OF 1990
(D.C. OFFICIAL CODE § 32-501(4))


* * *

(4) "Family member" means:

(A) A person to whom the employee is related by blood, legal custody, or marriage;

(B) A child who lives with an employee and for whom the employee permanently assumes and discharges parental responsibility; or

(C) A person with whom the employee shares or has shared, within the last year, a mutual residence and with whom the employee maintains a committed relationship; or

(D) A foster child.

* * *

FISCAL YEAR 2017 BUDGET SUPPORT ACT OF 2016
(D.C. LAW 21-160)

SECTION 1152 OF TITLE I. SUBTITLE P. 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 subsection (c) of this section.

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

(c) Money in the Fund shall be used to fund the implementation of the Universal Paid Leave Act of 2016, as introduced on October 6, 2015 (Bill 21-415).

(d)(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 a 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.

(a) There is established as a special fund the Universal Paid Leave Implementation Fund ("Fund"), which shall be administered by the Office of the Chief Financial Officer in accordance with subsection (c) of this section.
(b) Money in the Fund shall be used to fund the implementation of the Universal Paid Leave Amendment Act of 2016 established in this Act, which shall include paying for benefits, public education, and administrative costs required pursuant to this Act; provided that no more than 10% of the funds deposited into the Fund shall be used to pay for the administration of this Act for each fiscal year.

(c)(1) The money deposited into the Fund, and any 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 Title I of this 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 shall be used only for the purposes of the paid leave program.

(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 this Act shall not be administered from the Fund until:

(1) at least one year after the effective date of this 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 nine months of benefits 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 nine 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 six 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 twelve 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 this 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 paid leave program established in this Act.

* * *
COMMITTEE OF THE WHOLE
COMMITTEE PRINT
December 6, 2016

A BILL

21-415

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish a paid leave system for individuals employed in the District of Columbia 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 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 of this title during the 4 quarters out of the 5 quarters immediately preceding the qualifying event during which the 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 caregivers and an infant or child.

(3) "Covered employee" means any employee who spends more than 50% of his or her work time working in the District of Columbia for a covered employer.
(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 in accordance with D.C. Official Code §51-101 et seq.; provided, that the term “covered employer” shall not include the United States, the District of Columbia, or any employer who 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.


(6) “Eligible individual” means a person who is not an employee of the United States, the District of Columbia, or an employer 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 the 52 calendar weeks immediately preceding the qualifying event for which paid leave is being taken; or

(B) A self-employed individual who earned self-employment income for work performed primarily 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 and has opted into the paid leave program established pursuant to this Act.
(7) "Paid leave benefits" means the monetary benefits provided pursuant to this Act.

(8) "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 1(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; or

(D) A grandparent of an eligible individual.

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

(10) "Intermittent leave" means paid leave taken in increments of no less than one week, rather than for one continuous period of time.

(11) "Open enrollment period" means:

(A) The first 90 days after the Mayor begins to collect the payroll tax pursuant to Section 103 of this Act;

(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 year thereafter, the months of
November and December.

(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 following 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 within one year 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:

(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 title; 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 as 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:

(A)(1) The term “treatment” includes, but is not limited to, examinations to
determine if a serious health condition exists and evaluations of the condition.

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

(3) 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 do not satisfy this definition; 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 three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:

      (I) Treatment of two 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 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 supervisions 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:

(1) Requires two 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 which is permanent of 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 three consecutive, full calendar days in the absence of medical intervention or
treatment.
(21) "Wages" has 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.

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

(b)(1) The Mayor shall issue rules within 180 days of the effective date of this Act to implement 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)(1) A covered employer shall contribute 0.62% of the annual wages of each of its covered employees to the Universal Paid Leave Implementation Fund in a manner prescribed by the Mayor.

(2) If a covered employer does not pay a covered employee an annual salary, the covered employer's contribution to the Universal Paid Leave Implementation Fund for that covered employee shall be calculated using the annualized income installment method.
(b) A self-employed individual who has opted-in to the paid leave program, established pursuant to this Act, shall contribute 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 of the effective date of this Act, the Mayor shall provide public notice to covered employers regarding the manner in which contributions to the Universal Paid Leave Implementation Fund shall be collected.

(d) By March 1, 2019, the Mayor shall begin to collect contributions to the Universal Paid Leave Implementation Fund from covered employers and self-employed individuals who have opted into the paid leave program established pursuant to this Act.

(e) Upon a self-employed individual’s 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, effective 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, and after a one week waiting period during which no benefits are payable, an eligible individual shall be entitled to receive payment of his or her paid leave benefits.
(b) 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 following 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 one qualifying event in a 52 work period.

(c) 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 physician or caretakers 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.

(d) An eligible individual may receive payment for his or her paid leave benefits for intermittent leave; provided, 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 work week period for a qualifying parental leave event.

(e)(1) An eligible individual who earns an average weekly wage at a rate that, on an annualized basis, is equal to or less than 150% of the District's minimum wage shall be entitled to payment of leave benefits at a rate that shall equal 90% of that eligible individual's average weekly wage rate;
(2) An eligible individual who earns an average weekly wage at a rate that, on an annualized basis, is greater than 150% of the District's minimum wage shall be entitled to payment of paid leave benefits at a rate that shall equal:

(i) 90% of 150% of the District's minimum wage; plus

(ii) 50% of the amount by which the eligible individual's average weekly wage rate exceeds 150% of the District's minimum wage; 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) Prior to October 1, 2021, the maximum weekly benefit amount shall be $1,000;

(4) On October 1, 2021, and October 1 of each successive year, the maximum weekly benefit amount provided in this subsection shall be increased 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. Any increase under this paragraph shall be adjusted to the nearest multiple of $1.

(f) By March 15, 2020, the Mayor shall commence the payment of paid leave benefits provided for in this Act.

Sec. 105. Self-employed individuals.

(a)(1) An individual who earns self-employment income and who opts-in to the paid leave program 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-in to the paid leave program, 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 paid leave fund for no less than three consecutive years.

(b) If an individual has chosen to withdraw from the program two or more times, he or she shall be barred from re-enrolling in the program for a period of five years from the date of his or her withdrawal from the program.

(c) Beginning with January 1, 2020, an individual who previously opted out of or withdrawn from coverage shall not be eligible for benefits for the first year after enrolling or reenrolling in the Program.

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

(2) The eligible individual may re-enroll consistent with requirements of this section.

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 what supporting documentation is necessary to support a claim for benefits, including requiring 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 provided for in this Act.

(c) The Mayor shall notify the employer within 5 business days of a claim being filed pursuant to this title.

(d) Within 10 business days after an individual has filed a claim for benefits under this title, the Mayor shall make and notify an individual of:

   (1) an initial determination as to an individual’s eligibility to receive benefits pursuant to this title;
   
   (2) the weekly amount payable to the eligible individual;
   
   (3) the week with respect to which payments will commence;
   
   (4) the maximum duration thereof; 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 deemed 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.

(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.


(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, shall be designed to be able to handle the benefits provided for in this Act and including paid medical leave (self-care) benefits.

(h) Information contained in the files and records pertaining to an individual under this title are confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, 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,

(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 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 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 program established by this title.


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 medical or family paid leave benefits provided in this Act.


(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 prior to 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.

(b) If paid leave taken pursuant to this Act also qualifies as protected leave pursuant to the Family and Medical Leave Act, 29 U.S.C. 2601, 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 the DC Family and Medical

(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 providing such benefits or an
eligible individual receiving such benefits from the provisions of this Act.

(e) An eligible individual receiving unemployment insurance, as defined by the District
of Columbia Unemployment Compensation Amendment Act, effective August 28, 1935 (Public
Law 74-386; D.C. Official Code § 51-101 et seq.) shall not be eligible to receive 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 benefits provided for in this Act.

(g) 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.

(h) This title 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 under 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 title 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 where an employer has failed to keep or provide an employee with employment records as required under D.C. 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 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 1 year of the occurrence or discovery of the alleged violation of this title, whichever is later.

(e) For complaints, other than a claim determination, that arise under this title, the administrative enforcement procedure and relief shall be the same as that in the District of Columbia Family and Medical Leave Act of 1990, effective March 14, 1991 (D.C. Law 8-181; D.C. Official Code § 32-501 et seq.).

(f) Notwithstanding any other provision of this title:

(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 90 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.

Sec. 109. Erroneous payments and disqualification for benefits.

(a) An individual who makes a false statement or misrepresentation regarding a material fact, or 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 where 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 fund on behalf of that individual during the period that he or she improperly obtained benefits.

(2) For 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 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 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 or related to this title:
(A) Files or attempts to file a charge;
(B) Institutes or attempts to institute a proceeding; or
(C) Facilitates the institution of a proceeding; or
(3) Gives any information or testimony in connection with an inquiry or proceeding related to this Act.

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 chapter that the Mayor may prescribe by rule.
(b) To ensure compliance with the provisions of this chapter, the Mayor, consistent with constitutional guidelines, may:
(1) Investigate and gather data regarding any wage, hour, condition, or practice of employment related to this chapter; and
(2) Enter or inspect any place of employment or record required by this chapter.
(c) For the purpose of any investigation provided for in this section, the Mayor may exercise the subpoena authority provided in D.C. Official Code § 1-301.21..

Sec. 112. Enforcement by civil action.
(a) Subject to the provisions in subsection (b) of this section, an eligible individual or the Mayor may bring a civil action against any employer to enforce the provisions of this chapter in any court of competent jurisdiction.
(b)(1) No civil action may be commenced more than 1 year after the occurrence or discovery of the alleged violation of this chapter.
(2) This 1 year 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.

**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-11) to read as follows:

“(b-11) 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), and (b-10) of this section, this act shall apply to all adjudicated cases that arise from Bill 21-415, the “Universal Paid Leave Act of 2016.”

Sec. 202. Paragraph 4 of Section 2 of the D.C. Family and Medical Leave Act of 1990, effective March 14, 1991 (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 Title I.P of the Fiscal Year 2017 Budget Support Act of 2016 (D.C. Law 21-160) is amended to read as follows:

(a) There is established as a special fund the Universal Paid Leave Implementation Fund (“Fund”), which shall be administered by the Office of the Chief Financial Officer in accordance with subsection (c) of this section.
(b) Money in the Fund shall be used to fund the implementation of the Universal Paid Leave Amendment Act of 2016 established in this Act, which shall include paying for benefits, public education, and administrative costs required pursuant to this Act; provided that no more than 10% of the funds deposited into the Fund shall be used to pay for the administration of this Act for each fiscal year.

(c)(1) The money deposited into the Fund, and any 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 Title I of this 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 shall be used only for the purposes of the paid leave program.

(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 this Act shall not be administered from the Fund until:

(1) at least one year after the effective date of this Act; and

(2) after the Chief Financial Officer of the District of Columbia certifies that the
529 Fund will remain solvent for at least one year after claims have begun to be paid from the Fund.
530 (i) The balance in the Fund shall not fall below the equivalent of nine months of benefits
531 at any time during a fiscal year. If the Chief Financial Officer determines that the balance in the
532 Fund will fall below the equivalent of nine months of benefits during a fiscal year, the Chief
533 Financial Officer shall promptly notify the Mayor and the Council and present a plan, including
534 recommended legislative changes, if any, to address the shortfall. If the balance in the Fund falls
535 below the equivalent of six months of benefits, the District shall immediately cease any further
536 payments of benefits. If payment of benefits is ceased in accordance with this section, payment
537 of benefits shall not resume until the Fund balance is equal to the equivalent of twelve months of
538 benefits.
539 (j) By December 30, 2017, the Mayor, in coordination with the Office of the Chief
540 Financial Officer, shall provide an update to the Council as to the funds that have thus far been
541 deposited into the Fund and the expected timeline for beginning to make payment of claims
542 under this Act.
543 (k) By October 1, 2018, and annually thereafter, the Mayor shall submit a report to the
544 Council about the financial management, claim management, operation, and use of the Fund and
545 paid leave program established in this Act.

**Title III Fiscal impact and effective date.**

546 Sec. 301. Applicability

This act shall apply upon the inclusion of its fiscal effect in an approved budget and
548 financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in
549 a certification published by the Council in the District of Columbia Register.

551 Sec. 302. Fiscal impact statement.

Sec. 303. Effective date.

This act shall take effect following approval of 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 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 § 1-206.22(c)(1)), and publication in the District of Columbia Register.