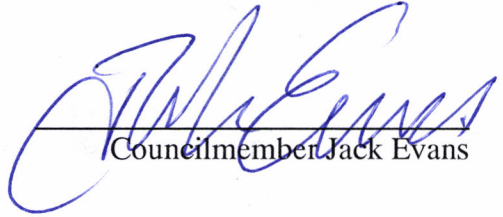

Councilmember Mary Cheh


Councilmember Jack Evans

AN AMENDMENT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Date: December 20, 2016

Offered by: Councilmember Evans and Cheh

To: Bill 21-415, Universal Paid Leave Amendment Act of 2016 Amendment
in the Nature of Substitute offered by Evans and Cheh

Version:

- ☐ Introduced
- ☐ Committee Report
- ☐ Committee Print
- ☐ First Reading
- ☐ Amended First Reading
- ☐ Engrossed
- ☐ Enrolled
- ☒ Amendment in Nature of Substitute

AMENDMENT #1

Sec. 102 (f) is amended to read as follows:

(f)(1) A covered employee shall be entitled to payment of family and parental leave benefits at a rate that shall equal:

(i) 90% of 150% of the District's minimum wage multiplied by 40; plus
(ii) 50% of the amount by which the eligible individual's average weekly wage exceeds 150% of the District's minimum wage multiplied by 40; provided, that no eligible individual shall be entitled to payment of paid leave benefits at a rate in excess of the maximum weekly benefit amount.

(2) Family and medical leave benefits for partial weeks of leave shall be prorated.

(3) Prior to October 1, 2021, the maximum weekly benefit amount shall be \$1,000;

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

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

AMENDMENT #2

Section 106. is amended to read as follows:

Sec. 106. Civil action.

An employee or employer claiming a violation of this act may initiate a civil action in the Superior Court of the District of Columbia or any court of competent jurisdiction to be heard.

AMENDMENT #3

Section 107 is amended by adding subsections (c) and (d) to read as follows:

(c) Employers with 50 or fewer employees are eligible under this section

(d) An amount of not to exceed \$5 million shall be available to grant hardships applied for under this section

AMENDMENT #4

Section 204 is amended by striking the phrase “fewer than 70 covered employees” and inserting the phrase “70 or fewer employees” in its place and striking the phrase “per covered employee” and inserting the phrase “per employee” in its place.

AMENDMENT #5

Section 301(a) is amended by striking the phrase “This act” and inserting the phrase “Sections 107, 203, and 204” in its place.

Rationale:

1-To be consistent with what is offered in the engrossed version.

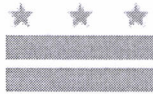
2-Not being a government program, the Office of Administrative Hearings has been determined to not be the appropriate jurisdiction to review appeals between private entities.

3-To provide clarifying parameters for the hardship waiver.

4-Further clarifies eligibility for the franchise tax credit.

5- Clarifies the sections that are subject to funding.

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 *Jeffrey S. DeWitt*

DATE: December 20, 2016

SUBJECT: Fiscal Impact Statement – Council Members Evans and Cheh
Amendment in the Nature of a Substitute

REFERENCE: Bill 21-415, “Universal Paid Leave Amendment Act of 2016”; Draft
Amendment as provided to the Office of Revenue Analysis on
December 19, 2016

Conclusion

Funds are not sufficient in the fiscal year 2017 through fiscal year 2020 budget and financial plan to implement the amendment. The amendment will cost \$49.7 million in FY 2018 and \$152 million over four year financial plan. The cost includes a \$200 per employee tax credit for businesses with 70 employees or fewer, and enforcement of an employer paid family leave mandate including: tax administration, employer compliance, employee and employer complaints and adjudication, and processing of hardship claims for businesses with 50 or fewer employees.

Background

The amendment requires all District businesses to provide covered employees paid leave for the same qualifying events and same number of weeks as the underlying bill, beginning January 2018. The weekly benefit is equal to the amount provided by the underlying bill, not to exceed \$1,000 per week.

The amendment provides a \$200 refundable tax credit per employee, per year, for all businesses in the District with 70 or fewer employees. The amendment also establishes a \$5 million economic hardship fund to provide financial assistance to businesses with fewer than 50 employees who cannot meet the requirements of the act without undue financial hardship. The bill requires that a business demonstrate to the satisfaction of the Mayor that the requirements of the act caused or will cause undue financial hardship.

The amendment requires a covered employer to certify and annually file with the Office of the Chief Financial Officer regarding the number of employees who received leave for a qualified event during the year, and the amount of leave and amount paid per employee. It also requires the OCFO,

The Honorable Phil Mendelson

FIS: Bill 21-415 "Universal Paid Leave Amendment Act of 2016," Council Members Evans and Cheh Draft Amendment in the Nature of a Substitute as provided to the Office of Revenue Analysis on December 19, 2016.

the District of Columbia Auditor, the Office of Human Rights, the Department of Small and Local Business Development to perform an audit after 18 months of the program and annually thereafter.

The amendment requires the Mayor to establish grievance procedures for employees or employers claiming a violation of the act. Employees and employers will have the right to appeal before an administrative law judge at the Office of Administrative Hearings.

Financial Plan Impact

Funds are not sufficient in the fiscal year 2017 through fiscal year 2020 budget and financial plan to implement the amendment. The amendment will cost \$49.7 million in FY 2018 and \$152 million over four year financial plan. The cost includes a \$200 per employee tax credit for businesses with 70 employees or fewer, and enforcement of an employer paid family leave mandate including: tax administration, employer compliance, employee and employer complaints and adjudication, and processing of hardship claims for businesses with 50 or fewer employees.

The total number of employees across all establishments with 70 or fewer employees totals approximately 200,000.¹ All businesses with 70 or fewer employees will be eligible to receive a \$200 credit per year per employee, regardless of their annual tax liability. Businesses that do not currently file tax returns for franchise or unincorporated business taxes will be required to file to receive the per employee tax credit. The total estimated cost of the credit is \$40 million in the first year, based on the estimated 200,000 total employees. Regulations should clarify how many businesses can claim a credit for a single employee and how long an employee should remain employed before an employer can claim the credit.

The bill requires that the Mayor establish an economic hardship grant program, establish rules and standards for the program, review applications from employers and determine how and when \$5,000,000 from a special fund will be distributed to offset the hardship. According to business dynamics statistics of the U.S. Census Bureau, approximately 9 to 10 percent of businesses close due to financial hardship. So to estimate the workload of the grant program, we assume that 10 percent of the 36,498 businesses with fewer than 50 employees will make a request for hardship assistance. This means we expect 3,649 claims for assistance to be processed annually. We assume, as we did with the underlying bill, that one FTE will be required for every 500 claims, plus supervisory positions. Based on this we assume a unit of approximately 9 FTEs will be required to manage the grant program. Depending on the criteria that will be used to determine whether hardship is established, and what documentation will be required to be provided by the businesses, the workload estimate could vary.

In total, 37 positions are required to administer and enforce the requirements of the amendment. In addition to the 9 FTEs for the economic hardship grant unit, the Office of Tax and Revenue will require 10 employees to process the additional returns that will be filed, and to assess and audit the returns to ensure compliance with the law. The Department of Employment Services will require 5 FTEs to monitor compliance of employers with the mandate. The Office of Human Rights will require 5 FTEs to develop receive and process claims by employees of employer violations. As with the underlying bill, the Office of Administrative Hearings will require 8 administrative law judges to

¹ Estimate based on data from Bureau of Labor Statistics, Quarterly Census of Employment and Wages, Office of Labor Market Research and Information, Q1 2016.

The Honorable Phil Mendelson

FIS: Bill 21-415 "Universal Paid Leave Amendment Act of 2016," Council Members Evans and Cheh Draft Amendment in the Nature of a Substitute as provided to the Office of Revenue Analysis on December 19, 2016.

manage the appeals allowed under procedures to be established by the Mayor. The judges will hear cases from any covered employee or employer in the District claiming a violation of the act.

Lastly, the amendment designates \$20,039,000 that has been placed in a reserve designated for universal paid leave to offset the cost of the amendment, but the funds have not yet been appropriated in a formal budget process and, therefore, is not available for use.

Universal Paid Leave Act of 2016, Bill 21-415					
Fiscal Impact of Amendment Proposed by Council Members Evans and Cheh					
	FY 2017	FY 2018	FY 2019	FY 2020	Total
Per employee tax credit of \$200 for businesses with 70 or fewer employees	\$0	\$40,000,000	\$40,800,000	\$41,616,000	\$122,416,000
Office of Administrative Hearings Administrative Law Judges ^(a)	\$0	\$1,667,535	\$1,714,653	\$1,763,183	\$5,145,371
Office of Tax and Revenue Personnel for Processing and Auditing of Credit ^(b)	\$0	\$870,280	\$892,758	\$915,911	\$2,678,949
DOES Employer Compliance ^(c)	\$0	\$541,823	\$551,459	\$561,288	\$1,654,570
Office of Human Rights Administrative Complaint Process ^(d)	\$0	\$662,720	\$674,774	\$687,070	\$2,024,564
Hardship Grant Administration ^(e)	\$0	\$1,035,027	\$1,066,078	\$1,098,060	\$3,199,166
Hardship Grant Fund	\$0	\$5,000,000	\$5,000,000	\$5,000,000	\$15,000,000
Total Fiscal Impact	\$0	\$49,777,385	\$50,699,722	\$51,641,512	\$152,118,619

Table Notes:

a) Includes 8 Administrative Law Judges at a collective bargaining established salary of \$160,000 judge.

b) Includes 10 FTEs at Grade 11/6.

c) Includes 3 Grade 10/5 FTEs, 1 Grade 12/5 FTE, and 1 Grade 14 midpoint FTE.

d) Includes 2 grade 11/5 FTEs, 3 Grade 12/5 FTEs, and 1 Grade 14 midpoint FTE.

e) Includes 3 Grade 10/5 FTEs, 3 Grade 13/5 FTEs, 1 Grade 6/5, FTE, and 2 Grade 14/5 FTEs.



OFFICE OF THE GENERAL COUNSEL

Council of the District of Columbia
1350 Pennsylvania Avenue NW, Suite 4
Washington, DC 20004
(202) 724-8026

MEMORANDUM

TO: Councilmember Jack Evans

FROM: Ellen A. Efros, General Counsel *EAE*

DATE: December 20, 2016

RE: Legal sufficiency determination for an amendment-in-the-nature-of-a-substitute¹ to Bill 21-415, the Universal Paid Leave Amendment Act of 2016

The measure is legally and technically sufficient for Council consideration.

The amendment-in-the-nature-of-a-substitute ("ANS") to the Universal Paid Leave Amendment Act of 2016 ("UPLA")² provides that a covered employee shall be entitled to family, medical, or parental leave to provide care for, respectively, a family member, the covered employee him or herself, or for a new child through birth, adoption, fostering, or otherwise assuming legal and parental responsibility.

The ANS establishes the requirements to qualify for family and medical leave and those conditions or treatments that will not qualify. It establishes the duration and the pay rate for the leaves and how these leave benefits will work with other available benefits.³

It provides that a covered employee will be entitled to 90% of the employee's average weekly wage up to a maximum of \$1,000 per week.⁴ Further, it provides that if a covered employee is entitled to benefits under UPLA from

¹ Including 5 separate amendment to be considered simultaneously with the amendment-in-the-nature-of-a-substitute.

² Passed on 1st reading on December 6, 2016.

³ E.g. If the covered employee qualifies for leave pursuant to the Family and Medical Leave Act of 1993, approved February 5, 1993 (107; Stat. 6; 29 U.S.C. 2601), or 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.*), leave provided by the UPLA will run concurrently with the leave of the other act. If a covered employee is receiving unemployment insurance, the covered employee will not be eligible for a UPLA leave.

⁴ Revised by separate amendment #1.

more than one covered employer, only the most recent covered employer shall be responsible for payment of those benefits.

It makes it unlawful for a covered employer to take retaliatory action against a person who has filed a charge, instituted a proceeding, or provided information or testimony in connection with a proceeding related to UPLA. And it provides the authority to the Office of Administrative Hearings to adjudicate cases arising from UPLA.⁵

The ANS includes a reporting and auditing requirement. It requires each covered employer to annually file a report with the Chief Financial Officer providing the number of employees who have received leave, including for each employee the duration and type of leave and the amount of wages paid. In addition, it requires the Mayor to conduct an audit of the family and parental leave program within 18 months of the applicability of UPLA, including an analysis of the program, a review of the effectiveness of the tax credit for small businesses, and a study on the economic impact of the program.

It provides that a covered employer may apply for an economic hardship grant from the Mayor, which if granted, may be used only to pay for the employee benefits provided under UPLA.⁶

It provides, beginning in 2018, for a tax credit for a covered employer with fewer than 70 covered employees of \$200 per covered employee per year.⁷

It amends the Universal Paid Leave Implementation Fund Act of 2016⁸ to require that all monies deposited in the Universal Paid Leave Implementation Fund be used to implement UPLA.

In addition, separate amendments to the ANS provide as follows:

#1. Revises the formula for the benefits to which a covered employee will be entitled to be consistent with that provided in the engrossed version of Bill 21-415.

#2. Deletes the provision regarding appeal to the Office of Administrative hearings and provides that a person aggrieved by a violation of UPLA may initiate a civil action.

⁵ Revised by separate amendment #2.

⁶ Revised by separate amendment #3.

⁷ Revised by separate amendment #4.

⁸ Effective October 8, 2016 (D.C. Law 21-160; 63 DCR 10775).

Legal and Technical Sufficiency Review

Amendment-in-the-nature-of-a-substitute to Bill 21-415, the Universal Paid
Leave Amendment Act of 2016

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#3. Adds to the existing hardship waiver provision to clarify that an employer with 50 or fewer employees may apply for a grant to meet its obligations under UPLA, and requires that \$5 million is to be made available for such grants.

#4. Clarifies the maximum number of employees a covered employer can employ and qualify for a tax credit.

#5. Amends the applicability provision to provide that sections 107, 203, and 204 shall apply upon their fiscal effect being included in an approved budget and financial plan.

I am available if you have any questions.