AMENDMENT IN THE NATURE OF A SUBSTITUTE
December 20, 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 Act earned by an eligible individual title during the 4 quarters out of the 5 quarters immediately preceding the qualifying event during which the eligible individual’s wages were highest, divided by 52.

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

(3) "Covered employee" means an employee of a covered employer who;
(A) Spends more than 50% of his or her work time **for that employer** working in
the District of Columbia **for a covered employer**; or

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

(4) "Covered employer" means:

(A) Any individual, partnership, general contractor, subcontractor,
association, corporation, business trust, or any group of persons who directly or indirectly or
through an agent or any other person, including through the services of a temporary services or
staffing agency or similar entity, employs or exercises control over the wages, hours, or working
conditions of an employee and is required to pay unemployment insurance on behalf of its
employees by section 3 of the District of Columbia Unemployment Compensation Act, approved
August 28, 1935 (49 Stat. 946; 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.

(5) “D.C. FMLA” means the District of Columbia Family and Medical Leave Act of

(6) “Eligible individual” means a person **whose claim for paid leave benefits is not based
on employment for 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 of the 52 calendar weeks
immediately preceding the qualifying event for which paid leave is being taken; or

(B) Is a self-employed individual who has:
   (i) Opted into the paid leave program established pursuant to this Act; and
   (ii) Earned self-employment income for work performed more than 50% of the time
   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.

(78) “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; or

(E) A sibling of an eligible individual.
“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)).

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

“Open enrollment period” means:

(A) The first 90 days after the date on which the Mayor begins to collect contributions to the Universal Paid Leave Implementation Fund 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 calendar year thereafter, the months of November and December.

“Paid leave benefits” means the monetary benefits provided pursuant to this Act.

“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 in order to provide care or companionship to a family member because of the occurrence of a qualifying family leave event.

“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 events, including bonding, associated with:

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

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

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

(18) “Retaliate” means to:

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

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

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

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

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

(d) By July 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 becoming a covered employer by opting into the paid leave program established pursuant to this Act, the Mayor shall provide notice to that individual regarding the manner in which contributions to the Universal Paid Leave Implementation Fund shall be collected from the individual.

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

Sec. 10. Duration and amount of benefits.

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

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

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

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

(e) The International Classification of Diseases, Tenth Revision (ICD-10), or subsequent
revisions by the World Health Organization to the International Classification of Diseases, along
with the physician health care provider 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.

(f) 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.
(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 multiplied by 40 shall be entitled to payment of weekly paid 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 multiplied times 40 shall be entitled to payment of weekly paid leave benefits at a rate that shall equal:

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

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

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

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

(5) Prior to October 1, 2021, the maximum weekly benefit amount shall be

$1,000;

(6)(A) On October 1, 2021, and on October 1 of each successive year, the maximum weekly benefit amount provided in this subsection shall 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; provided that the Chief Financial Officer of the District of Columbia shall certify that funds are sufficient in the Universal Paid Leave Implementation Fund each year before the maximum weekly benefit amount increases pursuant to this paragraph.

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

(hf) By July 1 March 15, 2020, the Mayor shall commence the payment of paid leave benefits provided for in this Act.

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

Sec. 105. Self-employed individuals.

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

(2) If an individual who earns self-employment income has chosen not to opt-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 who earns self-employment income 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 on with January 1, 2020, an individual who earns self-employment income who previously opted out of or withdrew from the program shall not be eligible to receive benefits pursuant to this Act for the first year after enrolling or reenrolling in the program.

(d)(1) If an eligible individual who earns self-employment income does not make a timely payment required by this Act 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) An individual who has been disenrolled pursuant to this subsection may re-enroll consistent with requirements of this section following the payment of any amounts due to the District pursuant to this Act.

Sec. 106. Administration of the Paid Leave Program.

(a) The Mayor shall establish reasonable procedures and forms for filing claims for benefits under this Act and shall specify what supporting documentation is necessary to support a claim for benefits, including, for qualifying family leave or qualifying medical leave, 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; provided that, for qualifying family leave claims for family leave benefits, the Mayor shall

require an applicant to affirm that he or she will be taking the leave in order to provide care

or companionship for a family member with a serious health condition and submit a description

of the care or companionship to be provided.

(c) The Mayor shall notify the eligible individual’s employer within 35 business days of

the filing of an claim being filed pursuant to this title for benefits under this Act.

(d) No later than 10 business days after an eligible individual files a claim for benefits

under this Act, the Mayor shall make, and notify an individual of, an initial determination as to:

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

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

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

(4) The number of weeks for which the eligible individual shall receive benefits

and the dates on which the corresponding payments shall be made; provided that the Mayor shall

employ the International Classification of Diseases, Tenth Revision (ICD-10), or any subsequent

revision by the World Health Organization to the International Classification of Diseases, along

with health care provider or caretaker assessments, when making this determination for purposes

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

(h) Information contained in the files and records pertaining to an individual under this 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.


(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.

(3) All outreach information shall comply with the Language Access Act of 2004,
Sec. 107. Coordination of benefits.

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


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

(4) If the paid leave is unforeseeable, a notification, either oral or written, shall be provided 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 Leave Act, effective March 14, 1991 (D.C. Law 8-181; D.C. Official Code § 32-501 et seq.).
(d) A covered employer may provide an eligible individual with leave benefits in addition to those provided by this Act; provided that the provision of such benefits, including a paid leave program, shall not exempt the covered employer from making contributions under section 103 or an eligible individual from receiving such benefits from the provisions of pursuant to 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) (1) If an individual concurrently earns self-employment income and is a covered employee employed by a covered employer, the individual shall not be entitled to receive double payments.

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

(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.
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

Sec. 109. Erroneous payments and disqualification for benefits.

(a) An individual who intentionally makes a false statement or misrepresentation
regarding a material fact, or who intentionally fails to report a material fact, to obtain a benefit
under this Act is disqualified from receiving paid leave benefits under this Act for a period of 3
years.
(b) If paid leave benefits provided for in this Act are paid erroneously or as a result of willful misrepresentation, or if a claim for paid leave benefits is rejected after benefits are paid, the Mayor shall seek repayment of benefits from the recipient; provided that the Mayor may exercise his or her discretion to waive, in whole or in part, the amount of any such payments 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. 10. 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
(D) Requests, applies for, or uses paid leave benefits;
(3) Gives any information or testimony in connection with an inquiry or proceeding related to this Act.
(c) It shall be unlawful for any individual to provide intentionally false statements in order to obtain paid leave benefits.

Sec. 111. Investigative authority.
(a) An employer shall develop, maintain, and make available to the Mayor records regarding the employer's activities related to this 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 after written notice has been given.
(c) For the purpose of any investigation provided for in this section, the Mayor may exercise the subpoena authority provided in 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, the Attorney General of the District of Columbia, or the Mayor may bring a civil action against any employer to enforce the provisions of this Act in any court of competent jurisdiction.
(b)(1) No civil action may be commenced more than 1 year after the occurrence or discovery of the alleged violation of this Act.

(2) This 1 year limitations period shall be tolled during the course of any administrative proceedings or during any period when a covered employer has failed to comply with the notice provisions of this Act.

(c) If a court determines that an employer violated any provision of this act, D.C. Official Code § 32-509(b)(6) and (7) shall apply.

Title II Conforming Amendments

Sec. 201. Section 6 of the Office of Administrative Hearings Establishment Act of 2001, effective March 2, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03) is amended by adding a new subsection (b-9) to read as follows:

“(b-9) 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), and (b-8) 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 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.

Title III Fiscal impact and effective date.
Sec. 301. Applicability

This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

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.