

1 **COMMITTEE PRINT**

DRAFT

2 December 6, 2016

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A BILL

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21-415

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To establish a family and parental paid leave system for individuals employed in the District of Columbia and to make conforming amendments.

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BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this

23

act may be cited as the “Universal Paid Leave Amendment Act of 2016”.

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Title I. Establishment of Family and Parental Paid Leave Program

25

Sec. 101. Definitions.

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For the purposes of this title, the term:

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(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.

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

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(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.

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35 (4) "Covered employer" means:

36 (A) Any individual, partnership, general contractor, subcontractor,
37 association, corporation, business trust, or any group of persons who directly or indirectly or
38 through an agent or any other person, including through the services of a temporary services or
39 staffing agency or similar entity, employs or exercises control over the wages, hours, or working
40 conditions of an employee and is required to pay unemployment insurance on behalf of its
41 employees in accordance with D.C. Official Code §51-101 *et seq.*; provided, that the term
42 "covered employer" shall not include the United States, the District of Columbia, or any
43 employer who the District of Columbia is not authorized to tax under federal law or treaty; or

44 (B) A self-employed individual who has opted into the family and parental paid
45 leave program established pursuant to this Act.

46 (5) "D.C. FMLA" means the District of Columbia Family and Medical Leave Act of
47 1990, effective March 14, 1991 (D.C. Law 8-181; D.C. Official Code § 32-501 *et seq.*).

48 (6) "Eligible individual" means a person who is not an employee of the United States, the
49 District of Columbia, or an employer the District of Columbia is not authorized to tax under
50 federal law or treaty, who meets the requirements of this Act and regulations issued pursuant to
51 this Act and:

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

55 (B) A self-employed individual who earned self-employment income for work
56 performed primarily in the District of Columbia during some or all of the 52 calendar weeks
57 immediately preceding the qualifying event for which family or parental paid leave is being

58 taken and has opted into the family and parental paid leave program established pursuant to this
59 Act.

60 (7) “Family or parental paid leave benefits” means the monetary benefits provided
61 pursuant to this Act.

62 (8) “Family member” means:

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

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

69 (C) A person to whom an eligible individual is related by domestic partnership,
70 as defined by section 1(4) of the Health Care Benefits Expansion Act of 1992, effective June 11,
71 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(4)), or marriage; or

72 (D) A grandparent of an eligible individual.

73 (9) “Health care provider” has the same meaning as provided in section 2(5) of the
74 District of Columbia Family and Medical Leave Act of 1990, effective March 14, 1991 (D.C.
75 Law 8-181; D.C. Official Code § 32-501(5)).

76 (10) “Intermittent leave” means family or parental paid leave taken in increments of no
77 less than one week, rather than for one continuous period of time.

78 (11) “Open enrollment period” means:

79 (A) The first 90 days after the Mayor begins to collect the payroll tax pursuant to
80 Section 103 of this Act;

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

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

85 (12) “Qualifying family leave” means paid leave for up to a maximum amount of 8
86 workweeks within a 52 workweek period that an eligible individual may take following the
87 occurrence of a qualifying family leave event.

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

90 (14) “Qualifying parental leave” means paid leave for up to a maximum of 11
91 workweeks within a 52 workweek period that an eligible individual may take within one year of
92 the occurrence of a qualifying parental leave event.

93 (15) “Qualifying parental leave event” means:

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

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

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

99 (16) “Retaliate” means to:

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

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

105 (C) Inform another employer that the person has engaged in activities protected

106 by this title; or

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

110 (17) “Self-employment income” means gross income earned from carrying on a trade or
111 business as a sole proprietor, an independent contractor, or as a member of a partnership.

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

116 (A)(1) The term “treatment” includes, but is not limited to, examinations to
117 determine if a serious health condition exists and evaluations of the condition.

118 (2) Treatment does not include routine physical examinations, eye
119 examinations, or dental examinations.

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

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

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

130 (D) Conditions for which cosmetic treatments are administered do not satisfy this
131 definition; provided that procedures related to an individual’s gender transition shall not be
132 considered cosmetic treatments for the purposes of this subparagraph.

133 (E) The phrase “continuing treatment” involves a condition that requires any one
134 or more of the following:

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

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

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

146 (III) Treatment by a health care provider on at least one occasion,
147 which results in a regimen of continuing treatment under the supervisions of the health care
148 provider.

149 (ii) Any period of incapacity or treatment for such incapacity due to a

150 chronic serious health condition. A chronic serious health condition is one which:

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

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

155 (III) May cause episodic rather than a continuing period of
156 incapacity.

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

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

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

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

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

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173 Sec. 102. Establishment of a paid family and parental leave program.

174 (a) The Mayor shall establish a paid family and parental leave program to administer the
175 paid family and parental leave benefits provided for in this Act.

176 (b)(1) The Mayor shall issue rules within 180 days of the effective date of this Act to
177 implement this Act.

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

182 Sec. 103. Contributions to the Family and Parental Paid Leave Fund

183 (a)(1) A covered employer shall contribute 0.62% of the annual salary of each of its
184 covered employees to the Universal Paid Leave Fund in a manner prescribed by the Mayor.

185 (2) If a covered employer does not pay a covered employee an annual salary, the
186 covered employer's contribution to the Universal Paid Leave Fund for that covered employee
187 shall be calculated using the annualized income installment method.

188 (b) A self-employed individual who has opted-in to the family and parental paid leave
189 program, established pursuant to this Act, shall contribute 0.62% of his or her annual self-
190 employment income to the Universal Paid Leave Fund in a manner prescribed by the Mayor.

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

194 (d) By March 1, 2019, the Mayor shall begin to collect contributions to the Universal
195 Paid Leave Fund from covered employers and self-employed individuals who have opted into
196 the family and parental paid leave program established pursuant to this Act.

197 (e) Upon a self-employed individual's opting into the family and parental paid leave
198 program established pursuant to this Act, the Mayor shall provide notice to that individual
199 regarding the manner in which contributions to the Universal Paid Leave Fund shall be collected
200 from the individual.

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

205 Sec. 104. Duration and amount of benefits.

206 (a) Upon the occurrence of a qualifying family leave event or qualifying parental leave
207 event, and after a one week waiting period during which no benefits are payable, an eligible
208 individual shall be entitled to receive payment of his or her family or parental paid leave
209 benefits.

210 (b) An eligible individual may submit a claim for payment of his or her family or
211 parental paid leave benefits for a period during which he or she does not perform his or her
212 regular and customary work following the occurrence of a qualifying family leave event or
213 qualifying parental leave event; provided that an eligible individual shall not be entitled to
214 receive payment for more than one qualifying event in a 52 work period..

215 (c) The International Classification of Diseases, Tenth Revision (ICD-10), or subsequent
216 revisions by the World Health Organization to the International Classification of Diseases, along

217 with the physician or caretakers assessments shall be used to determine the appropriate length of
218 paid family leave an eligible individual is entitled to, up to a maximum of eight workweeks,
219 based on the serious health condition of the eligible individual's family member.

220 (d) An eligible individual may receive payment for his or her family and parental paid
221 leave benefits for intermittent leave; provided, the total amount of intermittent leave shall not
222 exceed 8 workweeks in a 52 workweek period for a qualifying family leave event or 11
223 workweeks in a 52 work week period for a qualifying parental leave event.

224 (e)(1) An eligible individual who earns an average weekly wage at a rate that, on an
225 annualized basis, is equal to or less than 150% of the District's minimum wage shall be entitled
226 to payment of family and parental leave benefits at a rate that shall equal 90% of that eligible
227 individual's average weekly wage rate;

228 (2) An eligible individual who earns an average weekly wage at a rate that, on an
229 annualized basis, is greater than 150% of the District's minimum wage shall be entitled to
230 payment of family and parental leave benefits at a rate that shall equal:

231 (i) 90% of 150% of the District's minimum wage; plus

232 (ii) 50% of the amount by which the eligible individual's average weekly
233 wage rate exceeds 150% of the District's minimum wage; provided, that no eligible individual
234 shall be entitled to payment of family and parental leave benefits at a rate in excess of \$1,000 per
235 week.

236 Sec. 105. Self-employed individuals.

237 (a)(1) An individual who earns self-employment income and who opts-in to the family
238 and parental paid leave program shall remain be continuously enrolled in the program until such
239 time as he or she elects to opt out; provided, that an individual who earns self-employment

240 income who has opted into the program may only opt out of the program during an open
241 enrollment period.

242 (2) If an individual who earns self-employment income has chosen not to opt-in
243 to the family and parental paid leave program, he or she shall only be permitted to enroll, or re-
244 enroll, in the program during an open enrollment period in a manner prescribed by the Mayor
245 and shall make contributions to the family and parental paid leave fund for no less than three
246 consecutive years.

247 (b) If an individual has chosen to opt-out of the program two or more times, he or she
248 shall be barred from re-enrolling in the program for a period of five years from the date of his or
249 her withdrawal from the program.

250 (c) Beginning with January 1, 2020, an individual who previously opted out of coverage
251 shall not be eligible for benefits for the first year after reenrolling in the Program.

252 (d)(1) If an eligible individual who earns self-employment income does not make a
253 timely payment then the District shall notify the eligible individual of the payment due. After
254 notice has been given, and if payment is not received, then the eligible individual shall be
255 disenrolled and shall not be eligible for family or parental paid leave benefits pursuant to this
256 Act.

257 (2) The eligible individual may re-enroll consistent with requirements of this
258 section.

259 Sec. 106. Administration of the Family and Parental Paid Leave Program.

260 (a) The Mayor shall establish reasonable procedures and forms for filing claims for
261 benefits under this Act and shall specify what supporting documentation is necessary to support a
262 claim for benefits, including requiring proof of a serious health condition and the length of leave

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263 expected based on industry standards used by health care professionals to label diagnosis of
264 medical conditions and treatments.

265 (b) Claims for family or parental paid leave benefits shall be made in accordance with
266 this Act and any regulations that the Mayor may prescribe for administration of the program
267 provided for in this Act.

268 (c) The Mayor shall notify the employer within 5 business days of a claim being filed
269 pursuant to this title.

270 (d) Within 10 business days after an individual has filed a claim for benefits under this
271 title, the Mayor shall make and notify an individual of:

272 (1) an initial determination as to an individual's eligibility to receive benefits
273 pursuant to this title;

274 (2) the weekly amount payable to the eligible individual;

275 (3) the week with respect to which payments will commence;

276 (4) the maximum duration thereof; and

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

280 (e) If an individual is deemed eligible to receive family and parental paid leave benefits
281 provided for under this Act, the Mayor shall make the first payment to the eligible individual
282 within 10 business days of the determination of eligibility and subsequent payments shall be
283 made biweekly thereafter.

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

287 (g)(1) The Mayor shall create a user-friendly, online portal for the submission and
288 management of forms and documents necessary to administer the family and parental paid leave
289 program.

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

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

294 (4) The portal shall be compliant with Health Insurance Portability and
295 Accountability Act of 1996 (Pub. L. No. 104-191; 42 U.S.C. § 300gg, 29 U.S.C § 1181 et seq.
296 and 42 U.S.C. 1320d et seq.).

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

301 (6) The portal, and all associated software necessary to administer the family and
302 parental paid leave program, shall be designed to be able to handle the expansion of the benefits
303 provided for in this Act to include paid medical leave benefits.

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

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307 an individual may review his or her own records or receive specific information from his or her
308 own records. All documents may be accepted and distributed electronically pursuant to D.C.
309 Official Code § 28-4917.

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

311 (A) The employees' right to paid family and parental leave benefits under
312 this Act and the terms under which such leave may be used;

313 (B) That retaliation by the covered employer against the covered employee
314 for requesting, applying for, or using paid family and parental paid leave benefits is prohibited;

315 (C) That an employee who works for a covered employer with under 20
316 employees shall not be entitled to job protection if he or she decides to take family or parental
317 paid leave pursuant to this Act; and

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

320 (2) The notice shall comply with the Language Access Act of 2004,
321 effective June 19, 2005 (D.C. Law 15-167; D.C. Official Code § 2-1931 *et seq.*).

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

326 (4) A covered employer who violates this notice requirement shall be assessed a
327 civil penalty not to exceed \$100 for each covered employee to whom individual notice was not
328 delivered and \$100 for each day that the covered employer fails to post the notice in a

329 conspicuous place. No liability for failure to post notice will arise under this section if the Mayor
330 has not prescribed the notice required by this section.

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

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

337 (3) All outreach information shall comply with the Language Access Act of 2004,
338 effective June 19, 2005 (D.C. Law 15-167; D.C. Official Code § 2-1931 *et seq.*).

339 Sec. 107. Coordination of benefits.

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

343 (2) The written notice shall include a reason for the absence involved, within the
344 parameters of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-
345 191; 42 U.S.C. § 300gg, 29 U.S.C § 1181 *et seq.* and 42 U.S.C. 1320d *et seq.*), and the expected
346 duration of the paid leave.

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

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

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

354 (b) If family or parental paid leave taken pursuant to this Act also qualifies as protected
355 leave pursuant to the Family and Medical Leave Act, 29 U.S.C. 2601, or D.C. FMLA, the paid
356 leave taken pursuant to this Act shall run concurrently with, and not in addition to, leave taken
357 under those other acts.

358 (c) Nothing in this Act shall be construed to provide job protection to any eligible
359 individual beyond that to which an individual is entitled under the DC Family and Medical
360 Leave Act, effective March 14, 1991 (D.C. Law 8-181; D.C. Official Code § 32-501 et seq.).

361 (d) A covered employer may provide an eligible individual with leave benefits in
362 addition to those provided by this Act; provided that the provision of such benefits, including a
363 paid family or parental leave program, shall not exempt the covered employer providing such
364 benefits or an eligible individual receiving such benefits from the provisions of this Act.

365 (e) An eligible individual receiving unemployment insurance, as defined by the District
366 of Columbia Unemployment Compensation Amendment Act, effective August 28, 1935 (Public
367 Law 74-386; D.C. Official Code § 51-101 *et seq.*) shall not be eligible to receive benefits
368 provided for in this Act.

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

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

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374 (h) This title shall not:

375 (1) Supersede any provision of law, collective bargaining agreement, or other
376 contract that provides paid leave rights in addition to the rights established under this
377 Act; or

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

380 (i)(1) An individual's right to benefits provided for in this Act shall not be diminished by
381 a collective bargaining agreement or other contract entered into or renewed after December 31,
382 2017.

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

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

387 Sec. 108. Appeals.

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

394 (b) In connection with an appeal made pursuant to subsection (a) of this section, the
395 Office of Administrative Hearings shall consider as evidence documentation including but not
396 limited to: paystubs; personal checks, cash receipts, or bank deposits; work schedules;

397 communications between employer and employee; and any circumstantial evidence regarding the
398 employee's eligibility.

399 (c) In any case where an employer has failed to keep or provide an employee with
400 employment records as required under D.C. law or has failed to make contributions on wages
401 paid to an employee as required under this Act, the Office of Administrative Hearings shall
402 consider, as a rebuttable presumption, that the employee eligible and shall consider broadly
403 evidence of the employee's eligibility for the benefit.

404 (d) A complaint, other than a claim determination, shall be filed within 1 year of the
405 occurrence or discovery of the alleged violation of this title, whichever is later.

406 (e) For complaints, other than a claim determination, that arise under this title, the
407 administrative enforcement procedure and relief shall be the same as that in the District of
408 Columbia Family and Medical Leave Act of 1990, effective March 14, 1991 (D.C. Law 8-181;
409 D.C. Official Code § 32-501 *et seq.*).

410 (f) Notwithstanding any other provision of this title:

411 (1) All correspondence, notices, determinations, or decisions required for the
412 administration of this Act may be transmitted to claimants, employers, or necessary parties by
413 electronic mail or other means of communication as the claimant, employer, or necessary party
414 may select from the alternative methods of communication approved by the Mayor. The Mayor
415 shall issue a list of such approved methods of communication within 90 days after the effective
416 date of this Act.

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

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420 Sec. 109. Erroneous payments and disqualification for benefits.

421 (a) An individual who makes a false statement or misrepresentation regarding a material
422 fact, or fails to report a material fact, to obtain a benefit under this Act is disqualified from
423 receiving family or parental paid leave benefits under this Act for a period of 3 years..

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

429 (c)(1) If the Mayor obtains repayment of benefits from an individual who has made a
430 willful misrepresentation or otherwise perpetrated fraud to obtain family or parental paid leave
431 benefits provided for in this Act, the Mayor shall distribute a proportional share of the recovered
432 amount to each covered employer who paid into the fund on behalf of that individual during the
433 period that he or she improperly obtained benefits.

434 (2) For purposes of paragraph (1) of this subsection, a covered employer's
435 proportional share of the recovered amount shall be equal to the amount paid into the fund by
436 that covered employer on behalf of the individual during the period that he or she improperly
437 obtained benefits, expressed as a percentage of the total amount paid into the fund by all covered
438 employers on behalf of the individual during the period that he or she improperly obtained
439 benefits.

440 Sec. 110. Prohibited acts.

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

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

445 (1) Opposes any practice made unlawful by this Act;

446 (2) Pursuant or related to this title:

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

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

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

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

452 Sec. 111. Investigative authority.

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

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

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

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

460 (c) For the purpose of any investigation provided for in this section, the Mayor may
461 exercise the subpoena authority provided in D.C. Official Code § 1-301.21..

462 Sec. 112. Enforcement by civil action.

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

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

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

471 **Title II Conforming Amendments**

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

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

478 Sec. 202. Paragraph 4 of Section 2 of the D.C. Family and Medical Leave Act of 1990,
479 effective March 14, 1991 (D.C. Law 8-181; D.C. Official Code § 32-501(4)) is amended as
480 follows:

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

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

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

485 “(D) A foster child.”

486 Sec. 203. Section 1152 of Title I.P of the Fiscal Year 2017 Budget Support Act of 2016
487 (D.C. Law 21-160) is amended to read as follows:

488 (a) There is established as a special fund the Family and Parental Paid Leave Fund
489 (“Fund”), which shall be administered by the Office of the Chief Financial Officer in accordance
490 with subsection (c) of this section.

491 (b) Money in the Fund shall be used to fund the implementation of the Family and
492 Parental Paid Leave Amendment Act of 2016 established in this Act, which shall include paying
493 for benefits, public education, and administrative costs required pursuant to this Act; provided
494 that no more than 5% of the funds deposited into the Fund shall be used to pay for the
495 administration of this Act for each fiscal year.

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

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

501 (d) There shall be deposited into the Fund \$20,039,000 of local funds in Fiscal Year
502 2016.

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

504 (1) Monies collected pursuant to section 103 of Title I of this Act;

505 (2) Annual appropriations, if any;

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

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

508 (f) Money in the Fund shall be used only for the purposes of the family and parental paid
509 leave program.

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

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

513 (1) at least one year after the effective date of this Act; and

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

516 (i) The balance in the Fund shall not fall below the equivalent of nine months of benefits
517 at any time during a fiscal year. If the Chief Financial Officer determines that the balance in the
518 Fund will fall below the equivalent of nine months of benefits during a fiscal year, the Chief
519 Financial Officer shall promptly notify the Mayor and the Council and present a plan, including
520 recommended legislative changes, if any, to address the shortfall. If the balance in the Fund falls
521 below the equivalent of six months of benefits, the District shall immediately cease any further
522 payments of benefits. If payment of benefits is ceased in accordance with this section, payment
523 of benefits shall not resume until the Fund balance is equal to the equivalent of twelve months of
524 benefits.

525 (j) By December 30, 2017, the Mayor, in coordination with the Office of the Chief
526 Financial Officer, shall provide an update to the Council as to the funds that have thus far been
527 deposited into the Fund and the expected timeline for beginning to make payment of claims
528 under this Act.

529 (k) By 1, 2018, and annually thereafter, the Mayor shall submit a report to the Council
530 about the financial management, claim management, operation, and use of the Fund and family
531 and parental paid leave program established in this Act.

532 **Title III Fiscal impact and effective date.**

11.29.16

533 Sec. 301. Applicability

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

537 Sec. 302. Fiscal impact statement.

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

541 Sec. 303. Effective date.

542 This act shall take effect following approval of the Mayor (or in the event of veto by the
543 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
544 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
545 24, 1973 (87 Stat. 813; D.C Official Code § 1-206.22(c)(1)), and publication in the District of
546 Columbia Register.