COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
WITNESS LIST
1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

Bill 22-130, Paid Leave Compensation Act of 2017

Bill 22-133, Universal Paid Leave Compensation for Workers Amendment Act of 2017

Bill 22-302, Large Employer Paid-Leave Compensation Act of 2017

Bill 22-325, Universal Paid Leave Amendment Act of 2017

&

Bill 22-334, Universal Paid Leave Pay Structure Amendment Act of 2017

on

Tuesday, October 10, 2017
10:30 a.m., Council Chambers, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

WITNESS LIST

1.	Rashad Young	City Administrator, District of Columbia
2.	Gayle Goldin	Senator, Rhode Island State Legislature/FMLI Campaign Advisor, Family Values @ Work
3.	Laura Brown	Executive Director, First Shift Justice Project
4.	Benjamin Veghte	Vice President for Policy, National Academy of Social Insurance
5.	Pronita Gupta	Director of Job Quality, Center for Law and Social Policy
6.	Aparna Mathur	Public Witness
7.	Andrew Kline	Legislative Counsel, Restaurant Association Metropolitan Washington and Veritas Law
8.	Vincent Orange Sr.	President & CEO, DC Chamber of Commerce

9.	Marie Johns	Chairperson, DC Chamber of Commerce Board of Directors
10.	Erika Wadlington	Director of Public Policy & Programs, DC Chamber of Commerce
11.	Seema Nanda	Chief Operating Officer, Leadership Conference on Civil and Human Rights
12.	Taryn Morrisey	Public Witness
13.	Yesim Taylor	Executive Director, DC Policy Center
14.	June Jimenez	Public Witness
15.	Jonathon Cho	Treasurer of Board, Adams Morgan Partnership BID
16.	Eric Jones	Associate Director of Government Affairs, Associated Builders and Contractors of Metro Washington
17.	Solomon Keene	President & CEO, Hotel Association of Washington D.C.
18.	Valerie Ervin	Senior Advisor, DC Working Families
19.	Kevin Clinton	Chief Operating Officer, Federal City Council
20.	Jaime Contreras	Vice President, SEIU 32BJ
21.	Kimberly Mitchell	Public Witness
22.	Andrew Hunt	Principal, AGH Strategies
23.	Melanie L. Campbell	President & CEO, The National Coalition on Black Civic Participation
24.	Ketayoun Darvich-Kodjouri	Principal, Springboard Partners
25.	Emily Martin	General Counsel and Vice President for Workplace Justice, National Women's Law Center
26.	Eric Atilano	Public Witness
27.	Roger Horowitz	Owner, Pleasant Pops

28.	Katharine Zambon	Public Witness
29.	Lisa Mallory	CEO, DC Building Industry Association
30.	Jessica Champagne	Public Witness
31.	Porter McConnell	Public Witness
32.	Raphaele Pelaez	Director of Human Resources, TCG, Inc.
33.	Arthur Smith	Public Witness
34.	Carlos Jimenez	Executive Director, Metropolitan Washington Council, AFL-CIO
35.	Zach Schalk	Communications Chair, DC for Democracy
36.	Julianne Weis	Public Witness
37.	Carrmen Wren	Public Witness
38.	Sarah Fleisch Fink	Director of Workplace Policy and Senior Counsel, National Partnership for Women & Families
39.	Antara Dutta	Public Witness
40.	Ricarra Jones	Political Organizer, 1199 SEIU
41.	Erik Rettig	Director of Northeast/MidAtlantic, Small Business Majority
42.	Doug Foote	Public Witness
43.	Monica Weeks	Owner, MSW Photography & Design, LLC
44.	Elliot Becker	Public Witness
45.	Sabina Henneberg	Public Witness
46.	Heather Boushey	Executive Director & Chief Economist, Washington Center for Equitable Growth
47.	Sally Kram	Director of Public and Governmental Affairs, Consortium of Universities
48.	Rachel Robinson	Public Witness

49.	Marcy Karin	Public Witness
50.	Matt Erickson	Partner, 76 Words
51.	Rebecca Barson	Owner/Principal, RDB Strategies
52.	Monica Kamen	Co-Director, DC Fair Budget Coalition
53.	Darius Sivin	Public Witness
54.	Adam Graubart	President, Roosevelt Institute at George Washington University
55.	Ariane Hegewisch	Public Witness
56.	Lauren Schreiber	Public Witness
57.	Jeremiah Lowery	Public Witness
58.	Carla Hashley	Public Witness
59.	Sara Alcid	Campaign Director, MomsRising
60.	Keshini Ladduwahetty	Public Witness
61.	Jim Dinegar	President and CEO, Greater Washington Board of Trade
62.	Marcia St. Hilaire-Finn	Owner, Bright Start Early Care & Preschool
63.	Rabbi Elizabeth Richman	Deputy Director & Rabbi in Resident, Jews United for Justice
64.	Jodie Levin-Epstein	Consultant, DC Paid Leave Coalition
65.	Elizabeth Heyman	Public Witness
66.	Carol Spring	Public Witness
67.	Shelley Moskowitz	Public Witness
68.	Marilyn Givens	Public Witness
69.	Chris Weiss	Director, DC Environmental Network
70.	Hannah Weilbacher	Public Witness
71.	Megan Duffy	Store Manager, Patagonia

72.	Jamie Davis Smith	Public Witness
73.	Rob Keithan	Public Witness
74.	Joanna Blotner	Campaign Manager, DC Paid Family Leave Coalition
75.	Carla Ferris	Owner, Wagamuffin Pet Care LLC
76.	Meredith Perry	Public Witness
77.	Diana Ramirez	Executive Director, Restaurant Opportunities Center of DC
78.	Folasade Moonsammy	Public Witness
79.	Mary Beth Tinker	Public Witness
80.	Victoria Hougham	Public Witness
81.	Sara Comeau	Public Witness
82.	Mary Laura Calhoun	Public Witness
83.	Travis Ballie	Public Witness
84.	Rontel Batie	Federal Advocate, National Employment Law Project
85.	Carol Joyner	Director, Labor Project for Working Families
86.	Ed Lazere	Executive Director, DC Fiscal Policy Institute
87.	Kirsten Williams	Vice President of Government Affairs for DC, Apartment and Office Building Association of Metropolitan Washington
88.	David Moran	Area Director of Operation, Clyde's Restaurant Group
89.	Diane Gross	Owner, Cork Wine Bar
90.	Diana Alvord	Public Witness
91.	Perry Redd	Employment Advocacy Director, Washington Lawyers' Committee for Civil Rights and Urban Affairs

92.	Walter Smith	Executive Director, DC Appleseed
93.	Kreig Rajaram	Public Witness
94.	Bruce Barfield	Public Witness
95.	Steven Nash	President & CEO, Stoddard Baptist Home
96.	Mahesh Tyagi	Chief Financial Officer, Stoddard Baptist Home
97.	Lindsay Dupertuis	Public Witness
98.	Bernie Brill	Executive Director, Alliance for Construction Excellence
99.	Jacqueline D. Bowens	President and CEO, District of Columbia Hospital Association
100.	Joe Andronaco	President, Access Green
101.	Sequnely Gray	Research Coordinator, A Jobs with Justice
102.	Ari Gejdenson	President, Mindful Restaurant
103.	Rozita Green	Chief Strategy Officer, Bainum Family Foundation
104.	Cora Williams	CEO & President, Ideal Electrical Supply
105.	Ellen Bravo	Co-Director, Family Values @Work
106.	John Camp	Public Witness
107.	Bonita Williams	Public Witness
108.	Jena Carr	Owner & Business Operations Manager, Little Red Fox
109.	Franco Paz Gomez	Public Witness

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CITY ADMINISTRATOR

Public Hearing on
Bill 22-130, the Paid Leave Compensation Act of 2017,
Bill 22-133, the Universal Paid Leave Compensation for Workers Amendment Act of 2017,
Bill 22-302, the Large Employer Paid-Leave Compensation Act of 2017,
Bill 22-325, the Universal Paid Leave Amendment Act of 2017, and
Bill 22-334, the Universal Paid Leave Pay Structure Amendment Act of 2017

Testimony of
Rashad M. Young
City Administrator

Before the
Committee of the Whole
Council of the District of Columbia
The Honorable Phil Mendelson, Chairperson

Council Chamber
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004
October 10, 2017
10:30 a.m.

Good morning, Chairman Mendelson and members of the Council. For the record, my name is Rashad Young, and I serve as the City Administrator of the District of Columbia. Joining me today at the table is Jacob Wong, an Applied Research Analyst in the Office of the City Administrator.

I am pleased to testify before you today on Bill 22-130, the Paid Leave Compensation Act of 2017; Bill 22-133, the Universal Paid Leave Compensation for Workers Amendment Act of 2017; Bill 22-302, the Large Employer Paid-Leave Compensation Act of 2017; Bill 22-325, the Universal Paid Leave Amendment Act of 2017; and Bill 22-334, the Universal Paid Leave Pay Structure Amendment Act of 2017. Each of these bills proposes to make amendments to the Universal Paid Leave Act, which was approved by the Council in December of 2016.

Overview of Universal Paid Leave Act

As you are aware, the Universal Paid Leave Act creates one of the first programs of its kind in the country. Under the Act, part-time and full-time private employees who work in the District, regardless of their place of residence, will be eligible for a paid leave benefit.

The paid leave benefit consists of 6 weeks of paid leave for the care of a family member, 8 weeks of paid leave for the birth a child or placement of a child with the employee, and 2 weeks of paid leave for the employee's own serious medical condition.

The weekly benefit that an employee will be paid under the Act is calculated as a percentage of the employee's regular wages, capped at $1,000 per week. The benefits will be funded by a 0.62% payroll tax imposed on all District employers.

It is important to note that the program will be administered by the District, not by employers. Employees will apply to the District government for the benefit, the District government will review and approve or disapprove the benefit claim, and the District government will make direct benefit payments to employees.

It is also important to note, particularly for the public, that federal government employees are not eligible for the paid leave benefit and that District employees are covered by a separate paid leave program, not by the Paid Leave Act. In addition, the paid leave program will not begin to pay benefits until July 1, 2020. This ramp-up period is necessary in order to establish policies and procedures for the implementation of the program, to develop the information technology to implement the program, to hire the employees who will be necessary to administer the program, and to collect sufficient revenue through the payroll tax to be able to pay benefits to eligible employees.

The five bills before the Council today propose to amend the current Paid Leave Act in a number of ways—such as by allowing employers to implement

their own paid leave programs, rather than requiring them to participate in a District-administered program; to remove small employers from the scope of the program; to modify the tax rate imposed on employers and to impose a tax on employees in addition to employers; and to remove the medical leave benefit. Before discussing the proposed amendments to the Paid Leave Act that are before the Committee today, I would like to describe the work that the Administration has undertaken so far to implement the current law.

Implementation of the Current Law

As I mentioned earlier in my testimony, the Paid Leave Act was approved by the Council at the end of 2016. It completed the mandatory Congressional review period in April 2017, but no funding was provided to begin to implement the law until Fiscal Year 2018 (FY18), which began on October 1 of this year, just last week. Some of the other key dates associated with the legislation are noted on the current slide. The most important dates are July 1, 2019, which is the date on which the payroll tax is scheduled to begin, and July 1, 2020, which is the date on which the benefits program itself is expected to begin. That is, July 1, 2020, is the date on which employees will become eligible to apply for paid leave benefits.

It is important to note, though, that these implementation dates were based on the legislation as enacted. To the extent that the legislation is amended, these dates will almost certainly change. Moreover, the current uncertainty regarding the final scope and structure of the program is itself delaying our implementation of the law. A number of steps that we need to take, such as

drafting regulations and beginning the process of developing the required information technology systems, rely on having clear, firm program requirements. Until the Council adopts amendments to the existing law, or sets aside the current legislative proposals, these steps cannot fully move forward. The current uncertainty, therefore, threatens our ability to implement the paid leave program on the statutory timelines.

Even with this lack of clarity, however, the Administration has been moving forward aggressively to create a work plan to implement the current law. Months before any funding was available to implement the Paid Leave Act, the Administration established an internal working group consisting of representatives from the Office of the City Administrator, Office of the Deputy Mayor for Greater Economic Opportunity, Department of Employment Services, Office of Human Rights, Office of the Chief Technology Officer, Department of General Services, Office of the Chief Financial Officer, Department of Human Resources, and Office of Contracting and Procurement.

The working group has met six times over the past several months. During this time period, members of the working group also held dozens of internal calls; had discussions with each state that operates a paid leave program, with separate calls related to both programmatic issues and information technology issues; met with representatives of advocacy groups; and also met a number of times with federal partners with experience in information technology development and paid leave programs.

The overarching goal of the working group is to create a detailed road map for implementing the Paid Leave Act, with a specific focus on the following areas:

- Administrative implementation of the program, including regulations, tax collection, claims submission, claims review, and benefit payment;
- Developing a more detailed budget for implementing the program, including both operating and capital costs;
- Developing a high-level information technology plan for the systems necessary to collect the payroll tax, review and verify claims, and pay benefits;
- Developing a plan for program staffing, including claims specialists, customer service representatives, medical and insurance experts, administrative law judges, and information technology specialists, along with the timing for these hires;
- Calculating space needs, including estimates for the costs and timing of space buildout; and
- Marketing and outreach for the paid leave program.

Staffing

One of the first major issues that the working group addressed was staffing needs for the paid leave program, including the number of employees needed to implement the program at full implementation and the number of staff that are necessary to ramp up to full implementation. As part of this process, the working group first determined which entity would be in the best position to administer the program. It reviewed both existing District agencies, the creation of a new agency, and the use of an outside entity. Based on a variety

of factors, including costs, capacity, experience in other jurisdictions, and synergy with existing programs, we have determined that the Department of Employment Services ("DOES") will administer the District's paid leave program.

In order to develop the preliminary staffing plan, DOES reached out to each of the states that is currently administering a paid leave program and also analyzed DOES's current staffing patterns for other programs.

The working group determined that a relatively small number of employees would be needed at the beginning of this fiscal year to begin to take the steps necessary to implement the paid leave program. The cost for these first employees in Fiscal Year 2018 is estimated at over $1 million.

In addition, we expect to need to hire additional employees at various points before the end of Fiscal Year 2018 in order to continue the process of implementing the program. These additional employees will add an additional $1 million in staff costs in FY18.

This slide also provides an overview of the staffing ramp-up plan through full implementation. The plan anticipates that approximately 40-50 additional staff will need to be hired in Fiscal Year 2019 and approximately 50 additional staff will need to be hired in Fiscal Year 2020 in order to fully staff the paid leave program. At its full complement, there are expected to be approximately 115 employees dedicated to the paid leave program, at an annual cost of over

$11 million. These out-year costs would be paid for through the employer payroll tax.

Unfortunately, the Council included only $500,000 in operating funds in Fiscal Year 2018 for the paid leave program (other than capital funding for information technology) and the financial plan does not include funding for most of the Fiscal Year 2019 staffing costs. Although we do not yet have an identified solution, we are working to address the Fiscal Year 2018 and 2019 gaps in funding for program staff, but as I will discuss in future slides, the overall FY18 funding gap is much more significant.

Startup Activities

The next slide provides additional information on the types of activities that the initial paid leave staff will work on. At a high level, the initial hires will be responsible for planning and building the framework for a DOES Office of Paid Leave, which will include developing the structure and building the teams for payroll tax collection, benefit claims review and disbursement, and enforcement.

In developing the program's structure, the initial staff will put together a detailed organizational matrix, perform skills and needs assessments, draft position descriptions, develop a recruitment plan, and create staff training programs, among a host of other activities. For the tax division alone, this will include establishing the structure of the collections unit, accounting unit, and audit and compliance units. The initial staff will also develop a

communications plan, including a paid leave website for employers, an outreach plan, and employer brochures and posters.

Developing the tax collection system will be another major aspect of the initial team's work plan. This will include working with the Office of the Chief Technology Officer to develop the business requirements for the tax collection system, performing vendor and systems research, developing a full statement of work, and engaging in each step of the procurement process. There is an immense amount of work that needs to take place long before the tax collection system would go live in July 2019.

Finally, the initial staff will be working on policy development, including the development of the formal program regulations. This is one of the key steps that needs to take place in order to begin the process of implementing the paid leave program. Reviews of rules and regulations in other jurisdictions will need to take place, along with individual outreach to those jurisdictions. A comprehensive rulemaking document will need to be drafted, published for public comment, and revised based on public feedback. The policy development team will also work on developing standard operating procedures for each administrative function of the paid leave program. These detailed, step-by-step procedures are critical to ensuring a fair, efficient, and consistent application of the paid leave program.

Space

Another major area that the working group analyzed was the space needed for the paid leave program staff. As I mentioned on the prior slide, there will be approximately 115 District employees needed to implement the paid leave program at full implementation in Fiscal Year 2020. To determine the best way to house those staff, the working group analyzed both owned space options and leased space options. The group reviewed the current District real estate portfolio and performed market research on potential lease options and determined that the most effective way to house the paid leave staff is through the buildout of existing District-owned space.

However, for either option, there is a substantial lead time needed to design and build out the necessary space—a process we anticipate to take at least 12 months. Given our need to have the space available by the Spring of 2019, when we expect to have approximately 60 to 70 staff on board, funds are needed during the current fiscal year to fully develop the space needs, solicit bids, and to enter into a construction contract. This creates another funding gap we are working to address.

Public Outreach

The next slide provides a high-level overview of the marketing and outreach necessary for the paid leave program. The Paid Leave Act requires public education and awareness campaigns—and we believe it's very important to

have comprehensive and timely campaigns in both areas. Our timeline and scope for the education and awareness efforts are based in part on discussions the working group had with other paid leave jurisdictions.

The first step in the outreach plan is the creation of basic fact sheets that will be made widely available to the public. However, these fact sheets can be created and made available only after the Council completes whatever actions it intends to take on the five bills before the committee today. We have already received a number of inquiries about the current law, and we are eager to be able to respond definitively to questions from the public.

After the initial fact sheets, the main elements of the outreach plan are anticipated to start in the middle of 2018, with pre-implementation outreach and training. This phase is particularly important to ensure that employers are fully aware of the requirements of the paid leave program, have systems in place to begin paying the payroll taxes in July 2019, and update their internal policies and procedures to reflect the existence of the paid leave program.

Starting in Fiscal Year 2020, more aggressive outreach would begin to the public, to ensure that employees are aware that the program exists and also to ensure that they know when they can access paid leave benefits and how they can file a claim. As indicated in the chart, during Fiscal Year 2020 total outreach costs are expected to be about $500,000.

Information Technology

The working group also performed extensive research on the information technology systems necessary to implement the paid leave program. Working group members reached out to their counterparts in California, New York, New Jersey, and Rhode Island to discuss how those states had implemented, or planned to implement, the information technology for their paid leave programs. Working group members also held several meetings with the 18F technology group in the General Services Administration, and discussed potential technology solutions with other outside parties.

Based on that research, the working group determined that there are no commercially available software products to implement a paid leave program. Based on this conclusion, the Office of the Chief Technology Officer ("OCTO") is now more fully analyzing three potential options: developing a complete paid leave information technology system in-house; purchasing an off-the-shelf system and substantially modifying it in-house to meet the needs of the paid leave program; or contracting with an outside vendor to create the information technology system, either by building a completely new system or through the modification of an off-the-shelf system. The working group is also analyzing the benefits of a so-called "agile" technology procurement as part of the information technology solution.

Through the working group process, two significant information technology issues have been identified. The first is tied to funding: the Council included

$40 million in capital funds for the paid leave information technology systems, but the rough estimates for each of the potential information technology solutions is well over this amount.

The other issue identified by the working group is related to timing: until the Council determines whether it will amend the Paid Leave Act, the next major step in the procurement process—detailed requirements—cannot be completed. To better understand the challenge we are facing, I would like to describe the information technology development process in more detail.

As indicated on this slide, there are five basic phases in the information technology deployment process: planning, analysis, designing, building, and testing. Although the slide shows these phases as discrete, iterative steps, some of the elements will overlap in practice, and the results of later steps, for example testing, may require going back to an earlier step, such as designing or building.

We are currently working on the first two phases of the project, which include determining the program requirements for the information technology systems, examining existing products that are already in the marketplace, and determining how best to procure the contractual support needed to develop the systems. We expect the first two phases to take approximately six months to complete.

Once the requirements are more fully developed, based on the final form of the paid leave law, we will complete a scope of work for the procurement of outside contractors. Based on our experience with prior projects of this type, such as SLED and DCAS, the procurement process is likely to take at least ten months.

Once the contracts are finalized, the more detailed design of the systems can take place, a process that we estimate will take three months. With the design in place, the development of the information technology can then move forward in earnest. This build phase is expected to take seven months, given the complexity of each system. The final stage of the deployment process is testing, including system testing, integration testing, user acceptance testing, and performance testing. The testing process is likely to result in refining the design and revising the builds of the systems until final acceptance, a process we expect to take three to four months.

Because of the extensive amount of time necessary to complete the information technology development, any delays due to a lack of funding, uncertainty regarding the final form of the legislation, or other factors could have a negative impact on the timeline for the entire paid leave program. We will provide updates on the development of the information technology systems through quarterly reports to the Council.

Implementation Challenges

The next slide summarizes several of the issues that we face as we work to implement the Paid Leave Act. Only $500,000 was included by the Council in Fiscal Year 2018 to fund the paid leave act. This funding is inadequate for the work that we must perform in order to meet the implementation timelines established by the legislation. As described earlier in my testimony, we will need several million dollars in Fiscal Year 2018 to hire adequate staff, design and contract for the build-out of the necessary office space, and implement the first phase of outreach and education.

The funding gap continues in Fiscal Year 2019, when additional millions of dollars of capital and operating funds will again be needed for similar purposes.

In addition, the funding budgeted for information technology is likely to be too low. As you may recall, the Chief Financial Officer estimated that the information technology systems for the paid leave program would cost between $40 million and $80 million, and the current capital budget includes $40 million for this purpose. The working group's initial estimates suggest that the cost will be near or higher than the mid-range of the CFO's estimate, leading to a funding gap of potentially $20 million or more.

Moreover, the uncertainty regarding the final form of the legislation will soon begin to significantly delay our ability to move forward on a number of fronts,

including the development of information technology systems and the drafting of regulations, policies, and procedures. And if the Council amends the Paid Leave Act, for example to create an employer mandate, or a hybrid model, the working group will need to review each of the issue areas again, which will extend our implementation timeline.

Finally, as the working group has conducted its work, it has identified potential concerns with the wording or structure of the current law. We are examining whether those issues can be resolved through regulations, but it is possible we will need to seek clarifying amendments to the current law.

Despite these issues, the Administration has worked aggressively to begin the process of implementing a paid leave program for District residents, and we will continue to push forward. The next critical step is for the Council to make a final decision on the structure of the paid leave program.

With that background in mind, I would now like to turn to the bills before the Committee.

Proposed Amendments to the Current Law

The Council has before it today five bills that would make significant amendments to the Paid Leave Act. Some of the most significant amendments that are proposed are the following:

- Bill 22-130, the Paid Leave Compensation Act of 2017, would create a hybrid system where large employers would be required to provide paid leave benefits directly to their employees, while the District would administer a paid leave program for small employers. The payroll tax on larger employers would be 0.2% and the tax on small employers would be 0.4%. This bill would exempt employers with fewer than 5 employees from any paid leave requirement.
- Bill 22-133, the Universal Paid Leave Compensation for Workers Amendment Act of 2017, would mandate that District employers provide paid leave benefits directly to their employees, replacing the District-administered program. In addition, the bill would impose a payroll tax of no more than 0.1% on many employers. With the funding from the payroll tax, the District would establish a program to provide financial assistance to small businesses that experience a substantial negative financial effect based on the requirement to implement a paid leave program. This bill would also exempt employers with fewer than 5 employees from any paid leave requirement.
- Bill 22-302, the Large Employer Paid-Leave Compensation Act of 2017, would replace the District-administered paid leave program with a mandate that employers with 25 or more employees establish and directly administer company-specific paid leave benefits that provide benefits equal to the requirements of the current law. The bill would eliminate the medical leave benefit and strike the payroll tax. Employers with fewer than 25 employees would be exempt from the

paid leave mandate and the bill would create a hardship exemption for other employers.

- Bill 22-325, the Universal Paid Leave Amendment Act of 2017, would maintain the District-administered program created by the Paid Leave Act. However, the bill would change the current funding structure for the paid leave program. Under the current law, the paid leave program is funded by a 0.62% payroll tax on employers. Under this bill, that tax would be replaced by a 0.2% tax on employers, and a 0.42% tax on employees.
- Finally, Bill 22-334, the Universal Paid Leave Pay Structure Amendment Act of 2017, would create a hybrid paid leave system where each employer would choose either to participate in a District-administered paid leave program or to administer its own paid leave program, subject to enforcement by the District. Employers who chose to participate in the District-administered program would be subject to a payroll tax of 0.54%, while employers who choose to administer their own programs would be subject to a payroll tax of 0.15%.

We believe it is important that the Council's review of these bills is guided by the following key goals:

- The paid leave program must provide robust benefits for District residents and must not increase the financial burden on District residents, through either a tax or fee.
- We must ensure that the impact on District businesses is sustainable and does not discourage companies from creating jobs in the District.

- We must maintain a paid leave structure that can be effectively and efficiently administered and enforced.

We also believe that it is important that the Council keep in mind the impact that this process is having, and will continue to have, on the Administration's ability to implement the program on the time frame set forth in the existing law. I want to emphasize, however, that the Administration will continue to work aggressively to make as much progress as possible while the Council considers these bills.

That concludes my testimony. I am happy to answer any questions you may have.

Office of the City Administrator

Rashad M. Young, City Administrator

Implementing Paid Leave

Testimony of Rashad M. Young, City Administrator

Before the

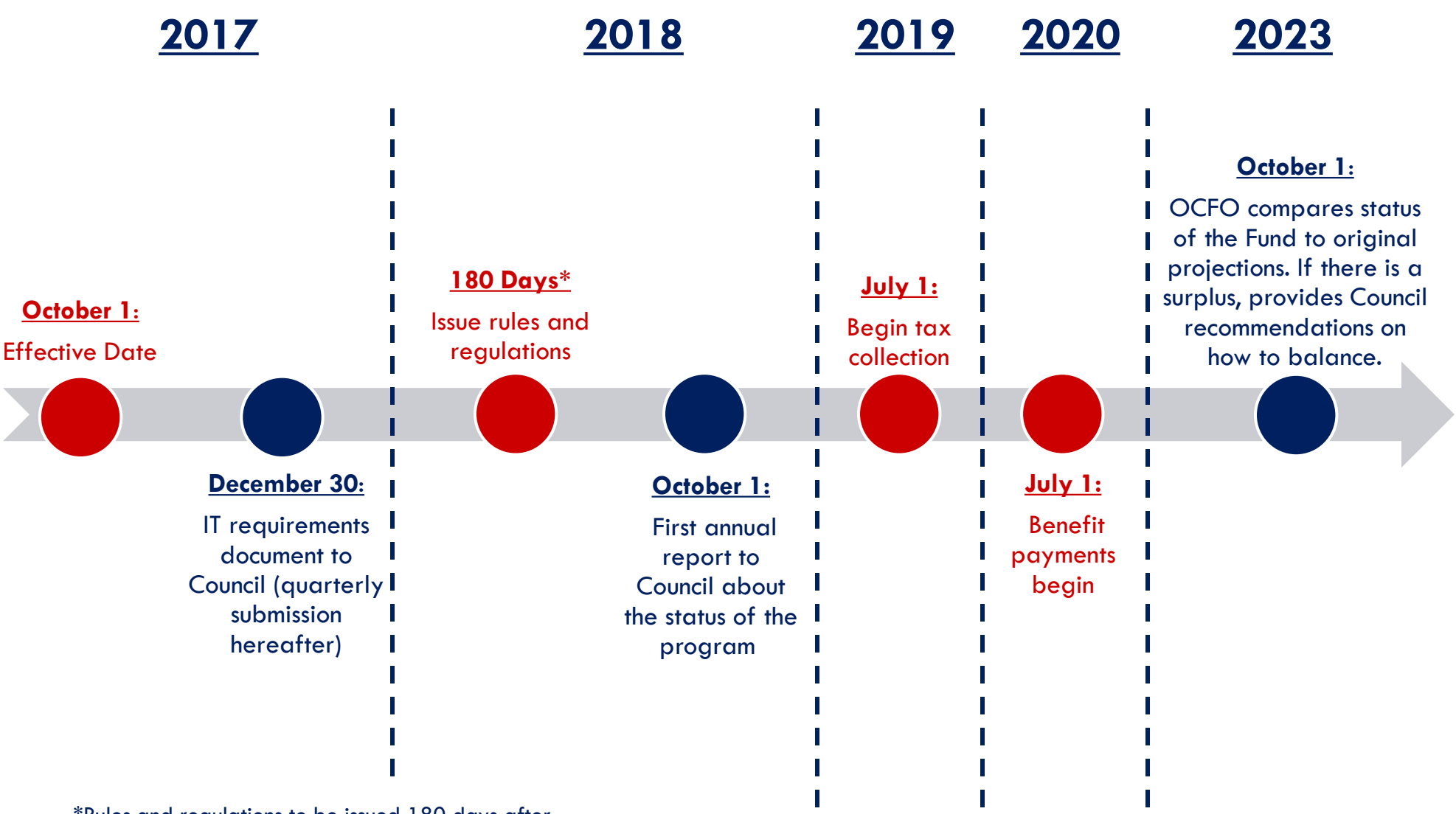
Committee of the Whole

October 10, 2017

Program/benefits overview

	Paid Leave Act
Administration	District run program, to include: tax collection, claim receipt and verification, and benefit payment
Tax Rate	0.62% payroll tax on employers
Benefits Duration (event) **1. Medical** **2. Family** **3. Parental**	 1. 2 weeks (care for oneself) 2. 6 weeks (care for a family member) 3. 8 weeks (care for a new child)
Wage Replacement	90% of 150% of minimum wage; 50% of earnings in excess of 150% of minimum wage
Weekly Max	$1,000; beginning 2021 annually adjusted according to CPI
Eligible for Benefit	Private sector workers employed in District (excludes District and federal government employees); self-employed may opt in; more than 50% of work must occur in District

Legislation timeline: key dates



*Rules and regulations to be issued 180 days after the legislation's effective date; legislative clarity is a prerequisite for drafting and issuing rules and regulations

Paid leave implementation working group

- OCA convened a working group of key District agencies to develop and recommend operational guidance, including recommendations on:
  - *program administration;*
  - *tax collection and benefit payment processes;*
  - *technology system requirements (high-level) and procurement method;*
  - *staffing;*
  - *space; and,*
  - *marketing and outreach.*
- Working group agencies: OCA, DMGEO, DOES, OCTO, OCFO, OCP, DGS, OHR, and DCHR
- Outside of the working group, OCA has engaged with 18F, paid leave advocates, and other relevant stakeholders
- DOES and OCTO have each engaged w/their counterparts on paid leave in California, Rhode Island, New Jersey, and New York to discuss programmatic and technology best practices respectively

DOES staffing; phased onboarding plan

Oct. '17 — Immediate hires; $1.1M

Jan. '18 — Key Tax Division staff; $1.2M *(annualized)*

July '18 — Key Benefits Division staff; $700k *(annualized)*

FY18

Oct. '18 — Additional Benefits Division staff; Benefit Payment Control Supervisor; $600k

April '19 — Call Center Representatives; Claims Examiners; $3.3M *(annualized)*

FY19

Oct. '19 — Medical Assessor; $110k

April '20 — All remaining staff; $4.3M *(annualized)*

FY20

Fully staffed Office of Paid Leave: ~115 FTEs and ~$11.5M annually

FY18 implementation activities

- In FY18, the core team will be tasked with planning and building the framework for an Office of Paid Leave that will be responsible for:
  - tax collection;
  - claim review and benefit disbursement; and,
  - enforcement, including fraud prevention and detection.
- Note, there is no existing administrative foundation to leverage; the full office is being built from the ground up
  - *All other states w/paid leave had temporary disability insurance frameworks to leverage*

Program Structure

- Establishment of Tax Division
- Development of communications plan
- Finance management
- Planning for: Benefits Division; reporting on program performance; staff training; and other items

Policy Development

- Development of standard operating procedures
- Development of procedural requirements

Tax System

- Development of system requirements
- Vendor research
- Procurement
- Development of business requirements and processes
- System configuration
- User acceptance testing

Space for the paid leave program

- The working group explored two primary options for housing the new paid leave program:
  1. Leverage District-owned space; or
  2. Lease space on the open market
- The working group preliminarily determined that the owned space option is preferable, as:
  1. It is advantageous based on cost and timing considerations
  2. The lead time for buildout is significantly shorter
  3. The District has owned facilities to leverage
- Note, DOES is able to accommodate a small number of employees at the 4058 Minnesota Ave facility (current headquarters) on a temporary basis before full buildout is complete

Marketing & outreach

Phase I:

Initial outreach and marketing – website and factsheets

Phase II:

Pre-implementation outreach & training

Phase III:

Benefits trainings for covered employees

	Likely Activities	Budget
FY18	• Factsheets, notice to employers, outreach and education, trainings	**$200,000**
FY19	• Continued notice to employers, metro ads, print ads, digital, outreach and education, trainings	**$350,000**
FY20	• Metro ads, publication ads, digital, trainings, outreach and education	**$500,000**

Information technology overview

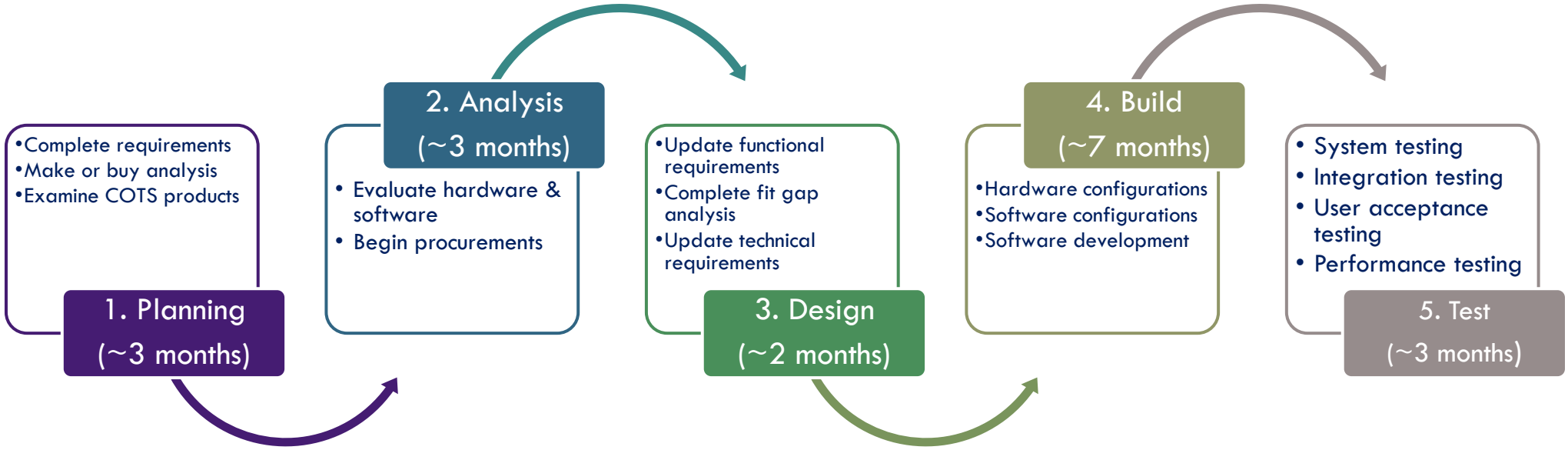
- The administration has connected with CA, NJ, RI, and NY and performed initial market research; findings:
  - There are no commercially available software products
  - States leveraged existing temporary disability insurance (TDI) systems
    - *DC does not have TDI framework to leverage*
- OCTO has developed rough order of magnitude cost estimates and is exploring all potential development options, including customizing commercial off the shelf products, OCTO enterprise solutions, and outside developers building the systems
- Working group has also engaged 18F and other outside parties on paid leave technology

Information technology: process and timing

In advance of deploying the required paid leave technology systems – 1. tax collection and 2. benefit receipt, review, and payment – there are a number of activities that must be accomplished

- Legislative certainty is prerequisite for a number of these steps

The December 31 technology update report and requirements document will provide additional details



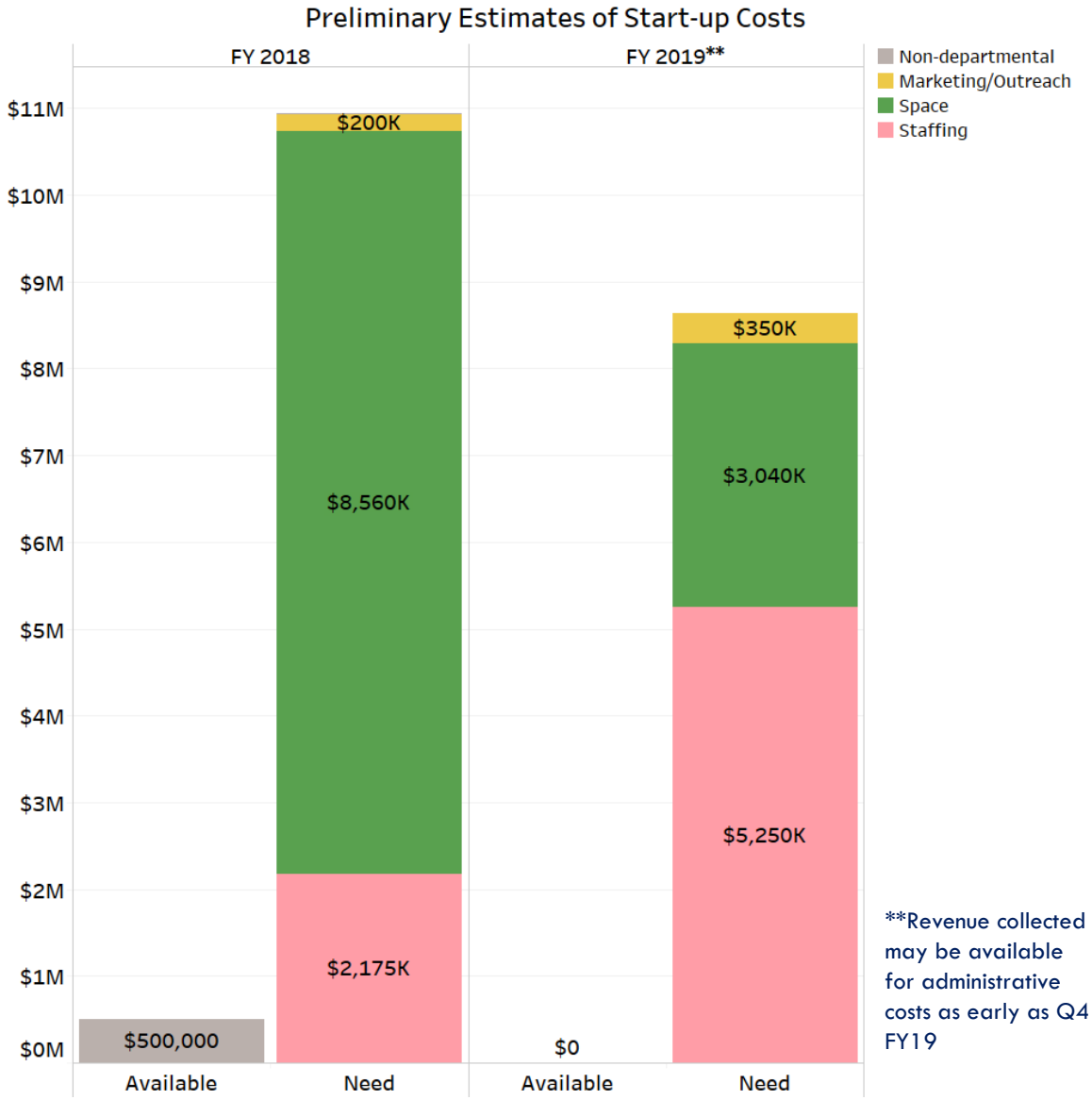
Once testing is complete, the system will be deployed; OCTO anticipates deployment to take ~1 month

Paid leave consists of two modules; development of each module adheres to the above process

Implementation challenges

1. **Budget*:**
   - Significant operating and capital funding gaps in FY18 and FY19.
     - *Several million dollars in each year.*
   - Preliminary technology cost estimates exceed $40M.
2. **Delay:**
   - Uncertainty about the final form of the PFL program delays our ability to move forward with key implementation steps.
   - Changes to the current law will require us to reanalyze working group issues.
3. **Legislation:**
   - Potential implementation issues related to the text of the current law (drafting issues).
   - Hope to address them through regulations and procedures, but may need legislative fixes.

*In FY20, the paid leave program will be funded via the 0.62% payroll tax. Program costs are anticipated at ~$19.3M; that includes staffing (~$11.5M); technology (~$6.5); OHR enforcement (~$550k); marketing/outreach (~$500k); and space (~$230k).



**Revenue collected may be available for administrative costs as early as Q4 FY19

Goals for paid leave program

1. Robust paid leave benefits for -- and no financial burden on -- District residents

2. Impact on District employers is sustainable and does not discourage companies from creating jobs in the District

3. Paid leave program structure that can be effectively and efficiently administered

Testimony of Gayle Goldin
Rhode Island State Senator
Family Values@ Work, Advisor

Regarding Universal Paid Leave
Before the Committee of the Whole
October 10, 2017

Thank you for hearing my testimony today. My name is Gayle Goldin and I'm a state senator in Rhode Island, and a campaign advisor at Family Values@ Work.

Since 1942, Rhode Island has had state run temporary disability insurance that provides wage replacement to a worker who needs to take time off to care for his/her own health. It is administered efficiently and cost-effectively by our Department of Labor and Training. TDI has helped hundreds of thousands of people over the years- including me- make sure a medical crisis doesn't turn into a financial one, too. TDI also provides wage replacement when a woman needs to care for herself after the delivery of a child. But what it didn't do was cover time to care for someone else, including the new child in your home.

So I ran for office to change it.

In 2013, Rhode Island became the 3rd state in the country to pass paid family leave, and the first to do so with job protection. Now workers can

take time to care for a seriously ill loved one or be there with a new child, without fear of financial ruin or losing their job. They do so using the exact same state-run social insurance system.

Here's how it works: Jane has a heart attack and needs time off of work to heal. She (or her family) lets work know that she is unavailable, and then her doctor provides medical documentation that is submitted to the state of Rhode Island, along with her application form. Jane's partner also let's work know he'll be unavailable, and submits an application to the state that includes Jane's medical information.

The only thing an employer has to do is verify that the employee is not working. The state takes care of the rest. That includes reviewing the application and medical documentation, cross-referencing wage history with Unemployment Insurance data, reviewing work history eligibility, independently verifying the number of weeks needed for leave. Nurses review any applications that request a leave that is outside of the objective standards, and has a physician review any case that raises red flags. The staff can also work with other state agencies as needed. The state also maintains a board of review so that if an application is denied, the employee has an opportunity to appeal the decision.

Importantly, the staff believe that their primary job is to make it easier for people to take care of themselves and their loved ones.

Not surprisingly, research shows that paid family leave is an incredible benefit for Rhode Island families. People have lower stress, have better health outcomes, and when they return to work, they stay on the job.

Researchers also found small businesses in RI like paid family leave, too. Major employers, like Lifespan hospital system, say implementation is a non-issue. Hasbro, which is headquartered in RI and employs people worldwide, expanded their company paid leave benefit for employees prior to the addition of family leave and then again, afterwards, in 2016 -- that's a benefit on top of what is already provided in our state; Many employers, like Brown University, who have had robust benefits prior to the state program continue to provide those benefits, too.

We had opponents in 2013, and we still do. Yet, some of my own colleagues who originally were skeptical of family leave have seen firsthand what it a difference it has made for their own constituents or in their own lives. And despite the sky- will-fall claims from the Chamber of Commerce that businesses would stop coming to RI and people would lose jobs, our unemployment rate was 9.2% when we passed the law. It's now just over 4%.

I asked our Department of Labor and Training for their thoughts on the bills being heard today. You have a copy of that memo, but basically it boils down to this: when everyone is in the same insurance pool, the costs are lower because the risk is spread broadly and the administrative challenges are minimized.

It is no surprise that I am a strong supporter of RI's model of a state-run social insurance. As an elected official, I'm proud of my state. As a policy analyst, I know that publicly run social insurance is the most efficient system you could create, which is what you did last year when you passed the Universal Paid Leave Act.

The bills you have before you today, however, will create administrative burdens, increase costs, or otherwise dissuade workers and employers from participating. Employees are unlikely to want to disclose private health care information to their employers, especially when their loved ones conditions could lead to stigma and discrimination. A system that is not properly enforced will mean some employers will deny workers their benefit – which creates an uneven playing field for employers and employees alike. Publicly run insurance removes this problem because eligibility determination and appeals process are done objectively. Additionally, public systems have access to data that simply is not

available to everyone, which prevents fraud and ensure proper wage replacement.

I know what it's like to take a hard vote, and I'm sure for many of you Universal Paid Leave Act felt that way. Looking back, you should feel proud. You voted to create a paid leave with the most cost-effective, most transparent mechanism –and one that will have the least administrative burden on businesses and employees. Universal Paid Leave Act – a bill that made it through this chamber, the mayor's desk, and an unfriendly congress to become law- deserves every chance to be implemented as soon as possible. The country is watching, but most of all, your constituents are depending on it.

RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Labor and Training
Center General Complex
1511 Pontiac Avenue
Cranston, RI 02920-4407

Telephone: (401) 462-8000
TTY: Via RI Relay 711

Gina M. Raimondo
Governor
Scott R. Jensen
Director

To: The Honorable Gayle Goldin
RI Senate – District 3

From: Matthew Weldon
Assistant Director, DLT

Date: September 19, 2017

Subject: TDI/TCI Funding and Administration

TDI/TCI is a Social Insurance Program

Rhode Island's Temporary Disability Insurance (TDI)/Temporary Caregiver Insurance (TCI) program is a social insurance program. The program is funded 100% via employees, collected through a payroll tax and remitted by their employers. Since participation is compulsory, the pool of participants is vast. As such, employees working for both large and small employers contribute while far fewer people actually avail themselves of the benefits.

This factor controls costs. Requiring all private sector workers in Rhode Island to contribute ensures that the system is adequately funded for its anticipated use. If parties were able to selectively participate the concern would be that those that are less likely to utilize the benefits would opt out, taking their contributions with them. This would only leave the people that would be likely to collect at some point – resulting in a system that in all likelihood would not be able to support itself without significant tax rate increases.

Actions short of allowing parties to selectively participate may present similar challenges, depending on how the program is structured. If the program was built to provide this insurance/benefit to employees of firms of a certain size only, then technically the program would still mandate participation, albeit to a smaller group of employees. This might not present budgetary or funding challenges in the same manner as a voluntary program would, but it would likely present administrative challenges that would need to be overcome in order to successfully operate.

Questions

- The program would have to track employers and employees to determine who is covered and who is not covered by the program which would increase administrative costs. Do non-covered employers/workers pay a portion of the extra administrative costs?
- As workers move from one employer to another they may be covered by the state program originally and then covered by the employer program or vice versa. How do we split the costs of benefits when there are two employers in the base period – one covered and one exempt? Who pays for those administrative costs? Continued coverage for the employee as they move between employers needs to be addressed.

Continued coverage for the employee as they move between employers needs to be addressed.

- If an employee for the exempt employer disagrees with a decision do they have the same appeal rights as the covered workers (through the Board of Review)? If so, does the exempt employer help support the appeals board?
- What happens when an employer or their insurer goes out of business? Who would pay benefits due to the employee?
- In our system, employees would have wages in their base period for up to a year and a half. If they leave the TDI/TCI program the fund would continue to have a liability with no current income stream to offset the liability.
- Who would monitor the exempt employers program compliance and who would pay for that monitoring? There would have to be rules and regulations put in place covering the exempt employers – who pays for that effort?
- In RI, when there is a question about a worker's injury being work related or not, those workers with TDI coverage can often file for and likely receive TDI benefits while their Workers Compensation claim is being reviewed. A lien is placed on any future Workers Compensation award in order to repay the TDI Fund should the injury be determined to be work related. Those workers exempt from TDI would obviously not have the luxury of this option.

Testimony of Laura Brown, Executive Director, First Shift Justice Project
Regarding the amendment legislation to the Universal Paid Leave Act
Before the Committee of the Whole
October 10, 2017

Good morning, my name is Laura Brown, Ward 6 resident and Executive Director of First Shift Justice Project. I testify today in favor of a bill that already passed.

I provide legal services to low-income pregnant women and new mothers in the District of Columbia and I beg you not to replace the existing paid leave insurance system with an employer mandate.

Low-income workers stand to benefit most from the paid leave law, which will put them on more equitable ground with other workers by affording them a benefit which is generally lacking but more often available to workers who earn more. Turning this into a system in which the employee must rely on her employer to administer the benefit will undermine this potential. Instead, low-income women will be even more vulnerable to discrimination and retaliation than they already are when trying to assert their rights, because the employer will save money if the business can avoid paying this benefit.

Low-income workers who need leave will be fired before they can take the leave. Employers already fire low-income pregnant employees in anticipation of their need to take unpaid leave. An employer generally knows of an expectant mother's need for leave months ahead of time. This theoretically gives the employer time to arrange coverage for

the employee's work tasks during the time she is out, but unfortunately it also gives the employer time to figure out a way to avoid the cost.

My client Kathy (not her real name) was fired the same day that she informed her employer that she was pregnant. The company told her that they were laying employees off because business was slow; however, she had worked there longer than many others and was the only full time employee being laid off. Kathy had taken family medical leave the year before when she experienced a miscarriage. The employer knew that she was trying to become pregnant again. The timing of her termination made it very clear that the company did not want to deal with her pregnancy or the unpaid FMLA leave it would require. If they had to pay on their own for leave, this medium-sized company - a company considered a large employer under some of the proposed alternative bills - would have had an even greater incentive to terminate her. Another client who was working for a D.C. small business inquired about whether she could take maternity leave and her boss responded by telling her "to bring her baby to work;" not long after that, he terminated her.

Other pregnant clients have been fired days before they would have hit the one-year mark of employment and become eligible for unpaid family medical leave. Two other clients were terminated during pregnancy after the employers made repeated comments about the inconvenience of having to cover their workloads while they were out. Two clients were even fired *while* on leave, despite clear protections under the DC FMLA and D.C.'s pregnancy accommodations law (the Protecting Pregnant Workers

Fairness Act) that mothers who are taking time off to recover from childbirth are entitled to job protection.

The provisions in the law that prohibit retaliation are inadequate.

The fact that a low-income worker can bring a claim after they've been fired is not sufficient to prevent employers from retaliating. Employers know that most low-income employees will not file claims, so for many of them who are weighing the possibility of a claim versus the cost savings, firing an employee is worth the risk. Moreover, it is little consolation to an employee who is six months pregnant and has just lost her job that she can file an administrative or legal claim that will take an untold amount of time to resolve. An employer's retaliation against one worker for taking leave has a chilling effect on other employees' willingness to assert their rights.

It is not clear under an employer mandate how or whether paid leave benefits will be portable.

There is no job protection in the paid leave law; however, if the employer lays a worker off before or during her leave, she can still access the benefits because they are portable. It is difficult to conceptualize how a person could continue to draw benefits under an employer mandate. Even if the system is a hybrid, it is complex to have an employee move between employer and government-administered programs. Although admittedly I have no qualifications to make this judgment, it seems to me the resources that will need to be put toward enforcement of an employer mandate for it to be effective will meet or exceed the resources that some of the Councilmembers are

concerned about expending to administer the paid leave insurance system in the first pace.

Women of childbearing age will be discriminated against in hiring. Women of childbearing age are already discriminated against in hiring. If employers bear the cost of paid leave, this will just increase the incentive. In one of my first interviews after graduating from law school, I was asked whether I planned to have children. That was 15 years ago. It was a prohibited question then and it is prohibited now – but my clients are still being asked. Employers still assume that young women they hire are going to have babies.

In sum, if we abandon the paid leave insurance system for an employer mandate, we will magnify the inequality that exists between low-income and professional workers, and the 16,000 low-income families in this city that depend on the income of a breadwinner mother will lose again.

Thank you.

Considerations for Policymakers in the Design of Paid Family and Medical Leave Systems

by Benjamin W. Veghte, Vice President for Policy and Alexandra L. Bradley, Health Policy Analyst, National Academy of Social Insurance

As states work on the development of new paid family and medical leave systems, they face critical design choices with respect to system architecture, funding, and administration. With regard to system architecture, the main choices are between a social insurance approach and an employer mandate, although there are gradations between the two. In a social insurance approach, risk and resources are pooled broadly across virtually all workers in a state. In an employer mandate system, employers are required to offer insurance to their workers but can either self-insure, purchase insurance from a private carrier, or participate in a state fund, if one exists in their state.

Most state programs currently in place, and most programs in advanced economies around the world, have been structured as social insurance programs. In the U.S., this includes Rhode Island, California, and New Jersey, as well as the enacted but not yet implemented programs in the District of Columbia and Washington state. In social insurance programs, virtually all employees and/or their employers contribute a fixed percentage of wages to a dedicated state-wide fund. To maximize risk pooling, social-insurance paid leave programs are typically community rated, not experience rated. This means that all workers are treated similarly and are not subject to cost variations based upon age, gender, geographic location, or any other demographic factor that might predict the likelihood of requiring/taking family or medical leave.

In employer-mandate systems, employers who self-insure or purchase insurance from a private carrier have costs/premiums that are experience rated. This means that the level of premiums varies across employers based on the actual or projected claims experience of their employees. Employers who self-insure have the purest form of experience rating, because they pay all benefit costs directly. For employers who purchase insurance from a private carrier, premiums are tailored to the risk profile of each firm's employees, or to the claims experience of the employer in the prior year.

Employer experience rating makes sense in Workers' Compensation or Unemployment Insurance programs, because in these programs, experience rating gives the employer an incentive to manage its own costs by improving workplace safety and return to work (in the case of Workers' Compensation) or strengthening employee retention (in the case of Unemployment Insurance). For paid *medical* leave, one could argue that a modest degree of experience rating could incentivize employers to offer modified work to employees with medical restrictions, thereby bringing some of them back to work earlier, both reducing the employer's indemnity and improving the worker's employment and medical outcomes. Applying employer experience-rating to paid *family* leave makes no sense whatsoever, though. Moreover, in neither case does the employer contribute to the causation of leave. "Punishing" the employer for an employee's need for non-work related disability or family leave is unfair to the employer.

Most concerning is that experience rating paid leave insurance would incentivize hiring discrimination against any worker who an employer might perceive to be more likely to require medical leave or take family leave, e.g. young women, workers with disabilities, or older workers. Such workers could drive up

premiums in an employer-mandate system, and some employers might take this into consideration when making hiring decisions.

One policy consideration that must be weighed is whether or not to allow employers to opt out of a paid leave program. A pure social insurance approach would not allow opt outs of any kind, thereby achieving maximum risk and resource pooling. The state of Rhode Island, for example, covers all workers under the same, state-run program, and there is no possibility to opt out. Pooling risk across an entire state's workforce allows the higher costs caused by those who need to take longer periods of leave—e.g., an individual undergoing treatment for cancer, parent caring for a newborn child, or person caring for a parent recovering from a heart attack—to be offset by the lower costs of those who need to take little or no leave in a given year. In general, the larger the risk pool, the more predictable and stable the premiums can be. In a larger risk pool, there is less uncertainty about the rate at which the insured event will transpire, so premiums are likely to be lower. When opt-outs are allowed, then employers who opt out experience variation in their benefit costs (if self-insured) or premiums (if they purchase from a private carrier) based on the risk profile of their employees. This makes their costs less predictable, and creates an incentive for hiring discrimination based on the perceived likelihood that a potential hire will require/take leave.

A social insurance system that allows employer opt-outs faces risks of greater costs unless it has a strong regulatory apparatus and limits opt-outs to a minimal level, as in the cases of New Jersey and particularly California. A state allowing employer opt-outs can experience higher premiums or benefit costs in their state fund if the employers opting out are "selecting against" the fund. "Selecting against" the fund occurs when these employers have employees that are, on average, less likely to take temporary disability and/or family leave. Moreover, if a system allows opt-outs, strong regulations and enforcement are required to make sure that employers who self-insure have sufficient assets to cover costs, and that employers opting out provide private insurance coverage of equal or better quality than the state fund to their workers.

Without strong protections, employees in a system with employer opt-outs or an employer mandate face greater challenges in access and equity than in a fully state-run program. Claiming paid leave benefits from one's employer—which could potentially drive up their insurance costs—can incur stigma, particularly for workers with hard-to-observe medical conditions. In cases where an employer chooses to self-insure, workers may be required to provide sensitive medical information directly to their employer and supervisors—something many employees may be reticent to do. Employers who opt out of the system, particularly those who self-insure, have stronger incentives to engage in discrimination or intimidation tactics towards employees in need of paid family and medical leave—particularly with regards to low-wage, part-time, or otherwise vulnerable employees, who are often seen as more interchangeable. Moreover, even if a state adopts a strong appeals process, it may not meet the needs of vulnerable workers who lack the time or resources to endure an appeals process Furthermore, both employers and for-profit insurers have an incentive to interpret eligibility criteria restrictively. Removing the employer or the employer's for-profit insurer from decisions about the existence and duration of disability avoids this problem. Even when employers do not discriminate, there may be a disproportionate economic impact of mandating employer self-financing of paid family and medical leave where the labor force is comprised primarily of women of childbearing age or older workers who are more likely to need

temporary disability leave, or when above-average leave costs arise for other unpredictable, unexpected reasons.

As states move forward with designing programs to protect workers who need time off to care for a family or personal health-related need, policymakers will need to weigh the pros and cons of a variety of different design options. Social insurance programs pool risk across a large group of individuals and/or employers, making the coverage of that risk as efficient and affordable as possible. For states adopting a social insurance approach, one of those considerations is whether or not, and if so to what extent, to allow employers or employees to provide coverage for their employees by either self-insuring or purchasing a private plan. While on the surface such an opportunity might appear to relieve some of the burden on the state government by shifting administration to the employer or private insurance company, such coverage will also require keen monitoring and evaluation to ensure that all employees are receiving adequate, sufficient access to leave that is compliant with the standards of the law. Decoupling administration for a state-run system also places employees at an increased risk for discrimination, intimidation, retaliation, or flat-out denial of a request from their employer. A universal state-run program removes the risk of such harmful effects on employees and streamlines administration for greater overall cost efficiency.

CLASP
policy solutions that work for low-income people

Testimony of Pronita Gupta, Director of Job Quality, Center for Law and Social Policy

DC COUNCIL PAID LEAVE HEARING
October 10, 2017

Chairman Mendelson and Members of the Committee of the Whole, my name is Pronita Gupta, and I am the Director of Job Quality at the Center for Law and Social Policy (CLASP). CLASP is a national organization that works to improve the lives of low-income people by developing and advocating for federal, state, and local policies that strengthen families and create pathways to education and work. We advocate for and conduct research and analysis on job quality policies, including paid sick days, paid family and medical leave, and fair scheduling. Further, we work with community and government partners to promote effective implementation and enforcement of labor standards policies.

I thank you for the opportunity to provide testimony in support of the Universal Paid Leave Act and about my concerns regarding the proposed alternatives which can weaken the program and hurt working families, especially low-income families. Prior to joining CLASP, I was the Deputy Director of the Women's Bureau in the US Department of Labor under President Obama. One of my primary responsibilities was overseeing the Department's Paid Leave Analysis grant program. The District was one of our first grantees and I was thrilled to see how the research and feasibility analysis produced from this grant helped inform the development of the Universal Paid Leave Act. I believe that the Universal Paid Leave Act, as passed, fulfills the underlying mission of the grant program –namely to expand access to paid family and medical leave and meet a critical need faced by most working families, especially low-income families. Under this important legislation, workers no longer need to make the painful tradeoff between caring for their child, a seriously ill loved one or for their own serious illness, and the need for a paycheck. The District is just one of the 6 states to offer paid family and medical leave –an important benefit the majority of workers in the US cannot access.

That is why I am so concerned about efforts to repeal and replace the Universal Paid Leave Act (UPLA). First and foremost, UPLA meets three critical standards of effective social policy[1] It:

- Reduces inequality
- Promotes economic security
- Promotes greater gender equity

In contrast, the repeal and replace proposals that finance the program through an employer mandate risk undermining those standards and could result in first **Increasing Inequality**. Currently in the US, 86 percent of all workers lack access to paid family leave including over 95 percent of low-wage workers.[2] An important feature of the Universal Paid Leave Act is that it covers all private and nonprofit sector workers in DC. This includes part-time workers, tipped workers and self-employed residents. However, some of the alternative proposals would no longer cover part-time workers or the self-employed. Any proposal that decreases access for women, low-income workers, older workers, immigrant workers or communities of color will be a step in the wrong direction.

The employer mandate approach also could **Increase economic insecurity.** Paid Family and Medical leave programs must ensure that workers who take leave do not have to compromise their economic security in order to take that leave. Research shows that many low-wage workers lose all their income while on unpaid family and medical leave, and many low-wage workers of color cannot afford to take any *unpaid* family leave. For example, 72 percent of Latino workers are neither eligible for nor able to afford to take FMLA leave.[3]

While the Universal Paid Leave Act and many of the replacement proposals have a progressive wage replacement rate that would allow low-wage workers to utilize and benefit from the program, employer mandates would undercut this gain. An employer mandate would require the individual business to solely fund the entire paid family and medical leave program, which would further incentivize those businesses to pursue cost-cutting measures that in turn lead to the denial of benefits, pressure to take less leave, or retaliation through a reduction or change in work hours--actions that undermine the economic security of working families.[4] [5] The research report for Montgomery County, Maryland, one of the 2015 DOL Paid Leave Analysis grantees, further reiterates this point. The report states, "...structuring a PFML program as an employer mandate is likely to result in negative outcomes for women, older workers, workers with disabilities, other workers who are the most likely to need leave and the businesses that employ them." Additionally, that "employer mandates are inconsistent with programs intended to help reduce employment discrimination."[6]

The employer mandate approach also could **Increase gender inequity.** While the gender wage gap has narrowed over time, it still continues to persist and is getting worse for Black women, who in 2016, earned 62.5 cents for every dollar earned by a White man.[7] International studies have indicated that under employer mandates, women often face employment discrimination and the gender gap actually increases.[8]

Workplace policies, such as paid family and medical leave, have been identified as effective tools in closing this gender gap.[9] Studies from California's Paid Family Leave Insurance Program further demonstrate the positive impact paid leave can have on increasing women's workforce participation and wages.[10] This is vital in a jurisdiction like DC where 72 percent of women are now primary or co-breadwinners in their families.[11]

An Employer Mandate Can Undermine Enforcement and Worker Protections. These three standards can be further undermined by poor implementation and the lax enforcement of worker protections. Since the District of Columbia does not have a Temporary Disability Insurance Program, it cannot piggy back onto an existing infrastructure as has been done in California, New Jersey, and Rhode Island. These states were able to expand their temporary disability insurance programs to include paid family leave. DC will have the opportunity to establish a completely new program which will need to include processes to make medical determinations, decisions about program eligibility, wage replacement and appropriate benefit levels, and will have to develop a system to process and disperse payments. Fortunately, the Council approved the necessary startup funds since this work is resource-intensive. It is my understanding the executive branch is anxious to do its job and move forward to create the implementation scaffolding for the Universal Paid Leave Act. If an employer mandate replaces or is added to the Universal Paid Leave Act, it will require the creation of an additional new enforcement scheme. A bifurcated program where the DC government must develop and manage both a new social insurance program and provide oversight of companies who have opted to self-insure will plunge (?) DC government into double-duty enforcement by the DC government and will increase administrative costs. Why do that?

CLASP has a long history of working to both develop critical social policies and to advocate for the proper implementation and enforcement of these policies. We work closely with state and local agencies charged with implementing policies, labor enforcement agencies and advocates to improve policy implementation and foster systems change that increases access and improves services. We recognize that a law is only effective if it is correctly implemented and robustly enforced. However, even with strong laws and penalties, enforcement can be a challenge. For example, wage theft continues to plague our labor market, though many states and cities have adopted strong penalties. An Economic Policy Institute study of wage theft in the 10 most populous states found that 2.4 million workers per year report being paid less than the minimum wage in their state, accounting for a total underpayment of over $8 billion in wages annually.[12] The reason these violations continue to abound is because most enforcement agencies are "overburdened and under-resourced."[13]

Furthermore, retaliation against workers who speak out or raise concerns about their rights continues to be widespread. According to a national survey, 43 percent of workers who complained to their employers about their pay and working conditions were subject to retaliation.[14]

A key virtue of a social insurance program is that the government agency collects and disburses the program funds. So, under the social insurance model if an employer retaliates, the employee is able to secure the benefit from the agency. You may get fired but you at least had income throughout your cancer treatment and can decide if you have the stamina to make an appeal for being wrongfully fired. Of course, social insurance also makes it harder for low road employers to try and skip out on contributing their fair share to the insurance pool. However, if the enforcement agency also must develop an employer compliance program that will both

impede the implementation of the social insurance program and add risk to worker rights and protections.

The need for paid family and medical leave in the District is considerable. The current Universal Paid Leave Act will help protect workers from the full force of discrimination and levels the playing field for all businesses is the right policy to meet this need.

Thank you.

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Statement before the District of Columbia City Council
On D.C. Paid Leave Proposals

An Employer Mandate Vs A Social Insurance Model for Paid Leave

Aparna Mathur
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October 10, 2017

1. Introduction

A paid family and medical leave allows working families to take some weeks off of work with a certain level of pay at the time of birth (or adoption) of a child, to take care of their own illness, or for caregiving responsibilities toward family members. While it sounds reasonable that employers should be willing to (and often do) accommodate the needs of their employees at such times, the policy itself has engendered a lot of discussion and debate amongst policymakers. A critical point of contention is whether the private sector should be "mandated" or forced to provide such leave and to incur the costs of doing so, or whether the government can provide the benefit to employees in a manner that is less burdensome.

The need for paid family and medical need is strongly supported by evidence. Recent research suggests that when compared to countries in the OECD, women's labor force participation in the U.S. has stalled, and nearly a third of that gap can be explained by the lack of family friendly policies like paid leave. If women are unable to continue their careers because their workplaces are less accommodating of their needs for time off, this limits their ability to move up the income ladder. This is not just an issue for women, but for families as a whole, as women are now the primary breadwinners in more than 40% of families, according to the Pew Research Center.

Paid leave laws are a recognition of the changing picture inside people's homes.[1] Data from the Bureau of Labor Statistics show that for mothers with children under the age of 6, labor force participation rates have increased from 39% in 1975 to 64% in 2015, and mothers with older kids have participation rates at 74% today. Today, most women and mothers are working or attached to the labor force. While a few still choose to exit at the time of birth, for the vast majority, not working is not a choice. Families depend on the incomes provided by both parents to meet their financial needs and to provide children the resources they need to grow. This is especially true of single mothers, who tend to have lower average incomes and few fallback options if they do not work. For working parents, paid leave and other workplace policies that recognize this reality are critical.

In fact, the evidence from the three US states that have adopted paid leave programs is pretty convincing that having access to paid leave is good for families, and particularly for those who are disadvantaged. From the employee perspective, paid family leave laws in California, New Jersey and Rhode Island allow families to feel more comfortable taking time off when they need it and encourage mothers to return to the workforce to continue their careers.[2] While state paid leave laws have generally improved access to leave, particularly for low-income workers and disadvantaged groups, take-up rates have considerable room for improvement.[3] In surveys, many low-income employees generally report that they could not take full advantage of available paid leave either because it did not come with job protection or because the wage replacement rates were too low for them to stay out of the work for long. In many cases, employees were simply unaware that they had access to this type of paid leave.

Polls show that the public is overwhelmingly in favor of paid family and medical leave. Support for the concept is bipartisan, with almost 71 percent of Trump voters and 83 percent of Clinton voters in favor of a paid family leave policy. Yet the United States is the only advanced nation that does not have a paid leave policy at the national level. We do have the federal Family and Medical Leave Act, passed in 1993, that offers 12 weeks of unpaid job protected leave, but only three states in the US have implemented a paid leave program on top of this. While the federal government has been slow to act on this issue, many private employers and states have recently come forward with their own benefit policies for their employees. Tech companies like Google, Apple and Netflix offer many months of paid leave to accommodate the needs of working parents in their organizations. Paid family leave is provided in California, New Jersey, and Rhode Island. The state of New York has recently passed a paid family leave policy that will phase in by 2021. In December 2016, the District of Columbia enacted the D.C. Universal Paid Leave Amendment Act, providing eight weeks of paid parental leave, six weeks of paid family care leave, and two weeks of paid medical leave. In June 2017, Washington State passed a generous paid leave law offering 12 weeks of leave, which will take effect in 2020.

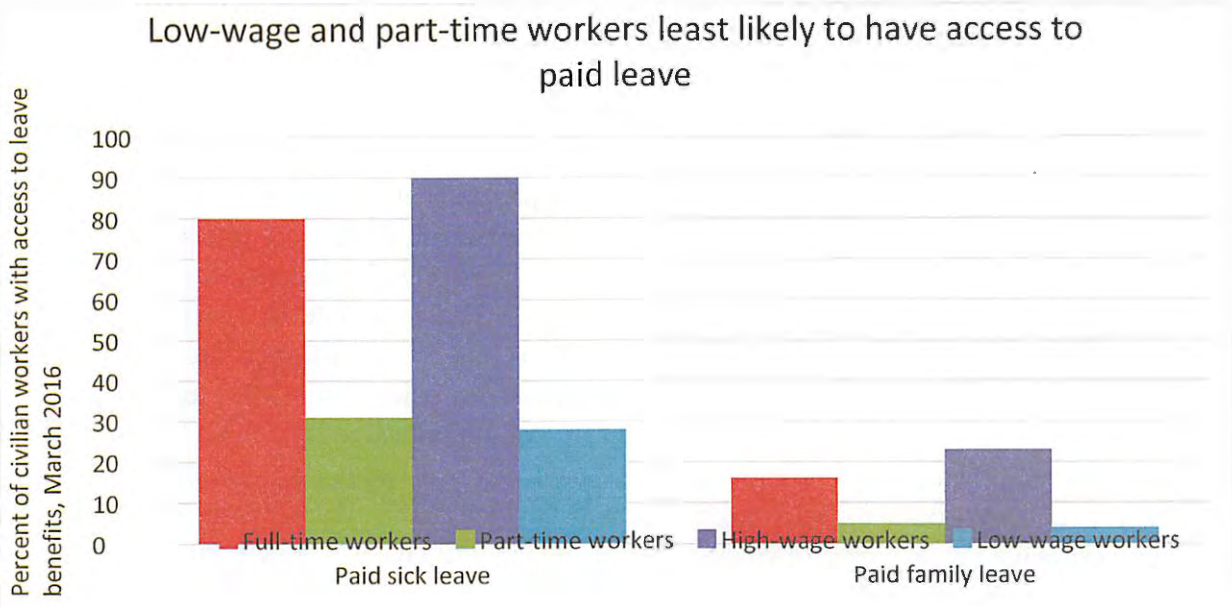
That said, there are numerous controversies surrounding the topic. From the business perspective, paid leave creates a variety of concerns. One is that the proliferation of state laws and regulations will make it increasingly difficult for them to operate efficiently across state lines and will raise their costs of complying with new labor regulations. They may well prefer one federal law to 50 state laws. In addition, there is an obvious cost associated with the lower productivity imposed by an absent employee or the wages that must be paid to a replacement. At the same time, paid leave may reduce turnover costs by encouraging parents to return to work after a leave.

The design of these policies is critical. For instance, they must be gender-neutral so that women are not adversely impacted when it comes to hiring. They should also be designed in a way that does not burden businesses excessively, especially small businesses. And ensuring access for the least advantaged workers should be a primary goal.

II. Access to Leave Is Not Uniform Across the Workforce

Some American workers have access to paid leave through benefits offered by their employers or because they live in one of the three states that have implemented state paid leave policies. But access is not widespread, especially for low-wage and part-time workers, as shown in the figure below.

Figure. Access to Paid Leave



Source: BLS National Compensation Survey, "Table 32: Leave benefits: Access, civilian workers," March 2016.
Note: "High-wage workers" includes those with wages in the highest 10 percent, while "low-wage workers" includes those with wages in the lowest 10 percent. Family leave includes both parental leave and family care leave.

According to the Bureau of Labor Statistics (BLS) American Time Use Survey Leave Module, in 2011, 39 percent of respondents reported having some access at their workplace to paid leave for the birth of a child (40 percent of women and 38 percent of men).[4] The Leave Module captures informal arrangements made between employers and their employees. According to the BLS National Compensation Survey (NCS), 14 percent of all civilian workers have formal access to paid family leave (defined as either parental leave or family care leave), but this ranges from 4 percent of workers in the lowest 10 percent of weekly wages to 23 percent of workers in the highest 10 percent. Similarly, the bottom 10 percent of workers are about half as likely to receive paid holidays, sick leave, and vacations as those in the highest 10 percent.[5]

Access to all types of paid leave is also lower for minority, less-educated, and part-time workers. Access varies significantly by industry, with high levels of paid leave in fields such as public administration and finance (where almost 80 percent of workers have access to paid leave) and the lowest levels in leisure and hospitality, where fewer than one-quarter of workers have access to paid leave.[6]

III. Comment on DC Paid Leave Proposals

The social insurance approach to paid leave under the Universal Paid Leave Act is largely a sensible one. By spreading the costs of the program more broadly, the social insurance approach makes the provision of paid leave affordable for firms and employees. In a recent report that I worked on—the AEI-Brookings Report on Paid Family and Medical Leave—we reached the similar conclusion that providing paid leave through a small hike in the payroll tax would be

feasible not only for large employers but also for smaller businesses. The main concern with the UPLA in relation to our recommendations is that the tax is levied on the employer rather than the employee. Ideally, since this is a benefit being earned by employees, the payroll tax would be imposed on the employees only. But I understand that there is a legal issue with imposing such a tax on employees who are commuters rather than residents of the state. As an economist, I believe that any tax on the employer will in large part be passed onto the workers, so the economic burden will still generally be on employees. Of course, for employees earning the minimum wage, employers cannot pass on these costs, which could manifest in reduced employment of low-wage workers.

In contrast, the idea that companies might be better off with an employer mandate instead of a social insurance program is hard to fathom. While social insurance broadly distributes the costs of providing leave, an employer mandate shifts all of the costs onto the firm, raising implicit labor costs. Firms can respond to this mandate in several ways: One, they may try to self-insure or purchase private insurance products; these will likely be costly and unavailable in many places. Two, they may reduce wages paid for workers that are hired. Three, firms may simply discriminate against people who are more likely to use this leave, particularly women. Since an employer mandate disproportionately raises the expected labor costs of those most likely to use the paid leave, mandating paid leave incentivizes firms to discriminate against women and others likely to take up the policy. I would strongly recommend that the Council reconsider any proposal that shifts the current system to an employer mandate.

The idea of a mandate might be appealing to certain larger firms that already provide leave to their employees, as an employer mandate would increase labor costs for their competitors. However, there are several ways that a social insurance program might be appealing even to such firms. By imposing a relatively small payroll tax hike, companies can take advantage of a cheaper policy for the initial weeks of leave provided. If companies want to top that off with higher benefit packages, they would be free to do so. But at the very least all employees would have access to a basic minimum period of leave through the UPLA program.

It is also important to ensure that all eligible employees within a company have access to the leave. The UPLA ensures that leave is available to all part-time and temporary employees. When firms provide leave privately, it is often the case that higher wage employees have access to more generous leave than low-wage workers, even within the same company. With the UPLA, the lowest wage workers would be guaranteed some leave as well.

It also makes sense that firms that currently offer paid leave may want to opt-out of the state program by proving that they are providing leave that meets the criteria set by the UPLA. The primary concern here is the potential for adverse selection. If firms with low expected costs opt-out, then the costs for those remaining in the program would be higher. While this is not a strong argument against allowing firms to opt-out, it is important to properly model the impact of such a provision on the policy's costs.

Naturally, there are concerns about the impacts of mandates and other leave programs on small businesses, which leads many bills to apply differential treatment to firms based on their size.

For example, the Paid Leave Compensation Act (B22-0130) imposes a mandate on firms with 50 or more employees, provides paid leave compensation for employees of firms with 5 to 49 employees, and exempts firms with fewer than 5 employees; the Large Employer Paid-Leave Compensation Act (B22-0302) imposes a mandate on firms with 25 or more employees. The differential treatment of employee paid leave compensation based on employer size creates labor cost differentials across firm sizes, incentivizing firms to reduce employment or limit employment growth to remain below a given threshold. Moreover, this differential treatment may impose particularly onerous compliance costs on firms with employment that fluctuates annually across arbitrarily determined thresholds.

Finally, the mandate would require employers that do not pay directly out of pocket to purchase insurance from a private market. However, even if such insurance products are readily available, they are unlikely to be cheaper than social insurance. So in comparing the two choices, it would be good to compare the costs of that program with the costs of the social insurance program. I believe that the cheaper the policy, the lower the burden on businesses and employees. So an honest accounting of costs is warranted.

IV. Recommendations of the AEI-Brookings Report on Paid Parental Leave

As part of the AEI-Brookings Working group on paid family leave, we debated many of the parameters of paid leave policies and the pros and cons of designing policies in different ways. I offer our compromise plan here in the hope that it may inform further debate on this issue. Our proposal favors a uniform federal policy but does so in a way that should not crowd out existing state and private sector plans. Also, while our current proposal is only about parental leave, we have begun exploring the expansion of such leave for family and medical reasons.

First, national public paid parental leave would be available to both employed mothers and fathers (with strict eligibility requirements), so that working parents do not need to return to work within days of a child's birth or adoption. Second, any plan would be budget-neutral, splitting the cost of financing between a payroll tax and cutting government spending or tax expenditures elsewhere in a way that does not adversely affect low-income families. We recognize that the federal deficits and debt are on an unsustainable trajectory and that it would be irresponsible to make matters worse. Since the benefit is targeted to working families, we would ask workers as a group to finance part of the plan through a modest increase in their payroll taxes. Third, it would keep the benefits relatively targeted and inexpensive by offering a 70 percent replacement rate up to a cap of $600 per week, for a limited number of weeks (e.g. 8 weeks). Fourth, it would include job protection. And fifth, it would require an independent study of the effects of paid family leave to ensure that the policy is not having significant unintended consequences, such as crowding out existing plans or leading to discrimination.

The key elements of the plan are its budget-neutrality, its extension of benefits to the middle and working class and not just the poor, and its establishment of a floor on the number of weeks of

leave provided. States and private employers would be free to supplement this leave, if they chose to do so.

As D.C. moves forward on this issue, two takeaways from our proposal, that are worth considering, are as follows: One, to ensure that any increases in the payroll tax are offset with spending cuts elsewhere in the budget, specifically spending cuts that are not directed at lower income households. Two, a study of the economic impacts of such a proposal on businesses and employees, so that the design of the policy can be amended to work better for both.

V. Conclusion

An employer mandate for paid family leave would invite damaging unintended consequences. A mandate is not free; it would have direct negative impacts on firms' profits, especially small businesses less able to absorb the new costs. Firms would respond to the increase in expected labor costs by some combination of higher prices, reducing other compensation, and/or reducing employment. A mandate would create a strong incentive for hiring and pay discrimination against those most likely to need or take paid leave.

In addition, while in principle a mandate may appear cheaper since the costs are not transparent or directly borne by the government, in practice it would not be. A mandate imposes additional costs and distortions that could be much more expensive to the public than social insurance. I believe that the cheaper the policy, including public and private costs, the lower the burden on businesses and employees. So a true comparison of the two proposals should require an honest accounting of costs.

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DC Chamber of Commerce
DELIVERING THE CAPITAL

Testimony of Vincent Orange
President & CEO, DC Chamber of Commerce
Before the Committee of the Whole on October 10, 2017
on
Bill 22-130, the "Paid Leave Compensation Act of 2017," Bill 22-133, the "Universal Paid Leave Compensation for Workers Amendment Act of 2017," Bill 22-302, the "Large Employer Paid-Leave Compensation Act of 2017," Bill 22-325, the "Universal Paid Leave Amendment Act of 2017," and Bill 22-334, the "Universal Paid Leave Pay Structure Amendment Act of 2017."

Good morning Chairman Mendelson, and members of the DC Council. My name is Vincent Orange, President and Chief Executive Officer of the DC Chamber of Commerce-the voice of business.

The "Universal Paid Leave Amendment Act of 2016" established a District-run paid leave program for individuals employed in the District, and provides for eight weeks of parental leave, six weeks of family leave, and two weeks of medical leave. The DC Chamber does not object to the paid leave benefits.

However, we do object to the funding of the paid leave benefits by imposing a 0.62 percent tax on the business community generating annually nearly $250 million of tax revenue of which nearly $160 million will fund paid leave benefits for non-residents of the District of Columbia at the expense of dc business taxpayers. In addition, D.C. residents employed outside the District are excluded from receiving the paid leave benefits.

After reviewing the five new paid leave bills, and hosting a dialogue on paid leave and the DC Home Rule Charter before an audience of one hundred individuals with Councilmember Mary Cheh, DC Attorney General Karl Racine, and DC Appleseed Executive Director Walter Smith; and further discussions with the DC Chamber's Board of Directors, business stakeholders, consultants, and think tanks, the DC Chamber offers, today, an approach which can lead to a more balanced funding model that will provide the necessary dollars to support the paid leave benefits.

The DC Chamber requests that the committee of the whole consider marking up legislation that requires large employers (using definition in B22-334), those with employees of one hundred or more, to self-administer the paid leave program and provide the paid leave benefits to their employees while paying 0.15 percent of their employees wages or $33 million dollars to assist in operating the District-run program.

Employers with less than one hundred employees will be required to be in the District-run program and pay 0.15 percent of their employee wages or $28 million to assist in operating the District-run program. Using the cost sharing model from B22-325, the employees of these small firms would be required to pay 0.4 percent fee of their wages or $73 million to support operating the District-run program, and ensuring its financial sufficiency.

Thus, this approach would produce the neccesary $131 million needed to operate this paid leave program where large employers self-administer, small employers are in the District-run program, and employees, residents and non-residents, pay a fee for the paid leave benefits.

This proposal is predicated upon a "fee for a benefit". This is a benefit provided to a specific population of District residents and non-residents employed in DC. This is a very important distinction that leads to this proposal being considered a "fee for a benefit", and not a tax. If this benefit was offered to all employees working in the District, it would be considered a tax. However, since federal government employees, dc government employees, and dc residents employed outside of the District are not eligible for the paid leave benefits, the proposal set forth here today would be considered a "fee for a benefit". But for the fee one would not receive the paid leave benefits.

This proposal is clear, concise, and can be scored by the independent Chief Financial Officer because it provides a distinct framework to establish funding with certainty.

The take-away from my testimony here today are four points:

I. Mark up a proposal where large employers pay 0.15 percent of their employee wages or $33 million, and are required to self-administer the paid leave program, and are required to offer its employees the eight, six and two weeks of paid leave benefits.

Ii. Mark up a proposal where employers with less than 100 employees pay 0.15 percent of their employees wages or $28 million and are required to participate in the District-run program.

Iii. Mark up a proposal where employees, those District residents and non-residents alike, pay 0.4 percent of their wages or $73 million for paid leave benefits.

Iv. This proposal generates in total $134 million dollars annually, to operate, the District-run program, costing $131 million on an annual basis.

This framework presented here today is more balanced, fair and provides for more certainty in funding and securing a positive fiscal impact review.

In closing, the DC Chamber is not opposed to ensuring employees have benefits to care for themselves and time off to care for ill family members.

However, the DC Chamber favors a paid leave program where beneficiaries of the benefits participate by paying a fee to receive the paid leave benefits which is like the operations of paid leave programs in California, New York, and new Jersey. The DC business community must not be saddled with the entire cost of the paid leave

program. The District of Columbia is unique in that it cannot tax at source. Thus, non-DC residents cannot be taxed. However, District residents and non-residents can be charged a fee for a benefit.

Thank you very much for allowing me the opportunity to testify. I am available for any questions you may have.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
Public Hearing

Tuesday, October 10, 2017
10:30 a.m., Council Chambers, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Bill 22-130, Paid Leave Compensation Act of 2017
Bill 22-133, Universal Paid Leave Compensation for Workers Amendment Act of 2017
Bill 22-302, Large Employer Paid-Leave Compensation Act of 2017
Bill 22-325, Universal Paid Leave Amendment Act of 2017
&
Bill 22-334, Universal Paid Leave Pay Structure Amendment Act of 2017

Testimony of Andrew J. Kline, General Counsel, Restaurant Association Metropolitan Washington

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Good morning Chairman Mendelson, Council Members and Council staff. I am Andrew J. Kline, General Counsel for the Restaurant Association Metropolitan Washington (RAMW) and am here today on behalf of myself and Kathy Hollinger, President and CEO of RAMW. The Restaurant Association Metropolitan Washington actively promotes the Washington, D.C. area food service industry on behalf of our nearly 1,000 members, which include restaurant owners and operators, food distributors, and service providers. As the restaurant scene in DC continues to expand, so does our membership, which grows daily, and soundly represents the diversification of the industry in the District. Established in 1920, RAMW is an advocate, resource, and community for our members.

Thank you for holding this hearing and allowing us to testify.

I think it important to set the record straight as to where we are. The Council passed a bill last year requiring that employees be allowed paid leave under certain circumstances, and set up a mechanism for funding that leave. We, along with other organizations, did not oppose the concept of mandatory paid leave but continually expressed our concern about the costs of providing leave as well as the funding mechanism.

There are now five bills before you which seek to change the cost or the funding mechanism or both. NONE of these bills seek a complete repeal of paid leave. It is unfortunate that certain groups have disingenuously described the Council's consideration of these five measures as an effort to "repeal and replace" as if this is somehow tantamount to the national Republican agenda of completely destroying universal health care. Mandated paid leave, and the amount of leave allowed, is already set forth in the law and none of the bills before you seeks any change in the leave levels. We can disagree and debate these issues, but I, for one, hope that our local political scene will not degenerate such that advocates on either side rely on lies, half-truths and rhetoric unsupported by facts to advance their position. We can do better.

Furthermore, these issues should be debated and decided based on what is good for the residents, employers and employees of the District of Columbia. Efforts by some to exploit our local government and economy as some sort of petri dish to try out new models and ideas should be resisted, unless those models and ideas are what is best for the District of Columbia considering all factors.

As representatives of many small businesses, RAMW applauds changes which allow flexibility, yet also assure there will be, for those who do not elect to self administer, an economically sound fund from which leave can be paid. In addition, RAMW and its members support ANY change which reduces the amount to be paid by businesses participating in a paid leave insurance model. As was discussed extensively when this matter was last debated, our restaurants are greatly concerned about the costs to them of the UPL program, particularly when combined with other costs increases, including those resulting from the rise in the minimum wage. It should be noted that no reduction in tax proposed in any of the bills

changes how much employees will be paid when taking leave, only how much will be the cost to businesses.

We also support any change which allows businesses to decide whether to self-administer mandatory paid leave or participate in a government run insurance program. Both have advantages and disadvantages for employers. As long as employees have access to leave and a government insurance pool can be sustained, it really should make no difference to employees how leave is administered.

RAMW does have a major concern which we believe should be addressed whether the current law on the books is otherwise amended or not. That is the hard date in the law for the commencement of payment of any tax. We raised this issue with many of you when the law was initially passed. As it currently stands, businesses will begin paying payroll taxes to fund a paid leave program as of July of 2018, with the expectation that benefits will be payable to employees a year later. But what if benefits cannot be paid a year later, either because the software has not been completed or the agency which is to process claims and pay benefits is not up and running? Given the District's difficulty in completing projects, such a scenario is certainly not farfetched. We know that some time has already passed since passage of the UPL law but do not know what progress has yet been made. If that were to happen, we suspect you will likely have employers and employees quite angry, as you have taken money from one, and not made it available to the other.

We suggest that some objective benchmark be developed to gauge when the software and the agency will be ready to properly function and taxes are only able to be collected when implementation of the program is realistically a year away. We believe this is a critical issue which must be addressed.

I thank you for giving me the opportunity to testify. I am happy to answer any questions.

DC Chamber of Commerce
DELIVERING THE CAPITAL

Erika Wadlington, Director of Public Policy & Programs, DC Chamber of Commerce
Before the Committee of the Whole
on
Bill 22-130, the "Paid Leave Compensation Act of 2017," Bill 22-133, the "Universal Paid Leave Compensation for Workers Amendment Act of 2017," Bill 22-302, the "Large Employer Paid-Leave Compensation Act of 2017," Bill 22-325, the "Universal Paid Leave Amendment Act of 2017," and Bill 22-334, the "Universal Paid Leave Pay Structure Amendment Act of 2017."
Tuesday, October 10, 2017

Good morning Chairman Mendelson, Councilmembers, and staff. I am Erika Wadlington, Director of Public Policy & Programs at the DC Chamber of Commerce. Thank you for the opportunity to testify on the proposed alternatives to finance and administer the Universal paid leave program in the District. At the Chamber, we strive to advocate for policies that make living, working, and doing business in the District of Columbia a better place for all our residents and the job creators that are investing in our economy. I would like to echo the sentiments of our member-companies who all appreciate the Council taking another look at the financing mechanism for paid leave, as well as the Committee's interest in reviewing the components of the program administration. About the administrative, compliance and enforcement provisions in the proposed bills, particularly B22-334, we would like to work with the Committee on language that ensures the reporting requirements are simple and not overly burdensome, on amendments to what is considered unlawful practices that are action driven and responsive but do not dampen enforcement activity. We would also like to work on provisions that would reduce the punitive aspects and costs of the law not increase them.

An issue that is of importance to the Chamber and its members is having clear guidance and low costs associated with policy requirements. The proposed language in B22-334 is not clear for employers who want to self-administer specifically when looking at how the law coordinates with existing employer policies. We recommend it should be amended if moving forward. As you know from previous testimony over the years, each business and industry sector are unique. How businesses provide their benefits packages is no different. Whether the benefit is provided through, for an example, a disability insurance plan or employer-provided leave coverage, the Chamber believes whatever standard business practice that currently exists for an employer should be allowed as long as they

provide the mandated paid leave benefit. Such concepts align with how the District sees its paid sick days law and we would like to see that incorporated into the Universal Paid leave law moving forward. Further, we would like to see the Committee reconsider the retaliation provisions in B22-334, and reduce burdensome reporting requirements. As drafted, some provisions would require businesses to submit quarterly reports that ask for information, which is a concern for our membership. At the Chamber we would support annual reporting and are willing to work with the Council to outline requirements that are simple, clear, easy, and straightforward.

Additionally, since the scope of this hearing is focused on the payment structure and administration of paid leave, our members have questions about the type of staff and employees included in the fee assessed on the employer. At times a business may use contracted or temporary staff and our members have concerns that the language in current law is confusing. Because we do not want to see any misreading or unintended consequences surrounding which entity will be responsible for contribution amounts in such a scenario, we ask that the Council clarify this issue as it reconsiders the payment structure.

Lastly, for the record, we want to underscore the necessity for implementing and fulfilling public policy that is simple, predictable, and easy-to-understand. Ultimately, this will improve compliance and reduce the cost of administration. Because this issue is complex, a change in a policy can make budgeting difficult. For example, when the District enacted Universal Paid Leave, this legislative body mandated that the amount collected from covered employers would begin in 2019. We would encourage the Council to align its implementation timeline to collect the tax for any employer (large or small) to something tangible and certain. As such we would encourage the Council to move away from a July 2018 date as recommended in some proposals and align the tax collection to when the Mayor issues regulations and the government program is operational.

Thank you for the opportunity to comment on the proposed bills. The DC Chamber looks forward to working with you to find optimal solutions to the concerns raised. I am available to answer questions at this time.

The Leadership Conference on Civil and Human Rights

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The Leadership Conference

STATEMENT OF SEEMA NANDA, EXECUTIVE VICE PRESIDENT AND COO OF THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS
DC COUNCIL PAID LEAVE HEARING
OCTOBER 10, 2017

My name is Seema Nanda and I am the executive vice president and COO of the Leadership Conference on Civil and Human Rights, a coalition of over 200 national organizations representing persons of color, women, children, organized labor, individuals with disabilities, older Americans, immigrants, major religious groups, gays and lesbians and civil liberties and human rights groups. We were founded 67 years ago and have coordinated national lobbying efforts on behalf of every major civil rights law since 1957.

Before working at the Leadership Conference, I was Chief of Staff to former U.S. Labor Secretary Tom Perez. Prior to serving at the U.S. Department of Labor, I headed the presently named Office of Immigrant and Employee Rights Section of the Justice Department's Civil Rights Division. It is a privilege to represent the civil rights community in addressing the Council today.

As you all know and have experienced in your own lives, nearly everyone will need to take time away from work at some point to care for a new child or a parent, or deal with a serious personal or family illness. The United States is the only industrialized nation that provides zero paid leave to new mothers, or even unpaid leave to all new parents. This is a hurdle towards opportunity that far too many working people face in our country. Today, however, the District of Columbia has a new law ready for implementation and the opportunity to do things differently, as a beacon of progress in our nation on this issue.

Paid leave is a fundamental building block of workplace policy that is essential to creating pathways to opportunity for all. Access to paid leave is important for all people, but the failure to provide paid leave has a disproportionate effect on the most vulnerable communities, including many of the communities represented by The Leadership Conference. The lowest wage workers who most need the safety net that paid family leave provides are the least likely to have it. While there are no statistics on the percentage of people of color with access to paid leave, we know that half of all White workers have access to some paid parental leave (which may include short-term disability insurance) while only 43 percent of African American workers and just 25 percent of Latino workers have access. [1]

That's why The Leadership Conference applauded the DC Council for passing the Universal Paid Leave Act, or UPLA.

The structure of the bill, which depends upon the creation of social insurance, is critical to the success of DC's paid leave program. We strongly support the social insurance components of the program, which create a pool that provides stability and solvency, adequately spreads risk, and is structured in a way to ease enforcement and disincentivize retaliation against workers for using their paid leave. We discourage the DC Council from enacting the various alternatives to social insurance that have been proposed because we believe they would hurt working families, communities of color, and the most vulnerable members of our society. Let me explain why.

The social insurance component has been critical to the success of state family and medical leave programs in California, New Jersey, and Rhode Island. Such plans spread risk among employers and help all employers weather different scenarios because they are paying insurance, not the full cost of an employee's leave. Allowing a significant number of employers to opt out of the social insurance program would shrink the pool and at the same time create an unwieldy program that may well undermine the key aspect of the bill, which is to spread risk over a significant number of employers and thus insure the financial stability of the program. Small businesses in particular would struggle with an employer mandate.

But of most significance to The Leadership Conference is the discriminatory and retaliatory effects that an opt-out employer mandate would create. An employer mandate program is only as good as its compliance rate. Employers under a mandate must cover the full cost of an individual employee's leave, and thus have incentives to discriminate in hiring and to retaliate against employees who take leave, or deny benefits to employees entitled to leave.

Structuring a paid leave policy in such a way that employers pay their own costs of paid leave, rather than through the insurance program, will likely result in significant discrimination against major subsets of vulnerable workers, particularly women of childbearing age and lower income individuals, who generally have less bargaining power in the workplace and knowledge of their rights. A 2016 study by Cynthia Thomas Calvert from the UC Hastings College of Law found that discrimination based on family responsibilities is rising faster—269 percent over the past decade—than other areas of employment discrimination. [2] Because discrimination often begins when an employee changes supervisors, there is no way to control for "good" and "bad" employers. An employer mandate incentivizes employers to fire vulnerable workers or not to hire them at all.

Just as vulnerable workers need paid leave the most and are least likely to have it, young workers, women, people of color, and immigrants are more likely than other workers to experience workplace violations. For instance, a 2017 Economic Policy Institute Study found that low wage workers experience more wage violations than higher paid workers.[3] The District is no exception to this. In its recently released report on highlights of 2016, the D.C. Office of Human Rights reported that 85 percent of its docketed cases related to employment discrimination, with retaliation, sex, race, and disability the most prevalent bases for discrimination claims.

The social insurance program has several distinct benefits which will prevent against discrimination. The employer does not directly pay the cost of the family and medical leave; rather, they contribute to these costs through the social insurance pool. By creating a profit incentive to deny leave for workers, any program that includes an employer mandate will as a matter of fact result in more discriminatory behavior by employers. In addition, employees under UPLA would receive their benefits through the District, not through their employer, therefore removing their employer from the equation entirely of having **the potential** to discriminate against them by not providing benefits.

Employees in low wage jobs, who many employers often see as interchangeable, are likely to face denials or potential retaliation for using leave, which could take the form of reduced hours, worse schedules, or other more subtle forms of discrimination. And under some of the alternative proposals the Council is considering, only employees of employers with more than 20 employees would be protected from discrimination.

Second, under the mandate option, employees are in theory entitled to benefits after only a 7-day working period, and benefits are based on a lookback over 4 of the 5 previous quarters of any job. As a result, employers will likely be reluctant to cover an employee who was not employed with the employer for most of the period.

Because payment under an employer mandate would be made directly by the employer, enforcement would become a major task and would require significant funding in order to secure employer compliance. But employer compliance under a mandate will never be as effective as a social insurance program because of the incentives to deny coverage, and the most vulnerable workers – those who fear retaliation the most, and those with the most to lose – will be the biggest losers under an employer mandate program. While the present bill requires that payroll taxes help fund enforcement, international research shows that employers in countries with a mandate rather than a social insurance program tend to discriminate against workers they think are most likely to take leave, particularly women of child-bearing age. [4]

We recognize that the District faces complex issues. The DC unemployment rate is higher than the national average, with the rate troublingly high in Wards 7 and 8. But reducing unemployment and implementing paid leave are not mutually exclusive strategies, but rather, closely related policies that reinforce each other. Social insurance paid leave policies reduce disparities in leave-taking between the lowest paid workers, disproportionately women and people of color, and higher socioeconomic groups. Studies have shown that women with access to paid leave are more likely to return to the labor force, resulting in lower level of overall unemployment. Paid leave is not a fringe "nice to have" policy for poorer communities. It is a fundamental policy that reduces inequalities, reduces unemployment, and increases women's labor force participation.

The Leadership Conference

Thank you again on behalf of The Leadership Conference for this opportunity. We urge the D.C. Council to retain its original proposal, with its critical social insurance component, which will be serve the needs of all of the District's residents, including the most vulnerable workers.

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[1] http://www.clasp.org/resources-and-publications/publication-1/2014-04-09-Inequities-and-Paid-Leave-Brief_FINAL.pdf

[2] http://www.worklifelaw.org/pubs/FRDupdate2016.pdf

3 http://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/

[4] https://www.americanprogress.org/issues/economy/reports/2015/11/19/125769/administering-paid-family-and-medical-leave/

D.C. POLICY CENTER

PUBLIC HEARING ON

Bill 22-130, "Paid Leave Compensation Act of 2017"
Bill 22-133, Universal Paid Leave Compensation for Workers Amendment Act of 2017
Bill 22-302, Large Employer Paid-Leave Compensation Act of 2017
Bill 22-325, Universal Paid Leave Amendment Act of 2017
and
Bill 22-334- "Universal Paid Leave Pay Structure Amendment Act of 2017"

Before the Committee of the Whole
Councilmember Phil Mendelson, Chairman

October 10, 2017 10:30AM
John A. Wilson Building

Testimony of Yesim Sayin Taylor
Executive Director
D.C. Policy Center

info@dcpolicycenter.org

Good morning, Chairman Mendelson and the members of the Committee of the Whole. My name is Yesim Sayin Taylor and I am the Executive Director of the D.C. Policy Center, an independent, non-partisan think tank committed to advancing policies for a strong and vibrant economy in the District of Columbia. We believe that a resilient and growing economy is the only sustainable way the District can provide the necessary services for its growing population, and support robust safety nets for its most vulnerable residents. I thank you for the opportunity to testify on the alternatives to the current Paid Family Leave legislation.

Last year, the D.C. Council enacted the Universal Paid Leave Act to provide the workers in the District of Columbia with paid parental leave, family leave, and short-term disability benefits. Workers can receive up to 8 weeks of parental leave, 6 weeks to take care of an ill family member, and 2 weeks of paid sick leave if they get seriously ill. Their benefits will not be greater than 90 percent of their wages, capped at $1,000 per week. The District will establish a new agency to collect revenue and administer the benefits. The CFO estimates that creating a new agency and the new system could cost up to $80 million[1] and the Council has set aside $40 million to begin the work. When fully implemented—approximately three years after the work of setting up the agency begins—the program benefits and administration will cost an estimated $260 million annually.

The Paid Leave Act creates important benefits, but there is clearly discomfort about the financing of the program: Five bills have been introduced by the same Council that enacted the Paid Leave Act, some shifting the burdens from the government's balance sheet to the private sector; others shifting the statutory incidence of the costs from employers to employees, and two bills

[1] Office of the Chief Financial Officer, Fiscal Impact Statement – Universal Paid Family Leave Act of 2016, issued on December 2, 2017, available at http://lims.dccouncil.us/Download/34613/B21-0415-Fiscal-Impact-Statement11.pdf

consider a hybrid model where some businesses will be mandated to offer the benefits and others will be a part of the publicly administered programs.

Whether financed through a tax, a mandate, or a combination of the two, the paid leave benefits will be nearly twice the current unemployment benefits, and the tax would be 85 percent of the annual corporate tax collections. Shifting the costs from the government to the private sector through a mandate will reduce the financial exposure of the D.C. Government, but it will still increase risks in the private sector, especially considering that the District will be the only jurisdiction in the metro region with such a program. Whatever path the city takes, it must take steps to mitigate these risks and preserve the District's competitiveness. To this end, I offer the following two recommendations for the Council's consideration:

- **Protect the District's employers and employees against administrative risks.** All variations of the bill that require public administration have a lag between the time tax collection begins and the time the benefits are paid. This lag is necessary to build a reserve to protect the city's exposure to financial risk. But current law and the proposed bills offer no protections against administrative risk. What if the program administration is delayed after tax collections begin? The Council's Budget Office conducted an economic analysis of the current law and found that in its first year, when businesses are remitting taxes but employees are not yet receiving benefits, the city could experience a job loss of 400 to 800.[2] The longer the lag between the tax collections and benefit payments, the bigger the job losses will be. Without the associated benefits in hand, the paid leave program will be a pure tax on the economy. Given the complicated nature of program administration, the city should ensure that taxes are collected *only* when the city is

[2] Office of the Budget Director, Council of the District of Columbia, Economic and Policy Impact Statement for Universal Paid Leave Act of 2016, issued on December 2, 2016, and available at http://lims.dccouncil.us/Download/34613/B21-0415-Economic-and-Policy-Impact-Statement-UPLAA3.pdf

reasonably sure that the program setup is on track. To do so, the Council could consider the following:

- *Define milestones for the administration of the program and set the conditions the public program should meet before the city begins tax collections.* At a minimum, there should be a functioning prototype system for tax collections and benefit administration.
- *Halt tax collection if full system functionality is delayed.* The current timeline suggests that the city will have approximately six months to meet reserve requirements. Then benefit payments must start. The Council, or the Mayor in rulemaking process, should carefully set targets and continuously reassess the city's ability to meet the administrative milestones. If there is any possibility of delay in benefit administration after tax collections begin, the District should halt the tax collections until the system setup is back on track.
- *Budget additional local funds to support the system setup.* The fiscal impact statement issued by the Office of the Chief Financial Officer on December 2, 2017 warns us that the setup costs could be as high as $80 million. At present, we do not know where these funds would come if the costs exceed $40 million. It would be prudent for the city to budget additional funds to ensure that set-up costs are not paid for by the taxes. Current law limits administrative costs to only 5 percent of the total tax collections. The Council should clarify that these are operating costs of the new public agency, and not the costs of setting up the system.

- **Mitigate financial risks on the private sector by reducing other tax burdens**. Even under the hybrid models where tax burdens are lower, District employers will continue to face financial risks. For example, under the Pay Structure Amendment Act, businesses with more than 100 employees will pay only a 0.15 percent tax on payroll, but that is purely a

subsidy to smaller firms. These firms would still have to meet the mandate. Many businesses will have to expand their HR departments to administer the benefits: at a minimum to verify eligibility, and also to ensure recipients receive the correct amount of benefits. Firms under the mandate will have to augment their payroll administration (which could be very difficult if their payroll is with a third party) and create a system for verifying eligibility. These will certainly come at a cost beyond the cost of the benefits.

To mitigate these costs, the Council should consider reforming the unemployment insurance tax and eliminating the unemployment administrative assessment businesses have been paying since 2006. By doing so the District could largely counter the costs of the paid leave program without any risk to the District's unemployment program. I strongly urge the Council to consider the following two changes:

- *Eliminate the Administrative Funding Assessment.* The revenues from this tax were initially capped at $4 million. (The tax is 0.2 percent on the first $9,000 of an employee's salary, or $18 per employee per year). The District repealed the cap in 2013, and now collects upwards of $10 million from businesses to administer the unemployment insurance program. The District already receives significant federal funding to administer unemployment insurance,[3] and since the Department of Employment Services would be also receiving additional administrative funds to administer the public paid leave program, the city should consider eliminating this administrative tax on all businesses. This will return $10 million back to the employers and employees.

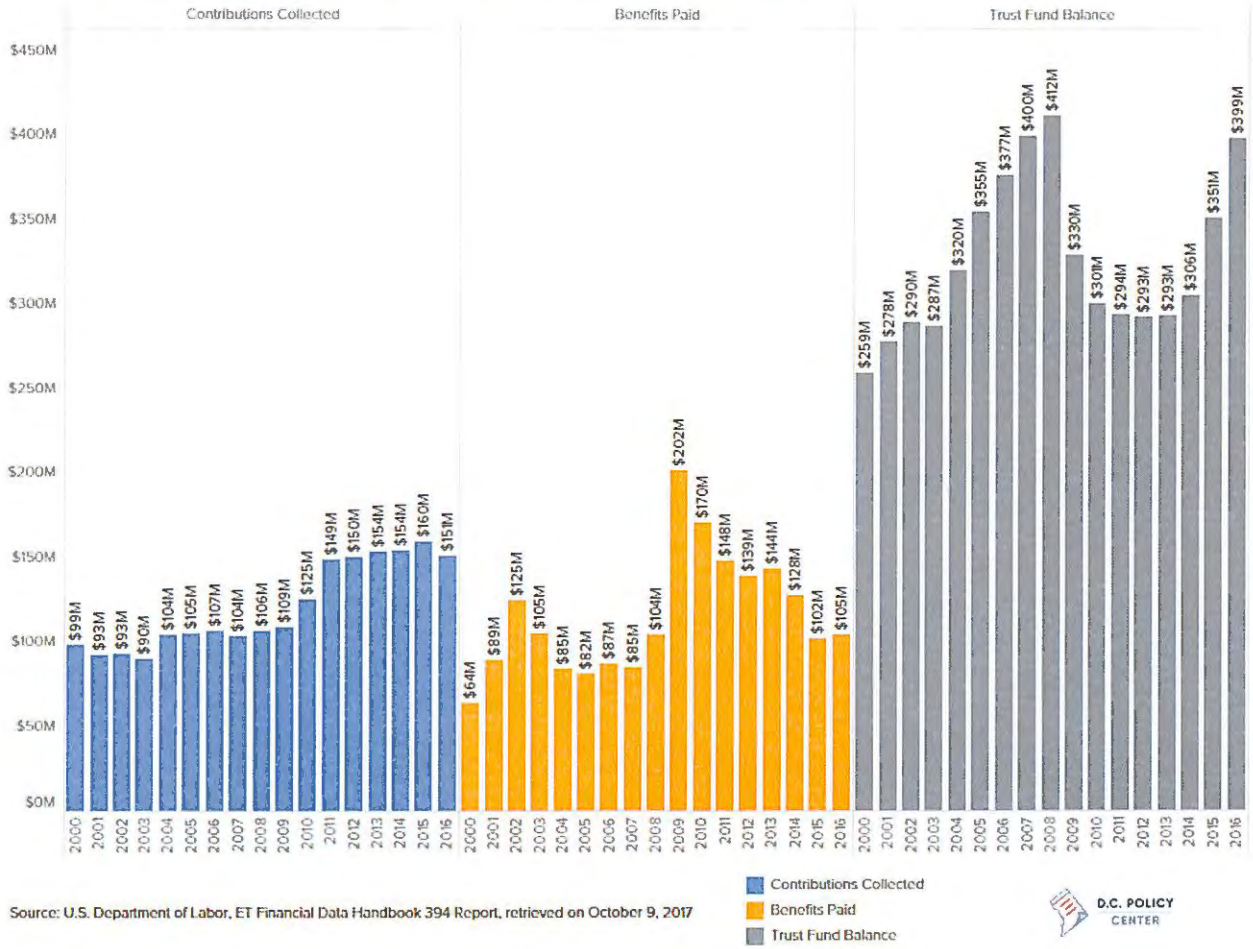
[3] Title III of the SSA provides for payments from the federal UTF to the states to meet the necessary costs of administering the UC programs in the states. The major proportion of the cost of operating their public employment offices is provided for by the Wagner-Peyser Act. In 2016, for example, the District received $9.3 million supporting the staff that process benefit claims, in addition to $14.3 million in administrative grants from the federal government.

- *Reduce unemployment taxes on District businesses.* In 2016, the District increased unemployment benefits from $359 to $425 per week. Benefits for those with part time jobs also increased. Despite these changes, the trust fund balance continues to grow. At the end of 2016, the fund balance was $399 million. Six months later, at the end of the second quarter of 2017, it stood at $450 million. While it is important to have a strong trust fund balance to ensure that during high unemployment times, the District can continue to pay benefits, it is unnecessary to have a fund balance that is four times the annual benefits paid. Even through the Great Recession, the fund balance did not go under $290 million (See the chart on the last page of this testimony). The District should reduce unemployment insurance taxes to target a fund balance that is not greater than 100 percent of benefits paid in a year. If we use the highest cost year as criteria, for example in the last ten years, this would be about $200 million. Reducing taxes to keep the fund balance at a reasonable level could return $250 million back to the employers and employees over the next four years.

Should the Council consider including these changes in the bill, the D.C. Policy Center is ready to work with the appropriate committee staff to study the economic impacts, and formulate the right approach.

I thank you for the opportunity to speak on this very important issue and I am happy to answer any questions.

Unemployment Insurance- Benefits, Contributions, and Trust Fund Balance



Source: U.S. Department of Labor, ET Financial Data Handbook 394 Report, retrieved on October 9, 2017

PUBLIC HEARING ON B22-130, Paid Leave Compensation Act of 2017
B22-133, Universal Paid Leave Compensation for Workers Amendment Act of 2017
B22-302, Large Employer Paid Leave Compensation Act of 2017
B22-325, Universal Paid Leave Amendment Act of 2017
B22-334, Universal Paid Leave Pay Structure Amendment Act of 2017

October 10, 2017

Submitted to the Committee of the Whole

Testimony of June Jimenez

in opposition to all proposed changes to the Universal Paid Leave Act

My name is June Jimenez and this testimony represents my own views, not those of my employer. I'm a MomsRising member here in the DC area, and I'm here to testify against the alternatives to the Universal Paid Leave Act because they would incentivise discrimination against people who are welcoming a new child or dealing with a medical issue.

Just over five years ago, while three months pregnant with my daughter Karanda, I was employed as a lobbyist representing corporations at the DC Council. I regularly walked the halls of the Wilson building and volunteered at many campaign events for current and former Councilmembers.

When I began to ask for clarification on my access to FMLA benefits and short-term disability insurance, my workplace became increasingly hostile and my employer told me that I could only have the two paid weeks off outlined in our employee handbook. Shortly thereafter, my employer laid me off and claimed it was due to 'contract restructuring.' Until this point, my career had been moving along as planned. I graduated from an Ivy League school, had a successful 10 year long career as a professional fundraiser, and owned my own home.

Yet, because I was pregnant, I found myself unemployed with no prospective employers willing to hire an expectant mother. Without any income, I turned to Medicaid, WIC and unemployment insurance to support my growing family as I desperately sought work.

Job-hunting is a monumental task in and of itself, but I found that being visibly pregnant added a whole new set of challenges to it. I interviewed with several people in my network, who knew the quality of my work and said they would love to hire me, but were afraid that I would leave as soon as I had the baby. I was told, on more than one occasion, that an employer "didn't want to 'invest' the time and training into a pregnant employee!"

Ultimately, I was unable to find a job while pregnant, and six months after I was laid off, gave birth to my daughter as an unemployed parent. Had it not been for Medicaid, WIC, and unemployment insurance, my daughter and I would not have made it through this difficult time. I am happy to say that now, four years later, I have a happy and healthy daughter who is thriving in Pre-K. I've successfully graduated from business school and am now working for a variety of Federal clients.

But I fear that my experience -- of being laid off, and then unemployed for six months during pregnancy, a time when access to financial resources is vital, and still unemployed for one whole year after that -- will be the experience of many more D.C. parents. Currently, the law of the land is the Universal Paid Leave Act, which protects against such an outcome by introducing a social insurance system and a new government office to administer benefits.

But there are four harmful repeal-and-replace proposals, introduced by Councilmembers Mendelson, Cheh, Evans, and Gray, that would require many employers to purchase paid leave insurance from the private market. To be clear, such insurance doesn't even exist, but the fact is that this employer mandate model provides businesses with a financial incentive to discriminate against job applicants like me -- a woman of childbearing age -- as well as workers with disabilities or health challenges.. Employers would also have an incentive to fire or lay off workers who become ill or pregnant, or have a family member who needs care.

It's for these reasons that it would be unconscionable and dangerous for the Council to repeal the Universal Paid Leave Act -- at the behest of special interests -- and replace it with the alternative proposals. The paid leave law that the DC Council already passed is by far the best option for all workers. It neutralizes and standardizes the cost of paid family leave insurance for employers, and would rely on a DC government agency to act as an unbiased arbiter of benefits. This would safeguard women like me from discriminatory employers whose obsessions with their profit margins keep them from hiring us.

Instead, it's well past time for the Council to move forward with implementing the current law. Only under the Universal Paid Leave Act will DC workers be able to access their paid leave benefits without facing repercussions that are harmful to our children, our families, and our communities.

Testimony on Bills
B22-130, Paid Leave Compensation Act of 2017
B22-133, the "Universal Paid Leave Compensation for Workers Amendment Act of 2017
B22-302, the "Large Employer Paid-Leave Compensation Act of 2017"
B22-325, the "Universal Paid Leave Amendment Act of 2017"
B22-334, the "Universal Paid Leave Pay Structure Amendment Act of 2017"

By

Eric J. Jones, MSF, Associate Director of Government Affairs
Associated Builders and Contractors (ABC) of Metro Washington

Good morning Chairman Mendelson and the members of the Committee of the Whole, my name is Eric J. Jones and I am here today on behalf of the more than 600 Contractors, Subcontractors, Suppliers and Construction related companies who are members of the Associated Builders & Contractors (ABC) of Metro Washington. ABC Metro Washington is the pre-eminent advocate for fair and open competition and the merit shop philosophy, and the premiere trade association in the Metropolitan Washington, D.C, construction industry. I am here today to provide testimony on the following legislation, B22-130, B22-133, B22-302, B22-325 and B22-334.

While we appreciate the time and attention given to this issue, we feel that it is important for this body to focus its efforts in a singular fashion as the deadline for the implementation of paid leave is fast approaching. With this in mind, our testimony will focus on Bill B22-334, the "the Universal Paid Leave Pay Structure Amendment Act of 2017". While we believe that there are still issues with this legislation we believe (a) that it is the most logical step moving forward to amend the current law and (b) that this bill has the best opportunity to make it through this body.

Background

As an industry, we are not against paid leave as those on the other side like to accuse. Further, we would argue that we as an industry are much more competitive as it relates to how we provide resources for our employees. This is because unlike most others in the region we are governed by federally mandated standards that set industry wide requirements on how our employees are paid and trained. This standard known as Davis-Bacon applies to all contractors and subcontractors performing on jobs which receive federal funds or benefits in excess of $2,000 for the construction, alteration, or repair (including painting and decorating) of buildings or public works. The law states that we must pay our employees no less than the prevailing wags and fringe benefits for corresponding work on similar projects in the area. Further the law applies to all contractors and

subcontractors performing work on federal or District of Columbia contracts.[1] As such the law also mandates that all District required base salaries and mandatory benefits, etc. are included as part of the prevailing wage. This means that any newly regulated legislative actions which provide for or mandate changes to salaries and/or benefits will have a direct impact on any company based within the District of Columbia doing local or federal work. Further any new legislation which adds additional benefits will have a negative fiscal impact as they will increase the cost of any District funded project budgeted for or underway as the minimum required wages will go up.

Our Concerns

As previously stated during our testimony on Bill 21-415, the "Universal Paid Leave Amendment Act of 2016", which was passed into law in the winter of 2016 we have four central concerns:

I. The way in which the legislation and its minimum standards were set;
II. The government implementation of the aforementioned program;
III. How this legislation will impact the calculation of Davis-Bacon and future wage determinations;
IV. The competitive disadvantage that it creates for our companies in this regional environment.

I. The way in which the legislation and its minimum standards were set

Under the current law, there is a one-size fit all approach to the setting of minimum requirements of leave for the various qualifying incidents. While the newly proposed legislation deals with the funding structure for the new leave program(s), it does nothing to deal with the nuances of individual industries. Further, it doesn't take into consideration other work rules, previously required policies and programs that industries must take into consideration when developing a structure for their employees and the types of programs that companies currently offer. Not only will this leave companies scrambling to avoid penalties for non-compliance in the future, it will create a human resources nightmare due to the overlap of various programs.

In particular, in the case of the construction industry our work rules, which include apprenticeship requirements, mandate minimum standards for education (classroom time) as well as on the job training (OJT's). The rotation or removal of an employee who we must keep on our books not only has implications on the cost of a project, but also has the ability to create unforeseen violations of the District's apprenticeship standards, which are part of mandatory agreements required on projects within the District.[2] Further it also has the potential to force companies to violate minimum requirements for hours worked and other relevant

[1] The Davis Bacon Act, 40 U.S.C. §§ 3141-3148 (2009)
[2] 7 DCMR 1100 Apprenticeship

percentages currently in District law.[3] Both of these items carry not only substantial fiscal penalties, but also have the potential to prevent companies from being able to work on District and/or federal projects in the future.

II. Government Implementation of the Program

Based on the 2018 implementation date of this legislation, we are concerned that the District will not be able to launch and develop the program in accordance with the legislation.

The development of a technology system to launch the program

To launch the program the government is required to build out a technology system to collect the taxes required to run the program, track all incoming request for leave and manage the disbursement of funds and track the use of the program. As of close of business on Friday, October 7th DOES has yet to develop the draft language for an RFP for the program. Further, there is still a great deal of disagreement around (a) the proposed cost to develop such a system and (b) the ability of DOES to develop such a program. Previously the department has had issues developing a system for Unemployment Insurance even though there were similar systems and federal support to do so. Likewise the department has had several issues developing and launching their internal system to track the First Source program. Considering that there has never been a program developed for such a leave system we are concerned about the ability to have something done in such a short turn around.

Duplicate benefits cost for covered employees

Currently the program calls for the District to start collecting taxes on July 1, 2019 with benefits available to covered employees in 2020. The legislation however requires that companies began to provide the leave starting in 2018 to employees who do not work for covered employers. This means that companies who currently provide leave will still be required to cover the cost of their current programs while also covering the cost of the future District program. This increase in cost has the potential to significantly impact a company's bottom line. In particular in the construction industry, this increase in cost will increase the cost per employee as well as have a negative impact on the prevailing wage rate per employee. It will also increase the average fringe benefits rate for fiscal year 2018 and 2019 above the numbers for fiscal year 2020 due to double payments.

Non-Concurrent Benefits

As previously stated, companies that decided to opt out of the government program are required to provide leave for their employees staring in 2018. For

[3] DC Code §2-219 First Source Employment

companies who decided to opt in to the government program or who are required to be part of the government program, they are required to pay the mandatory payroll tax starting in 2019. There is however no guarantee that the program will be fully operational, up and running by 2020. This has the potential to create two separate systems for companies. One in which leave is provided to employees and one in which leave is not provided. This puts companies in a uniquely undesirable situation (a) provide the leave as mandated with the current cost associated with the leave in addition to the paying the required tax or (b) pay into a system which will may not be operational.

III. The calculation of Davis-Bacon wages

The Davis-Bacon act requires that all contractors working in the District on Federal or Local projects pay a prevailing wage. As part of this prevailing wage, employers are required to submit to an annual wage survey, which includes an estimated hourly cost of all fringe benefits. The required inclusion of this new program creates multiple issues with the calculating of this hourly rate:

1. Unlike regularly accrued paid time off and/or sick leave, there is neither a set cap for this leave nor a predetermined formula for calculating its cost. This lack of a generally accepted accounting practice makes it impossible for companies to use a standardized method to account for this leave on one's books. This prevents one from being able to accurately estimate an hourly cost and would cause them to not comply with federal guidelines.

2. While the law mandates that companies use a calendar year to calculate the percentage of hours worked in the District, which ultimately identifies who qualifies for the leave. It does not however mandate the use of the leave provided over a similar period. Because of this, it is impossible to identify the amount of leave provided until after the leave has been used, which again falls outside of the standardized procedures for calculating the cost of leave as it relates to fringe benefits.

3. Unlike standard paid time off, the extended time periods available under this program also prevents companies from using a scheduling process to estimate potential future leave cost. This is because the leave does not reset at the end of a calendar year or include a carry over procedure. Instead the leave is based on a usage model in which the leave is calculated as a maximum amount over an extended time frame.

IV. Competitive Disadvantaged and Unintended Consequences

As an industry we are part of a business community that is always looking to level the playing field in this regional market. While neighboring jurisdictions are offering tax breaks, lower rents and other incentives for businesses to move from the District, we as a city continue to increase the cost of doing business. In our

industry in particular, a differences in cost of less than 2% can in many instances decide who is awarded a contract. In such an environment, our companies have to try harder and harder to find ways to stay fiscally competitive and items such as this do not help. With all of the potential issues that this legislation creates including increased operational and liability cost, the potential to pay into a system that may not guarantee leave and the requirement to provide leave while paying into a program that may allow your competitors to hold off for two years for providing similar leave, many of our members find their selves in a complicated system. Instead of continuing to feel that our city is dumping on us and making it more and more difficult to compete, we would like to see help from the District.

Conclusion

As and industry, we understand that much like any other legislation that there will be some give and take and some discomfort for all. We however feel that this legislation creates some issues that will have long-term negative impacts on not just our industry, but also the District's bottom line. With that in mind, we would like to offer the following items as a way to correct these issue:

1. A blanket exemption for the construction industry;

2. The ability for all construction based companies to opt out of the program including the tax provided that they meet the mandatory minimums set forth in federal and District law;

3. An amendment to the District's first source law to include a waiver for companies impacted by this legislation;

4. An amendment to the District's apprenticeship standards for companies impacted by this legislation;

5. An exemption for construction companies working on federal projects;

6. An exemption for construction companies working on District projects that receive any federal funding;

7. Uniformity of benefits for covered and non-covered employers;

8. Language mandating the design and completion of a technology management system for the program prior to any funds being collected.

In closing we would like to thank you for the opportunity to provide testimony and I am available to answer any questions you may have.

PUBLIC HEARING

BEFORE THE

THE COUNCIL OF THE DISTRICT OF COLUMBIA

RE: BILL 22-334, THE "UNIVERSAL PAID LEAVE PAY STRUCTURE AMENDMENT ACT OF 2017"

TESTIMONY
OF:

SOLOMON KEENE
PRESIDENT & CEO
HOTEL ASSOCIATION OF WASHINGTON DC

Tuesday, October 10, 2017

1350 Pennsylvania Avenue, NW
Washington, DC 20004

Good Morning, Chairman Mendelson, and Members and Staff of the Committee of the Whole. I am Solomon Keene, President & CEO of the Hotel Association of Washington, D.C., a trade association representing the interests of hotels in the District of Columbia with over 90 plus members. Hotels in the District generate over $227 million dollars in tax collections to our city each year, employ over 15,000 employees and pay over $780 million dollars in wages.

I am here to testify regarding the proposed amendments to the current paid leave law. Since the enactment of the "Universal Paid Leave Act of 2015" in February 2017, there have been several different bills introduced, within four months of the legislation passing, seeking to amend the current law. We genuinely appreciate the efforts of everyone that acknowledges the need to improve the current law.

As the largest private employer in the District, HAWDC supports Bill 22-334, the "Universal Paid Leave Pay Structure Amendment Act of 2017." Although not perfect, it is a modest improvement over the current law, and provides employers the flexibility to self-administer their paid leave programs, as well as reduces the payroll tax that employers are required to pay. The bill seeks to reduce the funding taxation rate from .62% to .54% for employers who remain in the government-run plan. It would also give employers, for a fee of .15%, the opportunity to self-administer their paid leave programs and pay leave benefits directly to their employees. Although our members are frustrated that they will still have to pay a tax to help fund those businesses that opt to remain in the government-run system, with a lower tax, this amendment will afford them the ability to be able to continue to offer the same amount of benefits they already generously offer. We believe that many employees would also appreciate the benefit of being able to work with their employer to schedule leave as opposed to attempting to navigate a new government run bureaucracy to schedule leave, determine eligibility and arrange for payment.

Our members remain committed to providing paid leave to their employees. However, by treating everyone the same, the "one-size fits all model" and forcing everyone into a government-run system creates unintended effects on both employers and employees. Bill 22-334 takes into account generous leave programs that employers already proactively provide to their employees and have strategically created in order to remain competitive to attract top employees.

Our members have always been at the forefront of training and hiring District residents to work in our industry. As one of the leading industries engaged in workforce development in the District; we strongly encourage the Council when creating policies to focus on job creation, training and retention. Collectively, as business and government, we should be asking ourselves what can the District do to strengthen the economy and entice businesses to come and stay in the District thus creating more career opportunities for District residents.

We still have some concerns regarding the current paid leave law and its impact on the economy and job creation, however, giving employers the flexibility to manage their own benefit programs is a step in the right direction. We support giving employers the option as to how to provide paid leave benefits to their employees. Thank you for the opportunity to testify regarding this important issue to our industry and our city and I welcome any questions that you may have.

Committee of The Whole
Public Hearing on Bills Related to D.C. Paid Leave
(Bill 22-130, Bill 22-133, Bill 22-302, Bill 22-325 and Bill 22-334)

October 10, 2017

Testimony:
Kevin Clinton
Chief Operating Officer
Federal City Council

FEDERAL CITY COUNCIL

Chairman Mendelson and members of the DC Council, thank you for the opportunity to testify before you today on five bills that would amend the new "Universal Paid Leave Amendment Act of 2016".

During the debate over the universal paid leave act, the Federal City Council raised the following concerns:

- Benefits Flowing to Non-Residents
- Impact on DC Competitiveness
- Government Intervention in the Employee-Employer Relationship

We appreciate that Councilmembers Evans, Gray, Cheh, Bonds and Chairman Mendelson identified these same challenges and have sought to modify the new law to improve it through the five bills under consideration today.

Benefits Flowing to Non-Residents

Under the new law, all benefits would be paid for by D.C. employers yet two thirds of the benefits would flow out of the District to non-residents, a nine-figure outflow of resources to commuters who are federally prohibited from paying income taxes to D.C.

All of the bills under consideration today begin to chip away at the size of the transfer of from DC employers to commuters. In the case of Bill 22-302 the payroll tax is eliminated altogether. Bills 22-130, 22-133 and 22-334 reduce the size of the new payroll tax. Bill 22-325 transfers a portion of the bill's expense onto commuters.

Impact on DC's Competitiveness

Under the new law, the program will cost $260 million per year, paid through a new payroll tax. We should put some context around this—the program would dwarf the recently implemented series of corporate income tax reductions of an estimated $60 million. Why should we care? Unlike places like California we

operate in an open and competitive regional market in which lower-cost jurisdictions are a metro-stop away.

And the significant cost of this program should not be viewed in isolation. With the possibility of the State and Local Tax deduction being eliminated at the federal level and immense unfunded WMATA obligations, both known and unknown, we are looking at potentially seismic threats to the District and its finances on the horizon.

The bills under consideration today do serve to reduce the overall size of the government-run portion of the program while keeping benefit levels the same. Shifting the incidence of an expense from the government to the private sector may not have a macro-level economic effect, lower tax rates send a better signal to the market about the cost of doing business in D.C.

Government Intervention in the Employee-Employer Relationship

Employers value human capital and they work to strengthen their relationship with their employees. The new law shifts responsibility for that relationship from the private sector to the government. This concerns employers, especially with unanswerable questions about how effectively the program would be managed. For employees who experience challenges accessing their benefits from the government, new stresses could ensue for both employers and employees.

Three of the new bills help address this concern by allowing either all businesses (Bill 22-302) or large businesses (Bill 22-130 and Bill 22-334) to self-administer required leave levels. Self-administration may be an improvement but it is not a panacea. Whether run by DC or self-administered, UPLA carries a real and costly "stealth tax", in the nature of companies having to beef up their HR/Compliance staffs (or, pay third-parties big sums to administer).

Bill 22-133 would require companies to purchase equivalent levels of insurance to the new law. This approach was endorsed by many in the private sector because it has the benefit of keeping the employee-employer relationship more firmly in the hands of the private sector while also limiting the District's administrative

exposure. However, these proposals require the certainty that such a product will be available in the market which does not appear to be the case.

Bill 22-325 does not address this concern.

Bill 22-334, Universal Paid Leave Pay Structure Amendment Act of 2017

I'd like to provide with a few points specific to Bill 22-334 introduced by Chairman Mendelson. This bill requires employers with more than 100 employees to "self-administer" the program. Smaller business have the option of self-administering or having their employees participate in the DC-run program. The effect will be that all employees will benefit from the new leave levels, even those who work for employers that cannot afford to provide these benefits on their own. It also has the benefit of lowering the cost to those who use the government program (to 0.54 percent) and those who self-administer (to 0.15 percent).

For these reasons, this bill appears to be the best of the alternatives under consideration today.

The paid leave advocacy coalition argues that this bill is "a watered-down version that leaves out DC's most struggling families". You may hear this argument today. I disagree. Employees who work for self-administering companies will appreciate having fewer forms to submit and just one HR office to visit to manage their child, family, and self-care leave. With all due respect to my former colleagues in the administration, I would consider the option of making fewer trips to DOES while sick, or caring for a family member or a newborn a benefit not a cost. And when it comes to those working for employers that don't self-administer they may even get better services as DOES will be able to focus its finite resources on better services to fewer customers. For both groups of employees, what's not to like?

Conclusion

I've testified to positive aspects of the bills under consideration today. I'll end with a few notes of caution. Public policy schools teach that any government action that raises the cost of hiring employees will reduce the demand for employees. The DC Council's economic impact statement predicted that the current law will result in up to 1,300 fewer private sector jobs. The impact of the bills being considered today wouldn't deviate from this original estimate in the long run. Many not hired will be residents at the margins of employability, which will operate in opposition to one of DC's greatest priorities which is to help our residents attain employment.

One factor to consider is what the impact of revised legislation will be on smaller firms. We know that larger employers have expressed a willingness to self-administer, because many are already providing leave at the required levels. Will this mean that the new payroll tax on smaller firms may lead to the departure of these businesses or reduced employee levels? Given that smaller firms traditionally drive employment growth, this is a factor to consider.

One aspect of this bill contributing to lower employment is the provision that qualifies employees for leave on Day one of their employment. Typical private sector family and parental leave policies kick in after one year. This specific provision will dampen hiring and we suggest that the DC Council reconsider it.

Even if any of these bill pass, the new business environment that results will be less competitive than the pre-UPLA world. DC is part of a regional economic market. We will always be better served by maintaining regulatory parity with our neighboring jurisdictions. Our strong economy and fiscal position exists because people want to live here and businesses want to locate here. Our future success will be depend on maintaining a policy environment considers both sides of this equation.

Thank you for the opportunity to testify today.

32BJ SEIU
Stronger Together

SERVICE EMPLOYEES INTERNATIONAL UNION CTW, CLC

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Council of the District of Columbia,
Committee of the Whole

Bill 22-130, Paid Leave Compensation Act of 2017
Bill 22-133, Universal Paid Leave Compensation for Workers Amendment Act of 2017
Bill 22-302, Large Employer Paid-Leave Compensation Act of 2017
Bill 22-325, Universal Paid Leave Amendment Act of 2017 &
Bill 22-334, Universal Paid Leave Pay Structure Amendment Act of 2017

Testimony of Jaime Contreras

October 10, 2017

Good morning Chairman Mendelson and Council Members. Thank you for the opportunity to testify here today. My name is Jaime Contreras, Vice President of 32BJ SEIU and Director of our Capital Area District.

32BJ represents over 163,000 men and women, including 18,000 members here in the capital area, who make their living in property services – commercial cleaners, janitors, security officers, window cleaners and airport workers. We are diverse, hailing from 64 different countries and speaking 28 different languages, but we are united in our mission to raise job standards and improve the lives of workers, their families and their communities.

Almost two years ago my colleague Xiomara Flores testified before this same committee. Her message on behalf of our members and all low-wage workers was clear - we urgently need a scheme that guarantees all workers in our district paid time off when they a need it most.

The Universal Paid Leave Act, delivered on what workers need. Paid leave for medical, family and parental needs through a program that provides universal coverage and equitable access for all workers.

The bills under discussion today will do nothing but threaten what we have achieved. If any of these bills are enacted, workers will be worse off compared to the UPLA. Between them, these bills variously propose:[i]

- Small business carve-outs that will exclude tens of thousands of workers from accessing leave;
- Shifts costs from the employer to workers;
- The elimination or delay of medical or family leave;
- The exclusion of self-employed workers; and
- The creation convoluted multi-tier systems that shrink the public insurance pool solvency, cut out large groups of workers and leave thousands more vulnerable to employer non-compliance.

The last of these features is particularly concerning to us. The nature of competitive contracting in the property services industry means that employers have an incentive to drive down costs in order to win and retain work. The shift to an employer mandate from the universal 0.62% tax, will mean that individual employers will have an incentive to deny employees leave or to discriminate in hiring against workers seen as more likely to take leave. For our members, who often live pay-check-to-pay-check, the denial or delay of leave by their employer could have dire financial consequences just as their family is at its most vulnerable.

In addition, the employer mandate will place a greater enforcement obligation on the Department of Employment Services to ensure employers are playing by the rules. This responsibility will be particularly difficult to meet under the proposed models that lack provisions for proactive oversight by the agency.

Workers across the district, including our members, entrust those elected to council to stand up for their rights and put policies in place that help make lives better. It is a shame that almost a year after passing one of the most thoughtful paid leave packages in the nation, and in the midst of this critical period of program preparation, we are back here considering ways to whittle down the benefits to workers.

District voters have voiced strong support for paid leave. The focus this council should squarely be on meeting the implementation targets set in the Universal Paid Leave Act, not on undertaking the 11th hour bidding of corporate interests, determined to weaken the programs benefits and delay its introduction.

On behalf of our members I urge you to reject these bills and instead redirect your effort and attention to implementation oversight of the existing law in order to deliver a strong and effective program for working families.

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[i] An overview and links to each bill can be found at: http://dccouncil.us/files/user_uploads/event_testimony/2017_08_01_15_31_47.pdf. Small business carve outs (22-130, 22-302), elimination of medical leave (22-302), delay of family leave (22-130), Elimination of self-employed (22-130, 22-133, 22-302), Multi-tier system/employer mandate (22-130, 22-133, 22-302, 22-334), shifts cost to workers (22-325).

Andrew Hunt
Owner, AGH Strategies, Ward 4
Resident, Ward 4

Testimony in support of preserving Universal Paid Leave Act
DC Council Committee of the Whole
October 10, 2017

Chairman Mendelson and members of the Council:

Thank you for the opportunity to testify in opposition to changes in the Universal Paid Leave Act. I am a native Washingtonian, Ward 4 resident, and owner of AGH Strategies, a database consulting firm also in Ward 4. Besides myself, we have five employees—a small business, but one competing for customers and workers against large and small companies from around the world.

As a business owner, I want to provide solid and affordable benefits for my employees, have predictability for my costs, and know I'm on a level playing field. As passed, Universal Paid Leave Act satisfies these priorities, but proposed changes threaten some or all of them.

Small business owners need the social insurance model of the UPLA to fund the benefits that workers need. What may not be obvious is that mixing different structures and regulations will hurt us by increasing uncertainty, complexity, and bureaucracy.

If some businesses are playing by one set of rules and others with another, or with a choice of rules, the system will be complex for employees and business owners to navigate. As my business grows, will I have artificial incentives to stay above or below a certain employee count? What will happen to individuals' benefits as they switch between employers who are under different systems?

I'm sure the proposals under consideration have answers to these questions, but I'm also sure that the procedures would require paperwork, explanations, and enforcement. Those cost taxpayers money, but they also cost businesses and employees their time to understand and comply.

Cutting out some employers also shrinks the insurance pool for the rest of us. Overhead costs will be spread among fewer businesses. Meanwhile, an entire additional bureaucracy will need to be built out to regulate the other system.

All of these systems will also take time. We should not delay the implementation of the system any longer. Businesses are also sick of all the uncertainty—just implement the single, popular, straightforward social insurance system.

Finally, I'm concerned that businesses outside of the social insurance paid leave program will try to evade paying their employees leave. Since they are paying individually out of pocket, they are incentivized to cut costs. Whether through signaling to employees that they risk their jobs if they take the full time allowed—or flat-out denying leave requests—these businesses will shove the social costs of caring for loved ones onto the rest of us.

The District is a small jurisdiction, and we should all be in the system together. Please reject any changes to the Universal Paid Leave Act and make sure it is implemented promptly.

Hearing on the Universal Paid Leave Act of 2015
Committee of the Whole
District of Columbia City Council
October 10, 2017
Council Chambers, John A.Wilson Building, 1340 Pennsylvania Avenue, NW
By Melanie L. Campbell
President and CEO of the National Coalition on Black Civic Participation and
Convener of the Black Women's Roundtable

Good afternoon Council Chair Mendelson and Members of the Council, thank you for the opportunity to come before you this evening.

I am Melanie Campbell, President and CEO of the National Coalition on Black Civic Participation (The National Coalition) and Convener of the Black Women's Roundtable (BWR). The National Coalition is a 501(c)3, nonprofit, non-partisan organization founded in the District of Columbia in 1976, is dedicated to increasing civic engagement, civil rights, women's rights, & social justice, as well as, leadership opportunities and increasing voter participation in Black and underserved communities. We have affiliates and partners in 12 states across the country including Maryland, Virginia, and in the District of Columbia, where we have had our headquarters for over 40 years.

The Black Women's Roundtable, established in 1983 as The National Coalition's women and girl's empowerment arm, is comprised of a diverse group of Black women civic leaders representing national, regional, state-based and international organizations and institutions.

I testified before the DC Council on February 11, 2015, supporting the passage of the comprehensive paid leave legislation, Universal Paid Leave Act of 2015, which passed the Council and was signed in to law. Needless to say, I am disappointed to be back to ask the Council not to repeal this law and replace it with a weaker version that will not meet the needs of most DC workers..

The Black Women's Roundtable addresses the national health and economic disparities in our annual "Status of Black Women in the United States" reports. The income and race disparities in the District of Columbia are well documented. They include hospitalization rates for Black residents that are three times higher than those of White residents, and a higher death rate from breast cancer for Black women. The city's Black community has one of the highest infant mortality rates in the world. Research shows paid family leave alleviates stress and economic hardships that accompany these real life conditions.

As an Employer: As a small non-profit headquartered in DC, the Universal Paid Leave Act as it stands affords The National Coalition the opportunity to support our employees in a truly meaningful way when they are confronted with personal illnesses or family emergencies. We do not know when a medical disaster will strike and when it does, we should not have to decide between a family we love and the job we need. Without a publicly operated leave program such as the one set forth in the DC Paid Family Leave legislation, my organization would not be able

to support our employees in the way this law allows. This existing program provides a substantial benefit at a minimal cost to smaller employers, including a fair wage replacement rate to employees and 8 weeks of paid leave to welcome a new child. Any change to the social insurance model of the existing law to one that carves out large employers could weaken the pool. As a small non-profit employer, planning to grow my organization, it is better to have a predictable amount that I must pay than be subjected to individual leave taking as events arise. The solvency of the entire program, is also concerning, because a majority (53 percent) of the city's private sector workforce is employed by companies and organizations of 100 employees or more..

For the National Coalition, the Universal Paid Leave Act is both adding a layer of protection for our employees and at the same time, ensuring that our small administrative infrastructure is not overwhelmed by administrative details. We welcome the government's assistance in handling sensitive medical records and calculating wage replacement, instead of our office and staff. Managing this process, or the denial of a request could leave us open us to lawsuits, even as we are making a good faith effort to implement the law.

Impact on Economic Security and Income inequality: With nearly 13 years of experience and analyses in California and three years in New Jersey, we have gained some useful insights. Researchers in California and New Jersey have found that women who take family leave are more likely to stay on track for wage increases and less likely to need public assistance or welfare. In fact, in New Jersey, women who had taken the leave were far more likely to be working nine to twelve months after the birth of their child than those women who had not. Likewise, these women were thirty-nine percent less likely to receive public assistance, and fifty-four per cent more likely to have seen an increase in their wages.

And in California, there is evidence working men are taking more time to bond with the children. Some 26 percent of claims tank to bond with a child were filed by dads in 2013, up from 17 percent in 2004 when the program started.

I strongly urge the Council, to not repeal the Universal Family Leave Act; do not succumb to the wishes of a few large employers, but instead reject the five bills that move the city backward and leave families unprotected when illness strikes and families are most vulnerable. I urge this Council to clear the way for the Mayor to implement the bill that she has already signed, and the Council has funded, without delay. The Universal Family Leave Act is a responsible law that permits workers to be good parents, caring family members and effective workers.

Thank you again for the opportunity to speak to you.

Council of the District of Columbia
Committee of the Whole
Hearing on the Universal Paid Leave Act
October 10, 2017

Testimony of Ketayoun Darvich-Kodjouri
Principal, Springboard Partners

Chairman Mendelson, committee members, my name is Ketayoun Darvich-Kodjouri and I'm a Principal at Springboard Partners – a small, woman- and Latino-owned public relations firm headquartered in Ward 3. Thank you for the opportunity to testify today.

Springboard Partners wholeheartedly supports the Universal Paid Leave Act, which became law in April. We urge you to implement it without delay; let's not water it down to the detriment of our businesses, our employees, and our city.

I'd like to remind you why our small business so strongly supports the Universal Paid Leave Act. We testified about our support last year. We said then, and we still believe now, that providing paid family leave for our firm is both the *right* thing to do and a *smart* thing to do.

It's the right thing to do because we are a firm that's committed to the wellbeing of our employees. We share the values of our nonprofit and foundation clients – and I think the values of the members of this Committee – that people should be able to take time off when they have a new baby, a loved one in need of care, or are seriously ill themselves. We shouldn't force employees into the Faustian choice between bankrupting their family or bankrupting their own health.

Universal Paid Leave is the smart thing to do because there is no greater asset to a consulting company like ours than its people. We need smart, talented, committed people working with us. But at our size, we can't afford to provide extended paid family leave. That means we can't compete with larger firms that can attract working parents and other employees who need the security that paid leave offers.

I'm the perfect example. I just joined the firm last year after spending my career in much larger companies and organizations. I'm part of the sandwich generation – a working mom who also was caring for elderly parents. Before now, I never would have joined such a small firm like Springboard where I didn't have the safety of knowing there was a paid leave option to help support my family if the unimaginable happened. And in fact, at one point the unimaginable did happen and I had to care for my mom when she was dying of breast cancer. It's only after my daughter started school, and sadly after my mother died, that I decided to take the risk of joining a start-up.

As I noted at the start of my testimony, Springboard supports the Act as it stands and urges the Committee to reject calls to water it down. We're frankly worried that some of the proposed amendments – especially allowing large and other employers to opt out – means that the Paid Family Leave social insurance pool will not be stable. If the program isn't stable and eventually

fails, then we're back to square one. It doesn't create a lot of confidence for small businesses like ours.

And finally, we urge you to implement the Act without delay. Every day the District delays putting the Universal Paid Leave Act into effect is another day that companies like ours are at a competitive disadvantage. It also creates continued insecurity for our existing employees – who we want to retain so we can continue to grow.

Thank you again for this opportunity to testify. I look forward to answering any questions you may have.

NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

Testimony of Emily Martin
General Counsel and Vice President for Workplace Justice, National Women's Law Center

Before the D.C. Council
October 10, 2017

The Universal Paid Leave Act: A Better Model for Working Families

Thank you for the opportunity to submit this testimony on behalf of the National Women's Law Center in opposition to amendments and revisions that would compromise the Universal Paid Leave Act. Since 1972, the National Women's Law Center has worked to secure and defend family economic security and women's legal rights, including their rights to equal opportunity and fair treatment in the workplace. The Universal Paid Leave Act was a critical achievement for working families in the District of Columbia. We urge the Council not to weaken or undermine this measure. In particular, our testimony will focus on the importance of maintaining a social insurance system for providing paid family and medical leave and the important protections such a system provides in diminishing the risk employees face of discrimination, retaliation, and other obstacles to accessing paid leave.

Workers in Low-Wage Jobs, Who Have the Greatest Need for Paid Leave, Must Have Strong Protections from Retaliation to Utilize this Benefit

The protections provided by the Universal Paid Leave Act are particularly important for those working in low-wage jobs. People working in low-wage jobs, who can least afford to go without pay, are least likely to have access to paid leave when they need it.[i] According to the Bureau of Labor Statistics, only 6 percent of low-wage workers receive paid family leave benefits,[ii] while 13 percent of all private industry workers and 24 percent of those in the highest-earning bracket have access to paid family leave.[iii] Women and people of color are especially likely to hold low-wage jobs—and especially likely to have an unmet need for leave.[iv]

Yet low-wage and part-time earners—who are mostly women and disproportionately women of color—particularly need access to paid leave, as few can afford to take unpaid time off without suffering serious financial consequences. For example, in a recent Pew Research Center survey, 62 percent of people with household incomes below $30,000 who took time off from work in the past two years for parental, family or medical reasons received no pay during this time; a majority reported that they had to take on debt as a result, while nearly half said they went on public assistance and/or put off paying their bills.[v]

Concerns about the risk of employer retaliation also lead many employees, and in particular many with lower incomes, not to take the family or medical leave they need. The same Pew survey shows that nearly a third of people in lower-income families who needed or wanted to take parental, family, or medical leave in the past two years were not able to do so. While the most common reason for not taking leave was not being able to afford losing pay, a majority also reported that they feared they could lose their jobs for taking leave.[vi]

Nor are fears of retaliation unfounded: in another survey of people working in low-wage jobs, almost one in five mothers reported losing a job due to her own illness or caring for a family member.[vii] Other data confirm that employees in low-wage jobs generally bear significant risks of retaliation when they seek to exercise their rights in the workplace. For example, a survey of workers in low-wage industries in Chicago, Los Angeles, and New York City found that of those workers who complained about working conditions or had tried to form a union in the previous year, 43 percent experienced illegal retaliation.[viii] One in 10 workers reported that fear of termination prevented them from raising serious rights violations with their employer such as discrimination or being denied the minimum wage.[ix] A 2016 report by Raise the Floor Alliance and the National Economic and Social Rights Initiative analyzing surveys and interviews of low-wage workers in Chicago found, "Retaliation has been the primary tactic deployed by businesses to keep workers from exercising their rights in the precarious economy."[x] This analysis found that the great majority of the low-wage workers surveyed who had taken action to defend their rights or improve their job experienced retaliation, in the form of threats, harassment, physical violence, immigration action, termination, or reduction of hours or wages.[xi] As a result many working people, especially in low-wage jobs, decline to exercise or defend their workplace rights out of fear.

Gender stereotypes can compound the risk of retaliation. For example, social science data suggest that employers tend to perceive mothers as less competent and committed than fathers or those without children.[xii] When women take parental leave, this stereotype can heighten the risk of retaliation that leave taking already entails. Perhaps for this reason, "[a]mong those who took leave from work following the birth or adoption of their child, women are nearly twice as likely as men to say this had a negative impact on their job or career: 25% of women say this, compared with 13% of men."[xiii]

The Universal Paid Leave Act Minimizes the Risk that Employers Will Retaliate Against Employees Who Take Leave

For all these reasons, when designing a policy to ensure that paid family and medical leave is actually available to those who need it most, care must be taken both to minimize the incentive for employers to retaliate against those who take leave and to support employees in their ability to access this leave. The Universal Paid Leave Act does just this. Of course, it provides wage replacement for time taken, addressing the largest obstacle to taking necessary time to care for family or address medical needs. But also of critical importance, the social insurance structure that it creates helps to lessen the risk of employer retaliation against those who take leave, by ensuring that the employer does not directly bear the full cost of wage replacement because the employee has taken leave. In the absence of such a structure, taking paid leave could be expected to expose an employee to greater risks of retaliation than taking unpaid leave, because of the direct impact of this leave on the employer's bottom line. In

contrast, breaking this link between an employee's exercise of leave rights and an immediate out-of-pocket cost to an employer reduces the employer's incentive to interfere with an employee's right to take family or medical leave, or to retaliate against an employee who takes such leave.

Under the Universal Paid Leave Act, employees also will have increased confidence that they can exercise their right to take paid leave without employer retaliation because their request for wage replacement will be going to the District, not to their employer. In contrast, if an employee, particularly a low-wage employee, knows that her employer will be directly bearing the cost of her wages during her leave, she may be unwilling to trust that her employer will not find a way to terminate her to avoid this cost should she seek to exercise her leave rights. As a result, employees might be reluctant to take the paid leave that they need.

Moreover, under the Universal Paid Leave Act, in the event that an employer did retaliate against an employee for taking leave, an employee would be somewhat protected from the impact of that retaliation, as the employer could not block an employee's ability to receive wage replacement during her leave. These paid leave benefits would be directly disbursed by the District, and thus would provide a critical life line even if, for example, an employer terminated an employee for exercising her leave rights.

While it is impossible to completely eliminate the risk of employer retaliation, the Universal Paid Leave Act ensures that the availability of wage replacement will not heighten the risk to employees exercising leave rights. Given the risk of retaliation that employees, and particularly employees in low-wage jobs, face in exercising workplace rights, it is critical that a paid leave program be designed to minimize this danger.

The Alternative Measures Under Consideration Would Expose Employees to Heightened Risks of Retaliation and Discrimination

While the Universal Paid Leave Act ensures that the availability of wage replacement does not increase employer incentives to retaliate against an employee who takes family or medical leave, interfere with an employee's ability to take family or medical leave, or discriminate against an employee based on a perception that he or she is likely to take family or medical leave, that cannot be said for the alternative proposals before the Committee.

Several different plans have been proposed to partially or fully replace the Universal Paid Leave Act's social insurance model with an employer mandate, which would require all or some District employers to self-insure to cover the costs of providing paid leave, or to obtain coverage for paid leave benefits from the private insurance market. These approaches are undesirable for a variety of reasons, as they create regulatory complexity, legal and financial risks, and program instability. But of particular note is the increased risk to which these proposed alternatives would expose employees.

If an employer is required to directly bear the cost for wage replacement when an employee takes leave, this can impact both the employer's and the employee's decision-making. An employer facing these costs will be more likely to discourage the employee from taking leave.

The employer will also be more likely to try to save costs by terminating an employee who takes leave, or by avoiding hiring types of employees who the employer perceives as likely to take leave. Employees, of course, will be aware that their time off now comes at a direct financial cost to the employer, and may reasonably fear utilizing this benefit—especially the lower-income employees who are at increased risk of retaliation and in particular need of wage replacement. Moreover, if an employee does experience employer retaliation or interference preventing her from accessing paid leave benefits, that employee will have no efficient means of recourse. It would fall upon the employee to bring legal action against her employer to get these benefits—an incredibly high obstacle, and again one that those lower-income employees at the highest risk of retaliation are the least likely to be able to surmount. And while retaliation may be more pronounced at the lower end of the income scale, it affects employees across the income spectrum.

Employer reliance on private insurance to pay benefits does not remedy the problem, if such insurance products were even available. Private insurance companies often set premiums through an experience rating system: in other words, the more the insurance is used, the more expensive it becomes. If employers face the prospect of increased premiums based on employees' use of paid leave benefits, this creates the same financial incentive for employers to discourage employees from using paid leave benefits that self-insurance creates.

When employer outlays vary depending on how often employees use paid leave, pregnant women and women of childbearing age are at particular risk of discrimination. While many sorts of family and medical leave are inherently unpredictable, an employer seeking to minimize costs arising out of paid leave might be particularly unwilling to employ pregnant women, given the expectation of bearing the cost of parental leave wage replacement. Because wage replacement is keyed to an individual's average weekly wage, these paid leave policies also increase the risk of pay discrimination against pregnant workers or those who an employer believes are likely to become pregnant. Pregnant workers already face discrimination in hiring and on the job—especially in low-wage jobs. For example, Doris Garcia Hernandez was fired from her job at Chipotle in D.C. when she became pregnant and needed to take more bathroom breaks and take time off for occasional prenatal appointments. Ms. Hernandez's case is unusual in that she found legal counsel and successfully held Chipotle accountable in court.[xiv] Such discrimination more often goes unchallenged and will only be intensified if an employer anticipates significant out-of-pocket costs associated with an employee's pregnancy. Indeed, unscrupulous employers might try to cut costs by avoiding hiring women of childbearing age when possible. Those with caregiving responsibility, those with disabilities or with family members with disabilities, and older employees might also be at heightened risk of unlawful discrimination under these systems. Stacking the deck against pregnant women and other vulnerable workers should be an unacceptable result for the Council.

The Council Should Reject Harmful Revisions to the Universal Paid Leave Act

Working people in the District deserve access to paid leave and a system designed to protect employees from the discrimination, interference, and retaliation that could prevent them from utilizing these benefits. For this reason, and for the many others amply set out in testimony

submitted to the Council in opposition to the harmful amendments under consideration, the Council should allow the Universal Paid Leave Act to be implemented as enacted.

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[i] *See generally* JULIE VOGTMAN & KAREN SCHULMAN, NAT'L WOMENS LAW CTR., SET UP TO FAIL: WHEN LOW-WAGE WORK JEOPARDIZES PARENTS' AND CHILDREN'S SUCCESS 11 (2016), *available at* https://nwlc.org/wp-content/uploads/2016/01/FINAL-Set-Up-To-Fail-When-Low-Wage-Work-Jeopardizes-Parents%E2%80%99-and-Children%E2%80%99s-Success.pdf.

[ii] BUREAU OF LABOR STATISTICS, U.S. DEPT. OF LABOR, NATIONAL COMPENSATION SURVEY: EMPLOYEE BENEFITS IN THE UNITED STATES, Tbl. 32: Leave benefits: Access, private industry workers (March 2017), *available at* https://www.bls.gov/ncs/ebs/benefits/2017/ebbl0061.pdf. "Low-wage workers" here refers to those with wages in the lowest 25 percent among private industry workers; note that "[s]urveyed occupations are classified into wage categories based on the average wage for the occupation, which may include workers with earnings both above and below the threshold." *Id.*

[iii] *Id.* The "highest-earning bracket" refers to those with wages in the highest 25 percent among private industry workers. *Id. See also* Trina Jones, *A Different Class of Care: The Benefits Crisis and Low-Wage Workers*, 66 AM. U.L. REV. 691 (2017) (describing Netflix and Virgin's paid leave policies covering high-wageworkers but leaving out their lower earning employees).

[iv] Jasmine Tucker & Kayla Patrick, Nat'l Women's Law Ctr., *Low-Wage Jobs Are Women's Jobs: The Overrepresentation of Women in Low-Wage Work* 2-3 (August 2017), *available at* https://nwlc.org/wp-content/uploads/2017/08/Low-Wage-Jobs-are-Womens-Jobs.pdf; U.S. DEP'T OF LABOR, THE COST OF DOING NOTHING: THE PRICE WE ALL PAY WITHOUT PAID LEAVE POLICES TO SUPPORT AMERICA'S 21ST CENTURY WORKING FAMILIES 13 (Sept. 2015), *available at* https://www.dol.gov/featured/paidleave/cost-of-doing-nothing-report.pdf. *See also* Juliana Menasce Horowitz et al., *Americans Widely Support Paid Family and Medical Leave, but Differ Over Specific Policies*, PEW RESEARCH CENTER 54 (Mar. 23, 2017), *available at* http://www.pewsocialtrends.org/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/.

[v] Horowitz et al., *supra* note 4, at 53.

[vi] *Id.* at 54.

[vii] LIZ BEN-ISHAI, CTR. FOR LAW & SOCIAL POLICY, WAGES LOST, JOBS AT RISK 2 (Feb. 2015), *available at* http://www.clasp.org/ resources-and-publications/publication-1/2015-02-03-FMLA-Anniversary-Brief-3.pdf, citing OXFAM AM., HARD WORK, HARD LIVES: SURVEY EXPOSES HARSH REALITY FACED BY LOW-WAGE WORKERS IN THE U.S. 7 (2013), *available at* http://www.oxfamamerica.org/static/media/files/low-wage-worker-report-oxfam-america.pdf. To qualify as a low-wage work for the purposes of this study, survey respondents were either "employed in a job that pays $14 per hour or less, or they were unemployed and looking for work, were not students, and had earned $14 per hour or less in their last job." See also Heather Hill, Paid Sick Leave and Job Stability, 44 WORK & OCCUPATIONS 143 (2013).

[viii] ANNETTE BERNHARDT *ET AL.*, BROKEN LAWS, UNPROTECTED WORKERS: VIOLATIONS OF EMPLOYMENT AND LABOR LAWS IN AMERICA'S CITIES 24-25 (2009), *available at* http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf?nocdn=1.

[ix] *Id.* at 24.

[x] RAISE THE FLOOR ALLIANCE & NATIONAL ECONOMIC & SOCIAL RIGHTS INITIATIVE, CHALLENGING THE BUSINESS OF FEAR: ENDING WORKPLACE RETALIATION, ENFORCING WORKERS RIGHTS 7 (2016), *available at*(http://www.raisethefloralliance.org/report.

[xi] *Id.* at 12-13.

[xii] Shelley J. Correll, Stephan Benard, & In Paik, *Getting a Job: Is There a Motherhood Penalty*, AMERICAN JOURNAL OF SOCIOLOGY (Mar. 2007), *available at* https://sociology.stanford.edu/sites/default/files/publications/getting_a_job-_is_there_a_motherhood_penalty.pdf.

[xiii] Horowitz et al., *supra* note 4, at 69.

[xiv] Rebecca Cooper, *Chipotle Will Have to Pay Up After Firing Pregnant D.C. Employee*, WASHINGTON BUSINESS JOURNAL (Aug. 5, 2016), *available at* https://www.bizjournals.com/washington/blog/top-shelf/2016/08/chipotle-will-have-to-pay-up-after-firing.html.

October 10, 2017
Submitted to the Committee of the Whole
Testimony of Eric Atilano
in opposition to all proposed changes to the Universal Paid Leave Act

My name is Eric Atilano. I'm a Ward 4 resident of 5 years, a civil rights lawyer, and a father. I'd like to thank you for passing and funding the Universal Paid Leave Act. I'm here today to implore you to not repeal and replace the law.

I have a three young boys and at their births, I had anticipated spending as much time as possible with my wife and kids. As a civil rights lawyer, I was aware that there's a federal mandate in place that prevents discrimination and retaliation – the Family Medical Leave Act – and shouldn't have had to worry about my employer denying my leave requests or facing retaliation for taking leave. Nonetheless, I dreaded it each time, with good reason – I was told that had I asked for more than two weeks of unpaid leave, it would have been an issue. This was my experience with requesting unpaid leave, which didn't cost my employer anything out of pocket. I can't imagine how it would have been if they had to have paid out of pocket – like the mandate options would require.

I currently oversee an office that processes discrimination and retaliation complaints for a large employer. I can confirm, with 100 percent certainty, that discrimination and retaliation for taking leave and/or requesting benefits is a very real problem. According to the Equal Employment Opportunity Commission, retaliation is the most often filed claim in the federal government and over the last 10 years, it has consistently increased and currently makes up nearly half of all EEOC claims.[1]

But the impact on people when they fear — and ultimately face — discrimination or retaliation for taking leave tells the real story. It's absolutely devastating, which often leads to anxiety, depression, physical ailments and according to the recent data on median household incomes – if you're person of color, it's likely the beginning of financial downward spiral since our median income and net worth is a fraction of our white neighbors.

The UPLA was thoughtfully and carefully drafted to address these concerns by spreading the cost.

As a civil rights attorney and former constitutional law teacher, I love an innovative legal argument. Whether something is a tax or a fee sets up the opportunity for some great debates, which surely Councilwoman Cheh's proposal would trigger. But as any good lawyer knows, pursuing anything other than the client's interest is legal malpractice. And in this case, the client is D.C. workers and their families. Pursuing an option that will certainly embroil the city in long and costly litigation that prevents implementation of the UPLA would be political malpractice. I'm assuming this inventive and risky approach is aimed at addressing the claim that DC workers who live in Virginia and Maryland will benefit from the UPLA. But the Council knows that's a dubious corporate talking point; this is a worker law similar to minimum wage and workers compensation which are not limited to DC residents, and the UPLA tax is paid by employers, not residents. Further, I have no interest in DC winning a race to the

[1] https://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm

bottom, especially when countless VA and MD residents are former DC residents who were forced out because we've failed to provide affordable housing here in DC.

I can't believe I'm asking you the same thing I've been asking the GOP for the last 8 months – please don't repeal and replace.

Testimony in Support of the Universal Paid Leave Act of 2016
October 10, 2017
Submitted to the DC Council Committee of the Whole
Testimony of Roger Horowitz, Pleasant Pops
Resident Ward 1

Councilmembers,

Thank you for allowing me to testify today in support of paid family leave. My name is Roger Horowitz and I own Pleasant Pops. We're a DC small business that started in 2010 with me and my college roommate selling homemade ice pops at DC farmers' markets. In the seven years since, we have expanded into a food truck and now own two cafes, one in Adams Morgan and one just blocks from here at 15th and H St. NW. I also am a homeowner in Pleasant Plains in Ward 1.

As a responsible employer, I'd love to be able to offer paid leave to my employees and I would love to be able to take advantage of paid leave. I testified here before the council in the past about my support for the Universal Paid Leave Act of 2016 and was thrilled when this bill became law.

DC had years of debate about paid family leave and got a good bill passed and as a small business owner I think we should stick with this bill. All of the alternatives aren't as small business friendly. I don't want to be exempted from paid leave because I have a small business. I don't want to have a tax credit but be on the hook for thousands of dollars of unplanned costs. I don't want to have to worry about hiring a 50th employee and then being responsible for paid leave costs out of pocket instead of through social insurance.

I also don't want to live in a city where women, the elderly and employees with pre-existing conditions are discriminated against because their employers want to save money and not hire folks who are likely to use their employer paid leave. I live in DC. I've had horrific experience with lead inspectors from DOEE and with building inspectors from DCRA. I want an agency to administer paid leave rather than have sick and disadvantaged residents have to wait in long lines or wait on endless phone calls to get DC inspectors to do an investigation over whether they were discriminated against in hiring or got fired due to having to use paid leave.

This is what worries me about changing our program from a universal one in which all employers and all employees are part of the same financing system .With an employer mandate where some employers can opt in or out of social insurance, the pool that I and others need would face solvency and stability unknowns as the pool shrinks or bounces around. And, among

those employers hold the purse strings some will see paid leave as a cost, not as an investment in their workers. That could particularly hurt the women, the elderly, low income and other workers who too often face retaliation and loss of income; we can prevent that by keeping universal social insurance.

At Pleasant Pops, we offer a living wage and paid sick leave. We provide healthcare even though we aren't required to do so, and we grow our entry-level employees into senior managers. And these choices have paid off. Our business is successful because we invest in our employees. Please let us compete with big businesses and let us offer paid leave and let us keep the current law that you passed. It is the best option out there.

Roger Horowitz
Owner
Pleasant Pops

Universal Paid Leave Testimony

Good morning and thank you for being here today. My name is Katharine Zambon and I am here to express my support for the Universal Paid Leave Act. As a DC resident for 13 years, I believe that the UPLA will help make DC a better place, not just for children and families but for everyone.

In May 2016, my husband and I were thrilled to welcome my daughter Sidney to our family. Unfortunately, she was born six weeks early - so early that we hadn't yet gotten her a crib. Because she was premature, Sidney had to spend 16 days in the special care nursery. My husband and I both felt lucky that we could take time away from our jobs to be with our daughter. But we quickly realized that others weren't so lucky.

After I was discharged from the hospital, my husband and I drove back a few hours later to visit our baby girl. It was nearly midnight when we got back to the hospital but we had to see her. For the next twelve days, we would walk past the lobby where relatives with stuffed animals, flowers and balloons waited excitedly to greet their new family members. We would wait to get buzzed in to the special care nursery, wash our hands and meet a nurse who would gently place our daughter in our arms, careful not to tug on the various wires and sensors attached to her small body.

While the special care nursery was pretty quiet during the daytime, I noticed that more parents would show up to spend time with their babies around 5:00 p.m. It took me too long to realize that they weren't as lucky as me and my husband. They couldn't take time off from their jobs. They couldn't afford to be with their babies. They had to be at work.

As hard as it was to visit my daughter in the special care nursery, I would have felt much worse if I couldn't be with her. I felt like she was working so hard to get bigger and stronger so she could come home with us. I wanted to be with her as much as possible, and I felt devastated for parents who couldn't be with their newborns like I could.

That realization made me feel lucky that I could spend so much time with my daughter. I also feel lucky to be in a position where I can take time to testify in favor of the UPLA. But thinking back to the time my daughter spent in the special care nursery, I want to ask, who isn't here? Who doesn't have the ability to come testify? Because while the UPLA would have a positive impact on my life, it will really help the people who aren't here, including new parents who work at hourly jobs. And I don't think that luck should determine your ability to be with a family member when they need you.

My husband and I chose to raise our daughter in DC because we believe that DC is a good place to start a family. I believe that by making it easier for workers to take care of their families, you can help make DC a great place, not just for children and families, but for everyone. Thank you again for your time and I would be happy to answer any questions.

DISTRICT OF COLUMBIA BUILDING INDUSTRY ASSOCIATION

Testimony of Lisa María Mallory
CEO
District of Columbia Building Industry Association

Before the

Committee of the Whole

Honorable Phil Mendelson, Chair

Public Hearing
on

Bill 22-130, Paid Leave Compensation Act of 2017

Bill 22-133, Universal Paid Leave Compensation for Workers Amendment Act of 2017

Bill 22-302, Large Employer Paid-Leave Compensation Act of 2017

Bill 22-325, Universal Paid Leave Amendment Act of 2017

&

Bill 22-334, Universal Paid Leave Pay Structure Amendment Act of 2017

The John A. Wilson Building
1350 Pennsylvania Avenue, N.W. Room 500
Washington, D.C. 20004
October 10, 2017
10:30 a.m.

Good morning Chairperson Mendelson, members of the Committee, and staff.

My name is Lisa Mallory, Chief Executive Officer of the District of Columbia Building Industry Association (DCBIA).

By way of background, DCBIA has been the leading voice of real estate development in the District of Columbia. Our more than 450 members are comprised of professionals involved in all areas of real estate development, including builders, developers, general contractors, subcontractors, engineers, brokers, attorneys, and other key real estate professionals. DCBIA and its members have been a part of the District's legislative process since our trade association's inception.

We especially appreciate the opportunity to work with you, Chairman Mendelson, and that, as leader of this Council, we commend your inclusion of the comments provided by all stakeholders on universal paid leave. We continue to pledge our commitment to work with you, the Mayor and the rest of the Council to ensure a sensible, manageable and balanced approach to Universal Paid Leave in the District of Columbia. **I believe the fact that 5 bills have been introduced this year on the subject showcases the need and desire to get this right!**

The purpose of my testimony today is to provide our membership's feedback on Universal Paid Leave and to express our support for the Universal Paid Leave Pay Structure Amendment Act of 2017.

First and foremost, DCBIA supports paid leave benefits for our employees. I am disturbed by how certain people have been misguided to think and state that DCBIA doesn't when that is the farthest thing from the truth. Wanting a system better than what is current law - one that does not send approximately $160 million yearly to non-DC residents - is not being against paid leave. Wanting a better system is acting responsibly. While we are in favor of the city's goal of providing a standard level of paid family and medical leave, we would like it to be as least burdensome as possible. We believe the Chairman's bill is a step in the right direction, and we support his efforts, but we still have a few concerns. Specifically:

- **The start date of this program needs to be reconsidered. We are holding hearings in October with a start date of 2018.**

We firmly believe small businesses that do not focus their time on the goings-on of the Wilson Building will be caught off-guard with this bill without a proper education campaign.

- **Taxes must be collected first to properly fund the paid leave program before benefits can be provided.**

If there is not enough money built into next year into the Implementation Fund to pay for all the claims that will surely follow, then we run the risk of bankrupting the system and dealing with the same problems that plague Social Security in this country.

- **The District also currently lacks the capacity to administer and monitor this program effectively.**

This law is very complicated. Collecting money, providing benefits and establishing a system to prevent fraud, waste and abuse is a tall order to complete by the timeframes imposed by the Council. Aside from this burden on the District, this new paid leave apparatus will be even more of an administrative burden for both businesses and employees who have, for a long time, been accustomed to a short-term and long-term disability system, which this law will now negate. It will take a long time for all parties to get up to speed on providing and applying for universal paid leave, and implementing this program too soon will create an administrative burden that will ultimately negatively impact the employees it is designed to serve.

- **Additionally, we have concerns with the added provisions expanding retaliation penalties, which will make it very expensive for businesses trying to navigate and comply with this complicated legislation.**

We feel that such harsh penalties on businesses are unjustified. The business community is compliant with the District's laws and raising fines and penalties for

employers before this law even becomes effective showcases an inappropriate and mischaracterized view of businesses in the District.

- **There are also questions as to whether this law will comply with the Davis-Bacon Act.**

As you well know many of my members have to comply with Davis Bacon laws while building District-funded projects. Because this leave is mandatory, it now constitutes a mandatory fringe benefit for all employees. As such, an hourly cost must be calculated so that it can be included in the calculation of wages for Davis – Bacon (prevailing wage) that is extremely difficult to do because of the fluidity in construction projects and hiring of hourly workers for those very specific projects.

We do appreciate the clause in the Chairman's bill to allow all businesses to opt-out if they self-administer and we believe that will go a long way to ensure businesses can continue operations in DC in a smooth and orderly process while complying with this law.

Finally, our members already provide generous paid leave packages to employees out of their own pockets to remain competitive. Since universal paid leave taxes become effective in 2019 before the District begins to provide the benefit, employers **will pay twice for the same benefit for an entire year**. This poses a hardship on businesses in 2019 while they pay both the District and employees for paid leave, which could lead to temporary cuts to employer-

provided benefits – a result nobody wants to see happen, but economics may mandate.

DCBIA wants to continue to protect our employees by offering the paid leave contemplated by this legislation, but we have the opportunity with this hearing to improve upon ***the way*** in which this law is implemented to make universal paid leave more financially and administratively manageable and less of a financial burden for both the District and its employers.

Conclusion

To conclude, I thank you Chairman Mendelson and the Committee for convening today's hearing. We remain committed to working with the Mayor and Members of the Council on the District's Universal Paid Leave Program. I am available to answer any questions you might have following the conclusion of this round of testimonies.

Thank you.

Hearing for Paid Leave Legislation
October 10, 2017
Testimony for Jess Champagne, Ward 4 Resident

Thank you for the opportunity to speak with you today.

My name is Jessica Champagne, and I live in Petworth. This is my second time testifying before the Council on this issue. The first time I testified, Jacob Feinspan was standing behind me holding my infant son; I was still on parental leave myself, and spoke of how crucial paid leave was to my family as we were nursing our underweight baby up to a healthy weight. That baby's tush has been appearing above Washington Post articles about paid leave on a surprisingly regular basis, along with his friends Adam and Milo.

Now, he is an extremely energetic two-and-a-half-year-old. He can climb 8' ladders, way over my head, speak in complete sentences, and feed bottles to his cousin and other babies who are new on the scene.

Which is to say - we have been debating paid family leave in this city for a long time, as long as it takes a human being to acquire language and go from complete immobility to learning how to crawl, walk, run, jump, skip, and climb.

The good news about that lengthy debate is that the Universal Paid Leave Act, as passed, is a great law that would really help my family and the organization where I work.

First, my family. We are hoping to have a second child, gdwilling. My husband is now an independent contractor helping launch a new startup. Under the Universal Paid Leave Act, he would still be able to pay into a fund, and draw from that fund to have paid leave if we are lucky enough to have a second child. All of Councilmember Evans' bills will stripped away that opportunity for us, and our family would likely lose that time to be together and nurture a new life.

Second, my organization. I serve as deputy director of a small non-profit. Our staff is unionized and has bargained a robust paid family leave allowance. I am thrilled that I and my colleagues can benefit from this. When I had Benjamin, I was able to take about four months off, and to recruit a consultant to carry on a portion of my work. For a small organization, though, that length of leave has a real impact on the year's budget and ability to do our work. The Universal Paid Leave Act will make it much easier for our organization to support our employees in this way. We have been looking forward to being able to simply pay a fixed portion of payroll into a

shared fund that will cover compensation for staff during leave. That way, we will have predictable costs, and will have funds available to hire on replacements during prolonged periods of leave.

This city made a clear decision last year that everyone who works here should have access to paid family leave. I am proud of our city that we are standing up for the rights of everyone, not just white-collar workers like me, to have paid family leave. As the wife of a trans man, I'm proud that we came up with a system that will protect people against the whims and biases of their employers. I try to be a good boss - but I know that my coworkers' rights shouldn't depend on my good will.

We have had a lot of bad political news over the past twelve months, a lot of political decisions that have hurt families, immigrants, queer families like mine, and so many other groups. There is no need for the DC Council to add to that bad news by eliminating or weakening a program that has so much promise to make our city a better, more fair place.

I ask you all to stand by the Universal Paid Leave Act, without changes.

Testimony of Porter McConnell
Committee of the Whole Hearing on Paid Leave Legislation
October 10, 2017

My name is Porter McConnell, and I am a Ward 1 resident. Thanks for the opportunity to advocate against legislative changes to the Universal Paid Leave Act. I have testified before about my experience as a Ward 2 small employer, but today I'd like to focus on my personal challenges with working and being a parent in DC.

I experienced direct discrimination for being a parent in the workplace, and I also had to cope with arbitrary eligibility requirements when I tried to use existing workplace benefits. I fully expect both would worsen under the employer mandate alternatives that are being raised to replace the Universal Paid Leave law. It's hard enough being a working parent, and I see no reason to make it harder.

When I was interviewing for my last job running a global coalition, I was asked point blank in an interview whether I had children. Now I know that the question is illegal and I didn't have to answer it. But at the time, I was surprised and caught off guard, and so I answered no, because I had not yet had my son. My future boss replied "Oh good, so you'll be able to travel." Nevermind that when I did have a child, my son had an able-bodied father who was perfectly capable of parenting him while I was away for work. The expectation was that I would not be up to the job if I was a mother.

This worried me, but I took the job anyway, telling myself I would fight that battle later. It was a demanding role managing a team and a board scattered across ten time zones. Later that year, my spouse and I decided to have a son. This should be a totally ordinary and happy occasion, right? Hardly. We were under extreme pressure to time my son's birth perfectly: I was advanced maternal age so getting pregnant as soon as possible was the best health decision. But I needed to be eligible for paid leave from my employer, which didn't kick in until 12 months after I started my job.

Added to that, it was one of my core job responsibilities to run my organization's global conference in Dar es Salaam, Tanzania that October, a place pregnant women were not advised to travel because of Zika, but I had to go there to do my job. First trimester exposure to Zika is considered the most risky, but I also wasn't allowed to fly internationally after I was seven months pregnant. So I needed to be in the second trimester at the time of the conference if I was going to minimize the health risks AND keep my job AND qualify for leave. We had only two months to get me pregnant. Those of you who've had children know just how romantic and natural having a huge amount of pressure to procreate can be.

I'm grateful to report that we just managed to hit that crucial window. I was in the second trimester while in Tanzania and I didn't contract the Zika virus. My son was due just one day after the one year employment mark when I would become eligible for parental leave, but God love him, he was born 4 days late. My son is now three and a half years old and happily attending our neighborhood DCPS Pre-K program.

I would fully expect women workers in their thirties like me to be retaliated against in both hiring and firing with an employer mandate model. Without funds to pay for the leave mandate, employers seeking to minimize costs would rationally try to avoid workers they suspect are more likely to use it. Employers and policymakers have a culture of blaming people who bear children, or get sick, or have sick family members. It comes from the misguided belief, especially from male employers or policymakers, that it won't happen to me, or better said, I won't bear the costs if it does. And the result is that, consciously or not, employers make assumptions about female productivity during childbearing years.

These kinds of calculations will increase if employers are required to provide a benefit without funds from an insurance pool and to face a penalty if they do not. And while more men are taking parental leave, prejudice is not generally data-driven, and these assumptions would fall squarely on women.

Discrimination is bad enough, but needing to have a child on your employer's terms can also make it complicated to work and parent in DC. It ruled a major life decision for us, and it undermined pretty big health considerations. Many, many things could have gone wrong in my own story, and I would have been without recourse. The more legal protections that aren't subject to employer discretion, the better off all Washingtonians will be.

I'm fully aware that I'm one of the fortunate ones. My employer provided paid leave, but it's outrageous that I'm one of only 14% of Americans who enjoy that privilege. Everyone in DC should have access to paid leave, and the only credible way to do that is through universal social insurance. Universal programs like Social Security and Medicare have proven more durable and popular with Americans over time than targeted ones because they apply to all of us. Social insurance is what makes paid leave a right, not a privilege for the rich.

Every single employer I have had in the eleven years I have lived in DC has been a small or medium-sized enterprise. They are 99% of employers in DC. Hundreds of them have been pushing for a universal insurance pool model for over two years. So why are the big corporations getting a second chance to weigh in, when they represent only 1% of DC employers? There are about a hundred citizens here today testifying in favor of a law that *was already passed*, and 82% of DC voters supported a more generous version of this law. The Mayor has already begun implementing it. What else do we have to do to be heard as loudly as the Board of Trade?

Testimony of Daniel A. Turner
Founder and CEO of TCG
Supporting the Universal Paid Leave Act
Committee of the Whole, October 10, 2017

Thank you, members of the Council, for the chance to weigh in on these proposed revisions to the Universal Paid Leave Act.

My name is Raphaele Pelaez. I work as the Director of HR for TCG. I'll be reading my boss's testimony in his own words but my voice.

I'm Daniel Turner and I'm the founder and CEO of TCG, a 23-year-old company. TCG is a government contractor with, as of this week, 136 employees. I founded TCG in Ward 3, where I was born and raised, and our current headquarters is in Truxton Circle in Ward 5. Next week we move to our new HQ in Shepherd Park in Ward 4. We are born and bred DC.

I apologize for my inability to attend. Raphaele will be an excellent mouthpiece.

The UPLA probably isn't perfect. But the adjustments proposed will make the act less, not more fair. When TCG puts in a bid, we rely on a network of businesses - small and large - that can provide the customer expertise we lack. The concept that a large business would be held to a different standard than a small one is reasonable, but the concept that a large business could opt out of a rule covering a small business is ridiculous. Large businesses should be held to higher standards, and should be charged more, than small businesses. Economies of scale mean we have more money to spend on improving society. Since our society here in DC correctly believes that it's important to help people help their families, it's clear to me that TCG should be doing its part to help DC help people help their families. Allowing me to opt out of that just because I'm a large business is ludicrous. Why should I - or any large business - get to hold the purse strings for their employees instead of contributing in the same way as other businesses. A shared pool of funds is better for everyone.

Furthermore, 100 people is not really a significant number of people. Even at nearly 150 employees, I would prefer to be part of an insurance pool than to try to go it alone. When we're bigger it might be easier, but I also know that doing so would compromise the community pooling effect, and would hurt smaller businesses. Why would I want to hurt my partners? So I am opposed to removing large employees from DC's paid leave program.

I am also surprised at the council. Why are we delaying the implementation of our new law? My company is going through something of a baby renaissance. We find this happens every 4-5 years or so. We currently have three employees who are pregnant and we've already had 5 parental leaves this year. And Raphaele, who is reading this, has had to take a great deal of time away from work to deal with family issues in the last year. If we had had the UPLA in place, my employees - including Raphaele - might have had more time to spend with their loved ones, and

would have come back to work both more refreshed and more able to focus on being productive. But since we only provide 3 weeks' paid parental leave and no paid family leave, they had to return distracted, exhausted, and missing their needy family members. No offense, Raphaele.

In my perspective, it's important for businesses to recognize the debt we owe to society and to our employees. When we see employees as humans, rather than as resources, we are able to provide better for them and for their families. I don't believe this because I am altruistic. The reality is that happy employees are better employees, and I make more money when my employees are happier and more productive than our competition's employees. Who wants to work with people who are unhappy or distracted or angry? I certainly don't. And neither do my clients. We regularly win recompetes when the client contemplates having to work with a company that doesn't love making their employees happy. It's a small price to pay. And when we're talking about a whole city full of happier people, it'll be that much easier for me to fill the slots we currently have open (well more than 10!).

In conclusion, I ask the council to moderate the efforts of the short-sighted groups that are focusing on the really very small cost to businesses for this legislation. It's worth discussing, certainly, but not worth changing the rules so they apply only to those who choose to make it part of their budgets.

The reality is that none of us knows what will actually happen when this law is in effect. Fortunately, laws aren't written in stone.But don't make risky adjustments to a proven model before anything has started - that's just second-guessing, and this kind of whipsawing is bad for business. How can I budget when I don't know what the rules will be?

Answer: I can't.

Thank you for your time.

Raphaele can try channeling me and can also offer her own HR perspectives, if you have questions.

Hearing on Paid Leave Legislation
October 10, 2017
Testimony by Arthur Smith, Resident of Ward 4

Good Morning,

My name is Arthur Smith and I am here to talk to you today about the revisions that have been proposed to the Universal Paid Leave Act, a piece of legislation that became law this April. The current law will help thousands of people live more stable lives and will help to ensure the safety and well-being of thousands of children and elderly people. It will provide coverage for 65% of DC residents who are working, with individuals eligible to take 2 weeks of paid leave to treat their own health, up to 6 weeks to take care of a sick relative, and up to 8 weeks for new parents.

Let's think about what this means for people.

I have a niece, who recently turned two. Spending time with her, especially when she was in the first few months of her life, I could see that she was completely dependent on others for her survival. There were countless times when her parents and her other family members prevented her from doing something that would cause herself serious harm, like falling down steps, walking into the street, or even rolling off of the couch. In those moments of her life, when she was completely dependent on others to survive, someone was there to protect her and ensure her safety and well-being. Paid leave gives parents the ability to take time off from work to take care of their children in moments like these. When I look at the council members in front of me, I see a group of people who had someone there for them in those moments, when they were most vulnerable, when they were completely dependent on others for survival. I believe that it is a given that if they did not have someone there to prevent them from walking into the street or falling down the stairs, they most certainly would not be in front of us today, voting on whether or not to deny or grant that same right to thousands of children in Washington D.C. In fact, it would be disturbing to think that the Council would even entertain the possibility of denying that right to children. The revisions to the Universal Paid Leave Act that have been proposed would weaken the program, would make the program more expensive for businesses (and it's important to remember that 99% of the businesses in D.C. are small to mid-size businesses), could destabilize the program and make it insolvent, would create more government bureaucracy, and could create financial and legal risks for the city.

The council needs to vote against the proposed bills and implement the current law as quickly as possible so that the next time a 3 month old is about to fall down the stairs, their parent, who was able to stay home and watch them because of the passage of the Universal Paid Leave Act, will be there to hold them back. You all need to do the right thing.

Thank You.

Metropolitan Washington Council, AFL-CIO

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Testimony of Carlos Jimenez,

Executive Director

Public Hearing On:

B22-130, Paid Leave Compensation Act of 2017

B22-133, Universal Paid Leave Compensation for Workers Amendment Act of 2017

B22-302, Large Employer Paid-Leave Compensation Act of 2017

B22-325, Universal Paid Leave Amendment Act of 2017

B22-334, Universal Paid Leave Pay Structure Amendment Act of 2017

Before the Committee of the Whole

Honorable Phil Mendelson, Chair

10 October 2017

Good morning Chairman Mendelson and members of the Council. My name is Carlos Jimenez and I am the Executive Director of the Metropolitan Washington Council, AFL-CIO. We are the regional labor federation comprised of 175 local unions representing over 150,000 members, 40,000 of whom live in the District of Columbia. Our mission is to represent the interest of our members and all working families under our jurisdiction.

Alongside many of you, we were part of the deliberate and intentional process that culminated with the passage of the Universal Paid Leave Act last year. We celebrated that accomplishment because it meant that working people would have the chance to take leave with pay in the event that they or a loved one fell suddenly ill, or access that leave when they welcome a new baby into their lives. I don't think any of us would say that it was a quick process, it was after all over 2 years of discussion and debate, but we worked through it and I think ultimately struck the right balance between the needs of our businesses and workforce.

I will offer from the onset that we do have some concerns about today's hearings. And so first and foremost I would say that it is our hope that whatever discussions and decisions happen here, that they in no way delay the enactment and implementation of paid leave. It's important to remember that at heart, this is about offering real help to very real people who urgently need paid leave. Secondly, I would say that changes to the passed legislation should only be

considered if they improve the delivery and implementation of the existing legislation. Workers in the District deserve paid leave, they deserve it on time, and they deserve it whole and as promised.

To the best of my knowledge and despite their commendable efforts, none of the policies being considered today can guarantee that they don't complicate or create confusion where currently none exists. The current and approved legislation has mechanisms that allow for oversight and enforcement; the proposed bills, particularly the ones with employer mandates, have zero such provisions proactively in place. We know from experience that bad employers will find ways of skirting the law; we have seen this as it relates to wage-theft or access to paid-sick days. Passing policies without giving the Department of Employment Services (DOES) the tools and mechanisms for robust oversight will only make it that much more challenging for residents to access this needed benefit.

But perhaps the biggest concern we have with today's hearing is a fundamental one and one that relates to the legislative process itself. Is the District a place where special interests can undermine or overturn the legislative process? It is one thing for us to establish a program or policy, and then modify or amend the program once it is on its feet and based on real world experience and learning. It's a completely different thing to "repeal and replace it" before it's even off the

ground. We were hard-pressed to find many other examples of this dynamic, and had concerns about this precedent and how it may be utilized in the future.

Are we to glean from this that in the future, if working people have an objection to pro-business, pro-developer, or on any number of Council policies – be they on the environment, health, or safety – that we too could access this power of revision and replacement on critical legislation? Or is this awesome and new power only reserved for powerful special interests? You may think that I'm engaging in hyperbole, but I'd remind you that we're in an environment where big corporate interests are using underhanded tactics in states to overturn pro-worker policies at the local level. It is happening in Arizona, Wisconsin, Ohio – I worked on an effort to raise the minimum wage in St. Louis years ago only to see the State government overturn that raise last year, and when I see this happening in the District, it gives me great pause and concern.

Now I know that what is happening in those other states is completely different from what is happening here. We raised the minimum wage, we've come together to improve unemployment insurance and are working on a host of issues to make our city a better and stronger one, and we passed universal paid family leave. We are here today to ask that we not take actions that could create loopholes or rollback progress. We know that there are many interests this legislative body is responding to and which you are mindful of, and so we wanted to remind

everyone that UPLA is about offering protections for the most special of interests – our working families – and they are the heart of our city.

We urge you to remember that UPLA is something tangible and real that our workforce needs now. We cannot delay, and changes – if any – should only be considered if they can demonstrably improve its delivery and implementation. Thank you for the opportunity to testify this afternoon, we look forward to working with you to keep our great city moving forward.

Testimony by Zach Schalk on behalf of DC for Democracy
before the Committee of the Whole
Regarding revisions to the Universal Paid Leave Act
October 10, 2017

Chairman Mendelson and other Councilmembers, thank you for the opportunity to testify today. My name is Zach Schalk. I am a resident of Columbia Heights in Ward 1 and the Communications Chair for DC for Democracy. We are a progressive, all-volunteer grassroots organization with over 600 members dedicated to promoting the political empowerment of ordinary people throughout the District. We are also active members of the DC Paid Family Leave Coalition, and I'm here today to strongly support the full implementation of the Universal Paid Leave Act that is currently the law of the land.

The legislation that passed last year and was fully funded in the budget passed this spring is vital to creating a just and equitable economy in the District. It rightly empowers workers and families to care for themselves and loved ones with the full confidence provided by a public social insurance program. The current debate over repeal and replace measures bows to pressure from corporate interests while providing cover for those who want to delay the full implementation of the law this body courageously fought for after years of debate. Every day of delay is another day of injustice for working families throughout the District. The question before the Council today is really a simple one: Which side are you on—the side of corporations or the side of working families?

DC for Democracy members represent a diverse cross-section of Washingtonians. We are young people ready to start a family and retirees who may need care from loved ones currently unable to take time off work. We are parents who need to stay home with a sick child and workers who may get sick ourselves. Many of us are fortunate enough to already work for employers who offer some form of paid leave. But many others are stuck in jobs where employers are either unable or unwilling to offer such benefits.

No matter our individual circumstances, we all deserve the peace of mind in knowing we have the full benefits offered by the Universal Paid Leave Act, no matter who employs us. This is why we fought so hard for the bill that was passed, and why we're willing to fight so hard to protect it. This is why we were so proud of the Council when the bill was passed and funded, and why we are appalled we must continue the fight here today. We

expect better from our leaders—especially those who claim to want a more equitable and prosperous Washington, DC.

The effort by corporate interests to undermine the paid leave law—a law that was the product of compromise between these interests and the bill's advocates to begin with—was swift and perplexingly effective from the public's perspective. If we'd hoped the days of backroom deal making that throws working families under the bus were behind us, the ongoing campaign to repeal and replace the UPLA shows that we may be wrong.

But you can still live up to our hopes by doing nothing more than faithfully implementing a law that's already on the books and already has the required funding secured. Stop the delay tactics. Stop the political theater and convoluted repeal and replace schemes. Prove to this community that we made the right choices by electing you to your office, and work to improve the lives of ordinary people living and working in the District instead of kowtowing to the corporate lobby.

DC businesses can afford the small burden of additional taxes needed to pay for this program, but District workers can't afford to live without it. Thank you for your consideration.

Hearing on Paid Leave Legislation
October 10, 2017
Testimony by Julianne Weis, Ward 4 resident

I moved to Washington DC two years ago, with my husband and 18-month old son. I was finishing my PhD, and my husband got a job offer in the District, so we relocated from Germany. We were planning on having a second child soon. I knew that in the types of jobs I would apply for, I would have to return to work almost immediately after birth. That seemed completely unfathomable to me: the process of healing after childbirth is long, not to mention the strain of looking after a newborn day and night, with a toddler as well. But because I had recently moved to the country and I was applying for entry-level positions, I did not believe that I would have the leeway to negotiate adequate maternity leave with a new employer, or accrue extra vacation and sick days as so many parents are forced to do. Facing this dilemma, I decided to take myself completely out of the job market. My second daughter is now 11 months, and I am returning to work before the end of the year. But this large gap in my economic productivity has represented a great sacrifice for my family, both in the immediate financial terms, and also in my long-term career prospect. With a more limited income, and my lack of engagement in the professional world, my family has also contributed much less to the local economy than we could have if my husband and I had both been employed.

My experience confirms that removing women from the workplace because of poor maternity leave options is both socially irresponsible and economically unwise. I would have happily engaged myself in a job and career had I known I would be guaranteed a healthy, reasonable leave to recover after the birth of my daughter. But left in the vulnerable position of having to negotiate imminent maternity leave with a new employer, I chose to temporarily leave the workplace. DC was paving the way for the country in passing the paid leave bill last year by passing fair and progressive paid leave legislation. I do not understand why many of its important provisions are up for debate yet again, a year later.

Hearing on Paid Leave Legislation

October 10, 2017

Testimony of Carrmen Wrenn, Ward 4 resident

Good Morning/Afternoon/Evening.

My name is Carrmen Wrenn and I have been a proud resident of Ward 4 since May of 2010. I support implementing the Universal Paid Leave Act as it stands because my family has experienced circumstances twice in the last six years where we would have greatly benefitted from the policy.

In November of 2011, my then boyfriend (now husband) was diagnosed with a malignant Stage 3 Oligodendroglioma in the right frontal lobe of his brain. His family was unable to help him due to location and mental health issues. I was newly hired at my firm and had neither accrued leave nor was I eligible for FMLA. If I hadn't had an extremely understanding supervisor, I never would have been able to cobble together the combination of telework and alternate work hours that allowed me the time to accompany Darren to the multiple doctor's visits his illness required.

In 2015, when I was pregnant with our son, I was delighted to learn that my company offered 12 weeks of paid parental leave. Darren was not so lucky. Despite having a job with otherwise generous benefits, my husband learned that he would have to use his accrued leave if he wanted to take time off after the birth. We agreed that he should not use all of his leave as we knew he would need to reserve some for the multiple doctor's appointments that managing his cancer still requires.

Two days after our son was born, I had to go to the emergency room to address complications from the delivery. After my emergency surgery and the unexpected hospital stay, my husband needed to extend his leave. He was able to dip into his sick leave, but did not have many hours to spare. Ultimately, he ended up having to return to work before I had fully recovered.

The irony is that we know we are extremely lucky. At no point during either of our respective ordeals did we have to worry about keeping our jobs or having enough time to recover. It is baffling to me that most of my fellow citizens do not have this same benefit. No one should have to choose between providing for their family and caring for their family. And no one's ability to take time off to care for sick family or a new child should come down to the luck of the draw and depend on whether you just happen to have an understanding boss or a fair and progressive-minded employer. I urge you to keep stories like mine in mind when considering the newly proposed changes to the DC Universal Paid Leave Act.

Thank you for hearing my testimony.

DC Council Hearing on Paid Family and Medical Leave

October 10, 2017

Oral Testimony by Sarah Fleisch Fink, Director Workplace Policy and Senior Counsel, National Partnership for Women & Families

- Good afternoon Chairman Mendelson and members of the Council.

- My name is Sarah Fleisch Fink and I am the Director of Workplace Policy at the National Partnership for Women & Families and a DC resident in Ward 3.

- The National Partnership is a national nonprofit, nonpartisan advocacy organization based here in Washington, D.C. For more than four decades, we have fought for every major policy advance that has helped women and families.

- I provide policy, technical and drafting expertise on paid family and medical leave to policy makers and legislators across the country. I provided policy advice to the Washington state paid leave advocates, the NY paid family leave campaign, and to a number of you and your staffs on paid leave and the DC Universal Paid Leave Act. My colleagues and I have researched and written on the existing paid leave programs in California, Rhode Island and New Jersey. I currently serve on the MD Paid Leave Task Force.

- I am testifying today against the changes proposed to the Universal Paid Leave Act, which would make it more complex to implement and administer and would weaken

its protections.

- First, several of the bills you are hearing today would allow for an employer mandate by which employers could opt out of D.C.'s paid leave program to administer benefits on their own.

- Doing this creates a bifurcated system that requires additional government administration, staffing and oversight than if one paid leave program is used by all workers. Additional outreach and education materials need to be created and disseminated to explain the employer mandate and the government program; additional enforcement mechanisms are needed to enforce both programs; and additional infrastructure is needed for appeals from denials or claims of retaliation by employees subject to the employer mandate. These are just a few examples. Notably, Rhode Island, the state most similar to D.C. in terms of size that has a paid leave program, does not allow employers to opt out.

- In 2015 and 2016, I was part of a team that researched and prepared a report about implementing paid family and medical leave insurance for the state of Connecticut. Members of the team interviewed paid leave program administrators in California and Rhode Island to help Connecticut learn about program design. The authors of the report - and the Voluntary Plan Administration Section within California's Employment Development Department - which administers California's paid leave program - recommended that Connecticut ***not*** allow opt-outs under a voluntary plan program stating, "This would create additional administrative functions within the

CT-FMLI program and would create unnecessary burdens within what would already be a new state program." Let's be clear that this is the state agency that administers paid leave in California - the state with the longest standing paid leave program - advising another state ***not*** to start their program with an employer mandate. Rhode Island's program administrators have expressed a similar view.

- Administering both an employer mandate and a paid leave fund through the state is complex. Employers who chose the employer mandate or voluntary plan in California instead of being included in the paid leave fund must follow stringent requirements. To give you a sense, the California ***Employers'*** Guide to Voluntary Plan Procedures is a nearly 60-page document that addresses, among other topics, detailed procedures for getting a voluntary plan approved, requirements for the trust fund, required employer reports, tax reports, security deposits, procedures for disputes, medical examinations, calculation and denial of benefits and appeals.

- Allowing for an "employer mandate" or "voluntary plan" is not simple. It is not simple to implement, administer or run two programs effectively. There is no policy reason to allow for an employer mandate in addition to the D.C. paid leave program that the Universal Paid Leave Act already established, and it will make getting workers access to paid leave when they need it more difficult. An employer mandate that is established without the type of procedures California has - including significant resources for enforcement - is not going to succeed in getting benefits to workers who need them and qualify for them.

- Second, the Universal Paid Leave Amendment Act, introduced by Councilmember Cheh, which provides that employees and employers would split the contribution to the paid leave fund is problematic. Over two years ago, when I first started working with several people on your staffs, and advocates to develop a paid leave policy for DC and a draft bill, we considered providing for a joint employer/employee contribution. However, after consulting with legal experts and considering the pros and cons of doing so, we decided it was in the best interest of establishing paid leave in D.C. effectively to have an employer-only contribution.

- As you know, collecting contributions from non-residents who live in MD and VA and work in D.C. would almost certainly invite a legal challenge that could take years to resolve. It would also likely be challenged during the required congressional review period from elected leaders from MD or VA. At minimum, this amendment would significantly slow implementation of paid leave for D.C. workers.

- Nearly a year ago, you passed the Universal Paid Leave Act and emerged as a leader on paid leave. You did so after over a year of research, discussions, and analysis by various stakeholders. You held three hearings. And, ultimately, the bill you passed was a compromise. It provides for significantly fewer weeks than the original bill, is less expensive for employers, cuts coverage for D.C. residents working outside of D.C., reduced funding for education, and has lesser job protections for workers. The bill you passed moved forward from the Mayor, through the congressional review period and it became law in April. We should be implementing that law right now

and not revisiting a program that will work for D.C. workers.

- Thank you for the opportunity to testify and I'm happy to answer any questions.

TESTIMONY IN OPPOSITION TO THE PROPOSED AMENDMENTS TO THE UNIVERSAL PAID LEAVE ACT OF 2015

Submitted to the Council of the District of Columbia, Committee of the Whole
October 10, 2017

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy organization based in Washington, D.C. For more than 45 years, we have fought for every major policy advance that has helped women and families. We promote fairness in the workplace, reproductive health and rights, access to quality, affordable health care, and policies that help women and men meet the dual demands of their jobs and families. We appreciate the opportunity to submit testimony regarding proposed changes to the Universal Paid Leave Act of 2015 (UPLA), the District of Columbia's groundbreaking paid family and medical leave law.

At some point, nearly everyone will need to take time away from work to deal with a serious personal or family illness, or to care for a new child. But nationwide, only 15 percent of workers have access to paid family leave through their employers, and less than 40 percent have access to personal medical leave through employer-provided short-term disability insurance.[1] Without the ability to receive income, many workers must forgo taking leave or put their economic stability in jeopardy in order to care for a family member, a new child or their own health.

The District of Columbia emerged as a leader on paid family and medical leave when it passed UPLA last year. However, the proposed amendments would undermine what the Council achieved for D.C. workers. **We oppose B22-130, the Paid Leave Compensation Act of 2017; B22-133, the Universal Paid Leave Compensation for Workers Amendment Act of 2017; B22-302, the Large Employer Paid-Leave Compensation Act of 2017; B22-325, the Universal Paid Leave Amendment Act of 2017; and B22-334, the Universal Paid Leave Pay Structure Amendment Act of 2017.** These bills would weaken provisions of UPLA that are critical to the success of the D.C. paid leave program.

I. The "opt-out" proposed in several of the bills would make administration of paid leave more difficult for the government and employers.

The Paid Leave Compensation Act, Universal Paid Leave Compensation for Workers Amendment Act, Large Employer Paid-Leave Compensation Act and Universal Paid Leave Pay Structure Amendment Act would allow larger employers to opt out of the District-wide program to administer benefits on their own through an employer mandate, either by self-insuring or by purchasing a private insurance policy. Doing so would create a bifurcated system in which the government has to administer paid leave through the District-wide program *and* enforce the employer mandate for employers who opt out. This requires additional government administration, staffing and oversight than one paid leave program encompassing all workers. The government would be obligated to create and disseminate additional outreach and education materials to explain the employer mandate and the government program; utilize additional enforcement mechanisms to enforce both programs; and create additional infrastructure for appeals from denials or claims of retaliation by

employees subject to the employer mandate. In all likelihood, stretching agency resources across two very different but related systems would only make it more difficult for workers to obtain benefits when they need them the most.

States that have already implemented paid leave agree. In 2015 and 2016, the National Partnership was part of a team that interviewed program administrators in California and Rhode Island as part of a report about implementing paid leave in Connecticut. Program administrators in California's Employment Development Department – including those who administer the Voluntary Plan Administration Section – recommended that Connecticut not allow opt-outs under a voluntary plan program, stating, "[t]his would create additional administrative functions within the CT-FMLI program and would create unnecessary burdens within what would already be a new state program."[2] As an example of the complexity, California's guidance for employers who choose the employer mandate or voluntary plan is a nearly 60-page document addressing requirements these employers must meet.[3] Rhode Island's program administrators also advised against an opt-out, and the state – which is the closest to D.C. in size out of the paid leave states – does not allow employers to opt out.

The proposed opt-out system would also likely make paid leave more expensive overall. UPLA creates an insurance-based system that combines small contributions from a large pool of employers, making leave more affordable for employers by spreading costs. A bifurcated system means that fewer employers would be in the pool, which could make it more expensive. Meanwhile, individual employers who opt out and self-insure have to bear the entire cost of their employees' paid leave. These costs are also largely unknown and hard to predict, meaning that employers who opt out would have a difficult time anticipating their costs from year to year.

II. Some of the proposed amendments cover fewer people and provide less comprehensive benefits to workers than UPLA.

Two of the proposed amendment bills – the Paid Leave Compensation Act and the Large Employer Paid-Leave Compensation Act – would make the law applicable only to larger employers. The Paid Leave Compensation Act excludes employers with fewer than five employees, as well as self-employed individuals. The Large Employer Paid-Leave Compensation Act goes even further, exempting employers with fewer than 25 employees, self-employed persons, and any businesses that can demonstrate a "financial or operational" hardship.

Excluding businesses and self-employed persons would significantly undermine the purpose of the law. Workers at smaller businesses have the same family and medical needs as workers at larger businesses, but are significantly less likely to have access to paid leave through their employers. Smaller businesses already face a competitive disadvantage in their ability to attract employees because they are less able to afford paid leave benefits on their own. These are the employers who most need a District-wide fund to provide paid leave to workers.

In addition to the coverage restrictions, two bills would limit employees' ability to take certain amounts or types of leave. The Paid Leave Compensation Act and Universal Paid

Leave Compensation for Workers Amendment Act would only allow eligible workers to take one leave per year, meaning that people with multiple qualifying events in a year, or people with recurring short-term medical needs that require intermittent leave, could not take the time off that they need. The Large Employer Paid-Leave Compensation Act eliminates the original law's provision of two weeks of leave for employees to deal with their own serious health conditions. Workers with disabilities would have to forgo wages in order to deal with their own health needs, even though they would receive benefits to care for a family member with the exact same condition. And because women still bear the lion's share of family caregiving responsibilities,[4] limiting leave to family caregiving could lead to sex discrimination in hiring.

III. The Universal Paid Leave Compensation for Workers Amendment Act would make paid leave less accessible to low-wage workers over time.

Most of the bills maintain the original law's benefit structure, setting the maximum weekly benefit amount at $1,000, to be adjusted annually for inflation. This structure makes leave more affordable for the lowest-paid workers in the District because it would keep benefits at a level that reflects cost-of-living increases over time. By contrast, the Universal Paid Leave Compensation for Workers Amendment Act would not index the cap to inflation, meaning that it would remain at $1,000 long after that amount becomes insufficient to support a family.

IV. The employee contribution proposed in the Universal Paid Leave Amendment Act would likely invite legal challenges to the law.

Although most of the bills under discussion would, like UPLA, finance the paid leave fund by collecting payroll contributions from employers, the Universal Paid Leave Amendment Act would require contributions from both employers *and* employees. However, collecting contributions from non-D.C. residents would almost certainly trigger a legal challenge to the law that could take years to resolve. Congressmembers from Maryland and Virginia may also attempt to delay or defeat such a law during the required congressional review period. In short, the amendment would at best significantly delay the implementation of paid leave for D.C. workers.

* * *

The Council engaged in a long and thorough deliberative process before passing UPLA, holding multiple hearings and soliciting input from a range of stakeholders. The resulting law included many compromises and sacrifices, ultimately balancing the goals of making leave affordable for the workers who need it most, minimizing burdens on employers and maintaining long-term solvency. The amendments under consideration would undermine the program the Council passed. **The National Partnership for Women & Families urges the Council not to adopt these misguided amendments.** We appreciate your consideration, and we look forward to continuing to work with you to assure all D.C. workers have access to paid family and medical leave. If you have any questions regarding this testimony, please contact Sarah Fleisch Fink, Director of Workplace Policy and Senior Counsel (sfleischfink@nationalpartnership.org) at the National Partnership for Women & Families at 202-986-2600.

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Hearing on Paid Leave Legislation
October 10, 2017
Testimony of Antara Dutta, Ward 6 Resident

Good morning, and thank you for allowing me to testify here today. My name is Antara Dutta and I live in Ward 6.

I have been a longtime supporter of paid family leave generally and in particular, of the Universal Paid Leave Act (UPLA) that the DC Council passed last year. But as several Councilmembers have recently wavered in their support for the original legislation, I have been left feeling disappointed and frustrated.

For quite some time now, many Council members have, on the one hand, announced their public support for the *benefits* of the original legislation, but on the other hand, have walked away from the only option on the table that is actually going to deliver those benefits to DC workers. The benefits of any social program are only guaranteed when the program is financed, administered and enforced appropriately. In the case of paid family leave, the social insurance model that was the basis for the original legislation provides a fair and progressive paid family leave solution for DC workers. A social insurance model allows smaller employers to better manage the financial risks of having to pay for long absences by employees. It also protects workers because it requires that employers pay a certain percentage of their payroll into a social fund every year and a neutral third party – the DC government – administer paid family leave to qualifying employees. An employer mandate does the opposite – it allows businesses to withhold paid leave from their employees, to discriminate in hiring and retaliate against workers who demand paid family leave.

Let's consider what we know and what that means for paid family leave in DC. We know that many large businesses do not want to provide paid family leave to their employees. That's one reason why we need a law to ensure that employees receive these benefits. We know that an employer mandate shifts the onus to vulnerable workers to have to ask their employers for paid leave. We know that employers can and do retaliate against workers when they ask for such benefits. We also know that employers have an incentive to discriminate in hiring when the burden of providing and administering paid family leave is handed over to them.

Given these facts, how can some of you claim to be committed to paid family leave but throw your support behind a version of the program that is not likely to deliver such leave to many DC workers? And what do you intend to do to ensure that employers do not discriminate in hiring, do not deny their workers benefits, and do not retaliate against their workers when they ask for paid leave? The Council is letting down DC workers if it fails to answer these questions and to support a paid family leave law that will actually deliver what it promises on paper.

I strongly urge the Council the reject the alternative proposals to UPLA and to return to supporting UPLA's original provisions.

1199SEIU
United Healthcare Workers East

Testimony of Ricarra Jones, 1199SEIU

Opposed to revisions to Universal Paid Family Leave

District of Columbia Committee of the Whole:

1199SEIU is the largest healthcare union in the country. We represent 2,000 nursing home and hospital workers in the District of Columbia that provide quality care at every stage of the healthcare delivery process. As healthcare workers, we often provide care for others but are unable to care for ourselves or loved ones. This is why we supported the Universal Paid Leave Act and are very concerned about the threats to repeal or replace the legislation.

We are extremely concerned about the possibility of an employer mandate due to the numerous instances where our members have been denied leave without cause. This mandate would allow employers to control their employees' access to leave and make unfair determinations based on company finances, staffing, or personal relationships. We know firsthand, rather than simply being able to put in a leave request with the District of Columbia government, workers would have to go through their employer making it more difficult for employees to access leave benefits.

We have numerous instances of employees being denied leave, for example, David has worked as a psychiatric technician at a hospital in the District of Columbia for 10 years. Recently, his mother was diagnosed with colon cancer and had to get surgery. After her surgery, David requested unpaid Family Medical Leave to care for his mother because she was unable to feed herself and needed assistance using the bathroom. Although, his request was submitted in a timely manner, he was denied by the hospital because they said they were short staffed. He was instructed to find someone to cover his shifts, although he tried to find coverage, he was unsuccessful and none of his co- workers could take his shift. At this point, David's only option was to call out to care for his mother and jeopardize his job or go to work and leave her alone.

As a result of being denied time off, David was unable to care for his sick mother and had to rely on other family members that also had difficulty taking off work. There were plenty of times that his mother was left alone and had to take a chance of going to the bathroom by herself and could have fallen and severely injured herself. David was so concerned about his mother at times

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that he contemplated quitting his job to care for her because he was not allowed the time off and believed he had no other option.

Moreover, when this program is managed by the employer, they reserve the right to deny employees leave without good reason and even retaliate against employees who use their time. If employers are refusing to grant unpaid leave, it is unlikely they will grant paid leave if it is up to their discretion and not properly enforced.

David represents hundreds of healthcare workers that have been denied time off to care for their loved ones. He had to make a choice no one should have to make between caring for a family member and losing your job.

It is clear, we are in a caregiving crisis, tens of thousands of District of Columbia residents are unable to care for their families and every day we delay the implementation of the Universal Paid Family Leave, we leave someone like David's mother alone.

In conclusion, employer mandate proposals are problematic and make leave more expensive for businesses, jeopardize solvency of the District's social insurance pool, and create intimidating dynamics for workers who need to access leave. We strongly believe caregivers, not corporate management, know what's best for their families. **The hardworking healthcare workers of 1199SEIU oppose any efforts to delay or weaken the Universal paid leave act.**

SMALL BUSINESS MAJORITY

STATEMENT FOR THE RECORD

BEFORE THE COUNCIL OF THE DISTRICT OF COLUMBIA

ON THE

COMMITTEE OF THE WHOLE

PAID LEAVE PUBLIC HEARING

October 10, 2017

Erik Rettig

Small Business Majority

Chairman Mendelson and members of the Council. Thank you for having me here today to discuss the importance of paid family and medical leave to small business owners and their employees.

The Universal Paid Leave Act establishes a paid leave system in the District of Columbia that will provide up to eight weeks of paid family and medical leave to allow employees to care for a newborn baby, six to provide care for a family member or two to recuperate themselves from a serious illness. The program will benefit businesses by lowering turnover, boosting productivity, and enhancing employee morale. This is why it's critical that the City move forward with implementing this law rather than the Council considering amendments that would undermine the benefits it will bring to the District's small businesses.

Small businesses are supportive of paid family leave insurance pools like the one created by the Universal Paid Leave Act, which they realize are the most affordable way for their companies to provide paid leave to their employees. Scientific opinion polling conducted by Small Business Majority in March found a majority of small employers support state-administered paid family and medical leave insurance programs. Additionally, 7 in 10 small businesses already have a formal or informal policy in place when it comes to family leave—time an employee would take to care for a family member with a serious illness or caregiving need. Of those who do offer a family leave policy, 61% offer full or partial pay and 22% offer pay depending on the employee. Additionally, many small businesses have some of parental leave policy in place to allow employees to care for a new child. Twenty-six percent offer maternity leave, and nearly 4 in 10 (37%) offer both maternity and paternity leave.

Some have claimed that guaranteed paid leave programs are harmful for small businesses because they cannot afford to temporarily replace an employee while they are on leave. However, our research shows small businesses understand the

need for their employees to have family and medical leave options at their disposal should they need to take them, and that this does not lead to a drastic decline in productivity. Fifty-six percent of small businesses say they simply reassign an employee's workload to another employee temporarily. Only 14% say they hire some sort of replacement.

While the research shows small businesses support paid leave policies and that many already have some sort of policy in place, it's important to note that I've heard support for this policy directly in my conversations with small business owners throughout the District. Many small business owners think of their employees as family, so it's no surprise they support paid family and medical leave proposals. Plus, they allow them to offer an important benefit to their employees that they otherwise would struggle to afford. This levels the playing field for small businesses by allowing them to compete with larger employers that are more likely to have the resources to offer robust paid family and medical leave benefits.

Paid leave insurance pools enable small business owners to foster a better workforce while protecting their workers and their bottom lines. The Universal Paid Leave Act provides these benefits to small business employees without creating the complicated administrative burdens on employers that some of the amendments under consideration today would create. That's why we are concerned about some of the proposals under consideration today that would allow the insurance program to continue but some permit some employers to be part of a different system. Allowing some employers to opt-out would shrink the insurance pool and potentially make it harder for small businesses to benefit from the program, while also creating extra enforcement issues for both the City and participating employers.

We hope the Council will consider the risks of these proposals and their potential impact on small businesses and begin implementing the Universal Paid Leave Act as it currently stands.

Thank you.

Erik Rettig, Director Mid-Atlantic
Small Business Majority

Hearing on Paid Leave Testimony
October 10, 2017
Doug Foote, Ward 1 Resident

Good evening, Councilmembers.

My name is Doug Foote. I live and work in Ward 1, and I'm here to strongly oppose the repeal-and-replace measures for the Universal Paid Leave Act of 2016 under consideration today.

In February of 2016, I was in this room, at this table, to testify in favor of the UPLA. I talked about the 10 weeks my mother spent in the hospital due to a pregnancy complication -- and how paid family leave could have helped our family. I was one of more than 100 DC residents from all walks of life who testified in favor of the UPLA during that 12 hour hearing.

The bill that passed that December, after over 14 months of negotiation, was a compromise. It included roughly HALF the length of leave and a little more than HALF the payment mechanism originally proposed.

I was still incredibly proud of our city and our council when UPLA passed.

But let's be clear. The law we passed was HALVED not because doctors said the leave was too generous for a child's health. Not because residents said "we want less time with our sick parents." Not because DC small business owners said "we'd rather have a mandate."

By all accounts, the law was halved because of concerns from what we call the business "community": groups like the DC Chamber of Commerce, the Restaurant Association of Metropolitan Washington. Groups that represent the narrow interests of a slice of large businesses in the city. They don't represent the small business owners I testified alongside back in February 2016, people who would benefit greatly from a social insurance program and will get hurt by a mandate or a split bill.

I urge the members of the Council to remember that this law has gone through more than its fair share of scrutiny and compromising. I urge you to implement the law as is, and give relief -- not a generous luxury, but relief -- to your constituents; the thousands of DC residents who are unable to both earn enough to survive AND care for their children or elderly relatives.

Do not change the UPLA. The people of this city have already compromised enough.

Monica Weeks, Ward 4 Resident
DC Council Committee of the Whole
Hearing on Paid Family and Medical Leave Insurance
October 10, 2017

Hello, my name is Monica Weeks and I am testifying today in support of the Universal Paid Leave Act. I am a small business owner here in Washington, DC and I am also the President of the DC Chapter of the National Organization for Women. I have lived in DC for 5 years and live in Ward 4 in Fort Totten.

Today my testimony will focus on my health and why having a paid family leave act is necessary for our community and for small businesses. I have Crohn's Disease, an autoimmune deficiency disorder and require infusions every 8 weeks. These infusions are costly and I am fortunate enough to have private health insurance through my husband's union's insurance. These infusions are at no cost to me now but if I did not have health insurance, I would be required to spend thousands of dollars on each infusion for this necessary medication.

There have been several times in my life since I was 19 years old that I have needed to leave work for extended periods of time. I have had to have inpatient surgeries called fistulectomies to remove big cysts from my body. These surgeries usually leave me out of commission for a few weeks to a month at a time. Luckily, I am in remission and my infusions make sure to keep my fistulas at bay.

I am lucky though. I have always had a job that has afforded me to leave work and make sure my job is secured. But at a cost. The last time this happened, I was required to take short term disability which only paid me 70% of my salary. Once again, I was fortunate to have savings and a partner who could help with the bills if need be.

Now I own my own business and would like to grow it someday. I believe in providing healthcare for all, especially one's employees. I want to make sure that if one day I employ someone, that they are happy and healthy and able to perform their job well. Which is why we need a universal paid family leave act.

The UPLA utilizes a social insurance approach which allows small contributions from many small businesses to create a large pool of funds shared by all. I can't afford the "repeal and replace" model where some or all employers are expected to individually pay for the leave. Whether the company pays out of pocket directly or buys yet-unproven private market insurance it becomes more of a risky business than it

needs to be. Even if my smaller business remained part of an insurance pool, I worry about making the pool smaller if other employers leave it. What's the impact if the pool becomes a puddle? What does that do for sustainability? we know social insurance works. Social insurance is a better model because it is comprehensive, predictable, and low cost.

Social insurance is also preferred because it relieves businesses from administering the benefits. Under UPLA, the employer does not need to create benefits administration systems. This is a huge benefit to me since I am a one-person team at the moment and would have to take this work on myself if I hired one more person.

We need the Universal Paid Family Leave Act and we need it now. We must make our citizens health a priority and we can start with this bill. Thank you for your time.

Hearing on Paid Leave Legislation
Testimony for DC City Council, 10/10/17
Elliott Becker, Ward 5 Resident

Council members,

Thank you for taking the time to hear my testimony. Like most people in our city, I have my own particular family concerns. My younger brother, Gabriel, is autistic, and requires full-time supervision. Luckily, he is well taken care of in the Benedictine School in Maryland. Nevertheless, as my parents age and I become his guardian, I will likely need to take care of him, both for predictable things, like holidays, and unpredictable things, like emergencies.

Thus it is important to me that Universal Paid Family and Medical Leave is available at any job I do in D.C. I was born in at Sibley hospital and have lived in or near D.C. for most of my life. The best way to make sure that the paid family leave I need to care for my brother is available is to implement the paid leave bill that this Council already passed. Citizens of D.C. worked hard to make sure that paid family leave was available to all citizens, and the Council passed a bill that ensured it.

Now powerful moneyed interests in DC have coalesced in an attempt to undermine one of the best paid family leave laws in the country. All of the bills under consideration today merely serve to undermine a carefully-crafted, democratically passed bill. The Universal Paid Family Bill was extensively considered and negotiated. Now is the time to implement it so that people can start using the benefits provided as soon as possible. Every day that the law is delayed is a day that DC residents who need family leave won't have it. It is the Council's duty to provide those benefits, not kowtow to wealthy business interests.

The bills up for consideration to amend paid family leave offer an excellent opportunity for council members to show whether they support the corporate moneyed interests who support the repeal and replace bills, or whether they support the everyday working people who support the Universal Paid Family Leave law as it currently exists. The people of DC will remember your votes.

October 10, 2017
Submitted to the Committee of the Whole
Testimony of Sabina Henneberg, Ward 2 resident
in opposition to all proposed changes to the Universal Paid Leave Act

Chairman Mendelson and Councilmembers:

Thank you for the opportunity to testify before you today. My name is Sabina Henneberg, and I'm a resident of Ward 2. I am of child-bearing age and have two rapidly aging parents. I may also face a medical emergency myself—any one of us might. That's why I'm here in strong support of the Universal Paid Leave Act: because no one should have to go without paid leave coverage, and the only way to ensure that is through a social insurance system.

I finished my Ph.D. this May, and have not yet secured a full-time job. I am surviving on loans, research grants, and two part-time jobs: one as an adjunct faculty with American University and the other as a host in a D.C. restaurant. I don't qualify for paid leave benefits through either. The UPLA would ensure that I'd be able to take time off when I need it without sacrificing my livelihood. By contrast, alternative proposals set up a structure whereby it is cheaper for the boss to fire an employee than to pay for my leave.

Through this part-time work I have met many other hard-working D.C. employees who face similar challenges that would be addressed by the UPLA. Many speak little English and would likely need an employee education program to help them understand their benefits, which the UPLA mandates and finances, but not all the alternatives do. Also, because it has an effective mechanism to ensure compliance with the law, the UPLA would give every D.C. worker guaranteed equal access to quality paid leave coverage. I fear that without those provisions, my fellow restaurant workers, who already face job insecurity, would be at risk of retaliation from employers.

I've witnessed what can happen when paid leave benefits are not applied universally, like they would be in practice under an employer mandate. In my last full-time job, when a colleague told her boss she was pregnant, her boss responded, "Now you're no use to me." Naturally, she began to worry about her job security, and other employees feared asking for the leave they required. I therefore felt a sense of enhanced security when the UPLA finally passed, but now it is already under threat.

The UPLA in its current form would make D.C. workers of all types more productive by keeping their families healthy and thriving. It does not punish young professionals like me who are still getting established, or part-time and hourly workers, for their personal and family medical needs. When I moved to D.C. as a graduate student 10 years ago, I believed it would be a place where I could comfortably build a family and where all residents would be treated fairly. Now, I'm not so sure.

Heather Boushey, Executive Director and Chief Economist, Washington Center for Equitable Growth

Resident, Ward 2

Testimony Against Repeal and Replace of DC's Universal Paid Leave Act

Council of the Whole Hearing October 10, 2017

Thank you, Chairman Mendelson, for calling this hearing. And thank you to the DC Council for having me here to speak today. It's a privilege to be here. My name is Heather Boushey and I am the Executive Director and Chief Economist of the Washington Center for Equitable Growth. We are a research and grantmaking organization focused on whether and how structural changes in the economy, particularly related to economic inequality, affect economic growth.

I have extensively studied the ways in which work-life conflict affects economic opportunity and the economy writ-large. And what I--and other researchers--have found is that policies such as paid leave not only positively affect the health and well-being of children and families, but also workers' ability to participate in the labor market. Paid leave can have positive effects on economic growth overall.[1]

Of course, not all paid leave policies are created equal and ill-designed policies can sometimes unintentionally harm the people they are trying to help. This can have effects on the overall economy as well. That is why I am here to discourage the Council from repealing and replacing DC's Universal Paid Leave Act (UPLA)with any of the proposed alternatives.

These alternative measures threaten UPLA's government-administered inclusive social insurance approach. D.C.'s new law is simple and straightforward: the government collects the funds from employers and disperses the benefits to employees. Under the alternatives, employers hold the purse strings and the benefits. The alternative proposals vary from a total repeal of the social insurance pool to a partial repeal in which some unknown number of employers can opt out of the pool

As an economist, I am interested in policies that are evidence-based. Through the experiences of California, New Jersey, and Rhode Island, we know that paid leave policies funded through social insurance programs are a tested and successful model for any government—state or national—considering a paid family leave program. The alternate proposals being put forth today are not fully thought out or based on the available evidence, and not only may harm workers, but also be problematic for businesses and the economy as well.

The alternative financing schemes would be detrimental for three reasons: It would put employers at risk; it raises the likelihood of denial of benefits, retaliation, and discrimination; and it could have short- and long-term economic effects.

First, costs for leave are unpredictable from year-to-year, and covering employees' salaries while they are on leave for an extended period of time could be harmful for some companies, especially small businesses and those with a modest annual profit. Paying workers out of a government-administered fund, as the Universal Paid Leave Act does, means that businesses do not take a significant financial hit if their employees need to access these benefits. In fact, surveys of employers in California and New Jersey, both of which have universal paid leave programs paid for through a social insurance program, overwhelmingly report that employers have found that paid leave has neutral or positive effects on turnover, profitability, and morale.[2]

Second, employers who are directly responsible for covering the salaries of their employees on leave have a financial incentive to limit how much or whether these workers access these benefits. This could lead employers to illegally deny benefits or retaliate against their employees who take leave in the form of reduced wages, schedule changes, or demotions.[3] Research shows that employer-mandated leave can also result in increased discrimination. If an employer believes that their worker is more likely to use these benefits, especially women of a certain age, they may be less likely to hire or promote them.[4] Under the UPLA, a neutral third party is responsible for approving or denying a leave request. And, while some policymakers have expressed concern about employees abusing this policy, a survey of employers in New Jersey, which has its own paid family leave program, found that no employers were aware of any instances of abuse.[5]

Third, these potential outcomes could have short-and long-term economic effects. Women are more important than ever in maintaining families' economic security, and research shows that paid leave helps women stay in the labor force and earn more over a lifetime.[6] Women's participation in the labor force also helps boost economic growth overall, which is concerning considering that U.S. female labor force participation has stalled in recent years compared to other OECD countries. Research shows that almost a third of this gap is due to a lack of family friendly policies such as paid leave.[7] There is reason to believe that the UPLA would have a positive effect on these issues: The DC Council's Office of the Budget Director issued an "Economic and Policy Impact

Statement" in December 2016 that included a projective positive impact for DC on women's labor force participation.[8]

My views on these issues are shared with those from many different professional and ideological backgrounds. I recently took part in the bipartisan AEI-Brookings Working Group on Paid Family Leave and, while the group disagreed on many issues, there was unanimous agreement that a successful policy should not require employers to directly finance their employees' paid leave for the reasons outlined above.[9] To boost DC families' economic well-being and strengthen our economy, you should not repeal and replace the financing mechanism in place in the Universal Paid Leave Act.

Thank you for allowing me the opportunity to speak and I look forward to your questions.

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[1] Heather Boushey, "To Grow Our Economy, Start with Paid Leave," *Cato Institute*, November 14, 2014, https://www.cato.org/publications/cato-online-forum/grow-our-economy-start-paid-leave.

[2] Eileen Appelbaum and Ruth Milkman, "Leaves That Pay: Employer and Worker Experiences with Paid Family Leave in California" (Washington, DC: Center for Economic and Policy Research, 2011), http://www.cepr.net/documents/publications/paid-family-leave-1-2011.pdf.;Sharon Lerner and Eileen Appelbaum, "Business As Usual : New Jersey Employers' Experiences with Family Leave Insurance," *CEPR*, June 2014, http://www.cepr.net/documents/nj-fli-2014-06.pdf.

[3] Heather Boushey, *Finding Time: The Economics of Work-Life Conflict* (Cambridge, Mass.; London: Harvard University Press, 2016), http://www.hup.harvard.edu/catalog.php?isbn=9780674660168.

[4] Mallika Thomas, "The Impact of Mandated Maternity Benefits on the Gender Differential in Promotions: Examining the Role of Adverse Selection," *Institute for Compensation Studies*, September 6, 2016, http://digitalcommons.ilr.cornell.edu/ics/16.

[5] Lerner and Appelbaum, "Business As Usual : New Jersey Employers' Experiences with Family Leave Insurance," *CEPR*, June 2014, http://www.cepr.net/documents/nj-fli-2014-06.pdf.

[6] Appelbaum and Milkman, "Leaves That Pay: Employer and Worker Experiences with Paid Family Leave in California."

[7] Francine D. Blau and Lawrence M. Kahn, "Female Labor Supply: Why Is the United States Falling Behind?," *The American Economic Review* 103, no. 3 (2013): 251–56.

[8] Office of the Budget Director, "Economic and Policy Impact Statement: Universal Paid Leave Amendment Act of 2016 (B21-415)," (Washington, DC: Council of the District of Columbia, 2016), http://lims.dccouncil.us/Download/34613/B21-0415-Economic-and-Policy-Impact-Statement-UPLAA3.pdf.

[9] "Paid Family and Medical Leave: An Issue Whose Time Has Come" (Washington, DC: AEI and Brookings Institute, May 2017), https://www.brookings.edu/wp-content/uploads/2017/06/es_20170606_paidfamilyleave.pdf.

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TESTIMONY BEFORE THE COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE

Public Hearing on
Bill 22-130, Paid Leave Compensation Act of 2017
Bill 22-133, Universal Paid Leave Compensation for Workers Amendment Act of 2017
Bill-22-302, Large Employer Paid-Leave Compensation Act of 2017
Bill 22-325, Universal Paid Leave Amendment Act of 2017
Bill 22-334, Universal Paid Leave Pay Structure Amendment Act of 2017
Tuesday, October 10, 2017

Presented by Ms. Sally Kram, Esq., Director of Public & Governmental Affairs
Consortium of Universities of the Washington Metropolitan Area

Chairman Mendelson, Members of the Committee, and staff, on behalf of myself as an employee of the Consortium of Universities of the Washington Metropolitan Area, I am presenting this testimony on the above titled bills. While the Consortium supports me in this statement, its views are my own.

Thank you for giving me the opportunity to testify once again on Universal Paid Leave (UPL). I previously testified on this matter in December of 2016. As before, I personally, and the Consortium in general, support the notion of an employer mandate, or "self-insured model" as described in varying degrees in Bills 22-130, 22-302 and 22-334. We believe this approach has the two-pronged advantage of assuring employees at self-insured or "opted-out" companies access to paid leave while also allocating the bulk of operational costs to those companies. We also appreciate the Council hearing our concern about the .62 payroll tax, proposing a lower tax for self-ensured and opted-out companies, in all of the bills before the Council today.

However, I am not here today to testify about the Consortium's official position on behalf of its members[1]. Rather, I am here to discuss how, as an employee of a small nonprofit company in the District of Columbia, I would be adversely affected if employer "opt-outs" were limited to large companies[2], or, alternatively, small companies were forced to remain in the UPL program as currently required by law[3]. As a result, I am supportive of any model that provides employers the flexibility to provide paid leave for its workforce, pursuant to the proposed 8-6-2 model[4], regardless of size.

In terms of all of these bills, the Consortium is a small company. Under the DC Unemployment Insurance Act, the Consortium has roughly 25 employees[5]. As an employee of this small company for the last 21 years I have:

- Gotten married (1998);
- Had two children (2001 and 2002);
- Cared for the children through their childhood including well-baby visits and routine medical appointments that most children experience (2001 to the present);
- Experienced the death of my father in York, PA which took place over the course of about a year as he declined gradually (2009-2010);
- Attended to my father's last days and funeral, also in York PA (2010);
- Moved my mother to the Washington region after it became clear she was unable to live by herself (2015);
- Moved my mother to a memory care facility in the Washington region after her condition declined (2016);
- Attended to my mother's medical needs after she arrived in the area including three visits to the Emergency Room (2015 to the present); and
- Attended to my own medical needs (1996 to the present).

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[1] Dr. John Cavanaugh, President and CEO of the Consortium, has drafted testimony on that position. It will be submitted for the record.

[2] Bill 22-133 seems to allow small businesses to opt out as does Bill 22-334. Bill 22-302 may allow small businesses such as the Consortium to opt out. However, depending on the cut-off as to size, the Consortium may be mandatorily included into Bill 22-302's provisions.

[3] Current law, and bills 22-130 and 22-325 appear to require small companies to participate in the District's UPL program.

[4] The 8-6-2 model presented by the UPL law provides 8 weeks of paternity/maternity leave; 6 weeks of family leave and 2 weeks of self-care leave at levels equal to 90% of wages up to 2x minimum wage and then 50 percent of wages on all wages thereafter up to $1,000 a week.

[5] The Consortium's payroll changes on a month-to-month basis in the District of Columbia. The average monthly payroll is 25 DC-based employees.

At no point during my Consortium employment was I denied leave to address the issues that arose because of the history above. And, on only one occasion—after the birth of my second child within 19 months of giving birth the first time—was I not provided full wage replacement.[6] My access to the leave was and remains seamless. My wages arrive twice a month without break making my income stream predictable and manageable as I address the needs of my own health, my growing family, and that of my aging parents.

The Consortium's leave policies, provided to me in writing on my first day with the company and updated throughout my work there, are clear and understandable. Fortunately, the Human Resources Director, Erin Pate, started with the company about three weeks after I did meaning that during my employment at the Consortium I have interacted with virtually the same HR team since I started. Throughout these years, she has given me personal attention while ensuring that my employment records are protected and secure to the best of her ability[7].

It was precisely this generous leave policy as well as salary bump from my previous five-year employment with the Council of the District of Columbia that drew me to the Consortium. (That and an upgrade to an office from a cubicle.) In addition to fully paid medical leave;[8] the Consortium provides me with 10 fully paid Federal holidays per year; additional company holidays such as the half-day before and the Friday after Thanksgiving; fourteen hours of Annual Leave for each month of employment up to 210 hours per year; bereavement leave; paid leave for jury duty;

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[6] The Consortium, like many employers, requires me to accumulate leave based on a formula of hours awarded based on hours worked. I exhausted all of my paid leave benefits in the 12 weeks off I took after the birth of my first child. When my second child was born, I had accumulated about six weeks of fully paid leave. My job was protected by DC FMLA for the full 12 weeks I could have taken off for both pregnancies, but I was only able to access six weeks of fully paid leave for the second baby. However, I was able to return to work on a part-time basis after the first six weeks, paid in full for the work I was able to perform during this period.

[7] As the Equifax data theft indicates, large repositories of personal information are rich target for hackers. While any company's records can be hacked, it seems that if the District held virtually all private sector employees' medical records on one place, it is possible that such records could be more vulnerable. More to the point, the Consortium has a vested interest in protecting its employee records from hack due to its personal relationship with its employees. This relationship could not exist between those same employees and the government of the District of Columbia.

[8] The Consortium's medical leave policy provides me with 7 hours per month of paid sick leave, well in excess of the requirements of the District's Paid Sick and Safe Leave Act. Also, more generous than existing law, I am permitted to roll my medical leave over from month to month and year to year without limit. I am also permitted to use that leave for myself and my family at full replacement pay wages.

compensatory time which I can use like annual leave; and religious accommodation leave[9].

To take the leave, if I know in advance I will be absent, I submit a leave request form to the HR Director which is reviewed and, if appropriate, approved by my supervisor (company President, Dr. John Cavanaugh.) In general, since I have accumulated so many days of leave, the purpose for which I am taking the leave is usually not questioned. The HR director assigns the hours to my leave balance (sick vs. annual vs. compensatory, for example) and I receive leave balance statements each month that keep me apprised of how much leave I have left. If the leave is not anticipated, such as a visit to the emergency room with my mother, I file forms when I return, notifying my company by e-mail where I am. As noted in footnote 8, the Consortium has permitted me to use medical leave to address health-related issues presented by my immediate family including myself, my husband, my children, my mother and, while he was alive, my father.

There has been discussion of mandating that "small companies" alternatively defined as those with as few as 25 or as many as 99 employees, be required to participate in the District government managed UPL program in order to make it's fund "balance."[10] If such a mandate was retained in law[11] even as large companies were permitted to self-insure or opt-out, I would be forced into the District's UPL program thereby losing leave flexibility, pay and possibly access to health insurance, full retirement[12] and other fringe benefits I currently enjoy through my employment. And, because the issue of how my existing benefits would be articulated with the District's program has not been fully addressed, I fear I would

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[9] Under this leave policy, which was created at my request, I can work on otherwise designated Consortium leave days, such as the week between Christmas and New Year's, and use those hours to offset days off for the celebration of holidays in my own faith tradition.

[10] Current law and bills 22-130 and 22-325 requires small business participation in the District's UPL program. Bills 22-133, 22-302, depending on the definition of small employer, and 22-334 would likely cause business operation changes. While 22-334 appears to allow for small business opt-outs, there has been some public discussion of mandating small business participation in the District's UPL program, while excluding large business participation to make the program financially feasible.

[11] The Consortium's insurance plan is an interesting example of how a small company retained its flexibility in light of a government mandate to continue to offer the same level of health care options as before the DC law change. When the District first stood up its Health Care Exchange, all small companies were required to buy insurance on that Exchange. Because the Consortium had traditionally purchased insurance via an umbrella provider, AMHIC, they were ultimately exempt from the DC Health Care Exchange mandate. Consortium health care offerings continued unchanged with similar levels of benefits and costs.

[12] Indeed, since retirement benefits at the Consortium are allocated per paycheck, any break in pay would result in less money allocated to my retirement plan.

lose access to my health benefits that cover me and my children just when I need them the most[13].

Chairman Mendelson, I understand today's hearing is on the question of how the Universal Paid Leave program already passed by the Council might be alternatively funded in order to extend "base" benefit levels to all DC employees. I ask that the Council NOT look at small companies, such as the Consortium and its employees (like me) to balance the UPL fund[14].

I am not alone in receiving excellent benefits even though I work for a small DC-based company. According to the Bureau of Labor Statistics, in 2016 the median hourly wage in the District of Columbia was $32.65. This is roughly $2.65 more than 2x minimum wage (about $30 an hour) meaning that any employee payed more than 2x minimum wage who has been receiving full wage replacement through their current employment-related leave policy would lose money when enrolled in the District program. And, as noted in footnotes 12 and 13, other work-related fringe benefits may be imperiled as well.

Perhaps more worrisome, because the UPL program as passed as well as the bills before the Council today, require certifications at multiple levels—an employee must notify the government of their desire to acquire the leave benefit; they must presumably prove why they need the benefit given the three categories allowed; they must wait until the benefit is certified by the Mayor and then wait for the check from the DC government—I may actually have to go for some unspecified period of time with no paycheck at all. As noted above, this would vary significantly from my historic employment experience. To repeat, other than when my second child was born, I have never received less than full pay for any of my leave and my paycheck has never failed to arrive on the 15th and the 30th of each month.

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[13] Current UPL law would not permit me to receive a Consortium paycheck while also receiving a government paid leave reimbursement. Such a "severance" of employment could negatively impact employment-related benefits including access to health insurance.

[14] Additional funding mechanisms such as raising the payroll task on large employers, should also be disfavored since such approaches will inevitably reduce jobs overall in the District as the cost of establishing a job in DC becomes more expensive in relationship to surrounding jurisdictions. And, as tax credits are viewed as a way of mitigating costs, as posed by Bill 22-133, nonprofit companies would not be eligible for such mitigation as they do not pay corporate taxes. Employee cost-sharing, as proposed by Bill 22-325, would raise costs to for-profit and not-for profit employees alike.

Arguably, the District's nonprofits might be hit harder than for-profit companies due to mandatory participation in the DC program. Nonprofits often use employee-focused leave packages, rather than higher wages, to attract workers. Forcing all small businesses into the UPL fund simply because of their size would nullify any advantage such companies have in offering such leave packages. Ironically, given the intent of UPL, its mandatory extension to small employers with leave plans that currently meet the 8-6-2 model, could, for these companies, make the District less attractive as a work-site than surrounding jurisdictions.

Based on my personal experience, I would urge the Council to embrace a UPL funding model that permits small employers to self-insure their leave policies. No DC employee should be left in a worse position, if at all possible, than they are today once the UPL law is fully implemented.

Thank you for your attention to this testimony. I am happy to answer any questions you may have about it.

Testimony of **Rachel S. Robinson**
Associate Professor at American University.
Ward 3 Resident

Council of the District of Columbia
Hearing on Paid Family Leave
October 10, 2017

Chairman Mendelson, members of the Council, I am Rachel Robinson, a Ward 3 resident and Associate Professor at American University.

I have lived and worked in the District of Columbia for 10 years, and am the mother of two small children (aged 2 and 4). Paid leave made it possible for me to achieve both professional and personal goals, without significant cost to my family. Today I will briefly describe my own experience with paid leave as an employee of American University, and speak to the broader importance of the DC Universal Paid Leave Act (UPLA) for reducing social inequality and making the District a destination of choice for high-quality workers and their families.

Broadly, I am concerned about the proposed changes to the UPLA. One concern is that a change in the law will delay implementation. My other key concern is that any change made to the UPLA's basic social insurance infrastructure increases the risk of inequities in the policy's implementation. Based on my research in diverse contexts, policies have the greatest impact when the policymaking entity maintains the rules and signals a clear message about the goal of the policy. Although devolving authority for implementation is often necessary for compromise, it can result in policies without teeth that fail to achieve their intended ends.

American University has family leave policies that differ for tenure-line faculty and other staff, including a high number of so-called "term" faculty who teach on year-to-year contracts. Tenure-line faculty such as myself generally teach two courses per semester, and then spend the rest of their time conducting research as well as supervising students. But tenure-line faculty members (regardless of gender) are granted just a one-course release in the event of a qualifying event. This means that a woman who gives birth is still responsible for teaching one course. This one course could be taught in the semester before, during, or after which she experiences the birth. At the discretion of supervisors, tenure-line faculty may instead develop a modified work arrangement to substitute for that course. Tenure-line faculty women who give birth also receive 6-8 weeks of disability payments. All other staff – that is, all employees who are not tenure-line faculty -- have no formal parental leave policy and instead must patch together other leave. For these staff, disability runs concurrent to sick leave, so the leave

available through that route is essentially capped at 6 weeks. This difference in policy represents a great inequality at the university.

For the birth of both my daughters, I was able to develop a modified work arrangement, which meant that I did not have to teach the semester following each of their births, but I did still have to carry out my modified work arrangement. Others are not so lucky.

The original version of the UPLA is important for several reasons that relate to my own personal experience. First, it would ensure that everyone in the District could have the exact same core time for paid parental leave. Second, it would reduce the inequality between employees at my own institution. My experiences at American indicate that the proposed modifications to the UPLA, which place the burden of providing leave on employers, could very well result in inequality, rather than paid leave for all. While many employers would adhere to the law's rules, including, I hope, American, my employer's behavior to date demonstrates a willingness to give the best benefits to only a select set of employees. I fear other employers might share this disposition under an employer mandate. In contrast, under UPLA, the government controls access to paid leave for everyone regardless of rank, greatly reducing the risk of inequality persisting. Third, and finally, UPLA makes the District the type of city in which I want to live, pay taxes, and raise children, and sends a strong signal to others like me that they should consider moving here.

TESTIMONY OF MARCY KARIN
The Committee on the Whole
D.C. Council
October 10, 2017

Thank you, Mr. Chairman and Members of the Council. My name is Marcy Karin. I am a proud Ward 2 resident who returned to the District last year to work in Ward 3 as the Jack & Lovell Olender Director of the Legislation Clinic and an employment law professor at the University of the District of Columbia David. A. Clarke School of Law. Through the UDC Legislation Clinic, I have supervised the work of a team of excellent student attorneys representing Jews United for Justice in preparing for this hearing.[1]

I am honored to testify, in my personal capacity, in support of the Universal Paid Leave Act ("UPLA"). Paid leave is a critically needed economic security policy that helps address the mismatch between the way workplaces are structured in the 21st Century and the needs of the District's workers, businesses, and our community as a whole. Among other things, the UPLA contains a combination of anti-retaliation, third-party review, and portability provisions that greatly increase the likelihood that the law's goals will be achieved. As enacted, it represents the best way for the District to move forward at this time.

Today, I offer three observations based on my years of rigorous study, academic scholarship, and practice as a lawyer who has represented both workers and employers of all sizes in disputes involving workplace rights, including access to and enforcement of paid and unpaid leave.[2]

First, ***the UPLA affords workers the robust retaliation protection needed for success***. This is critical for a paid leave policy, especially for low-wage and part-time workers who otherwise might not know about their rights or fear asking for wage replacement directly from an employer. Indeed, the benefits of a paid leave law will not be realized without education and meaningful anti-retaliation provisions that protect against employer-based intimidation or discrimination.

Generally, these types of anti-retaliation protections prevent employers from taking adverse employment actions in hopes of stopping an employee from exercising a right or pursuing a complaint through a formal process. Under existing local employment laws, cases have alleged that employers have failed to hire, changed shifts, reduced hours, and or terminated workers who are also caregivers, women who are pregnant, have experienced miscarriages or are otherwise of childrearing age, mature workers, workers with disabilities and others for enforcing a right or seeking recourse when one has been denied.

Of course, there are many good employers in the District. But there is no reason to expect that all employers will forgo these types of bad acts under a paid leave law and engage in best

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[1] Thanks to the following UDC Legislation Clinic Student Attorneys who have worked with Jews United for Justice this semester: Hannah Amundson, Grace Emery, Maryann Menanno, and Thomas Moore.

[2] My author pages on SSRN (http://ssrn.com/author=1497843) and HUFFING POST (http://www.huffingtonpost.com/author/marcy-karin) contain representative examples of my employment law scholarship. In addition to this writing, over the years, I have worked to develop thoughtful local and national employment law in a number of capacities, including as Legislative Counsel for Workplace Flexibility 2010, an Alfred P. Sloan Foundation grant-funded initiative that was housed at Georgetown University Law Center, and as pro bono counsel to Corporate Voices for Working Families.

practices. This is especially true under an employer mandate model, where the decision about whether to pay wage replacement is given to a party with an incentive to deny claims for perceived cost savings, or to factor in the cost of self-insurance into hiring decisions, or to otherwise engage in activities that prevent a worker from seeking payment in the first place. When this type of bad act happens, retaliation protection is meant to offer workers the opportunity to seek recourse based on an employers' intimidation, discrimination or retaliation.

Second, ***the UPLA's third party process for providing wage replacement will help minimize employer retaliation and legal challenges against employers.*** Put simply, it places an unreasonable burden on workers to require them to seek wage replacement directly from their employers and then sue if a bad act happens. Workers often do not have access to or control over the paperwork needed to demonstrate access to a protection, the existence of retaliation, or the ability to disprove an employer's claim that an action was taken for a legitimate business reason. As a result, a strong anti-retaliation provision by itself is not enough to prevent potential employer abuse.

Realistically, it is hard to capture all of the ways that workers have been intimidated in the past under existing employment laws or paint a full picture of how much retaliation might happen under a new paid leave statute. In part, this is because of an underreporting phenomenon in many areas of employment law. Further, the reality of workers' experiences enforcing existing laws is that many do not have the knowledge, ability, time, or other resources to seek recourse via litigation. Among other reasons, past experience demonstrates that some workers are afraid to ask, others do not understand available rights, and some elect not to bring a formal complaint or private lawsuit because of the amount of resources it would take—including time and often money—to enforce one's rights. It also belies common sense to ask workers to engage in an expensive and time-consuming litigation process when the very reason they sought leave in the first place was to address a major life change, family emergency, or needed self-care. As a result, lawsuits simply are not the answer for every situation, especially if it costs workers more to pursue a claim than the total amount of wage replacement denied in the first place.

Bad actors will still exist; but the UPLA minimizes their impact by removing employers from the decision about whether to approve or deny wages. Using this social insurance model offers hope that workers will still get needed compensation by having a party outside the employment relationship examine the situation. It also allows workers to proactively seek this determination; rather than requiring a bad act to happen to get recourse. The employer mandate model does not offer the same level of protection or guarantee a neutral determination on wages if an employment relationship sours.

Finally, **the portability and predictability of access to wage replacement that the UPLA provides is crucial to success.** Especially in a town with such high turnover and given the realities of part time and low-wage work, fairness dictates that workers must have access to wage replacement regardless of whether they win the boss lottery or need to switch jobs.

Thank you again for allowing me testify. I look forward to answering your questions and providing any guidance I can to the District as it hopefully moves forward with the implementation of UPLA.

Matt Erickson
Co-owner, 76 Words
Resident, Ward 5

Testimony before the Council of the Whole, Hearing on Paid Family Leave
October 10, 2017

My name is Matt Erickson – 22-year DC resident, Ward 5 homeowner, DC small business owner. I supported the Universal Paid Leave Act (UPLA) as a way to keep Washington DC growing economically and I am proud of our new law. I am troubled by proposals that threaten our new social insurance program and seek amendments that threaten the funding pool and threaten access to needed leave.

I co-own a consulting and advertising agency, 76 Words. And, thanks to modern knowledge economy that tends to ignore a company's physical location, we could run our business from Seattle or Austin or anywhere.

Fact is, businesses like mine go where the talent is. And talented workers go where their work will be rewarded.

In our case, that's Washington DC. Washington's talented workforce means we can find and keep the best workers around.

Universal Paid Leave is how we keep our homegrown workforce here, and attract the best talent to our city.

UPLA sends a message to all workers that in DC, employees will be treated fairly in a time of family crisis – no matter who their boss is, no matter how far-sighted or not their company is, no matter how fair or not their HR department is – or how interested it is in adhering to the letter or the spirit of the law. No matter what.

My business is a small business. We don't have an HR department, and any money or effort we put into managing our employee systems is money we don't spend on serving our clients. UPLA's social insurance program lets us pay attention our clients instead of managing a benefits system for employees. UPLA makes sense for employers of all sizes – the contribution is predictable, the administrative burden negligible since the city takes it on.

The last thing we need is to allow some business group lobbyists to undermine the city's social insurance program by amending our law to let employers opt out of it. That could shrink the pool and make it unstable. You don't need to be an economist to appreciate that if the pool shrinks or ping pongs in size, that can be problematic. An employer opt-out also puts new enforcement responsibilities on the government on top of those needed to implement the social insurance program. A strung-out enforcement agency? Who exactly does this benefit?

We all have the same goals: To build a stronger and more just DC economy. In order to do that, we have to make it a great place to live and work, for people who are from here, or from across the country.

Because it will mean my proudly DC-based company will have access to a stronger workforce, and with that it'll be good for my bottom line, as a small business owner I urge you to focus on the implementation now of our new law, UPLA. The amendments that would change its financing structure delay what my company, our employees and the city need. I urge you to reject changes that will delay UPLA and that have no clear benefit to the city.

Testimony of Monica Kamen
Co-Director, DC Fair Budget Coalition
Tuesday, October 10th, 2017
Committee of the Whole
Paid Family Leave

Thank you for the opportunity to testify today. My name is Monica Kamen, I am here to advocate for the Universal Paid Family Leave program that became law in April of this year. I am speaking from several experiences and perspectives today. I am here as a co-director of the DC Fair Budget Coalition. Our coalition is comprised of organizations and community members that advocate for budget and public policy initiatives that seek to address systemic social, racial and economic inequality in the District of Columbia. As a co-director of the organization, I am speaking from the experience of a business manager who operates in Ward 1. I am also speaking as a Ward 1 resident who can live here now but am having difficulty imagining a future in which I could afford to raise a family here, or anywhere in the District for that matter. I am also speaking as a caregiver for several family members including two grandparents, my sister, and my partner and as a hopeful future recipient of this program.

I have submitted in my written testimony my own story of caregiving, but I'd like to focus today on why our current law would work better for me as a business operator, and why it is a better program for the District.

I was born and raised with the value of caregiving. When I was in middle school, my grandmother died suddenly of an aortic aneurysm. She was always the healthier between herself and my grandfather, and it took my whole family by storm. It was particularly difficult for my mom. With his health poor and my grandmother gone, my parents invited my grandfather to move into our home. Along with him came full time nurses, trips to doctors appointments, and a lot of missed work for both of my parents. But they were able to provide him a comfortable home in which to end his life, surrounded by people who loved him. A week after my grandfather died, my father's mother moved in with us, lived with my parents for 6 years before she passed in 2012. All of these experiences were far from easy on my parents, particularly financially. They had to constantly miss work and pay for medical bills and nursing costs that continued to rise. Now, despite being 65 years old and nearing ready to retire, both my parents still work full time, often two or more jobs, even while sick or recovering from surgery, just to make ends meet. They don't see themselves retiring any time soon.

Now, years later, I too have had to care for someone. My partner and I live together in Ledroit Park and share the cost of a small apartment. In June 2016, he was diagnosed with Crohn's Disease. Following his diagnosis, he was hospitalized 8 times in 2 months and sent to the Emergency Room even more. A year ago on Friday will mark the anniversary of the surgery that removed twelve inches of his small bowel. He works in live event technology here in DC, and he was fortunate to have been covered by disability insurance that he'd been paying into, but he only was compensated around 40% of his wages (he works hourly) and had mounted tens of thousands of dollars in medical expenses. He had to take off of work for 3 months while he was recovering, and my non-profit salary had to cover our rent and food expenses.

I am also incredibly fortunate that my employer is a part of the Paid Family Leave coalition and cares about workplace leave policies, because it was never a question whether I could take whatever time I needed to be with him. I wasn't worried about losing my job. But I was incredibly stressed, making decisions from an emergency room after having been up all night, plugging my laptop in next to the blood pressure machine and worried about what would happen if this surgery didn't work and he didn't get better. How would I pay the rent? How would he keep his health insurance?

This period in his life caused all sorts of hardship- financial, emotional, and obviously physical, and with Crohn's, his medication will likely stop working at some point and he will have another flare. I hope that one day, our experience managing his illness will be different- that both of us will be able to take time off to care for him without worrying about keeping up so much with the bills.

I am certain that you have heard thousands of this type of testimony since the UPLA had first been introduced. It is obviously a huge need for people from all economic strata, but if you are poor and Black or Brown in DC and you are your job is deemed dispensable and replaceable, then these types of situations become catastrophic. How many people fill our shelters because of an illness or an accident? How many people lose everything when they get sick and fall into an endless loop between shelters, and hospitals and the street?

In order for a program like this to work, workers have to be able to trust that they can seamlessly receive their wages and that they will still have their job when they get back from leave. Today, almost 10 full years after DC's first paid sick days law was passed, District workers, particularly in service and retail, still feel incapable of taking a single paid sick day without losing their jobs or may not even know about their rights. How will they feel able to ask their employers for 6 weeks off? I fail to understand why the

Council thinks employers will willingly or easily provide their employees with those 6 weeks of paid leave when they currently dismiss people in their employment for needing just one single day of sick pay.

This problem cuts to the fundamental issue with an employer mandate. Wage theft continues to be a rampant problem throughout the District in large part because employers know they can get away with it. They know employees don't know their rights, don't have time or money to seek legal recourse for labor violations, and that our Department of Employment Services is tasked with an almost impossible responsibility of knowing, investigating, and punishing every possible labor violation of every employee in every business in this city. Employer mandates that allow companies to control the purse strings associated with leave give even more financial incentives to a company to deny or discourage someone from exercising their rights. Social insurance is a better way to manage a paid leave program, and that's exactly why the UPLA was passed.The existing law is a smarter way to protect employees, as the worker is protected against wrongful denial of benefits and the District will know if they lose their job as a result of taking leave.

We also know that the only way for this program to be successful is if the insurance pool is solvent and has enough revenue to sustain it. Removing larger employers from the pool and keeping only smaller, less stable businesses increases the risk that the insurance program will fail. It is not sound fiscal policy to rely on small organizations like mine with 2 employees and a $180,000 budget to fund this program. We need the Walmarts, the Home Depots, and the large firms to pay their fair share into the program. This approach better protects the people working for these larger companies as well as supporting smaller businesses eager to have a fair shot at meeting the paid leave needs of their employees.

Finally, I want to remind the Council that just last month Congress attempted to block several of the District's laws from going into effect. We are under careful eyes these days and Councilmember Cheh's "fee bill" unnecessarily draws the focus of those eyes. The issue of paid family and medical leave is not the vehicle by which to test out legal theories on how to skirt our commuter tax prohibition. Working families facing a caregiving crisis need certainty and hope, not congressional interference and risky, unpredictable litigation.

The District had a robust debate around this issue last year. Residents were clear that this is the program they supported and believed would work best. I know it is tempting to panic every time big business lobbyists threaten to relocate operations with every piece of policy the Council considers but this body's own economic impact statement

confirmed that the UPLA would not harm our economic growth. Every crane, every grand opening confirms that business is booming in DC – with such a thriving business economy, it is time to double down on ensuring our workforce is also thriving.

While things have gotten better for some in DC in recent years, we know that people of color in every Ward, and especially East of The River, have seen wages, benefits, and jobs stagnate. The District cannot boast its capacity at retaining poor Black and Brown residents. These are the people who are truly leaving because they cannot afford to live here.

The law in its current form will make a huge difference for families like mine, and more importantly, for families who are one lost pay-check away from losing their homes.

Thank you for the opportunity to testify, and I'm happy to answer any questions.

Written Testimony of **Dr. Darius Sivin**
International Union, UAW

Council of the District of Columbia
Committee of the Whole Hearing on Paid Family Leave
October 10, 2017

My name is Dr. Darius Sivin. I hold a PhD from the Johns Hopkins University School of Public Health. I have worked for the United Auto Workers for more than 15 years. Most of my career has been devoted to issues related to the impact of work on health.

I am in favor of implementing the Universal Paid Leave Act as it exists now. The approaches in the alternative bills could be used to discriminate against workers and/or deny claims. In addition, they create financial and legal risks for the city without clear benefits. In simple terms, weakening and delaying DC's paid leave program is hurting working families in our nation's capital who are experiencing a caregiving crisis. Now I would like to explain the public health benefits of the existing law.

In 2016 in the United States, the labor force participation rate of men with children under 18 was 92.8% and the participation rate of women with children under 18 was 70.5%[1]. This means that approximately 65% of children with one male and one female parent had two parents in the labor force, approximately 86% of children with two male parents had two parents in the labor force, and approximately 50% of children with two female parents had two parents in the labor force[2]. The labor force participation rate of mothers with children under 6 years old was 64.7%. The participation rate of mothers with infants under a year old was 58.6 percent. 95.6 % of employed fathers and 76.3 percent of employed mothers worked full time. Taken together, these statistics show that most children have all their parents at work most of the time from a very young age.

How different might the District of Columbia be? It was not easy to get exactly the above statistics for DC, but in 2015, 74.0 % of the male residents of DC participated in the labor force[3] while 69.1% of U.S. males participated[4]. Female DC residents participated at 66.8 %[5], while

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[1] https://www.bls.gov/news.release/pdf/famee.pdf (Accessed 9/24/2017)

[2] It is possible that these numbers are not quite correct. For example, one could imagine that workforce participation is higher for women whose partners are women than for women overall or lower for men whose partners are men than for men overall. The BLS sources I used for this information do not speak to that question.

[3] http://www.nationalpartnership.org/research-library/work-family/paid-leave/caregiving-brief-gender-labor-force-participation-rate-chart.pdf

[4] https://www.bls.gov/opub/reports/race-and-ethnicity/2015/home.htm (Accessed 9/28/2017)

[5] http://www.nationalpartnership.org/research-library/work-family/paid-leave/caregiving-brief-gender-labor-force-participation-rate-chart.pdf

U.S. women participated at 56.7%[6]. These statistics suggest that the national statistics cited above underestimate the fraction of DC children whose parents work from the time they are very young.

As a result, children's needs for parental time and energy are increasingly subordinate to parental work obligations. This problem is especially acute for low-income parents, who have less access to quality childcare and who often work in jobs that provide few family-support benefits. According to, DC Action for Children, more than one in four children in the District of Columbia lived in poverty as of 2015[7].

In research comparing OECD countries, Tanaka (2005) found that, after controlling for other country specific characteristics, countries with more paid parental leave had lower mortality rates among infants and young children. Paid leave has the strongest effect on mortality between 28 days and a year after birth, most likely because this is the period when most paid leave is taken. In addition, pre-birth leave reduces the incidence of low birth weight, a known risk factor for infant mortality.[8]

From the point of view of public health, one of the key benefits of paid family leave is that it facilitates breastfeeding. Breastfeeding is one of the most health protective activities that exists. According to the *Surgeon General's Call to Action to Support Breastfeeding*[9], breastfeeding reduces a mother's risk of breast cancer and ovarian cancer. Its benefits for infants include reduced risk of:

- Asthma
- Childhood obesity
- Diabetes mellitus Type 2
- Diarrhea and vomiting due to gastrointestinal infection
- Eczema
- Ear infection
- Hospitalization for lower respiratory tract diseases in the first year of life
- Leukemia, and
- Sudden infant death syndrome

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[6] https://www.bls.gov/opub/reports/race-and-ethnicity/2015/home.htm (Accessed 9/28/2017)

[7] http://apps.washingtonpost.com/g/documents/local/dc-action-for-children/2407/ (Accessed 9/24/2017)

[8] Tanaka, S. (2005). Parental leave and child health across OECD countries. The Economic Journal 115(501): F7-F28.

[9] U.S. Department of Health and Human Services. (2011). *The Surgeon General's Call to Action to Support Breastfeeding*. Washington, DC: U.S. Department of Health and Human Services, Office of the Surgeon General. (http://www.surgeongeneral.gov.)

As a result, the American Academy of Pediatrics recommends that most infants in the U.S. be breastfed for at least 12 months, and exclusively breastfed for about the first six months[10].

Although 75 percent of mothers initiate breastfeeding, only 43 percent breastfeed at six months and 22 percent at 12 months. Moreover, only 33 percent of mothers breastfeed exclusively through three months and 13 percent do so through six months[11]. Research clearly shows that mothers who use paid leave substantially increase the length of time that they breastfeed their infants, compared to those who do not benefit from such leave[12]. Studies also show positive associations between the length of family leave and the duration of breastfeeding[13]. Obstacles to breastfeeding may include lack of a private and hygienic place to breastfeed or express milk, insufficient break time, inflexible work hours, and lack of support from supervisors and coworkers. For these reasons, the U.S. Surgeon General has called for paid family leave to be granted to all working mothers[14].

Here I would like to add that it is possible for paternal leave to facilitate breastfeeding as well as maternal leave because fathers can feed expressed milk through bottles and fathers can do other baby-related tasks and even other housework while mothers are at work, giving mothers more time to breastfeed when they get home.

In closing, I would like to say that failure to implement the existing law now is a threat to the public health benefits I have described. The alternatives do not improve on the law; rather they create risks. Carving out large employers from the District's social insurance program or allowing employers of any size to opt out would create bifurcated and more expensive demands on enforcement and, at the same time potentially reduce the revenue for the public program, jeopardizing its overall stability and solvency. We should not be debating ways to risk public health; we should be marshalling our resources in the most efficient way possible. The Universal Paid Leave Act does that. The alternative bills do not. In simple terms, weakening and delaying DC's paid leave program is hurting working families in our nation's capital who are experiencing a caregiving crisis. We should implement the existing law now to achieve the public health benefits I have just described.

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[10] American Academy of Pediatrics, Section on Breastfeeding. (2012). Breastfeeding and the Use of Human Milk *Pediatrics* 129 (3) e827-e841; DOI: 10.1542/peds.2011-3552 (www.pediatrics.org/cgi/doi/10.1542/peds.2011-3552)

[11] U.S. Department of Health and Human Services. (2011). (*Op. cit*)

[12] Guendelman, S., et al. (2009). Juggling work and breastfeeding: Effects of maternity leave and occupational characteristics. *Pediatrics* 123(1): 38-46.

Appelbaum E. & Milkman, R. (2011). *Leaves that pay: Employer and worker experiences with paid family leave in California.* Washington, DC: Center for Economic and Policy Research.

[13] Bertea, P. C. & and Stutz, E. Z. (2007). Length of maternity leave and health of mother and child: A review. *International Journal of Public Health* 52: 202-209.

Berger, L. M., Hill, J. and Waldfogel, J. (2005), Maternity leave, early maternal employment and child health and development in the US*. *The Economic Journal*, 115: F29–F47. doi:10.1111/j.0013-0133.2005.00971.x

[14] U.S. Department of Health and Human Services. (2011). (*Op. cit*)

DC Council Committee of the Whole Hearing on Paid Family Leave Alternatives
October 10, 2017
Testimony of Adam Graubart (Ward 2)

Good evening,

My name is Adam Graubart, I live in Ward 2, and I am testifying as the President of the Roosevelt Institute at The George Washington University. I want to emphatically request that this Council reject all efforts to repeal and replace the Universal Paid Leave Act. All of these proposals provide leave less equitably than the already passed legislation. These proposals shift the focus of this policy from a people-centered initiative to a profit-centered endeavor. Providing the levers to paid leave access in the hands of profit-focused actors will limit benefits, marginally affecting the status quo prior to the Universal Paid Leave Act's passage.

These proposals are not only unresponsive to the issues at hand but also defy the advocacy of residents and businesses in these councilmembers' respective wards. Jack Evans' proposal, for instance, creates a framework that will work against many of his Ward 2 constituents. An employer mandate model makes providing paid leave a costly burden; it demands that every small business in Ward 2 front this cost without any government assistance. The difference between paying an annual tax of .62% and footing the bill of an employee's' pay for 8 weeks is monumental, a math lesson that Councilmember Evans and some of his colleagues can not seem to comprehend. In contrast, Evans' constituents at ANCs 2A and 2B passed resolutions demanding paid leave law "without placing an undue burden on local businesses." Let's be clear - an employer mandate will be an undue burden on local businesses.

In particular, I worry about my fellow students and young people across Ward 2, who Jack Evans supposedly represents. An employer mandate model disincentivizes employers from hiring people of childbearing age, particularly women, for they are most likely to increase costs if the employer has to foot the bill for their leave. Jack Evans' proposal poses a risk to the job prospects of young people and hopeful parents in the District and, at its core, it's anti-progressive and anti-feminist. Seven hundred fifty George Washington University students and 20 faculty members signed a letter to our university president and the Council in 2016, underscoring the importance of paid leave as a policy that encourages students and young people to stay and start families in Washington, DC. A recent *Washington Post* article by Aaron Gregg discussed that DC's high-cost housing market is driving Millennials to cheaper cities. Only a network of pro-worker initiatives, including *universal* paid family leave will 1) economically anchor DC's transient young population and 2) address the extreme and growing costs facing DC's most marginalized, long-term residents. I endorse universal paid leave as an equitable way to address child care and public health disparities across lines of race,

class, and age. I hope that Jack Evans understands the inequity inherent in his proposal. I hope that Jack Evans listens to his constituents, 2 ANC resolutions, 750+ students, numerous small business owners, and dozens of visitors to his office over the corporate lobbyists who line his campaign coffers.

Thank you.

DC Council's Committee of the Whole

Hearing on Paid Leave, October 10, 2017

Testimony by Ariane Hegewisch, Resident of Ward 3

Thank you for the opportunity to testify today. My name is Ariane Hegewisch. I have been a resident of Ward 3 for the last 16 years, both my husband and I are employed in DC, and our son just finished public school. I am testifying because I deeply care about economic and gender equality in the District and beyond, and also because I have spent my whole working life studying the interaction of social policy with gender and economic security.

My professional experience includes working on gender equality and employment for a large city; over a decade as a senior researcher and lecturer on human resource management at one of Europe's top business schools; and conducting research reviews, for clients such as the World Bank, on the impact of family leave and other work family policies on women's employment.

I am currently employed by the Institute for Women's Policy Research but testify today in a strictly personal capacity.

I am testifying to urge you against amending or overriding the Universal Paid Leave Act which became law on August 17 of this year. The UPLA builds on established good practice in the design of paid family leave by pooling the cost of leave through social insurance. It is difficult for me to understand why the Council is considering a move away from a design that builds on established international best practice and instead is considering an employer mandate which will increase the risk of discrimination.

The UPLA addresses the need for potentially substantial time-off from work, and thus differs from earned sick days. For an economist the argument against providing paid family and medical leave through an employer mandate is clear. The need for paid leave is not evenly distributed throughout the working population; on average some people are more likely to need leave than others- such as people with a disability or chronic illness, or people of a certain age or size, or women. Social insurance neutralizes the 'risk' of employing someone who may be more likely to need paid leave; an employer mandate on the other hand puts a 'pricey' label on the head of the same person. Even though it is illegal for employers to discriminate on such a statistical basis, we all know that this happens. For this reason, the International Labour Organisation strongly recommends that paid leave is funded through social insurance or public funds, and this model is followed by almost all other high income countries. As Harvard professor of economics Larry Summers noted in the American Economic Review many years ago, "mandated benefit programs can work against the interests of those who most require the benefit to be offered."[1]

Mandates are likely to have two effects: reduced pay and/or higher unemployment (for those who are more likely to use the benefits) or strong incentives against using the benefits (for those who have more of a choice). Thus mandating employers to pay for paid leave is likely to discourage men from taking leave and from being active fathers. Knowing that their request for 8 weeks of paid leave may sharply increase the cost of their employer's experience-rated insurance plan is likely to act as a considerable barrier. This will be particularly so for men working in lower wage, lower quality jobs.

As a resident of Ward 3, Councilmember Cheh, I was pleased to see the introduction of the Equal Pay Amendment Act last summer. The Universal Paid Leave Act will work hand in hand with the Equal Pay Amendment Act and will be an important building block for gender equality in DC. The Paid Leave Compensation Act and the other amendments based on mandates run directly counter to that intent.

Because of the importance of paid leave for both the health and equal participation in employment for women, I would further urge you to withdraw the proposal for collecting a 'fee' from nonresidents. While the federal interference in DC's options for regulating itself is highly frustrating, DC residents need access to paid leave now- the fee collecting option is risky and likely to substantially delay the implementation of the paid leave law.

I urge you all to vote against the amendments tabled against the Universal Paid Leave Act.

Thank you.

Ariane Hegewisch
5404 39th St NW
Washington DC 20015

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[1] Lawrence Summers. 1989. "Some Simple Economics of Mandated Benefits. ", *American Economic Review*, 79, (2): 182

Council of the District of Columbia
Committee of the Whole
Testimony for Hearing on Paid Family Leave
October 10, 2017
Lauren Schreiber

Hi, my name is Lauren Schreiber and I am here to testify against revisions to the Universal Paid Leave Act. I have worked in DC all of my professional life and was blessed to have my first child, Najia Suhaila Oda, in June 2017. I spent the months leading up to my delivery working on researching paid leave in an effort to convince my small nonprofit that three weeks of paid leave was not enough - I'm deeply thankful that Critical Exposure, my employer, took DCs recommendation for 8 weeks of paid leave and extended it to me as a trial run in improving our organization's policy. The bill you all approved in December gave me the courage to ask and push and get the paid leave I needed. I have no idea what I would have done without it.

Najia was delivered 3 weeks early and though we were both healthy and home within 48 hours, it couldn't be clearer to me that women who deliver need at least 8 weeks off. Najia, who lost over 10% of her birth weight just a few days after she arrived, struggled to put on weight for the first month and I had a really hard time breastfeeding - between doctors appointments and lactation consultant visits that seemed to happen every 2 days and triple duty feeding (pumping-bottle feeding-breastfeeding every 2 hrs round the clock), things didn't even start to become somewhat manageable until 6 weeks in. I couldn't even prepare a meal for myself until she hit two months. My husband, who is a self-employed fitness trainer working in DC, spent just 72 hrs with us before having to going back to work and has been stealing time to be with his new baby ever since. I'm here testifying for his right to be with his family, too.

Without access to paid time off, there's no way I could have successfully breastfed my child or adjusted to being a new mom. I can't even imagine returning to work after 3 weeks - my child would have been the equivalent of a just-born-baby developmentally and my body would have been battered, engorged and completely sleep deprived. I would have been no use to my employer or my child had I been under pressure to both work and adjust to parenthood simultaneously just to ensure that our finances were secure.

I feel fortunate that I was able to convince my nonprofit to give me 8 weeks of paid leave, but no one should have to go through the stress I did the months leading up to my pregnancy to convince their employer to give them paid time off. While I felt comfortable asking my employer about paid family leave, I have many friends who I know wouldn't feel comfortable doing the same, which is why it's critical that we keep the universal social insurance program for paid leave as-is. Every DC worker deserves paid family leave, and this can only be guaranteed through a social insurance program with no carve outs. I urge the council to keep paid family leave as-is and to not back out on the benefits that the city fought for and won. My family, and families like mine, depends on in.

Council of the District of Columbia
Committee on of the Whole
Testimony against changes to the Universal Paid Leave Act
Statement of Jeremiah Lowery
October, 10th 2017

Chairman Mendelson and Councilmembers, good evening. I am Jeremiah Lowery, a Ward 4 Resident, and I am testifying against all proposed changes to the Universal Paid Leave Act.

Let me start by thanking you, Chairman Mendelson, for creating one of the strongest paid leave bills in the nation. Now is the time to keep it intact.

This evening I want to speak briefly about my personal and professional reasons for keeping our current paid leave law intact.

A few years ago my mother had a liver infection and she was hospitalized for 3 months, and then needed at least another month to recover at home. Luckily her company offered paid leave and she was able to return to work after her recovery. Without this program, she would have had to leave her job and would have been on the brink of homelessness. My mother's story is just like that of many other D.C. residents, except most don't have access to a strong paid leave program. Every D.C. resident should be afforded the same opportunity as my mother and they should not have to choose between their health or staying on a job to keep food in their mouths or avoiding homelessness.

On a professional level I was the Research and Policy Coordinator at Restaurant Opportunities Center D.C. from 2013-2015, where I organized food service workers to fight for paid sick days, equal pay, and better working conditions. I heard the stories of hundreds of food service workers in D.C. – who were guaranteed good benefits through legislation but never received those benefits because the law was never enforced or if they asked for those benefits, their employer would threaten to fire them.

Chairman and members of the Council, the best enforcement mechanism for the paid leave bill is keeping it in its current form, any changes will guarantee that some workers get left behind.

Chairman Mendelson, we have the power to keep families in D.C. and ensure that workers have access to paid leave by keeping this bill intact.

Thank you for the opportunity to testify today, and I am happy to answer any questions you may have.

Hearing on Paid Leave Legislation

October 10, 2017

Testimony of Carla Hashley, Ward 5 Resident

My name is Carla Hashley, I live in Ward 5, and today I want to tell you a story about food poisoning. Last year I was hospitalized for eating something that is very common. It made me sicker than I had ever been before, and a year later, I'm still not fully recovered. The food poisoning caused colitis, which caused post-infection IBS, which can last for years. I'm still dealing with the fall out, with special doctors' visits, a new diet, learning which foods will make me sick for a few days.

Luckily, I have paid sick days thanks to DC's sick days laws, and an employer who is willing to meet my needs for recovery, for longer than perhaps they expected to. But at this point I have a serious chronic condition. What happens if I get worse? What if I run out of sick days or get a bad flu or break my leg one year? What if I change jobs? These questions are all buzzing around my mind now. I'm worried about being able to care for my parents as they get older, and my sister who has her own chronic condition, and now also myself. I need clear, fair, and accessible paid medical leave, exactly like what was passed in this very chamber in December 2016. I need leave that isn't dependent on who I work for, or on me knowing who to ask, or on me feeling like I can ask from a maybe less thoughtful boss. Taking care of myself has made me a better and more productive employee at my current job and I want to be able to bring that to any employer.

A few years ago, even with my master's degree, I found myself working retail. I had been laid off by the non-profit I had been with and went back to an industry I had experience in. After being a temporary associate for the holiday season, I became manager of a Gap location in the area. I worked with a small team, and almost all of us held down multiple jobs. They weren't students looking for a discount and some pocket cash, as some people imagine retail workers are. Some were professionals who also worked at a large non-profit, one also worked at a fast food place, and others worked other service or retail jobs. Because we worked for multiple employers, my team all had multiple income sources, multiple HR departments, and rotating managers.

Under the proposed changes to the UPLA, these hard-working adults wouldn't be able to get consistent and fair leave. What if one employer joins the universal pool and another opted out and paid benefits directly? Are they supposed to deal with three different HR systems to keep a roof over their head? Additionally, I've seen people be worried about taking a day off for an appointment or calling in sick, because they are worried their hours might get cut the next week. Even just asking about leave puts people in danger of retaliation from employers, who act like if someone has health issues or a sick relative they're "not committed" to the job. The UPLA means that people are covered equally and we don't have to talk to two or three employers, and it takes this opportunity to retaliate out of the employer's hands. With UPLA, your leave doesn't depend on whether the company you work for opts in or out. I've seen the way retail works: bosses say that people come first, but the profit margin really comes first. Companies won't opt into something that will cost them more, they'll find a way to avoid paying for any leave at all, whether that's discriminating when people are getting hired or firing people when they need leave.

As a DC resident, a sister, a daughter, a friend, and as a current and past manager, I implore you to keep the UPLA intact. These alternatives would not help the people you want to help, and would not create justice and fairness we all want to see in the city we call home.

PUBLIC HEARING ON B22-130, Paid Leave Compensation Act of 2017
B22-133, Universal Paid Leave Compensation for Workers Amendment Act of 2017
B22-302, Large Employer Paid Leave Compensation Act of 2017
B22-325, Universal Paid Leave Amendment Act of 2017
B22-334, Universal Paid Leave Pay Structure Amendment Act of 2017

October 10, 2017

Submitted to the Committee of the Whole

Testimony of Sara Alcid (Ward 3), MomsRising

in opposition to all proposed changes to the Universal Paid Leave Act

My name is Sara Alcid––a Ward 3 resident of 5 years––and I'm here to testify against all proposed changes to the Universal Paid Leave Act. I'm a Campaign Director at MomsRising, a national on-the-ground and online advocacy organization with over one million members. Along with our thousands of members in DC, I, too, am dismayed that several members of the DC Council have caved to corporate pressure and introduced harmful revisions to the Universal Paid Leave Act.

The proposals before the Council, most of which replace the Universal Paid Leave Act's social insurance system with an employer mandate, dangerously assume that employers will fairly administer the paid leave benefits that their employees have earned. This is not unlike putting the proverbial fox in charge of the hen house, especially when we already know that intimidation and retaliation against DC workers who use their earned sick days is all too common.

A local MomsRising member, whose name is withheld due to privacy and job security concerns, is familiar with this reality. She shared the following with us:

"I am a Black pediatrician in DC with almost six months worth of accrued sick time. I have the unfortunate circumstance of working in an environment where calling out sick for just one day is strongly discouraged, frowned upon, and sometimes results in such consequences as working longer hours, seeing more patients upon my return from work, or experiencing inflexibility in future scheduling requests. I have come to work with a migraine strong enough not to think straight, but because of pressure from hospital administration, I reported to work. When my little one was sick, I was told to contact the hospital's list of 'on-call' babysitters so that I could go to work and care for others' sick children while I let a stranger into my home to care for my sick child."

Under an employer mandate, not even a worker in a white-collar job can trust that her benefits will be provided fairly and without some form of retaliation. Four out of the five bills introduced by Councilmembers Evans, Cheh, Gray, and Mendelson would place control of hardworking families' paid leave benefits into the hands of the organized corporate lobby that has opposed universal paid leave from the beginning, including the DC Hospital Association, which by no coincidence represents this pediatrician's employer.

Do we really want employers who intimidate and retaliate against workers who use their legally mandated paid sick days to be in charge of administering paid family and medical leave benefits? For DC's working families, especially low-wage workers, the answer is a resounding no.

To put it in perspective: The Federal Reserve Board found that nearly half of Americans would have trouble finding $400 to pay for an emergency, let alone an emergency on top of missed paychecks. [1] For low-income families, the stakes are high, with medical expenses being the number one cause of personal bankruptcy -- and yet, under the alternative proposals before the Council, this may very well be their reality [2] It's unacceptable to gamble away our guaranteed ability to access paid family and medical leave under the Universal Paid Leave Act just because corporate lobbyists are knocking on your door.

My own father, who is a carpenter, had to go to work the day my mom died of cancer, as well as the days and weeks leading up to her death because his employer was heartlessly inflexible. He couldn't risk losing his job, and so he had no choice. He could never trust this employer to correctly administer the benefits that my father needed to care for my mother through her illness.

Just last year, while I was busy advocating for the Universal Paid Leave Act's passage, I was shocked to be diagnosed with thyroid cancer and had a lengthy surgery to remove my thyroid and fifty of my lymph nodes. With $11,000 in medical bills at the age of twenty-seven, access to paid family leave for my partner Meagan to care for me during my two weeks of recovery would have gone a long way in ensuring our economic stability and my successful recovery. We were lucky that I had access to a generous amount of paid medical leave -- and that Meagan could use some PTO to care for me during half of my recovery period, but families shouldn't have to be "lucky" to do this.

Each day that certain members of the DC Council drag on their highly disappointing and problematic corporate-inspired repeal and replace campaign, paid family and medical leave is delayed and pushed farther out of reach for the families who need it -- and who trusted your word last year when you passed the Universal Paid Leave Act.

It's time for us all to focus on implementing the Universal Paid Leave Act, not repealing and replacing it with proposals that roll the dice on people's lives.

[1] The Secret Shame of Middle-Class Americans, *The Atlantic*
https://www.theatlantic.com/magazine/archive/2016/05/my-secret-shame/476415/

[2] Medical Bankruptcy Accounts for Majority of Personal Bankruptcies, *NerdWallet*
https://www.nerdwallet.com/blog/health/managing-medical-bills/nerdwallet-health-study-estimates-56-million-americans-65-struggle-medical-bills-2013-2/

Kesh Ladduwahetty
Ward 3 Resident
Testimony at the Committee of the Whole Hearing on Paid Leave
October 10, 2017

Councilmembers, my name is Kesh Ladduwahetty and I live in Ward 3.

I serve on the Executive Committee of the Ward 3 Democrats and am co-chair of the Committee's Ethics Task Force. The Ward 3 Democrats passed a resolution on April 20th that called for full funding of the Universal Paid Leave Act (UPLA). The Committee has not had an opportunity to debate the new bills, which is why I am speaking on my own behalf today.

I am testifying in strong support of the original UPLA. I was proud of this Council when you resoundingly voted for the UPLA last December and funded the program in May. At this point, I would have thought that the focus would be on implementation, especially the crucial process of writing regulations. Yet here we are debating alternative legislation that would essentially repeal and replace it. I cannot recall a situation like this, and I fear it sets a dangerous precedent for future legislation.

I am heartened that most of the alternatives to UPLA recognize the value of paid family leave. Like all labor laws, paid leave applies to all workers in the workplace. If we upended traditional labor law and limited the benefit to DC residents, that would have the perverse effect of inviting a bias against hiring DC workers.

UPLA is clearly the fairest and simplest way of providing paid family leave for all workers. An employer mandate, in contrast, would require workers to rely on their employers to receive the benefit. Given the trend towards a "gig" economy and short-term, uncertain employment, it is unwise to tie the social safety net to employers. Rather than streamline the program, the alternatives to UPLA impose significant additional administrative burdens on government. Under three of the alternatives, the government will need to track the number of employees at each business, and differentiate between employees who are covered by the mandate and those who are not. This exposes the program to significant additional administrative burdens on businesses, as well as the government agency. For all of these reasons, UPLA offers the best protection for workers.

As a DC statehood activist, I would also like to comment on Council Member Cheh's proposal to impose a fee on commuters in order to finance the program. The Home Rule Charter prevents us from imposing a commuter tax. A fee may be considered a commuter tax by another name. Such a measure would very likely invite this hostile Republican Congress to challenge the validity of the program.

I hope the Council considers these alternatives to UPLA from the standpoint of the benefits and costs to the entire DC community, as opposed to one particular constituency. From the standpoint of the entire community, UPLA is clearly the best approach. Thank you.

GREATER WASHINGTON
Board of Trade

Statement of James C. Dinegar
Greater Washington Board of Trade

Bill 22-130, Paid Leave Compensation Act of 2017
Bill 22-133, Universal Paid Leave Compensation for Workers Amendment Act of 2017
Bill 22-302, Large Employer Paid-Leave Compensation Act of 2017
Bill 22-325, Universal Paid Leave Amendment Act of 2017
& Bill 22-334, Universal Paid Leave Pay Structure Amendment Act of 2017

Chairman, Phil Mendelson
Committee of the Whole

October 10, 2017

Chairman Mendelson, distinguished Councilmembers. My name is Jim Dinegar and I am President and CEO of the Greater Washington Board of Trade. Thank you for the opportunity to testify today.

The Greater Washington Board of Trade represents the regional business community of Northern Virginia, suburban Maryland and the District of Columbia. As such, many of our members have employees doing business in the District who are residents elsewhere. Many of our members also provide extensive benefits and leave, which brings me to testify again today to support of revisions that would end the expensive duplication of benefits and allow businesses already doing right by their employees to not pay twice.

When the original proposal was introduced, we worked long and hard to conduct the research and fiscal analysis that factually highlighted the challenges facing the implementation, fairness and financial viability of what ultimately became the current law.

In every other jurisdiction that provides universal leave, the employee pays. Here, the employer pays – even though many already provide more leave than is required under the 2/6/8 weeks of current law. This completely different approach is what unnecessarily complicates this law and we commend your efforts to refine and improve it.

You have doubtless heard a lot of accusations about "repeal and replace." Please don't let that be confused with our call to "refine and improve" so that this program can begin sooner, help those who need it and not waste funds by duplicating benefits where they are already in place.

As evidenced by the five new proposals - - some of which would dramatically overhaul current law - - there remains significant concern over the implementation, fairness and financial viability of the program.

We appreciate the opportunity to reiterate our concerns over the creation of a new program that would unnecessarily duplicate the generous benefits already offered by so many of the companies doing work in the District of Columbia. We commend the approach to end this duplication where employers already provide benefits that meet or exceed those specified in the current law.
If a company already provides paid leave, why charge them the full payroll tax and enroll their employees in the program? Doing so delays the implementation of this law because you need to build a bigger reserve.

Lowering the payroll tax for those meeting or exceeding current law is an important step towards ending the duplication, enhancing fairness and strengthening the financial viability of the fund for others to use. In this way, fewer employees will draw from the fund because their employer already provides the equivalent or better than the current mandate. Fewer withdrawals means more remains for those in need.

It would be important to note that adjusting the tax and eligibility will greatly reduce the percentage of District funds being paid to residents of Maryland and Virginia - - a concern we raised almost two years ago.

Just as important is the work being done to minimize the development of a whole new government bureaucracy. You have identified a way to reduce operating costs while targeting the application of benefits that address the real need. We encourage this approach and believe that doing so gets this program up and running much faster.

You will continue to hear from people opposed to any change to the current law. We do not testify today in opposition to the current law, we testify in support of the improvements needed to implement things faster and better, make it fair for all involved and make it financially stable so that it will stand the test of time.

Thank you for the opportunity to testify.

Marcia St. Hilaire-Finn
Owner, Bright Start Child Care and Preschool, Ward 4
Resident, Ward 4
Testimony on Paid Family and Medical Leave Insurance before DC Council
October 10, 2017

My name is Marcia St. Hilaire-Finn. I am the owner of Bright Start Early Care and Preschool in Washington, D.C. Bright Start has been caring for and teaching children, since 2002, and has 24 employees. I strongly support our new law, the Universal Paid Leave Act. Last year I testified in support of UPLA and celebrated the Council passing the bill. I sit before you surprised. Surprised that the Council is causing delay in the full implementation of UPLA in favor of directing energy and time toward proposals that create risks for employers, employees, and the city.

As an employer, I firmly believe that the Universal Paid Leave Act is beneficial to small businesses like mine. While I am a small sized business with a small margin, the 0.62 payroll tax is a good value, neither costly, nor difficult. I provide a yearly cost of living raise, typically ranging from 2-3%so I could continue to give a raise but at a little bit less so as to easily cover my contribution to the social insurance pool. My employees would rather have this leave benefit and a raise of 1% or so than go without paid family and medical leave when they need it – and we all do at some point.

My business needs UPLA implemented now, not delayed. Let me tell you a story

Last year two of my employees, needed excess time away from work because they needed radiation therapy to treat breast cancer. It was a hardship for my business, and the employees, since they had to be away from work for an extended time with limited pay, and substitute staff, needed to be paid. If UPLA was in effect, both my business and employees would have suffered less financial constraints.

I am concerned that the proposed alternatives are a big risk without any obvious benefit to the city. I am mostly worried about ways that the alternatives may reduce access to paid leave by workers, particularly workers without the highest wages -- such as child care workers. That's not a concern under UPLA. Under UPLA, government collects the funds for the social insurance pool from all employers and also disburses those funds to workers who need the leave. In contrast, under the various alternatives in which employers hold the purse strings, some –not all- employers will try and cut costs. How can employers cut costs under the alternatives? They might fire an employee who announces they need six weeks to care for their child with cancer. While the proposals might include provisions to tackle retaliation, it takes an enormous amount of time and capacity to prove retaliation. At least under a social insurance program, a worker with a qualifying need will not be denied their benefit. Further, if everyone is under the same social insurance program, we all operate under the same rules. If some companies are allowed to opt out, that means different rules and the city will have to spend extra money on enforcement. Why do that?

As an employer, childcare provider, health professional, and member of the community, I strongly urge the Council to put the focus on implementing our social insurance program, the Universal Paid Leave Act.

Hearing on Paid Leave Legislation
Testimony of Rabbi Elizabeth Richman,
Deputy Director & Rabbi in Residence, Jews United for Justice
Ward 4 Resident
October 10, 2017

Good afternoon. My name is Rabbi Elizabeth Richman. I am the Deputy Director and Rabbi in Residence of Jews United for Justice, an organization that counts thousands of DC residents in its community. I am also a DC resident and homeowner in Ward 4.

I am here today to testify against the five bills that have been proposed as replacements for the Universal Paid Leave Act.

My organization helped convene the group of local and national experts who spent the last three years researching, writing, and fine-tuning the Universal Paid Leave Act. The legislation was designed around two central principles: first, that the program be viable, sustainable, and effective, and second, that the program be broadly inclusive, in particular of the people who currently have the least access to paid leave through their jobs. The proposals in front of us today undermine both of those principles. I believe we are all trying to work toward a good paid leave program, and that the authors of these bills view their proposed changes primarily as technical fixes. But I want to be clear that, as you heard from leading experts, these are not just technical changes; they actually undermine the core principles I just outlined and will almost certainly make it much harder for people to get paid leave - especially the most vulnerable people.

Councilmembers, you know that there are large numbers of people in this city who work multiple jobs for low wages and whose continued employment is contingent on the good will - and the whims - of their employers. Rather than making the discrimination and pressure they already face less likely by putting paid leave in the hands of a neutral government agency, all the bills that allow employers to "opt out" of the citywide fund put control of the benefits in corporate hands.

It isn't reasonable for a supposedly universal program to force people whose employers already treat them like they are expendable and replaceable to go ask their managers for paid leave. When employers have to pay for leave, too many businesses will respond to the financial incentive to save money and will find ways to deny leaves, fire people, discriminate in hiring, or retaliate against people who need leave by giving them worse and fewer shifts.

These corporate control bills also do not indicate how the city will effectively enforce the laws or hold employers accountable. I cannot imagine a young working-class dad with a newborn baby will be equipped to take his corporate employer to court or push his case against a manager with a city office when he gets fired for asking for leave to care for his baby. And even highly-empowered white collar workers experience pressure from their managers not to take leave. Employers may not plan or intend to do wrong, but the incentives push every manager and boss in that direction. We shouldn't make a policy that assumes every employer is a saint,

we should stick with a policy that makes it easy and affordable for everyone to do the right thing.

I am also very concerned about Councilmember Cheh's alternate revenue bill. This is a creative solution, but will almost certainly invite Congressional intervention and catapult the District into a massive lawsuit, resulting in enormous taxpayer expense and long-delayed implementation of paid leave. While the restriction on a commuter tax is unfair and should be challenged, it is simply wrong to use vulnerable employees facing caregiving crises as that test case.

Jewish tradition teaches that all people are equal and that all of us who work - especially those who are poor and rely on their wages for survival - are entitled to decent pay and fair, dignified, humane treatment on the job. I would argue that these are actually universal human values. I hope the Council will help make these values manifest in our city by dropping these damaging alternative bills and moving forward with the well-designed universal paid leave program we already have.

Testimony of Jodie Levin-Epstein, D.C. Paid Leave Coalition
Committee of the Whole
Public Hearing
October 10, 2017

Chairman Mendelson and members of the Committee of the Whole, I am Jodie Levin-Epstein, and I work with the D.C. Paid Leave Coalition. The Coalition includes over 200 businesses, non-profits and community institutions as well as thousands of individuals across the city. I also worked for the Center for Law and Social Policy (CLASP) for nearly 30 years and led this national organization's efforts on paid leave.

We thought we would be celebrating. After all, our new law, the Universal Paid Leave Act is the product of significant analysis and substantial compromise. Most importantly, it is premised on a shared value that our program should be "universal". The "universal," inclusive program you passed is one in which **all** employers **similarly contribute** to the social insurance pool so **all** employees in big and small firms can be protected when they need leave. We are all proud of that value.

But instead of discussing creative strategies for implementation, we are now airing the plethora of concerns about the employer mandate proposals including how those who are most vulnerable are at greatest risk of losing access because of possible employer retaliation. And, instead of an implementation RFP hitting the streets, this hearing may well be crimping the release date. That's damage done. And, Councilmember Cheh's proposal to get around the Congressional commuter tax prohibition also causes worry. It likely would result in litigation that could last years -- years in which family leave will be unavailable. Many of us are equally riled by the Congressional restriction rule but we cringe at the notion of postponing needed paid leave for who knows how long to babies and elders in need of care.

We should only accept change that is value-added for the whole city. There's everything right in trying to improve legislation. There's everything wrong in making changes that take big risks with good legislation. The proposals vary but the good news is that Chairman Mendelson's bill leaves in place the benefits workers can receive and applies the program firms of all sizes. The bad news is that the financing structure is changed. Some or all employers would control the purse strings. That incentivizes some employers to save money. The end result: some workers in need will not get paid leave. In other words, how leave is financed is not a technical issue; rather, it impacts what we value – access.

The risks of an employer mandate are not insubstantial.

- The larger the social insurance pool the more stable. Shrinking our pool because some employers go it alone increases risks of solvency and stability;
- The more employers who hold the purse strings to benefits, the greater the risk those strings will stay tied and benefits will not reach eligible workers; intimidation, retaliation, and discrimination are incentivized by the financing structure.
- Bifurcated enforcement requires the city to implement and pay for two different programs. An employer mandate requires substantial enforcement. It also could create challenges for workers who switch between the programs. Under social insurance, in contrast, the benefits are portable and follow the employee.
- States with experience recommend avoiding an employer mandate. This includes California and Hawaii. California's program inherited a financing structure dating back to the 1940's. State officials have recommended the approach not be replicated. Specifically, when Connecticut was investigating how to pursue a state family leave program, California officials responsible for the state's "voluntary plan" opt-outs cautioned that it " would create additional administrative functions within the CT-FMLI program and would create unnecessary burdens within what would already be a new state program." In Hawaii, the Women's Commission has identified a myriad of concerns about its employer mandate which is driven by a legacy financing structure established for the state's Temporary Disability Insurance program.
- State size should matter. Rhode Island and D.C. have a similar size workforce. Rhode Island and D.C. both have inclusive social insurance

programs – without an employer mandate. Rhode Island has succeeded – with no employers opting-out and without the unnecessary expenditure on bifurcated enforcement.

Why do some business associations want employers to hold the purse strings?

- It is really hard to understand what is driving associations to push against a proposal that provides a stable, predictable, low cost vehicle for delivering fundamental benefit. Reasons likely vary from disinterest in doing anything new, particularly something required by government, to a basic misunderstanding of how the law would work.
- Significantly, many businesses across the city are worried about the pending proposals. In the attachment to this testimony you'll see the High Road Employer letter signed by such businesses as Art-drenaline 365 Café in Ward 8 and more well-known businesses such as Comet Ping Pong, A Few Good Hardware Stores, and Rosa's Luxury.

A value-added proposition.

- Another reason some employers might push for an employer mandate, an idea I heard from HR staff in California, is that some employers don't want the government to get the credit for doing something good, they want it. That's music. We can achieve the same through our social insurance program. Instead of debating and designing ways for employers to hold the purse strings, let's brainstorm ways to give employers credit for the social insurance program they contribute to. For example, checks disbursed to workers by the city agency could celebrate the contribution. That's just one idea. Let's debate others.

That's a value-added proposition that helps the city as a whole.

Attachment

PAID FAMILY LEAVE

October 9, 2017

An open letter to member of the DC Council:

We are employers who urge the DC Council to value what the Universal Paid Leave Act (UPLA) accomplishes and to avoid any amendments that jeopardize the social insurance system it established.

As business owners, we know that our greatest asset is our employees. We strive to provide benefits. Few employers, however, can afford paid family and medical leave. Paid family and medical leave is important since most of us, at some point, need leave to care for a seriously ill family member, address our own illness, or parent a new child. Paid leave makes business sense too: it helps us retain employees and avoid the high cost of worker replacement. Further, in finding our employees, we compete with larger employers who can afford paid family and medical leave benefits. That's a competitive disadvantage. The UPLA addresses these issues.

At the heart of the Universal Paid Leave Act is a social insurance program that applies to all employers and to all workers. Employers contribute 0.62 of payroll into a shared pool of funds that is available to all workers. We are delighted that the start-up funds for the program are now approved and we hope to get news of implementation progress soon.

The Council proposals to change the Universal Paid Leave Act's financing structure generally continue the social insurance program *but* create provisions that could significantly shrink the pool by allowing some or all employers to instead pay for an employee's leave out of pocket (directly or with currently unavailable private market insurance).

If the social insurance pool is shrunk it may lose its solvency. That worries us. We hope it troubles you too.

Sincerely,

Gina Schaeffer	**A Few Good Hardware Stores** Chinatown, Glover Park, Logan Circle, Tenleytown, and Woodley Park
Shawn Lightfoot	**Art-drenaline 365 Café** Anacostia
Andy Shallal	**Busboys and Poets** Brookland, Chinatown, Takoma Park, and U Street Corridor
Bryce Reh	**Comet Ping Pong** Van Ness

Jena and Matt Carr	**Little Red Fox and Fox Loves Taco** Van Ness and Brookland
Fatma Nayir	**Mama's Kitchen** Anacostia
Megan Duffy	**Patagonia** Georgetown
Roger Horowitz	**Pleasant Pops** Adams Morgan and McPherson Square
Bradley Graham	**Politics and Prose** Van Ness
Aaron Silverman	**Rose's Luxury, Pineapple and Pearls, and Little Pearl** Barracks Row
Pennye Jones-Napier	**The Big Bad Woof** Takoma Park
Aaron Seyedian	**Well Paid Maids** Washington, DC

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The entire DC Paid Family Campaign coalition membership, including more than 75 for-profit businesses across the District who supported passage of the Universal Paid Leave Act, can be found online at www.dcpaidfamilyleave.org/coalition.

Hearing on Paid Leave Legislation
October 10, 2017

Testimony of Elizabeth Heyman
Ward 1 Resident

Chairman, Councilmembers, and staff, my name is Elizabeth Heyman and I'm a resident of Ward 1. I've spoken to you many times about why an accessible paid family and medical leave program is something that DC families cannot afford to wait for. Two years ago, we couldn't all agree that paid family and medical leave was a benefit that no workers and employers should be without. Today, that's not the case. I'm proud that I live in a city where every single councilmember agrees that DC should have some form of paid leave. I am especially grateful to those of you who are putting me and my neighbors before corporate interests when thinking about what paid leave looks like.

I'm here today because the changes being considered to UPLA would be extremely detrimental to workers. I want to share some of my own experiences that lend themselves to my fears. Before moving to DC, I lived in New York City. I was there for college, but in order to do that, I needed to also work multiple jobs. One of my jobs was with a large retail brand, which, at the time, had stores all over the country. While the job did not require much training, after a quick tour of the store I was given an employee manual to read in my time off and sent to the floor to start selling clothes. When I did read through the manual, I learned that I had to request time off three weeks before needing it. Unfortunately, Yom Kippur, arguably the most holy holiday of the year for an observant Jew, was two weeks from my start date. I immediately filed a request for time off, hoping that my boss would understand that it was physically impossible for me to do so sooner, since I didn't even work at the company yet. When I tried to speak to him about it the next day, he told me that if I didn't come into work for my shifts, I wouldn't see my name on the schedule again. That year, I spent Yom Kippur stocking shelves and selling clothing; I couldn't afford not to.

Now I have an employer that deeply values its employees, and therefore has created a culture that both promotes self-care and makes it work when my coworkers and I need to put our families first. Unfortunately, I have not always been that lucky. The experience at my big retail job is one of the reasons so many of these alternative bills scare me. I made the choice that was right for me on that Yom Kippur, but afterward I did not feel comfortable asking my boss for anymore time off for fear of losing my job or having my hours cut. You have the power to disincentivize workplace discrimination and retaliation.

I hope that you'll take this opportunity to do what's right for me and my neighbors. Our votes are a symbol of our trust and faith that you are the right people to do this work. *Please* make sure the Universal Paid Leave Act becomes a reality. Thank you for your time.

Carol Spring testimony
Public Hearing: Committee of the Whole
October 10, 2017

Good morning Chairman Mendelson and Councilmembers. Thank you for listening to my testimony today.

My name is Carol Spring, and I'm testifying today to ask that the Universal Paid Leave Act is upheld without changes. We in the city have been waiting for this program to be fully put into action.

I have been a homeowner in Ward 4 for the past twelve years, and I lived in Ward 1 prior to that. My eleven-year-old daughter told me recently that she plans to go to college in DC and raise her future children and grandchildren here.

A few years ago, when both of my parents went through surgery in the same year, I realized that my parents' and my in-laws' medical needs are growing at the same time that my husband and I are also raising a child. I live closer to my parents than my siblings do, so if either of them should have a medical emergency, I would be the most able to help out. I'm working and caring for a young child and my husband has a well-controlled but chronic condition.

What would happen if any of them came down with a major illness and I needed to take time to care for them? What if I fell ill and my husband needed to take time off work to care for *me*? Would we be able to pay the mortgage, or would we lose our house? These are some of the questions in my head when I have trouble sleeping at night.

I'm also aware that I have resources available to me that many DC residents do not have. Many do not have a safety net, and are one illness away from losing their jobs and their homes. As a Christian, I am called to love my neighbor, to care for the widow, the orphan, those in need, and those caught in the system of incarceration. I'm concerned about racial justice and inequity, the high cost of housing here, and the huge number of working families who teeter on the edge of poverty - plus thousands who are already struggling with poverty and homelessness.

I'm speaking to you on behalf of thousands of people who can't take a single day off work to be here, for fear of losing their jobs. We want paid leave to happen as soon as possible. We must care for all, to build a stronger community for all.

Why should working families have to choose between caring for their families and keeping their jobs? With the legislation that the Council passed last year, people who work will be happier and therefore more "productive", something that DC businesses want. We cannot delay this program any longer. You voted it into law, and DC residents support it. Please put Universal Paid Leave Act into action now, without changes, and you will stabilize families and attract good businesses to DC that residents want to work for and that contribute to a strong city where prosperity is shared by all.

Thank you for your time today.

Hearing on Paid Leave Legislation
October 10, 2017
Testimony of Shelley Moskowitz, Ward 4 resident

Good day Chairman Mendelson and Councilmembers. I am Shelley Moskowitz, a resident of the District since 1987 and homeowner in Ward 4 since 2010. I appreciate the opportunity to testify today. I know from both personal and professional experience the enormous difference paid leave can make. I am a strong supporter of the Universal Paid Leave law as originally enacted and I am gravely concerned about the alternative proposals being considered today.

My caregiver journey began in 2011 when my 83-year old mother suffered a major stroke. It caused left side paralysis, slurred speech and cognitive impairment. I thankfully worked for a national nonprofit with a union contract that included paid sick leave. Within hours, I was able to be at my mother's bedside in the ICU and stay with her through her transition to rehab. If any of you have gone through similar family health crises, you know there are so many important decisions to make – medical, financial, logistical. It is an emotional roller coaster ride. Having paid leave took one major concern off my plate and allowed me to focus on my new role as a caregiver.

My siblings were not as fortunate. My sister felt torn between her full-time job and all the assistance mom needed. She reduced to 2/3rds time at work, but ultimately felt compelled to "retire" when her hours and pay were cut back, but her employer left the same amount of work on her plate. My brother had very limited leave time, so he did what he could on weekends. I was able to use my paid leave to provide much-needed respite for my sister and spend precious time with my mom. I was able to be there when mom took her final breath on September 5, 2014. Thanks to paid leave, I have no regrets and I have beautiful memories.

My caregiving experience forever changed me. I am now self-employed as a caregiver coach and nonprofit consultant. When I ask family caregivers what paid leave would mean to them, their eyes light up at the thought of being able to care for their loved ones without fear of losing their jobs or stress about paying their bills.

Here in the District, we can provide equal access to quality paid leave coverage to our residents. The Universal Paid Leave law was originally built on a social insurance model that protected workers, who were guaranteed paid leave by their employer's contribution into a common fund and who would not have to fear retaliation from their employers if they took paid family leave. I know how important such protections are for workers. You should be proud of the law and uphold it. It is irresponsible for the Council to consider proposals that would undermine the goal of providing universal paid leave coverage. Don't break your promise to DC families – they deserve better.

Shelley Moskowitz
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Washington, DC 20011
202-320-0213
smoskodc@yahoo.com

Hearing on Paid Leave
October 10, 2017
Testimony of Marilyn Pratt-Givens, Ward 7 Resident

My name is Marilyn Pratt-Givens and I live in Ward 7. I'm here to support the Universal Paid Leave Act.

In December of 1992 I was working for Verizon, loving my job and colleagues and never missing a day of work - it was so rewarding. On Christmas Eve, I discovered a lump in my right breast. I went to my doctor, who sent me to have it checked.

The technician advised me that it was a benign tumor. When going into have a biopsy I had my mother and dad there, and we thought the lump would be removed and it would be over. But when I woke up from anesthesia, I noticed my mother was crying. She told me I had cancer. It was shocking.

My next step was lumpectomy, chemotherapy, radiation, and I lost my hair. My mother, and my boyfriend, who is now my husband, and my family and friends were there to take me to chemotherapy. I got short term leave with full pay and then later half pay with long term disability.

Chemotherapy, radiation and hair loss made my life depressing and miserable. Having my mother by my side would have helped, but she wasn't able to be there because she couldn't take time off from her job. After I finished radiation, I still felt sick. But I went back to work because my leave had run out.

In 1994-95 I woke up one day with a red scar on my forehead and 2 bald spots in my head. It was then that I discovered I had Lupus, that day being the first time ever even hearing that word. My body took on more aches and pains. I was continuously going to different specialists, which I still do today. My rheumatologist and I spoke about long term disability so that I could get better.

Verizon told me that I had to come back to work. Going back to work for those months on medication was hard on my mind and body.

On August 2, 1996, while I was at my desk working, one of the managers came to my desk and told me that my rheumatologist wanted me out of work now. That was my last day at work there. I loved and succeeded at my job. It was heartbreaking to leave.

Members of the DC Council: You passed a very strong law, the Universal Paid Leave Act, last year. Please do not repeal or weaken it. My experience taught me that if you allow employers, especially large corporations, to administer paid leave, they will wind up getting between patients and their doctors. I was fortunate enough to have some paid leave when I was diagnosed with cancer, but my family members were not.

Please, no more delays. It's time to implement the Universal Paid Leave Act as soon as possible, so that families hit with cancer or another unexpected health crisis can have security and peace of mind. Don't make them wait any longer.

Hearing on Paid Leave Bills
DC Council
Testimony of Hannah Weilbacher, Ward 1 resident, Public Witness

Good afternoon. My name is Hannah Weilbacher, and I'm a Ward 1 resident testifying in support of the Universal Paid Leave Act.

For over two and a half years, I worked at Jews United for Justice and for the DC Paid Family Leave Campaign as a community organizer. I'm here today in a volunteer capacity.

I'm here for my mom, a breast cancer thriver. When I asked her if she had had paid leave when she was going through cancer, she laughed. "Of course not," she said, "but I'm lucky because they let me keep my job." Lucky? No one should be lucky to work for someone who *lets* them take time off to go to cancer treatment. It should be a right for employees to be able to take time and for employers to afford to offer it.

I'm also here for myself. I'm in the midst of learning more about some personal, chronic health issues. I'm dealing with things we've all dealt with - my insurance is a nightmare, my policies are confusing, and the emotional aspect is exhausting. Universal social insurance, the UPLA plan, is the only way to ensure I can take leave when my health issues worsen..

And I'm here today for everyone who can't be here. What kind of person do you think is able to be here on a Tuesday afternoon? People have made sacrifices to be here today, and it's not the first time they have taken the time to write testimonies and be at the Wilson Building. But even *more* people have told us how they wished they could show up today, but given that they *do not have any paid time off* are not able to.

Whoever I'm here for, I truly can't believe I'm here today at all. I can't believe that the Council is so seriously and so blatantly discussing siding with the corporate lobby. Mostly - I can't believe that anyone thinks that District voters and small businesses won't notice that this program, which people have communicated - unequivocally - their need for, is being weakened and the implementation is being delayed.

It's true - people are busy. But here's the good news - if I've learned anything as a community organizer, it's that we're not too busy to take action. When people are hurt, and when people are hopeful, we take action. That's why we're back here today. That's why it is in each Councilmember's best interests to listen to the stories you are hearing today - most of them for the umpteenth time.

Don't count on us not paying attention. Don't count on us believing that a Councilmember could "support paid leave in theory" while working to repeal and replace the UPLA. Don't count on us believing that the "benefits won't change between the two options," when our lived experience has taught us without a doubt that employer-enforced protections are benefits in name only.

The Council engaged in a thorough, two-and-a-half-year debate on paid leave last session. I know, because I lived it intimately. Big business had the same amount of time as community advocates did to propose alternatives and lobby the Council. But not only that - they had access to 10 times the number of paid lobbyists and researchers as the paid leave campaign did, and yet they neglected to offer meaningful solutions or compromises during that time. Even when some Councilmembers took their calls and ignored ours.

For a moment at the end of 2016, you gave me a reason to be hopeful about what local government is able to accomplish. We need the government to demonstrate leadership by sticking with a program that centers the needs of working people and levels the playing field for small businesses. These alternative proposals are riddled with the same loopholes as the amendments introduced last year and yet here we are debating them. Why is the business lobby receiving special treatment over District families, workers, and small businesses? Despite bringing in paid lobbyists to pack these chambers, the community - covered in red t-shirts - still filled this room and the hallway out there each time we were asked to share our stories. And you can count on us to stay and pay attention to what's really going on. Thank you.

Megan Duffy
Patagonia, Store Manager
DC Council Committee Hearing on Paid Leave
October 10, 2017

Hello, my name is Megan Duffy and I am testifying today in support of our new law, the Universal Paid Leave Act and about my concerns regarding the proposed alternatives to the Act that threaten the safety of the social insurance program. I currently serve as the Store Manager at the Patagonia Store in Georgetown, located in Ward 2. Patagonia is a California based outdoor clothing and gear company, with a 30 plus year mission of building the best product, doing no unnecessary harm, and using business to inspire solutions to the environmental crisis.

At Patagonia, we've spent more than 40 years honing in on more environmentally responsible ways to make the world's most functional, highest quality gear for the outdoors. Yet our founder, Yvon Chouinard, considers the kids and grandkids that grow up at our on-site child development center to be Patagonia's "best products." It's incredible to me that as country we are so far behind the rest of the world in taking care of our families. I'm one of the lucky ones. In addition to our commitment to the environment, Patagonia is passionate about the success of our employees' families. To support our families, Patagonia provides company-paid health care and sick time for all employees, and we offer 16 weeks fully paid maternity leave, 12 weeks fully paid paternity leave and paid leave for adoptive mothers and 12 weeks fully paid family medical leave in the event you or a family member has a serious illness or medical condition. We do more than what is required under UPLA and will continue to do so.

My business is in D.C. and the success of my company is fed by the health of D.C.'s local economy. A social insurance model of the Universal Paid Leave Act insures that all local businesses are able to sustain and support their employees through a minimum standard that sets a level playing field; this keeps the market competitive. Patagonia provides paid family and sick leave to our employees because it's the right thing to do – and because it's good for our business. It can be a daunting for companies to embark on the journey to support employees in the ways listed above, but we have found the return on our investment has been worth it at every turn.

We are concerned that proposals that require or give employers the option to pay out of pocket would create unnecessary risks for the social insurance model. If the social insurance pool shrinks it may become volatile or insolvent. Further, a labor law is only effective if it is enforced. If UPLA is amended to also create an employer opt-out of any kind that would require the enforcement agency to manage two different programs: social insurance and the employer mandate. That's a risk not just to the pool but the workers and community that depend on it.

Paid Family Leave Hearing

October 10, 2017

Jamie Smith, Ward 4 Resident

When my daughter Claire was born at Sibley Hospital eleven years ago we had no indication that she would anything but a happy, healthy baby. I had saved up my vacation and sick leave for years in order to be able to take a couple months off when I finally had my baby.

But, things don't always go according to plan. Claire was born very sick, with multiple life-threatening conditions caused by what we later learned was a genetic disorder. She spent weeks in the neonatal intensive care unit at Georgetown University Hospital. Because I had leave saved up, as did my husband, we were able to stay by her side and talk to her numerous doctors about her care. As shocking as it is to hear, we were some of the lucky ones able to stay by the bedside of our child when it wasn't clear we would ever get to take her home. Most of the babies were left alone in the cribs all day until around 6:00 when what I came to call the "Daddy shift" started and other parents trickled in to spend an hour or two with their critically ill infant before heading home to sleep. From talking to these parents, I know that they didn't leave their infants because they wanted to, but because they had no choice. They had to work.

Eventually, our luck ran out too. Claire was still very sick. Although she was released from the NICU she had so many appointments each week with specialists and therapists that it was impossible for me to return to work even though I had no more leave saved up. Fortunately, my employer allowed other employees to donate leave to me and so I began to rely on the kindness of friends, and strangers, to help fund the time off I needed to care for my fragile and significantly disabled newborn.

As Claire has grown, so have her needs. Managing her care, her therapies, and her medical treatments alone could be a full-time job. My husband and I try to share the work of staying on top of her care and her appointments, which continue to be numerous.

All families deserve the ability to be with their loved one when they are facing serious medical challenges. No one should have to face the choice of being away from their child who is close to death or a paycheck, as I saw happening daily when Claire was in the NICU. No one should have to beg strangers for support to be with their critically ill, as I was forced to do when Claire was born.

In taking steps to implement the Universal Paid Leave Act DC has proven its commitments to the health, dignity, and well-being of its citizens. Steps that will make DC an attractive place to live and work. DC should stick by this commitment and not roll back the protections slated to be implemented.

PUBLIC HEARING ON REVISONS TO THE UNIVERSAL PAID LEAVE ACT

Testimony in Support of Paid Family Leave
From Rev. Robert C. Keithan, Resident of Ward 5
October 10, 2017

Hello. My name is Rob Keithan. I am the Minister for Social Justice at All Souls Church Unitarian at 16th and Harvard in Ward 1, and a DC resident of more than 20 years currently living in Ward 5.

Paid leave would have made a huge difference to my family, had it been in place when we had our first child in 2015. Our daughter was born 7 weeks premature, weighing only 3 pounds 12 ounces. She spent 30 days in the NICU before we could take her home. It was one of the most stressful times in our life, and it was made even more difficult by the lack of paid leave. We both chose to take significant amounts of unpaid leave to be with our tiny daughter, which was absolutely the right decision. But even now, 2 years later, we're still digging ourselves out of that financial hole. And we are people with economic privilege—I know many of the parents we met in the NICU had no choice other than to keep working.

This Council already passed strong paid leave legislation. You did so after several years of robust public debate, with all sides having ample opportunity to weigh in. The bill already strikes a good balance between business and worker protection; in fact, it wasn't even as strong as I hoped it would be in terms of worker protection, but it was an incredible step forward for the people of DC. Re-opening the debate to carve out a different system for large employers, or to create other loopholes or bureaucratic hurdles, is harmful, irregular and unnecessary. The bills weaken enforcement mechanisms, delay implementation, and make it more likely for low-wage or part-time workers to face intimidation or retaliation.

If passed, these bills will wrongfully and needlessly force more families to go through what mine has – or face the heartbreaking decision of staying at work when their child's life is at risk. These bills are a step backwards, and frankly it's hard to see it as anything besides a caving in to powerful interests.

The Council should focus on how to use development and growth to reduce inequality in our city, rather than spending time discussing ways to weaken a good law that's already been passed. I urge the Council to reject any and all amendments to the Paid Leave Act. Thank you.

Testimony on behalf of the DC Paid Family Leave Coalition
Prepared by Joanna Blotner, Campaign Manager

Committee of the Whole, District of Columbia Council
Hearing on Paid Family and Medical Leave Replacement Legislation
Council Chambers, John A.Wilson Building, 1350 Pennsylvania Avenue, NW
October 10, 2017

Good afternoon Chairman Mendelson and members of the Council. My name is Joanna Blotner, I am a Ward 1 resident, a native Washingtonian, and the DC Paid Family Leave Campaign Manager. Our campaign's coalition represents more than 200 community institutions, non-profit organizations, and businesses across all eight wards.

Over the past three years we have engaged thousands of residents, workers, and business owners across the city, each with a unique and often heartbreaking story about their need for paid time to care for the ones they love. On behalf of my coalition and all the people and families I have met through my organizing, I am here to express profound disappointment in the Council's efforts to repeal the Universal Paid Leave Act and replace it with legislation that would jeopardize access to paid family and medical leave benefits for hundreds of thousands of people working in DC.

There are a myriad of problems with each of the bills that have been introduced this year to replace the Universal Paid Leave Act and below are the toplines of the technical or conceptual problems unique to each bill as we see them - I will not read this list aloud but I urge you to review it:

1. **Bill 22-130, the Paid Leave Compensation Act of 2017, introduced by Councilmembers Evans and Cheh**

- Nearly 31,000 people who are self employed or work for a micro business of 5 or less employees will lose access to paid family and medical leave coverage. Approximately 69% of businesses in DC have less than 5 people in their employ.
- The social insurance pool created by this bill would shrink from 510,000 workers to just 144,000, a 72% reduction in size. Such a small insurance pool coupled with a reduction in the wage contributions rate and a significant loss of pooled revenue from many of our city's largest

and most financially stable companies makes for a very risky financial experiment. We should not be taking risks with the health and wellbeing of our families, especially at the expense of DC's small businesses.

- The arbitrary "50 employees" business size threshold discourages business growth. Paying for longer term leaves out of pocket is inherently more unpredictable than a social insurance model and for many mid-size businesses those unpredictable and high costs will be hard to bear. Many companies who fear the costs of self-insuring will be seek to keep their companies small even when if they have growth potential. And what about those companies that already fluctuate annually around the size threshold level, how will they comply with this law? Any given year a business could employ between 48 and 52 people, for example, simply due to job transitions, project fluctuations, and/or seasonal needs - how will they know whether to self-insure or contribute to the social insurance program any given month, how will the employees know how their leave would be covered?
- The arbitrary size threshold is out of alignment with DCFMLA creating compliance confusions for employers and employees alike.
- Employees would only be eligible to take one leave per year, even if that one leave only required 2 weeks of caregiving.
- Working families in DC will be forced to wait another two years for this law to be implemented (2022). That is an unacceptable delay.

2. Bill 22-133, the Universal Paid Leave Compensation for Workers Amendment Act of 2017, introduced by Councilmembers Evans and Gray

- Again, the 31,000 people who are self employed or work for a micro business with 5 or less employees will lose access to paid family and medical leave coverage.
- This legislation repeals the social insurance financing of paid leave: all covered employers (any company with 5 or more employees) will be required to self-insure or obtain insurance coverage from the private market. This approach to paid leave poses a significant and unpredictable financial burden on DC businesses. Some of our largest and wealthiest employers will navigate this requirement and be able to absorb the benefits and extensive administrative requirements, but for small and mid size companies with slim margins, an unexpected family medical emergency could put the company in the red. Further, without an up-front guarantee that covered employers are financially solvent enough to cover their employees' paid leave, there is no assurance that working people throughout the city will be able to receive the pay they need when caring from themselves and their families.
- This legislation suggests that DC businesses should seek out private-market paid family and medical leave insurance to cover the leave if a company cannot afford to self-insure. <u>However, this insurance product does not exist</u>. And if it did, we would need to ask a fundamental question: do we want paid family and medical leave coverage to have profit incentives inherent to private market products? We know existing temporary disability insurance companies already find creative ways to deny claims to avoid pay outs, do we really want to replicate this sort of system that makes it *harder* or more stressful for us to care for our families?
- This legislation suggests that DC's smaller businesses could also rely on a tax credit rebate system to offset some of their costs of paid leave (whether provided by self insuring or private insurance). To qualify, however, the company has to run cumbersome cost assessments that prove they deserve assistance paying for leave and then submit claims annually for their rebates,

all while dealing with the upfront processing and paying of an employee's leave. For small and mid-size companies, many of which have understaffed HR or finance departments, if any formal departments at all, this creates *more* administrative burdens than the Universal Paid Leave Act. There is also no guarantee that the tax credits will offset enough of the upfronts costs of leave *or* that the government will have enough tax credit revenue collected through this version of a paid leave program to approve all of claims it receives.

- Intermittent leave is scaled back making it harder for people to attend regular appointments for such as dialysis, chemotherapy and radiation, physical therapy/rehabilitation, prenatal visits, asthma check ups, and more.
- Employees would only be eligible to take one leave per year, even if that one leave only required 2 weeks of caregiving.

3. **Bill 22-302, the Large Employer Paid-Leave Compensation Act of 2017, introduced by Councilmember Evans**

- At least 50,000 people working in the District of Columbia will be denied paid family and medical leave coverage because they work for a smaller company (25 or less employees). This arbitrary threshold for paid leave coverage wrongly leaves thousands of workers without the support they need when the inevitable medical emergency strikes, prevents small employers from offering competitive benefits against their larger counterparts, creates compliance challenges and financial burdens for small companies any time they grow or downsize, and is bizarrely inconsistent with both DCFMLA and Federal FMLA with regard to size threshold *and* on job service eligibility requirements.
- Countless other workers from companies of every size will also lose access to paid leave benefits if their bosses decide that leave causes an undefined "operational hardship" to the company. It is safe to assume that this approach to paid leave will only reinforce the status quo - the 86% of the businesses not currently providing paid family and medical would assert that paying for leave out of pocket is a financial hardship, disproportionately impacting people in lower income jobs, who, in DC, are overwhelmingly people of color.
- Paid medical leave would be reduced by one week and paid out by way of an accrual system analogous to DC's paid sick days law. Illness and injury, however, do not distinguish between whether you have accrued sufficient leave or whether you are new to your job.
- No employee education or outreach is funded in this legislation effectively ensuring workers will not know how to exercise their rights to paid family leave.
- Penalties for violating this law are extremely low compared to other labor laws in the District thus creating insufficient deterrents for denying leave.

4. **Bill 22-325, Universal Paid Leave Amendment Act of 2017, introduced by Councilmember Cheh**

- While our coalition appreciates that social insurance is the financing structure of this legislation - as we believe it is the most effective and efficient way to administer leave and protect worker rights - we are very concerned about the legality of collecting fees from commuters. An attached memo prepared by Steptoe and Johnson, LLP concludes: *"the treatment of the charge must be evaluated in the context of what appears to be strong Congressional intent to deny the District the authority to reach the personal income of nonresidents. Indeed, the fee/tax analysis in*

support of the Cheh bill might be missing the forest for the trees. As discussed above, there appears to be a significant risk that a court might find that levying this "fee" on nonresidents' income, even to provide a benefit to those same individuals, represents an impermissible tax." Why take this risk? Why invite Congressional scrutiny and interference? Why subject the District to costly and lengthy litigation? Why delay access to paid family and medical leave when we have already have a strong, thoroughly debated, and legally sufficient law on the books? Families facing crushing financial pressures and caregiving crises are are not the vehicle by which to provocatively test the District's scope of taxation. (I should note, many of our coalition members would be personally happy to brainstorm alternative commuter tax test cases that do not harm working families and have better chances of success!)

5. **Bill 22-334, Universal Paid Leave Pay Structure Amendment Act of 2017, introduced by Chairman Mendelson**

- With approximately 53% of the District workforce employed by larger companies of 100 or more employees, this bill threatens to shrink the District's social insurance dramatically. The fundamental principle of insurance is: the larger the pool, the more spread out the risks, the more financially stable and solvent the insurance fund; why then does this legislation pursue an opposite solvency design?
- The social insurance design is concerningly entirely optional - any employer can opt out, any employer can opt in. This creates a highly unpredictable, volatile insurance pool. Any given year the fund has no certainty around the number of people who will be eligible or the amount of revenue it can expect to collect - how will covered businesses be able to budget long term if insurance rates are constantly fluctuating? How can the CFO reliably certify year to year that the projected program income will be sufficient to cover benefits. The entirely optional nature of this bill's design is an untested model - nationally and internationally - and it flies in the face of best practice recommendations for insurance policy design.
- It is unclear that the tax levied against larger employers will sufficiently cover costs needed to fund worker outreach and education as well as adequately offsetting the insurance contribution rate small business are paying into the District's social insurance pool.

However, our core concerns with the replacement bills being debated today exist around the shared challenges of administering and enforcing any version of a program that allows companies to self-insure. When employers control the purse strings of leave perverse, financial incentives to harass, intimidate, and retaliate against workers are created. While our coalition recognizes and appreciates the many high-road employers who truly have their employees' best interests at heart, we know from research and our on-the-ground organizing that these are too few of them. Make no mistake, the collective of employer mandate bills before you - all of Councilmember Evans's bills and Chairman Mendelson's bill - do not *reward* high-road employers, they undermine the universality, portability, and impartiality of the paid leave program passed last year at the expense of vulnerable workers (meant in the broadest sense of that term) and at a direct cost to businesses aspiring to offer paid leave protections to their workforce.

Our core concerns with an employer mandate approach to paid leave include, but are not limited to, the following:

- How will an employer mandate work for those who experience intimidating power-dynamics on the job?
- How will an employer mandate work for those in high-turnover industries or those whose bosses see workers as disposable and replaceable?
- How will an employer mandate work for those with multiple jobs?
- How will an employer mandate protect the medical privacy of employers?
  How will an employer mandate interact with a company's existing sick or vacation policies?
- How will oversight of an employer mandate work?

We believe the answers to these questions - and indeed there are *no* adequate answers to many of the related, sub-questions of these broad categories - involve too many risks to the rights workers, too many administrative burdens placed on employers, and too great (and too inefficient) a cost placed of the District government. For some forms of labor law, an employer mandate is the only option available to the government. Paid family and medical leave is not of those cases, though; we have better solutions available to us in social insurance.

I want to remind the Council today that employer mandate policy designs were discussed at length last year as the Council prepared to vote on paid leave. Our coalition met with every single office last year -- though many councilmembers refused to meet with us directly -- to point out the exact same harms to employees and employers listed above. This reflection makes today's discussions all the more disconcerting. The issues we identified with an employer mandate were raised a year ago and yet the four bills before us today did little if anything to address our very serious concerns based on the real life experiences of working families we have been organizing for three years. I may not be a public official elected to represent constituents, but I feel a personal, moral responsibility to carry the stories I hear in my organizing with me as I advocate for ways to advance fairness and basic decency in the District. I implore the Council to take to heart the stories of discrimination, retaliation, intimidation, and harassment you have heard today and to realize that for every one person brave enough - and in a job flexible enough to be able - to step forward today, there are likely one hundred more with a similar story who couldn't be here. Take this issue seriously and be brave enough, like them, to put families first.

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To: Ed Lazere
Executive Director, DC Fiscal Policy Institute

From: Cameron Arterton
Lisa Zarlenga

Date: October 6, 2017

Re: Analysis of Councilmember Mary Cheh's Universal Paid Leave Legislation

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I. Background

On April 7, 2017, the District of Columbia Universal Paid Leave Amendment Act of 2016 became law. The legislation provides up to eight weeks of paid parental leave and between two and six weeks of paid leave for personal and family medical issues. *See* D.C. Act 21-682 (currently D.C. Law 21-264). The amount of benefits is tied to the amount of the employee's wages.

As enacted, the new benefits are funded through a Universal Paid Leave Implementation Fund, to which employers in the District of Columbia ("D.C." or "the District") must contribute an amount equal to 0.62% of employee wages. The law essentially covers all businesses in D.C. (except the federal or D.C. government) that have employees and are required to pay unemployment insurance on behalf of its employees. Covered employees include any employee who works over 50% of his or her time for the employer in D.C. The benefits are calibrated to the employee's wages, with a higher wage replacement for lower-wage workers and a cap on weekly benefits of $1000 until 2021 and indexed thereafter.

Councilmember Mary Cheh has introduced the Universal Paid Leave Amendment Act of 2017 (the "Cheh bill") that would change the funding structure and impose a portion directly on employees of covered employers. *See* Council of D.C., B22-0325, 22nd Council (D.C. 2017). Under the Cheh bill, the 0.62% employer payroll assessment will be divided into a "fee" of 0.2% on employers and 0.42% on employees. *See id.* at 1.

However, in the Home Rule Act of 1973, Congress prohibited the D.C. government from imposing a commuter tax (i.e. a tax on the income of nonresidents working in D.C.). *See* Pub. L. No. 93-198, § 602(a)(5) (1973) (codified at D.C. Code § 1-206.02(a)(5)). Because of this ban on a direct tax of nonresidents' income, supporters of the paid leave law are concerned that if the Cheh bill were enacted

to change the funding source for the leave benefits, this new funding source might be vulnerable to challenge as, in effect, a commuter tax, ultimately imperiling the entire program.

Accordingly, this memorandum examines whether the funding structure is potentially vulnerable to challenge as an impermissible tax under the Home Rule Act, or whether it might survive if characterized as a fee. The memo first reviews existing case law regarding the distinction between fees and taxes, and then addresses the unique circumstances of the commuter tax ban. The memorandum concludes that although far from clear, there is a significant risk that a court could find the proposed funding structure to be an impermissible tax.

II. Legal Analysis

A. Fee/Tax Distinction

While the distinction between a fee and a tax most commonly arises in the procedural or jurisdictional context, the analysis appears to generally be the same. In layman's terms, a tax is a charge for general revenue-raising purposes, while a fee is a charge intended to cover the cost of a specific benefit for the fee-payers. As discussed below, courts have established a three-factor test to determine whether a charge is a fee or a tax. This analysis depends significantly on the facts and circumstances of the case, however, and the weight that courts accord the various factors.

i. ACLI v. D.C. Health Benefit Exchange Authority

The most recent case to address the fee/tax distinction in D.C. is *American Council of Life Insurers v. District of Columbia Health Benefit Exchange Authority*, 815 F.3d 17 (D.C. Cir. 2016).

To cover a funding shortfall for the D.C. Health Benefit Exchange Authority, the D.C. Council levied a charge—which it labeled an "assessment" on insurance policies sold in D.C. that exceeded a certain premium threshold—regardless of whether the policies were sold on the Exchange. The American Council of Life Insurers ("ACLI") challenged the charge on statutory and constitutional grounds, which were rejected by the district court. *See ACLI v. D.C. Health Benefit Exch. Auth.*, 73 F. Supp. 3d. 65 (D.D.C. 2014). On appeal, the D.C. Circuit rejected the suit on jurisdictional grounds not considered at the district level. *See ACLI,* 815 F.3d at 19.

Because the Tax Division of the D.C. Superior Court has exclusive jurisdiction over challenges to taxes imposed by D.C., whether the charge was a fee or a tax was a threshold question for the D.C. Circuit's jurisdiction. *See id.* As there are no federal cases interpreting this Congressional grant of exclusive jurisdiction to the D.C. Superior Court, the court looked to the "most closely analogous provision," the Tax Injunction Act, which bars injunctive or declaratory relief in federal court for suits challenging state taxes. *Id.*

In analyzing this question, the court stated that "the key question is whether a charge raises revenue merely to cover the cost of offering a service to the payers of the fee . . . or whether it also raises

revenue for purposes that aren't especially beneficial or useful to the payers, or required for pursuit of their businesses. In other words, the hallmark of a fee is at least a rough match between the sum paid and the (broadly defined) benefit provided. . . ." *Id.*

To analyze the distinction between a fee and a tax, courts have generally employed a three-factor test, which the D.C. Circuit articulated as:

> First, a charge is more likely a tax if levied by the legislature than if imposed by an administrative agency. Second, the broader the population on which the charge falls, the more likely it is to be considered a tax. Third, the wider the use of the revenue raised by the charge, and the more it 'benefits the general public,' the more likely the charge is a tax, though in some cases this third criterion is formulated in terms more directly linked to the benefit-burden match.

Id. at 20 (citations omitted). The court also noted that the second and third factors "seem like separate halves of what we have suggested is central. They focus on the breadth of, respectively, the payer base and the benefitted group. Where the two are narrow, and *match each other*, the charge looks more like a fee." *Id* (emphasis in the original).

Thus, a charge that collected revenue from riverboat casinos and transferred it to a fund benefiting racetracks was a tax. *See id.* (citing *Empress Casino Joliet v. Balmoral Racing Club, Inc.,* 651 F. 3d 722 (7th Cir. 2011)). An assessment on motor vehicles for a compulsory no-fault compensation program was found to be a fee because of the symmetry between payers and beneficiaries, even though the class of payers and the benefits were broad. *See id.* at 20-21 (citing *Trailer Marine Transp. Corp. v. Rivera Vasquez,* 977 F.2d 1 (1st Cir. 1992)). Similarly, a charge on cell phone service providers that covered the public service commission's expenses in regulating those firms was also considered a fee. *See id.* at 21 (citing *San Juan Cellular Tel. Co. v. Pub. Serv. Comm'n of P.R.*, 967 F.2d 683, 687 (1st Cir. 1992)). In contrast, however, the court noted that the breadth of the payer base and the benefitted group can weigh against treating the charge as a fee. *See id.* at 20. Social Security, for example, is a tax "notwithstanding a fairly close match of burdens and... benefits." *Id.*

In this instance, the court believed that the mismatch between the payers (all insurers) and the benefit (the D.C. health exchange) weighed in favor of considering the assessment a tax. *See id.* at 20. The court downplayed the significance of the first factor, the enacting body, suggesting that the analysis is mixed as the D.C. Council enacted the legislation, but directed the Authority to set the rate and assess the charge. *Id.* at 20-21. The court did note specifically that the label placed on the charge by the D.C. Council is not relevant. *Id.* at 21. Thus, in finding that the "assessment" is in actuality a tax, the court found it did not have jurisdiction to hear the case. *Id.*

ii. Other Case Law

The D.C. courts have similarly used the same three-factor test for distinguishing between fees and taxes. *See, e.g., Am. Bus. Ass'n v District of Columbia,* 2 A.3d 203 (D.C. 2010); *District of Columbia v. E. Trans-Waste of Md., Inc.*, 758 A.2d 1 (D.C. 2000); *Stuart v. Am. Sec. Bank,* 494 A.2d 1333 (D.C. App.

1985). In *Eastern Trans-Waste,* for example, for purposes of determining jurisdiction under the anti-injunction statute, the court considered whether a $4.00 per ton solid waste facility charge was a fee or a tax. 758 A.2d at 9-10. The court noted that, as in this case, if the legislature imposes the charge, it is generally considered a tax, whereas if an administrative agency imposes the charges, it is usually considered to be a fee. *Id.* at 11. Turning to the second factor, the court found that since the charge is imposed on "those in the solid waste industry," the second factor suggests that the charge is a fee. *Id.* at 12. The court noted, however, that "standing alone, the fact that an assessment targets only a narrow class of people is not enough to characterize the assessment as a fee." *Id.* (citations omitted). Thus, in cases where the analysis puts the charge in the middle of the spectrum between a fee and a tax, the third factor, the use of the fees, is critical. *Id.* Because the court concluded that the fee is used to protect District residents from the health and safety hazards of illegal dumping and unregulated waste processing companies, the benefit is one to the general public, not just those in the waste disposal industry. *Id.* Accordingly, the court found the charge to be a tax.[1] *Id.*

Other courts have distinguished between assessments to raise revenues (a tax) and payments given in return for a government-provided benefit (a fee). Thus, an assessment for fire protection services based upon a resident's property owner status, instead of the use of the city service, was a tax. *Folio v. City of Clarksburg,* 134 F.3d 1211 (4th Cir. 1998). An amount paid for a specialty license plate in excess of the administrative costs, which was paid to various state initiatives, was a tax. *Hill v. Kemp*, 478 F.3d 1236 (10th Cir. 2007). And an assessment of a percent of revenues on casinos that was used to subsidize racetracks was a tax, as it was not in exchange for a government service. *Empress Casino*, 651 F.3d at733.

The fact that amounts collected are earmarked for certain purposes and do not go into the general fund does not detract from their revenue raising purpose and make them any less a tax. *See, e.g., Empress Casino*, 651 F.3d at 732; *Wright v. McClain*, 835 F.2d 143 (6th Cir. 1987). For example, federal payroll taxes are earmarked for social programs such as Medicare, social security, and unemployment, and the federal gasoline tax is earmarked for highway construction. However, an amount charged to drivers in Puerto Rico that went into a plan to compensate victims of motor vehicle accidents was held to be a fee rather than a tax because they were held separately from the general state funds, were dedicated exclusively to reimburse private parties, and were collected only from those seeking the privilege to drive on state highways. *Trailer Marine,* 977 F.2d 1.

B. Commuter Tax Ban

Section 602 of the District of Columbia Home Rule Act of 1973 states in relevant part:

[1] While the fee/tax distinction most commonly arises in the jurisdictional context, it appears that the same general analysis should apply for substantive purposes, too. In *Stuart*, a purchaser of property sued the seller for failure to disclose certain assessments as part of a disclosure of "taxes and water rents." *Stuart*, 494 A.2d at 1335. While the court in Stuart did not employ the more recent three-factor test, it did articulate the general principle that taxes are intended to raise revenue for a government's general needs. *See id.* at 1337. In contrast, because the assessment at issue was designed to cover the costs to maintain a particular property, it was found not to be a tax. *Id.*

> (a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to: . . . (5) impose any tax on the whole or any portion of the personal income, either directly or at the source thereof, of any individual not a resident of the District. . . .

Section 602(a)(5), 87 Stat. at 813 (codified at D.C. Code § 1-206.02(a)(5). There do not appear to be any D.C. or federal cases challenging fees imposed by the District as violating this provision of the Home Rule Act, more commonly known as the commuter tax ban. Challenges to the D.C. unincorporated business tax as a violation of the commuter tax ban, however, may shed some light on the contours of the ban. For instance, in *Bishop v. District of Columbia*, 411 A.2d 997 (D.C. 1980), *aff'ing en banc,* 401 A.2d 955 (D.C. 1979), the D.C. Court of Appeals considered whether imposition of the D.C. unincorporated business tax (UB) on nonresident unincorporated professionals and personal service businesses violated the ban. Section 605 of the Revenue Act of 1975 repealed the exemption from the UB tax for unincorporated professionals and personal service businesses, thereby extending the UB tax to these enterprises. *See id.* at 998. Two lawyers residing outside of D.C., but practicing law in the District, paid the tax and sued for refund.

While the levy in *Bishop* was indisputably a tax and the issue was whether Section 605 of the Revenue Act impermissibly imposed the tax on income or permissibly imposed it on something else, the court's analysis of the breadth of the commuter tax ban is instructive. In examining the legislative history of the commuter tax ban, the court observed that Congressional intent was to "preclud[e] any tax which is based on a percentage of income regardless of whether it is technically considered personal income." *Bishop,* 411 A.2d at 998 (quoting Rep. Breckenridge of Kentucky). The court's analysis demonstrates that Congress's intent in enacting the commuter tax ban was to prevent broadly the District from levying any taxes on the income of nonresidents. *Id.* Thus, the court found that the District could not extend the UB tax to unincorporated professionals and personal services businesses because Congress had "expressly and specifically withheld the District of Columbia Council's authority to impose a tax on the income of nonresidents." *Id.* at 999; *cf. District of Columbia v. Bender,* 906 A.2d 277, 282-83 (D.C. 2006) (finding that Congress did not intend the commuter tax ban to repeal generally the UB tax, which had been enacted by Congress prior to the Home Rule Act).

C. Cheh Bill

Proponents of the Cheh bill would likely argue that there is a close match between the fee-paying population and the benefit provided and, therefore, under *ACLI*, the assessment in the Cheh bill should be treated as a fee and not a tax. However, taken together, the case law regarding the distinction between fees and taxes and the scope of the commuter tax ban suggests that there is a significant risk that the assessment will be treated as a tax.

First, the charge is enacted by the D.C. Council, a condition that cuts in favor of treatment as a tax. *See Eastern Trans-Waste,* 758 A.2d at 11.

Second, the assessment is imposed on all individuals who work primarily in the District, an extremely large group. *See ACLI,* 815 F.3d 17 at 20 ("[T]he broader the population on which the charge falls, the

more likely it is to be considered a tax."); *Am. Bus. Ass'n,* 2 A.3d at 211 (commercial vehicle fees part of the overall scheme of vehicle registration are broadly applicable and therefore suggest treatment as a tax); *but see Trailer Marine Transp. Corp.,* 977 F.2d 1 (even though class of payers and benefits were broad, assessment on motor vehicles for a compulsory no-fault compensation program was a fee because of symmetry between payers and beneficiaries). A broad base of payers and benefitted individuals can be indicative of a tax, even if there is a close match of benefits and burdens, as evidenced by the treatment of Social Security. *See ACLI*, 815 F.3d at 20.

Third, if the ultimate use benefits the general public rather than a narrow class, that points to treatment as a tax. *See, e.g., Am. Bus. Ass'n,* 2 A.3d at 211; *Eastern Trans-Waste*, 758 A.2d at 12. In this case, the class that benefits is not the general public in the District, but is both narrower and broader. It is narrower in that it covers only employees who primarily work in the District; it is broader in that it covers residents of Virginia and Maryland who primarily work in the District.

Similar to the *Folio* case, the assessment is based on an employee's wages, not the use of any services. Thus, the assessment is arguably raising revenues earmarked for employees taking family and medical leave. Not every employee will take this leave, and even those who do take leave do not necessarily receive a benefit commensurate with what they paid in—benefits are capped at a current level of $1000 per week for a maximum of $8000.[2]

Looming over the fee/tax analysis is, of course, Congressional intent underlying the commuter tax ban. The fee-structure envisioned by the Cheh bill is explicitly a levy on the personal income of nonresidents based on a percentage of that income and thus appears to fall squarely within the space Congress has sought to shield from the District's reach. The mere fact that it is called a fee clearly will not save it. *See, e.g., ACLI,* 815 F.3d at 21 (rejecting label of "assessment" in finding charge on insurance premiums by D.C. Council was a tax).

Further, the fee/tax analysis is most commonly employed for purposes of determining jurisdiction. *But compare discussion of Stuart, supra* note 1 (applying similar analysis to the substantive issue). It seems questionable whether courts will allow this analysis to lead to a result that, viewed at a more general level, is difficult to reconcile with Congressional intent behind the commuter tax ban. Indeed, approving such a fee arguably could sanction the disassembling of the personal income tax into component parts and the relabeling as fees in order to include nonresidents' income in the tax base. For example, could a levy be imposed on the wages on all employees who park in the District, with the proceeds going to repair and maintenance of roads and stop lights; or a fee on employee wages to maintain the pipes leading to office buildings in the District; or a charge on wages of all employees who work night shifts to pay for the salaries of police officers patrolling at night?

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[2] While the court in *ACLI* suggested that Social Security is a tax because the breadth of the payer and benefit-recipient classes outweighs the close match, at least one court has suggested another rationale, questioning whether Social Security is even a close match when not all persons in the benefitted class will receive benefits. For example, "[i]f you die before reaching the age of 62, you get no social security benefits even if you've been paying social security tax for 40 years." *Empress Casino,* 651 F.3d at 733.

III. Conclusion

Overall, it is far from clear how the funding structure in the Cheh bill would fare if challenged in court. As described above, the analysis of the fee/tax case law yields mixed results, with a significant risk that the courts could find the charge to be a tax, or at least inconclusive. *Cf. Am. Bus. Ass'n*, 2 A.3d at 212 (finding the fee/tax analysis inconclusive and proceeding to the merits). In addition, the treatment of the charge must be evaluated in the context of what appears to be strong Congressional intent to deny the District the authority to reach the personal income of nonresidents. Indeed, the fee/tax analysis in support of the Cheh bill might be missing the forest for the trees. As discussed above, there appears to be a significant risk that a court might find that levying this "fee" on nonresidents' income, even to provide a benefit to those same individuals, represents an impermissible tax.

Paid Leave Legislation Hearing
Testimony of Carla Ferris
Ward 4 Resident and DC Business Owner
October 10, 2017

Hello, and thank you for the opportunity to speak today. I would like to share with you my support for the Universal Paid Leave Act in its current iteration. For the past 12 years I have been the owner of a small pet care company, with a staff of about 40 people. Due to the nature of our industry, most of my staff work part time. Slightly less than half hold second part-time jobs. My staff is made up of amazing, hardworking, compassionate and caring individuals, and I am thankful for the work that they do every day.

Our job is a physically active one - illness and injury can make it impossible to complete the demands of the work day. Many of my staff members are also parents of young children, or caregivers for older family members. It is extremely important to me that my staff know that I ***always*** support them fully when they need to take time off to care for themselves or others. It is a basic human need, one that they should have a right to fulfill without having to worry about repercussions at work.

Our job is also one that is very time sensitive. Pets need to be cared for at the right time, for their health and safety. For this reason, when my staff need to take time off, it is imperative that I make arrangements for someone else to fill in right away. The work cannot wait.

My staff are paid based on the hours that they work - so when someone is off for the day, whoever fills in for their work will be paid for that work - and the person who was unable to work has lost income. I work with my staff to find ways to make up for lost income whenever I can, and have been able to provide some paid leave, but have struggled to do so uniformly because of the financial fluctuations that are common in small businesses. If too many people need time off at the same time, my business simply doesn't have the funds to cover the cost of paid time off for all. Do I allocate the available funds to the person who needs several weeks off to recuperate from a serious injury, or to the parent who needs several days off to care for a sick child, or to the person who has contracted the flu and needs to stay at home and rest?

These are not choices that I want to make. These are not choices that I should be making. My staff, and all of the residents of the District of Columbia, deserve to have the security of knowing that they can take care of their health and the health of those that depend on them, without finding themselves unable to make ends meet due to lost wages. While I am very fortunate to have a large percentage of long term staff members, I also have some people that work only seasonally, or stay for a shorter period of time. They, too, deserve safety and security.

In addition, some of my staff are independent contractors, which means that they are completely left out of most of the proposed alternatives to the UPLA - and my ability to help them in a time of need is dictated by the cash flow of my small business.

Small businesses like mine don't typically self-insure for the very reason that we are small. I know that I am not alone when I say that I am eager to pay my fair share into a citywide fund, knowing that it will provide a safety net to good people, hardworking people who so richly deserve it, and often desperately need it. I want to do the right thing, just as many of my fellow small business owners do - but we need help to be able to do it in a way that is feasible for our businesses. Without the deep pockets and sizable cash reserves of a large business, planning is absolutely essential for us. We need a predictable cost.

I also want to speak to some of the horror stories I have heard from some members of my staff about their experiences with other employers. While it is true that many people see the

importance of making sure that all of their staff can take care of themselves and their family members, there are plenty of others out there that are perfectly happy to bully and intimidate employees in their time of need. Some of the best members of my team have been fired by previous employers over such basic things as needing time off to care for a sick child. It turns my stomach when my staff members thank me profusely for "being so understanding" when they are dealing with an emergency. No one should have to suffer the indignity of begging their employer to understand and grant them leniency when they have a critical need for leave. No one should have to fear for their job when they have a critical need for leave. And yet, it is absolutely plain to see that many, many, many people do. For this reason, I believe that it is imperative that Paid Family Leave be administered by the city, NOT by employers who have the power to retaliate and intimidate their staff.

I urge the council not to start over on this urgent matter. Two years of discussion and negotiation led to the excellent bill that has already been passed. Please do not begin again. Please do not erode the safety and protections for employees that were built into this bill. Please do not take away the predictability that small businesses like mine need. Please do not underfund a program that will need to be administered with professionalism and fidelity if it is to be effective. Please do not repeal and/or replace the UPLA.

Thank you.

Hearing on Paid Family Leave

October 10, 2017

Testimony of Meredith Perry, Ward 1 Resident

My name is Meredith Perry. I live in Ward 1 and made DC my permanent home in 2013.

I want to talk today about why Universal Paid Family Leave is so important to my family. My daughter took fertility assistance to create. Before we were given the all clear to transfer from the fertility clinic to a normal obstetric practice, we had already spent over $8,000.

Because of the frequent appointments, it was no secret that my husband and I were trying to start a family. I told the human resources officer at my company that I was pregnant almost immediately. My company covered 10 days of parental leave, 66% of my salary on six weeks of short term disability, and for the remaining four weeks, whatever I could cobble together of my remaining sick leave and vacation days. My HR manager made it clear that regardless of any health complications or childcare delays, if I did not return to work within the 12 weeks, I would "be invited to re-apply to my job."

When our daughter arrived in 2015, I took all 12 weeks of federal Family and Medical Leave. My husband accompanied us the first five weeks, and I flew solo the remaining seven. In the end, I had zero sick days and about a week of unpaid time. Incidentally, it was during my maternity leave that I first became aware of the DC Campaign for Family Leave. We were hopeful that it would be in place before we added a second child and are disappointed in the ensuing efforts to weaken and delay leave from the DC city council.

Anyway, then my husband took his remaining seven weeks. Since he was not the childbearing parent, this came purely from his paid time off. To cover this time, he also took 8-10 days of leave without pay.

Although we budgeted carefully, we still could not find a daycare ready to accept our child when our leave ended. We had to wait an additional five weeks and could neither afford additional leave without pay nor a nanny. It was only through friends and family that we were able to work while we waited for a spot to open up at our day care.

As my husband and I consider whether to add to our family, we need to consider not only the additional fertility, prenatal and child care expenses, we also need to budget for what our current or future benefits can cover with a second child. Every new job posting we consider comes with discussions about better benefits vs. retaining Family and Medical Leave protections vs. when we attempt having a child. Existing tenure requirements are not the free flows of talent, job mobility and culture of opportunity we'd like to create in the District—and they have made us doubt otherwise compelling job opportunities. For now, based on the status quo, our current leave banks, both of would need to over a month of leave without pay. In short, we are already behind the eight ball.

While my husband and I may have more benefits than many DC residents, Universal Paid Family Leave in DC would give our family some financial breathing room to take the time we'd like to take to bond with our children and to ensure that they are situated in a day care when space becomes available. Every day that the Council continues to delay implementation of the universal paid leave act with a repeal and replace campaign, my and my husband's ability to grow our family is put further and further out of

reach. We need the council to stop trying to change a good law and instead focus on implementing the law as is, which will bring relief and lower stress for young families, like mine, looking to have children. I recommend that the Council uphold the Universal Paid Family Leave Act so families like mine can plan for our future.

Date: October 10, 2017
To: Chairman Phil Mendelson and Members of the DC City Council Committee of the Whole
From: Kunta Bedney, Council Representative of Keystone Mountain Lakes Regional Council of Carpenters and Ward 8 Resident
Re: Testimony in Support of Implementing the DC Paid Family Leave Law

Thank you Chair Mendelson for accepting my testimony in support of the DC Universal Paid Leave Act. Born and raised in DC, I am a new dad and my partner is using the Family Medical Leave Act - her leave is unpaid. It's all on me but for now, I can handle it because I am also a union carpenter. My concern is what happens to other members of the building trades, carpenters, electricians, plumbers and others who don't have any savings when they're building their families -- we're building this city, making it one of the richest cities in the country and yet we feel like we're being left behind.

If the Universal Paid Leave Act is replaced and managed by an employer mandate, employers will only continue to manipulate the system and workers who need leave the most won't get it.

In our city where buildings are going up everywhere, only 5% of the construction is union labor, compared to 80% in Pittsburg, PA. I see what happens when contractors don't hire union. In my work as an organizer, I support workers who've been denied the overtime pay they're entitled to; fired illegally and injured on the job. I've also talked with hundreds of workers who are misclassified as independent contractors when it's clear that they are employees. Builders, their subcontractors and the labor brokers that they hire are all in on this game. Most of the employment practices are illegal. And yet I don't see them facing any - or enough - repercussions, they slip through the cracks because the penalties are low. Why would anyone trust them to manage a paid leave program that is so important to our newborns, family members, and the health of the workforce?

I am also responsible for recruiting high school students into apprenticeship programs. It is a job that I take very seriously because I know from personal experience how easy it is for DC students to choose the street life over an honest living. But it is also hard to encourage these young people to join the construction trades when I know how much corruption exists in hiring, and getting the pay that you have worked hard to earn. All people want to know that their job will allow them to care for their family members, that's why we go to work in the first place. In our city, it's just too risky to leave paid leave benefits up to most employers.

For these reasons, the DC Universal Paid Leave Act should be a social insurance fund that every DC private employer pays into. Employer penalties mean nothing to the contractors – they just work up the next bid to offset the charge. But still they are cheating the workers, their families and the city's tax base.

Thank you for hearing me out today. Our city depends on you to do the right thing for all of us and implement the law that passed, the Universal Paid Leave Act.

Sincerely,

Kunta Bedley
Council Representative
Keystone, Mountain Lakes Regional Council of Carpenters
kbedney@kmlcarpenters.org

Testimony on Revisions to the Universal Paid Leave Act
To the DC Council, October 10, 2017
By Mary Beth Tinker, 2939 Van Ness St. NW, Apt. # 220, Washington DC 20008

Health care workers and nurses like myself cheered when the Universal Paid Leave Act finally became law this April. This common sense law was way overdue, and -- as we all know -- it didn't just happen. Passage of the law required many hours of work on the part of countless community members, including myself, engaged in the democratic process. And it required many hours of hard work on the part of Councilmembers, with much debate, negotiation and testimony. All parties were welcome to participate.

When the Universal Paid Family Leave Act passed, people reacted by saying:

"Civic engagement still matters in DC if you get involved."
"You don't have to have a big bank account to stand up for yourself in DC."
"You don't have to be a big developer to have a say with the DC Council."

These were the messages when the Universal Paid Leave Act passed. It was an example of how real democracy - instead of "pay to play" - is alive and well in DC.

Or, at least that was the example. Immediately and predictably, small groups of powerful interests were not happy with the new law. Through the Council, these powerful interests began to try to sabotage not only the law, but the democratic process. Alternate bills to weaken the Universal Paid Leave Act began to be introduced.

To these powerful interests, the Council should stand firm and say 'no'. The Council should side with the community in rejecting the substitute bills. As a resident of Ward 3, I want to state my particular opposition to Councilmember Cheh's legislation that will result in endless delays and legal battles, wasting our city's resources and hurting our residents who can't wait any longer for paid leave. Instead, the Universal Paid Leave Act should be implemented as soon as possible as originally intended.

It is a fact of life that some employers do not want to pay their employees to take care of themselves when they are sick. Every nurse knows this first hand, and I've worked at too many hospitals and clinics where that was certainly the case.

And, too many patients worry that missing work will jeopardize their jobs. I heard this often at Prince George's Hospital, where I worked recently as a Registered Nurse. It is naive to think that all employers will voluntarily look out for the wellbeing of their employees. As a nurse, that has not been my experience.

Early in my nursing training, I learned that health care is much more than medical care. Health care is also the care of the community and the neighborhood, the promotion of healthy

relationships that connect us to each other and to the larger world. Health care involves a healthy democracy, where people feel hope that their voices will matter, and then see evidence that their voices did in fact matter.

The Universal Paid Leave Act is a great victory for working families and for public health. It is a victory for the democratic process. To weaken or delay it is an affront to the community. I urge you to reject these bills and maintain the law as originally passed. Thank you.

Testimony Against Changes to the Universal Paid Leave Act
October 10, 2017
Testimony of Victoria Hougham
****

Good afternoon, and thank you for having me. My name is Victoria Hougham and I am here to voice my concern about potential changes to the Universal Paid Leave Act.

While awaiting the arrival of my first child, I worked at a leading, national non-profit organization in DC. In my previous four years on the job, I had stellar performance evaluations, several salary increases and two promotions.

Still, I was nervous about taking maternity leave because of the fast pace of the organization's work and because I was only the third person ever to take maternity leave. But my boss reassured me that she'd make anything work to have me back. On the day I left before giving birth, I loved everything about my job.

I returned to work after 16 weeks of mostly unpaid leave and encountered a markedly different workplace environment. I faced regular hostility and harassment at work, including suggestions that I look for work elsewhere if I could not handle the workload, questions about my decision to breastfeed my child during lunch at the nearby daycare rather than working through lunch, and attempts to intimidate me when I requested a brief FMLA-based reduced work schedule to transition back. On the day I returned, my employer altered my terms and conditions of employment by rewriting my job description, denied me a pay raise for the year, and changed its position with regard to my FMLA-based request to use intermittent leave. I also learned that HR did not tell me that I could have taken an additional six weeks of maternity leave because "no one takes that much leave".

My employer is viewed in the field as a leading progressive, active, social justice organization. But, I still faced harassment and intimidation after I returned there from a 16-week maternity leave. I ended up leaving the position because it seemed like my only option was to sue my employer, which I did not want to do nor could I afford to do. I felt lost and wished I would have had a place to go to report this.

My experience speaks directly to the changes to UPLA that the DC Council is considering today. The alternative employer mandate models do not guarantee a clear and strict enforcement structure and adequate employee protections and will <u>not</u> deliver the same benefits as UPLA's social insurance framework. If my "progressive" former employer barely tolerated my unpaid, federally-mandated FMLA leave, why would it comply with a D.C. paid leave policy that did not have any DC government oversight? What would stop it from even worse harassment and retaliation when an employee requested paid leave? And if my "progressive" employer could have retaliated against me for taking unpaid family leave, why would other DC employers not do the same with their vulnerable workers under the employer mandate models that you are considering today?

Testimony Against Changes to the Universal Paid Leave Act
October 10, 2017
Testimony of Victoria Hougham
****

The current version of UPLA strikes a good balance between business and worker protection. An employer mandate does not. I request the Council to stand up for the rights of DC workers and continue to support UPLA's current provisions.

Thank you.

Hearing on Paid Leave Legislation
October 10, 2017
Testimony of Sarah Comeau
Ward 5 resident

My name is Sarah Comeau. I am a former educator and mother. I worked as a teacher and an administrator at public and private schools here in the District for 14 years, often holding more than one job at a time. I worked with what would be considered disadvantaged populations and in a "Blue Ribbon" school. I have 2 beautiful, healthy sons. I am here today to testify against proposed revisions to the Universal Paid Leave Act.

During both of my pregnancies I was employed at a private school in a very affluent neighborhood in DC. I was what is known as an "at will" employee but I had received a new contract every year for 8 years, complete with cost of living raises and bonuses; that is, until I became pregnant with my first child. When I sat down with the school's director to sign my contract for the school year she informed me that my position was being changed and my hours were being reduced. It was less than a month before my baby was due and there was nothing I could do. I was an "at will" employee and 36 weeks pregnant.

The second time I informed my boss of a pregnancy it was during summer vacation three years later. The school's director had not yet given me my contract for the following school year and less than one week after announcing my pregnancy she informed me that she did not have a contract for me because my position had been eliminated. Eliminated after 11 years of faithful service to the school and the community.

In both cases, the loss of hours, loss of pay, and eventual loss of my job were a heavy burden that added an untold amount of stress to myself and my family during an already stressful time. And in both cases I believe my job was cut or eliminated because I was pregnant. That is discrimination. The business lobby has said that their bills have nothing to do with workplace discrimination, but I know from firsthand experience- twice over!- that organizations are constantly striving to keep costs down, maintain their staffing levels, and increase employee productivity. Setting up a program where employers self-insure for paid leave could easily lead to increased discrimination or wrongful termination. If employers like mine were already treating pregnant women this way, I don't see a reason to believe they would willingly comply with paid leave.

Requiring organizations and businesses to pay out of pocket for paid leave also makes it harder for women of childbearing age to find employment; employers will see them as too expensive to hire compared to other groups. The Universal Paid Leave Act as it was written and passed

into law ensures instead that employers' costs are shared and that the DC government is an unbiased decision-maker about whether any particular employee qualifies for leave. This neutralizes costs for employers and will protects people like me against discriminatory employment practices.

Ultimately, my family was able to deal with the job loss and reduced hours that arose from my pregnancies, although it took a heavy toll on us. But many, many families in DC have far fewer resources and support than I did, both personally and with their bosses at work. DC desperately needs to implement the Universal Paid Leave Act as it was written. I urge you in the strongest possible terms to reject the alternative proposals and to implement the UPLA immediately.

Thank you for your time and consideration on this very important matter.

Hearing on Paid Leave Legislation
October 10, 2017
Mary Laura Calhoun, Ward 4 Resident

Hi, everyone! My name is Mary Laura Calhoun and I'd like to tell you why I support the Universal Paid Leave Act in its current form.

I live with my family in Ward 4, where we own a home. My husband and I were thrilled when I became pregnant almost three years ago. Everything was going well and I was feeling great. Then, things suddenly changed. At seven months pregnant, my doctors told me I'd have to quit working immediately. I'd developed high blood pressure which was dangerous to me and the baby. My condition soon became pre-eclampsia, and finally HELLP syndrome – a condition that, left untreated, was likely to have killed both my baby and me. To save our lives, my daughter was born early via C-section. While Isabel and I were undergoing a complicated surgery, my husband wondered if he had just become a single father or if, even worse, he would be leaving the hospital alone. Thankfully, we were all released from the hospital a few days later.

Although we had been sent home, neither Isabel nor I were anything close to healthy. I was in significant pain from surgery and Isabel was suffering from being born before she was ready. She was too weak to nurse and lost a significant amount of weight. For almost three months, I pumped milk for her at least 8 times a day while my husband fed her through a syringe. It was a full time job for both of us. We depended on the paid family leave offered to me as a DC government employee to keep us financially stable until my daughter and I were both healthy enough for me to return to work.

Now I work at a public charter school that is not able to provide the same benefits as the DC government. Like most public schools, money is tight. If I get pregnant again, I will face a high-risk pregnancy. At any moment, I may need to quit working. I may need to be hospitalized and I have a significant risk of delivering prematurely. My child may need a long NICU stay. During this time, I would feel terrible knowing that school would be forced to take money from a tight budget to pay not only for my leave, but for the salary of my replacement. That's why it's so important that the Universal Paid Leave Act is implemented in its original form, as a social insurance plan, so that my school won't be faced with unforeseen costs associated with my leave and so I can depend on a steady income.

Thank you Chairman Mendelson and the Committee for your time today,

My name is Travis Ballie and I am a citizen of Ward 7. I am testifying today oppose the DC Council's efforts to weaken and delay paid leave in the District. This is the third year that I have been involved with the Paid Family Leave campaign and I can point to dozens of my fellow residents who can say the same.

We have testified for dozens of hours, made hundreds of calls and brought together businesses, faith communities, ANCs, civil rights and economic justice organizations, all for the cause of being able to afford to have a family in DC. I testify today with the same message my friends and I have been echoing for 3 years: Social insurance is the way to go. The place I work already provides some paid parental leave but I want everyone in DC to have equal access to quality paid leave coverage and the only way to guarantee that is through social insurance. This is of special concern for East of the River residents, who make up a disproportionate amount of our state's low income workers.

According to a recent Washington Post article covering a report by DC Action for Children: "Since 2010, the number of young children living in the city has increased by 23 percent, and children younger than 5 account for nearly 40 percent of the child population. But the wards with the highest share of these young children — Wards 5, 7 and 8 — have the lowest median family incomes."

Needless to say, working class parents in DC have the most to gain from uiversal paid family leave. A legal right to paid leave however means nothing if employees feel intimidated by their boss or their employers intentionally withhold information about their rights at work, as we have seen with wage and paid sick day laws.

There is also a racial gap across economic strata that exist which add additional stigma to women of color asking to access paid family leave policies from their employer. In a report by The Center for Talent Innovation, which interviewed a sample of black women with college degrees, found that only 11 percent of Black women say they have an advocate invested in their success. That's because leaders, who are predominately white and male, tend to "groom" employees that look like them. The report goes on to say how they feel pressure to not take leave they are eligible for, fearing they will be informally punished. Our existing paid leave law will not solve this problem, but the current structure is fundamental to shifting more power to workers in an age where workers have rarely had so little power.

I urge the Council to maintain the current law as is.

Sincerely,

Travis Ballie
1620 29th St SE, #203
Washington, DC 20020

Rontel Batie

Federal Advocate, National Employment Law Project

Resident, Ward 5

Testimony Before the D.C. Council Paid Leave Hearing

October 10, 2017

Thank you, Mr. Chair.

My name is Rontel Batie, and I have the pleasure as serving as a Federal Advocate for the National Employment Law Project. I am pleased today to join this esteemed panel and talk about the proposed alternatives that would alter the financing structure of the city's new law, the Universal Paid Leave Act. I will focus on retaliation in the workplace, the impact that it has on workers, and what we need to do to stop it from occurring. It is NELP's view that when an employer holds the purse strings, that increases the incentives for retaliation. In contrast, the Universal Paid Leave Act, is free of those incentives since it is based on an inclusive social insurance model.

When an employer punishes someone who works for them for engaging in a legally protected activity, that is retaliation. Many employees who have experienced this attest to lost wages, a delay in pay, or even outright termination as a result of caring for a dying parent, or taking time off to bond with a newborn child, both of which are legally protected activities.

Just last year, the Equal Employment Opportunity Commission received over 42,000 claims of retaliation, which is approximately 3,000 more than the year prior. Many of these were resolved in the form of settlements, withdrawals with benefits and even merit resolutions.

However, the continual rise of these claims shows that monetary compensation for retaliation claims alone is not sufficient to make affected employees whole, nor has it been wholly effective in thwarting the practice by employers.

This is due to the fact that retaliation comes in many different forms, and therefore, we must diversify the remedies in order to expand protection to more employees.

Some forms of retaliation are easy to prove. For instance, if an employer terminates an employee for missing a day of work for chemotherapy, this is easier for the employee to prove and provides a clearer case for a remedy.

However, what about the worker who takes paid leave to care for a parent on dialysis, only to return to work and realize that their hours have been cut short, resulting in lost wages?

Or the person who takes time off to care for their wife and newborn child, only to return to work and see that they've been reassigned to a less desirable unit or job.

These types of retaliation, which are less-blatant, often times give employers a slight cover to justify their decisions and circumvent the law. Employers are also advantaged because of the anticipated delay, which is often lengthy, between an employee working one's way through administrative agencies

and the court system in order to get a check; this can take months or years, long past when the retaliation first occurred.

This provides the employee with little to no incentive to report when they are retaliated against for participating in protected activities because the ramifications of doing so could possibly be worse than if they acquiesced to their rights being violated.

That's why it is important to ensure that UPLA, under which the government collects and disburses paid family and medical leave funds to affected employees remains the financing mechanism.

This provides employees with the necessary protection needed to assert their rights. In other words, how the law is financed and the degree to which employers control the purse strings is not simply a technical change. It is a fundamental one. We all hope that all employers do the right thing, and many do; the problem with the proposals that have been introduced is that they create risks for the intended recipients and thus, they create risks for the efficacy of the new law you passed because you believe our working families need paid family and medical leave.

I look forward to further discussion on this issue, and with that, I yield back the balance of my time.

LABOR Project for WORKING FAMILIES
carol@working-families.org

Date: October 10,2017
To: Chairman Phil Mendelson and Members of the DC City Council Committee of the Whole
From: Carol Joyner, Director, Labor Project for Working Families in partnership with Family Values @ Work
Re: Testimony in Support of Implementing the DC Paid Family Leave Law

Thank you, Chair Mendelson and Members of the DC City Council Committee of the Whole, for the opportunity to submit testimony. My name is Carol Joyner, Director of the Labor Project for Working Families (LPWF). We work in partnership with Family Values @ Work and allies to build family-friendly workplaces. I am also a Ward 4 resident. Today, I want to urge you to keep your promise to DC families by honoring the law that passed — the Universal Paid Leave law.

Shifting the administration of the PFL social insurance fund to an employer mandate for large employers is not a small adjustment or a "tweak" in the law. This fundamental change in the program will have a significant impact on the most vulnerable workers. Because employer mandates introduce a profit margin in program delivery, businesses with tight margins — restaurants, childcare centers, non-profits — will have to pay for each claim. For some businesses, the temptation to deny these claims will be great. Decades of work in the labor movement have taught me that many low-wage workers will face intimidation and retaliation for asking for the leave they have earned.

My personal experience underscores this need.

When my family moved to DC in 2005, my mother had been diagnosed with Alzheimer's disease and Dad was almost 78 years old. As my mother's disease progressed and it became impossible for Dad to care for her, we moved them here from NJ and they lived in Chevy Chase House in Ward 3 for several years. During that time, Mom's health declined, and Dad was diagnosed with bladder cancer. Caring for my parents was only part of my responsibilities. My partner and I were also raising two children — and had come to accept our roles in the "sandwich generation." Surgeries, hospitalizations, and doctor's appointments became a regular part of life.

I had gone from being just a parent to a total caregiver, along with my full-time job.

Living through this period has convinced me even more that we need comprehensive paid family leave. After a two-year deliberation — with tax dollars spent on meetings, hearings, reports, CFO analyses and even a Task Force — the Council voted 9-4 in support of our new law, an accomplishment that reflected not only deliberation but significant compromise in DC. We support the Universal Paid Leave law because it mitigates the financial hit so many working families take due to caregiving. That money is lost not only to the families but to the businesses that depend on their spending.

As DC changes demographically, residents, old and new, want to raise a family, care for those who raised them and still be able to afford to live here. When I was caring for my parents, I was fortunate to have paid family leave in my employment policies. Eight years of care and I never lost any pay. But I was the only one in my family with paid leave. That increased the responsibility on me and came at a financial and emotional loss for my siblings.

The lack of paid family leave is a moral and economic problem across the country but in DC, it's a problem we're on track to addressing. We know what it looks like when a government aims to repeal and replace a law that helps families. We urge you to move on. Paid Family Leave is the law. Mayor Bowser is implementing it and families across the city can't afford to wait another minute as you consider delaying and weakening the law. Today, you can ensure that DC sets the standard for helping every family be a strong family with the freedom to care for those they love.

Thank you for your time and attention.

Carol Joyner
Labor Project for Working Families/FV@W
Ward 4
carol@working-families.org

DC FISCAL POLICY INSTITUTE

Independent Research. Poverty Solutions. Better DC Government.

Testimony of Your Ed Lazere, Executive Director
At the Public Hearing on
B22-130, Paid Leave Compensation Act of 2017
B22-133, Universal Paid Leave Compensation for Workers Amendment Act of 2017
B22-302, Large Employer Paid-Leave Compensation act of 2017
B22-325, Universal Paid Leave Amendment Act of 2017
B22-334, Universal Paid Leave Pay Structure Amendment Act of 2017
DC Council Committee of the Whole
October 10, 2017

Chairperson Mendelson and members of the Committee, and thank you for the opportunity to speak today. My name is Ed Lazere and I am the Executive Director of the DC Fiscal Policy Institute. DCFPI is a non-profit organization that promotes opportunity and widespread prosperity for all residents of the District of Columbia through thoughtful policy solutions.

I appreciate the opportunity to testify on the bills today. As you know, the Universal Paid Leave Act (UPLA) passed in 2016 by the DC Council guarantees that people who work in DC can take time off from work, with pay, when they need to be with a new baby, care for an ill relative, or address their own health need. It is important and commendable to note that all of the bills being considered today recognize the importance of paid family and medical leave, and all of them maintain the same level of benefits and benefit structure as UPLA. The bills differ from UPLA primarily in the way that DC's paid family and medical leave program will be administered.

That does not mean, however, that the proposed changes are minor or insignificant. Indeed, the structure of DC's program, as I will discuss below, is incredibly important to ensuring that workers can easily access leave when needed and that the program provides the least administrative burden on businesses.

Given that UPLA is already DC law, and that all of the alternative bills would maintain UPLA's benefits, the Council should only support changes if they would improve the way that UPLA is administered—that is, if they would result in a better program for workers and businesses. The DC Fiscal Policy Institute's review concludes that none of the alternatives meet this standard, however, and that all of the alternatives would weaken UPLA in one or more critical ways. DCFPI urges the Council to reject these alternatives.

UPLA, was designed with national experts and uses a proven "social insurance" model like Social Security, which results in low administrative costs, very limited administrative burden on employers, and a transparent system for both workers and their employers. These features would be important for any program but are especially important in this case because UPLA was designed to reach all workers and to be especially helpful to low-wage workers and workers of color.

Most of the alternative bills include an "employer mandate," where employers provide the benefit directly rather than through a public fund as under UPLA. Yet an employer mandate undermines each of the advantages of UPLA. Workers with the most advanced skills and most power in the workplace would likely receive paid family and medical leave under an employer mandate, but low-wage workers and workers of

color—who already face the most discrimination and the highest rates of wage theft—would face challenges and barriers to accessing benefits. An employer mandate would result in a less equitable program.

A final bill alters the way that the UPLA payroll tax is levied, placing most of the tax on *employees* rather than fully on *employers* as under UPLA. This rests on an untested and very risky notion that the UPLA payroll tax can be considered a "fee" and thus avoid the federal law that prevents DC from levying a tax in income earned in DC by non-residents. If this were to be adopted, it almost certainly would face a legal challenge that would tie up the program, potentially for years, and could in fact imperil the program's survival. It simply is not work the risk.

UPLA Uses a Proven Social Insurance Model

UPLA uses a social insurance model, like Social Security and Unemployment Insurance, which has been tested and proven to work. Under UPLA, all private-sector employers in the District will pay a fixed payroll tax into a government-run fund to cover the cost of benefits for their workers. When workers experience a qualifying event—welcoming a new child into their families or addressing their own or a family member's serious health condition—the employee comes off the company's payroll, and receives wage replacement from the public fund. The agency administering the fund is responsible for processing claims and paying benefits.

This structure is beneficial in several ways:

- It offers a predictable tax to employers. This tax is modest, amounting to just $5 a week for an employee being paid $800 a week.
- It has low administrative costs and places virtually no administrative burden on employers.
- It uses a neutral third-party arbiter to decide whether a claim for benefits should be approved.

In addition, DC's Council Budget Office found that the District can implement UPLA without affecting the ability of businesses and the DC economy to thrive. Their thorough analysis concluded that the economy will be 99.9 percent as large as it would be without UPLA, and that the adopted program is "unlikely to alter the current upward trajectory of the District's economy." A universal program also minimizes cost, increases employee morale, and reduces turnover.[1]

For these reasons, all of the states that currently offer paid family and medical leave use this structure.

UPLA Promotes Racial Equity While Also Promoting Economic Development

The design of UPLA will help address economic and racial inequities in DC. This is because the paid family and medical leave program would replace 90 percent of the wages for workers with the lowest incomes, with lower reimbursement rates for higher-paid workers. This high wage replacement rate will help ensure that low-wage workers in DC—most of them people of color—will actually be able to take the leave for which they are eligible. This will help stabilize the incomes of low-wage workers, many of whom work in industry sectors with very rates of turnover, when they have a life event that requires time off. In addition, taking paid leave from a job is likely to help low-wage workers keep their jobs when leave is over, although UPLA does not guarantee this right. Currently a worker who needs to take an extended amount of time off but does not have leave is likely to leave their job. This change under UPLA is especially important to Black

[1] http://dccouncil.us/news/entry/economic-and-policy-impact-statement-universal-paid-leave

workers, since they are much more likely than White workers in DC to stay out of work for an extended time when they leave a job. CITE

UPLA also is likely to support economic development in the District and the city's competitiveness with its neighbors, by making jobs in the city more attractive than jobs in the suburbs. Beyond that, residents preparing to have children may be more likely to stay in DC—and keep their DC-based job—if they know they can get paid parental leave. Paid leave would help these residents afford DC's high cost of living and tilt the balance of location decisions toward staying in the city.

Proposed Alternatives Would Undermine UPLA and Hurt Workers and Businesses

All of the bills being considered today offer the same benefits as UPLA, but would provide them in very different ways.

- Two bills use an "employer mandate" model[2], in which all employers provide employees with paid leave directly, without a public fund to administer the benefit. Instead, employers would either "self-insure"—which means the employer pays the cost of an employee's wage replacement directly out of pocket—or purchase insurance through a private company if that is available. All employers would have to self-insure for at least part of the program, since there are no insurance products anywhere in the country that cover all of UPLA's benefits, particularly leave to care for an ill relative. These alternatives would also require larger businesses to pay a small payroll tax to support tax credits to some small businesses.
- Two other proposals are "hybrid" models,[3] in which small employers would pay a payroll tax to participate in an UPLA-type government-run fund, and larger employers would be subject to an employer mandate (as described above). Employers under the mandate would be required to provide benefits to their workers and also pay a payroll tax into the government-run fund to help offset the cost to small businesses.
- A final bill, the Universal Paid Leave Amendment Act, is the same as UPLA other than the 0.62 percent payroll tax would be split between the employee (0.42 percent) and employer (0.2 percent).

DCFPI's review of the alternatives that include an employer mandate raise a number of concerns: an employer mandate would likely be bad for workers, bad for many businesses, and have much higher administrative costs. As shown below, an employer mandate undermines each of the advantages of UPLA: easy access to benefits for workers, predictable costs for businesses, and low administrative costs.

Below is a summary of the most significant concerns with an employer mandate or hybrid approach. (It should be noted that there are other details of the individual bills that are also problematic. A full chart including the full details of each proposal, and how they compare to UPLA, is available here.)

An Employer Mandate Would Be Bad for Workers, Especially Workers in Low-Wage Jobs

Under an employer mandate, employees request paid leave from their own employer, rather than filing a claim for benefits with a neutral government agency under UPLA. This is problematic because it would

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[2] B22-0133, The Universal Paid Leave Compensation for Workers Amendment Act of 2017, and B22-0302, The Large Employer Paid-Leave Compensation Act of 2017.

[3] B22-0130, The Paid Leave Compensation Act of 2017, and B22-0334, The Universal Paid Leave Pay Structure Amendment Act of 2017.

create a financial incentive and other reasons for employers to deny or limit claims. Think of the way for-profit private health insurance coverage works—in which it can be quite common for workers' benefits to be denied—versus the way that Social Security benefits are administered, in which retirees rarely have a problem receiving their payments.

In the case of paid family and medical leave, consider a business facing its busiest time of the year, and the pressure a manager may put on a worker to not take leave or to cut their leave short. Or consider a business facing a cash-flow problem, and the fear they would have around paying a worker for several weeks of leave while also having to replace the worker temporarily. The pressure to limit or deny claims under an employer mandate would exist whether a business self-insured—paying benefits directly—or if it bought insurance to cover benefits. In the latter case, insurance premiums tend to be experience rated, so that premiums would be higher for businesses with higher claim rates.

Employees in low-wage occupations where hourly pay and shift work is common are especially vulnerable to intimidation and pressure to not to take leave. These workers already often experience retaliation in the form of reduced hours, worse schedules, or even termination, and often do not even ask for benefits to which they are currently entitled, such as paid sick days.[4] This means that under an employer mandate, the highest paid workers with the most power in the workplace would have much better access to paid family leave than low-wage workers and workers of color. An employer mandate thus severely undercuts the goal of UPLA to create an equitable program that is accessible to all.

In addition:

- An employer mandate can increase the likelihood of discrimination for certain workers. There is evidence that employers in countries that have an employer mandate discriminate against workers they think would be most likely to take leave, especially women of child-bearing age.CITE
- Models dependent on employer-provided benefits prevent people from accessing benefits when they are unemployed or between jobs—even if contributions were made on their behalf while they were working. This discriminates against people recently separated from the workforce or with irregular work patterns, and acts as a deterrent for workers to switch jobs or start their own business.

An Employer Mandate Would Be Bad for Many Businesses

It is unclear whether an employer mandate would be any less expensive for employers than UPLA, especially since all employer mandate bills require affected employers to pay a tax *and* pay the full costs of benefits themselves. There is a substantial risk that an employer mandate could be costly and unpredictable for many businesses, in contrast to the entirely predictable cost of the UPLA payroll tax. The risks are especially great for small and mid-sized businesses.

- Under each of the alternative proposals, employers would still pay a payroll tax. This would be on top of funding benefits for their own workers, either through self-insurance or private insurance. Because costs of providing benefits directly is unknown, it is not clear that an employer mandate approach will be any cheaper than UPLA on average, especially since the employer mandate bills all provide roughly the same benefits as UPLA.

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[4] DCFPI, DC Jobs with Justice, and the Kalmanovitz Initiative at Georgetown University. 2015. Unpredictable, Unsustainable: The Impact of Employers' Scheduling Practices in DC.

- Currently, no insurance product exists in the private market to provide paid family leave. It is completely unknown how long it would take to develop such a product, if ever, and what this product would cost on the open market.
- Because no private insurance product exists, employers would have to self-insure for paid family leave, which is financially risky and administratively challenging. Self-insurance could lead to volatile costs that vary greatly from employer to employer and from year to year, since the number of workers needing leave could vary greatly from year to year. Self-insurance therefore is likely to have higher costs for many businesses, at least in some years. For example, if a worker making $500 a week takes six weeks of leave, an employer who self-insures would have to pay $2,700. Under UPLA, the employer would pay just $161 a year into the insurance pool to provide the same benefit.
- The hybrid approach may discourage business growth. Requiring employers to go from the publicly funded program to an employer mandate when their number of employees rises above a set threshold creates a cliff effect for businesses, which could be a disincentive to grow.
- Because costs will vary from employer to employer, companies that have higher usage of leave—or perhaps even *perceived* higher usage, based on the demographics of their workforce—will pay more, and therefore they will be at a competitive disadvantage. Again, this creates a market incentive to not hire workers likely to need leave, and to attempt to deny leave when workers seek it.

The uncertainty around costs of an employer mandate runs counter to the predictability that employers often say they are looking for. The unpredictably of an employer mandate is in sharp contrast to the fully predictable and modest cost of the 0.62 percent payroll tax that funds UPLA.

An Employer Mandate Is Bad for Program Administration and Costs

Administration of a paid leave program has three general cost categories: processing benefit claims, the cost of education and enforcement of the law, and infrastructure/IT costs. Under UPLA, all costs have been calculated and fully accounted for— and the administrative and education/enforcement costs are embedded as part of the 0.62 percent payroll tax. Under the alternative proposals, the total costs have not been calculated, and these total costs are likely to be the same or much higher than those under UPLA:

- **Processing Benefit Claims:** Rather than utilizing the economy of scale of a single, centralized agency, the alternate models will turn each employer into an individual program administrator. Under self-insurance, every employer would need to have staff, software, and procedures for administering this benefit. This could be burdensome to businesses and result in higher overall cost.
- **Education, Monitoring, and Enforcement:** Any employer mandate would require very strong mechanisms to ensure that workers know about their rights, so they can access their leave benefits and can seek redress when they are wrongfully denied such benefits. It also should require employers to provide detailed information on their workforce and applications for leave, to help the District monitor compliance. DC's enforcement agency would need to be much larger than under UPLA and would therefore be more costly.
- **IT/Infrastructure:** A hybrid approach still requires DC to create an IT system and a division to run a public program. Start-up costs are likely to be the same as UPLA, as the IT costs of a social insurance program are relatively fixed. This means that a hybrid approach would have almost all the IT and administrative costs of UPLA *plus* the added administrative costs placed on all employers.

Taxing Workers Directly to Fund Paid Family Leave is Legally and Politically Risky, and Unnecessary

The Universal Paid Leave Amendment Act is the same as UPLA except that the 0.62 percent tax would be split between employees (0.42 percent) and employers (0.2 percent) rather than entirely on employees. This kind of sharing of the expense makes sense in principle and is used in other states, but it is a challenge in DC because the District is not allowed to levy an income tax on non-residents. For people who work in DC but live outside, this bill would create a non-resident income tax. The bill supporters suggest that this can be considered a "fee," because it supports a benefit for workers, but this is highly risky. Designers of UPLA chose a payroll tax on employers after a lengthy analysis and conclusion that a levy on workers would violate the federal government's prohibition of the District levying an income tax on non-residents who work here.

The DC Fiscal Policy Institute sought a legal analysis of this issue from the Steptoe and Johnson law firm, and that is attached to my testimony. That analysis confirms that there is a possible legal argument for considering the UPLA payroll assessment a fee rather than a tax, but that this is not a slam-dunk conclusion and that in fact there are strong reasons to consider the assessment a tax. This means that adopting this bill would likely face a legal challenge, for perhaps an extended period that would delay implementation, with a good possibility that the effort to call the assessment a fee would be overturned by the courts.

Notably, the legal analysis points out that Congress has expressed a strong and long-standing interest in preventing a non-resident income tax, and that any court would likely take that into account if declaring the assessment a "fee" faced a legal challenge. If the UPLA assessment were considered a fee, the District could start levying income taxes on non-residents for other reasons, such as public safety or public works, that non-resident workers benefit from.

It is important to note that levying the UPLA tax on employees, rather than employers, is actually not necessary to ensure that the burden is shared. Economic logic, and the analysis by the DC Council Budget Office, suggest that a levy on employers for an employee benefit would be fully or partially passed on to workers through slightly lower wages. If working in the District brings a substantial benefit that working in the suburbs does not, it is likely that the added attraction of working in DC would allow employers to attract and retain workers at slightly lower wages. It also is possible that employers could pass on the cost to employees by offering slightly lower wage increases for existing employees.

The changes would not have to be great to fully pass on the cost to workers. If an employer has a position with a $50,000 salary without paid family leave, offering the job for $49,700 plus paid family leave would *fully* pass the cost on. Or if an employer that usually offers 2 percent pay increases were to provide 1.7 percent pay increases for just two years, that would permanently pass adjust the wage scale to fully pass the cost on to workers.

UPL Testimony – 10/10/217

My name is David Moran, and I am the Director Operations with Clyde's Restaurant Group. We own and operate 5 restaurants in the District including Clyde's, The Hamilton and the Old Ebbitt Grill employing 1,122 people here. Thank you for taking the time to address our concerns with Universal Paid Leave legislation. As we have said often in front of this Council when discussing these types of issues facing our industry – we understand the desire to improve the benefits for all District workers but question the method and/or the funding mechanisms that are these are imposed upon us. We are an industry that functions and survives on very tight profit margins and here we are again with an issue that will significantly hurt or end many of our operator's ability to operate here in the city. We understand that the Universal Paid Leave is in fact law and will, of course, fully comply with it but will be forced to again make decisions that will hurt not help our employees.

Our most recent annual payroll for our District employees was $40,449,642.00 which based on the current .62 funding model would cost us $250,788. While our restaurants have been successful to date, we have seen the sales growth experienced over the last 15-20 years slow dramatically as we have been forced to take prices increases due to continual rising labor, commodity and occupancy costs. We once felt we were part of the city's revitalization but now worry that the economic model our business was built on may no longer be a recipe for success. We will be forced to raise prices, run shifts with fewer personnel cutting hours as well as reducing hiring, promotions and salary increases. The last restaurant we opened in the District was in 2011 and as we look for new opportunities we are now looking elsewhere. We operate in a unique three jurisdiction region and DC's neighbors are poised to take what the District may force out. Last week several of our company's senior people attended the George

Mason University/Stephen Fuller Regional Economic Outlook for 2018 conference in which he predicted that Northern Virginia and suburban Maryland will experience higher economic growth than the District for the first time in recent history. In addition to confirming that the DC region is one of the three most expensive cities to live in along with New York and San Francisco, he pointed out that DC is in a precarious situation with amount of baby boomers now beginning to leave the job market and the city. Much of this region and certainly our business has been built on these guests. The millennial generation appears to be much more price sensitive and we believe that this growing customer base will not be as open to the price elasticity that the boomers were. Our most recent trend of slowing sales seem to support this too.

We do appreciate that the other pieces of legislation that have been introduced also address many of the concerns that you and your constituents have with the current law. Reading about other options including those with percentages lower than .62 are encouraging in the thought of providing us with the flexibility we need to make the decisions that are best for our business. Ultimately, what we support is a model that is less onerous on our businesses and the restaurant industry in general.

Testimony of Diane Gross - Universal Paid Leave
October 10, 2017

Hello, my name is Diane Gross and I own Cork Wine Bar on the 14th Street Corridor. I want to thank the Chairman and Council members for having me here to hopefully provide some helpful information from a small business perspective as you reexamine Universal Paid Leave. I support Universal Paid Leave but feel strongly that we need to make the program less onerous for small businesses. I hope the Council will look seriously at ways to make this program successful for all participants by making sure it is financially, structurally and operationally feasible.

Cork Wine Bar opened about 10 years ago before 14th Street was a dining destination – we were trailblazers for the explosion that was to come. At Cork are a small, close group – our employees work very hard and we want them to have a great place to work. Since we opened our doors we have provided our the best benefits that our small business could afford and that's why from day one we provided health care and family leave options.

We are lucky at Cork to have excellent employee retention –Several employees have been with us since our opening year and on average our current staff has been with us for 5 years. Folks go off and work other places and come back to Cork and some have even started families and returned. We are a family friendly place – our pastry chef often leaves at 3:00 to pick up her baby daughter, our Market chef has Wednesday and Friday night off to pick up his daughters, one of our line cooks just came back after a year of maternity leave, and occasionally when one wonders into Cork before service on a weeknight a young child will be doing homework waiting for a parent or older sibling to pick him up while his mother is preparing the line for service. My husband and I also have two young children and older parents so we get the tug of work/life balance.

As this legislation has made its way through the Council – I have been following it closely. As a small business that has been effectively and successfully providing leave for my employees, I believe that legislation which allows employers to offer their own leave for employees is critical. I understand that the Council believes that a City Administered program is important but there must be another option. Where we are already successfully doing it or believe that we can, we should be given the opportunity to opt out and continue our own programs, provided that we offer at least the same benefits. This allows small businesses to manage their own bottom line, put aside funds or take compensation out of current revenue – whatever works for their individual business.

I also have concerns about the having a .62% tax rate. This puts tremendous strain on small businesses who are already complying with minimum wage, the ACA, sick leave and other employer funded legislation. They all seem like small

amounts - ½ a percent here, a dollar there but with margins as low as they are in the restaurant business – all those numbers add up to significantly impact revenue and make it increasingly difficult to continue to operate. Most other jurisdictions that offer Paid Leave are employee funded. This employer only funded program could cost me $30,000 a year. Let's be honest that means we have to make up costs somewhere. That means fewer raises, fewer hours for employees, increased menu prices. I know I can administer a plan that provides the same level of benefit to my employees or better for less without having to cut costs or make other sacrifices.

Small businesses like my own work very hard to be in compliance with DC law. There are a lot of laws and regulations to comply with and I would urge you, as you reexamine this legislation, that along with offering a employer option to self-fund you create a comprehensive system of training, education and mandatory warnings for the first offense. Oftentimes employers are truly the definition of small businesses where owners, like me, are juggling the responsibility of managing employees, vendors and customers. We want to be in compliance but it's often impossible to know the nuances and all the changes in the law. The DC Council and local government have an obligation in creating this very large benefit program to help employers comply – make it easier for them to know the law and be educated on it.

I thank the Council for their time and urge you to be considerate of the impact of all parts of the legislation on both the employer and the employee. I especially want to thank the Chairman for exploring the impact on small business as you reexamine this legislation. If we are to execute the plan together to make it work for all of us it must not be too onerous on small business. If the ultimate goal is to create a benefit that helps employees care for their families – something that we all support -- lets do it in a way that can be operationally and financially feasible for those who are paying for it so continue to be able to do so. Thank you.

Diana Kelly Alvord, DC Resident, Ward 2
Committee of the Whole / Universal Paid Family Leave Act Hearing October 10, 2017

My name is Diana Kelly Alvord and I have lived in Ward 2 with my family since 2012, and worked in DC since 2010. I appreciate the opportunity to testify today, and I am here to urge the Council to move forward with fully implementing the Universal Paid Leave Act that was passed back in December. I was here in this Chamber the day that bill passed and I was proud of this Council for taking such an important step in giving workers and families across the District the support they need to maintain their jobs and support their families in times of crisis. Then I testified here in this Chamber back in May, to call for fully funding implementation of the bill, and I was proud of this Council for seeing that it was fully funded.

But I am deeply disappointed that we are all back here today to re-hash a policy debate that went on for years before the vote on this bill. When I told friends I was taking a day off of work to come back here and testify again, people asked me, "Didn't they already pass paid leave last year?" And they are right, the Council did, and passing a bill should mean something! Casting a vote is a solemn promise and it is the greatest power and responsibility given to Councilmembers by their constituents. This Council made a promise to working families last year in passing the Universal Paid Leave Act. I am here today to ask you to keep that promise, and stick with the original bill which was carefully designed to create a broad, stable insurance pool, support all kinds of families, level the playing field for small business, and protect the most vulnerable workers from discrimination.

Universal paid leave is a very important, very personal issue for me and my family, because I know firsthand what it's like to go through a medical crisis without it. As I described for the Council back in May, my firstborn was delivered via emergency C section at only 24 weeks gestation. It was a miracle he survived that delivery. He weighed less than two pounds. All the odds were against him. His lungs collapsed on the second day, and he was in the NICU at GWU Hospital in Ward 2 for over four months. Even though my husband and I had well-paying jobs, insurance, and savings, we still came so close to the financial edge in our son's first year of life. We are well aware that most DC families facing their own medical crises don't have all those advantages. The Universal Paid Leave Act would change their lives.

We were lucky we were able to scrape by, that I was permitted to take an unpaid leave of absence from work, to make it possible for me to be at our son's bedside, but I was struck over and over during those first months by how few other parents were able to be with the dozens of other babies who were in the NICU along with our son. Some had to return to work and others wanted to save what little leave they had for when they hoped the baby would finally come home. Parents should not have to choose between talking with their baby's doctor before a surgery or keeping their jobs. They should not have to choose between staying to hold their baby's hand or going to work in order to pay the rent. People who don't have sympathetic employers or good benefit packages have the right to be with their babies too. That is the point of the bill that I and so many of us fought for last fall and that is why I am back here today.

I am asking the Council to keep its promise and honor the votes that were cast to pass this bill, and give it a chance to get off the ground. It's time to get this program in place, to support all the families across the District who have no idea that a premature baby is in their future, just like we didn't. Right now I guarantee you that in GWU Hospital, and the other hospitals across our city, tiny babies are lying there alone because we don't have this program. Their parents are at work right now, heartsick. That's not right. This is no time to schedule more hearings and spend more hours waffling over changes demanded this late in the game by exclusive corporate interests. I am calling on this Council now to stop spending

its time and energy debating replacement legislation and instead take the actions needed to make Paid Leave a reality - without further delay.

The alternatives being considered today are paid leave in name only as they allow corporate control to gut protections for workers. DC families deserve better. They need this Council to demonstrate real leadership by sticking with a program that centers the needs of working people, protects them against discrimination, and levels the playing field for small and mid-size businesses; they need a program that is actually enforceable and that is the Universal Paid Leave Act.

The Council engaged in a thorough, two-year debate on paid leave last session. Big business had the same amount of time as community advocates did to propose alternatives and lobby the Council. They had the same opportunity to be heard and to influence the policy process with paid lobbyists, researchers, and economists as we in the paid leave campaign did. At nine months pregnant, I came into this building to meet with Councilmembers last September, the week before I delivered my daughter - thankfully safely at full term this time. I came back, with my husband, last October, when she was only three weeks old and i was still recovering from my surgery, to talk with Councilmembers about how important it is that all families have the protection of paid leave. And then the Council voted in December, and passed a bill, and in due course that bill has become law -- and my daughter has turned a year old and is about to start walking -- but here we are yet again, in another hearing about alternatives riddled with the same enforcement loopholes that advantage the biggest businesses and the same flaws as the amendments offered and defeated last December.

Many people in this room worked hard to pass a fair and sound and progressive leave policy that provides the most support for low-income workers and small businesses who need it the most.
It is time to move forward. Families across DC are looking to you to get this program going now, not to postpone it or underfund it or replace it with a worse program that won't really benefit those who are most vulnerable.

I know all too well the terrifying uncertainty of having a baby in the hospital, fighting for life. Families shouldn't have to fear job loss and bankruptcy on top of that. I am one of hundreds of people who has been standing up for DC's paid leave program for almost three years now and we should not have to wait any longer. DC families cannot afford to wait any longer. The Council must stand by its word and show its constituents that its votes are not just for show, and that their voices matter more than corporate interests. All the time and energy being spent reopening debate on these flawed repeal and replace efforts would be much better spent seeing that Paid Family Leave is implemented properly and transparently, so that it can begin benefiting working families as soon as possible and spare as many other parents as possible what my family went through.

Thank you for the opportunity to speak to you today.

WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

Written Testimony of
Perry Redd, Employment Advocacy Director
The Washington Lawyers' Committee for Civil Rights and Urban Affairs

Before the Committee of the Whole of the Council of the District of Columbia on

- *B22-130, Paid Leave Compensation Act of 2017*
- *B22-133, Universal Paid Leave Compensation for Workers Amendment Act of 2017*
- *B22-302, Large Employer Paid-Leave Compensation act of 2017*
- *B22-334, Universal Paid Leave Pay Structure Amendment Act of 2017*

October 10, 2017

The Washington Lawyers' Committee for Civil Rights and Urban Affairs opposes the several proposed bills that comprise the District's Universal Paid Leave Acts. WLC was founded in 1968 to address civil rights violations, racial injustice and poverty related issues in our D.C. community through litigation and other advocacy. The Washington Lawyers' Committee has recently merged with the Employment Justice Center which has worked since its founding in 2000 to help secure, protect, and promote workplace justice in D.C. The Committee has extensive experience protecting the rights of workers and others. This proposed legislation is detrimental in weakening worker protections, give credibility to the business communityand will reverse the progress made in recent Council sessions

I'd like to think that I testify before this Committee from a unique perspective in that I am immersed in the weekly intake of worker's legitimate grievances that through our open Workers' Clinics are able to provide DC workers with sound legal advice (provided at no cost, thus no monetary incentive) and weed out the wrong from the illegal.

What I know is that the repeal of any of the protections afforded within our Universal Leave laws will be a disservice to the working class of the District. It is rather "Trumpian" logic to assert that workers employed at companies with less than 25 don't periodically need to take leave. What human being at a small business doesn't have the same life issues that employees at larger companies have? Make it make sense to me?

We, as the worker advocacy community of the District are not insensitive to the concerns of the businesses of the District. Concerns around U/I fraud, heavy regulatory compliance and even the fantasy that businesses may up and leave the District have been meticulously examined by activists and advocates like me. What we've come to find through empirical data is that business have not left since the passing of our universal leave policies

have been implemented(?); maybe because businesses aren't complying or the Mayor's enforcement agencies aren't enforcing, but for whichever is the case, DC businesses are **not** leaving the city. According DCRA's last reporting data report 345 new general business licenses were issued in May 2016...and in the previous month, there were 317 new businesses registered in the District. With at least 21 cranes in the air (as the former Mayor Gray used to say), it's clear and present that in the era of progressive universal Paid Leave, business is not leaving the District; just the opposite.

Now, in contrast, the insensitivity inflicted upon DC's workers—low wage workers chiefly—is immeasurable, at the least. Just from the raw count intakes at the EJC/WLC Workers' Clinics, we've had 183 unique workers come in to get legal advice on either being denied taking sick leave, not being paid for taking sick leave, being suspended for requesting sick leave, retaliated against or terminated...and sadly enough, the workers' more often than not, have legitimate claims!

The sorriest part of this saga is that it keeps happening, so the fairytale that businesses are pretty much "good actors." Wrong! Factually speaking, the vast majority of the workers come into our clinic from different businesses on everything from illegal discrimination, wage retaliation to not paying sick days. As for the Employer Mandate, it is unreasonable for us to trust that businesses, their industries and owners will responsibly police themselves.

- From my perspective as a Worker Advocate, the fact that there'll be ***no*** coverage for:
    - Employees of employers with 1-4 employees
    - Casual employees
    - Part-time domestic workers
    - Real estate brokers
    - Self-employed (not even an opt-in)
    - Those who recently lost their job before their qualifying event
- Delays, yes, **delays** benefits for family caretaking leave benefits until October 2022
- Prohibits leaves for multiple qualifying events in the same year, even if there were leftover weeks from first leave.
- ...makes this newly proposed legislation unacceptable. The efforts at destroying legislation that turns out to be a miniscule imposition on businesses is absolutely shameful. The proposals to lessen the tax burdens to almost zero ought to inform the District's residents that the business lobby wants a free ride—on the backs off of the working class! What am I talking about?

Large employers (50+) would both pay for the benefit themselves (or through private regulated insurance) AND pay a 0.2% payroll tax to subsidize smaller employers. Also, large employers have no option to stay in the public pool instead. Small businesses (5-49 employees) would still get their insurance from a public pool, but because of the subsidy from large businesses, would only have to pay around 0.4% instead of 0.62%. This lowered contribution is pool money that won't go into the fund, thus making it harder to maintain.

- The Large Employer Paid Leave Compensation Act—**the Employer Mandate**—screws the very workers I deal with every week naked and vulnerable. It **excludes**:
  - Employees working for "small" employers with 1-24 employees (since when has a small business been one with 24 employees?)
  - Self-employed individuals (excluded entirely, with no opt-in option)
  - Part-time workers, casual employees with varying weekly hours and fluctuating schedules
  - Any individuals who are unemployed at the time of a qualifying event
- **Delays coverage for new employees**: 6 months tenure with a covered employer is required to receive benefits.
- **Qualifying events**:
  - Provides 6 weeks for a family leave event and 8 weeks for a parental leave event
  - **Does NOT include medical leave** for the employee themselves as a qualifying event
  - Only allows leave for one qualifying event per year.

In the end, if you change the financial apparatus of UPLA, then you change the implementation, thus changing the access to paid leave. Not guaranteeing solvency of the program leaves workers uncovered. The re-working of our progressive leave policies take us back to the dark days of worker insecurity and I—along with The Washington Lawyers' Committee—vehemently oppose this packaged legislation, especially the four Employer Mandate bills.

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TESTIMONY OF WALTER SMITH, EXECUTIVE DIRECTOR
DC APPLESEED CENTER FOR LAW AND JUSTICE

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE

John A. Wilson Building Room 500
October 10, 2017

Bill 22-130, the "Paid Leave Compensation Act of 2017"
Bill 22-133, the "Universal Paid Leave Compensation for Workers Amendment Act of 2017"
Bill 22-302, the "Large Employer Paid-Leave Compensation Act of 2017"
Bill 22-325, the "Universal Paid Leave Amendment Act of 2017
Bill 22-334, the "Universal Paid Leave Pay Structure Amendment Act of 2017"

Good morning Chairman Mendelson and members of the Committee. I am Walter Smith, Executive Director at the DC Appleseed Center for Law and Justice. DC Appleseed is a nonprofit public interest organization that addresses important issues facing residents of the National Capital Area. Thank you for convening this hearing on the various proposals to revise the District's existing paid leave law, which the Council adopted last year through Law 21-265, the "Universal Paid Leave Amendment Act of 2016" ("Universal Paid Leave Act"). DC Appleseed strongly supported that law and continues to do so.

I would like to make two points to you in this testimony about the various proposals to amend the paid leave law.

The first is that while the paid leave law that the Council passed is of course not perfect, we think it is well designed to meet important objectives that everyone seems to agree on, and we don't think the case has been made that the Council should now reverse its 9-4 vote in favor of that law and adopt something new.

Second, if the Council does decide to reopen the law, the only portion of it that we think bears reconsidering is how to pay for the benefits provided for in the law. We say that because when the original bill was passed, the Council was under the impression that it could not consider a sharing of costs for the benefits between employers and employees—due to the Home Rule Act's prohibition on a nonresident income tax. However, as you may know, a recent decision from the U.S. Court of Appeals for the D.C. Circuit has provided good authority for the Council to split the costs between employers and employees, as other jurisdictions have done, on the ground that those costs would amount to a fee not an income tax.

Let me briefly address each of these two points.

1. The Council Should Not Reopen the Current Law

We continue to strongly support the Universal Paid Leave Act, which the Council adopted last year and became law in April. That law is the result of more than a year of debate, including three hearings where more than 100 witnesses testified. The Council carefully considered the law before passing it, and did so after lengthy review and several drafts. It then passed the law by a vote of 9-4. Under these circumstances, while no doubt the law could be improved—which is likely true of nearly every law the Council passes—we think as a matter of process and good governance the Council should not reopen this law in the absence of a clear showing that a serious mistake has been made and a better alternative is readily available and supported by a majority of the Council. We do not think that is the case here.

In fact, we think the law as passed is a fair, workable system that is consistent with and will likely advance all the key policy objectives of the District's commitment to paid leave for employees in the city. This includes the objective of providing paid leave for low-income D.C. workers, who are predominantly people of color and women. The current law effectively levels the playing field by ensuring that *all* workers are able to participate, both under the terms of the law and as a practical matter. The law furthermore provides the greatest benefit—a 90% wage replacement—at the lowest income levels. This higher wage replacement for lower income workers is based in part on lessons learned in other states where program uptake was lowest for low-income workers who could not afford to live on 50%-66% of their wages.

In addition, by requiring all employees to be covered through a single pool of funds, the current law effectively reduces the coverage cost per employee. And, by centralizing administration of the program in a single agency, it helps ensure uniformity of implementation and reduces the per employee administrative costs. Finally, because the law as passed does not require employee contributions to the fund, it protects low-income employees from further expenses that some may not be able to afford.

We are aware that one major change to the law that some wish to make at this point is to allow some employers to meet the requirements of the law on their own, without participating in the fund and without the participation of a government agency ensuring fair, uniform administration of the paid leave program. We understand why employers who may already be providing some or all of the paid leave benefits required by the law, and who have the means to self-insure for the payment of those benefits, would prefer to administer paid leave on their own. For several reasons, however, we don't think the case has been made that the Council should now reopen the law to make this dramatic a change in the program.

First, this change seems likely to increase the cost per employee for those employees who are included in the pool—simply because the larger is the population to be covered, the lower will be the cost per employee covered. A new analysis will need to be done by the CFO if this change is made, and it seems likely that the cost will go up for employers participating in the pool.

Second, unless all employers are permitted to participate in the pool if they choose to do so, there may be some who are required to provide coverage on their own that will have difficulty doing so, particularly as there do not appear to be insurance products available to cover all of the paid leave required by the law.

And third, while we would prefer to assume all employers not in the pool would comply in good faith with the law, there are situations where employees have not only not received the wages and benefits to which they are entitled, but have been threatened with or have experienced employment-related repercussions for exercising their legal rights. And while we would not typically recommend making policy based upon a few bad actors who would deny leave, the fact is that low-income workers and women are historically the ones who suffer disproportionately from such violations.[1] Indeed, a report based on interviews with service industry employees in the District found that women were up to five times as likely as men to experience threats of retaliation when asking for adjustments to their schedules.[2]

It is inevitable that without centralized, uniform enforcement of the law by a single agency, there will be cases where the law is not fairly enforced, particularly in the case of low-income residents who may have little recourse in the face of an employer resisting compliance. Moreover, to help ensure that that does not happen, there will be additional administrative costs for the government to monitor enforcement by employers not participating in the fund.

The law passed by the Council is a fair, workable program. The Council should give it a chance to work and leave for another day modifications that might be needed in the event the program in practice does not work well as designed.

2. **If the Council Does Re-Open the Law, It May Want to Consider the Recent Court Decision Permitting Cost Sharing for Paid Leave Between Employers and Employees.**

While for the reasons stated we do not support reopening the law at this point, if the Council does reopen, there is one change we think the Council could fairly consider – because it is a change the Council thought it could not consider at the time the law was passed.

As the Committee explained in its report on the Universal Paid Leave Act, the reason the law provides for the program to be funded entirely through a charge on employers is that it was thought that requiring an employee contribution would violate the Home Rule Act's prohibition on

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[1] Ann O'Leary, How Family Leaves Laws Left out Low-Income Workers, 28 Berkeley J. Emp. & Lab. L. 1 (2007). Available at: http://scholarship.law.berkeley.edu/bjell/vol28/iss1/1.

[2] Schwartz, Ari, et al. Unpredictable, Unsustainable: The Impact of Employer Scheduling Practices in DC. June 2015: DC Jobs with Justice.

taxing nonresident income.[3] This has led to the claim that the law would be unfair to the District, since D.C. employers would be paying for a program that would primarily benefit nonresidents, who make up two-thirds of D.C. employees. It has also led to the claim that employees have a stake in the paid leave program, and should pay their fair share of the costs of the program, as is the practice in other jurisdictions.

In these circumstances, the Council may want to consider a recent decision from the U.S. Court of Appeals for the D.C. Circuit suggesting that the paid leave program could in fact ask employees—including nonresident employees—to pay some share of the costs of the paid leave program. Under that decision, requiring employees to contribute to a program from which they would benefit in some approximate proportion to the amount they pay is arguably a fee, not a tax, and is therefore permissible under the Home Rule Act. As the Court said, "the hallmark of a fee is at least a rough match between the sum paid and the (broadly defined) benefit provided, as seen from the payers' perspective."[4] While there are a number of factors in distinguishing between a tax and a fee, the court underscored that when "the payer base and benefitted group[] . . . are narrow, and *match each other*, the charge looks like a fee."[5] Under this decision, the District could legitimately require nonresidents to contribute to the paid leave program, since the charge would apply only to a certain group of payers—workers—and would fund a benefit program specifically for those same payers.

If the Council wished to take this approach, it could continue to impose the .62% assessment on employers' payrolls, but it will then need to determine (1) how to split the .62% between employers and employees; and (2) whether there should be a different split affecting low-income employees. We think that if the Council decided to take this approach, it should require employees to contribute no more than .31% (half of the .62% charge) and include an income-based subsidy (such as a limit on total contributions by a low-wage employee). Keep in mind that even small amounts of money are significant to working families already struggling to make ends meet. We would not want to see low-income workers not burdened by a program designed to give them access to paid leave and increase their economic security.

We recognize that any charge on employees might be challenged by nonresidents seeking to avoid paying any share of the benefits of the program. However, we do not think this risk should foreclose this path if the Council wishes to follow it. Given the strong language in the recent D.C. Circuit decision, we think there is a good likelihood that the District would prevail. This is

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[3] Comm. of the Whole, Council of the District of Columbia, Report on Bill 21-415, "Universal Paid Leave Amendment Act of 2016 at 8 (Dec. 6, 2016) ("While [other states'] programs are either paid through employee or employer/employee contributions, unique restrictions placed on the District's government by Congress prevents employee contributions, i.e. a "commuter tax," from being levied on any individual who does not live in the District.").

[4] *Amer. Council of Life Insurers v. D.C. Health Benefit Exchange Auth.*, 815 F.3d 17, 19 (D.C. Cir. 2016).

[5] *Id.* at 20.

particularly so since any lawsuit would have to be brought in D.C. Superior Court. Moreover, any litigation would likely be resolved well before July 1, 2019, when the District will begin collecting contributions for the program under current law.

* * *

We urge the Council not to reopen the paid leave law. But if it does so, we think it should consider the option that retains as much of the existing law as possible because of the likelihood that it will serve low-income District workers most effectively.

Testimony in opposition to changes in the Universal Paid Leave Act
October 10, 2017
Testimony of Lindsay Dupertuis, Ward 5 Resident

My name is Lindsay Dupertuis and I've been a D.C. resident for over 7 years, living in Ward 6, Ward 1, and now Ward 5. I have already testified twice in support of the Universal Paid Leave Act. I was thrilled by the Council's support in February and December last year, and now I'm heartbroken that this legislation is in danger from alternatives that weaken employee protections and create more red-tape for citizens in crisis.

This issue is deeply important to me. I may look young and healthy, but I'm chronically ill. My illness has progressed since I last testified. I will need a liver transplant at some point during the next decade--probably sooner rather than later. I need this legislation ASAP! So I'm here, again, to speak as a member of the organ transplantation community.

As of Oct. 2, 2017, 349 people in D.C. are on the waitlist for organs like kidneys or livers.[1] These are just the patients who are most critically ill; many more have progressive conditions, like me, that lead to transplantation down the line. Sadly, nationwide, about 10% of waitlisters die before they receive a transplant.[2] But you have the power to ease our burden.

Universal paid family leave can help us in two ways. First of all, the legislation guarantees 6 weeks of paid leave each year for a spouse to care for a sick partner. I will be very ill for a long time before I get a new liver. My partner, like other transplantee caregivers, will truly need those 6 weeks of paid leave, and possibly for multiple years in a row. I worry that an employer mandate will give the employer leeway to discourage workers from taking leave, or to fire workers who use their leave to the full extent of the law. A payroll tax administered by a government agency reduces the risk of employees facing intimidation or retaliation for serving as caregivers.

Here's the second benefit: the Universal Paid Leave Act could allow more people to become living organ donors. As you may know, kidneys and liver lobes can be transplanted from a healthy person to an ill recipient. It is a major surgery and the lengthy recovery period discourages many people from donating tissue to their sick friends and family. However, with guaranteed paid leave for the living donor and the caregiver, these obstacles are alleviated. And, if leave is administered through a neutral agency, no employee will be punished for making this life-saving choice.

I could tell you so many stories of hardship from transplant recipients. Please understand that D.C. residents are suffering without universal paid leave, and that I live with these worries every day of my life. Please support the original paid leave legislation with no alterations.

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[1] https://www.unos.org/data/transplant-trends/#waitlists_by_organ+state+District-of-Columbia
[2] https://www.unos.org/data/

TESTIMONY OF BERNIE BRILL
ON BEHALF OF
THE ALLIANCE FOR CONSTRUCTION EXCELLENCE

BEFORE THE COMMITTEE OF THE WHOLE

on

Support of B22-0334, the "Universal Paid Leave Pay Structure Amendment Act of 2017"Act"

Submitted on October 10, 2017

Good afternoon, Chairman Mendelson and members of the District of Columbia Council's Committee on the Whole. I am Bernie Brill, Executive Director of the Mid-Atlantic Chapter of the Sheet Metal and Air Conditioning Contractors Association, and a member of the Executive Committee of the Alliance of Construction Excellence. Today, I will provide testimony particularly in support of B22-0334, the "Universal Paid Leave Pay Structure Amendment Act of 2017"Act".

ACE is a coalition of the premier construction specialty contractor associations in the Maryland/District of Columbia/Virginia region. ACE members include the Maryland Chapter of the National Electrical Contractors Association, the Mechanical Contractors Association of Maryland, the American Subcontractors Association of Metro Washington, the Iron Workers Employers Association, the Sheet Metal and Air Conditioning Contractors National Association and the Washington, D.C. Chapter of the National Electrical Contractors Association.

As B22-0334 would allow an exemption for "certain large businesses with over 100 employees, as well as certain small businesses with 100 or less employees" if paid leave benefits are already provided, many companies in the construction industry already are in compliance with this proposed legislation. Many contractors provide generous compensation packages that include ample leave time for their employees, largely due to negotiations resulting in collective bargaining agreements that benefits all parties involved.

An example of one such package would be that of the Washington DC Chapter of the National Electrical Contractors Association ("NECA"), which provides 13 weeks of paid leave with compensation: The policy is as follows:

- *During the first 13 weeks of your disability, you are eligible to receive a benefit of 50% of your gross weekly income, to a maximum of $350.*

- *If your disability continues beyond 13 weeks, you are eligible to receive a benefit of 40% of your gross weekly income, to a maximum of $210 for the next 13 weeks, if approved by the Board of Trustees.*

Another example of generous compensation would be that of the Union Sheet Metal Workers in the DC Metro Area. It is said that compensation is "...currently is $59.20 per hour", with a base wage of $40.27hr. plus an additional $18.93/hr. for fringes including

health insurance, pension, 401(k), apprenticeship fund, disability, and recruitment, not including "Social Security, unemployment insurance, or workers compensation". Additionally, Sheet Metal Workers "may elect to contribute to a "Vacation Fund", which is money available for vacation time or any type of financial or family emergency. Please note that the wages set a minimum as many workers earn even more along with eight paid holidays.

In addition, Iron Workers Local 5 compensation is $48.79 per hour in wages, health insurance, pension, annuity, apprenticeship fund, plus social security, Medicare, unemployment and workers compensation insurance. Iron Workers Local 201 compensation is $47.08 per hour for wages, health insurance, pension, annuity, apprenticeship fund, plus social security, Medicare, unemployment and workers compensation insurance. They both provide an "Off-the-Job Accident Plan" that provides "the lesser of (1) $800 or (2) 66.67% of weekly earnings, less any weekly disability income benefits available from (workers') Local Union or Home Fund's Health Plan, regardless of whether (workers) receive a benefit". These benefits are offered for a period of 6 weeks, or when the disability ends, whichever period is shorter.

These examples provide a clear indication that construction companies have been proactive in efforts to provide ample benefits to their employees. As generous benefits are already provided, ACE stands in support of providing its members with the opportunity to opt out of participating in the payroll tax for the Universal Paid Leave Implementation Fund. Although the requirement to provide quarterly certification of these benefits would impose an administrative burden on employers, that requirement would be a fair trade-off compared to being force to pay into a fund for benefits their employees already receive.

The scheduling of work on every construction project is of paramount importance. There is a sequence of work that must be carefully choreographed so that work follows a logical process. Whenever this timeline is altered costs increase dramatically because it means that overtime must be paid along with probable penalties.

Unlike other professions when someone is out for a few days others can "pitch in" and cover or the work can wait until the individual returns. Not so with construction. The project goes forward meaning that when an individual takes unscheduled leave, someone else must be moved into that position and paid full wages and benefits. This means the construction company under this bill would be paying both the individual out on leave plus the new worker.

It is strongly suggested that this bill be amended to allow construction companies and workers covered by a recognized collective bargaining agreement be exempted under a mutually agreed to waiver.

. While achieving its goal for workers, the legislation will also serve to recognize the efforts that employers, particularly employers in the construction industry, have already made to ensure a proper work-life balance for their employees.

Thank you for the opportunity to testify today regarding this legislation. Our organization welcomes the opportunity to work with the Committee on the Whole to reach our mutual objectives, and will be happy to answer any question you may have.

To answer questions or for more information, please contact:

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Testimony before the
Council of the District of Columbia
Committee of the Whole

B22-0334, the Universal Paid Leave Pay Structure Amendment Act of 2017

* * *

Presented by
Justin J. Palmer, MPA
Vice President, Government Relations
October 10, 2017

Good afternoon Chairman Mendelson and members of the Council. My name is Justin Palmer, and I am the Vice President of Government Relations for the District of Columbia Hospital Association (DCHA). I appreciate the opportunity to present testimony on B22-334, the Universal Paid Leave Pay Structure Amendment Act of 2017.

As you are aware, hospitals represent the 2nd largest private employer in the District. Collectively we employ nearly 28,000 individuals and support another 9,000 jobs in the city. In 2015, total hospital expenditures were $4.2 billion and supported an additional $1.3 billion in economic output. Simply put, we ARE an economic driver in this great city, but that is at risk as the District government imposes additional regulatory and legislative burdens that increase the cost of providing patient care. You need only look at the headlines over the last 2 months to see that, while hospitals are economic drivers, they are also extremely vulnerable.

Over the last few years employers and hospitals alike have been required to adapt to the additional costs of wage theft compliance, an increasing minimum wage, and now they are having to prepare for implementation of the existing Universal Paid Leave law. As we testified prior, this law as currently passed is flawed and extremely concerning to us. Hospitals operate 24 hours a day, 7 days a week, 365 days a year because we need to be there when people need us. The nation-wide shortages of nurses and specialists creates and economic dynamic that hits us particularly hard when you take into account that hospitals often have to pay replacement workers and staffing agencies up to 200% because the workforce is not readily available. **In fact, DCHA estimated that the existing law could increase the cost of operating hospitals in the District by over $46 million a year.**

This is not to say that hospitals do not support paid leave. District hospitals have a strong history of providing generous benefit programs structured to allow maximum flexibility to accommodate family and medical needs as well as to promote work-life balance for all employees. However, given the unique role of our institutions and the specialized nature of our workforce, we firmly believe that hospitals, as employers, must

retain maximum flexibility in the design and operation of comprehensive employee benefit programs, including paid leave.

To this end, while not perfect, we are encouraged by the employer mandate that this legislation would establish. It allows hospital Human Resources departments to manage their leave programs, which is essential when operating our institutions and to ensure they are able to meet the needs of residents and visitors alike. We cannot be dependent on a government agency to manage a paid leave program for us. Further, Chairman your legislation provides the needed flexibility for large employers to utilize existing leave programs to meet the needs of their employees.

Given the ever-increasing cost of operating in the District and the economic uncertainty within the health care industry, the District's hospitals would prefer that there was no tax on businesses that choose the employer mandate model to fund the UPLA pool but recognize that the lower tax in this bill is a vast improvement to current law. Additionally, we ask that any tax collection for the program be tied to the Executive Office of the Mayor certifying that the program can be implemented and that the IT systems are in place to effectuate the program to help ensure that funding is not re-appropriated for other purposes if the program is not operational.

Regarding the quarterly reporting requirements included in this legislation, we are concerned that this mandate would place additional workload burdens on finite hospital staff and require unnecessary fiscal resources from hospitals. DCHA recommends annual reporting requirements and certification to lessen these burdens. We also recommend that lines 105 to 132 be struck and left to rulemaking. Reporting requirement specifics should not be engrained in legislation but left to the rulemaking process in order to be flexible and adaptable.

Thank you for allowing me to testify today and I am happy to answer any questions you may have.

Testimony of Sequnely Gray
Research Coordinator, DC Jobs with Justice
Submitted to: The Committee of the Whole
Public Hearing on Universal Family Medical Leave
Room 500
Tuesday, October 10, 2017

Good day Committee of the Whole,

My name is Sequnely Gray, I am a native Washingtonian, a Ward 1 resident and the Research Coordinator for DC Jobs with Justice and the mother of 7 wonderful children. DC Jobs with Justice is a coalition of Labor Organizations, Community Groups, faith-based organizations and student groups dedicated to protecting the rights of working people and supporting community struggles to build a more just society. I am testifying today because I believe that giving employers the responsibility to grant staff Paid Family Medical leave can be quite intimidating and often unjustly denied to fulfill the company's interest to make revenue or simple lack of expertise by management.

In my position as Research Coordinator I am a trusted messenger. I regularly conduct outreach to restaurants and community members to ensure these businesses and their workers are aware of the worker rights laws in the District of Columbia. I also escort and accompany community members to the Department of Employment Services to file workers rights complaints for wage theft. In November of 2016, I conducted a survey in the popular night club scenes of Adams Morgan and H Street corridor. I spoke with about 265 people and visited about 60 businesses. During my outreach, I discovered that out of the 265 people I talked to, only 26 of those people have successfully filed for paid sick days and were granted them without hassle or retaliation. Many of the managers I spoke with didn't know anything about paid sick days and didn't have information available in the staff break room or in the new hire packet. Too often DC Jobs with Justice and our partners we work with to improve workers rights receive calls from workers that have been denied paid sick days, discriminated against, retaliated against or even terminated because they are pregnant or have to take care of a sick family member. We do not want DC government to create such an important benefit and then have many workers – particularly low wage workers – not being able to access it. I want to share just one example with you about how hard it can be for workers to access their rights under the law. Just last week, I accompanied a young lady to DOES. Ms. G is an employee of a security company that is contracted with the Department of Human Services to secure all of the District of Columbia's family shelters and she has been employed there for a little over a year now. She is a new mom with a child that was born premature. At the time of

her hire, she presented the proper paperwork to human resources to show that her child would need regular physical therapy to improve his motor skills. Earlier this year, Ms. G's son started his therapy. Ms. G proceeded to visit human resources to file for Family Medical Leave. During her inquiry at HR, she spoke with the HR administration about how she wanted to file for FMLA because her son was starting physical therapy soon and she wanted her position at the company to be secure. The human resources administrator told Ms. G that she didn't know what Family Medical Leave Act was and that she had to get the paperwork from her son's doctor. The doctor's office stated this was above and beyond other Family Medical Leave requests. That same day, Ms. G called DC Jobs with Justice. I spoke with Ms. G and discovered that she had not only been denied Family Medical Leave but she had experienced wage theft and intimidation as well. Currently I am working with Ms. G to get her lost wages and we will be visiting the Office of Human Rights later this week. However, this process has been extremely stressful for Ms. G and has caused her to fall behind on her bills. She has put up with a stressful work environment with a hierarchy of management that punishes its staff for circumstances out of their control.

This Council made a promise to working families last year when they passed the Universal Paid Leave Act. We all agree (Businesses, Councilman and Constituents) paid leave is needed to protect families and DC families deserve better. They need the government to demonstrate real leadership by sticking with a program that centers the needs of working people, protects them against discrimination, and levels the playing field for small and mid-size businesses; they need a program that is actually enforceable and that is the Universal Paid Leave Act. Every day that the Council drags on with a repeal and replace campaign, paid leave is put further and further out of reach. Ms. G's family and so many families in the District of Columbia need leave now to care for themselves and their love ones and your actions are delaying implementation of good policy, making it more difficult for families to plan their lives. Universal Paid Leave Act also creates a straightforward program accessed in one way, where all businesses follow the same rules, and outside organizations like DC Jobs With Justice are able to monitor compliance more easily – as we currently do with paid sick days and wage theft. We don't need more delay or more confusion. Give DC families what they deserve. PAID FAMILY MEDICAL LEAVE!

Thank you for the opportunity to speak.

Dear Members of the Council,

Thank you for allowing me to testify today.

I own and operate 8 establishments in DC, employing roughly 200 people.
I thank you for reexamining the Universal Paid Leave legislation.

We care for our employees very much and provide quality work environments for them. This is something that we as a company have always done.

After looking at all the pieces of this legislation, I want to say that whatever allows for the most flexibility for my business to provide a fair plan is what is best.

This .62% additional tax will add an additional $59,000 in taxes and cut into approximately 17% of profits. Businesses must examine choices such as cutting jobs, offering lower wages, or look for future opportunities outside of DC.

This reminds me of San Diego, where they were dying to have a restaurant scene and as soon as they began to have one, so many taxes were levied, a large number of the full service restaurants closed and gave way to fast casual concepts that provided fewer jobs and vastly different experiences. Basically, bars with food trucks.

I understand the Paid Leave is the law and I support that. However, the proposed implementation of this has me very concerned. I feel that I am better equipped to provide a plan for my employees as an independent business owner than for a government bureaucracy to run a program that I fund through additional taxes.

Another great example of how continued regulations are forcing businesses to operate with fewer employees is Shake Shack. One of the most influential and socially responsible restaurateurs, Danny Meyer, has segued into the fast casual concept. Shake Shacks in NYC are now moving toward ordering kiosks, eliminating all front of house positions, and just running with cooks and a manager. I say this to highlight what decisions business owners are making in the face of 1,000 cuts.

I realize that a lot of these regulations are implemented to protect employees from bad employers. However, let me make myself clear. As a socially responsible entrepenuer, the District of Columbia is giving me great pause in wanting to open new businesses here. In trying to oust the few bad operators, you are driving away the many good operators, like in New York and much of California. Is it worth it?

Thank you for your time.

Ari Gejdenson

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bainumfdn.org

October 10, 2017

Testimony by Noel Bravo, Bainum Family Foundation Senior Director of Program Development to DC Council Committee of the Whole on B22-130, Paid Leave Compensation Act of 2017, B22-133, Universal Paid Leave Compensation for Workers Amendment Act of 2017, B22-302, Large Employer Paid-Leave Compensation Act of 2017, B22-325, Universal Paid Leave Amendment Act of 2017, B22-334, Universal Paid Leave Pay Structure Amendment Act of 2017

Good afternoon, Chairman Mendelson, Councilmembers, and staff. My name is Noel Bravo and I am the Senior Director of Program Development at the Bainum Family Foundation. I am also a DC resident and a parent of children raised in DC early learning programs and schools. The Bainum Family Foundation is committed to ensuring all children in the District can fulfill their potential. By 2020, we will have invested nearly $20 million to promote high-quality early learning, and our immediate goal is to add 750 high-quality early learning seats for infants and toddlers in Wards 7 and 8. At the same time, we are working to advance a robust set of policies, systems, and supports for young children and their families through our Birth-to-Three Policy Alliance, which includes key members of the Paid Family Leave Coalition. We are committed to enhancing paid family leave because it is good for children, good for low-income families, and good for our child care workforce.

It is well-documented by neuroscientists that a baby's early interactions with parents and caregivers literally shape the architecture of their developing brains. Parents can only ensure this development by providing nurturing and responsive caregiving that forms strong emotional bonds with their newborns; and this can only happen with consistent, positive, round-the clock interactions. Unfortunately, the time needed for this bonding is often least available to those who need it most, including parents who work low-wage jobs and who constantly face the stress of making ends meet. Ironically, this includes our child care workforce, whose jobs caring for others' children often do not allow them to time to care for their own. The Universal Paid Leave Amendment Act of 2016 (UPLA Act) is our best opportunity to ensuring that workers across industries have the time they need to support their newborn's health, development, and learning.

Ensuring a well-compensated and well-supported child care workforce is crucial to the District's early learning efforts, and this legislation is a critical building block to that end. Specifically, the UPLA Act's social insurance structure is crucial to ensuring our child care workforce can access paid leave.

Without this structure, we will increase reimbursement rates for early learning centers and homes will improve wages for our child care workforce, but this will not be enough to cover the cost of providing employees with paid family leave. Therefore, the UPLA Act is the best way to ensure early childhood educators do not need to choose between caring for others' children or for their own.

Likewise, the Act's inclusion of all employers, regardless of size and industry, will ensure that parents in many low-wage jobs can care for their children. We know those working at larger companies and making higher wages are much more likely to have access to paid leave. Parents earning low wages are much less likely to have this support. In the leisure and hospitality industry, for example, we know that workers have minimal access to paid family leave (6%, nationally).[1]

This inequity places a much greater burden on these families, and we know that the lasting impacts of persistent stress on infants' brains threatens their future success in school and life. Guaranteeing paid leave for all, regardless of industry, income, and employer, is the only way to ensure that all children have a strong and fair start in life. We cannot wait any longer to offer this critical support to children and families and ask that the Council take action now to implement the UPLA Act as promised.

Thank you again for the opportunity to testify. We look forward to working with the Council to put young children, their families, and our child care workforce first.

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[1] 2017. Pew Research Center. Americans widely support paid family and medical leave, but differ on specific policies: Personal experiences with leave vary sharply by income. Accessed at: http://assets.pewresearch.org/wp-content/uploads/sites/3/2017/03/22152556/Paid-Leave-Report-3-17-17-FINAL.pdf

December 19, 2016

Hon. Phil Mendelson, Chairman, and Council Members
District of Columbia Council
1350 Pennsylvania Avenue NW, Suite 504
Washington, DC 20004

Dear Chairman Mendelson and Members of the District Council:

As child care providers and advocates for quality child care, and members of the Birth-to-Three Policy Alliance, we write to urge you to make paid family leave a reality for families, and prioritize further action to ensure the viability of the District's child care businesses.

Paid leave is good for children. A baby's early relationships with his or her parents and other caregivers literally shape the architecture of the developing brain, a fact that is supported by extensive neuroscience research. Parents need to provide nurturing, responsive caregiving to form attachments with their newborn baby, and this cannot happen without the gift of time. Far too many families in our city have employers that don't afford them this opportunity, and parents rush back to work out of economic necessity, forgoing this important bonding time with their infant.

Paid leave is good for families. The scarcity of infant and toddler slots in the District is an increasingly understood challenge that needs a solution, yet nothing we do to solve that problem will increase the availability of care for an infant prior to six weeks of age. DC's licensing regulations do not allow for child development centers and homes to care for a child before then as a basic health and safety matter. Families have to do what they can to make it work for those first six weeks of their child's life, and if you are low income, finding a solution to this challenge is all that more difficult. The current paid leave proposal is a sensible solution that levels the playing field for all families in the District.

Paid leave also is important for improving the quality of child care. Child care experts agree: Low pay and poor working conditions mean lower-quality care. Raising pay and improving benefits for child care workers is critical to improving the retention and professional development of qualified early childhood teachers. That, in turn, improves opportunities for the healthy development of thousands of children receiving care in the District's hundreds of child care homes and centers.

Paid family leave is good for child care workers, too. The District's child care workers perform a vital service that allows workers to continue contributing to our economy when they have children. But when they begin families of their own, most child care workers must choose between caring for their own children and earning a living.

Paid leave is important, as is the need for the Council to act during next year's budget debate to ensure the fiscal viability of District child care businesses. Current reimbursement rates for the

care of children in low-income families fall as much as 30 percent below the cost of providing that care. Action to modernize reimbursements must not only cover that shortfall, but must also help child care businesses offer pay and benefits required to deliver high-quality care for our community's children.

Children and families cannot wait for paid leave, and from the perspective of the District's child care community, there is no reason to delay. We urge you to address the critical need of providing paid family leave, and return next year to take up the issue of increasing child care reimbursements, while ensuring any changes to reimbursement are structured to ensure wages and benefits are sufficient to attract and retain skilled teachers and deliver quality care.

Sincerely,

CentroNía	DC Early Learning Collaborative	Martha's Table	Mary's Center
United Planning Organization	American Academy of Pediatrics, DC Chapter	Children's Law Center	DC Action for Children
DC Appleseed Center for Law & Justice	DC Fiscal Policy Institute	Jews United for Justice	Bainum Family Foundation

Testimony of Cora Williams
Before the Committee of the Whole on Tuesday, October 10, 2017
On
Bill 22-130, the "Paid Leave Compensation Act of 2017," Bill 22-133, the "Universal Paid Leave Compensation for Workers Amendment Act of 2017," Bill 22-302, the "Large Employer Paid-Leave Compensation Act of 2017," Bill 22-325, the "Universal Paid Leave Amendment Act of 2017," and Bill 22-334, the "Universal Paid Leave Pay Structure Amendment Act of 2017."

Good Afternoon Chairman Mendelson and Members of the DC City Council. My name is Cora Williams, and I am the CEO and President of Ideal Electrical Supply Corporation. Thank you for the opportunity to provide comments today. I understand that Bill 22-130, Bill 22-133, Bill 22-325, and Bill 22-334 all provide different mechanisms for paying for the paid leave program. I appreciate that the Council is open to further suggestions and feedback in advance of the implementation of Universal Paid Leave on how to fund paid leave in the District and how the program should be managed. For the purposes of today's

hearing, I would like to share my thoughts as an owner-operator of a business for over 25-years on my concerns with the enacted Universal Paid leave law to help you mitigate any unintended consequences early on, and , how the legislation if enacted would impact our wholesale business.

Ideal Electrical Supply Corp. is a full-service wholesale distributor of electrical and industrial products. We have a 25,000 sq. ft. secure and bonded facility and we employ 24 employees. By many standards, including the Small Business Administration and the bills before the committee, we are a small business. We are headquartered in Ward 5 of the District. As the owner and operator of Ideal, I am certain that we contribute to the economic vitality of our city by hiring and training residents, mentoring other small businesses, and giving more than $300,000 in

scholarships to needy DC high school seniors over the past 23 years.

All wholesale businesses operate on very thin margins. Small wholesale businesses operate on even smaller margins as the volume is not as high as large wholesale businesses. We are lean, but we do our best to make sure we provide a variety of benefit opportunities that would make our employees happy while meeting the needs of our clientele. We currently offer several weeks of paid leave plus time off for government holidays and paid sick days. Wholesale businesses are lucky if they net one percent. Thus, the enacted payroll tax mandate at 0.62% and even the employer fees suggested by some of the proposed bills before the DC Council would have a significant impact on our company. I appreciate that the bills before you would recommend a lower tax ranging from 0.15% for large firms to either 0.2% for all

businesses or 0.54% for small companies in some scenarios. To illustrate the impact of the contribution amounts, let me provide you with examples on what that means for us. If you enacted a .62% tax, our bottom line would be impacted by a negative 3.99% change. If you enacted a .54% tax, our bottom line would be impacted by a negative 3.47% change. If you enacted a .15% tax, our bottom line would be impacted by a negative 1% change. A tax at 0.62% would have a negative impact on our business forcing us to consider cutting something from somewhere. I encourage the Council to amend the law so that the fee assessed on small business is lower. Mr. Chairman, if the committee moves forward so costs can be shared with employees, that is another option I would support.

Additionally, I have some questions about how the program would be administered and how the fees would be collected. I am clear that for our employees who work a majority of the time in DC would be covered but from time to time depending on the pace in our warehouse we use temporary staff. Would I need to contribute to the fund if those employees are provided through a third-party? I'm sure other companies who engage the staffing services of others through private or District employment programs would like the law to be clearer on who would be taxed, so there is not double counting. For the record, the concern weighs on me about what additional costs I may need to pay or even what aspects of our business we would need to keep track of to remain in compliance. We do the best we can with our business service consultants just to comply. The consultant's service is not free; any compliance has a cost. I would definitely support simple compliance structures that is easy for companies to follow.

In closing, I thank you for taking the time to hear my comments and the concerns of all impacted stakeholders. Universal Paid Leave and employee benefits are important. We support and will provide the benefits, but we are still concerned about the costs implication of this bill, and overall how this would impact the day-to-day operations of our business.

Written Testimony of
John Camp, former DC Restaurant employee

Before the Committee of the Whole of the Council of the District of Columbia on

- *B22-130, Paid Leave Compensation Act of 2017*
- *B22-133, Universal Paid Leave Compensation for Workers Amendment Act of 2017*
- *B22-302, Large Employer Paid-Leave Compensation act of 2017*
- *B22-334, Universal Paid Leave Pay Structure Amendment Act of 2017*

October 10, 2017

Good evening members of the Committee of the Whole. Chairman Mendelsen. Thank you for allowing me the opportunity to testify. My name is John Camp from Ward 1 and I'm a former restaurant employee with Buca de Beppo where I worked two jobs as a waiter and caterer, often seven days-a-week between the two jobs.

I opposed the proposed bills before us today that protected my need for Universal Paid Leave. My story is this: I was terminated for not having a doctor's the morning after suffering an injury even though I showed up ready for work. DC law gives me three days to provide that doctor's note. The restaurant refused to cooperate with me. So I contacted DOES. Upon making this complaint, I learned of the Accrued Sick Leave law. My employer didn't inform me of the law, nor that I had accrued sick leave. Thus I had two complaints against the employer.

With regards to accrued sick leave funds, the restaurant ultimately admitted to DOES that they had withheld the money illegally as a matter of public record and not even been printing the information on employee's pay stubs. As a result, dozens, if not hundreds of former employees who were owed accrued sick leave, were none the wiser. Like myself, they had never been made aware of the money due to them.

As a result, I was awarded my accrued sick leave and a fine was exacted upon the restaurant and paid to me. This keeps our money in our local economy, rather than far away.

Thus any testimony that companies operating in the District are acting responsible and not taking advantage of employees is hereby debunked. I am the tip of the iceberg, and the tide is rising. Out-of-state companies believe that they can ignore DC laws.

In the case of my firing, they are demanding that the office of Administrative Hearings be made impotent because, in their eyes, DC is not a state. They're saying that they can corporately bully employees by demanding they sign arbitration agreements as a condition of employment; a concept that is likely lost on the lowest class of employees who have zero familiarity with "Trumpian" corporate intimidation.

Initially, The Employment Justice Centyer, now a part of the more powerful, Washington Lawyers' Committee has helped me through a [process in which Buca failed to cooperate in an official investigation of the Office of Labor, Law and Enforcement. Because of their disregard for OLLE, they

have denied me due process by denying me a route of seeking the arbitration they demand on my own, and fighting me on the logistics of my case, saying that 15-months I had to wait nullifies my claim.

e several proposed bills that comprise the District's Universal Paid Leave Acts.

Council of the District of Columbia Committee of the Whole

Bill 22-130, Paid Leave Compensation Act of 2017
Bill 22-133, Universal Paid Leave Compensation for Workers Amendment Act of 2017
Bill 22-302, Large Employer Paid-Leave Compensation Act of 2017
Bill 22-325, Universal Paid Leave Amendment Act of 2017 &
Bill 22-334, Universal Paid Leave Pay Structure Amendment Act of 2017
October 10, 2017

Testimony of Bonita Williams

Good morning, my name is Bonita Williams and I live in Ward 5.

I'm a mother of five and grandmother of eight.

I work as a security officer at the State Department and I'm a proud member of 32BJ SEIU.

I get paid sick and vacation days thanks to my union–but when I used them all up, I was afraid to ask my employer for more.

Security officers can be written up for all kinds of things, so why would I risk my job when I already know what the answer will be?

Because of this, I wasn't able to spend enough time with my mom before she died.

She contracted Hepatitis C through a blood transfusion in the 80's and passed away last year.

I'm devastated –I wanted to take time off to be with her in the hospital during the days leading up to her getting sick and dying –

That's time with my mother I'll never get back.

But I couldn't miss a paycheck.

If I missed that pay – even once – my bills would double – I'd be kicked out of my apartment and it would be hard to catch up.

I can't even imagine want someone without a union would do – without any time to take for family emergencies.

PAID FAMILY LEAVE

October 9, 2017

An open letter to member of the DC Council:

We are employers who urge the DC Council to value what the Universal Paid Leave Act (UPLA) accomplishes and to avoid any amendments that jeopardize the social insurance system it established.

As business owners, we know that our greatest asset is our employees. We strive to provide benefits. Few employers, however, can afford paid family and medical leave. Paid family and medical leave is important since most of us, at some point, need leave to care for a seriously ill family member, address our own illness, or parent a new child. Paid leave makes business sense too: it helps us retain employees and avoid the high cost of worker replacement. Further, in finding our employees, we compete with larger employers who can afford paid family and medical leave benefits. That's a competitive disadvantage. The UPLA addresses these issues.

At the heart of the Universal Paid Leave Act is a social insurance program that applies to all employers and to all workers. Employers contribute 0.62 of payroll into a shared pool of funds that is available to all workers. We are delighted that the start-up funds for the program are now approved and we hope to get news of implementation progress soon.

The Council proposals to change the Universal Paid Leave Act's financing structure generally continue the social insurance program *but* create provisions that could significantly shrink the pool by allowing some or all employers to instead pay for an employee's leave out of pocket (directly or with currently unavailable private market insurance).

If the social insurance pool is shrunk it may lose its solvency. That worries us. We hope it troubles you too.

Sincerely,

Gina Schaeffer	**A Few Good Hardware Stores** Chinatown, Glover Park, Logan Circle, Tenleytown, and Woodley Park
Shawn Lightfoot	**Art-drenaline 365 Café** Anacostia
Andy Shallal	**Busboys and Poets** Brookland, Chinatown, Takoma Park, and U Street Corridor
Bryce Reh	**Comet Ping Pong** Van Ness

Jena and Matt Carr	**Little Red Fox and Fox Loves Taco** Van Ness and Brookland
Fatma Nayir	**Mama's Kitchen** Anacostia
Megan Duffy	**Patagonia** Georgetown
Roger Horowitz	**Pleasant Pops** Adams Morgan and McPherson Square
Bradley Graham	**Politics and Prose** Van Ness
Aaron Silverman	**Rose's Luxury, Pineapple and Pearls, and Little Pearl** Barracks Row
Pennye Jones-Napier	**The Big Bad Woof** Takoma Park
Aaron Seyedian	**Well Paid Maids** Washington, DC

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The entire DC Paid Family Campaign coalition membership, including more than 75 for-profit businesses across the District who supported passage of the Universal Paid Leave Act, can be found online at www.dcpaidfamilyleave.org/coalition.

Hearing on Paid Leave Legislation
October 10, 2017
Testimony of Franco Gomez
Ward 1 Resident

Hello,

My name is Franco Gomez and I oppose the DC Council's efforts to delay and weaken paid leave in the district. I am a Ward 1 resident and until recently, an employee in Ward 2. Until last month, I was a cook at Rebellion, a restaurant in Dupont Circle. I had been working there for over a year when I suffered from a job-related accident in the kitchen. I was cleaning the griddle with a chemical that needs to heat up to more than 380 degrees. As I was cleaning, some of the chemical and hot grease splashed on my arm. My whole arm turned red and started pulsing as the black liquid cooked through my skin. I sent my supervisor a photo and asked him if I could leave to go to the emergency room. He told me it was "NO BIG DEAL" and that if I left for the E.R. then I might as well not come back to Rebellion to work the next day. He made me stay through my shift, and I was not able to seek medical attention until midnight. The medic gave me antibiotics in addition to treating the wound and told me not to work the next day, because of the burn. I had flu-like symptoms and yet my supervisor STILL made me go into to work the following days. He did not allow me to take any time off of work due to the injury and I now have permanent scars on my arm that I have included pictures of, in my testimony.

In August, I had a 1 week vacation planned, which my supervisor had approved but told me it would be unpaid. When I returned to work, he had removed my name from the schedule and informed me that I would

not be working at Rebellion any longer. It was impossible for me to request the usage of paid sick days and because I took an unpaid and approved 7 day vacation, my employer retaliated by firing me. Rebellion would never agree to pay for parental leave or leave I might need to take to care for my aging parents, if it was up to them.

Rebellion regularly violates labor laws and didn't treat me or my colleagues with dignity or respect. They would change my hourly pay on a whim between one week to another. They had me working in the middle of summer in that tiny kitchen without any air conditioning. I was verbally abused by the management at Rebellion every day. Leaving paid leave to the discretion of bosses in industries like mine means that my colleagues and I will never be able to take advantage of paid leave . Our employers simply won't pay and I have the scars to prove it.

springboard partners

Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, DC 20004

October 8, 2017

Dear Chairman Mendelson,

I own a small business, Springboard Partners, headquartered in Ward 3. We cheered when the Council passed the Universal Paid Leave Act in December by a strong majority after more than a year of deliberation.

I'm traveling overseas for work this week and am sorry I cannot be present for the hearing on alternatives to the Universal Paid Leave Act.

Springboard Partners is a small communication firm with a team of five people. We can't yet afford to provide paid family leave for our employees on our own. But we know it's essential to provide these benefits, because there is no greater asset to a consulting company than its people. Being unable to offer paid leave means we cannot compete with larger companies in our field when it comes to recruiting and retaining the best talent.

We've run the numbers, and our costs to pay into the system will be under $1,500 per year. Budgeting to pay this exceptionally modest amount into the public program will be absolutely manageable for us—and it means that we don't have to risk the financial future of our business for the weeks or months a team member is on leave.

Several members of the Council have proposed changes to the program that have the potential to exclude companies of our size and/or reduce the proportion of companies paying into the social insurance program.

I ask the Council to proceed without delay to implement the Universal Paid Leave as passed in December. The District needs a family and medical leave program that creates a level playing field for all businesses and has the contributions necessary to be stable and effective for the long term.

Danielle Lewis, Partner | (202) 263-9132 | danielle@springboard.partners

www.springboard.partners

On a personal note, I'm 37 years old. I would like to adopt a child. The prospect of the Universal Paid Leave Act means that I will be able to do so without financial risk to myself or my company. However, the longer the Council delays in launching the program, the longer I will need to wait before starting my family.

Community leaders talk a lot about family values, but when it comes to making policy choices, too few actually value families. I'm proud that the District is a national leader in advancing policy that invests in families, from near-universal health coverage for children to universal pre-K—both of which enjoy the strong support of our community's businesses. Implementing the Universal Paid Leave Act without further delay is the logical next step.

Sincerely,

Danielle Lewis

Danielle Lewis
Partner

October 6, 2017

To: Honorable Chair Mendelson
Honorable Chair Pro Tempore McDuffie
Members of the D.C. Council

From: Catherine Betts, J.D.
Hawaii Paid Family Leave Coalition

Dear Chair Mendelson, Chair Pro Tempore McDuffie, and members of the D.C. Council:

My name is Catherine Betts and most recently, I served as the Executive Director of the Hawaii State Commission on the Status of Women, which has been leading the movement in Hawaii for paid leave. I am no longer with the Commission and am writing as a member of the Hawaii Paid Family Leave Coalition. I have researched our temporary disability insurance (TDI) program – which is designed as an "employer mandate" - for the last six years, to determine the feasibility of using it as a foundation for paid leave in the state of Hawaii. I have also continued this research as a 2016 United States Department of Labor Paid Leave Analysis grant recipient.

I am writing to shed light on the complexities of using a self-insuring or private market insurance system to provide wage replacement for caregiving responsibilities. Hawaii is one of only five states with a TDI system. Unlike programs in CA, NJ, RI and NY, ours is the only one designed exclusively as an employer mandate. Through the research we conducted under the USDOL grant, we have exposed many of our TDI system's inadequacies and pitfalls. While New York's TDI program is quasi-privatized, Hawaii's lacks the robust enforcement found in New York's system.

Hawaii's TDI is time-limited, privatized, and has a weak enforcement mechanism. Hawaii's TDI scheme has presented major obstacles and challenges for several reasons. First, TDI is provided by a battery of various private insurers. As such, no payroll deductions or funds are tracked or dispersed by our State Department of Labor and Industrial Relations (DLIR) and there is no central account into which employees and employers contribute a universal TDI fund premium. Our DLIR has struggled with understanding costs and implementation of a paid family leave program.

Additionally, the state and county governments which employ many of our state's residents, are self-insured. So long as the state provides a bare minimum of sick leave for employees, the state meets the requirements for TDI purposes and does not need to provide TDI to employees; a loophole that robs many new mothers of paid leave time, postpartum. For example, if an expectant woman employed by the state had a certain amount of sick leave accrued, she could be considered ineligible for TDI, even if the expectant woman encountered pregnancy complications, postpartum recovery and/or health issues, etc. Finally, like other TDI policies, new fathers and male caregivers are not eligible for TDI benefits to care for a family member, and are thereby limited their ability to take partially paid leave at an equal level as women.

An employer may adopt one or more of the following methods of providing TDI benefits: an insured plan in which the employer purchases insurance from an insurance carrier, a "self insured" plan in which an employer must show proof of financial solvency and ability to pay benefits or by a collective bargaining agreement that contains sick leave benefits. Due to the privatization of this program, we have seen firsthand

the perverse incentives employers may have when it comes to not providing the benefit for their employees. Many employees in the state do not even know they have a right TDI due to its privatization.

Finally, Hawaii's TDI system operates much like it has operated since its passage by the Hawaii State Legislature in 1969. Paperwork is tracked by manual timestamps, ineligibility of TDI is commonly communicated to an employee via telephone (despite a written requirement), leaving it difficult to appeal such a decision. As such, our "employer mandated" TDI system needs careful revision and overhaul to adequately support a family leave program that truly benefits Hawaii's workforce. An employer mandate for self-insurance or private insurance benefits has shown to be dangerous to employees.

Thank you for the opportunity to provide testimony on this issue.

Hearing on Paid Leave Legislation
Preston Van Vliet, Ward 3
UPLA Hearing

My name is Preston Van Vliet and I am a Ward 3 resident. Today, I am testifying against any and all revisions to the Universal Paid Leave Act as passed by the Council last year. I previously testified before the Council in February 2016 about the importance of Universal Paid Leave Act for me as a transgender individual. My need for paid leave continues to evolve since that time, as both planned and unplanned medical needs have come up for myself and for my chosen family. My chosen family are other LGBTQ people who I've built loving, trusting relationships with. While UPLA is tremendously important for new parents, my experiences serve as an example of why paid leave for self-care and for family caregiving is just as crucial for the many DC residents who are not parents but have similarly urgent caretaking needs.

Since I last testified before you all in February 2016 - life has carried on. In August of that year, my previous partner was hospitalized for 10 days due to very serious pneumonia. I took several days off work to be there with him. Luckily everything went fine after he got out of the hospital, but he was just another emergency away from losing his job and us from not being able to cover our housing expenses.

At the end of January 2017, I had top surgery as part of my transition related care. It went so well, and I was healing so quickly! My chest is doing great and I couldn't have done it if DC hadn't already required insurances to cover these procedures. I originally asked for 2 weeks off from work, but because I was healing so well, I was ready to return after a week. However, my grandma passed away in Michigan during that first week, so I used that time to go to her funeral.

The day I got back from Michigan - 19 days after top surgery - something shocking happened. I was jumped by two individuals who snuck up behind me. They smashed my face against a brick wall and they broke my jaw in seven places. I had several surgeries to permanently insert metal plates in my face and had my jaw wired for six weeks, living on a liquid diet for that time. Luckily there were no complications from the assault regarding my top surgery.

I could not have gotten through that time without the support of my chosen family and my employers.

I was not the only one in my family to have serious health crises this year. In the summer, one of my chosen family members experienced seizures and needed help. Another individual of my chosen family in just the past month is having surgical complications that require him needing a feeding tube.

In just 12 months, I've had to use about 6 weeks worth of paid leave for my own serious health conditions - including time for follow up appointments after returning to work - and an

accumulation of nearly 3 weeks worth of paid leave to provide care for my chosen family. If I was not able to get that kind of paid leave and caregiving support, I would be unemployed, facing financial ruin, and severely depressed. I would have been forced to leave the District and move back to Michigan. If I was not able to provide that care for my chosen family members, their lives would have been at risk and it would be taking them so much longer to recover.

I was able to cobble together enough paid leave to meet my responsibilities, but having paid leave is not guaranteed by law and so many employers do not provide it. This would be much easier and far more reliable if we had legislation in place to secure our rights to take time off to care for ourselves and our families. Councilmember Cheh, as one of your constituents, I am particularly worried by your proposed legislation that would result in drawn-out legal challenges and, most importantly, be a waste of both time and money that even further delays and denies District residents the protections we so direly need.

We all have responsibilities that extend beyond the workplace -- responsibilities to our biological families, chosen families, and to ourselves. DC is a diverse city, but the need for paid leave extends to all of us--for different reasons and at different stages in our lives--and we all need it to be implemented now.

The Washington Post

Opinions

No repeal and replace for D.C.'s paid leave law

By Eileen Appelbaum October 6

Eileen Appelbaum is senior economist at the Center for Economic and Policy Research and co-author of "Unfinished Business: Paid Family Leave in California and the Future of U.S. Work-Family Policy."

Employers should be pleased with the D.C. paid family and medical leave plan. Instead, they are trying to undermine it. Business lobbyists are pushing a "replacement" that gets rid of the best parts of the plan and places heavy burdens on the very employers they presumably are trying to help.

In response to broad public support among business owners and residents for paid family and medical leave, the D.C. Council passed legislation in December to ensure that no private-sector D.C. employee would have to choose between a paycheck and providing necessary care for themselves or their families. The Universal Paid Leave Act became law on April 7, with benefits beginning in 2020. The business lobby, primarily representing very large employers, objected to this law before it passed. Now it is trying to gut it.

Opposition to paid leave legislation by business lobbyists is not new, and neither are the objections they raise. Prior to the passage of California's first-in-the-nation paid family leave law nearly 15 years ago, the business lobby strongly denounced the measure, claiming it would be a great burden for employers (especially small businesses), lead to abuse by workers and cause economic harm as a job killer. The same objections are raised today here, but experience with paid leave in California, New Jersey and Rhode Island refutes these false claims.

Five years into the California program, Ruth Milkman and I carried out research on employers' experiences with that state's paid family leave law that found virtually no abuse by workers and minimal impact on business operations and, thus, no reason to reduce employment. Even better, the data showed that the program saved money for businesses, primarily through reduced turnover, with even more savings for companies with generous paid leave benefits via coordination with the state's program. Nearly 89 percent of California employers, including those with fewer than 50 employees, reported no effect or a positive effect on productivity, and 91 percent reported no effect or a positive effect on profitability or performance. The District's program is modeled on California's.

The D.C. program creates a fair system for the District's private-sector employees and businesses, setting a basic standard that levels the playing field for the small- and medium-sized companies that make up 99 percent of District employers. Every

employer pays a modest tax into one fund that, in turn, pays out benefits when an employee needs leave. In contrast, the business lobby and large employers want to require each company to pay their own employees' family and medical leaves. These out-of-pocket expenses might be viable for very large employers, but they would impose crushing costs and administrative burdens on small- and medium-size companies.

Employers would need to set up individual insurance funds that were actuarially sound and could cover the cost of their employees' leaves. While employers' contributions to cover the cost of leaves is relatively low when spread over D.C.'s entire private-sector workforce through a social insurance fund, they loom large when individual employers must cover the costs of paid leaves for their own employees. The costs to cover these leaves are likely to be economically damaging for all but the largest employers. Requiring employers with 50 or even 100 employees to cover the costs of their own employees' leaves directly, or to buy equivalent private insurance if such an insurance product becomes available, would saddle many of them with unrealistic financial burdens.

When employers cover the costs of paid leaves for their own workers, these employees must file benefit claims with their employer rather than a government agency. This places new, large administrative requirements and cost burdens on employers, something most would prefer to avoid. Under the business lobby's proposal, employees are eligible for paid leave based not on their tenure with their current employer but based on past work experience. That means an employee could get in a car accident in their first week of a new job and their new employer would be required to review their employment history, ascertain their eligibility for paid leave, and then pay the full costs of the leave.

The current law, which covers all private-sector D.C. workers through a social insurance fund administered by a government agency, is less costly for most employers, relieves businesses of the bookkeeping burden and added costs of administering the benefit, streamlines compliance and eliminates monitoring by enforcement agencies. It creates a basic standard for paid leave that employers of all sizes can meet or exceed and provides a fair paid leave program for employees.

The District's Universal Paid Leave Act is the best deal for employers, especially small- and medium-size companies. If the D.C. Council cares about local business interests, it should reject efforts to repeal and replace it.

Read more about this issue:

The Post's View: Mayor Bowser's fecklessly let D.C.'s paid-leave proposal become law

Colbert I. King: The District's government is a costly laboratory for the left

Sheryl Sandberg and Rachel Thomas: Support national paid family leave

The Post's View: Send D.C.'s paid family leave plan back to the drawing board

The Post's View: D.C.'s paid-leave proposal goes way too far

Testimony of Sherry Ettleson
Owner, Ettleson & Associates
Executive Search Consultants

Council of the District of Columbia
Hearing on Paid Family Leave
October 10, 2017

Thank you for the opportunity to testify before you today. My name is Sherry Ettleson. I am here today as a mother of three, a daughter of elderly parents, a small business owner, and a long-time resident of the District of Columbia. I have lived in DC for over 30 years. This is only the second time that I have testified before a DC City Council committee. The first time was on the issue of funding for DC public schools. I feel strongly about paid family leave as well. So much so that I wanted to personally voice my support for the Universal Paid Family Leave law in its current form.

I applaud the DC City Council's hard work to make universal paid family leave a reality for workers in DC. I am proud to be a citizen of a city that takes the lead on this important worker and business issue. However, I am dismayed that the Council is considering replacing the basic infrastructure of this program, its funding mechanism.. I believe that recent proposals may threaten the viability of the current law

The current law is fair for families, workers, caretakers and businesses. It spreads the cost among large and small employers. Costs are predictable and administration of the program details are tasked to the government, not individual businesses. It is the government agency's job to collect and distribute the funds. This is easiest for employers and the most reliable system for employees. The proposed infrastructure changes, however, would either require or allow employers to stay out of the social insurance program. This raises risks for the shared pool – potentially threatening its solvency and/or stability. For employees, there are additional concerns when employers hold the purse strings to benefits. Some employers will try to cut corners and their costs. That means they may try to deny or dissuade eligible workers from taking the leave they need. I am not an expert, but from my experience and what I hear from people I talk to in my work as a recruiter, employees are more successful, do a better job, and are happier when their employer is flexible when family obligations arise – and they don't fear the loss of a job if they have unexpected family obligations.

As the owner of a small and growing business, and as someone who helps other businesses hire staff, I know it is never easy to have an employee gone for an extended period of time, or to pay more to operate a business, but – as you all know – paid family leave is the right thing to do and certainly in the long run it is good for business and workers. No one should have to choose between a job and caring for a sick family member or bonding with a newborn child. Please do not put this program at risk.

I support the current law. It is by far the fairest way possible to ensure as many workers as possible have access to paid leave to take care of a new baby or a sick family member. Please don't take us backwards. Instead, I strongly urge you to move quickly to implement the current law.

Thank you for your consideration.

Aaron Seyedian

Owner, Well-Paid Maids, Ward 1

Statement for the Record

Related to COW Hearing October 10, 2017

In Support of the Universal Paid Leave Act

I am dismayed by recent efforts to undermine the Universal Paid Leave Act (UPLA) by allowing some employers to run private benefit administration programs. As a business owner attempting to raise labor standards in the local cleaning industry, I have seen first-hand the blatant disregard that many "low-road" employers demonstrate toward existing laws regarding licensing, taxation, and employee misclassification.

While enforcement can temper bad behavior, it is challenging to do well. Approaches which minimize the need for enforcement – such as UPLA's social insurance model of benefits administration – help ensure that laws are carried out as intended.

Under a private benefits administration model, however, the enforcing agency would have the burdensome task of ensuring employers are providing appropriate payments and amounts of leave, as well as monitoring whether the funds set aside for paid leave are adequate – no small feat considering the data collection and interpretation requirements. Systematization and rigor are qualities we all want to see in enforcement, but they will be difficult to achieve if regulators are forced to keep tabs on not only the social insurance pool, but also a variety of individual employers who have opted-out.

Finally, by ceding control of data on paid leave amounts and requests to private employers, workers would be more vulnerable to discrimination and retaliation. This is tantamount to giving bad actors license to violate the standards set out by the UPLA, which will harm employees, compliant businesses, and the District.

Paid family and medical leave written testimony for Committee of the Whole hearing October 10, 2017
Kathryn Greenberg, Principle, KG Consulting, Ward 3

My name is Kathryn Greenberg and I run a small fundraising consulting business, KG Consulting, in Washington, DC. I employ 3 people in addition to myself.

The new Universal Paid Leave Act that was passed in April 2017 was a very welcome policy change. I have always thought our country should offer leave to people who have babies, who are sick, and to those who need to care for family members.

The UPLA, requires that I pay .62% of my employee's salaries and under the law's progressive wage replacement system they will then receive up to $1,000 per week of their pay when they need leave. I did the calculation and determined it would cost me approximately $120/month for all three of my employees. This seems eminently reasonable and would not have a material impact on my business.

The fact that the model DC adopted is a government run, social insurance program also tested in CA and NJ, is important. Trying to set up my own program or work with an outside private insurer will take more of my time, my most valuable resource. We have seen how the private insurance market has worked in healthcare. I would much prefer the predictable and more secure program that a government payroll tax provides.

Moreover, the impact on my business of one of my employees taking leave without this policy is significant. Currently I pay 50% of an employee's salary when they are on leave. I recently hired a new employee who will have a baby in November. During that time, I will pay 50% of her salary (approximately $10,000). With this program, she will receive up to $1,000 per weekoand my business may augment that but it would not be this significant a cost.

Some of the proposals maintain the social insurance program but allow and/or require larger businesses to opt out of it. I don't see the benefit to the city in doing that. To me, it raises questions about the whether the social insurance pool will be allowed to shrink or possibly become volatile because of firms going in and out of it. Of course, the economy has some inherent volatility in terms of the creation and closing of firms but a policy that allows opt in and opt out from the social insurance pool adds an unnecessary volatility on top of that. In addition, if the Council moves to create a second program on top of the social insurance program then a second enforcement program is essential. To me, that raises a question about efficient use of our resources.

The field of fundraising is a very competitive field. It is hard to find stellar fundraising staff. By offering paid leave in DC we become a more competitive hiring location. As a small business owner, who supports the Universal Paid Leave Act, the lobbyists from the business associations don't represent me. Their membership clearly only reflects the 1% of mega employers in the city. It is appalling that the Council would consider jeopardizing a universal program for the wants of the well-funded 1%. If as a small business I can handle the costs associated with this program, why can't they?

As a country we need to do better for our workers and ensure people have time to care for themselves and their family members. My best friend has lived with crushing debt since she was put on bed rest **8 years ago** and had no salary for 5 months. People should not lose their financial footing or live in constant stress because we don't offer paid leave. The UPLA is the best approach to ensuring this doesn't happen to anyone else.

Thank you for your consideration.

a better balance
the work and family legal center

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Testimony
Committee of the Whole, Council of the District of Columbia
October 10, 2017
Submitted by Sherry Leiwant, Co-President and Co-Founder, and Molly Weston Williamson, Staff Attorney, A Better Balance

A Better Balance is a national non-profit organization that fights for the rights of working people to care for themselves and their families without risking their economic security. We are leading advocates for paid family and medical leave laws around the country and were one of the leading members of the coalition that fought for and won New York's paid family leave law in 2016. We were proud to support the District's adoption of the Universal Paid Leave Act, a powerful law that has the potential to be life changing for D.C. workers. Today, we urge you to defend that law and not be fooled by the purported alternatives being put forth to undo the Council's hard work.

The Universal Paid Leave Act created a structurally sound social insurance program, to be operated by the District, through which all workers would receive their benefits. This system, like similar structures used to provide important benefits such as unemployment insurance, would reliably guarantee benefits at a sustainable, affordable cost by pooling contributions from all employers. This fund is not an ancillary component: it is at the core of what makes universal paid leave truly universal.

Chairman Mendelson's so-called "Universal Paid Leave Pay Structure Amendment Act" risks fatally undermining this essential fund. If passed, this bill would exempt large employers from contributing to or participating in the fund altogether, unless they voluntarily chose to opt in; small employers, while included by default, could opt out of the fund if they wished. The solvency and sustainability of the fund depends on having everyone participate. If too many employers leave (or do not join), the fund will not be able to adequately and safely pool risks to spread costs and may collapse—rendering it unable to provide the benefits to which workers are entitled. Particularly given the limited size of the District's private sector workforce, as compared to larger jurisdictions like New York or California, this type of collapse is a real risk. Allowing essentially totally voluntary participation by employers is setting the fund up to fail and, when it does, leave workers who depended on it to provide benefits in the cold.

Moreover, the bill claims to require that employers not participating in the fund provide equal benefits, but provides inadequate enforcement to ensure that employers will actually do so. Employers claiming to provide benefits privately are only required to "certify" that they are doing so and provide minimal documentation about employee use

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of and requests for leave. They are not required to set aside assets to pay for benefits or otherwise demonstrate their solvency or ability to pay those benefits when workers need them, as employers who seek to essentially self-insure are required to do in states with existing paid leave programs. In New York, for example, employers who wish to self-insure for temporary disability insurance (or the new paid family leave program) must apply for approval from the state and file a bond or otherwise set aside assets to pay for benefits. This process ensures that the money will reliably be there when workers need it.

Under the proposed bill, on the other hand, workers will have no such guarantees. They will instead simply have to hope their employer will be ready and able to pay when the time comes. This is unacceptable. By passing the Universal Paid Leave Act, the Council made a commitment to workers that desperately needed benefits would be there for them when a health crisis strikes or a new child joins their family. Leaving workers subject to the whims of their employers' cash flow on any particular day turns that vow into a paper promise. Nor is it a solution that workers can, in theory, sue or file complaints to get their benefits—no one should have to go to court when they should be dealing with illness or bonding with a new child.

The District already has a system that works for both workers and employers: the one created by the Universal Paid Leave Act. The bills before you today seek to fix what is not broken and, in doing so, risk very real harms. We urge you to reject these proposals and instead turn to the work of implementing the strong law you already passed for your constituents.

CONSORTIUM OF UNIVERSITIES
of the Washington Metropolitan Area

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TESTIMONY BEFORE THE COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE

Public Hearing on
Bill 22-130, Paid Leave Compensation Act of 2017
Bill 22-133, Universal Paid Leave Compensation for Workers Amendment Act of 2017
Bill 22-302, Large Employer Paid-Leave Compensation Act of 2017
Bill 22-325, Universal Paid Leave Amendment Act of 2017
Bill 22-234, Universal Paid Leave Pay Structure Amendment Act of 2017
Tuesday, October 10, 2017

Presented by Dr. John C. Cavanaugh, President & CEO
Consortium of Universities of the Washington Metropolitan Area

Chairman Mendelson, members of Council, I am Dr. John C. Cavanaugh, President and CEO of the Consortium of Universities of the Washington Metropolitan Area. Thank you for giving me this opportunity to appear before the Committee to speak on this issue of vital importance to District employers: their employees..

The Consortium is both a truly regional and diverse organization and is a critical asset to the District's economy. In combination with our affiliated hospitals, universities are among the District's largest private employers. This puts the Consortium in a position to consider the full implications of the proposed bills. Our membership includes nine (9) universities inside the District, five (5) universities in Maryland, and three (3) universities in Virginia. Included in these totals are three (3) federal universities that by law are prohibited from advocacy, so my comments do not reflect their opinions.

The Consortium member institutions have long supported paid leave programs, and have demonstrated that belief through an array of flexible leave programs for parents, family medical care, and self-care, among others. We testified[1] on December 2, 2015 in support of paid leave programs. We described how our employees have made good use of our programs. Our member institutions are justly proud of their effective and efficient processes for administering these

[1] The Consortium's December 2, 2015 testimony may be accessed at https://static1.squarespace.com/static/54f72b94e4b05ca04000cf5c/t/59b7fa69d55b41ba35f2cb4c/1505229417966/Universal+Paid+Family+and+Medical+Leave+Testimony+2015-12-02.pdf.

programs. We also noted that our members have effective benefits education, communications systems, and support mechanisms in place to address employees' questions and concerns.

While in support of paid leave, in our earlier testimony we voiced several concerns with the approach taken by the 2015 proposal. The most important concern we raised, and the one that continues to be central for us, is the articulation of the benefits the Council desired and subsequently adopted for all District employees (8 weeks parental leave, 6 weeks family leave, 2 weeks personal leave). These leave benefits were similar to those already being provided by many organizations, including our member institutions. In our earlier testimony, we asked for consideration by the Council for those employers that, like the Consortium member institutions, already had successful paid leave programs that employees used and trusted. We made the case that by working collaboratively with organizations already offering paid leave we all could achieve the goal of providing broader access to paid leave at the most affordable cost. We believed then, and still believe, that the Council should take advantage of the experience, infrastructure, and processes that already exist within most large District employers that already offer paid leave. That way, the District could focus most of its efforts and resources on employees who currently have no or limited access to paid leave, creating the universal access the Council envisions.

As described below, our concerns are for the most part addressed through these proposed amendments. Thus, we come here today to thank Council for listening to our concerns and to offer possible ways to incorporate appropriate changes into the law without compromising access to benefits for District employees who currently do not have access to paid leave benefits. We are especially pleased at the Council's willingness to leverage the efforts of the many organizations that provide paid leave benefits to ensure access to benefits by all.

We also are grateful for the work that has been done to ensure that the Paid Leave Act implementation will be consistent with other key employment laws, including laws relating to unemployment compensation, wage theft, minimum wage, workers compensation, pregnancy protection laws, antidiscrimination laws, and so forth as they relate to the workplace.

The set of proposed paid leave bills put forward by Councilmembers are intended to amend the existing law, and are focused on two different issues: articulation of benefits and cost containment. In general, there are two main approaches in our view. For example, Bill 22-130, Bill 22-302, and Bill 22-334 provide avenues for organizations of a certain size to be subject to an employer mandates based upon the current law. One way that is presented, for instance in Bill 22-334, is for such organizations to self-insure, that is, to provide equivalent benefits through their respective organizations and still pay a lower payroll tax to help offset the costs of a District-run program. By creating pathways for organizations to provide benefits equivalent to the District's program, this model explicitly recognizes and proposes ways to address the

articulation of benefits issue that is our top priority. Under Bill 22-334, organizations already offering paid leave could continue their programs with adjustments needed to comply with the base levels stipulated by the Universal Paid Leave Act requirements. Employees of these organizations would experience few, if any, changes to the leave programs they are accustomed to. Thus, our assessment of this model is that it addresses both benefits articulation and program affordability.

The bills focused on cost containment primarily, such as Bill 22-130, Bill 22-325, and Bill 22-334, offer a wide range of options. For example, Bill 22-325 is based on an employee cost-sharing model constructed on the presumption that such cost-share payments are fees and not a tax. However, this approach does not carry with it a self-insurance component along the lines discussed earlier, as it would still require all employers to participate in the District-run program. This would mean that employees of organizations that already offer paid leave would likely see dramatic changes in their benefits plans, at the least in terms of how they access them, and at the most in terms of the salary they would draw while on leave. Most of the other bills addressing cost do so through differential tax rates on those organizations already offering equivalent paid leave and those participating in the District-run program. One difference in Bill 22-334 is that even small organizations that already offer equivalent paid leave programs may continue to do so and pay the lower payroll tax.

As I noted earlier, the Consortium has been very consistent in its concerns about the paid leave programs from the time they were first proposed through today. Our highest concern remains the need preserve the ability of Consortium institutions to pay leave benefits equivalent to those in current law directly to their employees, without the need for an expensive government intermediary. This direct provision of leave benefits by employers who have a history of managing such benefits for their employees is the most efficient and cost effective way to meet the needs of many District employees. Remaining consistent, the Consortium urges the Council to adopt amendments to the Paid Leave Act that create avenues for organizations to self-insure so long as they offer equivalent paid leave programs as required by the existing law.

We also urge the Council to consider the fact that employers who do provide equivalent paid leave benefits programs are also absorbing the full cost of providing, tracking, and administering these programs. There will be no costs passed on to the District government. Consequently, these employers will be providing a major service to employees without District intercession, thereby saving the District millions in avoided costs. With that in mind, we ask the Council to consider eliminating, or at least further lowering, the payroll tax to be levied on self-insured employers.

Given these positions, we recognize the need for appropriate employer education, enforcement, and oversight processes. With respect to employer education, the District must establish a vigorous and universal education program for all District employers so that they fully understand

how to comply fully with the program. We strongly urge the Council to enact the appropriate oversight procedures for this education process and make the implementation of universal paid leave contingent on educating employers and employees on the program being implemented.

With respect to reporting, the District already has reporting timelines for other employment-related data, such as unemployment compensation. Perhaps the reporting timelines for paid leave could track those calendars for consistency.

Additionally, we urge the Council to closely examine the data that District government already collects from employers to ascertain its sufficiency for purposes of reporting under the Universal Paid Leave Act. We argue that additional data reporting requirements should only be imposed if they are directly linked to enforcement. For self-insured employers, enforcement should closely track the process used for unemployment insurance cases, rather than forcing the District government to establish a new, elaborate enforcement and tracking program. With respect to penalties for lack of compliance, two kinds of situations must be distinguished. On one hand, there is a possibility of an error committed in good faith, such as a simple reporting or mathematical error that is a one-time occurrence. On the other hand, there are situations in which an organization deliberately lies in reporting, denies access to benefits, fails to educate employees about benefits, or commits other flagrant and egregious violations. We do not believe the penalties in these two cases should be identical. In the former case, there should be an opportunity for the organization to correct the error, and to demonstrate that it is not a consistent pattern. In the latter case, we believe that significant penalties, including costly fines or removal of the ability to provide its own benefits program should be levied.

In closing, the Consortium expresses its appreciation to the Council for all of the work done to address concerns and to improve employees' access to paid leave. We believe that the amendments offered, especially those that address both articulation of benefits and cost effectiveness, especially Bill 22-334, will achieve those improvements.