

  
Chairman Phil Mendelson

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Universal Paid Leave Amendment Act of 2016 to require covered employers who employ more than 100 employees in the District to provide medical, family care, and parental leave, to allow covered employers who employ less than 100 employees in the District to participate either in the District-run universal paid leave program or to provide medical, parental, and family care leave themselves, to reduce the payroll tax funding the program, to permit a third party administrator, and to make conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Universal Paid Leave Pay Structure Amendment Act of 2017”.

Sec. 2. The Universal Paid Leave Amendment Act of 2016 (D.C. Act 21-682) is amended as follows:

(a) Section 101 is amended as follows:

(1) Three new paragraphs (9a), (11a), and (20a) are added to read as follows:

“(9a) “Large business” means an entity that employs more than 100 employees.”.

“(11a) “Paid leave program” means the program that pays paid leave benefits to employees pursuant to Section 104 of this act.”.

“(20a) “Small business” means an entity that employs 100 or less employees.”.

34 (2) Paragraph (11) is amended to read as follows:

35 “(11) Paid leave benefits” means the benefits specified in Section 104 of  
36 this act.”.

37 (b) Section 102 is amended to read as follows:

38 “(a) The Mayor shall establish a paid leave program to administer the paid leave  
39 benefits.”

40 “(b) A large business covered employer shall be exempt from the paid leave  
41 program; provided the large business covered employer provides his or her employees with paid  
42 leave benefits; provided further that a large business covered employer shall not be exempt from  
43 this act if the large business covered employer chooses to opt-in to the paid-leave program.

44 “(c) A small business covered employer shall participate in the paid leave  
45 program unless the small business covered employer provides his or her employees with paid  
46 leave benefits.

47 “(d) Subsections (b), (c), (d), (e), (f), (h) and (i) of section 107 of this act shall  
48 apply still to any paid leave program administered by a large business covered employer or small  
49 business covered employer regardless of whether they are exempt or have opted-out of the paid-  
50 leave program administered by the Mayor.

51 “(e) Sections 110-112 of this act shall also apply to large business covered  
52 employers and to any small business covered employers who have opted-out of the District-run  
53 paid-leave program.

54 “(f)(1) Within 180 days after the effective date of the Universal Paid Leave Pay

55 Structure Amendment Act, the Mayor, pursuant to Title 1 of the District of Columbia  
56 Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code §  
57 2-501 *et seq.*) shall issue rules to implement the provisions of this act.

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

62 (c) Section 103 is amended as follows:

63 (1) Subsection (a) is amended to read as follows:

64 “(a)(1) A covered employer, including a large business covered employer  
65 that has opted-in to the paid leave program, shall contribute an amount equal to 0.54% of the  
66 wages of each of its covered employees to the Universal Paid Leave Implementation Fund in a  
67 manner prescribed by the Mayor.

68 “(2) A large business covered employer and a small business  
69 covered employer who has opted-out of the paid leave program shall contribute an amount equal  
70 to 0.15% of the wages of each of its covered employees to the Universal Paid Leave  
71 Implementation Fund in a manner prescribed by the Mayor.”.

72 (2) Subsection (b) is amended by striking the phrase “0.62%” and  
73 inserting in its place “0.54%”.

74 (3) Subsection (d) is amended to read as follows:

75 “(d)(1) Beginning July 1, 2018, a covered employer that is exempt from,  
76 or that has opted-out of the paid leave program, shall provide his or her employees with paid  
77 leave benefits.

78 “(2) By July 1, 2019, the Mayor shall begin to collect all  
79 contributions from large business and small business covered employers, regardless of whether  
80 the entity has chosen to participate in the paid leave program or is providing its employees with  
81 paid leave benefits through its own program.”.

82 (d) Section 106 is amended as follows:

83 (1) A new subsection (b-1) is added to read as follows:

84 “(b-1) The Mayor may contract with a third-party administrator to  
85 administer the paid leave program; provided that at least 30 days prior to executing a contract  
86 with a third-party administrator would be both less expensive and administratively burdensome  
87 than if the program were administered solely by the government.”.

88 (2) Subsection (i)(1) is amended as follows:

89 (A) Subparagraph (B) is amended to read as follows:

90 “(B) That retaliation by a covered employer, regardless of whether  
91 they are providing paid-leave benefits to their employees through their own paid-leave programs  
92 or through the District administered paid-leave program, against a covered employee for  
93 requesting, applying for, or using paid-leave benefits is prohibited;”.

94 (B) A new subparagraph (B-1) is added to read as follows:

95 “(B-1) That an intentionally false statement made in order to obtain  
96 or deny benefits provided for in this Act shall be punishable pursuant to D.C. Official Code § 22-  
97 2405;”.

98 (e) A new section (106a) is added to read as follows:

99 “Sec. 106a. Employer Mandate Requirements

100 “(a)(1) Large business covered employers and small business covered

101 employers that have chosen to opt-out of the District run paid-leave program must certify  
102 quarterly to the Mayor, in a manner prescribed by the Mayor, that the covered employer is  
103 providing paid-leave benefits and that the covered employer has complied with the notice  
104 requirements set forth in Section 107 of this act.

105 “(2) In addition to the requirements in paragraph (1) of this subsection, a  
106 covered employer who has chosen to provide its own paid-leave program, in accordance with  
107 this act and rules promulgated by the Mayor, shall also provide the following information as part  
108 of its quarterly certification:

109 “(A) Number of employees;

110 “(B) Number of eligible individuals who have requested paid-  
111 leave during the preceding quarter;

112 “(C) Type of paid-leave each eligible individual has requested;

113 “(D) Number of weeks taken by each eligible individual;

114 “(E) Number of eligible individuals who requested paid-leave in  
115 accordance with this act but were denied and an explanation as to why the eligible individual was  
116 denied his or her request for paid-family leave;

117 “(F) Number of eligible individuals who have sought a legal  
118 remedy to obtain benefits during the quarter, the outcome of any legal actions not resolved in  
119 prior quarters; and

120 “(G) Number of individuals who have intentionally made a false  
121 statement or misrepresentation regarding a material fact and amount of money recovered by the  
122 covered employer due to the false statement or misrepresentation.

123 “(b)(1) Employers shall retain records documenting hours worked by employees

and paid leave taken by employees for a period of 3 years, and shall allow the Mayor and the Office of the District of Columbia Auditor access to the records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the benefit requirements provided for in this act.

“(2) When an issue arises as to an employee’s entitlement to paid leave under this act, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid leave taken by the employee, or does not allow the Mayor or the Office of the District of Columbia Auditor reasonable access to the records, there shall be a rebuttable presumption that the employer has violated this act.”.

(f) A new section (108a) is added to read as follows:

“Sec. 108a. Enforcement and Penalties

“(a)(1) An employee injured by a violation of this act, the Attorney General of the District of Columbia, or the Mayor may bring a civil action in any court of competent jurisdiction or an administrative action against any employer to enforce the provisions of this act

“(2) When an administrative complaint is filed against any employer or other person alleged to have violated this act, a hearing by an administrative law judge shall be scheduled.

“(3) No action may be commenced more than one year after the occurrence or discovery of the alleged violation of this act; provided that the one-year limitation period shall be tolled during the course of any administrative proceedings or during any period when a covered employer has failed to comply with the notice provisions of this act.

“(b) If an employer fails to allow an employee to use paid-leave as required by

146 this act, the employer shall pay \$500 in additional damages to the employee for each accrued day  
147 denied, up to a maximum of \$5,000, regardless of whether the employee takes unpaid leave or  
148 reports to work on that day.

149 “(c) Except as provided in Section 107(i)(4), an employer who willfully violates  
150 the requirements of this act shall be subject to a civil penalty for each affected employee of  
151 \$1,000 for the 1st offense, \$1,500 for the 2nd offense, and \$2,000 for the 3rd and each  
152 subsequent offense.

153 “(d) If the Mayor determines that an employer has violated any provision of this  
154 act, the Mayor shall order the employer to provide affirmative remedies including:

155 ”(1) Back pay for lost wages caused by the employer’s violation of this  
156 act;

157 “(2) Reinstatement or other injunctive relief;

158 “(3) Compensatory damages, punitive damages, and additional damages as  
159 provided in subsection (b) of this section; and

160 “(4) Reasonable attorney’s fees and costs of enforcement.

161 “(e) An action may be maintained against any employer in a court of competent  
162 jurisdiction by any one or more employees for and on behalf of himself or themselves. An  
163 employer who violates the provisions of this act shall be liable to the employee or employees  
164 affected for:

165 “(1) Back pay for lost wages caused by the employer’s violation of this  
166 act;

167 “(2) Reinstatement or other injunctive relief;

168 “(3) Compensatory damages, punitive damages, and additional damages as



169 provided in subsection (b) of this section; and

170 “(4) Reasonable attorney’s fees and costs.

171 “(f)(1) Where compliance with this act or regulations enacted to implement  
172 this act is not forthcoming, the Mayor shall take any appropriate enforcement action to secure  
173 compliance, including initiating a civil action and, except where prohibited by another law,  
174 revoking or suspending any registration certificates, permits or licenses held or requested by the  
175 employer or person until the violation is remedied.

176 “(2) To compensate the District for the costs of investigating and  
177 remedying the violation, the Mayor may also order the violating employer or person to pay to the  
178 District a sum of not more than \$500 for each day or portion thereof and for each employee or  
179 person as to whom the violation occurred or continued. The funds recovered by the District  
180 under this act shall be allocated to offset the costs of implementing and enforcing this act.

181 “(g) In any administrative or civil action brought under this act, the Mayor or  
182 court shall award interest on all amounts due and unpaid at the rate of interest specified in § 28-  
183 3302(b) or § 28-3302(c).

184 “(h) Any money awarded to an employee under this act shall be enforceable  
185 by the employee to whom the debt is owed or may be collected by the District on behalf of the  
186 employee.

187 “(i) The administrative fines and penalties collected under this section shall be  
188 deposited into the Universal Paid Leave Implementation Fund Act of 2016, effective October 9,  
189 2016 (D.C. Law 21-160; DCR10775).

190 “(j) An individual who intentionally makes a false statement or misrepresentation  
191 regarding a material fact, or who intentionally fails to report a material fact, to obtain a benefit



under this act is disqualified from receiving paid leave benefits from his or her employer under this act for a period of 3 years.

“(k) If paid leave benefits provided for in this act are paid erroneously or as a result of willful misrepresentation, an employer may seek repayment of benefits from the recipient.”.

(g) Section 110(c) is amended to read as follows:

“(c) It shall be unlawful for any individual or entity to provide intentionally false statements in applying for paid leave benefits. False statements shall be enforceable pursuant to D.C. Official Code § 22-2405.”.

(h) Section 112 is repealed.

Sec. 3. Section 1152 of the Universal Paid Leave Implementation Fund Act of 2016, effective October 9, 2016 (D.C. Law 21-160; DCR10775) is amended as follows:

(a) Subsection (b) is amended by striking the phrase “paying for benefits, public education, and administrative costs” and inserting the phrase “paying for benefits, public education, inspectors to monitor covered employers who choose to run their own paid-leave program, and administrative costs” in its place.

(b) Subsection (e) is amended by adding a new paragraph (2a) to read as follows:

“(2a) Revenue from civil fines and administrative penalties;”.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

215        This act shall take effect following approval of the Mayor (or in the event of veto by the  
216   Mayor, action by the Council to override the veto), a 60-day period of congressional review as  
217   provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
218   24, 1973 (87 Stat. 813; D.C Official Code § 1-206.22(c)(1)), and publication in the District of  
219   Columbia Register.