

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE**

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

OCTOBER 10, 2017

**TESTIMONY OF THE
WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND URBAN
AFFAIRS**

My name is Christine Dinan and I am a Staff Attorney at the Washington Lawyers' Committee for Civil Rights and Urban Affairs. I am pleased to submit this testimony on behalf of the Washington Lawyers' Committee for Civil Rights and Urban Affairs in support of the Universal Paid Leave Act of 2015 ("UPLA"), as passed by the D.C. Council in 2016 and enacted earlier this year. We urge the Council to reject the alternative legislative proposals that have been introduced, each of which would replace the original groundbreaking legislation with weaker protections for hardworking employees and their families in the District.

For nearly fifty years, the Washington Lawyers' Committee has addressed issues of discrimination and entrenched poverty through pro bono litigation, representing individuals in claims of discrimination related to employment, housing, incarceration, and disability rights. In our employment practice, we regularly advise and represent workers who have been denied their wages, paid sick days, and other workplace benefits under D.C. law. Too often we have regrettably had to counsel workers that they have no right to collect a paycheck while they are dealing with a family or medical emergency, unless they are one of the lucky few who have won the "boss lottery" and receive such benefits from their employer. Given this unfortunate reality, we were overjoyed to learn that paid leave had finally become a near-universal¹ benefit for District workers.

The Committee closely monitored the months-long debate over the UPLA, watching with pride as the D.C. Council embraced the idea that paid family and medical leave – the promise of financial security while a worker is dealing with their own or a family member's serious illness or welcoming a new child into their family – is essential

¹ We recognize that the UPLA does not, and cannot, extend benefits to employees of the federal government, who represent a large percentage of the District of Columbia workforce.

to guarantee full and equal participation in the workforce, regardless of your gender, occupation, or level of income. The Council expressed its commitment to D.C. workers when it shepherded a bill that provided real benefits to the District's most vulnerable workers through several lengthy public hearings, committee mark-ups, and a final legislative session. Yet no sooner had the UPLA become law than its detractors began chipping away at the progress that had been achieved, wasting no time to introduce amendments that would gut the law of its most inclusive and innovative provisions.

We submit this testimony today to urge the Council to once again stand up for the hardworking people of the District, and ensure that the maximum possible number of workers receive benefits under the law, that they receive those benefits without further delay, and that in applying for and receiving benefits, they not be subjected to the whims of their employer. Based on our review of the proposed amendments to the UPLA, none of the alternatives would accomplish these objectives as well as the originally-enacted UPLA. Indeed, we have concerns with several common themes of the proposed amendments, which are discussed more fully below:

First, an employer mandate would not adequately protect workers. We can attest from our own experience of fielding hundreds of calls from workers who have found themselves suddenly unemployed in a crisis that employer-provided benefits are often arbitrarily and wrongfully denied, and that few blue collar workers even realize that they are entitled to such benefits. Placing the onus on employers to educate workers about their rights to leave benefits and to ensure that workers receive the benefits they are owed will ensure that those phone calls keep coming, as employers have every incentive to deny benefits that they alone bear the cost of providing.

That several of these proposals include strong penalties for employers who violate the law is not an adequate solution. It is little consolation to a worker who has been evicted or unable to feed their family due to the loss of their wages that they can file a complaint against their employer to recoup wrongfully withheld benefits months, or sometimes years, later. We are limited in our capacity to assist workers in combatting such abuses, and many families in crisis will not even understand that their problem is one with which a lawyer can help.² If these benefits are truly meant to provide a safety net, they must be neutrally administered to reduce such issues on the front end.

Even setting aside concerns about the proper administration of leave benefits, an employer mandate model which ties eligibility for benefits to employment with a particular employer for a given period of time would leave far too many workers behind. This ignores the realities faced by workers who must regularly switch jobs for myriad reasons outside

² According to results from a recent survey of low-income DC residents, "Fewer than 12% of survey participants sought help from a lawyer. Many tried to resolve their problems without help from anyone or turned to family or friends for help. Others did not perceive their problems as being susceptible to legal resolution." *The Community Listening Project*, THE D.C. CONSORTIUM OF LEGAL SERVICES PROVIDERS, at 36, April 2016, <https://www.lawhelp.org/files/7C92C43F-9283-A7E0-5931-E57134E903FB/attachments/A4B5C44F-8B88-4B76-97A9-FF648F7C7EB9/clp-final-april-2016.pdf>.

of their control, including the seasonality of certain work, unexpected layoffs, and scheduling inflexibility. By contrast, the UPLA covers workers based on the length of their employment with any number of covered employers prior to the request for benefits.

Second, all employers should be covered, regardless of their size. Many of the alternative proposals that are being considered exempt certain small businesses (variously defined as employers with fewer than five, fewer than 25, or fewer than 50 employees) from the requirement to provide paid family and medical leave benefits.

As a preliminary matter, it must be noted that any proposal that exempts an employer with 20 or more employees from coverage by the UPLA would place the law at odds with the D.C. Family and Medical Leave Act (“DCFMLA”). This would exacerbate the situation that initially prompted the passage of the UPLA, as certain employees would be entitled to job protection for qualifying periods of leave, but they would not be entitled to receive any pay during that leave, rendering the DCFMLA’s protections meaningless for many workers. To be clear, under the current formulation of the UPLA, there will still be a category of workers who can collect a paycheck, but not receive job protection. However, we believe this is a more equitable means of balancing an employee’s need for income with an employer’s need to secure staffing than the proposals which are being considered today.

But more importantly, these proposals would eliminate one of the UPLA’s greatest accomplishments: providing paid leave to employees of businesses and organizations that are too small to bear the cost of such benefits on their own. The UPLA offers small businesses the opportunity to provide the same benefits that larger employers can provide, thereby making small businesses (and nonprofits like ourselves) more competitive in attracting top talent. It will also allow small employers to offer crucial, meaningful support to their employees, increasing employee commitment and morale. By exempting small employers from the UPLA’s coverage, the District would not only deny local small businesses and nonprofits an even playing field for employee recruitment and retention, but it would deny a substantial portion of District residents access to critical benefits. If the trade-off between a universal insurance model and employer mandate model requires leaving out this category of employees who are least able to otherwise access paid family and medical leave, the cost is simply too large to bear.

Finally, District workers and their families need these benefits now. In addition to gutting the UPLA of its signature accomplishments, several of the alternative proposals being considered today would impose further delays in providing paid family and medical leave to District employees, which we cannot accept. Each day that we delay implementation of this legislation and its vital benefits harms the workers that are one unexpected illness away from dire financial uncertainty. We urge the Council and Mayor Bowser to commit to maintaining the original timetable for implementation that is included in the UPLA.

For each of these reasons, we urge the Council to reject the alternative proposals that are being discussed today and focus instead on implementing the Universal Paid Leave Act of 2015, as originally enacted, with dispatch.

Thank you.