

October 5, 2016

The Honorable Muriel Bowser  
Mayor of the District of Columbia  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, D.C. 20004

The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia  
1350 Pennsylvania Avenue, NW  
Suite 504  
Washington, D.C. 20004

Dear Mayor Bowser and Chairman Mendelson:

On behalf of the undersigned coalition of leaders of the District of Columbia business community, we write regarding Bill 21-415, the “Universal Paid Leave Act of 2016,” currently being considered by the Council of the District of Columbia (“Council”).

We have serious concerns about the negative impact this bill will have on both employers and employees and have urged the Council to consider the unintended consequences the bill will have were it to become law. At the same time, we share the Council’s desire to provide our employees with paid family and medical leave – as in fact many of us already do – and have developed an alternative approach that we believe is better for business and better for employees. Enclosed please find draft legislation that details this alternative model which we refer to as the Employer Mandate.

As you know, over the past few years the District has proposed and/or adopted several laws that have made it more expensive and burdensome than ever before to be an employer in the District of Columbia. From minimum wage increases and scheduling requirements to extreme recordkeeping requirements of employees, D.C. employers, unlike employers in almost any other jurisdiction, are constantly facing new and changing laws while still providing jobs and goods residents need and depend on. These laws have had consequences. For example, after several years of robust growth, job creation in D.C. has slowed to a crawl. As cities like Atlanta, Dallas, and even Detroit experience booming job markets, in D.C. job growth has cooled dramatically to less than half a percent. At the same time, the D.C. region’s Gross Domestic Product growth now ranks last among the 15 largest metro areas in the country. And the District’s unemployment rate remains significantly higher than the national average, as well as, those of Maryland and Virginia. More than ever it is imperative that policymakers think carefully about the impact of their actions

on the local economy and local employment trends, especially as many D.C. employers could, with minimal disruption, relocate at least a portion of their operations by just a few miles to Maryland or Virginia.

Although well intentioned, the paid leave legislation currently being considered by the Council has significant flaws. First, unlike every other paid leave program in the country, it is paid for by a tax on employers. Such a tax will inevitably cause employers to slow hiring and shift jobs outside the District. Second, the administration of the current paid leave legislation is hugely impractical, as it shifts determinations about whether employees have a right to take requested leave to the D.C. government without the participation of employers. Moreover, to attempt to administer the proposed program, the District government will have to create a giant, expensive, inefficient new bureaucracy, which may or may not prove to have adequate funds to pay out the promised benefits and may or may not be up to the job. And perhaps most importantly, should the Council legislation become law employees will be shocked when – at the most sensitive times of their lives – they are redirected from their employers to go try and collect only a portion of their paycheck from the D.C. government. And because the Council’s model doesn’t offer 100 percent wage replacement, many of the most vulnerable employees won’t be able to afford to take time off at all - defeating the purpose of paid family and medical leave.

Unlike the legislation the Council is currently considering, we believe the Employer Mandate strikes the right balance in providing valuable benefits to D.C. employees without greatly harming the District economy and disrupting the normal operations of employers’ administration of leave benefits. In addition, our proposal is more generous to employees than the legislation before the Council because it guarantees employees – including employees of small businesses – 100% of their salary while they are on protected leave.

The attached draft of the Employer Mandate approach details a universal, workable paid family and medical leave for employees in the District of Columbia that is better for employees and better for employers. Below please find a brief Q&A on the basics of the Employer Mandate model:

- ***Who is covered?*** The definition of eligible individuals builds on the Council’s draft and – consistent with Federal FMLA guidelines – clarifies that employees must be employed for at least one-year prior to the qualifying event and work at least 1250 hours during that year. All eligible District employees – regardless of whether they work for a small, medium, or large employer – are covered, except for employees of the federal government and other District-based employers that are exempted under the Council’s bill.
- ***What do employees get?*** The Employer Mandate guarantees 100% of wages for a full 8 weeks of protected leave to all eligible employees, in addition to the paid sick and safe leave benefits employees accrue under the Accrued Sick and Safe Leave Act (“ASSLA”). The most recent version of the Council’s legislation provides only 90% of wages with a cap of \$1500 a week, a reduction in salary that the District’s most vulnerable employees cannot afford to take. In addition, unlike the current discussion draft of the Council’s bill, the Employer Mandate provides paid leave coverage for mental health conditions, meeting an important need for D.C. employees.

- **When will employees start getting their benefits?** Just like the Council’s legislation, the Employer Mandate phases in implementation of the benefit, depending on the size of the business. Employers with 50 or more employees are required to comply within one year of the legislation becoming law (this is earlier than under the Council’s legislation, which proposed a one-year waiting period plus certification of the fund by the Office of the Chief Financial Officer). Small and medium businesses (49 or fewer employees) will have two years to implement the benefit. This gives needed flexibility to smaller businesses to plan for thoughtful and responsible implementation, including the option of buying insurance to cover the leave.
- **How are small businesses treated?** Small businesses (with fewer than 20 employees) and medium businesses (with 20-49 employees), will have the choice of covering the paid leave benefit leave through their own paid leave policies or of accessing a shared risk insurance pool that the law requires the District government to contract for within 6 months of law’s effective date. The Employer Mandate redirects \$20 million the Council has already appropriated to start building a giant, expensive new D.C. bureaucracy to directly subsidize the cost of insurance premiums for small and medium businesses.
- **How will employees receive their benefits?** The Employer Mandate builds on existing employee benefit programs and provides employers the flexibility to choose among offering a suite of paid leave benefits, provided that the minimum paid leave benefit available to employees meets the 8-week requirement. This is consistent with ASSLA’s approach to existing paid time off (“PTO”) policies, and it also tracks the approach taken by the Obama Administration in its just released Final Rule that mandates that government contractors provide paid medical and family leave to their employees, under Executive Order 13706. If an employer’s existing paid leave benefits are not sufficient to provide an eligible employee taking leave for a qualifying event with a full 8 weeks of paid leave, the employer will need to guarantee salary continuation for the covered period. Employees will be paid directly from their employers the same way that they are currently paid under existing leave programs. This is in sharp contrast to the Council’s legislation that creates a large, expensive, and inefficient government-run claims benefit administration. Moreover, this approach allows for ease of administration of employer leave policies, which is especially important for employers that operate both in the District and in other jurisdictions.
- **How is this done in other jurisdictions?** District businesses are at a unique disadvantage because other jurisdictions have established employee funded paid leave benefits. Without D.C. Statehood, we are prohibited from allowing employees to fund this program.

Despite these challenges, our coalition of District business leaders has proactively developed the Employer Mandate model of universal paid family and medical leave. This program requires significant financial investment by the District business community, but it avoids the 1% model’s universally detrimental effects and represents the right thing to do for our District employees.

Thank you for your consideration of the Employer Mandate model for paid family and medical leave. We look forward to your support as we provide an important safety net to D.C. employees while preserving the District's economic vitality.

Sincerely,



Consortium of Universities of the  
Washington Metropolitan Area



cc: Members of the Council of the District of Columbia