TESTIMONY OF

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SENIOR VICE PRESIDENT, HEALTH POLICY
AMERICAN BENEFITS COUNCIL

BEFORE THE
COMMITTEE ON LABOR & WORKFORCE
DEVELOPMENT COUNCIL OF THE DISTRICT OF
COLUMBIA

PUBLIC OVERSIGHT ROUNDTABLE ON "IMPLEMENTATION OF LAW 21-264, THE UNIVERSAL PAID LEAVE AMENDMENT ACT OF 2016 AND PR23-647, BENEFITS REGULATIONS"

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11 A.M.

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Chair Silverman, council members and staff of the Committee on Labor and Workforce Development. Thank you for the opportunity to testify on behalf of the American Benefits Council about implementation of the Universal Paid Leave Amendment Act of 2016 and proposed final benefits regulations ("Final Rules").

The American Benefits Council is a Washington D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and families. Council members include over 220 of the world's largest corporations and collectively either directly sponsor or support sponsors of health and retirement benefits for virtually all Americans covered by employer-provided plans.

Our member companies recognize the importance of helping employees care for a new child or tend to their own – or a family member's – serious health issue. Council members typically have nationwide operations – often in all 50 states and numerous localities. The vast majority of large employers already sponsor excellent paid leave programs that enable employees to address their health and family needs. These programs also foster greater productivity and contribute to the success of the business.

The Council and its member companies are especially interested in legislative and regulatory activities that may impede the offering and administration of these generous paid leave programs to employees in a uniform manner. We appreciate the opportunity to share the employer perspective on the Final Rules and offer recommendations to address concerns with the regulations and minimize the burden on employers.

EMPLOYERS SHOULD BE NOTIFIED ABOUT THE APPROVED WEEKLY BENEFITS

PFL claim approval notification procedures and content as set forth under Sections 3502.7 and 3502.8

Only if the individual opted to instruct the Department of Employment Services (DOES) to disclose the weekly benefit amount, and, if applicable, the equivalent daily benefit amount, will the notification to employers include the individual's approved weekly benefit amount, and, if applicable, the equivalent daily benefit amount.

The DOES should not need the employee's approval to disclose the amount of DC Universal Paid Leave (UPL) pay they will receive. Employers have a right and a need to know this information. This disadvantages employers, particularly those who already provide their Washington, D.C. employees with some form of company-sponsored paid time off that the employee can use to "top off" (i.e., offset) the pay received from DC UPL . If the employee is receiving supplemental pay from the employer under an employer-provided paid time off program, the employer should be able to ensure that employees do not receive more than 100% of their regular base pay from a combination of DC UPL and company-provided paid time off.

While the language in Section 3502.8 is helpful, it is not enough. Saying that the employee can voluntarily disclose the weekly benefit amount to the employer or that the employer can condition receipt of employer-provided paid time off on the employee making such disclosure increases the employer's burden because now they need to (A) revise their company-wide paid time off policies, (B) create a Washington, D.C. Addendum to their relevant company-wide paid time off policies, or (C) not coordinate the benefits and allow the leaves to "stack." Both options also involve updating company-practices and retraining managers, HR, benefits teams, etc. on how these practices will work – adding to the administration burden on employers seeking to supplement DC UPL benefits to provide wage replacement.

It would be significantly simpler for, the eligible individual, the covered employer, and the DOES, to just provide employers with the eligible individual's approved weekly benefit amount when the DOES sends notice of the initial determination.

CLARIFICATION NEEDED TO ENSURE THAT ELIGIBLE EMPLOYEES WILL NOT RECEIVE MORE THAN 100% OF REGULAR BASE WAGES IN TOTAL

Short-term, employer-provided paid-leave benefits under Section 3513.5

We appreciate the language in Section 3513.5 stating that an eligible individuals right to short-term, employer-provided benefits while receiving DC UPL will be determined by employer's policies and that nothing in the act would prevent an employer from amending their policies However, 3513.5 should be updated to expressly and clearly state that eligible employees will not receive more than 100% of their regular base wages from a combination of DC UPL and short-term, employer-provided paid-leave benefits. This should be added to regulations or additional authority should be given to DOES to do so.

By way of example, the Connecticut Paid Family and Medical Leave Law provides that a covered employee may receive compensation under this section concurrently with any employer-provided employment benefits, provided the total compensation of such covered employee during such period of leave shall not exceed such covered employee's regular rate of compensation. CT PL 19-25 Sec. 3 (f).

Oregon's Paid Family and Medical Leave Law similarly provides that any employer may permit an employee to use paid sick time, vacation leave or any other paid leave earned by the employee in addition to receiving paid family and medical leave insurance benefits to replace an employee's wages up to 100% of the eligible employee's average weekly wage during a period of leave taken for family leave, medical leave or safe leave. HB 2005-B, Sec. 6(2).

CLARIFICATION NEEDED ON THE INTERPLAY BETWEEN DC UPL AND PAID SICK LEAVE BENEFITS

Coordination of benefits under Section 3513.1

We are strongly supportive of language in Section 3513.1 of the Final Rule stating that if DC UPL also qualifies as protected leave pursuant to the FMLA, or D.C. FMLA, the DC UPL shall run concurrently with leave taken under those acts. However, certain absences under the DC UPL law would both be covered absences under DC's paid sick leave ordinance, the Accrued Sick and Safe Leave Act. As a result, there needs to be guidance in any DC UPL final rulemaking, particularly Section 3513.1, that addresses how DC UPL and DC paid sick leave benefits will interplay. Otherwise, employers will be left to address this gray area on their own, which runs the risk of them overstepping on two separate DC mandates. The Final Rule should be amended to clarify the interplay between the DC UPL law and paid sick leave benefits or the Council should provide DOES with the authority to do so.

LIMITATIONS NEEDED ON INTERMITTENT LEAVE

Intermittent leave under Section 3506 and 3506.1

The Act and Final Rule state that "Intermittent leave" means paid leave taken in increments of no less than one day, rather than for one continuous period of time. Section 3505.3 of the Final Rule states that leave taken pursuant to this chapter shall be in no less than one (1) workday increments. Intermittent absences, particularly for bonding and particularly when the increment is as small as 1 day, can create major operational and administrative hardships on employers of all sizes. The Final Rule should be amended to restrict intermittent absences for bonding incidents unless both the employee and employer consent to such intermittent leave. This is the approach followed by the FMLA as well as Massachusetts and Connecticut paid family and medical leave laws.

INDIVIDUALS MUST BE CURRENTLY EMPLOYED TO RECEIVE UPL BENEFITS

Eligibility for benefits Section 3500.1(c)(1)(A)

We strongly support the interpretation that an eligible individual must be currently employed in order to receive UPL benefits.

LACK OF CLARITY ON HOW TO ADMINISTER BENEFITS TO EMPLOYEES WORKING IN BOTH DC AND ELSEWHERE

The DC Universal Paid Leave Amendment Act and corresponding Final Tax Regulations provide a standard for employers to use when assessing whether an

employee whose spends time working in both Washington, D.C. and outside of the District is entitled to UPL benefits. However, additional practical clarity should be provided. Some open questions include:

- Are employers expected to determine whether such a mobile employee is eligible for DC UPL benefits on their own or is this a determination that the DOES will make after receiving an employee's application?

- Is the employer responsible for recording such an employee's hours worked both inside and outside of DC and then reporting DC vs. non-DC hours to the DOES?

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Our member companies recognize the importance of helping employees care for a new child or tend to their own – or a family member's – serious health issue. We urge the Council to recognize the challenges faced by employers in implementing the Universal Paid Leave Amendment Act and the proposed Final Rule and consider our recommendations for addressing these concerns. The Council looks forward to working together on this issue.

I'm happy to answer any questions you may have.