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Brianne K. Nadeau
Councilmember Brianne K. Nadeau

Elissa Silverman
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Trayon White
Councilmember Trayon White, Sr.

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Councilmember Janeese Lewis George

Mary Cheh
Councilmember Mary Cheh

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, the Accrued Sick and Safe Leave Act of 2008 to provide paid time off for COVID vaccinations and recovery; the District of Columbia Family and Medical Leave Act of 1990 to extend and update existing unpaid leave available for COVID-related purposes; and the Coronavirus Support Temporary Amendment Act of 2021 to make conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “COVID Vaccination Leave Emergency Amendment Act of 2021”.

35 Sec. 2. The Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law
36 17-152; D.C. Official Code § 32-531.01 *et seq.*), is amended as follows:

37 (a) Section 2(5) (D.C. Official Code § 32-531.01(5)) is amended to read as follows:

38 “(5) “Paid leave” means:

39 “(A) Accrued increments of compensated leave provided by an employer
40 for use by an employee during an absence from employment for any of the reasons specified in
41 section 3(b); and

42 “(B) Compensated leave required to be provided by an employer to an
43 employee pursuant to section 3a or 3b.”.

44 (b) Section 3(c)(1) (D.C. Official Code § 32-531.02(c)(1)) is amended by striking the
45 phrase “Paid leave under” and inserting the phrase “Except as provided in section 3a or 3b, paid
46 leave under” in its place.

47 (c) A new section 3b is added to read as follows:

48 “Sec. 3b. Paid vaccination leave requirement.

49 “(a)(1) In addition to paid leave otherwise provided under this act, an employer,
50 including the District government, shall provide paid leave to an employee pursuant to this
51 section for an absence from work related to COVID-19 vaccination.

52 “(2) An employer shall provide paid leave to an employee in the following
53 amounts, but shall not be required to provide more than 48 hours of leave in total in a year
54 beginning on the effective date of the COVID Vaccination Leave Emergency Amendment Act of
55 2021, passed on emergency basis on October 5, 2021 (enrolled version of Bill 24-___):

56 (A) For vaccination leave, up to 2 hours per injection; and

57 (B) For vaccination recovery leave, up to 8 hours per injection during the
58 24-hour period following the 2-hour vaccination leave period.

59 “(3)(A) Subject to subparagraph (B) of this paragraph, an employer shall
60 compensate an employee for leave provided pursuant to this section at the employee’s regular
61 rate of pay. In the case of an employee who does not have a regular rate of pay, the employee’s
62 rate of pay shall be determined by dividing the employee’s total gross earnings, including all
63 tips, commission, piecework, or other earnings earned on an irregular basis for the most recent
64 workweek that the employee worked for the employer, by the number of hours the employee
65 worked during that workweek.

66 “(B) In no case shall an employee’s rate of pay fall below the minimum
67 wage established by section 4(a) of the Minimum Wage Act Revision Act of 1992, effective
68 March 25, 1993 (D.C. Law 9-248; D.C. Code Official Code § 32-1003(a)).

69 “(4) An employer shall provide paid leave under this section to any employee
70 who commenced work for the employer at least 15 days before the request for leave.

71 “(b)(1) Notwithstanding any other provision of this act, the remedies available under the
72 District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March
73 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), shall be the exclusive remedies
74 available to a District government employee for a violation of this section.

75 “(2) For complaints filed by non-District government employees, before taking
76 any other administrative action on a complaint filed pursuant to section 13, the Mayor shall
77 promptly provide the employer with written notice of the alleged violation, in a form or manner
78 to be determined by the Mayor, and give the employer 5 business days to cure the alleged
79 violation. The time to cure the violation shall run from the date the employer receives the notice.

80 “(c) Notwithstanding any other provision of this act:

81 “(1) The paid leave required to be provided under this section shall be in addition
82 to any other paid leave an employer provides an employee under an existing leave policy,
83 including under an existing contract or collective bargaining agreement; provided, that a paid
84 leave policy that exclusively and expressly provides for COVID vaccination and recovery leave,
85 and does not reduce other available paid leave, in amounts equivalent to or greater than the paid
86 leave required under this section shall satisfy the requirements of this section; and

87 “(2) Parties to a collective bargaining agreement may not waive or reduce the
88 amount of leave an employer is required to provide pursuant to this section.

89 “(d) For the purposes of this section, the term:

90 “(1) “Child” means a child under the age of 18 years who lives with an employee
91 and for whom the employee permanently assumes and discharges parental responsibility, or a
92 foster child under the age of 18 years.

93 “(2) “Vaccination leave” means leave taken from employment by an employee to
94 receive an injection, or for an employee’s child to receive an injection, of a COVID-19
95 vaccination approved by the federal Food and Drug Administration, including a booster injection
96 approved for the employee or child by the Centers for Disease Control and Prevention.

97 “(3) “Vaccination recovery leave” means leave taken from employment by an
98 employee to recover, or for an employee to care for a child recovering, from side effects from a
99 COVID-19 vaccination approved by the federal Food and Drug Administration, including a
100 booster injection approved for the employee or child by the Centers for Disease Control and
101 Prevention, which preclude an employee from performing his or her work.”.

102 (c) Section 4 (D.C. Official Code § 32-531.03) is amended as follows:

103 (1) The existing text is designated as subsection (a).

104 (2) New subsections (b) and (c) are added to read as follows:

105 “(b) An employer may not require an employee who seeks to use paid leave pursuant to
106 section 3a to:

107 “(1) For any reason, provide more than 48 hours' notice of the need to use such
108 leave;

109 “(2) In the event of an emergency, provide more than reasonable notice of the
110 employee's need to use such leave; or

111 “(3) Search for or identify another employee to perform the work hours or work
112 of the employee using paid leave.

113 “(c) An employer may not require an employee who seeks to use paid leave pursuant to
114 section 3b to search for or identify another employee to perform the work hours or work of the
115 employee using the paid leave.”.

116 (d) Section 5 (D.C. Official Code § 32-531.04) is amended as follows:

117 (1) A new subsection (a-2) is amended to read as follows:

118 “(a-2) An employer may require that an employee who uses paid leave pursuant to
119 section 3b to provide reasonable documentation upon return to work of the need for leave, which
120 may include a vaccination record or other documentation attesting to the date and time of the
121 vaccination injection.”.

122 (2) Subsection (b)(2) is amended by striking the phrase “under section 3” and
123 inserting the phrase “under sections 3, 3a, or 3b” in its place.”.

124 Sec. 3. The District of Columbia Family and Medical Leave Act of 1990, effective
125 October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-501 *et seq.*), is amended by adding a
126 new section 3a to read as follows:

127 “Sec. 3a. COVID-19 leave.

128 “(a) Beginning on the effective date of the COVID Vaccination Leave Emergency
129 Amendment Act of 2021, passed on emergency basis on October 5, 2021 (enrolled version of
130 Bill 24-___), an employee shall be entitled to leave if the employee is unable to work because the
131 employee:

132 “(1) Has tested positive for COVID-19 or is caring for a family member or
133 individual with whom the employee shares a household who has tested positive for COVID-19
134 and must quarantine pursuant to Department of Health guidelines;

135 “(2) Has a recommendation from a health care provider or a directive from an
136 employer that the employee isolate or quarantine due to COVID-19, including because the
137 employee or an individual with whom the employee shares a household is at high risk for serious
138 illness from COVID-19;

139 “(3) Must care for a family member or an individual with whom the employee
140 shares a household, who is isolating or quarantining pursuant to Department of Health guidance,
141 the recommendation of a health care provider, or the order or policy of the family member’s or
142 individual’s school or childcare provider; or

143 “(4) Must care for a child whose school or place of care is closed or whose
144 childcare provider is unavailable to the employee due to COVID-19.

145 “(b) An employee may use no more than 16 weeks of leave pursuant to this section in the
146 2-year period beginning on the effective date of the COVID Vaccination Leave Emergency

147 Amendment Act of 2021, passed on emergency basis on October 5, 2021 (enrolled version of
148 Bill 24-___).

149 “(c) An employer may require reasonable certification of the need for COVID-19 leave,
150 including as follows:

151 “(1) If the leave is needed due to a positive COVID-19 test of the employee or
152 employee’s family or household member, a copy of such test results with the date;

153 “(2) If the leave is necessitated by the recommendation of a health care provider
154 to the employee or due to long-term effects of a previous COVID-19 infection, a written, dated
155 statement from a health care provider stating that the employee has such need and the probable
156 duration of the need for leave;

157 “(3) If the leave is necessitated by the recommendation of a health care provider
158 to an employee’s family member or individual with whom the employee shares a household, a
159 written, dated statement from a health care provider stating that the individual has such need and
160 the probable duration of the condition;

161 “(4) If the leave is necessitated because of Department of Health guidance, a copy
162 of such guidance and other supporting documentation that demonstrates the need for leave at the
163 time it is taken or requested;

164 “(5) If the leave is needed because a child must quarantine due to school or
165 childcare provider policy or orders, a copy of that policy or a dated statement from the head or
166 administration of the school or childcare provider stating such need to quarantine or isolate or
167 providing information and a dated copy of a communication to or from the school or childcare
168 provider indicating the child had to quarantine;

169 “(6) If the leave is needed because a school, place of care, or childcare provider is
170 unavailable due to COVID-19, a statement by the head of the agency, company, or childcare
171 provider stating such closure or unavailability, which may include a printed statement obtained
172 from the institution’s website; or

173 “(7) If the leave is needed for supervision or care for a child who is receiving
174 virtual learning, a written, dated statement from a health care provider stating that the child
175 should receive virtual learning due to risk of serious illness from COVID-19.

176 “(d) An employer may require an employee to provide reasonable advance notice of
177 leave taken under section; provided, that in the event of an emergency or an unforeseen need to
178 use the leave an employer may not require an employee to provide advance notice of the
179 employee's need to use leave, but may require notice to be provided as soon as reasonably
180 practicable after leave is taken, but in no event fewer than 24 hours, after leave is taken.

181 “(e) Notwithstanding section 17, this section shall apply to any employer regardless of
182 the number of persons in the District that the employer employs.

183 “(f)(1) Except as provided in paragraphs (2) and (3) of this subsection, leave under this
184 section may consist of unpaid leave.

185 “(2) Any paid leave provided by an employer that the employee elects to use for
186 leave under this section shall count against the total workweeks of allowable leave provided in
187 this act.

188 “(3) If an employer has a program that allows an employee to use the paid leave
189 of another employee under certain conditions and the conditions have been met, the employee
190 may use the paid leave and the leave shall count against the 16 workweeks of leave provided in
191 this section.

192 “(4) An employee shall not be required, but may elect, to use leave provided
193 under this section before other leave to which the employee is entitled under federal or District
194 law or an employer’s policies, unless barred by District or federal law.

195 “(g) The provisions of section 6 shall apply to an employee who takes leave pursuant to
196 this section.

197 “(h) An employer who willfully violates subsections (a) through (e) of this section shall
198 be assessed a civil penalty of \$1,000 for each offense.

199 “(i) The rights provided to an employee under this section may not be diminished by any
200 collective bargaining agreement or any employment benefit program or plan; except, that this
201 section shall not supersede any clause on family or medical leave in a collective bargaining
202 agreement in force on the applicability date of this section for the time that the collective
203 bargaining agreement is in effect.

204 “(j) For the purposes of this section, the term “COVID-19” means the disease caused by
205 the novel coronavirus SARS-CoV-2.”.

206 Sec. 4. The Coronavirus Support Temporary Amendment Act of 2021, effective June 24,
207 2021 (D.C. Law 24-9; 68 DCR 6913), is amended as follows:

208 (a) Section 104(b) is repealed.

209 (b) Section 105(a) is amended as follows:

210 (1) Paragraph (1) is repealed.

211 (2) Paragraph (3) is repealed.

212 Sec. 5. Fiscal impact statement.

213 The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact
214 statement required by section 4a of the General Legislative Procedures Act of 1975, approved

215 October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

216 Sec. 6. Effective date.

217 This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor,
218 action by the Council to override the veto), and shall remain in effect for no longer than 90 days,
219 as provided for emergency acts of the Council of the District of Columbia in section 412(a) of
220 the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C.
221 Official Code § 1-204.12(a)).