

A RESOLUTION

24-98

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 4, 2021

To declare the existence of an emergency with respect to the need to amend the Universal Paid Leave Amendment Act of 2016 to prohibit the reduction of short-term disability benefits based on actual or estimated paid leave benefits; and to amend Title I of the Insurance Trade and Economic Development Amendment Act of 2000 to prohibit an insurer from offsetting or reducing benefits under a short-term disability insurance policy based on estimated or actual benefits received under the Universal Paid Leave Amendment Act of 2016.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Short-term Disability Insurance Benefit Protection Emergency Declaration Resolution of 2021”.

Sec. 2. (a) There exists an immediate need to protect benefits from the District’s Universal Paid Leave program and benefit payments from short-term disability insurance plans for District workers entitled to both.

(b) Many District employers provide optional, private short-term disability insurance plans as part of the compensation paid to employees. These plans provide enrolled employees with partial income replacement for the employee’s absence from work due to recovery from injury or illness, including postpartum recovery. A typical short-term disability plan provides between 40 and 60 percent of the employee’s salary up to a duration of between 3 to 6 months, based on medical need. Some employers pay the premiums for these plans, while other employers require employees to pay all or part of the premiums.

(c) The District’s Universal Paid Leave (“UPL”) program launched in July 2020. It provides benefits, in the form of partial wage replacement, to District workers who need to take time off from work for events associated with the birth or placement of a new child, including bonding (“parental leave”), recovery from serious illness or injury (“medical leave”), or caring for a family member with a serious illness or injury (“family leave”). District employers pay quarterly contributions into a social insurance fund from which benefits are paid to eligible workers.

(d)(1) The UPL program provides up to 8 weeks of benefits for parental leave, 2 weeks of benefits for medical leave, and 6 weeks of benefits for family leave. The UPL medical leave

benefit is significantly less than the other UPL leave benefits. This was due to conservative estimates, at the time the law was being written, of potential participation rates and concerns that additional medical leave would be too costly.

(2) The UPL program provides partial wage replacement up to \$1,000 per week, on a sliding scale depending on a claimant's income. An individual earning less than or equal to 150% of the minimum wage (currently \$22.50 per hour or \$900 per week or \$46,800 annualized) will receive a UPL benefit equal to 90% of their weekly wage; for those earning more than 150% of the minimum wage, the formula results in less than 90% of the weekly wage because the total earnings of these people are greater.

(e) Many District workers use the public and private programs together, relying on them to achieve closer to full wage replacement in total and to extend the period of wage replacement to more fully cover unpaid periods of leave from work necessitated by their medical needs.

(f) The Council has learned that since the UPL program began paying benefits to workers District insurance companies have been offsetting the amount of benefits paid under their short-term disability plans by the amount of benefits the employee is expected to receive from the District's UPL program, regardless of whether the beneficiary had received those paid leave benefits or not, and regardless of the purpose for which the leave is used (i.e., parental leave rather than medical leave). Specifically, workers have reported experiencing the following harms:

(1) Mothers who have received short-term disability benefits for their recovery from childbirth have had their short-term disability benefits reduced by the UPL benefit amount, even though one of these benefits is for medical recovery and the other is for events, including bonding, associated with the birth or placement of a child.

(2) Insurance companies have reduced short-term disability benefits based on their own estimate of UPL benefit amounts that they expected workers to receive and only fixed discrepancies after the employee appealed.

(3) Insurance companies have required employees preparing to undergo surgery to apply for UPL benefits so their short-term disability benefits could be reduced by the UPL benefit amount. This was regardless of the employee's intent or desire to use UPL program and denied the employee the right to choose how to use their annual allotment of UPL leave.

(4) Employees have struggled to understand their rights and how best to plan for childbirths and their own medical care due to changes in their coverage.

(g) Even though insurance companies are reducing the amount of benefits they pay to their plan participants, at least some have not reduced premiums charged in concert with the reduction of benefits. For example, one constituent's employer paid a \$625 annual premium. The employee was expecting to receive a short-term disability benefit of \$1,222, but the benefit amount was reduced to \$222, with a \$1,000 offset from expected PFL benefits. The premium was not adjusted. This action effectively enriched the insurance companies at the employee's expense. One constituent testified that "the [insurance company] was effectively redirecting the benefits of the Paid Family Leave program away from D.C. families and into their own pockets."

This means that while the employee pays for both the UPL contribution and the short-term disability premium, whether directly or indirectly, the employee is only receiving payment for one of the programs to which they contributed.

(h) Some employers have failed to properly notify their employees of the change in benefits under a short-term disability plan or have misinformed workers about what combination of benefits is available to them. Some employers sponsoring the short-term disability benefits for their employees are unaware of how the insurance companies are using the UPL program to reduce their costs. These employers do not understand the details of, or changes since the launch of UPL program to, insurance plans, including new riders added or the insurance companies' interpretation that UPL benefits are "other income" eligible for offsetting short-term disability benefits.

(i) The Council did not intend for UPL benefits to reduce or limit workers' access to short-term disability benefits:

(1) The UPL law states that the right to UPL benefits is not to be diminished by a collective bargaining agreement, by any other contract, or by an employer policy.

(2) The law enumerates 2 programs, unemployment insurance and long-term disability insurance, that, if an individual is receiving benefits under those programs, will make the individual ineligible for UPL benefits, implying that individuals are permitted to receive benefits under other programs like short-term disability.

(3) The law states that the UPL benefits shall not prevent an employer from supplementing or providing greater benefits than required under the UPL law.

(4) Individual workers often use the programs for different purposes, such as UPL for bonding leave and short-term disability for postpartum recovery.

(5) The UPL program and short-term disability insurance have completely separate and independent funding mechanisms.

(j) Under the UPL law, it is unlawful for any person to interfere with an employee's right to UPL. Using the UPL benefits as an offset for short-term disability benefits renders the UPL benefit meaningless because an employee receives no more benefit than they would in the absence of UPL; that is interference.

(k) The Council finds that it is necessary and urgent to prohibit insurance companies from using UPL benefits to offset the amount of short-term disability benefits.

Sec. 3. The Council determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Short-term Disability Insurance Benefit Protection Emergency Amendment Act of 2021 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.