

A RESOLUTION

24-584

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2022

To declare the existence of an emergency with respect to the need to amend the Universal Paid Leave Amendment Act of 2016 to prohibit insurers from reducing short-term disability benefits based on actual or estimated paid leave benefits, regardless of the jurisdiction in which the policy was issued or written; and to amend Title I of the Insurance Trade and Economic Development Amendment Act of 2000 to enable the Department of Insurance, Securities, and Banking to enforce the prohibition of 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, regardless of the jurisdiction in which the policy was issued or written.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Short-term Disability Insurance Benefit Protection Clarification Emergency Declaration Resolution of 2022”.

Sec. 2. (a) There exists an immediate need to protect benefits from 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 % 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 12 total weeks of benefits for parental leave, medical leave, and family leave.

(2) The UPL program provides partial wage replacement up to \$1,009 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 \$24.15 per hour or \$966 per week or \$50,232 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) Last year, the Council learned that, since the UPL program began paying benefits to workers, District insurance companies were offsetting the amount of benefits paid under their short-term disability plans by the amount of benefits the employee was 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 was used (i.e., parental leave rather than medical leave).

(g) Even though at least some insurance companies did not reduce premiums charged in concert with the reduction of benefits, others did reduce the amount of benefits they pay to their plan participants.

(h) It has since come to the attention of the Labor Committee, that the Department of Insurance, Securities, and Banking's ("DISB") ability to enforce the anti-offsetting law, as intended, is hampered by the fact that the agency's enforcement authority is typically limited to insurance policies that were written or issued in the District. Thus, DISB is likely unable to take enforcement action against an insurer for unlawfully offsetting UPL benefits for District-based employees because the employer's short-term disability policy was written or delivered outside the District.

(i) Some employers of District employees—such as national employers or those based in other states—may purchase a policy that was written or delivered outside the District. It has been reported to the Committee that several insurance companies do not believe their short-term disability benefit is protected by the District's anti-offsetting provision, and at least one District-based employee of a Maryland employer was recently informed that their insurance payment would be offset by the UPL benefit amount.

(j) The intent of this emergency legislation is to strengthen DISB's enforcement authority by including an extraterritoriality clause that requires application of the law regardless of the jurisdiction in which the short-term disability insurance policy was written or issued.

(k) 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.

(l) 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.

(m) 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, regardless of in which jurisdiction the policy was written or issued.

Sec. 3. The Council of the District of Columbia 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 2022 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.