

A RESOLUTION

25-235

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 11, 2023

To declare the existence of an emergency with respect to extending amendments to the Universal Paid Leave Amendment Act of 2016 to prohibit the reduction of private market short-term disability benefits based on actual or estimated paid leave benefits to which an eligible individual may be entitled from the District, regardless of in which jurisdiction the policy was issued or written; and to extend amendments to Title I of the Insurance Trade and Economic Development Amendment Act of 2000 to make the prohibition of offsetting or reducing benefits under a private market short-term disability insurance policy based on estimated or actual benefits received under the Universal Paid Leave Amendment Act of 2016 enforceable under that law regardless of the jurisdiction in which the insurance 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 2023”.

Sec. 2. (a) There exists an immediate need to extend the Short-Term Disability Insurance Benefit Protection Clarification Temporary Amendment Act of 2022 (D.C. Law 24-202), expiring July 26, 2023, to protect benefits from the District’s Universal Paid Leave program and benefit payments from short-term disability insurance plans for District workers who are entitled to both.

(b) Many District employers provide optional, private short-term disability insurance plans as part of the compensation package paid and available 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 documented medical need. Some employers pay the premiums for these plans, while many 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 when a qualifying leave event arises.

(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 \$1,049 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 \$25.50 per hour or \$1,020 per week or \$53,040 annualized for a 40-hour workweek) 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 sometimes complex and lengthy medical needs.

(f) In 2021, the Council learned that since the UPL program began paying benefits to workers, private insurance companies providing coverage to District workers 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 applied for or received those paid leave benefits or not and regardless of the purpose for which the leave was used (i.e., parental bonding leave rather than medical leave).

(g) In the last Council period, the Committee on Labor and Workforce Development (“Labor Committee”) worked to partially close this coordination of benefits loophole to prohibit benefit offsetting by including amendments to the Universal Paid Leave Act of 2016 (D.C. Law 21-264) in the Fiscal Year 2022 Budget Support Act of 2021 (D.C. Law 24-45).

(h) It later came 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, was hampered by the fact that the agency’s enforcement authority is typically limited to insurance policies written or issued in the District. Thus, DISB was 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 was previously reported to the Labor Committee that several insurance companies do not believe their short-term disability benefit is protected by the District’s anti-offsetting provision and Council offices continue to hear reports of District workers being victims of offsetting practices.

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

(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, which are subject to different time restrictions.

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

(k) 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.

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

(m) The Council initially passed emergency legislation to safeguard the benefits of District workers on July 11, 2022, and the corresponding temporary legislation went into effect on December 23, 2022. The temporary measure is now expiring, and action must be taken to enact a new round of legislation while passage of the permanent bill is pending in the current Council period.

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 Clarification Emergency Amendment Act of 2023 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.