AT-LARGE DC COUNCIL
ELISSA
★★★ SILVERMAN

OFFICE OF AT-LARGE COUNCILMEMBER ELISSA SILVERMAN
1350 Pennsylvania Avenue N.W., Suite 408, Washington, D.C. 20004
(202) 724-7772 | elissasilverman.com | @CM_Silverman

EMPLOYER MANDATE RISKY, DISADVANTAGES SMALL BIZ & WORKERS

The eleventh-hour "employer mandate" scheme offered as an alternative to the "Universal Paid Leave Act of 2016 (UPLA)" is risky and volatile for District businesses and workers. It is difficult to enforce, would shift costs from large businesses to small businesses and taxpayers, and would create incentives to discriminate against job applicants who are viewed as more likely to take paid leave.

Policy experts have testified that the employer mandate model is problematic. That is why the three states with paid leave programs—California, Rhode Island, and New Jersey—which serve tens of millions of residents and millions of businesses, have a public insurance model administered by the government. New York State, which is implementing paid leave now, also has a public insurance model.

The employer mandate is risky and costly for small businesses

Take a daycare with 10 employees—some part-time, some full-time—and a total payroll of around $200,000. What happens if one full-time employee earning $20 an hour gets pregnant and plans to take 8 weeks of maternity leave? Under the mandate, the daycare center would be expected to pay $6,400 to the employee but only receive $2,000 total in employee tax credits—**meaning the business would be expected to pay $4,400 out of pocket.** The proposal apparently includes a "hardship petition," but it is unclear how that would work and how much more money the business could receive.

Compare that to UPLA: The daycare would pay $1,240 in total each year given the .62% payroll tax, and their employees would have access to insurance for any paid leaves they need. The employee would receive $5,760 from the fund, equal to 90% of her wage for her 8 weeks of leave. **The daycare would be ahead by more than $4,000.**

If two full-time employees happened to need leave in a single year, the center would still only pay $1,240 in total payroll taxes, but their employees would receive $11,520 from the fund.

This is why small businesses have made clear that they ***need*** paid family leave *insurance*:

I own a ward 3 business with four staff. We support a public insurance option for paid family leave because 1) It's affordable, less than $1500/year for us or 0.02 percent of our total revenue; 2) It helps us compete with larger businesses for top talent; and 3) It's the right thing to do for a business that values family.

Offering paid leave on our own is not financially feasible. Being required to provide it – with only minimal tax credits to offset the costs – would make us seriously consider moving our business to Montgomery County. It gives larger businesses a huge advantage while putting my business at huge financial risk.

If my highest paid staff member needed to take eight weeks of leave, at her full salary I'd have to pay $20,000, plus another $20,000 to hire a temporary replacement. $40,000 is a massive hit for any small business – including mine – and a $200 tax offset is nothing but a token.

-- Danielle Lewis, Springboard Partners

The employer mandate encourages discrimination

A mandate model encourages businesses to discriminate against women, men of childbearing age, people with disabilities, and any other job applicants they perceive as more likely to need paid leave, in order to avoid paying for both the salary of the person on leave and for a replacement employee. An insurance model, by contrast, reduces this incentive to discriminate against job applicants or illegally deny leave requests because the employees' paycheck while on leave will be paid by the insurance fund instead of the employer. The mandate also might discourage leave, by putting employees in an adversarial position with their employer in asking for compensated time off.

The "hardship petition" is undefined, unfunded, and does not solve the problems created by the employer mandate

The proposed amendment guts the social insurance that is so vital to small businesses, replacing it with an unfunded tax credit that comes nowhere close to paying for comprehensive paid leave. The proposal claims to solve this problem by introducing "hardship petitions" for businesses, but they are completely undefined and are likely to be both costly for D.C. and inadequate for businesses. If the mayor's office attempts to measure employers leave costs and make them whole, there will need to be an entire new bureaucracy to judge *those* claims, forcing *employers* to collect sensitive health information from employees and then pass it on to D.C. government.

The employer mandate is unfunded and unbudgeted

This proposal would be an enormous unfunded mandate on businesses, offset by a suggested tax credit which is not currently budgeted and for which funds are not identified. This means that if the District is unable to find the necessary funds for the tax credit, District businesses, workers, and families will not have access to paid leave.

UPLA, by contrast, is paid for by a modest .62% payroll tax. For a payroll of $1 million, that is $6,200 per year.

Does the employer mandate have support?

So far, Councilmembers Cheh and Evans say they support it, but Councilmember Cheh said she will support the UPLA proposal if the employer mandate fails. UPLA passed by 11 to 2 on first reading.