

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the City Administrator



Office of the City Administrator

October 25, 2017

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue NW, Suite 504
Washington, DC 20004

Re: Implementation of the Universal Paid Leave Amendment Act of 2016

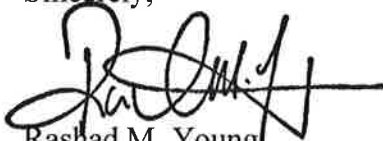
Dear Chairman Mendelson:

Pursuant to section 104(h) of the Universal Paid Leave Amendment Act of 2016 (D.C. Law 21-264; D.C. Official Code § 32-541.04(h)) (“Paid Leave Act”), the Office of the City Administrator (OCA) is pleased to submit the enclosed report entitled *Implementing Paid Leave: An update on the implementation of the Universal Paid Leave Amendment Act of 2016*.

The purpose of this report is to provide the Council of the District of Columbia (“Council”) with an update on the work completed to date and currently underway by the Administration to implement the Paid Leave Act. This report provides an update on implementation, including information on program administration, staffing, space for the new program, marketing and outreach, information technology procurement and development, and current implementation challenges.

Please feel free to contact Jenny Reed, Director of the Office of Budget and Performance Management, at (202) 478-9208 to discuss any questions you have regarding this report.

Sincerely,



Rashad M. Young
City Administrator



Purpose of the Report

The purpose of this report is to provide the Council of the District of Columbia (“Council”) with an update on the work completed to date and currently underway by the Administration to implement the Universal Paid Leave Amendment Act of 2016 (“Paid Leave Act”). This report, in partnership with City Administrator Rashad M. Young’s testimony and presentation delivered to the Committee of Whole (COW) on October 10, 2017, serves as the project plan required by section 104(h) of the Paid Leave Act.

The Administration has been moving forward aggressively to create a work plan to implement the current law. This report provides an update on that work, including information on program administration, staffing, space for the new program, marketing and outreach, information technology procurement and development, and current implementation challenges.

Overview of the Universal Paid Leave Amendment Act of 2016

The Paid Leave Act creates one of the first programs of its kind in the country. Under the Act, part-time and full-time private employees who work in the District, regardless of their place of residence, will be eligible for a paid leave benefit.

The paid leave benefit consists of 6 weeks of paid leave for the care of a family member, 8 weeks of paid leave for the birth of a child or placement of a child with the employee, and 2 weeks of paid leave for the employee’s own serious medical condition. The weekly benefit that an employee will be paid under the Act is calculated as a percentage of the employee’s regular wages, capped at \$1,000 per week. The benefits will be funded by a 0.62% payroll tax imposed on all District employers.

It is important to note that the program will be administered by the District, not by employers. Employees will apply to the District government for the benefit, the District government will review and approve or disapprove the benefit claim, and the District government will make direct benefit payments to employees.

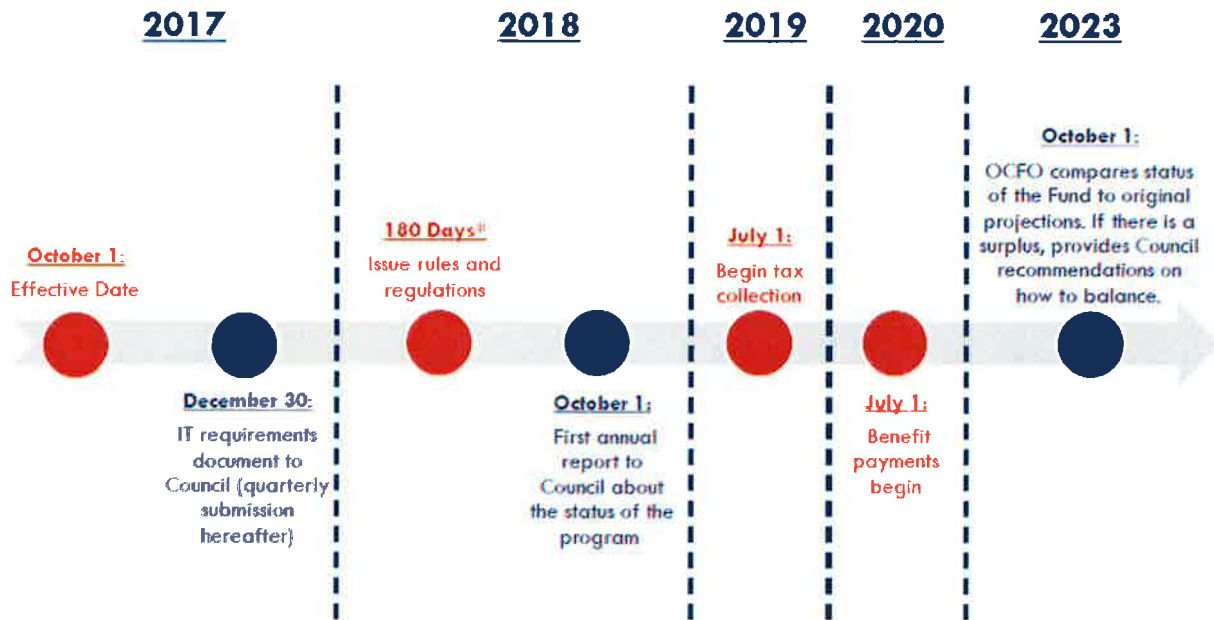
It is also important to note that federal government employees are not eligible for the paid leave benefit and that District employees are covered by a separate paid leave program, not by the Paid Leave Act. In addition, the paid leave program will not begin to pay benefits until July 1, 2020.

The table below provides a summary of the program's benefits:

| Paid Leave Act Overview | |
|----------------------------------|--|
| Administration | District run program, to include: tax collection, claim receipt and verification, and benefit payment |
| Tax Rate | 0.62% payroll tax on employers |
| Benefits Duration (event) | |
| 1. Medical | 1. 2 weeks (care for oneself) |
| 2. Family | 2. 6 weeks (care for a family member) |
| 3. Parental | 3. 8 weeks (care for a new child) |
| Wage Replacement | 90% of 150% of minimum wage; 50% of earnings in excess of 150% of minimum wage |
| Weekly Max | \$1,000; beginning 2021 annually adjusted according to CPI |
| Eligible for Benefit | Private sector workers employed in District (excludes District and federal government employees); self-employed may opt in; more than 50% of work must occur in District |

Background / Timeline

The Paid Leave Act was approved by the Council at the end of 2016. It completed the mandatory Congressional review period in April 2017, but no funding was provided to begin to implement the law until Fiscal Year 2018 (FY18), which began on October 1, 2017. The timeline below presents key milestones for the implementation of the Paid Leave Act. The most important dates are July 1, 2019, which is the date on which the payroll tax is scheduled to begin, and July 1, 2020, which is the date on which the benefits program itself is expected to begin. That is, July 1, 2020, is the date on which employees will become eligible to apply for paid leave benefits.



**Rules and regulations to be issued 180 days after the legislation's effective date; legislative clarity is a prerequisite for drafting and issuing rules and regulations.*

Paid Leave Implementation Working Group

Months before any funding was available to implement the Paid Leave Act, the Administration established an internal working group consisting of representatives from the Office of the City Administrator (OCA), Office of the Deputy Mayor for Greater Economic Opportunity (DMGEO), Department of Employment Services (DOES), Office of Human Rights (OHR), Office of the Chief Technology Officer (OCTO), Department of General Services (DGS), Office of the Chief Financial Officer (OCFO), Department of Human Resources, (DCHR) and Office of Contracting and Procurement (OCP).

The working group met six times; held dozens of internal calls; had discussions with each state that operates a paid leave program, with separate calls related to both programmatic issues and information technology issues; met with representatives of advocacy groups; and also met a number of times with federal partners with experience in information technology development and paid leave programs.

The overarching goal of the working group was to create a detailed road map for implementing the Paid Leave Act, with a specific focus on the following areas:

- Administrative implementation of the program, including regulations, tax collection, claims submission, claims review, and benefit payment;
- Developing a more detailed budget for implementing the program, including both operating and capital costs;

- Developing a high-level information technology plan for the systems necessary to collect the payroll tax, review and verify claims, and pay benefits;
- Developing a plan for program staffing, including claims specialists, customer service representatives, medical and insurance experts, administrative law judges, and information technology specialists, along with the timing for these hires;
- Calculating space needs, including estimates for the costs and timing of space buildout; and,
- Marketing and outreach for the paid leave program.

Key questions that working group aimed to answer and provide recommendations on included, but were not limited to the following (questions are organized by topic area):

Topic area: tax collection

- What District agency will be responsible for collecting the payroll tax? What would it cost to implement the payroll tax collection system? How long would it take?
- How will the payroll tax be collected?
- Are there current District processes for collecting payroll taxes? If yes, can the paid leave payroll tax leverage them? Are there systems the tax collection solution needs to interface with, such as the Unemployment Insurance and Workers Compensation systems?
- How will individuals who are self-employed opt-in to paying the tax to be eligible to receive benefits?

Topic area: benefit payment (and claim verification) process

- How will claim submission, review/verification, and payment occur? Is there a model (other states, Unemployment Insurance, etc.) to follow?
- What decisions need to be made about the benefit process to facilitate regulation development?
- How will this process and associated staff be incorporated into the current structure of the District government?

Topic area: technology

- What will it cost to build and/or procure a tax collection technology solution? Is there an existing system to leverage? What is the timeline?
- What will it cost to build and/or procure a benefit payment (and claim verification) technology solution? What is the timeline?

Topic area: space / marketing and outreach

- What are the space needs for the paid leave program? What is necessary to facilitate the buildout?
- What should the pre-implementation marketing and outreach campaign encompass?

The following sections present initial recommendations from the working group.

Program Administration (owner agency)

The first item the working group addressed is where to house the new paid leave program. The working group considered:

1. DOES;
2. Joint program ownership between DOES and OCFO – DOES for claim receipt, review and benefit disbursement and OCFO for payroll tax collection; and,
3. The creation of new Executive branch agency.

Based on a variety of factors, including costs, capacity, experience in other jurisdictions, and synergy with existing programs, the working group recommended and the City Administrator announced publicly during his testimony that DOES will administer the new program.

Staffing

After determining that DOES should administer the program, one of the first major issues that the working group addressed was staffing, including the number of employees needed to implement the program at full implementation and the number of staff that are necessary to ramp up to full implementation.

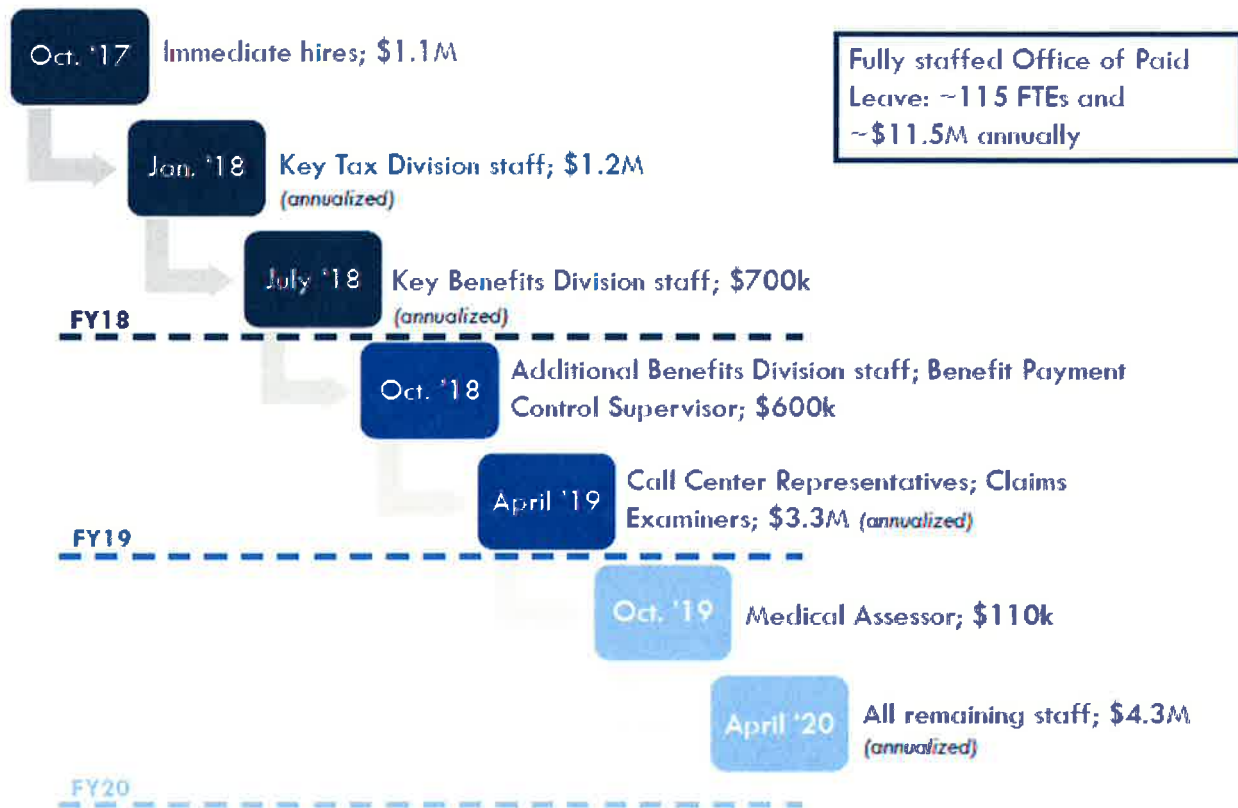
In order to develop the preliminary staffing plan, DOES reached out to each of the states that is currently administering a paid leave program and also analyzed DOES's current staffing patterns for other programs.

The working group determined that a relatively small number of employees will be needed at the beginning of FY18 to begin to take the steps necessary to implement the paid leave program. This initial group of employees includes an associate director to manage the paid leave program, a tax chief, business analysts, and program analysts. The cost for these first employees in FY18 is estimated at approximately \$1.1 million.

In addition to the initial cohort of employees, DOES expects to need to hire additional employees at various points before the end of FY18 in order to continue the process of implementing the program. These additional employees will add an additional \$1 million in staff costs in FY18. It is important to note, however, that the FY18 budget includes only \$500,000 for implementation of the Paid Leave Act. The Administration is currently working to identify potential sources of additional funding.

Below is an overview of the staffing ramp-up plan through full implementation. The plan anticipates that approximately 40-50 additional staff will need to be hired in Fiscal Year 2019 (FY19) and approximately 50 additional staff will need to be hired in Fiscal Year 2020 (FY20) in order to fully staff the paid leave program. At its full complement, there are expected to be

approximately 115 employees dedicated to the paid leave program, at an annual cost of over \$11 million. These out-year costs will be paid for through the employer payroll tax.



At a high level, the initial hires will be responsible for planning and building the framework for a DOES Office of Paid Leave, which will include developing the structure and building the teams for payroll tax collection, benefit claims review and disbursement, and enforcement.

In developing the program’s structure, the initial staff will put together a detailed organizational matrix, perform skills and needs assessments, draft position descriptions, develop a recruitment plan, and create staff training programs, among a host of other activities. For the tax division alone, this will include establishing the structure of the collections unit, accounting unit, and audit and compliance units. The initial staff will also develop a communications plan, including a paid leave website for employers, an outreach plan, and employer brochures and posters.

Developing the tax collection system will be another major aspect of the initial team’s work plan. This will include working with OCTO to develop the business requirements for the tax collection system, performing vendor and systems research, developing a full statement of work, and engaging in each step of the procurement process. There is an immense amount of work that needs to take place long before the tax collection system goes live in July 2019.

Finally, the initial staff will be working on policy development, including the development of the formal program regulations. This is one of the key steps that needs to take place in order to begin

the process of implementing the paid leave program. Reviews of rules and regulations in other jurisdictions will need to take place, along with individual outreach to those jurisdictions. A comprehensive rulemaking document will need to be drafted, published for public comment, and revised based on public feedback. The policy development team will also work on developing standard operating procedures for each administrative function of the paid leave program. These detailed, step-by-step procedures are critical to ensuring a fair, efficient, and consistent application of the paid leave program.

Below is graphic outlining FY18 implementation activities:



Space for the Office of Paid Leave

Another major area that the working group analyzed was the space needed for the paid leave program staff. As noted, there will be approximately 115 District employees needed to implement the paid leave program at full implementation in FY20. To determine the best way to house those staff, the working group analyzed both owned space options and leased space options. The group reviewed the current District real estate portfolio and performed market research on potential lease options and determined that the most effective way to house the paid leave staff is through the buildout of existing District-owned space.

Based on factors such as cost, timing, and program administration, the working group preliminarily recommended pursuing owned space. However, the Administration is still considering all options for housing the new Office of Paid Leave.

Note, for either option, there is a substantial lead time needed to design and build out the necessary space—a process the Administration anticipates to take at least 12 months. Given the need to have the space available by the Spring of 2019, when DOES expects approximately 60 to 70 staff on board, funds are needed during the current fiscal year to fully develop the space needs, solicit bids, and to enter into a construction contract. This creates another funding gap we are working to address.

Marketing and Outreach

The Paid Leave Act requires public education and awareness campaigns—and the Administration believes it is very important to have comprehensive and timely campaigns in both areas. The timeline and scope for the education and awareness efforts are based in part on discussions the working group had with other paid leave jurisdictions.

A timeline and high-level budget is presented in the following graphic:



| | Likely Activities | Budget |
|-------------|---|------------------|
| FY18 | • Factsheets, notice to employers, outreach and education, trainings | \$200,000 |
| FY19 | • Continued notice to employers, metro ads, print ads, digital, outreach and education, trainings | \$350,000 |
| FY20 | • Metro ads, publication ads, digital, trainings, outreach and education | \$500,000 |

The first step in the outreach plan is the creation of basic fact sheets that will be made widely available to the public. After the initial fact sheets, the main elements of the outreach plan are anticipated to start in the middle of 2018, with pre-implementation outreach and training and a website to share information. This phase is particularly important to ensure that employers are fully aware of the requirements of the paid leave program, have systems in place to begin paying the payroll taxes in July 2019, and update their internal policies and procedures to reflect the existence of the paid leave program.

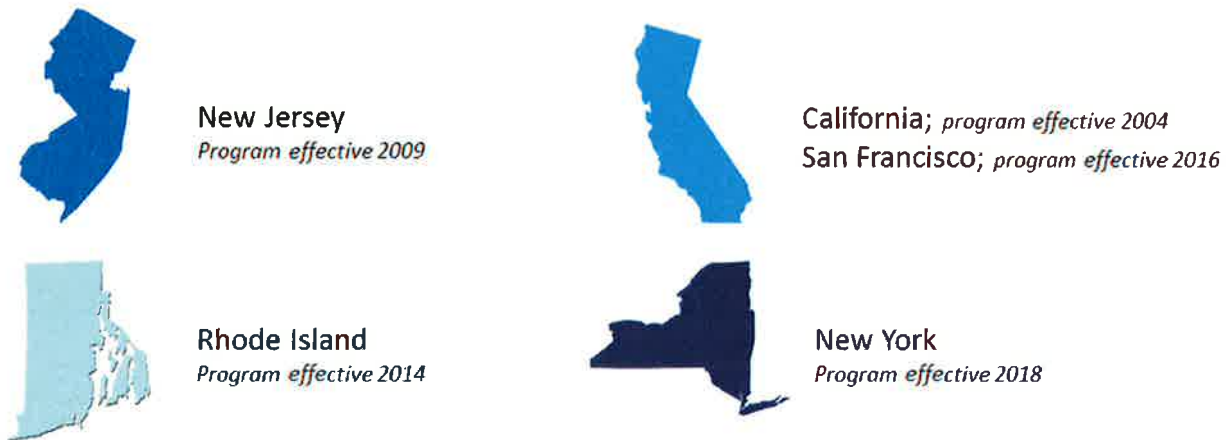
Starting in FY20, more aggressive outreach would begin to the public, to ensure that employees are aware that the program exists and also to ensure that they know when they can access paid leave benefits and how they can file a claim. As indicated in the chart above, during FY20 total outreach costs are expected to be about \$500,000.

Information Technology

The working group also performed extensive research on the information technology systems necessary to implement the paid leave program. Working group members reached out to their

counterparts in California, New York, New Jersey, and Rhode Island to discuss how those states had implemented, or planned to implement, the information technology for their paid leave programs.

State Engagements



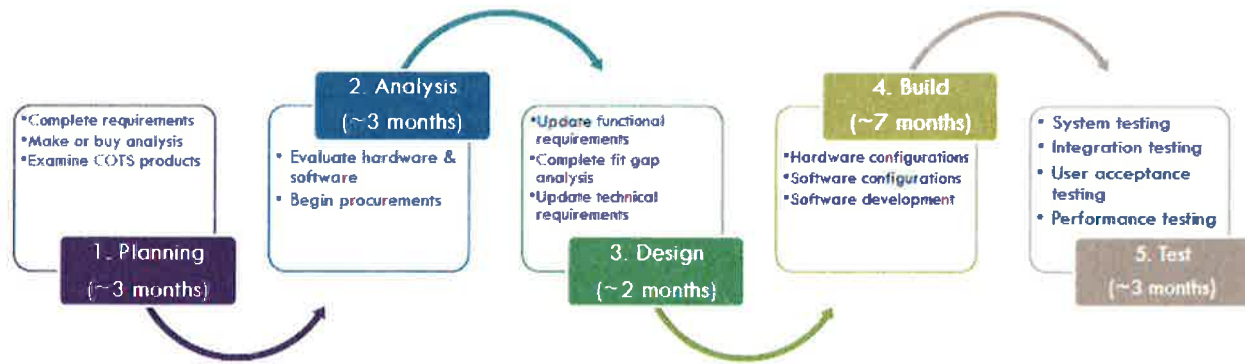
Based on that research, the working group determined that there are no commercially available software products to implement a paid leave program. Based on this conclusion OCTO is now more fully analyzing three potential options: developing a complete paid leave information technology system in-house; purchasing an off-the-shelf system and substantially modifying it in-house to meet the needs of the paid leave program; or contracting with an outside vendor to create the information technology system, either by building a completely new system or through the modification of an off-the-shelf system.

The working group is also analyzing the benefits of so-called “agile” technology procurement and development methodology as part of the information technology solution. To discuss agile, working group members held several meetings with the 18F technology group in the General Services Administration (GSA).

Through the working group process, two significant information technology issues have been identified. The first is tied to funding: the Council included \$40 million in capital funds for the paid leave information technology systems, but the rough estimates provided by OCTO for each of the potential information technology solutions is well over this amount.

The other issue identified by the working group is related to timing: until the Council determines whether it will amend the Paid Leave Act, the next major step in the procurement process—detailed requirements—cannot be completed.

The graphic below depicts the technology development lifecycle:



As indicated in the graphic, there are five basic phases in the information technology deployment process: planning, analysis, designing, building, and testing. Although the graphic depicts these phases as discrete, iterative steps, some of the elements will overlap in practice, and the results of later steps, for example testing, may require going back to an earlier step, such as designing or building.

The Administration is currently working on the first two phases of the project, which include determining the program requirements for the information technology systems, examining existing products that are already in the marketplace, and determining how best to procure the contractual support needed to develop the systems. Based on the District Government's experience with prior projects of this type, such as SLED and DCAS, the procurement process is likely to take at least ten months.

Once the contracts are finalized, the more detailed design of the systems can take place, a process that OCTO estimates will take three months. With the design in place, the development of the information technology can then move forward in earnest. This build phase is expected to take seven months, given the complexity of each system. The final stage of the deployment process is testing, including system testing, integration testing, user acceptance testing, and performance testing. The testing process is likely to result in refining the design and revising the builds of the systems until final acceptance, a process we expect to take three to four months.

Because of the extensive amount of time necessary to complete the information technology development, any delays due to a lack of funding, uncertainty regarding the final form of the legislation, or other factors could have a negative impact on the timeline for the entire paid leave program.

The Administration will provide updates on the development of the information technology systems through quarterly reports to the Council.

Implementation Challenges

Only \$500,000 was included by the Council in Fiscal Year 2018 to fund the Paid Leave Act. This funding is inadequate for the work that must be performed in order to meet the

implementation timelines established by the legislation. As described earlier in this report, the administration will need several million dollars in Fiscal Year 2018 to hire adequate staff, design and contract for the build-out of the necessary office space, and implement the first phase of outreach and education.

Note, the funding gap continues in Fiscal Year 2019, when additional millions of dollars of capital and operating funds will again be needed for similar purposes.

In addition, the funding budgeted for information technology is likely to be too low. The Chief Financial Officer estimated that the information technology systems for the paid leave program would cost between \$40 million and \$80 million, and the current capital budget includes \$40 million for this purpose. The working group's initial estimates suggest that the cost will be near or higher than the mid-range of the CFO's estimate, leading to a funding gap of potentially \$20 million or more.

Moreover, the uncertainty regarding the final form of the legislation will soon begin to significantly delay our ability to move forward on a number of fronts, including the development of information technology systems and the drafting of regulations, policies, and procedures. And, if the Council amends the Paid Leave Act, for example to create an employer mandate, or a hybrid model, the working group will need to review each of the issue areas again, which will extend our implementation timeline.

Finally, as the working group has conducted its work, it has identified potential concerns with the wording or structure of the current law. The Administration is examining whether those issues can be resolved through regulations, but it is possible we will need to seek clarifying amendments to the current law. Examples of concerns include employment status at the time of application and the possibility for duplication of paid benefits. These issues include whether an individual not currently employed is able to apply for paid leave benefits and whether an employee may receive benefits – a combination of District-paid and employer-paid benefits – in an amount greater than 100% of their weekly wages.

The graphic below summarizes implementation challenges and presents the FY18 and FY19 funding gaps:

1. Budget³¹:

- Significant operating and capital funding gaps in FY18 and FY19.
 - Several million dollars in each year.
- Preliminary technology cost estimates exceed \$40M.

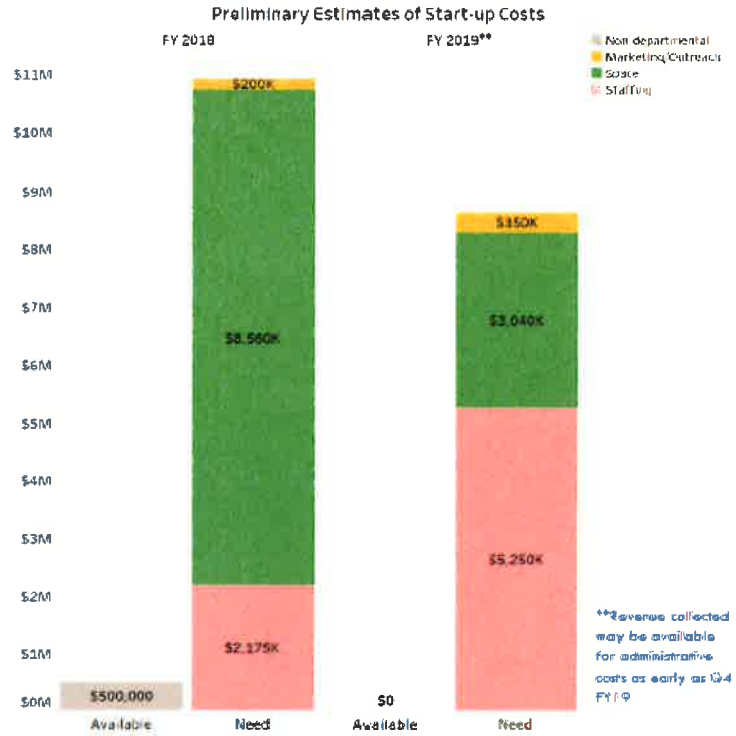
2. Delay:

- Uncertainty about the final form of the PFL program delays our ability to move forward with key implementation steps.
- Changes to the current law will require us to reanalyze working group issues.

3. Legislation:

- Potential implementation issues related to the text of the current law (drafting issues).
- Hope to address them through regulations and procedures, but may need legislative fixes.

³¹In FY20, the paid leave program will be funded via the 0.62% payroll tax. Program costs are anticipated at ~\$19.3M; that includes staffing (~\$11.5M); technology (~\$6.5); OHR enforcement (~\$550k); marketing/outreach (~\$500k); and space (~\$230k).



Conclusion

The Administration has worked aggressively to begin the process of implementing a paid leave program for District residents, and we have made significant progress in the areas of program administration, information technology, outreach, and staffing. The Administration will continue to work aggressively on the many steps required for paid family leave implementation.