



**Testimony regarding the
Implementation of the Universal Paid Leave Amendment Act of 2016**

**Labor & Workforce Development Committee
Public Oversight Roundtable
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Good morning, my name is Laura Brown, Ward 6 resident and Executive Director of First Shift Justice Project, an organization providing legal services to working mothers in low-wage jobs in the District of Columbia. I am also a D.C. employer. Thank you for the opportunity to testify today.

I would like to congratulate the Office of Paid Family Leave (OPFL) on a timely launch of the paid family leave benefits program and specifically, the benefits application system. Given the circumstances of the past few months, it is reassuring to have at least one event occur as scheduled. I am also very grateful that it looks like the Office of Human Rights (OHR) is going to receive money from the Paid Family Leave Implementation Fund to meet its obligations regarding complaints of retaliation under the Universal Paid Leave Act. Thank you, Council Silverman and the Committee, for your attention and work on this issue.

The issues that I have prioritized for my testimony are

- 1) Worker access to the paid leave benefits system and website.
- 2) Need for resources that advise claimants about rights to job protection.
- 3) Further undermining of eligible individual definition (requiring a completed quarter of employment).
- 4) Appeals of benefits denials.

Paid Leave Benefits System and Website Accessibility

Despite an apparently successful on-time launch, there is still quite a bit of work that needs to be done to make the website accessible to claimants. Specifically, language

access is a significant issue; generally, the website is not as worker-friendly as it could be. User-testing might have gone a long way in alerting the Office of Paid Family Leave to these issues; however, it is my understanding that no external user testing occurred.

Regarding language access, although it is possible to easily use the translate button on the home page to translate to Spanish, there are five other languages that the Language Access Act covers and in which the Office of Paid Family Leave is required to make its information and the application accessible. When you click “Other Languages” to translate the website, the drop down contains seventeen mostly European languages – including Swedish. The only other covered language that is included besides Spanish is French, excluding Amharic, Mandarin Chinese, Korean, and Vietnamese. It does seem like it is possible to “trick” the system into giving you other languages if you click “Spanish” first, but how would anyone know that? I will note that I did not have any trouble translating the website to all the required languages when accessing the website on a cell phone.

I am going to take a minute to talk about the tired topic of language access because it is beyond frustrating and discouraging that this website is not accessible to immigrant workers in D.C. This agency does not prioritize language access and once again, they did not in the design of this website, despite having three years to do it. They do not care about D.C. workers who do not speak English. Moreover, they have not been held accountable for these violations of D.C.’s Language Access Act. Advocates have complained about this for years, specifically with respect to the wage and hour office and the unemployment benefits system. The Department of Employment Services (DOES) apparently considers this a

minor, nitpicky issue that advocates raise just to gripe about something, but it is a real issue for D.C.'s growing immigrant population, and it is also an issue of legal compliance.

The D.C. Department of Employment Services violates the Language Access Act every day that it operates its departments in a way that excludes this significant group of D.C. workers. Nearly 1 out of 4 workers in the D.C. civilian workforce is an immigrant, and only 23% of them speak fluent English.¹ That is why we have a Language Access Act. In 2020, there is no excuse for a well-funded government agency to lack the language resources to serve all of its constituents.

There are other issues which potentially make it difficult for workers to navigate the website and find the information they need. Although the website is accessible by phone, the application is not. Moreover, whether on the computer or on the phone, all the forms and documents have to be downloaded; in addition, the document titles are complicated and not always intuitive.

The bottom line is that user testing could have shed light on some of these other issues. As the Office Inspector General report disclosed, there was no external user testing. It is not too late to do user-testing and make necessary improvements.

Job-Protection

The Universal Paid Leave Act does not provide leave; it provides insurance benefits that will replace worker wages while they are on leave from work. This is not just a semantic distinction; it is real. Workers who take time off of work and access paid leave

¹ "The State of Immigrants in the District of Columbia," Urban Institute (December 2018).

insurance benefits, but lack job-protection, are at substantial risk of being terminated. It is incumbent upon the Office of Paid Family Leave to convey this to applicants. Referring to the benefits as “paid leave” is misleading and potentially harmful. To remedy this problem, a language change is needed at the Office of Paid Family Leave and additional resources are needed to advise claimants of their rights to job protection – or the lack thereof.

In a June call/meeting, OPFL staff said they were going to provide direction to claimants about job-protected leave available to them through a resource called a “road map.” I offered that my organization, First Shift, could help with it. But the only road map I have seen simply delineates the process of applying for paid leave benefits for people who seek to access it for bonding. (See attached.) The “map” navigates claimants through four steps: 1) Go to the DC PFL website to see what your rights are; 2) Notify your employer in advance of your intention to access paid family leave benefits; 3) Apply for the benefits; and 4) Wait for your check. It provides no information about job-protected leave whatsoever; in fact, it does not even point out that requesting job-protected leave from your employer is an entirely distinct process, separate from accessing the paid leave benefits and including its own distinct notice and documentation requirements.

At the very minimum, OPFL should coordinate with the D.C. Office of Human Rights, which enforces the laws that provide job-protection, to create resources that specifically reference the connection between paid family leave benefits and laws that provide job protected leave. Right now, there is nothing (obvious) on OHR’s website about paid family leave insurance benefits and job-protection.

While I am hopeful that the two agencies are collaborating to create those resources, I also know it will not be enough. Employee leave rights is a complicated area of employment law, and published materials may not be adequate for many employees to sort out what rights they have and how to exercise them, especially in this early period of the paid leave benefits program's availability. Many D.C. businesses do not have Human Resources Departments; even when they do, Human Resources Departments are generally not knowledgeable enough about the law to correctly advise workers and may have competing interests that impact the guidance they do provide. Neither OPFL or OHR is in a position to offer this individualized guidance; consequently, legal services organizations like First Shift will be on hand to assist clients in this way.

Undermining of Statutory Definition of Eligible Individual

Despite the intent of the Council for the Universal Paid Leave Act to provide for broad coverage, particularly to marginalized low wage workers who generally do not have access to any paid leave, DOES continues to chip away at employee eligibility for the paid family leave benefits program. The Universal Paid Leave Act defines an "eligible individual" for the purposes of paid leave benefits to be a person who . . . "(A) has been a covered employee during some or all of the 52 calendar weeks immediately preceding the qualifying event for which paid leave is being taken." See Universal Paid Leave Amendment Act of 2017, Title I, Section 101(6). As I have testified previously before this Committee, regulations promulgated by the Office of Paid Family Leave have significantly narrowed this definition and are inconsistent with the statutory language.

Not only do the regulations require “current employment” as a condition of the receipt of benefits, as I have raised before; as applied by OPFL, the regulations require potentially *months* of employment as a condition of the receipt of benefits. D.C.M.R. 7-3500.1(c)(1)(B) requires that an individual have “earned income as a covered employee of a covered employer during at least one of the past five completed quarters immediately preceding the qualifying event for which a paid leave claim is being submitted.” OPFL has construed this to deny benefits to all claimants for whom they have no record of wages – even if the claimant has been employed by a covered employer “all or some of the preceding 52 calendar weeks” per the statute and even if they are “currently employed” at the time of application per the regulations. For example, an applicant who begins employment with a covered employer on July 6, 2020 and experiences a qualifying event on July 30, 2020 will not be considered eligible for paid leave benefits until after their employer reports their 3rd quarter wages in October 2020. This acts as a de facto eligibility requirement even though, unlike the unemployment system, there is no separate monetary eligibility requirement imposed by the UPLA statute. There is no reason that I can think of, other than administrative convenience, that OPFL imposes this requirement. Because this requirement, like the regulatory provision immediately preceding it, is clearly inconsistent with the statute, it cannot stand. The potential administrative obstacle regarding the calculation of the weekly benefits – if there is one - can be easily overcome by allowing claimants who are newly employed or their employers to submit documentation of wages earned before the quarter concludes.

This may be perceived as an issue which will rarely affect worker access to paid leave benefits, but a week into the program, it has already arisen. Because the pandemic

has disrupted employment all across the region, it is very likely that workers will be starting D.C. jobs in the coming weeks where their prior employment may not have been in D.C. Notwithstanding how common the issues is, the provision should be struck for the sole reason that it is inconsistent with the statute.

Paid Family Leave Benefits Appeals

Finally, I wish to comment on the proposal that adjudication of appeals of paid family leave benefits denials be shifted from the Office of Administrative Hearings to the Administrative Law Judges at DOES who currently handle workers compensation claims. In my view, this is ill-advised.

First, the consideration of appeals of decisions issued by DOES, by Administrative Law Judges at DOES, poses a conflict of interest. I would question the capacity of DOES ALJs to be fair under these circumstances. Currently, DOES Administrative Law Judges consider workers' compensation appeals; however, the underlying decision being appealed is not that of a DOES workers compensation claims examiner. Rather, the ALJs review the decisions of private workers compensation insurance carriers; thus, consideration of these appeals does not pose the same conflict.

After reaching out to my legal services colleagues who represent workers in unemployment insurance appeals, it is my understanding that unemployment insurance benefits appeals were previously adjudicated by the Department of Employment Services; however, in 2004, the appeals process was moved to the Office of Administrative Hearings precisely because of this conflict of interest and because of mismanagement of the appeals process.

Second, it is my understanding that DOES has proposed this because OAH “takes too long” in handling appeals – presumably they refer to the unemployment insurance appeals backlog. I submit to you that the current backlog in unemployment insurance benefits appeals is due, at least in part, to DOES’s own actions. While it is certainly logical that the significant increase in the number of unemployment insurance benefits applications due to the pandemic would result in a corresponding increase in appeals, DOES has contributed to that increase because of inconsistent benefits determinations by claims examiners and clear errors – for example, denying benefits for lack of monetary eligibility without considering the alternate base period. Clearly erroneous decisions like this and others have led to unnecessary appeals that have clogged the system - on top of the incredible number of unemployment insurance claims that have been filed over the past several months.

It would also be a mistake to transfer the appeals process from OAH to DOES because the paid family leave benefits program is more similar to the unemployment benefits system than it is to the workers’ compensation system in terms of structure and eligibility; thus, it should be an easier lift to train OAH ALJs to handle the paid family leave benefits cases than it would be to train the ALJs at DOES who currently handle appeals of workers compensation benefits decisions that are made by a private insurer.

Candidly, based on information I have, I agree that OAH is not currently prepared to handle paid family leave benefits appeals. There is no signed Memorandum of Understanding between agencies; no process in place by which the appeals will be received by OAH; and the OAH ALJs have received no training on the substantive law. Like with OHR, or perhaps even more important than OHR, this is a collaboration that should have been

developing over the past three years rather than a week after the program launch. Be that as it may, the solution is to prioritize the concretization of this aspect of the paid family leave process without further delay, not to transfer the whole operation to DOES.

On behalf of the working mothers First Shift serves, I want this paid family leave benefits program to be successful. I offer the services and resources of First Shift in any way that it is helpful to OPFL to resolve some of the concerns I have raised in my testimony; in fact, I have already offered to advise clients about job-protected leave and to train Administrative Law Judges at OAH about the substantive law. Together, we can make D.C.'s paid leave benefits program be the model for the country that it aspires to be.

Thank you. I am happy to answer questions.

PARENTAL LEAVE ROADMAP

DC Paid Family Leave provides paid time off when you need it most, so you don't have to choose between caring for yourself or your loved one and your job. Paid Family Leave covers a portion of your paycheck for up to eight (8) weeks to bond with a new child.

1. GROWING YOUR FAMILY?

Are you planning to grow your family soon? Learn more about options available to you at dcpaidfamilyleave.dc.gov. You may be able to receive pay for sick days and time off for prenatal care.



3. WHAT COMES NEXT?

After you apply, you can expect to hear back from the Office of Paid Family Leave within 10 business days. Before your leave begins, ensure that you have communicated with your employer. You may not work while receiving DC Paid Family Leave benefits, but you may receive both employer-provided and DC Paid Family Leave benefits simultaneously.



2. WHAT DOES THIS MEAN FOR WORK?

Start by telling your employer that you will be applying for Paid Family Leave benefits. **You must wait until after your new children arrives in order to apply for benefits (e.g. after your child is born or is placed in your home).** When you are ready to apply, you can do so online, on paper or in person. Go to our website, call our call center or visit your nearest American Job Center.

4. PAY DURING LEAVE

Parental Leave provides up to eight weeks of benefits in a year to bond with a new child for DC employees who are taking time to bond with a new child, including all parents of newborns, adopted children and foster children. **DC Paid Family Leave provides 90% of weekly wage replacement up to \$1,000 per week.** You will receive your DC Paid Family Leave benefits weekly.