Committee Print

Committee on Labor and Workforce Development

B24-615

July 13, 2022

A BILL

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To amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to update the District’s paid family leave program to provide for personal medical leave and for pre-natal leave, expand the length of paid leave for qualifying family and parental leave events, clarify the sequence of medical leave, sick leave, and organ donor leave, provide that paid family and medical leave may be exercised during a 12-month period following the start of the qualifying leave event, replace the Annual Leave Bank with a Paid Family and Medical Leave Supplement Bank, and repeal the Voluntary Leave Transfer Program.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “District Government Paid Leave Enhancement Amendment Act of 2022”.

Sec. 2. The District of Columbia Government Comprehensive Merit Personnel Act, effective March 3, 1979 (D.C. Official Code § 1-601.01 *et seq.*), is amended as follows:

(a) The table of contents is amended as follows:

(1) Strike the phrase “UNIVERSAL LEAVE PROGRAM” and insert the word “REPEALED” in its place.

(2) Strike the phrase “FAMILY LEAVE” and insert the word “REPEALED” in its place.

(3) Add a new section designation to read as follows:

“SEC 1204a Paid parental, family, and medical leave”.

(b) Section 1203c (D.C. Official Code § 1-612.03c) is repealed.

(c) Section 1204 (D.C. Official Code § 1-612.04) is amended to read as follows:

“Sec. 1204. Definitions.

“For the purposes of sections 1204 through 1212, the term:

“(1) “Agency” includes the Council.

“(2) “Child” means:

“(A) An individual under 21 years of age;

“(B) An individual, regardless of age, who is substantially dependent upon the employee by reason of physical or mental disability; or

“(C) An individual who is under 23 years of age who is a full-time student at an accredited college or university.

“(3) “Eligible employee” means a District government employee, including an employee of an independent agency; provided, that the term “eligible employee” does not include:

“(A) A temporary employee appointed for less than 90 days; or

“(B) An employee with intermittent employment.

“(4) “Family member” means:

“(A) A biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or a person to whom an eligible employee stands in loco parentis;

“(B) A biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to an eligible employee when the eligible employee was a child;

“(C) An individual to whom an eligible employee is related by domestic partnership, or marriage;

“(D) A grandparent of an eligible employee; or

“(E) A sibling of an eligible employee.”.

“(5) “Leave recipient” means an eligible employee whose application to receive leave from the PFML Bank has been approved pursuant to section 1208.

“(6) “Leave contributor” means an employee who contributes accrued annual, restored, or universal leave to the PFML Bank.

“(7) “Miscarriage” means the loss of a pregnancy before 20 weeks’ gestation.

“(8) “PFML Bank Administrator” means the Department of Human Resources.

“(9) “Pre-natal medical care” means routine and specialty appointments, exams, and treatments associated with a pregnancy provided by a health care provider, including pre-natal check-ups, ultrasounds, treatment for pregnancy complications, bedrest that is required or prescribed by a health care provider, and pre-natal physical therapy.

“(10) “Prolonged absence” means an employee’s absence from duty for at least 10 consecutive workdays.

“(11) “Qualifying family leave” means leave that an eligible employee may take following the occurrence of a qualifying family leave event.

“(12) “Qualifying family leave event” means the diagnosis or occurrence of a serious health condition of a family member of the eligible employee.

“(13) “Qualifying leave event” means a qualifying family leave event, qualifying medical leave event, or qualifying parental leave event.

“(14) “Qualifying medical leave” means leave that an eligible employee may take following the occurrence of a qualifying medical leave event.

“(15) “Qualifying medical leave event” means, for an eligible employee, the diagnosis or occurrence of a serious health condition, which shall include the occurrence of a stillbirth and the medical care related to a miscarriage.

“(16) “Qualifying parental leave event” means one of the following:

“(A) The birth of a child of an eligible employee;

“(B) The legal placement of a child with an eligible employee (such as through adoption, guardianship, or foster care); or

“(C) The placement with an eligible employee of a child for whom the eligible employee permanently assumes and discharges parental responsibilities.

“(17) “Qualifying pre-natal leave” means paid leave that an eligible employee who is pregnant may take for pre-natal medical care following the occurrence of a qualifying pre-natal leave event.

“(18) “Qualifying pre-natal leave event” means the diagnosis of pregnancy by a health care provider.

“(19) “Serious health condition” shall have the same meaning as provided in section 2(9) of the District of Columbia Family and Medical Leave Act of 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-501(9)).”

“(20) “Stillbirth” means the death of a fetus at 20 weeks’ gestation or later for an eligible employee who was pregnant with the fetus.”.

(d) A new section 1204a is added to read as follows:

“Sec. 1204a. Paid parental, family, and medical leave.

“(a)(1) An eligible employee shall be entitled to receive leave with pay for not more than 8 workweeks total in a 12-month period for any combination of leave as follows:

“(A) Up to 8 workweeks for qualifying parental leave events;

“(B) Up to 8 workweeks for qualifying family leave events; and

“(C) Up to 2 workweeks for qualifying medical leave events;

“(2)(A) An employee who used unpaid leave or accrued sick or annual leave on or after October 1, 2022, and before January 1, 2023, for a qualifying medical leave event may receive up to 2 workweeks of retroactive paid medical leave; provided, that granting such leave does not cause the employee to exceed the total workweeks of paid leave available pursuant to paragraph (1) of this subsection.

“(B) To receive retroactive paid medical leave, an employee shall submit a request for such leave on or after January 1, 2023, and before February 28, 2023, to the employee’s personnel authority. A request for retroactive paid medical leave shall state the number of workdays, not to exceed 10, for which the employee is seeking retroactive paid medical leave and whether the employee seeks:

“(i) Restoration of accrued sick leave;

“(ii) Restoration of accrued annual leave;

“(iii) Retroactive payment of salary for a period of unpaid leave; or

“(iv) A combination of restored accrued leave and retroactive payment of salary for a period of unpaid leave.

“(C) Within 20 business days after timely receipt of a request for retroactive paid medical leave, a personnel authority shall, consistent with the request and paragraph (1) of this subsection, restore the employee’s accrued leave and, as appropriate, retroactively pay the employee’s salary.

“(D) Retroactive paid medical leave granted under this paragraph shall count against the 2 workweeks of paid medical leave available under paragraph (1)(C) of this subsection.

“(b) Beginning on the applicability date of this subsection, an eligible employee shall be entitled to receive leave with pay for not more than 12 workweeks in a 12-month period for any combination of leave as follows:

“(1) Up to 12 workweeks for qualifying parental leave events;

“(2) Up to 12 workweeks for qualifying family leave events;

“(3) Up to 12 workweeks for qualifying medical leave events; and

“(4) Up to 2 workweeks for qualifying pre-natal leave events, except that qualifying pre-natal leave shall count against paid leave otherwise available to the employee pursuant to this section for qualifying medical leave events but shall not count against leave available for qualifying parental leave events.

“(c) For leave authorized by this section for a qualifying parental, family, medical or pre-natal leave event, the leave:

“(1) May be exercised by an eligible employee only within the 12-month period following the start of the qualifying leave event;

“(2) May be used in no less than one-hour increments, except that an agency may establish a policy to allow leave to be used in no less than one-day increments if such policy is necessary to avoid additional overtime costs; and

“(3) Shall count against the 16 workweeks of family leave or medical leave provided under sections 3 and 4, respectively, of the District of Columbia Family and Medical Leave Act of 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code §§ 32-502 & 503) (“D.C. FMLA”); and

“(4) When the leave is qualifying medical or pre-natal leave:

“(A) The leave shall be available in addition to accrued sick leave available pursuant to section 1203;

“(B) An employee shall not be required to use or exhaust accrued sick leave prior to the use of medical leave available under this section; and

“(C) If the qualifying medical leave event is organ or bone marrow donation, the employee may exhaust donor leave available pursuant to section 1203b before using leave under this section.

“(d)(1) If an employee using leave under this section is serving in a probationary capacity, the employee shall enter into a 1-year continuation of service of agreement and, the employee’s probationary period shall be extended by the duration of the leave used.

“(2) In the event the probationary employee voluntarily separates in violation of the 1-year continuation of service agreement, the individual shall be indebted to the District government for the salary paid during the leave period. Indebtedness incurred pursuant to this paragraph shall be construed as an erroneous payment pursuant to Title XXIX; provided, that collection for such indebtedness may only be made through deductions from lump sum leave payments.

“(e) An eligible employee using leave under this section shall enjoy the same employment and benefit protections afforded to an employee under section 6 of the D.C. FMLA; except, that section 6(f) of the D.C. FMLA shall not apply to leave taken pursuant to this section.

“(f)(1) A personnel authority may require that a request for leave under this section be supported by appropriate certification or other supporting documentation.

“(2) The International Classification of Diseases, Tenth Revision (ICD-10), or subsequent revisions by the World Health Organization to the International Classification of Diseases, along with any health care provider or caretaker assessments, shall be used to determine the appropriate length of qualifying family leave an eligible employee is entitled to, based on the serious health condition of the eligible employee’s family member, or the appropriate length of qualifying medical leave an eligible employee is entitled to, based on the serious health condition of the eligible employee, subject to the limits set forth in subsection (a) of this section.

“(3) Personnel authorities and agencies shall keep confidential any information regarding the nature of the serious health condition or the family relationship precipitating the request for leave.

“(g) Each agency shall maintain an accounting of leave used under this section and any records related to its use.

(e) Section 1205 (D.C. Official Code § 1-612.05) is amended to read as follows:

“Sec. 1205. Paid family and medical leave supplemental bank.

“(a) There is established within the District government a Paid Family and Medical Leave Supplemental Bank (“PFML Bank”), which shall consist of hours of leave from the following sources deposited in accordance with section 1206 and rules promulgated by the Mayor pursuant to section 1211:

“(1) Annual, restored, or universal leave an employee accrued or accumulated and voluntarily contributed to the PFML Bank;

“(2) Annual, restored, or universal leave an employee accrued or accumulated and voluntarily contributed to the PFML Bank for use by a specific leave recipient; and

“(3) Annual or universal leave that an employee may not carry over to the following leave year pursuant to section 1203(h) or 1061(a)(5).

“(b) The Department of Human Resources shall administer the PFML Bank.

“(c) The PFML Bank Administrator shall maintain an overall accounting of deposits and withdrawals to and from the PFML Bank.

“(d) An eligible employee may receive leave from the PFML Bank when:

“(1) The employee:

“(A) Is absent from work due to a qualifying medical leave event or qualifying family leave event, or

“(B) Provides certification from a physician or other licensed healthcare professional of an upcoming or existing qualifying medical leave event or qualifying family leave event; and

“(2) The employee has exhausted accrued annual leave and sick leave, compensatory time, paid family leave, paid medical leave, universal leave, or paid donor leave provided under this act, to the extent such other leave is available for the purpose for which the employee seeks to use leave from the PFML Bank.

“(e) The PFML Bank Administrator may enter written agreements with the Council, independent agencies, and subordinate agencies with independent personnel authority to facilitate eligible employees’ access to and use of leave from the PFML Bank, including agreements to allow employees not eligible to accrue annual or sick leave pursuant to section 1203(a) or universal leave pursuant to section 1061(a)(2) to contribute and withdraw leave from the PFML Bank.

“(f) A leave recipient may receive a maximum of 8 workweeks of leave from the PFML Bank during any 12-month period. Any unused withdrawn leave after the 12-month period shall become the property of the PFML Bank for use by other leave recipients.

“(g)(1) During the period in which transferred leave is being used, the leave recipient shall not accrue annual~~,~~ or sick leave.

“(2) Leave taken using leave transferred from the PFML Bank shall count against the 16 workweeks of family leave or medical leave provided under sections 3 and 4, respectively, of the District of Columbia Family and Medical Leave Act of 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code §§ 32-502 & 503).”.

(f) “Section 1206 (D.C. Official Code § 1-612.06) is amended to read as follows:

“Sec. 1206. Contributions.

“(a) A leave contributor may submit a voluntary written request to the PFML Bank Administrator that a specified number of hours of the leave contributor’s accrued annual, restored, or universal leave be contributed to the PFML Bank. The contribution shall be made to the PFML Bank in accordance with procedures established pursuant to section 1211.

“(b) A leave contributor may not contribute more than a total of 1/2 of the amount of annual or universal leave that the leave contributor would be entitled to accrue or receive during the leave year in which the contribution is made. A leave contributor may contribute restored leave without limitation. The personnel authority or his or her designee may, in special circumstances, as determined by the personnel authority or their designee, waive the limitation of the amount of annual or universal leave that may be contributed by an employee.

“(c) A leave contributor may designate a specific leave recipient to whom the leave contributor wishes to contribute leave. Contributed leave not used by the designated leave recipient within 12 months shall remain in the PFML Bank for use by other leave recipients.”.

(g) Section 1207 (D.C. Official Code § 1-612.07) is amended to read as follows:

“Section 1207. Application for withdrawal.

“(a) An application for withdrawal of leave from the PFML Bank shall proceed as follows:

“(1) An eligible employee who expects to experience an absence of 10 or more workdays due to a qualifying medical leave event or qualifying family leave event may make a written application to the PFML Bank Administrator to become a leave recipient.

“(2) If the employee is not capable of making an application on the employee’s own behalf, the employee may designate a representative to make a written application on the employee’s behalf.

“(b) The application shall include at least the following:

“(1) The anticipated duration of the prolonged absence;

“(2) The name, position title, and grade of the proposed leave recipient;

“(3) The amount of leave requested;

“(4) A declaration, signed under penalty of perjury, by the proposed leave recipient or the proposed leave recipient’s designated representative attesting to the fact that the employee is experiencing a qualifying medical leave event or qualifying family leave event; and

“(5)(A) Certification from a physician or other licensed healthcare professional that the proposed leave recipient, in the case of qualifying medical leave, or the proposed leave recipient’s immediate family member, in the case of qualifying family leave, has experienced a serious health condition and the anticipated duration of said condition.

(B) The International Classification of Diseases, Tenth Revision (ICD-10), or subsequent revisions by the World Health Organization to the International Classification of Diseases, along with any health care provider or caretaker assessments, shall be used to determine the appropriate length of qualifying family leave an eligible employee is entitled to, based on the serious health condition of the eligible employee’s family member, or the appropriate length of qualifying medical leave an eligible employee is entitled to, based on the serious health condition of the eligible employee.”.

(h) Section 1208 (D.C. Official Code § 1-612.08) is amended to read as follows:

“Section 1208. Approval of application.

“(a) The PFML Administrator shall refer the proposed leave recipient’s application to the employee’s personnel authority for review.

“(b) The proposed leave recipient’s personnel authority shall review an application to become a leave recipient under procedures established by the Mayor pursuant to section 1211.

“(c) Before approving an application to become a leave recipient, the personnel authority shall determine that:

“(1) The request to become a leave recipient has been necessitated by a qualifying medical leave event or qualifying family leave event;

“(2) The absence from duty because of the qualifying medical leave event or qualifying family leave event is, or is expected to be, at least 10 workdays;

“(3) The proposed leave recipient does not possess annual leave, restored leave, universal leave, sick leave, or compensatory time sufficient to cover the expected period of absence from work; and

“(4) The proposed leave recipient is not eligible for paid medical leave or paid family leave sufficient to cover the expected period of absence from work.

“(d) The PFML Administrator shall have final authority to approve or deny an application, or to approve an amount of leave less than requested, except that the PFML Administrator may not deny applications from employees of the Council or independent agencies that were approved by the appropriate personnel authority unless so permitted by an agreement entered into pursuant to section 1205(e) or the reason for denial is that the request for leave exceeds the amount of leave in the PFML Bank.

“(e) In approving or disapproving the application, the employee’s personnel authority and PFML Administrator may consider the leave record of the proposed leave recipient, the probability that the employee will separate from service, and any exigency or disruption in service that the agency, independent agency, or, in the case of the Council, the relevant Council office, may experience.

“(f) To the extent practicable, the proposed leave recipient or the employee acting on behalf of the proposed leave recipient shall be notified of the decision to approve or disapprove the application for leave within 15 calendar days after receipt of the application and, in all cases, within 30 days after receipt of the application. If the leave recipient is entitled to leave under the District of Columbia Family and Medical Leave Act of 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-501 *et seq*.), the leave transfer shall be granted.”.

(i) Section 1209 (D.C. Official Code § 1-612.09) is repealed.

(j) Section 1210 (D.C. Official Code § 1-612.10) is amended to read as follows:

“Section 1210. Termination of PFML Bank use.

“(a) The use of the PFML Bank transferred hours shall terminate on the date that the:

“(1) Leave recipient’s employment terminates;

“(2) Leave recipient is no longer experiencing a qualifying medical leave event or qualifying family leave event; or

“(3) The 12-month period specified in section 1205(f) expires.

“(b) Unused transferred leave shall not be subject to any form of lump-sum leave payment upon the leave recipient’s separation from employment.”.

(k) New sections 1210a and 1210b are added to read as follows:

“Section 1210a. Interference prohibited.

An employee shall not directly or indirectly promise to confer on another employee a benefit, such as an appointment, compensation, or promotion, or effect, or suggest to effect on another employee, a reprisal, such as withholding an appointment, reducing compensation, or demoting, for the purpose of interfering with any right that the employee may exercise to contribute, receive, or use leave available under this Title.

“Section 1210b. Short-term disability insurance policies.

“(a) The District may not enter into a policy or contract to provide temporary or short-term disability benefits to its employees that would allow the insurer to offset or reduce benefits or income available to an individual under the contract or policy based on estimated or actual leave benefits or salary the individual may or does receive under this act.

“(b) A provision in a policy or contract between the District and an insurer executed after the effective date of the District Government Paid Leave Enhancement Amendment Act of 2022, passed on 2nd reading on \_\_\_, 2022 (Enrolled version of Bill 24-165), that allows the insurer to offset or reduce benefits or income available to an individual under the contract or policy based on estimated or actual leave benefits or salary the individual may or does receive under this act shall be void as a matter of law.

“(c) For the purposes of this section, the term “insurer” shall have the same meaning as provided in section 101(7) of the Insurance Trade and Economic Development Amendment Act of 2000, effective April 2, 2001 (D.C. Law 13-265; D.C. Official Code § 31-2231.01(7)).”.

(l) A new section 1212 is added to read as follows:

“Section 1212. PFML Bank report.

“On or before March 1 of each year, the Mayor shall provide a PFML Bank report (“report”) to the Council. The report shall include:

“(1) A government-wide summary and agency-level information on:

“(A) The number of total contributed hours to the PFML Bank.

“(B) The number of employees that contributed leave to the PFML Bank;

“(C) The number of employees who withdrew leave from the PFML Bank;

“(D) The number of hours of leave used for a qualifying medical leave event.

“(E) The number of hours of leave used for a qualifying family leave event.”.

(m) Title XII-A (D.C. Official Code § 1-612.31 *et seq.*) is repealed.

Sec. 3. Applicability.

(a)(1) Except as provided in paragraph (2) of this subsection, section 2 shall apply as of January 1, 2023.

(2) New section 1204a(b) of the District of Columbia Government Comprehensive Merit Personnel Act, passed on 2nd reading on \_\_\_\_\_, 2022 (Enrolled version of Bill 24-615), added by section 2(d), shall apply upon inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the subsection listed in subsection (a) of this section in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by Mayor, action by the Council to override veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1–206.02(c)(1)), and publication in the District of Columbia Register.