

DEPARTMENT OF EMPLOYMENT SERVICES

NOTICE OF PROPOSED RULEMAKING

(Paid Leave Program)

The Director of the Department of Employment Services (DOES), pursuant to the authority set forth in the Universal Paid Leave Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-264; D.C. Official Code § 32-541.01 *et seq.*) (the “Act”), and Mayor’s Order 2018-036, dated March 29, 2018, hereby gives notice of the intent to amend Title 7 (Employment Benefits) of the District of Columbia Municipal Regulations (DCMR) by adding a new Chapter 34 (Paid Leave) in not less than thirty (30) days after publication of this notice in the *D.C. Register*.

If adopted, the proposed rules implement the Act by establishing the procedures necessary to administer a paid-leave program for eligible individuals employed in the District of Columbia.

Title 7 DCMR, EMPLOYMENT BENEFITS, is amended by adding a new Chapter 34, PAID LEAVE, to read as follows:

CHAPTER 34 PAID LEAVE

3400 ELIGIBILITY FOR PAID-LEAVE BENEFITS

3400.1 An individual shall be eligible to submit a claim for paid-leave benefits under this chapter if:

- (a) The individual experiences a qualifying family leave event, qualifying medical leave event, or qualifying parental leave event;
- (b) The individual does not perform his or her regular and customary work because of the occurrence of the qualifying family leave event, qualifying medical leave event, or qualifying parental leave event; and
- (c) The individual is:
 - (1) (A) Employed by a covered employer for some or all of the fifty-two (52) calendar weeks immediately preceding the qualifying event for which the paid-leave claim is being submitted; and
 - (B) Employed as a covered employee of a covered employer at the time of application; or

- (2) A self-employed individual who has:
 - (A) Opted into the paid-leave program as provided in this chapter; and
 - (B) Earned self-employment income for work performed more than fifty percent (50%) of the time in the District of Columbia during some or all of the fifty-two (52) calendar weeks immediately preceding the qualifying event for which paid leave is being taken.

3401 FILING A CLAIM FOR PAID-LEAVE BENEFITS

3401.1 An eligible individual shall submit a claim for paid-leave benefits using the online portal or in another format approved by DOES.

3401.2 When submitting a claim for paid-leave benefits, an eligible individual shall provide the following information through the online portal or in another format approved by DOES:

- (a) Proof of the individual’s identity, including the individual’s name, date of birth, and social security number;
- (b) Contact information, including the individual’s home address, telephone number, and email address;
- (c) (1) For a paid medical leave claim:
 - (A) Proof of a qualifying medical leave event, including medical documentation that provides the diagnosis or occurrence of a serious health condition; and
 - (B) The length of leave expected based on industry standards used by health care professionals to label diagnosis of medical conditions and treatments;
- (2) For a paid family leave claim:
 - (A) Proof of a qualifying family leave event, including medical documentation of the diagnosis or occurrence of a serious health condition for a family member;
 - (B) The length of leave expected based on industry standards used by health care professionals to label diagnosis of medical conditions and treatments;

- (C) Proof of a familial relationship between the family member and the eligible individual;
 - (D) An affirmation that the eligible individual will be taking the leave in order to provide care or companionship for a family member with a serious health condition; and
 - (E) A description of the care or companionship to be provided by the eligible individual to the family member;
- (3) For a paid parental leave claim:
- (A) Proof of a qualifying parental leave event; and
 - (B) Proof of a familial relationship between the child for whom paid leave is sought and the eligible individual;
- (d) The number of weeks of paid leave sought;
 - (e) Whether the paid leave will be taken continuously or intermittently;
 - (f) The name, address, telephone number, and email address of the individual's covered employer;
 - (g) The date the individual's employment began with the covered employer; and
 - (h) The most recent date on which the individual previously filed a claim for paid leave, if applicable.

3401.3 An eligible individual shall submit a copy of a government-issued identification to verify identity at the onset of the application process.

3401.4 For a medical leave claim, an eligible individual shall provide a form signed by the eligible individual authorizing the individual's health care provider to provide medical and/ or additional information necessary to process the claim for paid leave.

3401.5 For a family leave claim, an eligible individual shall:

- (a) Provide a form signed by the family member authorizing the family member's health care provider to provide additional information necessary to process the claim for paid leave; and

- (b) Provide government-issued documents, court orders, or other forms of documentation establishing a familial relationship between the eligible individual and family member.

3401.6 For a parental leave claim, an eligible individual shall submit government-issued documents, court orders, or other forms of documentation establishing a familial relationship between the eligible individual and the child for whom parental leave is sought.

3401.7 Each eligible individual applying for paid-leave benefits shall certify that the claim for paid-leave benefits and all information provided in support of the claim for paid-leave benefits are true and accurate.

3402 CALCULATION OF WEEKLY BENEFITS AMOUNT

3402.1 Subject to Subsections 3302.2 and 3302.3 and Sections 3303 [Waiting Period for Benefits] and 3313 [Relation to Other Benefits], DOES shall calculate the weekly paid-leave benefits amount to which an eligible individual is entitled as follows:

- (a) The wages used to calculate the weekly benefit amount shall be limited to wages paid to the eligible employee by covered employers.
- (b) An eligible individual who earns an average weekly wage that is equal to or less than one hundred and fifty percent (150%) of the District's minimum wage multiplied by forty (40) shall be entitled to weekly paid-leave benefits equal to ninety percent (90%) of that eligible individual's average weekly wage.
- (c) An eligible individual who earns an average weekly wage that is greater than one hundred and fifty percent (150%) of the District's minimum wage multiplied by forty (40) shall be entitled to payment of weekly paid-leave benefits that shall equal:
 - (1) Ninety percent (90%) of one hundred and fifty percent (150%) of the District's minimum wage multiplied by forty (40); plus
 - (2) Fifty percent (50%) of the amount by which the eligible individual's average weekly wage exceeds one hundred and fifty percent (150%) of the District's minimum wage multiplied by forty (40).
- (d) If an eligible individual has wages from multiple covered employers (including a covered self-employer), the wages shall be combined to determine the eligible individual's average weekly wage.

(e) The benefits calculated according to this subsection, if not a multiple of one dollar (\$1.00), shall be rounded to the nearest dollar amount.

3402.2 (a) Notwithstanding Subsection 3302.1, no eligible individual shall be entitled to payment of paid-leave benefits at a rate in excess of the maximum weekly benefit amount.

(b) Before October 1, 2021, the maximum weekly benefit amount shall be one thousand dollars (\$1,000).

(c) DOES shall adjust the maximum weekly benefit amount annually, to take effect on October 1, 2021, and on October 1 of each successive year, as provided in section 104(g)(6) of the Act.

3402.3 Paid-leave benefits for partial weeks of leave shall be prorated.

3403 WAITING PERIOD FOR BENEFITS

3403.1 After the occurrence of a qualifying family leave event, qualifying medical leave event, or qualifying parental leave event, an eligible individual must wait one (1) week during and for which no benefits shall be payable before being entitled to receive payment of his or her paid-leave benefits; provided, that regardless of the number of qualifying events for which an eligible individual files a claim for paid-leave benefits, he or she shall only have one (1) waiting period during and for which no benefits are payable within a fifty-two (52)-week period.

3404 LIMIT ON NUMBER OF WEEKS OF PAID LEAVE BENEFITS; INTERMITTENT USE OF PAID LEAVE; REPORTING USE OF LEAVE

3404.1 An eligible individual may receive a maximum of:

(a) Two (2) workweeks of paid universal leave for a qualifying medical event within a fifty-two (52) workweek period;

(b) Six (6) workweeks of paid family leave within a fifty-two (52) workweek period; and

(c) Eight (8) workweeks of paid parental leave within a fifty-two (52) workweek period.

3404.2 Notwithstanding Subsection 3304.1, an eligible individual may not receive more than a maximum of eight (8) workweeks of paid leave during a fifty-two (52) workweek period, regardless of the number of qualifying leave events that occurred during the fifty-two (52) workweek period.

3404.3 An eligible individual may use paid leave intermittently or continuously.

3404.4 All intermittent leave taken pursuant to this chapter must be in one (1) day increments.

3404.5 Eligible individuals shall certify use of paid leave weekly through the online portal or through another format approved by DOES.

3405 ONLINE PORTAL

3405.1 All claims for paid-leave benefits shall be submitted through the online portal or through another format approved by DOES.

3405.2 All DOES communications pursuant to this chapter shall occur through the online portal or through another format approved by DOES.

3405.3 Initial determinations shall be sent to applicants, eligible individuals, and covered employers through the online portal or through another format approved by DOES.

3405.4 All applicants, eligible individuals, and covered employers shall be responsible for maintaining current contact information in the online portal or through another format approved by DOES.

3405.5 All applicants, eligible individuals, and covered employers shall be responsible for checking the status of claims for paid leave through the online portal or through another format approved by DOES.

3405.6 All applicants, eligible individuals, health care providers, and covered employers shall be responsible for responding to any requests for additional information through the online portal or through another format approved by DOES.

3406 EMPLOYEE NOTICE TO EMPLOYER

3406.1 (a) To the extent practicable, an eligible individual shall provide written notice to his or her employer of the need for the use of paid-leave benefits before taking leave.

(b) If the paid leave is foreseeable, the eligible individual shall provide the written notice at least ten (10) days, or as early as possible, in advance of the paid leave.

(c) If the paid leave is unforeseeable, the eligible individual shall provide a notification, either oral or written, before the start of the work shift for which the paid leave is being used.

- (d) In the case of an emergency that makes it impractical for an individual to provide notice before the start of the work shift for which the paid leave is being used, the eligible individual, or another individual on behalf of the eligible individual, shall notify the eligible individual's employer, either orally or in writing, within forty-eight (48) hours after the emergency occurs.

3406.2 The eligible individual's written or oral notice shall include:

- (a) A reason for the absence involved, within the parameters of the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (Pub. L. No. 104-191; 110 Stat. 1936);
- (b) The expected duration of the paid leave;
- (c) The expected start and end dates of the paid leave;
- (d) Whether the paid leave will be used continuously or intermittently.

3407 PROCESSING CLAIMS FOR PAID LEAVE

3407.1 Within three (3) business days after the filing of a claim for paid-leave benefits, a DOES claims examiner shall:

- (a) Notify the applicant of the need to submit any additional information; and
- (b) Notify the covered employer of the filing of a claim and request from the employer proof of employment of the applicant.

3407.2 The covered employer shall submit the requested proof of employment within two (2) business days after receipt of the request from the claims examiner.

3407.3 If the covered employer fails to provide the requested proof of employment within two (2) business days, the claim for paid leave shall be processed using the available information; provided, that, if the covered employer later files proof that the eligible individual is not a covered employee of the employer, DOES may re-process the claim, taking into account the additional information.

3407.4 If an applicant or eligible individual is requested to provide additional information, the claim shall be held in abeyance until the additional information is received.

3407.5 If the claim is for paid family leave or paid medical leave, and the claims examiner determines that the applicant is an eligible individual and has provided the necessary documentation to support the paid-leave benefits sought, then the claim shall be reviewed by the claims examiner in accordance with 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 the proof of qualifying event provided by the eligible individual to support the claim for paid leave.

3407.6 Within ten (10) days after a claim for paid leave is filed, DOES shall issue to the applicant or eligible individual an initial determination that includes:

- (a) A statement as to whether the claim for paid-leave benefits has been approved or denied;
- (b) (1) If the claim was approved:
 - (A) The weekly amount of paid-leave benefits to be paid;
 - (B) The start date for the payment of weekly paid-leave benefits;
 - (C) The number of weeks for which the eligible individual will receive the paid-leave benefits; and
 - (D) The dates on which the paid-leave benefit payments will be made by the District; or
- (2) If the claim was denied, the reason(s) for the denial; and
- (c) A description of the process to file an appeal with the Office of Administrative Hearings.

3408 APPEALS

3408.1 If the applicant or eligible individual disagrees with all or any part of the initial determination, the applicant or eligible individual has the right to appeal the initial determination to the Office of Administrative Hearings.

3408.2 An appeal of an initial determination shall be filed with the Office of Administrative Hearings within sixty (60) days after the date of receipt of the initial determination.

3408.3 Appeals shall be governed by the rules, policies, and procedures of the Office of Administrative Hearings.

3409 OPT-IN OF SELF-EMPLOYED INDIVIDUALS

3409.1 An individual who earns self-employment income (“self-employed individual”) may opt into the paid leave program during an open enrollment period through the online portal or through another format approved by DOES.

3409.2 DOES shall hold open enrollment periods:

- (a) During the first ninety (90) days after the date on which the District, pursuant to Section 103 of the Act (D.C. Official § 32-1701.03), begins to collect contributions to the Universal Paid Leave Implementation Fund;
- (b) Beginning with calendar year 2020 and in each calendar year thereafter, during the months of November and December; and
- (c) For each self-employed individual, during the sixty (60) days following the commencement of business in the District of Columbia by the self-employed individual.

3409.3 After a self-employed individual opts into the paid-leave program, DOES shall provide notice to that individual regarding the manner in which contributions to the Universal Paid Leave Implementation Fund shall be collected from the individual.

3409.4 A self-employed individual who opts into the paid leave program must make contributions to the Universal Paid Leave Implementation Fund for no less than three (3) consecutive years and must remain continuously enrolled in the program until such time as he or she elects to opt out unless the individual ceases to be a self-employed individual.

3409.5 Except in the situations specified in Section 3309.4, self-employed individual who has opted into the program may only opt out of the program during an open enrollment period.

3409.6 A self-employed individual who previously opted out of or withdrew from the paid leave program may re-enroll in the program; provided that:

- (a) Beginning on January 1, 2020, a self-employed individual who previously opted out of the paid-leave program shall not be eligible to receive benefits pursuant to this chapter for the first year after enrolling or reenrolling in the program; and
- (b) If a self-employed individual opts out of the paid-leave program two (2) times, he or she shall be barred from reenrolling in the program for a period of five (5) years from the date of his or her second opt-out from the program.

3409.7 If a self-employed individual does not make a timely payment required by this chapter, DOES shall notify the individual of the payment due. If the payment due is not received by DOES within thirty (30) days of the mailing date of the notice, DOES shall disenroll the individual and the individual shall not be eligible for paid-leave benefits under this chapter. An individual who has been disenrolled may, after payment of all amounts due, opt-in to the paid leave program during an open enrollment period.

3409.8 If a self-employed individual who has opted into the paid-leave program is also a covered employee employed by a covered employer, he or she shall not be entitled to receive double payments of paid-leave benefits under this chapter. His or her paid-leave benefit payment amount shall be based on the combined wages from covered employment and self-employment.

3410 CONTRIBUTIONS BY OPT-IN SELF-EMPLOYED INDIVIDUALS TO THE UNIVERSAL PAID LEAVE IMPLEMENTATION FUND

3410.1 A covered employer who is a self-employed individual who has opted-in to the paid leave program shall contribute an amount equal to 0.62% of his or her annual self-employment income to the Universal Paid Leave Implementation Fund online or in another format approved by DOES.

3410.2 A covered employer who is a self-employed individual who fails to contribute any amount required by this section to the Universal Paid Leave Implementation Fund shall be subject to the same notice requirements, procedures, interest, penalties, and remedies set forth in section 4 of the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 948; D.C. Official Code § 51-104).

3410.3 All interest collected pursuant to Subsection 3310.2 shall be deposited into the Universal Paid Leave Implementation Fund.

3411 CONTRIBUTIONS BY COVERED EMPLOYERS TO THE UNIVERSAL PAID LEAVE IMPLEMENTATION FUND

3411.1 A covered employer shall contribute an amount equal to 0.62% of the wages of each of its covered employees to the Universal Paid Leave Implementation Fund online or in another format approved by DOES.

3411.2 A covered employer shall make contributions under Subsection 3311 even if the covered employer provides additional leave benefits to their employees.

3411.3 A covered employer who fails to contribute any amount required by this section to the Universal Paid Leave Implementation Fund shall be subject to the same notice requirements, procedures, interest, penalties, and remedies set forth in

section 4 of the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 948; D.C. Official Code § 51-104).

3411.4 All interest collected pursuant to Subsection 3311.3 shall be deposited into the Universal Paid Leave Implementation Fund.

3412 EMPLOYER NOTICE TO EMPLOYEE

3412.1 Each covered employer shall post and maintain a paid leave program notice promulgated by DOES, in a conspicuous place at each worksite that is accessible by its employees.

3412.2 Each covered employer shall also provide the paid leave program notice to employees at the following times:

- (a) To an individual employee, at the time of the employee's hiring;
- (b) Annually to all employees; and
- (c) To an individual employee, at the time the covered employer is aware that paid leave is needed by the employee.

3412.3 A covered employer who violates this notice requirement shall be assessed a civil penalty not to exceed one hundred dollars (\$100) for each covered employee to whom individual notice was not delivered and one hundred dollars (\$100) for each day that the covered employer fails to post the notice in a conspicuous place at each worksite.

3413 RECORD KEEPING

3413.1 All covered employers shall develop, maintain, and make available to DOES records regarding the employer's activities related to the Act, including paystubs, personal checks, cash receipts, or bank deposits; work schedules; communications between employer and employee; any circumstantial evidence regarding the employee's eligibility; and any other record as requested by DOES.

3414 RELATIONSHIP TO OTHER BENEFITS

3414.1 If paid leave taken pursuant to this chapter also qualifies as protected leave pursuant to the Family and Medical Leave Act of 1993, approved February 5, 1993 (107 Stat. 6; 29 U.S.C. § 2601 *et seq.*), or the D.C. FMLA, the paid leave shall run concurrently with, and not in addition to, leave taken under those other acts.

3414.2 Nothing in this chapter shall be construed to provide job protection to any eligible individual beyond that to which an individual is entitled under the D.C. FMLA.

3414.3 An eligible individual receiving benefits pursuant to the District of Columbia Unemployment Compensation Amendment Act, effective August 28, 1935 (49 Stat. 946; D.C. Official Code § 51-101 *et seq.*), shall not be eligible to receive paid-leave benefits under this chapter.

3414.4 An eligible individual receiving long-term disability payments shall not be eligible to receive paid-leave benefits under this chapter.

3414.5 An eligible individual receiving short-term disability payments shall be eligible to receive paid-leave benefits under this chapter.

3415 ERRONEOUS PAYMENTS AND DISQUALIFICATION FOR BENEFITS

3415.1 It is unlawful for any applicant or eligible individual to provide intentionally false statements to obtain paid-leave benefits.

3415.2 An individual who intentionally makes a false statement or misrepresentation regarding a material fact, or who intentionally fails to report a material fact, to obtain paid-leave benefits shall be disqualified from receiving paid-leave benefits for a period of three (3) years.

3415.3 If paid-leave benefits are paid erroneously or as a result of willful misrepresentation, or if a claim for paid-leave benefits is rejected after benefits are paid, DOES shall seek repayment of benefits from the eligible individual; provided, that the Director may waive, in whole or in part, the amount of any such payments when the recovery would be against equity and good conscience.

3415.4 (a) If DOES obtains repayment of benefits from an individual who has made a willful misrepresentation or otherwise perpetrated fraud to obtain paid-leave benefits, DOES shall distribute a proportional share of the recovered amount to each covered employer who paid into the Universal Paid Leave Implementation Fund on behalf of that individual during the period that he or she improperly obtained paid-leave benefits.

(b) For the purposes of paragraph (a) of this subsection, a covered employer's proportional share of the recovered amount shall be equal to the amount paid into the Universal Paid Leave Implementation Fund by that covered employer on behalf of the individual during the period that he or she improperly obtained benefits, expressed as a percentage of the total amount paid into the Universal Paid Leave Implementation Fund by all covered employers on behalf of the individual during the period that he or she improperly obtained benefits.

3416 COMPLAINTS

3416.1 A complaint alleging a violation of this chapter or the Act, other than a complaint regarding a claim determination (which shall be filed as an appeal as provided in section 108 of the Act), shall be filed with the Office of Human Rights and shall be governed by the administrative enforcement procedure used for the D.C. FMLA.

3416.2 All complaints shall be filed within one (1) year after the occurrence or discovery of the alleged violation, whichever is later.

3499 DEFINITIONS – As used in this chapter –

“**Act**” – means the Universal Paid Leave Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-264; D.C. Official Code § 32-541.01 *et seq.*), as amended.

“**Average weekly wage**” – means the total wages subject to contribution under section 103 of the Act earned by the applicant or eligible individual during the base period, divided by fifty-two (52).

“**Base period**” – means the four (4) out of the five (5) quarters immediately preceding the qualifying event during which the applicant or eligible individual’s wages were highest.

“**Bonding**” – means the formation of a close emotional and psychological relationship between a parent or primary caregiver and an infant or child.

“**Covered employee**” – means an employee of a covered employer:

- (a) Who spends more than fifty percent (50%) of his or her work time for that employer working in the District of Columbia; or
- (b) Whose employment for the covered employer is based in the District of Columbia and who regularly spends a substantial amount of his or her work time for that covered employer in the District of Columbia and not more than fifty percent (50%) of his or her work time for that covered employer in another jurisdiction.

“**Covered employer**” – means:

- (a) Any individual, partnership, general contractor, subcontractor, association, corporation, business trust, or any group of persons who directly or indirectly or through an agent or any other person, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of an employee and is required to pay unemployment insurance on behalf

of its employees by section 3 of the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 947; D.C. Official Code § 51-103); provided, that the term “covered employer” shall not include the United States, the District of Columbia, or any employer that the District of Columbia is not authorized to tax under federal law or treaty; or

- (b) A self-employed individual who has opted into the paid-leave program established pursuant to this chapter.

“**D.C. FMLA**” – means 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.*)

“**Director**” – means the director of DOES.

“**DOES**” – means the Department of Employment Services.

“**Eligible individual**” – means a person whose claim for paid-leave benefits is not based on employment for the United States, the District of Columbia, or an employer that the District of Columbia is not authorized to tax under federal law or treaty, who meets the requirements of the Act and this chapter and:

- (a) Has been a covered employee during some or all of the fifty-two (52) calendar weeks immediately preceding the qualifying event for which paid leave is being taken; or
- (b) Is a self-employed individual who has:
 - (1) Opted into the paid-leave program established pursuant to this chapter; and
 - (2) Earned self-employment income for work performed more than fifty percent (50%) of the time in the District of Columbia during some or all of the fifty-two (52) calendar weeks immediately preceding the qualifying event for which paid leave is being taken.

“**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 individual 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 individual when the eligible individual was a child;

- (c) A person to whom an eligible individual is related by domestic partnership, as defined by section 2(4) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(4)), or marriage;
- (d) A grandparent of an eligible individual; or
- (e) A sibling of an eligible individual.

“**Health care provider**” shall have the same meaning as provided in section 2(5) of the D.C. FMLA (D.C. Official Code § 2-501(5)).

“**Intermittent leave**” – means paid leave taken in increments of no less than one (1) day, rather than for one (1) continuous period of time.

“**Online portal**” – means the user-friendly system for the submission and management of forms and documents necessary to administer the paid-leave program.

“**Open enrollment period**” – means the periods of time described in subsection 101(10) of the Act (D.C. Official Code § 31-3301.01(10)).

“**Paid-leave benefits**” – means the monetary benefits provided pursuant to this chapter.

“**Protected activity**” includes:

- (a) Filing or attempting to file a charge pursuant to or related to the Act;
- (b) Instituting or attempting to institute a proceeding pursuant to or related to the Act;
- (c) Facilitating the institution of a proceeding pursuant to or related to the Act;
- (d) Requesting, applying for or using paid-leave benefits pursuant to or related to the Act;
- (e) Giving any information or testimony in connection with an inquiry or proceeding related to the Act;
- (f) Opposing any practice made unlawful by the Act.

“**Qualifying family leave**” – means paid leave for up to a maximum amount of six (6) workweeks within a fifty-two (52)-workweek period, regardless of

calendar year, that an eligible individual may take in order to provide care or companionship to a family member because of the occurrence of a qualifying family leave event.

“Qualifying family leave event” – means the diagnosis or occurrence of a serious health condition of a family member of an eligible individual.

“Qualifying medical leave” – means paid leave for up to a maximum of two (2) workweeks within a fifty-two (52)-workweek period, regardless of calendar year, that an eligible individual may take following the occurrence of a qualifying medical leave event.

“Qualifying medical leave event” – means the diagnosis or occurrence of a serious health condition of an eligible individual.

“Qualifying parental leave” – means paid leave for up to a maximum of eight (8) workweeks within a fifty-two (52)-workweek period, regardless of calendar year, that an eligible individual may take within one year of the occurrence of a qualifying parental leave event.

“Qualifying parental leave event” – means events, including bonding, associated with:

- (a) The birth of a child of an eligible individual;
- (b) The placement of a child with an eligible individual for adoption or foster care; or
- (c) The placement of a child with an eligible individual for whom the eligible individual legally assumes and discharges parental responsibility.

“Retaliate” – means to:

- (a) Commit any form of intimidation, threat, reprisal, harassment, discrimination, or adverse employment action, including discipline, discharge, suspension, transfer or assignment to a lesser position in terms of job classification, job security, or other condition of employment;
- (b) Reduce pay or hours or deny an individual additional hours;
- (c) Inform another employer that the person has engaged in activities protected by the Act or this chapter; or
- (d) Report, or threaten to report, the actual or suspected citizenship or immigration status of an employee, former employee, or family member of an employee or former employee, to a federal, state, or local agency.

“Self-employment income” – means gross income earned from carrying on a trade or business as a sole proprietor, an independent contractor, or a member of a partnership.

“Serious health condition” – means a physical or mental illness, injury, or impairment that requires inpatient care in a hospital, hospice, or residential health care facility, or continuing treatment or supervision at home by a health care provider or other competent individual. For the purposes of this definition:

- (a)
 - (1) The term “treatment” includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition.
 - (2) Treatment does not include routine physical examinations, eye examinations, or dental examinations.
 - (3) A regimen of continuing treatment such as the taking of over-the-counter medications, bed rest, or similar activities that can be initiated without a visit to a health care provider is not, by itself, sufficient to constitute continuing treatment for the purposes of this chapter.
- (b) The term “inpatient care” is the care of a patient in a hospital, hospice, or residential medical care facility for the duration of one overnight period or longer or any subsequent treatment in connection with such inpatient care.
- (c) The term “incapacity” means inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment of the serious health condition, or recovery from the serious health condition.
- (d) Conditions for which cosmetic treatments are administered are not serious health conditions; provided, that procedures related to an individual’s gender transition or restorative surgery following surgery or treatments for diseases or injury shall not be considered cosmetic treatments for the purposes of this subparagraph.
- (e) A serious health condition involving continuing treatment by a health care provider means any one or more of the following:
 - (1) A period of incapacity of more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:

- (A) Treatment of two (2) or more times within thirty (30) days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider. For the purposes of this sub-subparagraph, “extenuating circumstances” means circumstances beyond an individual’s control that prevent the follow-up visit from occurring as planned by the health care provider;
 - (B) The first, or only, in-person treatment visit within ten (10) days after the first day of incapacity if extenuating circumstances exist; or
 - (C) Treatment by a health care provider on at least one (1) occasion, which results in a regimen of continuing treatment under the supervision of the health care provider;
- (2) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
- (A) Requires two (2) or more periodic visits annually for treatment by a health care provider or by a nurse under direct supervision of a health care provider;
 - (B) Continues over an extended period of time, which shall include recurring episodes of a single underlying condition; and
 - (C) May cause episodic rather than a continuing period of incapacity;
- (3) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The family member of an eligible individual must be under continuing supervision of, but need not be receiving active treatment by, a health care provider; or
- (f) Any period of absence to receive multiple treatments (including any period of recovery from the treatments) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:
- (A) Restorative surgery after an accident or other injury; or

- (B) A condition that would likely result in a period of incapacity of more than three (3) consecutive, full calendar days in the absence of medical intervention or treatment.

“Universal Paid Leave Implementation Fund” means the Universal Paid Leave Implementation Fund established by section 1152 of the Universal Paid Leave Implementation Fund Act of 2016, effective October 8, 2016 (D.C. Law 21-160; 63 DCR 10775).

“Wages” shall have the same meaning as provided in section 1(3) of the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 946; D.C. Official Code § 51-101(3)); provided, that the term “wages” also includes self-employment income earned by a self-employed individual who has opted into the paid-leave program established pursuant to this chapter.

Comments on this proposed rulemaking should be submitted, in writing, within thirty (30) days of the date of the publication of this notice in the *D.C. Register* to the Department of Employment Services, 4058 Minnesota Avenue NE, Washington, DC, 20019, or via email to does.opfl@dc.gov. Additional copies of these proposed rules are available at the above address.