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2
3 Councilmember Anita Bonds



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5 Councilmember Janeese Lewis George

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8 A PROPOSED RESOLUTION

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13 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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19 To declare the existence of an emergency with respect to extending amendments to the Universal
20 Paid Leave Amendment Act of 2016 to prohibit the reduction of private market short-
21 term disability benefits based on actual or estimated paid leave benefits an eligible
22 individual may be entitled to from the District, regardless of in which jurisdiction the
23 policy was issued or written; and to extend amendments to Title I of the Insurance Trade
24 and Economic Development Amendment Act of 2000 to make offsetting or reducing
25 benefits under a private market short-term disability insurance policy, based on estimated
26 or actual benefits received under the Universal Paid Leave Amendment Act of 2016,
27 enforceable under that law, regardless of the jurisdiction in which the insurance policy
28 was issued or written.

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30 RESOLVED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
31 resolution may be cited as the “Short-Term Disability Insurance Benefit Protection Clarification
32 Emergency Declaration Resolution of 2023.”

33 Sec. 2. (a) There exists an immediate need to extend the Short-Term Disability Insurance
34 Benefit Protection Clarification Temporary Amendment Act of 2022 (L24-202), expiring July
35 26, 2023, to protect benefits from D.C.’s Universal Paid Leave program and benefit payments
36 from short-term disability insurance plans for District workers who are entitled to both.

37 (b) Many District employers provide optional, private short-term disability insurance
38 plans as part of the compensation package paid and available to employees. These plans provide

39 enrolled employees with partial income replacement for the employee’s absence from work due
40 to recovery from injury or illness, including postpartum recovery. A typical short-term disability
41 plan provides between 40 and 60 percent of the employee’s salary up to a duration of between 3
42 to 6 months, based on documented medical need. Some employers pay the premiums for these
43 plans, while many employers require employees to pay all or part of the premiums.

44 (c) The District’s Universal Paid Leave (“UPL”) program launched in July 2020. It
45 provides benefits, in the form of partial wage replacement, to District workers who need to take
46 time off from work for events associated with the birth or placement of a new child, including
47 bonding (“parental leave”), recovery from serious illness or injury (“medical leave”), or caring
48 for a family member with a serious illness or injury (“family leave”). District employers pay
49 quarterly contributions into a social insurance fund from which benefits are paid to eligible
50 workers when a qualifying leave event arises.

51 (d)(1) The UPL program provides up to 12 total weeks of benefits for parental leave,
52 medical leave, and family leave.

53 (2) The UPL program provides partial wage replacement up to \$1,049 per week,
54 on a sliding scale depending on a claimant’s income. An individual earning less than or equal to
55 150% of the minimum wage (currently \$25.50 per hour or \$1,020 per week or \$53,040
56 annualized for a 40/hour workweek) will receive a UPL benefit equal to 90% of their weekly
57 wage; for those earning more than 150% of the minimum wage, the formula results in less than
58 90% of the weekly wage because the total earnings of these people are greater.

59 (e) Many District workers use the public and private programs together, relying on them
60 to achieve closer to full wage replacement in total and to extend the period of wage replacement

61 to more fully cover unpaid periods of leave from work necessitated by sometimes complex and
62 lengthy medical needs.

63 (f) In 2021, the Council learned that, since the UPL program began paying benefits to
64 workers, private insurance companies providing coverage to District workers were offsetting the
65 amount of benefits paid under their short-term disability plans by the amount of benefits the
66 employee was expected to receive from the District’s UPL program, regardless of whether the
67 beneficiary had applied for or received those paid leave benefits or not, and regardless of the
68 purpose for which the leave was used (i.e., parental bonding leave rather than medical leave).

69 (g) In the last Council period, the Committee on Labor and Workforce Development
70 worked to partially close this coordination of benefits loophole to prohibit benefit offsetting by
71 including amendments to the Universal Paid Leave Act of 2016 (L21-264) in the Fiscal Year
72 2022 Budget Support Act of 2021 (L24-45).

73 (h) It later came to the attention of the Labor Committee, that the Department of
74 Insurance, Securities, and Banking’s (“DISB”) ability to enforce the anti-offsetting law, as
75 intended, was hampered by the fact that the agency’s enforcement authority is typically limited
76 to insurance policies that were written or issued in the District. Thus, DISB was likely unable to
77 take enforcement action against an insurer for unlawfully offsetting UPL benefits for District-
78 based employees because the employer’s short-term disability policy was written or delivered
79 outside the District.

80 (i) Some employers of District employees—such as national employers or those based in
81 other states—may purchase a policy that was written or delivered outside the District. It was
82 previously reported to the Committee that several insurance companies do not believe their

83 short-term disability benefit is protected by the District’s anti-offsetting provision and Council
84 offices continue to hear reports of District workers being victims of offsetting practices.

85 (j) The Council did not intend for UPL benefits to reduce or limit workers’ access to
86 short-term disability benefits:

87 (1) The UPL law states that the right to UPL benefits is not to be diminished by a
88 collective bargaining agreement, by any other contract, or by an employer policy.

89 (2) The law enumerates two programs, unemployment insurance and long-term
90 disability insurance, that, if an individual is receiving benefits under those programs, will make
91 the individual ineligible for UPL benefits, implying that individuals are permitted to receive
92 benefits under other programs like short-term disability.

93 (3) The law states that the UPL benefits shall not prevent an employer from
94 supplementing or providing greater benefits than required under the UPL law.

95 (4) Individual workers often use the programs for different purposes, such as UPL
96 for bonding leave and short-term disability for postpartum recovery which are subject to
97 different time restrictions.

98 (5) The UPL program and short-term disability insurance have completely
99 separate and independent funding mechanisms.

100 (k) Under the UPL law, it is unlawful for any person to interfere with an employee’s right
101 to UPL. Using the UPL benefits as an offset for short-term disability benefits renders the UPL
102 benefit meaningless because an employee receives no more benefit than they would in the
103 absence of UPL; that is interference.

104 (l) The intent of this second round of emergency and temporary legislation is to
105 strengthen DISB’s enforcement authority to prevent interference by including an

106 “extraterritoriality” clause that requires application of the law regardless of the jurisdiction in
107 which the private market short-term disability insurance policy was written or issued.

108 (m) The Council initially passed emergency legislation to safeguard the benefits of
109 District workers July 11, 2022 and the corresponding temporary legislation went into effect
110 December 23, 2022. The temporary measure is now expiring and action must be taken to enact a
111 new round of legislation while passage of the permanent bill is pending in the current Council
112 period.

113 Sec. 3. The Council of the District of Columbia determines that the circumstances
114 enumerated in section 2 constitute emergency circumstances making it necessary that the Short-
115 Term Disability Insurance Benefit Protection Clarification Emergency Declaration Resolution of
116 2023 should be adopted after a single reading.

117 Sec. 4. This resolution shall take effect immediately.