



# WHITMAN-WALKER HEALTH

Mailing Address:  
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October 24, 2017

Christina Setlow  
Deputy Committee Director  
Committee of the Whole  
Council of the District of Columbia  
1350 Pennsylvania Avenue NW  
Washington, DC 20004

BY ELECTRONIC MAIL

Re: Testimony of Whitman-Walker Health on Bills Proposing to Amend Act 21-682, the Universal Paid Leave Amendment Act of 2016

Dear Ms. Setlow:

In accordance with the Committee's Hearing Notice of August 4, Whitman-Walker Health is pleased to submit this testimony in support of Bill 22-334, the Universal Paid Leave Pay Structure Amendment Act of 2017.

Please contact me if you need any additional information or if we can be of further assistance to the Committee.

Respectfully,

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cc (with testimony):

Honorable Phil Mendelson  
Honorable Charles Allen  
Honorable Anita Bonds  
Honorable Mary M. Cheh  
Honorable Jack Evans  
Honorable Vincent C. Gray  
Honorable David Grosso

Honorable Kenyan McDuffie  
Honorable Brianne K. Nadeau  
Honorable Elissa Silverman  
Honorable Brandon T. Todd  
Honorable Trayon White, Sr.  
Honorable Robert C. White, Jr.



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## **BEFORE THE COUNCIL OF THE DISTRICT OF COLUMBIA COMMITTEE OF THE WHOLE**

### **TESTIMONY OF WHITMAN-WALKER HEALTH ON PROPOSED AMENDMENTS TO ACT 21-682, THE UNIVERSAL PAID LEAVE AMENDMENT ACT OF 2016**

Whitman-Walker Health (Whitman-Walker or WWH) appreciates this opportunity to express our views on the bills that have been introduced to amend Act 21-682.

We support Bill 22-334, the Universal Paid Leave Pay Structure Amendment Act of 2017, with amendments as explained below. Whitman-Walker is deeply committed to paid leave for our employees who are experiencing serious health problems, who are adding children to their families, or who need to care for ailing family members. Consistent with our core values, we have provided substantial paid leave benefits to our employees for many years.

However, for nonprofit employers such as WWH, which provide health care and other critical services to lower-income and otherwise vulnerable DC residents, extended leave for employees comes at a significant cost – to our organizations, and potentially to our patients and clients. Much of the debate over paid leave laws fails to acknowledge this critical dimension. Nonprofit community health centers struggle to meet increasing demands with limited resources. The District’s paid leave law make fulfilling their mission increasingly expensive. Nonprofits providing critical health and other services will incur the costs of temporary hires and other adjustments to compensate for the providers and other employees on leave – costs which often are not covered by their grants, third-party payments and other revenues – and also shoulder costly recordkeeping and reporting requirements – wholly apart from the new payroll tax.

As these additional costs increase, and when providers who are difficult if not impossible to replace with temporary hires are out for longer periods of time, nonprofit health centers face a painful dilemma. If they cannot absorb the additional costs by operating at a loss, or by reducing operations that are not directly patient-serving (which can include layoffs or salary and benefit reductions for non-provider employees), do they curtail needed services to the community – by limiting new patients, or reducing the number of patient appointments and increasing wait times for new appointments, or by delaying the addition of new services which are greatly needed?

We fully support Act 21-682's aim of providing substantial paid leave for employees experiencing personal or family illness, or new childcare responsibilities. However, we are very concerned that the statute contains significant ambiguities and flaws that will increase the cost and operational burdens on nonprofit health centers like Whitman-Walker. Of the pending bills that would amend the Act, Whitman-Walker believes that Bill 22-334, with amendments explained below, offers the most reasonable correctives. Most importantly, Bill 22-334, while maintaining the same paid leave benefit levels as Act 21-682:

- Gives employers the option to maintain their own paid leave policies so long as they provide at least the mandated benefit levels.
- Clarifies that the mandated benefit levels are not *in addition to* the amounts of paid leave for illness, family care or childcare that employers may already be providing.
- Reduces the tax rate for employers that comply with mandated benefit levels through their own HR policies, while still ensuring that such employers make a financial contribution to supporting the DC Government-administered leave program for persons whose employers do not provide sufficient paid leave.
- Provides the District Government with the option of contracting with an insurance company with demonstrated experience administering disability benefits, instead of creating a new Government agency, or substantially expanding an existing agency, in order to ensure the highest quality services at the most reasonable cost.

**PAID LEAVE LAW MUST TAKE ACCOUNT OF THE REALITIES FACED BY NONPROFITS THAT PROVIDE ESSENTIAL SERVICES TO DISTRICT RESIDENTS WITH LIMITED RESOURCES; BILL 22-334 IMPROVES ON ACT 21-682 IN THIS REGARD**

**There is a need for balance to avoid unnecessary barriers for vulnerable DC residents needing the services that financially challenged nonprofits provide.** Most of the testimony for and against the bill concentrates on the needs of employees or businesses, and fails to consider the needs of DC residents – many of whom are low-income or otherwise underserved. These residents depend on DC nonprofits to provide critical health care and social services. A paid leave policy needs to consider not only the needs and interests of employees, but also the needs of the employer’s customers – particularly the patients of nonprofit health care providers like WWH and other lower-income DC residents who depend on services provided by nonprofits to meet their essential needs. As a nonprofit community health center that provides high-quality care to many of DC’s sickest and most underserved communities, WWH must balance the needs of our patients for the care we provide, with our desire to provide paid leave to our employees consistent with our core values.

For our patients, paid leave has costs. Excessive leave for our staff would force us to curtail services to patients who desperately need those services, including individuals who are struggling with HIV, Hepatitis C and other severe illnesses; persons struggling with depression and other mental health challenges; and LGBT individuals who come to us for the affirming, competent care they need and deserve.

Because we understand the importance of paid medical and family leave for health and wellness, WWH provides generous paid leave for our employees, including

- An average of 2 weeks of paid sick leave for employees accruing per year, with the unlimited ability to carry over unused sick leave to future years. This leave is available

not only for the employee's own health needs, but also to care for family members (defined broadly) who are ill.

- A sick leave bank that is available for employees who have used all of their available paid sick leave.
- An average of 4 weeks of vacation leave accruing per year, which can be taken for any reason, with the ability to carry over approximately 4 weeks of unused vacation leave into the next year.
- An additional 3 weeks of paid leave for any employee with a new child.
- A short-term disability plan, fully paid for by WWH, which provides 66% of the employee's salary for up to 13 weeks.

Given these generous benefits, and the DC-FMLA, a significant portion of our staff is on leave at any given point in time. Many if not most health care providers on leave cannot feasibly be replaced with temporary hires – and, given the considerable learning curve required, neither can most health care support staff. As a result, we incur additional costs and often are forced to consider extending wait times for health care appointments and reducing the number of patient encounters per day. Based on our experience, increasing the amount of FMLA leave that is compensated, as Act 21-682 provides and Bill 22-334 would mandate, will almost certainly result in at least a significant number of staff extending their leave, which will threaten to further reduce DC residents' access to the care they need.

**Bill 22-334 would eliminate the danger that the benefit levels required by Act 21-682 would be *in addition to*, rather than coordinated with, the paid leave provided by employers under their existing policies.** Section 107(d) of Act 21-682 states:

A covered employer may provide an eligible individual with leave benefits in addition to those provided by this act; provided, that the provision of such benefits, including a paid-leave program, shall not exempt the covered employer from making contributions under section 103 or an eligible individual from receiving benefits pursuant to this act.

Although how this language applies to existing employer-provided paid leave is not entirely clear, it is possible that employees who receive paid leave under their existing policies would *also* be entitled to the amount of leave provided in Act 21-682. For instance, an employee entitled to 4 weeks of paid leave under their employer's existing policy would also be able to take an *additional* 8 paid weeks during the same year for childcare leave, or an *additional* 6 weeks of paid leave during the same year to care for a family member, or an *additional* 2 weeks of leave during the same year for their own illness. Such a situation would force us, and many other employers, to consider either (1) curtailing their existing leave policies – which could cause considerable morale issues with their employees; or (2) try to stay in business with a workforce that would be entitled to leave under two separate, uncoordinated systems, with employees entitled to much greater paid leave than the levels intended by the Council.

Bill 22-334 resolves this dilemma by providing that all covered employers must provide at least the level of paid benefits provided in the law; large employers can opt into the District-administered paid leave program rather than operating their own leave programs; and small employers can opt out of the District-administered paid leave program if they conclude that they would rather operate their own leave program that complies with mandated benefit levels.

**Arguments of the opponents of Bill 22-334 misunderstand or mischaracterize the realities faced by employers, including nonprofit health centers, and disregard the language of the bill.** The advocates who argue that a program administered entirely by the DC Government rather than by employers is superior to employer-provided paid leave that complies with benefit mandates base their criticisms on misunderstanding or mischaracterizations of the real world. They seem to assume that employers who currently provide paid leave for personal or family illness and/or childcare can simply eliminate their own leave policies and require their

employees to have recourse to a new, government-run system. To the contrary, some large employer policies (including Whitman-Walker's) are the product of negotiations with unions and codified in legally binding collective bargaining agreements. In addition, Whitman-Walker's leave policies – for all employees, whether or not covered by the collective bargaining agreement – are considerably easier to utilize than their rights under a District-run paid leave program. A Whitman-Walker employee needing paid time off for a new child, or for family illness, or for their own illness, currently informs their supervisor and HR, and if their request is consistent with their leave benefit and our guidelines, the employee simply continues to receive their paychecks for the time in question. By contrast, under Act 21-682, an employee would need to file a claim with the appropriate DC agency; submit the considerable documentation that would be required; wait weeks if not months to receive benefits; and if not satisfied, initiate a lengthy and burdensome appeal process. Were Whitman-Walker to propose eliminating, or substantially modifying, its current leave policies in favor of the District-administered paid leave program, our employees would rightly perceive this as constituting a substantial reduction in their benefits.

The argument of some opponents of modifying Act 21-682 that employers would not comply with legally mandated leave requirements, and would engage in widespread discrimination, is baseless as well as offensive to employers like Whitman-Walker who expend considerable effort to ensure that our employees are treated fairly and compassionately. Bill 22-334 includes a right to appeal from any adverse employer decision, as well as detailed reporting requirements to enable the District to monitor compliance.

Many of the opponents of Bill 22-334 argue that an employer mandate would be more expensive or impractical for many employers, and might create a disincentive for smaller employers to grow and risk losing the coverage of the government-administered paid leave

program. However, the bill gives large employers the right to opt into the government-administered program if that is less costly and more beneficial than administering their own leave policies.

**The mandates imposed by Act 21-682, which would not be affected by Bill 22-334, will impose significant additional costs on nonprofit health centers like Whitman-Walker which the District Government should acknowledge.** The new paid leave law, even with the considerable improvements in Bill 22-334, will impose substantial additional costs on WWH and on our ability to serve our patients. Specifically, the additional paid leave requirements, for new children and for the illness or disability of employees' family members, will likely result in additional paid leave costs for Whitman-Walker of approximately \$100,000 per year, based on our recent experience – not including other costs associated with the increased number of employees on leave at any given time. These shortages will increase our costs and may reduce our ability to serve patients who have few alternatives. In addition, the new administrative and reporting requirements will be substantial, and will likely require us to divert more staff resources to HR and require managers to devote more time to administering the law's requirements at the expense of other duties. Finally, the tax imposed on employers administering their own leave programs, while lower than the tax in Act 21-682, is still significant: more than \$350,000 per year for Whitman-Walker based on our current payroll.

These additional costs are particularly burdensome for nonprofit health centers which depend on grants, contracts and third-party payments that restrict compensation for overhead/administrative costs. Grants and contracts typically are for a fixed amount over a fixed term, without flexibility to increase billings for costs that increase during the grant term. Moreover, indirect cost rates are capped at amounts that generally are lower than actual

administrative costs – by District and federal agencies and by private foundations – and some grantors do not cover administrative costs at all. Moreover, third-party reimbursement rates generally do not fully cover the actual cost of care. It will be critical for District agencies, and the Council to the extent applicable, to adjust grants and contracts, third-party payments, and financial support for general health center operations, to recognize the increasing costs imposed by progressive laws.

**BILL 22-334 ALSO IMPROVES ON ACT 21-682 BY PROVIDING THE DISTRICT GOVERNMENT WITH THE FLEXIBILITY TO ENTRUST THE ADMINISTRATION OF THE NEW PAID LEAVE PROGRAM TO A DISABILITY INSURANCE COMPANY**

As District officials have acknowledged, the paid leave program created by Act 21-682 is likely to require the hiring of many new employees and the development of expensive new IT and administrative systems. Bill 22-334 provides the District with the flexibility to investigate the feasibility of contracting with an insurance company – for instance, an experienced and reputable disability insurer – rather than creating a new government agency or considerably expanding an existing agency such as the Department of Employment Services. This could result in considerable cost savings and increases in efficiency. Disability insurers are very experienced with assessing applicants’ medical conditions and salaries/wages, and, therefore, able to administer a program such as this one efficiently and effectively. (We note that the applicable language in Bill 22-334 – new Section 106(b-1), at page 4 of Bill 22-334 as introduced – appears to contain typographical errors.)

**AMENDMENTS NEEDED TO BILL 22-334**

Although Bill 22-334 would improve Act 21-682 considerably – and, we respectfully submit – is preferable to the other bills currently before the Council to modify Act 21-682 – we

submit that Bill 22-334 should be amended to clarify several important matters and to minimize unnecessary burdens.

**Bill 22-334 should be amended to clarify that an employer can comply with mandated paid leave benefit levels with paid vacation leave as well as sick leave, family and childcare leave.** Many employers, like Whitman-Walker, provide substantial paid vacation leave. An employee needing leave for illness or family reasons in excess of their accrued sick leave or childcare leave allowances has the freedom to use some or all of their accrued vacation leave for that purpose. Bill 22-334 should be amended to explicitly provide that this is permissible (as the law does not, of course, mandate any level of paid vacation leave).

**The reporting requirements on large employers, and small employers who have opted out to the District-run program, should be reduced.** New Section 106a imposes substantial documentation and reporting requirements on employers operating their own paid-leave programs. Whitman-Walker does not object to the requirement of quarterly certification of compliance – Section 106a(a)(1) – or to the requirement that such employers maintain adequate records and allow the district government access to those records on reasonable terms – Section 106a(b). However, Section 106a(a)(2) provides that quarterly certifications contain detailed information on all employees who have requested and taken leave. These extensive requirements will be expensive to implement. Since Bill 22-334 allows any aggrieved employee to file a complaint at any time, and gives the Attorney General and Mayor broad investigative powers, there is no need to require employers to make extensive, burdensome reports to the Mayor every quarter.

**Technical amendments.** Bill 22-334 also needs amendments to clear up several technical ambiguities:

- The bill adds a new **Section 108a, Enforcement and Penalties**, but leaves **Section 108, Appeals**, of Act 21-682 in place. The relationship between Section 108 and Section 108a is not clear, since both sections address appeals and remedies.
- The bill adds to Act 21-682 a new Section 102(e), stating that “Sections 110-112 of this act” apply to large employers and small employers who have opted out of the District-run paid leave program, but the bill repeals Section 112 of the Act (Section 2(h) of the bill). Therefore, Section 102(e) of Bill 22-334 should be corrected to state “Sections 110-111” rather than “Sections 110-112.”

**Conclusion.** Thank you for this opportunity to offer our views. If we can provide additional information or otherwise be of further assistance, please contact Daniel Bruner, Senior Director of Policy, at [dbruner@whitman-walker.org](mailto:dbruner@whitman-walker.org) or (202) 939-7628.

Respectfully submitted,



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October 24, 2017