


Council of the District of Columbia
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT
MEMORANDUM

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

TO: Chairman Phil Mendelson
FROM: Elissa Silverman, Chair 
RE: Request to Agendize Measures for the May 4, 2021, Legislative Meeting
DATE: April 27, 2021

I am writing to request that the following emergency measures and amendment in the nature of a substitute be agendized for the regular Legislative Meeting on May 4, 2021.

Emergency Measures

- [PR24-158](#), “Short-term Disability Insurance Benefit Protection Emergency Declaration Resolution of 2021”
- [B24-185](#), “Short-term Disability Insurance Benefit Protection Emergency Act of 2021”
- [B24-186](#), “Short-term Disability Insurance Benefit Protection Temporary Act of 2021”

This legislation will protect the paid family leave benefit payments to District workers who also have short-term disability insurance plans. The Council has learned that, since the new Universal Paid Leave (UPL) program began paying benefits to workers, some District insurance companies have been offsetting the amount of benefits paid under their short-term disability insurance plans by the amount of benefits the employee is expected to receive from the District’s UPL program.

This offsetting effectively zeroes out the UPL benefit: The compensation amount workers received or expected to receive from UPL is subtracted from the short-term disability payout. This is effectively interference with UPL, which is prohibited by the UPL Act. The “offset,” as it is known in the insurance industry, also effectively shifts the financial benefit of UPL from workers to the financial benefit of insurance companies.

This legislation—co-introduced by CMs Silverman, Henderson, and Lewis George—will prohibit insurance companies from using paid leave benefits, estimated or actual, to offset their payments under short-term disability insurance plans. The bill amends both the Universal Paid Leave Act and the Unfair Insurance Trade Practices code.

Many District workers participate in short-term disability plans offered by their employer as part of their overall benefits package; some employers pay the full premium, while some employers require employees to pay all or part of the premium. These plans typically offer up to 3 to 6 months of benefits for medical disability (including post-partum recovery), but some plans offer significantly less time. The public UPL program provides up to 8 weeks of bonding leave; up to 6 weeks of family caregiving leave; and up to 2 weeks of personal medical leave. Both short-term disability and UPL pay partial wage replacement. Many workers pay for and rely on both

programs as complements in order to come closer to full wage replacement and for a period of time that is closer to what they need medically.

Some insurance companies have made offsets to their short-term disability benefits regardless of whether the beneficiary had received the paid leave benefits or not and regardless of whether the purposes were the same (i.e., parental bonding leave under PFL and medical leave under short-term disability). These offsets are also not financially necessary for the insurers: the short-term disability and PFL programs have completely independent financing mechanisms, the PFL program didn't exist a year ago and therefore such offsets were not possible, and the companies have not adjusted premiums to reflect these offsets. For example, one constituent's employer paid a \$625 annual premium. The employee was expecting to receive a short-term disability benefit of \$1,222, but the benefit amount was reduced to \$222, with a \$1,000 offset from expected PFL benefits.

Constituents have reached out to the Committee, testified publicly, and reached out to local legal services for assistance. Workers have reported the following harms:

- Mothers who have received short-term disability benefits for their recovery from childbirth have had their short-term disability benefits reduced by the UPL benefit amount, even though one of these benefits is for medical recovery and the other is for bonding with a new child.
- Insurance companies have reduced short-term disability benefits based on their own estimate of UPL benefit amounts that they expected workers to receive, and employees had to go through an appeal to have a discrepancy fixed.
- Insurance companies have required employees preparing to undergo surgery to apply for UPL benefits so their short-term disability benefits could be reduced by the PFL benefit amount. This was regardless of the employee's intent or desire to use UPL program this way and denied the employee the right to choose how to use their annual allotment of UPL leave.

The Council did not intend for UPL benefits to reduce or limit workers' access to short-term disability benefits. In fact, the UPL law states that the right to UPL benefits is not to be diminished by a collective bargaining agreement, by any other contract, or by an employer policy. The UPL law enumerates two programs, unemployment insurance and long-term disability insurance, that, if an individual is receiving benefits under those programs, will make the individual ineligible for UPL benefits, implying that individuals are permitted to receive benefits under other programs like short-term disability. The law states that the UPL benefits shall not prevent an employer from supplementing or providing greater benefits than required under the UPL law. And, as mentioned earlier, employees pay into both programs separately, and should be able to receive the full amount of both benefits.

The Council finds that it is necessary and urgent to prohibit insurance companies from using UPL benefits to offset the amount of short-term disability benefits.

Amendment in the Nature of a substitute

- ANS to B24-185, “Short-term Disability Insurance Benefit Protection Emergency Act of 2021”

This Amendment in the Nature of a Substitute will clarify that the prohibition against offsetting the amount of benefits paid to an employee under a short-term disability insurance plan by the amount of benefits an employee is expected to receive from the District’s UPL program applies only to insurance companies and not to employers who self-insure or insurance companies that act as third-party administrators for employers who self-insure.

Copies of the emergency measures are available in LIMS. The draft of the ANS is attached. If you have any questions regarding these measures, please contact Liz Weiss at lweiss@dccouncil.us. Thank you for your consideration of this request.

cc: Members, Council of the District of Columbia
Office of the Secretary
Office of the General Counsel
Office of the Budget Director