

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

Pursuant to section 102(b)(2) of the Universal Paid Leave Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-264; D.C. Official Code § 32-541.02(b)(2)), I am transmitting the enclosed proposed final rules on the tax collection procedures necessary to establish and administer a paid-leave system for individuals employed in the District of Columbia. Also enclosed is a proposed resolution entitled the “Rulemaking for Paid Family Leave Collections Approval Resolution of 2019.” The proposed rules add a new chapter to the District of Columbia Municipal Regulations (DCMR) which will govern the amount and manner which the Paid Leave taxes are paid to the District government.

These rules will set forth a regulatory frame work for employers register, opt-in, and opt-out for the District’s paid leave program as warranted. The rulemaking also specifies the amount, timing and collection procedures for paying the tax that funds the District’s paid leave benefit. Finally, these rules determine the employer responsibilities of signage and recordkeeping that must be completed in addition to the tax and registration paid leave obligations.

The proposed final rules provide a strong regulatory framework upon which the District of Columbia’s Paid Leave contribution phase can be operationalized. I urge the Council to take prompt and favorable action on the enclosed resolution.

Sincerely,

Muriel Bowser
Mayor

Encl.

DEPARTMENT OF EMPLOYMENT SERVICES

NOTICE OF FINAL RULEMAKING

(Paid-Leave Program Contributions)

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 Contributions) Pursuant to D.C. Official Code § 32-541.02(b)(2), the final rules have been submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, holidays, and days of Council recess.

The final rules will implement a portion of the Act by establishing the tax collection procedures necessary to administer a paid-leave program for eligible individuals employed in the District of Columbia.

The Director initially published a Notice of Proposed Rulemaking for 7 DCMR Chapter 33, at Volume 65, Page 3668, of the D.C. Register. The Notice included regulations to implement the Act as a whole. Based on comments received, and the statutory timelines, DOES decided to bifurcate the regulations into two chapters, separating the employer contributions and paid-leave benefits. On July 6, 2018, for 7 DCMR 34, the Director published a second Notice of Proposed Rulemaking in the D.C. Register in Vol. 65, Page 7209, which included regulations to establish tax collection procedures. In response to comments received following the second Notice of Proposed Rulemaking, this final rulemaking includes changes from the second proposed rules in order to clarify employer registration and responsibilities, opt-in and opt-out procedures for self-employed individuals, wages, and contribution and collection procedures, in addition to minor word and technical changes. The following comments were received from the public in response to the second Notice of Proposed Rulemaking.

Commenters requested that DOES:

Clarify when a self-employed individual may opt into the program and the means by which he or she can demonstrate self-employment within the District. This has been addressed in Section 3401.

Allow more documents to be accepted as proof of DC self-employment. This has been addressed in Section 3401.3.

Distinguish between self-employed individuals who opt out and remain self-employed and those who leave the program because they are no longer self-employed. This has been addressed in Section 3402.

Remove additional definitions of “wages” so that the definition mirrors the definition in Unemployment Insurance as set by the Act. This has been addressed in Section 3403.

Clarify how Unemployment Insurance reporting of wages will be shared and used for PFL reporting purposes. This has been addressed in Section 3404.5.

Clarify the tax obligations of employers and ensure that employers pay the required taxes for all covered employees. This has been addressed in Section 3404.5(c).

Allow important notifications regarding late payments and pending collections to be sent via email and by mail. This has been addressed in Section 3405.

Allow for an intermediary process for late payments prior to commencing formal collection procedures. This has been addressed in Section 3405.

Extend the late payment grace period for late payments by self-employed individuals and allow them to be eligible for payment plans. This has been addressed in Section 3405.

Extend the late payment grace period for employers. This has been addressed in Section 3405.

Provide more details regarding the functionality of the online portal. This has been addressed in Section 3406.

Allow non-portal alternatives for registration and communication. This has been addressed in Section 3406.

Provide additional clarity for employer notice requirements, including compliance for non-traditional worksites and multiple worksite locations. It was also requested that DOES allow for digital and internet notices in addition to physical posters. This has been addressed in Section 3407.

Narrow and clarify record-keeping requirements to comply with privacy laws. This has been addressed in Section 3408.

The Director adopted these rules on _____, and they shall become effective on the date of publication of this notice in the *D.C. Register*.

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

CHAPTER 34 PAID LEAVE CONTRIBUTIONS

3400 EMPLOYER REGISTRATION

3400.1 Each covered employer with five (5) or more covered employees shall register through the online portal with DOES. Covered employers with fewer than five (5)

covered employees who notify DOES that they do not have access to a computer may request to register via a paper form.

3400.2 DOES shall maintain a separate account for each covered employer and shall credit the account with all contributions paid by the covered employer after July 1, 2019. This account shall be maintained for accounting purposes only and shall have no bearing on the rights of covered employees to benefits under Chapter 35 (Paid-Leave Program Benefits).

3400.3 Each covered employer shall be able to update its account with information related to its business activities, such as street address, email address, telephone number, and business status; to submit its quarterly wage reports pertaining to covered employees; and make payments electronically. A covered employer shall notify DOES if it ceases to be a covered employer as defined by the Act for any reason, or if there is a change in the ownership of the business.

3401 OPT-IN FOR SELF-EMPLOYED INDIVIDUALS

3401.1 An individual who earns self-employment income (“self-employed individual”) may opt into the paid-leave program within the following applicable open enrollment periods:

- (a) The first 90 days of program commencement in 2019;
- (b) Beginning with calendar year 2020, and in each calendar year thereafter, the months of November and December; or
- (c) Within sixty (60) days of commencement of self-employment in the District of Columbia.

3401.2 A self-employed individual shall submit a request to opt into the paid-leave program using the online portal or through an electronic or non-electronic format approved by DOES as provided on the DOES website.

3401.3 When submitting a request to opt into the paid-leave program, a self-employed individual shall provide, through the online portal or in another format approved by DOES as identified on the DOES website, a copy of one of the following documents:

- (a) District of Columbia business license;
- (b) District of Columbia occupational license; or
- (c) Contracts, tax documents, billings from or payments to a District of Columbia address (including electronic billings), documents demonstrating that work was performed at a specific site within the

District, or other documentation that demonstrates self-employment in the District.

- 3401.4 Before 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.
- 3401.5 A self-employed individual who opts into the paid-leave program shall remain continuously enrolled in the program until he or she elects to opt out, as provided in section 3402, or is removed, as provided in section 3402.
- 3401.6 If a self-employed individual who has opted into the paid-leave program is also a covered employee employed by a covered employer, his or her paid-leave benefit payment amount shall be based on the combined wages from covered employment and self-employment income as provided for in Chapter 35 (Paid-Leave Program Benefits).
- 3401.7 Each self-employed individual shall be able to update his or her account on the online portal with information related to his or her business activities, such as street address, email address, telephone number, and business status; to submit the individual's quarterly earnings reports; and make payments electronically.

3402 OPT-OUT OF SELF-EMPLOYED INDIVIDUALS

- 3402.1 A self-employed individual who previously opted into the paid-leave program may elect to opt out of the paid-leave program through the online portal or through an electronic or non-electronic format approved by DOES.
- 3402.2 A self-employed individual may opt out of the program only during an open enrollment period. Any election made during an open enrollment period shall take effect beginning on the first day of the following calendar quarter.
- 3402.3 Opting out of the program and removal from the program are distinguished as follows:
- (a) A self-employed individual shall be considered to have opted out of the paid-leave program if the self-employed individual had previously opted into the program and makes an election during an open enrollment period to no longer participate in the program while still earning self-employment income in the District of Columbia.
 - (b) A self-employed individual may request that DOES remove him or her from the paid-leave program by notifying DOES that:

- (1) The individual has moved the primary place of business for all of the individual's self-employed businesses out of the District of Columbia and intends to earn no self-employment income for any self-employed business in the District of Columbia within the next fifty-two (52) weeks;
- (2) The individual has accepted employment by a covered or non-covered employer and intends to earn no self-employment income in the District of Columbia within the next fifty-two (52) weeks;
- (3) In the next fifty-two (52) weeks, the individual intends to continue earning self-employment income, but not for work that is performed more than fifty percent (50%) of the time in the District of Columbia; or
- (4) The individual intends to earn no income within the next fifty-two (52) weeks.

3402.4 The decision to remove a self-employed individual per subsection 3402.3(b) rests solely with DOES.

- (a) DOES may request additional documentation from the self-employed individual to support his or her request for removal from the program.
- (b) If DOES determines that a self-employed individual should be removed, it shall inform the self-employed individual that he or she has been removed from the program by sending electronic notice via both the online portal and email to the self-employed individual's last known email address, and by physical mail to the individual last known mailing address.

3402.5 A self-employed individual who previously opted out of the paid-leave program may opt into the program during an open enrollment period, provided that:

- (a) Beginning on January 1, 2020, the self-employed individual shall not be eligible to receive benefits pursuant to Chapter 35 (Paid-Leave Program Benefits) for the first year after opting into the program; and
- (b) If a self-employed individual opts out of the paid-leave program two (2) or more times, he or she shall be barred from opting into the program for a period of five (5) years from the date of his or her second opt out of the program.

3402.6 A self-employed individual who was removed from the program for a reason set forth in subsection 3402.3(b) may re-enroll in the program during an open enrollment period if he or she resumes self-employment in the District of Columbia as described in section 3401. DOES reserves the right to request

additional documentation from an individual applying for re-enrollment in the program.

3402.7 A self-employed individual who did not opt into the program during the first open enrollment period for which the individual was eligible to opt into the program, may opt into the program during an open enrollment period, but shall not be eligible to opt out of the program for three (3) years following the election to opt in.

3403 WAGES

3403.1 For the purposes of implementation of the Act, the term “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.

3404 CONTRIBUTIONS BY COVERED EMPLOYERS TO THE UNIVERSAL PAID LEAVE IMPLEMENTATION FUND

3404.1 A covered employer shall contribute quarterly an amount equal to 0.62% of the wages of each of its covered employees, regardless of any other benefit programs offered by the employer, for services performed in the District of Columbia to the Universal Paid Leave Implementation Fund online or in another format approved by DOES.

3404.2 A covered employer who pays unemployment insurance to the District of Columbia for an employee during any quarter of a calendar year is presumed to be required to contribute to the Universal Paid Leave Implementation Fund for that employee for that quarterly period, unless the employer provides information consistent with the Act and regulations to rebut the presumption that the individual was a covered employee during that quarterly period.

3404.3 A self-employed individual who has opted-in to the paid-leave program shall contribute quarterly an amount equal to 0.62% of the total gross earnings from all of the self-employed businesses for which the individual performs at least fifty percent (50%) of his or her work in the District of Columbia. Payments shall be made to the Universal Paid Leave Implementation Fund online or in another format approved by DOES.

3404.4 The contributions payable pursuant to subsection 3404.1 shall become due and be paid by each covered employer to DOES.

3404.5 Each covered employer shall, not later than the last day of the month following the close of each calendar quarter, make a report of and pay the contributions

which shall have accrued with respect to wages paid to covered employees during the quarter.

- (a) DOES may permit covered employers to submit quarterly employee wage data from existing Unemployment Insurance reporting forms to determine contributions owed.
- (b) DOES may use the data collected from UC-30 forms to track wage history. An employer may upload a copy of those completed quarterly reports to the portal to meet its quarterly reporting requirements under this chapter.
- (c) By itself, an employee's lack of Social Security number or tax identification number does not excuse an employer from paying contributions on behalf of that individual if he or she is otherwise a covered employee.

3404.6 DOES shall extend the time for filing quarterly reports for all covered employers and self-employed individuals for a period of thirty (30) calendar days if DOES finds that the purposes of the Act would be defeated by requiring timely filing of the quarterly reports.

3404.7 Where a covered employee performs services in employment for two (2) or more covered employers during the same period, each covered employer shall make contributions on the basis of each covered employer's payments to the covered employee.

3404.8 If the contributions under this section are not paid when due, there shall be added thereto interest at the rate of one and a half percent (1 1/2%) per month or fraction thereof from the date they become due until paid. Interest shall not run against a court-appointed fiduciary when the contributions are not paid timely because of a court order.

3404.9 If contributions under this section are not paid, or wage reports are not filed on or before the first day of the second month following the close of the calendar quarters for which they are due, there shall be added a penalty of ten percent (10%) of the amount due. The penalty shall not be less than one hundred dollars (\$100), and DOES may waive the penalty for good cause. The 10% penalty (or \$100, whichever is greater) is a flat payment and does not accrue interest.

3405 COLLECTION PROCEDURES

3405.1 At any time after a covered employer or self-employed individual fails to file required reports or pay owed contributions, DOES shall inform the covered employer or self-employed individual of such failing by sending electronic notice via both the online portal and email to the covered employer's or self-employed

individual's last known email address, and by physical mail by sending notification to the employer's or self-employed individual's last known mailing address. Such notice shall be on forms of general applicability and shall include information regarding the quarters for which reports were not filed and the amount of contributions, interest, and penalties owed. Such notice shall demand filing of unfiled reports and payment of all sums owed within thirty (30) calendar days from the date of the notice in the online portal. At DOES' discretion, the notice may also inform the covered employer or self-employed individual of the option to enter into a payment plan described in subsection 3405.11, if approved

3405.2 If an employer or self-employed individual disagrees with DOES' determination of the failure to report or to pay contributions, the employer or self-employed individual may file an administrative appeal to DOES within the same thirty (30) day period provided for in subsection 3405.1. The appeal shall be filed using the online portal, or another format approved by DOES, and shall contain evidence showing that reports have been filed or contributions have been paid, or an explanation for the employer's or self-employed individual's late action.

3405.3 (a) After considering the new evidence, DOES shall send notice within thirty (30) calendar days to the employer or self-employed individual through the online portal, and any other format approved by DOES as described in subsection 3405.1, that, based upon this consideration of the submitted evidence:

(1) The claim against the employer or self-employed individual is resolved;

(2) The claim has been modified; or

(3) The claim remains the same.

(b) During the thirty (30) day period of DOES' consideration of the administrative appeal, the thirty (30) day period provided for in subsection 3405.1 will cease to run; however, the covered employer's or self-employed individual's other obligations under this chapter shall not be suspended. In the case of either (b) or (c), DOES shall notify the covered employer or self-employed individual that another thirty (30) day period as described in subsection 3405.1 has begun from the date of this notice in the portal.

3405.4 Only one administrative appeal provided by this section shall be allowed for each report due or contribution owed.

3405.5 If the covered employer fails to respond to the notice described in subsection 3405.1 by filing reports, paying contributions, or requesting an administrative appeal under subsection 3405.2, DOES may impose interest and penalties, file

liens, bring civil actions, or otherwise take any lawful action to compel the filing of reports and the payment of contributions, interest, and penalties. For self-employed individuals, DOES may terminate the individual's enrollment in the program, in addition to imposing interest and/or penalties, if the self-employed individual fails to pay the requisite contributions.

3405.6 In cases where DOES determines that collection by levy, distraint, civil action, or other extraordinary process may be necessary, a Notice of Delinquency shall be served on the covered employer. The notice shall be delivered via the online portal, by email, and by registered mail, return receipt requested, to the covered employer's last known address. At the discretion of DOES, the notice may also be served in person by the Director's designee. In the case of a Notice served by mail which is refused or otherwise not deliverable, the Director shall serve a second Notice of Delinquency by first class mail, postage prepaid, at the covered employer's last known address. Such Notice of Delinquency shall be separate from and in addition to the general notice set forth in subsection 3405.1.

3405.7 The Notice of Delinquency shall contain the following:

- (a) A statement of the amount due for contributions, interest, and penalties;
- (b) A demand for payment of the amount due;
- (c) A statement that the covered employer has ten (10) business days from the date of the Notice of Delinquency in the online portal to pay the contributions, interest, and penalties owed;
- (d) A statement that at the end of the ten (10) business-day period, the Director may attempt to collect the amount due by any means authorized by the Act and this chapter and without further demand or notice;
- (e) In the case of self-employed individuals, a statement that at the end of ten (10) business days, the self-employed individual may have his or her enrollment in the program terminated; and
- (f) A statement that the covered employer or self-employed individual has the option to enter into a payment schedule with DOES, and instructions for pursuing this option.

3405.8 Within ten (10) business days after posting of the Notice of Delinquency on the online portal, the covered employer or self-employed individual shall file the required reports or pay in full the amount due for contributions, interest, and penalties.

3405.9 The requirement to file reports or pay the contributions, interest, and penalties owed with the ten (10) business-day period described in subsection 3405.8 may

be waived if, within the same ten (10) business-day period, the covered employer or self-employed individual agrees to a payment schedule, approved by DOES and in compliance with subsections 3405.11, 12, and 13, by which the covered employer or self-employed individual will pay the amount due, together with interest and penalties, in regular installments.

3405.10 The ten (10) business-day period during which a covered employer or self-employed individuals must respond to a Notice of Delinquency shall be determined as follows:

- (a) The period shall begin to run on the day after the date of electronic notification via the online portal and email;
- (b) Legal holidays shall be counted except that if the last day for responding to a notice falls on a legal holiday, the time period shall end on the next day which is not a Saturday, Sunday, or legal holiday.

3405.11 The Director may authorize a covered employer or self-employed individual to pay delinquent amounts by regular monthly installments of such duration as will liquidate the delinquency in the shortest amount of time deemed reasonable by DOES. In determining whether to enter into an installment agreement, DOES shall consider:

- (a) The amounts owed and age of the debt;
- (b) The covered employer's or self-employed individual's past history of payment and compliance with any prior installment payment plans;
- (c) The covered employer's or self-employed individual's financial condition and, particularly, the prospects that the covered employer or self-employed individual will be able to fulfill its obligations under the installment plan; and
- (d) Any other factors which may be brought to DOES' attention which might affect the covered employer's or self-employed individual's ability to meet its installment obligations.

3405.12 In any installment payment agreement, the covered employer or self-employed individual shall acknowledge that default in any installment payment or in any future filing of required reports or payment of contributions voids the agreement and the Director may institute any collection procedure or penalty permitted by the Act and this Chapter without further notice or demand to the covered employer.

3405.13 DOES may renegotiate an installment payment schedule if DOES determines that changed circumstances of the covered employer or self-employed individual

warrant changes to the plan. However, renegotiation of an installment schedule may not extend the time period beyond twenty-four (24) months from the conclusion date of the original agreement.

- 3405.14 If a covered employer fails to respond to DOES' Notice of Delinquency by paying delinquent contributions, interest, and penalties owed or by entering a payment schedule described in section 3405.9, or if a covered employer fails to make another scheduled installment payment while the resolution of the delinquent payment is still pending, DOES, without further notice or demand to the covered employer, may attempt to collect the overdue payments by any method authorized by the Act and this chapter. In the case of self-employed individuals, DOES may terminate their enrollment in the program without further notice.
- 3405.15 A self-employed individual whose enrollment in the program has been terminated as described in subsection 3405.14 may not re-enroll in the program until all amounts owed to DOES, including all penalties and assessed interest, are paid and received by DOES. Once all amounts owed are received, a self-employed individual shall be able to re-enroll into the program during an open enrollment period as described in subsection 3401.1(b).
- 3405.16 DOES may levy a covered employer's bank account(s) by serving a Notice of Levy on the appropriate officer of the bank.
- 3405.17 DOES may levy a covered employer's contract(s) with any agency of the Government of the District of Columbia by serving a Notice of Levy on the official of said agency authorized to accept said Notice.
- 3405.18 DOES may levy upon property belonging to a covered employer by serving a Notice of Levy on the custodian of said property. Failure of the custodian to honor the levy shall result in the custodian's liability for the delinquent contributions, interest, and penalties.
- 3405.19 DOES shall cause the examination of any property seized pursuant to this section to determine its condition, and shall keep records of condition, storage location, and any other actions necessary to maintain the property prior to sale.
- 3405.20 A covered employer whose property has been seized pursuant to this section may redeem the property prior to the time it is sold by paying DOES the full amount of delinquent contributions, interest, and penalties owed and any costs incurred by DOES in seizing and storing the property or preparing the property for sale.
- 3405.21 No earlier than ten (10) calendar days following seizure of property pursuant to this section, DOES shall commence the process to sell the property. If DOES determines that adjournment of the sale will best serve the interest of the Universal Paid Leave Implementation Fund, DOES shall have the power to

adjourn the sale until such time as DOES determines that the best interest of the Universal Paid Leave Implementation Fund would be served by continuation of the sale of the property.

- 3405.22 (a) The proceeds of any sale of property under this section shall be deducted from the balance due to DOES as follows:
- (1) By first applying the proceeds to the costs of the sale, including costs of seizing, storing, advertising, and auctioneer fees;
 - (2) Then by applying the proceeds to delinquent penalties, interest, and contributions, in that order.
- (b) Any excess funds remaining after paragraph (a) of this subsection has been complied with shall be forwarded to the covered employer from whom the property was seized.

3405.23 DOES shall issue a Certificate of Sale to the purchaser of property at the sale and shall prepare ownership documents for property conveyed by sales made pursuant to subsection 3405.16. All property shall be sold "as is" and "where is" without any guarantee or warranty express or implied. DOES shall sell only the right, title, and interest of the delinquent covered employer in the property, and the covered employer's interest will be offered subject to any prior outstanding mortgages, encumbrances, or other liens.

3405.24 Any monies collected by DOES as a result of assessing a penalty as described in section 3405, and any accrued interest on an assessed penalty, shall be deposited into the Universal Paid Leave Implementation Fund.

3406 ONLINE PORTAL

3406.1 All DOES communications with covered employers and self-employed individuals pursuant to the Act shall occur through the online portal, or through an electronic or non-electronic format approved by DOES.

3406.2 All covered employers and self-employed individuals shall be responsible for maintaining current contact information in the online portal or through another format approved by DOES.

3406.3 All covered employers and self-employed individuals will receive notifications related to any required actions and the status of claims for paid leave through the online portal or through another format approved by DOES.

3406.4 All covered employers and self-employed individuals shall be responsible for responding to any requests for additional information through the online portal or through another format approved by DOES.

3406.5 Covered employers with less than 5 employees, and self-employed individuals who do not have access to a computer, may request paper communication from DOES.

3406.6 Notifications from DOES regarding late payments and reports as identified in section 3405 shall be sent by mail to the latest known address in addition to the online portal.

3407 EMPLOYER RESPONSIBILITIES

3407.1 Each covered employer shall post and maintain a paid leave program notice provided by DOES at each worksite in a conspicuous place or places where notices to employees are customarily posted. Covered employers shall send the notice to remote covered employees to post at their individual worksites.

3407.2 Each covered employer shall also provide the paid leave program notice to employees at the following times:

- (a) To an individual employee, within 30 days of the employee's hiring;
- (b) Annually to all employees; and
- (c) To an individual employee, at the time the covered employer receives direct notice from that employee that leave for a qualifying event is needed.

3407.3 Covered employers shall have the burden of demonstrating compliance with this subsection. A covered employer may establish compliance with subsection 3407.2 by sending notice via email or similar digital transmission, provided that the covered employer retains email receipts or signed statements by covered employees acknowledging delivery.

3407.4 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.

3407.5 For purposes of section 3407, worksite means a single physical location where business is conducted or where services or industrial operations are performed. In the case of employers engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice required by this section shall be posted at the location to which covered employees report each day.

3408 RECORD KEEPING

Covered employers are required to develop and maintain records pertaining to their obligations under the Act. Covered employers must keep the records for no less than three years and make them available for inspection, copying, and transcription by DOES representatives upon request. Records kept in computer form must be made available for transcription and copying. All records shall be kept confidential and only be released to parties other than authorized DOES representatives when required by law to do so.

These records shall include:

- (a) The name and Social Security number, or, if the Social Security number is unavailable, tax identification number, of each covered employee;
- (b) The beginning and ending dates of each pay period;
- (c) The wages paid for each pay period, including the cash value of other remuneration, gratuities, and tips and expenses incurred by each covered employee for which a deduction from wages is claimed;
- (d) Method of payment;
- (e) Earnings of employees;
- (f) The dates on which wages were paid;
- (g) Dates of parental, medical, and family leave taken by employees;
- (h) Copies of employee notices of leave furnished to the employer;
- (i) Copies of all written notices given to employees as required under the Act;
- (j) Documents describing employee benefits, including short- and long-term disability policies, sick leave, vacation leave, and other employer paid and unpaid leave policies and practices; and
- (k) Records of disputes between the employer and the employee regarding the Act.

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.*).

“**Commencement of self-employment**” – means:

- (a) The date that a self-employed individual first receives self-employment income that is required to be reported as self-employment income to the Internal Revenue Service; or
- (b) The date that a self-employed individual returns to earning self-employment income in the District of Columbia following a period of removal as described in section 3402.3(b).

“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 his or her work time for the covered employer in the District of Columbia, and not more than 50% of his or her work time for that covered employer in another jurisdiction. Work time spent at another work site outside of the District of Columbia is incidental in nature; is temporary or transitory in nature; or consists of isolated transactions.

“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.

“Director” – means the director of DOES.

“DOES” – means the Department of Employment Services.

“Last known email address” – means the last email address provided by covered employer or a self-employed individual to the paid-leave program.

“Last known mailing address” – means the last mailing address provided by a covered employer or a self-employed individual to the paid-leave program.

“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:

- (a) The first 90 days after the date on which DOES begins to collect contributions to the Universal Paid Leave Implementation Fund;
- (b) The first sixty (60) days following the commencement of self-employment in the District of Columbia; or
- (c) Beginning with calendar year 2020, and in each calendar year thereafter, the months of November and December.

“Paid-leave benefits” – means the monetary benefits provided pursuant to Chapter 35 (Paid-Leave Program Benefits).

“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.

“Self-employed individual” – means an individual who carries on a trade or business as a sole proprietor, an independent contractor, or a member of a partnership.

“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 meaning as provided in section 3403.