Section	Language	Comment
3400	**EMPLOYER REGISTRATION**	
3400	Employer Registration	This section outlines how employers should initially interact with the Department of Employment Services (DOES) around Universal Paid Leave (UPL) employer registration and filings. The Consortium supports synchronization of the proposed UPL system with DOES' existing system for unemployment compensation. Pairing communications, requirements, and deadlines with the existing unemployment compensation system will increase administrative efficiency and enable greater employer compliance.
3400.1	Each covered employer performing services in the District of Columbia shall register through the online portal with DOES.	**We encourage the agency to ensure that the online registration and correspondence between the agency and the employer should be easy to follow and timely.** It is important to the business community that the online portal is user-friendly and allows for information to be shared both ways. There should be built into the system mechanisms for DOES to communicate to employers and for employers to pose questions to DOES, or share information with DOES, to respond to inquiries and requests for information. In general, any questions or concerns about compliance issues should be communicated through the online portal.
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, and make payments electronically.	Regarding the quarterly wage reports (referenced in 3400.3 & throughout 3404), in general, we suggest that the Universal Paid Leave Act's implementation and compliance structure should be predictable, clear, and not overly burdensome. The quarterly reports should coincide with existing employer reports. To the extent that they can be submitted using the existing forms, the reports should be limited to and information germane to identifying wage rates and payroll information. Such as to identify employees, how much they were paid, and the corresponding period in which they were paid. Anything beyond what is necessary to determine the contribution amount should be is opposed by the business community. This subsection provides that an employer can update its account with information for DOES but does not require DOES to use the portal to provide the employer with information such as agency notices or requests for employer action. *Recommendation* This subsection should be revised to make the portal two-way, requiring DOES to update employers of critical information such as policy changes or potential compliance issues. Section 3400.3 of the Proposed Rule II requires each covered employer "to submit its quarterly wages reports" through an online portal to DOES. As drafted, the Proposed Rule II does not define term "quarterly wage reports," leaving employers guessing about what information will be requested. Stated differently, it is unclear whether covered employers will be required to provide quarterly wage reports for their employees on an individual employee basis, aggregate employee basis, or some other basis. MLDC respectfully requests that the "quarterly wage reports" include only aggregate wage information related to covered employees. To this end, the Company asks that section 3400.3 be amended to read: 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 <u>aggregate</u> quarterly wage reports <u>pertaining to covered employees</u>, and make payments electronically.
3401	**OPT-IN OF SELF-EMPLOYED INDIVIDUALS**	

3401.1	An individual who earns self-employment income ("self-employed individual") may opt into the paid-leave program during an applicable open enrollment period.	**The regulations should clarify which self-employed people can opt-in and receive benefits.** The revised regulations provide helpful additional details regarding coverage of people who are self-employed. However, we are concerned that some of the requirements in the regulations may inadvertently exclude self-employed individuals who were intended to be allowed to opt in under the statute. In addition, the regulations should clarify how the Department will determine whether a self-employed person "earned self-employment income for work performed more than fifty percent of the time in the District of Columbia" and what information or documentation self-employed people will need to provide for this determination. Because only self-employed individuals who meet this requirement will be eligible to receive benefits, it is important that they be able to determine whether they will qualify before they opt in.
		Issues regarding self-employed people: There is a need for greater clarity on a number of provisions that impact self-employed people. 1. **Clarifying which self-employed people can opt-in and receive benefits** While we appreciate the additional details regarding coverage of the self-employed in these revised regulations, we are concerned that some of the requirements in the regulations may inadvertently exclude self-employed individuals who were intended to be allowed to opt in under the statute.
		Clarify how self-employed people will document where they've performed their work; specify documentation needs for "commencement of business." I recommend DOES permit self-employed people to demonstrate their self-employment is attached to the District by accepting contracts, tax documents, billings from or payments to a DC address (including electronic billings), documents demonstrating work was performed at a specific site within DC, and other documentation approved by the department. In addition, DOES should allow self-employed people to qualify by signing an affirmation that they perform more than 50% of their work earning self-employment income within the District. These documents, in addition to relevant business licenses, could also be used to determine the commencement of business for self-employed individuals.
		Clarifying which self-employed people can opt-in and receive benefits DCFPI appreciates that these revised regulations provide significant additional details regarding coverage of the self-employed. However, we are concerned that some of the requirements in the regulations may inadvertently exclude self-employed individuals who were intended to be allowed to opt in under the statute.
		Clarifying which self-employed people can opt-in and receive benefits We appreciate that these revised regulations provide significant additional details regarding coverage of the self-employed. However, we are concerned that some of the requirements in the regulations may inadvertently exclude self-employed individuals who were intended to be allowed to opt in under the statute.
		Clarify how self-employed people will document where they've performed their work; specify documentation needs for "commencement of business." I recommend DOES permit self-employed people to demonstrate their self-employment is attached to the District by accepting contracts, tax documents, billings from or payments to a DC address (including electronic billings), documents demonstrating work was performed at a specific site within DC, and other documentation approved by the department. In addition, DOES should allow self-employed people to qualify by signing an affirmation that they perform more than 50% of their work earning self-employment income within the District. These documents, in addition to relevant business licenses, could also be used to determine the commencement of business for self-employed individuals.

		Clarify how self-employed people will document where they've performed their work; specify documentation needs for "commencement of business." I recommend DOES permit self-employed people to demonstrate their self-employment is attached to the District by accepting contracts, tax documents, billings from or payments to a DC address (including electronic billings), documents demonstrating work was performed at a specific site within DC, and other documentation approved by the department. In addition, DOES should allow self-employed people to qualify by signing an affirmation that they perform more than 50% of their work earning self-employment income within the District. These documents, in addition to relevant business licenses, could also be used to determine the commencement of business for self-employed individuals.
3401.2	A self-employed individual shall submit a request to opt into the paid-leave program using the online portal or through another format approved by DOES.	Specifically, the final regulations should clarify: (1) how self-employed individuals can opt in other than by use of the online portal (section 3401.2);
		Specifically, the final regulations should clarify: (1) how self-employed individuals can opt in other than by use of the online portal (section 3401.2);
		Specifically, the final regulations should clarify: (1) how self-employed individuals can opt in other than by use of the online portal (section 3401.2);
		Specifically, the final regulations should clarify: (1) how self-employed individuals can opt in other than by use of the online portal (section 3401.2);
		First, the requirement in proposed section 3401.3 that self-employed individuals must have or produce a business or occupational license in order to opt in should be removed. The statute does not require that self-employed individuals have such a license in order to opt in, and the regulations should not exclude people from getting paid leave coverage solely because they did not previously have such a license. If it is not possible to fully remove this requirement, we urge the Department to allow self-employed individuals to submit alternate documentation, such as documentation showing a pending application for a business license or other documentation showing that the individual is self-employed. We recommend that the regulations state that a self-employed person meets the provision through documentation that shows the self-employment is attached to D.C., including but not limited to billings from or payments to a D.C. address (including electronic billings), contracts, tax documents, documents demonstrating work was performed at a specific site within D.C., or other documentation approved by the Department. In addition, the Department should allow self-employed people to meet this requirement by providing signed affirmations that they perform more than 50% of their work earning self-employment income within the District of Columbia.
		First, self-employed individuals should not be required to have or produce a business or occupational license in order to opt in. The statute does not require that self-employed individuals have such a license in order to opt in and the regulations should not exclude people from getting paid leave coverage solely because they did not previously have such a license. The requirement to produce a license as part of the opt-in process in proposed section 3401.3 should be removed. If it is not possible to fully remove this requirement, we urge the Department to allow self-employed individuals to submit alternate documentation, such as documentation showing a pending application for a business license or other documentation showing that the individual is self-employed. We also urge the Department to remove the requirement to either have such a license or be registered with the Office of Tax and Revenue in the definition of "self-employed individual" in section 3499. In particular, the second sentence of the definition of self-employed individual, which imposes a substantial additional limitation not ground in the statute, should be removed.

3401.3	When submitting a request to opt into the paid-leave program, a self-employed individual shall provide a copy of one of the following documents through the online portal or in another format approved by DOES: (a) Basic business license; (b) General business license; (c) Occupation or professional license in addition to a business license (if applicable).	**Expand the eligibility requirements in Section 3401.3 and in the definition of "Self Employed Individual."** Not all people earning income through self-employed models have a business license. This is especially true of independent contractors, consultants, and people working as freelancers in the gig-economy, and doubly true for those earning small amounts of income where tax forms are not required for payments. Licenses should be one way to document eligibility for self-employed paid leave coverage, but it should not be the only way.
		First, self-employed individuals should not be required to have or produce a business or occupational license in order to opt in. The requirement to produce a license as part of the opt-in process in proposed section 3401.3 should be removed. The statute does not require that self-employed individuals have such a license in order to opt in and the regulations should not exclude people from getting paid leave coverage solely because they did not previously have such a license. We recommend that the regulations allow self-employed individuals to submit alternate documentation, such as documentation showing a pending application for a business license or other documentation showing that the individual is self-employed.
		First, self-employed individuals should not be required to have or produce a business or occupational license in order to opt in. The statute does not require that self-employed individuals have such a license in order to opt in and the regulations should not exclude people from getting paid leave coverage solely because they did not previously have such a license. The requirement to produce a license as part of the opt-in process in proposed section 3401.3 should be removed. If it is not possible to fully remove this requirement, we urge the Department to allow self-employed individuals to submit alternate documentation, such as documentation showing a pending application for a business license or other documentation showing that the individual is self-employed.
		Expand the eligibility requirements in Section 3401.3 and in the definition of "Self Employed Individual." Not all people earning income through self-employed models have a business license. This is especially true of independent contractors, consultants, and people working as freelancers in the gig-economy, and doubly true for those earning small amounts of income where tax forms are not required for payments. Licenses should be one way to document eligibility for self-employed paid leave coverage, but it should not be the only way.
		Expand the eligibility requirements in Section 3401.3 and in the definition of "Self Employed Individual." Not all people earning income through self-employed models have a business license. This is especially true of independent contractors, consultants, and people working as freelancers in the gig economy, and doubly true for those earning small amounts of income where tax forms are not required for payments. Licenses should be one way to document eligibility for self-employed paid leave coverage, but it should not be the only way. Here is an example where making the criteria broader will give more people an opportunity to opt in to the social insurance pool, which will increase solvency and reduce costs.
3401.4	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.	The payment mechanism and schedule for contributions to the paid leave fund referenced in Section 3401.4 should be determined b before opting in, not after. We encourage DOES to establish a standard operating procedure for self-employed contributions, not create protocols on a case by case basis. This will simplify operations for the Department and provide needed clarity to the self-employed community.
3401.8	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.	Section 3401.8 could be simplified to: "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."

3402	OPT-OUT OF SELF-EMPLOYED INDIVIDUALS	
3402.1	A self-employed individual who opts into the paid-leave program may elect to opt out of the paid-leave program through the online portal or through another format approved by DOES.	**The regulations should clarify the opt-out process.** The statute wisely includes restrictions on the ability of self-employed individuals who have opted into coverage to leave the program. Without these important safeguards, the risks to the solvency and stability of the fund would be too great. However, these restrictions were intended to apply only to those who voluntarily opted out after opting in, not to those who withdrew from the program for other reasons, such as ceasing to be self-employed due to moving or accepting a job. The current regulatory language (section 3402) could be read to conflate these two situations. Specifically, the final regulations should clarify: (2) how self-employed individuals can opt out other than by use of the online portal (section 3402.1); Specifically, the final regulations should clarify: (2) how self-employed individuals can opt out other than by use of the online portal (section 3402.1); **Establishing a distinction between opting-out and withdrawing from the paid leave program** The statute wisely includes restrictions on the ability of self-employed individuals to leave the program once they have opted into coverage. Without these important safeguards, the risks adverse selection to the solvency and stability of the fund would be too great. However, these restrictions were intended to apply only to those who voluntarily opted out after opting in despite still earning qualifying self-employment income. The restrictions were not intended to apply to those who withdrew from the program for other reasons, such as ceasing to be self-employed due to moving or accepting a job. These life changes would likely render someone ineligible for continued self-employed coverage. However, the current regulatory language in Section 3402 conflates these situations and should be remedied. Adding the following language distinguishing between opting out and withdrawing from the program will provide the necessary clarity to self-employed individuals: *1. A self-employed individual shall be considered to have opted out of the paid leave program if they do not enroll in the first 90 days of program commencement in 2019, do not enroll within 60 days of commencement of their business in future years, or, if after enrolling, elects to no longer participate in the program while still earning self employment income in the District.* *2. A self-employed individual shall be considered to have withdrawn from the paid leave program if they cease to be a self-employed individual qualifying for purposes of this Act because they are no longer earning self- employment income for work performed a majority of the time in the District of Columbia.* Specifically, the final regulations should clarify: (2) how self-employed individuals can opt out other than by use of the online portal (section 3402.1); **Create a distinction between voluntarily opting out of the paid leave program and withdrawing.** Opt out restrictions should apply only to those who voluntarily opt out after opting in (or never opted in), not to those who withdraw from the program for other reasons, such as ceasing to be self-employed due to accepting a job or moving. Sections 3401 and 3402 conflate these situations. DOES should differentiate opting out from withdrawing. This is especially important in Section 3402.3; the regulations should clarify that only a voluntary decision to leave the paid leave program after having first opted in will be treated as "opting out" for purposes of the one-year waiting period to receive benefits. Specifically, the final regulations should clarify: (2) how self-employed individuals can opt out other than by use of the online portal (section 3402.1);

		Clarifying the opt-out process The statute wisely includes restrictions on the ability of self-employed individuals who have opted into coverage to leave the program. Without these important safeguards, the risks to the solvency and stability of the fund would be too great. However, these restrictions were intended to apply only to those who voluntarily opted out after opting in, not to those who withdrew from the program for other reasons, such as ceasing to be self-employed due to moving or accepting a job. The current regulatory language (section 3402) could be read to conflate these two situations.
		Create a distinction between voluntarily opting out of the paid leave program and withdrawing. Opt out restrictions should apply only to those who voluntarily opt out after opting in (or never opted in), not to those who withdraw from the program for other reasons, such as ceasing to be self-employed due to accepting a job or moving. Sections 3401 and 3402 conflate these situations. DOES should differentiate opting out from withdrawing. This is especially important in Section 3402.3; the regulations should clarify that only a voluntary decision to leave the paid leave program after having first opted in will be treated as "opting out" for purposes of the one-year waiting period to receive benefits.
		Create a distinction between voluntarily opting out of the paid leave program and withdrawing. Opt-out restrictions should apply only to those who voluntarily opt out after opting in (or never opted in), not to those who withdraw from the program for other reasons, such as ceasing to be self-employed due to accepting a job or moving. Sections 3401 and 3402 conflate these situations. DOES should differentiate opting out from withdrawing. This is especially important in Section 3402.3; the regulations should clarify that only a voluntary decision to leave the paid leave program after having first opted in will be treated as "opting out" for purposes of the one-year waiting period to receive benefits.
		We urge the Department to much more clearly differentiate voluntarily opting out from withdrawing from the program. This should include clarifying in section 3402.3 that only a voluntary decision to leave the program after having first opted in will be treated as "opting out" for purposes of the one-year waiting period to receive benefits.
		2. Clarifying the opt-out process We urge DOES to more clearly differentiate voluntarily opting out from withdrawing from the paid leave program. We suggest including a clarification in section 3402.3 that only a voluntary decision to leave the program after having first opted in will be treated as "opting out" for purposes of the one-year waiting period to receive benefits. While the statute does a good job of safeguarding the solvency and stability of the fund by restricting the ability of self-employed people who have opted into coverage from leaving the program, these restrictions were only intended to apply to those who voluntarily opted out after opting in, It was not meant for those who withdrew from the program for other reasons, such as ceasing to be self-employed. The current language in section 3402 of the proposed regulations seems to conflate these two situations.
		This distinction is especially important to Section 3402.3 of the regulations. Only a voluntary decision to leave the program after having first opted in or a decision not to enroll in the program beginning July 2019 or after commencement of business despite being for program participation should be treated as "opting out" for purposes of the one-year waiting period to receive benefits.

3402.3	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 withdraws from the paid-leave program two (2) or more 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 withdrawal from the program.	The portability of benefits between jobs and career paths is a hallmark feature of the Universal Paid Leave Act. Because your rights to paid leave benefits are tied to wage or earning history, as long as someone continues to participate in the District economy, they will be covered for paid leave when the unexpected family or medical emergency arises. This principle and perk would be undermined if the regulations appeared to penalize individuals interested in becoming entrepreneurs -- if someone has to wait a year before qualifying for paid leave benefits when they start their own business despite having a wage history in the District's paid leave program from their current employer, that is a significant disincentive to take the risk to start your own business, a challenge all too often experienced by women of reproductive age in particular. Similarly, if your skill set is one that allows you to easily and frequently move between traditional employment (employment where you receive a W2s) and self-employment, you should not be penalized by losing access to benefits when more lucrative opportunities come along whether that is working for a firm or freelancing. We should be encouraging entrepreneurial pursuits in the District's economy and celebrating, not diminishing, access to safety net benefits like paid family and medical leave that make self-employment a more stable career path. Distinguishing between opting out of and withdrawing from the paid leave program will be an important administrative task for the Office of Paid Family Leave. The online and paper forms designed to process someone leaving the paid leave program should proactively ask for the reason someone is opting out or withdrawing from the program (i.e. no longer interested in participating, moving, took a new job in DC's private sector, took a new job outside of DC's private sector, change in business status, etc). Maintaining these records will allow DOES to accurately assess if penalties for leaving the program should be applied if or when the individuals re-enrolls in the program.
		We urge the Department to much more clearly differentiate voluntarily opting out from withdrawing from the program. This should include clarifying in section 3402.3 that only a voluntary decision to leave the program after having first opted in will be treated as "opting out" for purposes of the one-year waiting period to receive benefits.
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.	**We believe that the agency's guidance and regulations should align with existing law and not expand beyond what has been enacted by the DC Council.** With regards to the section pertaining to the calculation of wages, the business community would like to reiterate to the agency that the agency's guidance should align with D.C. Code and remain as simple as possible to ensure employers understand how to compute wages and what is considered a wage. Provisions that are not considered compensation under §51-101(3), the Unemployment Compensation Act should be removed from the regulations. While Sec. 3403.1 references that wages are what is defined in §51-101(3) of D.C. Official Code, it would be helpful if the agency details verbatim what is a wage as described in law without listing items that are not defined in §51-101(3). For example, commissions, bonuses, and gratuities are considered wages, but not listed in this section.
		Sec. 32-541.01(22) of the Universal Paid Leave Amendment Act of 2016 (UPLA) defines wages as having the same meaning as provided in the Unemployment Compensation Act (UCA). The Consortium had previously commented on DOES' original proposed rules for UPLA in May 2018 and recommended that the rules clarify that the UPLA definition of "employment" must also be consistent with the UCA's definition of "employment". DOES' current proposed rules, entitled Paid-Leave Program Contributions (Proposed Tax Rules), changes the definition of "wages" and creates a definition for "employment". The Consortium appreciates the intent of these changes, but strongly recommends additional changes in order to properly implement UPLA and maximize efficiencies.

		UPLA and UCA must have consistent definitions for "wages". UPLA utilized a cross-reference to UCA's definition section, which ensures that the meaning under both laws will be the same. Provisions added in the Proposed Tax Rules (subsections 3403.2 - 3403.8), blur this cross-reference by expanding the definition of "wages", and adding new terms that are undefined and potentially conflict with UPLA's definition of wages. For example, the Proposed Tax Rules use the terms "compensation", "prizes", and "severance payments" - terms which are undefined in the Proposed Tax Rules, UCA, and UPLA. *Recommendation* The rules should define wages to reflect the definition under UCA and subsections 3403.2 - 3403.8 should be struck.
3403.5	The following amounts shall be reported as wages: (a) Amounts paid to a covered employee while an employee is on vacation or sick leave; (b) Prizes awarded to covered employees in connection with services performed in the business; and (c) Sums disbursed by a covered employer based on the covered employer's addition of a certain percentage to the customer's bill as a tip.	Subsequently, the language in 3403.2.-3403.6 should align with the language in the Unemployment Compensation Act. §51-101(3)(A)(ii) specifies that payment made on the account of "Sickness or accident disability" shall not be considered wages, yet in the proposed rules the agency indicated in Sec. 3403.5 that "vacation or sick leave" should be reported as wages. The insertion of "sick leave" as a wage calculation seems to conflict with existing law. We strongly recommend that the agency aligns the section to what is in code and strike Sec.3403.5(a). The Proposed Rule II enumerates the categories of wages, which are subject to contributions to the Universal Paid Leave Implementation Fund ("UPLIF"), pursuant to the Universal Paid Leave Amendment Act of 2106 (D.C. Law 21-264; D.C. Official Code §§ 32-541.01 et seq.) (the "Act"). In particular, Section 3403.5(b) of the Proposed Rule II stated that: The following amounts shall be reported as wages: (b) Prizes awarded to covered employees in connection with services performed in the business; … The Company is concerned that the term "prizes" is undefined, thus forcing businesses to speculate as to its meaning. For example, if a covered employer hosts a lunch for its employees to express appreciation for accomplishing a company goal, would that be considered a prize? Likewise, if a covered employer distributes "gift cards" of a de minimum amount to its employees to celebrate a successful year or as a holiday gift, would the Department view those gift cards as "prizes," and therefore require the covered employer to report the face value of the gift cards as wages for purposes of the Act? Colonial urges the Department to exempt small, non-cash prizes from UPLIF contribution requirements under the Act. To this end, the Company respectfully requests that Section 3403.5(b) be amended to read: (b) Cash prizes, in excess of $100, awarded to covered employees in connection with services performed in the business; … To do otherwise would subject covered employers to an extraordinary level of administrative burden in proportion to the prize offered and may cause covered employers to cease these important tools of employee appreciation and team building.

3403.7	The following amounts shall not be reported as wages: (a) Any definite allowance which represents no profit to the covered employee but is used by the covered employee to meet expenses of the covered employer's business. (For example -- an allowance for automobile, oil, and gas to a salesman required to work in his or her own car over an extended territory; all transit flash passes or tokens; telephone in an employee's residence for the employer's convenience; and entertainment money expended on the employer's customers); (b) Where a covered employer requires a covered employee to wear a special uniform and the covered employer launders or pays for the laundering of the uniform, the amount paid for laundering; (c) Discounts allowed covered employees upon goods purchased from the covered employers; and (d) So-called "supper money," being an allowance for a meal when the covered employee works overtime and is thus required to eat at other than his or her regular boarding or living place.	3403.7(d) appears to be missing a word. We recommend the following revision: “So-called "supper money," being an allowance for a meal when the covered employee works overtime and is thus required to eat somewhere other than his or her regular boarding or living place.”
3403.8	Covered employers shall report all severance payments on the quarterly wage reports.	**We strongly suggest that the agency remove Sec. 3403.8.** If included would require employers to count severance payments in their contribution amounts and listed in the quarterly reports. We disagree with this section because severance payments are not included in the UPLA act and DOES is without authority to request that employers incorporate payouts that include severances like retirement or settlement agreements into their 0.62% wage payment calculation. Additionally, as reiterated previously, the Paid leave benefit is intended to be supplemental income for working individuals. If a person has separated from a company, then (1) that person is unemployed and not eligible for paid leave; and (2) that person under certain circumstances may be receiving unemployment benefits which would make their eligibility for paid leave invalid.
3404	**CONTRIBUTIONS BY COVERED EMPLOYERS TO THE UNIVERSAL PAID LEAVE IMPLEMENTAITON FUND**	
3404	Contributions by Covered Employers to the Universal Paid Leave Implementation Fund	This section is designed to flesh out what an employer can expect to pay into the UPLIF. As with our other sections, some language included in this section is unclear or confusing and should be amended.
		Subsection 3404.1 should be revised to read as follows: "A covered employer shall contribute quarterly an amount equal to 0.62% of the total wages of each of its covered employees regardless of any other benefit programs offered by the employer to Universal Paid Leave Implementation Fund online or in another format approved by DOES."
		Pursuant to Section 3404.1 of the Propose Rule II, the Department will require covered employers to remit contributions to the District's Universal Paid Leave Implementation Fund ("UPLIF") on wages earned by their covered employees *both inside and outside of the District of Columbia.* This is an unprecedented requirement on District employers. District employers, for example, are not required to pay the State Unemployment Insurance Tax ("SUI") for employees, who works outside of the District, provided that the employees meet certain "localization of work" conditions in other states. For employees, who meet these conditions, District employers are required to remit SUI tax to the state where the employees actually worked. By contrast, as stated above, DOES is requiring covered employers to remit contributions to the UPLIF on *total* wages earned by covered employees, including in locations outside of the District. The Act does not command this result. In fact, the Act is silent on this matter and specifically authorizes that contributions are to be made "in a manner prescribed by the Mayor." See Section 103(a) of the Act.

3404.1	A covered employer shall contribute quarterly an amount equal to 0.62% of the total wages of each of its covered employees to the Universal Paid Leave Implementation Fund online or in another format approved by DOES.	To accept the Proposed Rule II, in its current form, will relegate the District government to the region's paid leave administrator and paymaster, leading to perverse results. Consider that, under the Proposed Rule II, an employee can spend less than 10 percent of her time working in the District and meet the definition of a covered employee. According to Section 101(3)(B) of the Act, a person is defined as a "covered employee" provided his or her employment is *based* in the District and he or she "spends a substantial amount of his or her work time for that 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." An employee who, for example, works 45% of her time in Maryland and the same amount of time in Virginia would qualify as "covered," provided her employment is *based* in the District. As such, her employer would be required to contribute an amount equal to 0.62 percent of her "total" wages to the District's UPLIF. District-based, multi-jurisdictional employers will be disproportionately burdened with Department's Proposed Rule II. There can be no doubt that non-District-based, multi-jurisdictional employers will be better positioned to schedule their employees to avoid them being designated as "covered employees," and therefore avoid the UPLIF tax entirely. Such a situation is deeply troubling on many levels. By gratuitously adding costs to District businesses, especially CBEs, the District is placing its businesses at a distinct competitive disadvantage vis-á-vis suburban business *for work performed both inside and outside of the District!* Every additional cost that the District government imposes on District employers only serves to unfairly harm District businesses and their employees. MLDC respectfully proposes the following amendment to Section 3404.1: 3404.1 A covered employer shall contribute quarterly an amount equal to 0.62% of the total wages of each of its covered employees, <u>for wages earned on services performed in the District of Columbia</u>, to the Universal Paid Leave Implementation Fund online or in another format approved by DOES. It is worth noting that the word "total" does not appear in Section 103(a) of the Act, regarding "Contributions to Universal Paid Leave Implementation Fund." This requirement is being included as part of the Proposed Rule II.
		As mentioned in our previous comments, we strongly suggest that the rules should spell out that nothing in the enacted law prohibits an employer from providing or not providing their own employer-provided paid leave benefit as of the effective date of the program. It should be at the discretion of the employer to provide their own benefit program outside of the District provided benefit program. As it relates, to Sec.3404.3, we believe it would be of value to the agency and to the business community to have additional guidance regarding the difference between and the coordination of paid leave that is provided by the employer and paid leave that is provided by the District. As you know and as we have commented before to the DC Council and in other public forums, paid time off exists in the private sector already. Employers offer a variety of benefits and DCFMLA covers most of the District's workforce. Additionally, the agency's own 3rd quarter report illustrated that employers currently offer paid leave benefits. However, the rules do not clarify or even address situations in which an employer is paying for benefits that cover the same qualifying benefits as the District provided leave program. Nor is the Sec. 3403 -3404 clear to the applicable employer if wages allocated for paid time off the equivalent or equal to what is provided to the District should be counted in the wage calculations.

3404.3	A covered employer shall make contributions under subsection 3404.1 even if the covered employer provides additional leave benefits to its employees.	It is our request, that the rules specify that a covered employee may not seek paid leave benefits from a covered employer covering the same amount of time and providing the same amount of wage replacement as the DOES PFL program. Additionally, a covered employee should not be able to pile leave benefit amounts from both the covered employer and District government more than what is allowable under local law. We would suggest the agency add permissible language to the rulemaking indicating that "an employer may require that leave taken under the UPL Act be taken concurrently or otherwise coordinated with leave provided under an employer policy for the same purposes".
		Subsection 3404.3 requires employers to make payments into the UPLIF "even if the covered employers provides additional paid leave." This subsection is redundant since subsection 3404.1 already requires contributions from all covered employers. As written, 3404.3 could be read to provide an additional reporting requirement for benefits provided by covered employers to their employees. What is unclear here and is not addressed elsewhere is how wages of an employee that has left payroll and is receiving benefits under the UPL program is to be treated for purposes of the UPLIF assessment. *Recommendation* Subsection 3404.3 should be struck.
3404.4	The contributions payable pursuant to subsection 3404.1 shall become due and be paid by each covered employer to DOES, and shall not be deducted in whole or in part from the wages of individuals in such employer's employ.	Additionally, we would recommend that Sec. 3404.4 should be amended to say, "the contributions payable pursuant to subsection 3404.1 shall become due and be paid by each covered employer to DOES." The language regarding not deductible from wages should be removed as the agency has no authority in UPLA law to enforce that rule under this specific Act. It is already encompassed through other wage laws.
		This subsection bars employers from deducting the UPL assessment from employees "in whole or in part." This prohibition does not appear in the UPLA as passed. Since the prohibition on deducting from employees' wages does not appear in the statue and the definition of wages is unclear, compliance with this provision would be difficult if not impossible for employers. *Recommendation* This subsection should be struck.
		In yet another illustration of regulatory overreach, Section 3404.4 of the Proposed Rule II attempts to dictate the source of the covered employer's contributions to the UPLIF, stating that: 3404.4 The contributions payable pursuant to Subsection 3404.1 shall become due and be paid by each covered employer to DOES and *shall not be deducted in whole or in part from the wages of individuals in such employer's employ* . (Emphasis added). This prohibition does not appear anywhere in the Act and represents another deeply troubling intrusion into the internal business affairs of District employers. Many District employers, particularly small CBEs and non-profits are struggling with increasing costs across the board, including: rents, property taxes, minimum wages, water bills, health insurance premiums, and the list goes on. Additional taxes, like the mandated contributions to the UPLIF, invariably lead to hard choices, trade-offs, and reductions in other areas. The Department should not dictate to employers the source of funds permitted to pay this new tax.

Clarifying quarterly reporting requirements

Section 3404.5 of the proposed tax regulations requires employers to submit reports of accrued wages from the past quarter but does not specify whether that report will need to account for wages on a per employee basis or a cumulative payroll basis. Presumably, DOES will need to maintain accurate quarterly records of employee wages in order to process a benefits claim, similar to how DOES collects information from employers on UC-30 forms about the employees for whom they are making contributions to the District's Unemployment Insurance program. For the vast majority of DC employers, the employees they pay DC Unemployment Insurance taxes for will align identically with UPLA's covered employees (and covered wages already align by statue). Where that is the case, we urge DOES to develop interagency procedures for sharing quarterly employee wage data between these two programs to minimize duplicative paperwork filed by employers. The regulations should make clear if and how UC-30 forms may be used to track quarterly wage history for purposes of complying with reporting requirements in Section 3404.5 (i.e. could employers or payroll companies be permitted to upload a copy of those completed forms to the paid leave portal, can DOES's Unemployment Insurance division internally forward these forms to OPFL if authorized by the company, etc.). We also recommend aligning the paid leave quarterly contribution and reporting cycles with the Unemployment Insurance calendar as employers, HR managers, and payroll companies are already used to these deadlines. For example, the first program contributions should be due by July 31, 2019, the same as Q2 reporting for Unemployment Insurance, with payments to DOES being accepted from July 1 - July 31, 2019 reflecting wages paid to employees in April, May, and June 2019.

We do recognize that there will be cases where per employee wages reported for Unemployment Insurance will not align with the wage data needed by OPFL. Specifically, Unemployment Insurance filings may include a District employer's employees who do not meet the threshold of covered employee based on the amount of work they perform in the District and immigrant workers who do not possess a Social Security or Individual Tax Identification Number would not be reported on a UC-30 form as they are ineligible for benefits. In these cases, supplemental forms may be necessary to develop to ensure an employer is making contributions for the appropriate members of their workforce. We are particularly mindful that the recommendation to reduce duplicative paperwork should not subvert the right of immigrant workers to be included in the District's paid leave program. The statue specifically omitted requirements for Social Security numbers to enable DC to cover the entirety of the District's [private sector] workforce. The regulations should make clear that the lack of a Social Security number or an Individual Taxpayer Identification Number does not preclude that worker from paid leave coverage if they otherwise meet the definition of covered employee, and employers are expected to make quarterly contributions accordingly. We encourage the Department to engage payroll companies for guidance on how best to capture and report quarterly wages in cases where there will not be straightforward alignment between Unemployment Insurance and paid family leave reports. The Department should also engage the DC Healthcare Alliance for their expertise on working with immigrant populations who do not possess the types of identification government systems are accustomed to relying on.

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 during the quarter to DOES.	This subsection requires employers to make quarterly reports to DOES. However, it does not specify what information should be included in the quarterly report. Also, it does not specify whether existing mandatory quarterly Unemployment Insurance (UI) reports can be amended or whether this is a completely new (and additional quarterly) report. *Recommendation* This subsection should be expanded to more clearly specify what information is required in the UPL quarterly report. Preferably, the UPL quarterly reports should align with the quarterly reports already required under the UCA.
		Provide clearer guidance on reporting requirements in Section 3404.5. DOES will need to maintain accurate quarterly records of employee wage history from each employer in order to process a benefits claim. Employers already share employee wage data with DOES each quarter by way of the UC-30 forms that accompany unemployment insurance contributions. I encourage DOES to develop procedures for sharing quarterly employee wage data from existing unemployment insurance reporting forms with the Office of Paid Family Leave to minimize duplicative paperwork on the part of employers.
		Provide clearer guidance on reporting requirements in Section 3404.5. My understanding of the Universal Paid Leave Amendment Act is that DOES will need to maintain accurate quarterly records of employee wage history in order to process a benefits claim. If so, my company already shares employee wage data with DOES each quarter by way of the UC-30 forms that accompany our unemployment insurance contributions. I encourage DOES to develop interagency procedures for sharing quarterly employee wage data from existing unemployment insurance reporting forms with the Office of Paid Family Leave to minimize duplicative paperwork on the part of employers. The regulations should clearly explain that DOES may use the data collected from UC-30 forms to track wage history and that employers will be permitted to upload a copy of those completed quarterly reports to the paid leave portal (or other appropriate process). If employers will need to complete an entirely new form unique to paid leave - which I hope is not the case - that should be referenced and explained in the regulations so that employer, HR directors, and payroll companies can prepare accordingly. As the owner of an incredibly small business, where I am the only person who is dealing with all administrative requirements like these forms, I would greatly appreciate any mechanisms that streamline the amount of forms and information that businesses are required to submit.
		Finally, Section 3400 of the Proposed Rule II imposes very significant interest and penalties for covered employers that fail to file timely reports and pay contributions required under the Act. Specifically, the Proposed Rule II requires covered employers to reconcile all of their payrolls within 30 days of the end of the quarter - or face interest and penalty charges. For many covered employers, especially under-resourced CBEs and small non-profits, this short turn-around will be impossible to meet. For employers that pay twice a month, it leaves them only two weeks before the end of a quarter to make all of the necessary adjustments and to prepare the quarterly reports. For example, if a quarter ends on March 31, and the covered employees are paid for that work on April 15, the covered employer will have only two weeks to reconcile all matters and file its report, before being subject to interest, penalties, and possible litigation.

		Accordingly, MLDC respectfully requests the following amendment to the Propose Rule 3404.5 Each covered employer shall, not later than 60 days ~~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 during the the quarter to DOES.
3404.7	After making the findings specified in subsection 3404.6, DOES shall simultaneously publish notice of the extension of time to file covered employers' quarterly reports through the online portal at least twenty-one (21) days immediately preceding the last day of the month following the close of the calendar quarter.	Specifically, the final regulations should add email communication protocols to Section 3404.7
3404.8	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.	This section states that when a covered employee works for two or more covered employers during the same period, each covered employer would be responsible for making contributions based on their payment to the covered employer. This section speaks only to the payment of wages/contribution to the fund, but without any understanding of how the agency plans to handle benefits claims in this scenario the business community has several unanswered questions. The agency should specify how it would address paid leave requests when an employee is working for more than one employer and should also provide guidance to both the employer and employee on how to these requests would be handled. Would both employers be responsible for providing the notice mandated by Sec.3407.2? Who will be notified that the employee is requesting time off? Can an employee take paid leave from one employer and still work for a covered employer while receiving benefits? How would this section align with self-employed individuals who also work for covered employers? It is important in the context of the employer's responsibility for payment, notice, and scheduling that these questions are clarified in the rules.
3404.10	If contributions under subsections 3404.1 and 3404.2 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.	Regarding Sec. 3404.10, we would like the agency to specifically detail that the 10% of the amount due and any other invoice is a flat payment and does not accrue. The business community suggests that the agency apply a grace period and allow covered employers the ability to ask for a voluntary payment to correct any errors without a penalty associated with it.
		The regulations should provide a fair opportunity to remedy late payments before disenrollment. Proposed section 3404.11 of the regulations would punish self-employed individuals who fail to make timely payments within just ten days after a single notification by the Department by disenrolling them from the program, preventing them from receiving paid leave benefits. Self-employed individuals who were removed from the program in this manner would not be able to rejoin the program until the next open enrollment period. This is an excessively punitive system. We urge the Department to revise this process to provide self-employed individuals with additional time to remedy any late payment. At a minimum, the Department should restore the 30-day window provided by the prior proposed regulations (previous proposed section 3309.7), in place of the extremely brief 10-day period in the current proposal. The Department should also provide multiple warnings before disenrolling self-employed individuals, rather than subjecting them to this harsh penalty after a single missed message.

In addition, this section currently provides that a self-employed individual who fails to make timely payments will be notified only through the online portal and by e-mail. This is unfair to those who do not have reliable Internet access, who in effect would not be notified and would have no opportunity to remedy the problem (even if the issue was through no fault of their own). We urge the Department to additional revise this regulation to specify what other means, such as through postal mail or phone calls, will be used to alert self-employed individuals of problems with their payment.

More broadly, the Department should provide self-employed individuals with as many tools as possible to remedy their delinquent payment before subjecting them to the harsh punishment of disenrollment. This should include, for example, allowing self-employed individuals to enter into a payment schedule, subject to Department approval, as currently allowed for employers under proposed section 3405.7.

4. Providing a fair opportunity to remedy late payments before disenrollment

We urge the Department to revise the proposed process to deal with self-employed individuals who fail to make timely payments to the Universal Paid Leave Implementation Fund. Under proposed section 3404.11, a self-employed individual who fails to make timely payments within just ten days after a single notification by the Department is disenrolled from the program, preventing them from receiving paid leave benefits. Self-employed individuals who were removed from the program in this manner would not be able to rejoin the program until the next open enrollment period. This is an excessively punitive system.

We urge the Department to revise this process by providing self-employed individuals with additional time to remedy any late payment. At a minimum, the Department should restore the 30-day window provided by the prior proposed regulations (previous proposed section 3309.7), in place of the extremely brief 10-day period in the current proposal. The Department should also provide multiple warnings before disenrolling self-employed individuals, rather than subjecting them to this harsh penalty after a single missed message.

In addition, this section currently provides that a self-employed individual who fails to make timely payments will be notified only through the online portal and by e-mail. This is unfair to those who do not have reliable Internet access, who in effect would not be notified and would have no opportunity to remedy the problem (even if the issue was through no fault of their own). We urge the Department to revise this section and include language about other means of contacting a self-employed individual, such as through postal mail or phone calls, to alert self-employed individuals of problems with their payment.

More broadly, the Department should provide self-employed individuals with as many tools as possible to remedy their delinquent payment before subjecting them to the harsh punishment of disenrollment. This should include, for example, allowing self-employed individuals to enter into a payment schedule, subject to Department approval, as currently allowed for employers under proposed section 3405.7.

Providing self-employed individuals a fair shot at remedying late payments before disenrollment

Proposed Section 3404.11 would punish self-employed individuals who fail to make timely payments within just ten days after a single notification by disenrolling them from the program, preventing them from receiving paid leave benefits. Self-employed individuals who are removed from the program in this manner would not be able to rejoin the program until the next open enrollment period. This is an excessively punitive system.

		We urge the Department to revise this process to provide self-employed individuals with additional time to remedy any late payment. At a minimum, the Department should restore the 30-day window provided by the prior proposed regulations (previous proposed Section 3309.7), in place of the extremely brief 10-day period in the current proposal. The Department should also provide multiple warnings before disenrolling self-employed individuals, rather than subjecting them to this excessive penalty after a single missed message. More broadly, the regulations should provide self-employed individuals with as many tools as possible to remedy their delinquent payment before subjecting them to the harsh punishment of disenrollment. This could include, for example, allowing self-employed individuals to enter into a payment schedule, subject to approval, as currently allowed for employers under proposed Section 3405.7 or applying other methods of payment collection listed in Sections 3404 and 3405. In addition, Section 3404.11 currently provides that a self-employed individual who fails to make timely payments will be notified only through the online portal and by e-mail. This is unfair to those who do not have reliable Internet access, who in effect would not be notified and would have no opportunity to remedy the problem. We urge the Department to revise this regulation to expand the methods of communication they will use to notify an individual of a late payment. Postal mail and phone calls should be used - in addition to the portal and email - to alert self-employed individuals of problems with their payment.
3404.11	If a self-employed individual does not make a timely payment required by this chapter, DOES shall inform the self-employed individual of the payment due by electronic notice via the online portal and to the self-employed individual's last known email address. If the payment due is not received by DOES within ten (10) calendar days after the receipt of the notice in the online portal, 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.	**Provide a fair opportunity to remedy late payments before disenrollment.** Section 3404.11 would punish self-employed individuals who fail to make timely payments within just ten days after a single notification from DOES by disenrolling them from the program. This is excessively punitive. Instead, the regulations should apply the penalties and collection procedures from Section 3405 and 3404.9-10. The regulations should further specify that DOES will notify self-employed individuals of their intention to seek interest and penalty fees by way of email, postal mail, and/or phone calls, in additional to communicating through the online portal.
		Providing a fair opportunity to remedy late payments before disenrollment Proposed section 3404.11 would punish self-employed individuals who fail to make timely payments within just ten days after a single notification by the Department by disenrolling them from the program, preventing them from receiving paid leave benefits. Self-employed individuals who were removed from the program in this manner would not be able to rejoin the program until the next open enrollment period. This is an excessively punitive system. We urge the Department to revise this process to provide self-employed individuals with additional time to remedy any late payment. At a minimum, the Department should restore the 30-day window provided by the prior proposed regulations (previous proposed section 3309.7), in place of the extremely brief 10-day period in the current proposal. The Department should also provide multiple warnings before disenrolling self-employed individuals, rather than subjecting them to this harsh penalty after a single missed message. In addition, this section currently provides that a self-employed individual who fails to make timely payments will be notified only through the online portal and by e-mail. This is unfair to those who do not have reliable Internet access, who in effect would not be notified and would have no opportunity to remedy the problem (even if the issue was through no fault of their own). We urge the Department to additional revise this regulation to specify what other means, such as through postal mail or phone calls, will be used to alert self-employed individuals of problems with their payment.

			More broadly, the Department should provide self-employed individuals with as many tools as possible to remedy their delinquent payment before subjecting them to the harsh punishment of disenrollment. This should include, for example, allowing self-employed individuals to enter into a payment schedule, subject to Department approval, as currently allowed for employers under proposed section 3405.7.
			Providing a fair opportunity to remedy late payments before disenrollment Proposed section 3404.11 would punish self-employed individuals who fail to make timely payments within just ten days after a single notification by the Department by disenrolling them from the program, preventing them from receiving paid leave benefits. Self-employed individuals who were removed from the program in this manner would not be able to rejoin the program until the next open enrollment period. This is an excessively punitive system. We urge the Department to revise this process to provide self-employed individuals with additional time to remedy any late payment. At a minimum, the Department should restore the 30-day window provided by the prior proposed regulations (previous proposed section 3309.7), in place of the extremely brief 10-day period in the current proposal. The Department should also provide multiple warnings before disenrolling self-employed individuals, rather than subjecting them to this harsh penalty after a single missed message. In addition, this section currently provides that a self-employed individual who fails to make timely payments will be notified only through the online portal and by e-mail. This is unfair to those who do not have reliable Internet access, who in effect would not be notified and would have no opportunity to remedy the problem (even if the issue was through no fault of their own). We urge the Department to additionally revise this regulation to specify what other means, such as through postal mail or phone calls, will be used to alert self-employed individuals of problems with their payment. More broadly, the Department should provide self-employed individuals with as many tools as possible to remedy their delinquent payment before subjecting them to the harsh punishment of disenrollment. This should include, for example, allowing self-employed individuals to enter into a payment schedule, subject to Department approval, as currently allowed for employers under proposed section 3405.7.
			Provide a fair opportunity to remedy late payments before disenrollment. Section 3404.11 would punish self-employed individuals who fail to make timely payments within just ten days after a single notification from DOES by disenrolling them from the program. This is excessively punitive. Instead, the regulations should apply the penalties and collection procedures from Section 3405 and 3404.9-10. The regulations should further specify that DOES will notify self-employed individuals of their intention to seek interest and penalty fees by way of email, postal mail, and/or phone calls, in additional to communicating through the online portal.
			Provide a fair opportunity to remedy late payments before disenrollment. Section 3404.11 would punish self-employed individuals who fail to make timely payments within just ten days after a single notification from DOES by disenrolling them from the program. This is excessively punitive. Instead, the regulations should apply the penalties and collection procedures from Section 3405 and 3404.9-10. The regulations should further specify that DOES will notify self-employed individuals of their intention to seek interest and penalty fees by way of email, postal mail, and/or phone calls, in additional to communicating through the online portal.

		Other self-employed people, advocates, and I are suggesting these adjustments because it is often difficult to know all the steps needed to set oneself up either formally or informally in a self-employment situation – and this should not result in an inability to participate in the paid leave program. I know from personal experience that even though I am well-educated, organized, and had a lot of advantages to draw on in starting a business that it can be confusing at first to sort out all of what needs to be done administratively, including how various government agencies will be sending their communications, and, as a result, I made my share of mistakes because I didn't realize exactly what I needed to do and by when. Some of these mistakes included the late filing of required forms and taxes. I was reassured that this is often a normal part of starting up a small business, especially for someone who is a handling all of this on one's own. However, with this being the case, it seems both excessively punitive and unfair to only give self-employed people a ten-day grace period for a missed payment and subsequently disenrolling them from the program, especially based on only one communication in one format, which can be easy to miss – particularly when businesses that often have more significant administrative resources are provided with more support and leeway to rectify a late payment situation. This will also have the effect of decreasing the size of the social insurance pool when the goal should be trying to keep as many people as possible within it.
3405	**COLLECTION PROCEDURES**	
3405	Collection Procedures	This section discusses how UPL contributions will be collected. It does not seem to clearly apply to self-employed individuals. *Recommendation* This section should be amended to apply to all covered employers including self-employed employees. It should not deviate from how nonpayers or non-filers of UI are treated.
		The consequences for a covered employer's failure to correctly report (or account for) its contributions to the UPLIF are substantial. See Section 3405, Collection Procedures of the Proposed Rule II. As such, covered employers need clarity and predictability regarding how the paid-leave program is being administered and how notices of infractions are communicated. Throughout Section 3406 of the Proposed Rule II, the Department states that communications and notices between the Department and covered employers shall be through "the online portal *or through another format approved by DOES."* (Emphasis added). Colonial maintains that creating additional avenues for communications, outside of the online portal, could compromise the integrity of the program and frustrate compliance. In the absence of an audit trial, which an online portal permits, there may be no way for a covered employer to document adherence to the Act and regulations.
		The collection procedures included in the Proposed Rule II suffer from serious due process shortcomings. By illustration, Section 3405 leaves covered employers with one option when the Department notifies them of a failure to file reports or to pay contributions - *comply, as demanded, or seek a DOES-approved payment schedule!* See Sections 3405.1 and 3405.5. The Proposed Rule II offer no opportunity - or process - for covered employers to answer the contents of a DOES Notice of Delinquency, before the Department is authorized to begin initiating liens, civil actions, etc. As such, a covered employer's only remedy is a judicial action, *after* the District government has already commenced a proceeding to take the property of the covered employer.

		The absence of an intermediary process of administrative relief will render District covered employers, particularly CBEs and small non-profits, at the mercy of DOES' demands, no matter how arbitrary, capricious or abusive of discretion. Small covered employers will often not have the resources to proceed to expensive litigation, effectively leaving them no recourse against the demands of the Department. MLDC respectfully requests that DOES amend Section 3405 of the Proposed Rule II and incorporate procedures that will protect the due process rights of covered employers. These procedures should include an internal administrative process between the Department and the covered employer, permitting the exchange of information and possible resolution, along with an opportunity for an administrative hearing.
3405.1	At any time after a covered employer fails to file reports or pay contributions required by the Act, DOES shall inform the covered employer of such failing by electronic notice via the online portal and to the covered employer's last known email 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 ten (10) calendar days from the date of receipt of the notice in the online portal.	We recommend that the notice of delinquency should be mailed, (in addition to email) to an employer's address. We suggest that DOES increase the timeline of response outlined throughout Sec. 3405. The regulations require employers to file missed reports and/or pay missed payments within ten (10) calendar days of receiving a notice from DOES. Employers are also held to a 10-day calendar timeline for response and/or payment of any amount due plus interest and penalties after receiving a Notice of Delinquency. The period should be expanded from 10 calendar days to 30 calendar days to allow employers time to investigate any issues, to provide a response to DOES, or issue payments. 30 calendar days is the basis for the District's prompt payment laws. However, we do have concerns with the language that speaks to from the date of receipt of the notice in the online portal. Without a notification or an alert system, how will the agency calculate receipt of a notice? What the business community has experienced with UI payments, is that even though the invoice says payable within "receipt", DOES starts their collection clock on the date they draft/issue the invoice not when the employer receives it. This is a concern for our members as many covered employers fear DOES will continue this practice with UPLA implementation.
		Specifically, the final regulations should add email communication protocols to Section 3405.1 We recommend removing the phrase "required by the Act," in the first sentence of Section 3405.1. There will be forms required by DOES to process employer contributions and determine self-employed eligibility that go beyond what is specified in the Act and employers must be held accountable for complying with those Departmental requirements.
3405.10	If a covered employer fails to respond to DOES' Notice of Delinquency and demand for payment of delinquent contributions, interest, and penalties, or if a covered employer fails to make a scheduled installment payment, DOES, without further notice or demand to the covered employer, may attempt to collect the overdue payments by any method authorized by the Act.	This subsection sets forth penalties for failure to pay the UPL assessment or file the UPL reports. In order to avoid confusion, all rules governing UI payments, reports and appeals should apply to UPL payments, reports and appeals. *Recommendation* Revise 3404.10 to establish the same protocols as set forth under UCA for UI payment, reports and appeals.
3406	**ONLINE PORTAL**	

3406	Online Portal	This section provides procedures for how covered employers will be expected to communicate with DOES. It seems to assume that all communication - requests from the government for contributions as well as responses by employers regarding paid leave claims -- go through one office at each employer. Like many large employers, universities have separate offices for payroll taxes, UI assessments and paid leave claims administration. As a result, not all parts of the portal should be available to all parts of each covered employer. For example, an employer's payroll office which would be responsible for quarterly reporting, UI and (presumably) UPL remittances should be able to access one part of the portal while the benefits department, responsible for monitoring claims and providing information about those claims should access a different part of the portal. The payroll office would not need access to claim information. Of greater importance is how breaches to data security will be treated. If the DOES system is hacked, for example, as happened several years ago to the federal OPM data base, who will be liable for such breach and who will be responsible for notifying the affected employees? Data security is a complicated issue and should be addressed by the rules. *Recommendation* The rules should specify that the portal should allow for multiple points of contact at each covered employer based on the employer's distribution of functions. In addition, each of these points of contacts should be able to access the portal and its information depending on their roles. In addition, the rules should specify responsibilities in the event of a data breach after the information is reported to DOES.
		The regulations should clarify methods of communicating outside the online portal. It is promising to see the Department centralizing and streamlining communications through a primary hub such as the online portal. The portal will be an invaluable resource to workers and employers alike. However, self-employed individuals include a wide range of types of workers, including people at all levels of income. Many self-employed people, particularly low-income workers, may not have reliable Internet access. For these workers, clear, reliable modes of communication other than the online portal will be essential to their ability to opt in. Therefore, we strongly urge the Department to specifically clarify what alternative methods of communication will be available beyond the online portal. These should include, at a minimum, postal mail, phone calls, and the ability to perform key tasks in person at sites like American Job Centers. Specifically, the final regulations should clarify: (3) in general, how self-employed individuals can communicate with the Department and receive information from the Department other than through the online portal (section 3406).
		In addition, subjecting covered employers to multiple avenues of communications and notice will only further confuse and complicate an already challenging set of new administrative responsibilities. As such, the Company requests that the words “or through another format approved by DOES” be struck from every subsection of Section 3406.

3406.1	All DOES communications with covered employers pursuant to this chapter shall occur though the online portal or through another format approved by DOES.	**5. Communicating with self-employer workers** While we applaud DOES for proposing to centralize and streamline communications through a primary hub such as the online portal, we are concerned it may leave some self-employed people out, particularly low-income workers, who may not have reliable Internet access. For these workers, clear, reliable modes of communication other than the online portal will be essential to their ability to opt in. Therefore, we strongly urge the Department to specifically clarify what alternative methods of communication will be available beyond the online portal. These should include, at a minimum, postal mail, phone calls, and the ability to perform key tasks in person at sites like American Job Centers. Specifically, the final regulations should clarify: (3) in general, how self-employed individuals can communicate with the Department and receive information from the Department other than through the online portal (section 3406). **Expanding communications beyond the online portal** It is wonderful to see DOES centralizing and streamlining program communications through one primary hub such as the online portal; this will be an invaluable resource to workers and employers alike. However, not all self-employed entrepreneurs and employers have reliable access to the Internet or are accustomed to doing business online. Further, many business operators are simply too busy to check an online portal regularly, of their own volition, meaning important notices could slip through the cracks if the Department relies exclusively on communications via the portal. It is imperative that the paid leave program establishes protocols for communicating with stakeholders beyond the online portal and, relatedly, ensures the portal is mobile friendly to cater to the large number of people who primarily access the internet through their smartphones. We encourage DOES to ensure the IT systems that are developed for the portal have a built-in capacity to automatically generate an email message to employers and self-employed individuals any time a notice is posted to the portal (e.g. reminders of filing deadlines, notices that an employee has applied for/been approved for paid leave, etc.). We also encourage DOES to use postal mail, phone calls, text notices, and in person support at American Job Centers locations to communicate with business operators. When an employer creates their account with the portal - a task for which DOES should establish office hours at American Job Centers to help walk employers through - DOES should ask employers to indicate two preferred methods communication so that the program can tailor communications accordingly. Specifically, the final regulations should add email communication protocols to Section 3406 and clarify: (3) in general, how employers and self-employed individuals can communicate with the Department and receive information from the Department other than through the online portal or other formats. **Ensure communication will happen outside the online portal.** It is wonderful to see DOES centralizing and streamlining communications through a primary hub such as an online portal but not all entrepreneurs are accustomed to doing business online, and not all people have reliable access to the internet. Important notices could slip through the cracks if the agency relies exclusively on the online portal. I urge DOES to couple portal postings with email notifications and, for those with limited access to technology, communication should also happen via phone and mail. **Communicating outside the online portal** It is excellent to see DOES centralizing and streamlining communications through a primary hub such as the online portal. The portal will be an invaluable resource to workers and employers alike.

		However, self-employed individuals include a wide range of types of workers, including people at all levels of income. Many self-employed people, particularly low-income workers, may not have reliable Internet access. For these workers, clear, reliable modes of communication other than the online portal will be essential to their ability to opt in. Therefore, we strongly urge the Department to specifically clarify what alternative methods of communication will be available beyond the online portal. These should include, at a minimum, postal mail, phone calls, and the ability to perform key tasks in person at sites like American Job Centers. Specifically, the final regulations should clarify: (3) in general, how self-employed individuals can communicate with the Department and receive information from the Department other than through the online portal (section 3406).
		Ensure communication will happen outside the online portal. It is wonderful to see DOES centralizing and streamlining communications through a primary hub such as an online portal but not all entrepreneurs are accustomed to doing business online, and not all people have reliable access to the internet. Important notices could slip through the cracks if the agency relies exclusively on the online portal. I urge DOES to couple portal postings with email notifications and, for those with limited access to technology, communication should also happen via phone and mail.
		Ensure communication will happen outside the online portal. It is wonderful to see DOES centralizing and streamlining communications through a primary hub such as an online portal but not all entrepreneurs are accustomed to doing business online, and not all people have reliable access to the internet. Important notices could slip through the cracks if the agency relies exclusively on the online portal. I urge DOES to couple portal postings with email notifications and, for those with limited access to technology, communication should also happen via phone and mail.
3407	**EMPLOYER RESPONSIBILITIES**	
		This section refers to how employers should provide notice to their employees, referencing a "conspicuous place" "accessible by all employees" where notice needs to be posted. While many employers still have "break rooms," increasingly many employers in today's business environment do not. In Washington, DC there are many non-traditional worksites or employers that permit employees to work remotely. It would be difficult to define an "easily accessible" space for these employees. It is even more complicated on a college campus with multiple work sites and multiple work arrangements for employees. *Recommendation* The rules should be clarified to allow for alternative forms of notice such as electronic access or electronic communications, to help address businesses with non-traditional work sites and work arrangements.
3407	Employer Responsibilities	The Act imposes requirements on covered employers to distribute a paid-leave notice to covered employees, as promulgated by the Mayor. Specifically, the Act states that "[e]ach covered employer shall, at the time of hiring and annually thereafter, and at the time the covered employer is aware that the leave is needed, provide this notice to each covered employee." See Section 106(i)(3) of the Act. This language is largely repeated in Section 3407.2 of the Proposed Rule II. Pursuant to both the Act and the Proposed Rule II, covered employers, which fail to provide the above-mentioned notice, "shall be assessed a civil penalty not to exceed one hundred dollars ($100) for each covered employee to whom individual notice was not delivered." See Section 3407.3 of Proposed Rule II.

3407	Employer Responsibilities	Certainly, covered employers can objectively administer a program that requires all covered employees be given the "paid leave program notice" at the time of hiring and annually. However, it is entirely unclear how a covered employer is supposed to interpret and administer the requirement to provide notice to a covered employee "at the time the covered employer is *aware* that the leave is needed." See Section 3407.2(c) (emphasis added). Stated differently, on what information is a covered employer supposed to make this determination? MLDC recommends an objective standard in which the covered employee notifies the covered employer of the need for paid leave, thus triggering the obligation of the covered employer to provide the notice promulgated by the Mayor. Accordingly, MLDC respectfully requests the following amendment to the Proposed Rule II: 3407.2 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, meaning when the covered employee directly communicates the need for paid leave to the covered employer's designated paid leave coordinator in writing.
		On behalf of the business community, we would like to reiterate that the responsibilities of the employer should align with what is in D.C. law. Specifically, since employees will be seeking paid leave benefits from the District government and not the covered employer there will be information that the employer will not have access to or will not be aware of because they are not involved in the conversations between employee and DC government until informed of a claim by the District. As such, it is important to note that the employer responsibility as currently anticipated by the UPLA law would be to pay the payroll tax; notify employees of the UPLA benefit opportunity; and allow the covered employee the time off for approved paid leave. Moreover, regarding employer responsibility section found in Sec. 3407 we would like to provide the below comments: **Definition of Worksite.** Sec. 3407.1 requires employers to post a paid leave notice at each worksite. However, worksite is not defined or clear. It is requested that the definition of worksite is specified in rules. The business community would like to highlight that there is no longer one central HR office or work location for all employees. Some businesses have multiple locations with a headquarters outside of the District. Some employers have mobile employees that are out of the office or in the field, teleworkers, and work at home employees. How would this section clarify the notice requirement for those scenarios?

3407.1	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.	**Section 3407 of the proposed regulations should be elaborated upon in subregulatory guidance or in the program's planned operating procedures by developing DOES branded resources that enable businesses to easily be in compliance with UPLA.** We suggest the Department consider developing the following: ● Updated labor rights posters that combine information about paid family and medical leave with DCFMLA, DC paid sick and safe, and the Protecting Pregnant Workers Fairness Act. Posters will be most effective if they rely heavily on visual cues, address the intersections of rights and benefits, and clearly direct readers to additional information (i.e. an easy to remember web address, an app to download, a QVR code to scan). ● Downloadable electronic copies of paid leave poster notices in Spanish, Amharic, Chinese, and DC's other most common languages in accordance with the District's Language Access Act. These resources could live on the online portal. ● Sample language explaining the District's paid leave program that an employer can incorporate into their employee handbook. Relatedly, it may be helpful for this language to be developed in the form of a form an employee signs upon hire certifying they have been made aware of their rights to paid family and medical leave. Such forms should comply with Language Access. ● A short online training video about paid leave benefits and rights. This video should be recorded and/or closed captioned in DC's most popular languages (including English closed captioning for members of the deaf community). ● A template leave-notice form - form for employees providing notice to an employer of the need for family or medical leave - that can be adapted for each company's internal needs or preferences. These forms should include notice to e employees of their rights and protections in taking leave; this part of the template form should be uneditable as, unfortunately, not all employers treat their employees the way we'd hope. These resources should be made available to all District employers by January 1, 2020 so that they may be partners in the work of public education and outreach as was envisioned in the statute. Further, it may be wise for DOES to include a requirement in Section 3408 of the proposed regulations that employers document that they are complying with notice requirements annually and at the time of each employee's hire. This compliance could be demonstrated by having employees sign a copy of a notice of their rights at the time of hire or signing a form saying they've watched a DOES 'know your rights' video presentation. Annually, documentation of compliance could be demonstrated by maintaining an email record of notices sent to employees. There are many other ways to document compliance with the notice requirements in the regulations and JUFJ would be happy to share additional ideas if that would prove useful. When working families are able to meet their caregiving needs at home, these workers contribute to a healthier, happier, and more productive workforce - all District employers must be empowered to and held accountable for collectively achieving these positive outcomes.
		Sec. 3407.2(c) should be removed or clarified through further legislative authority. According to the UPLA law, an employer is to provide the notice "at the time the covered employer is aware that the leave is needed." Either this needs to be removed from the law or the time leave is needed needs to be specified. Since the employer does not know when an employee may need leave and when an employee may apply for the benefit it would make the most logical sense for the agency to request that the DC Council amend the law to remove this requirement as employers are not in a situation to understand this specific point of time and the law as passed by the Council does not go into specific detail to provide the agency with authority to address the business community's concerns.

3407.2	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.	This paragraph requires employers to provide notice of the UPL program to individual employees "at the time the covered employer is aware that paid leave is needed." As drafted, this language is too vague to be effectively implemented. For example, if an employee shares with her colleagues that she is pregnant, her coworkers could automatically become mandatory reporters since the employer would know have constructive knowledge of the pregnancy. If the information was shared as a confidence however, it could create problems for both the pregnant employee and her work-place confidant. IF on the other hand an employee's pregnancy is visually apparent but the employee hasn't shared the information, what should an employer do? It is even more fraught for employees with illnesses that create physical changes. At what point is an employer expected to "be aware" that an employee might need sick leave (self-care UPL)? If an employer failed to take note of these conditions, would it be risking a fine by not immediately providing notice to an employee who has not formally indicated any need for paid leave? Recommendation The terms "aware," "employer," and/or "needed" should be amended and the proposed rule should say that the employee must provide formal notice to the employer of their need to take leave. A possible model for this rule could be how the Americans with Disability Law (ADA) requires employees to notify/request accommodations from their employers.
		Section 3407.2(b) of the Proposed Rule II requires covered employers to provide notice of the paid leave program, as promulgated by DOES, annually to all employees. Failure to supply this annual notice will subject covered employers to substantial fines. In an effort to assist covered employers with complying with this notice requirement, Colonial asks the Department for guidance. Specifically, the Company would welcome the Department's direction on precisely how covered employers are expected to fulfill and document compliance with this requirement. With roughly 1,100 employees spread over approximately 250 sites, personally providing the annual notice of the paid leave program – to all employees – will be a significant administrative undertaking. At this time, the Company believes that the most efficient way to fulfill this requirement is to annually post the paid leave notice on the Company's website. Still, without more guidance, the Company will have no way of knowing whether its chosen approach will satisfy the notice requirement. Certainly, Colonial will not be the only covered employer with this dilemma and, as such, the Company respectfully requests that the Department provide additional clarification on this subject in the final regulations.
3408	**RECORD KEEPING**	
3408	Record Keeping	This section specifies the type of records employers must keep and how DOES can access the information. The language in some subsections is vague and needs to be clarified to promote optimal compliance.
		The record keeping provisions of Section 3408 of the Proposed Rule II are overly-broad and administratively burdensome, and not are required by the plain language of the Act. Importantly, the Proposed Rule II provides no rationale why such provisions are necessary to ensure compliance with the Act.

		Sec. 3408 - Record Keeping Needs an Overhaul. Overall, we oppose the drafting of this entire section. The guidance for recordkeeping is too expansive and would be applicable to information that has nothing to do with an employer's contribution amount to the paid leave fund. Sec. 3408.1 states that "For a period of not less than three years, all covered employers shall develop, maintain, and make available to DOES records regarding the employer's activities related to the Act, including pay stubs, 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… We strongly object to the inclusion of personal checks, or corporate bank deposits as the information an employment office needs for a paid leave benefit fund would be information regarding payroll, and not other business operational information. We request that DOES not include "communications between employer and employee" as it is not defined and could run afoul of some privacy laws as it relates to HR and conversations that have nothing to do with paid leave. The fact that "circumstantial evidence" is even referenced in a rulemaking is of great concern to the business community. Additionally, the section directs all covered employers to not only maintain this type of information but to "develop" circumstantial evidence. How can a covered employer develop this information and for what purpose? We request that this language is removed and would like to reiterate to the agency that the covered employer would not know of the "employee's eligibility" for the paid leave benefit. That determination would be made by the District under the paid leave act. As such any information about eligibility would not be within the covered employers' records but within the agency's records. The inclusion of "any other record as requested by DOES" should be stricken from the rulemaking as not all information held by an employer would apply to payroll information or would be covered by the Act. In general, the business community has deep concerns with this section and strongly recommends that the agency revise this section.
3408.1	For a period of not less than three (3) years, 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; provided, that the payroll records contain the following information:	This subsection specifies the types of records all covered employers must maintain and make available to DOES including "communications between employers and the employee." The language of this subsection is vague and could pose a problem for employers. For example, the requirement that employers "make available to DOES" certain records does not clarify when the material must be provided and whether and under what circumstances employers can appeal a DOES records request. In addition, in asking for all "communications between employer and employee" DOES might run afoul of federal law or employee privacy. In Washington, DC in particular many employees, including some affiliated with universities, have federal security clearances. Sharing such information could be a federal offense. More broadly, providing medical information at the request of the government but without knowledge of the employee could be a violation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

	(a) Name and social security number, or individual taxpayer identification number in lieu of a social security number, of each employee; (b) Beginning and ending dates of each pay period; (c) Wages paid for each pay period, including the value of non-monetary remuneration; and (d) Dates of employment.	Other information listed in the proposed rule that could be subject to DOES inquiry such as personal checks, cash receipts, bank deposits or work schedules seems to be well beyond the ambit of the payroll information that is likely needed to implement the UPL program. Finally, certain communications such as daily status updates like "I am in the office today" or "staff meeting at 2" may inundate DOES with information it doesn't need to implement UPLA. *Recommendation* The phrase "make available" should be struck and replaced with guidelines for employers including a timeframe for employers to respond and a process for any appeals of the DOES request. The list of items subject to DOES review should be significantly reduced and, the provision allowing for DOES to "have access to" any communications between employer and employee should be struck in its entirety. In addition, the word "communications" must be clarified with a list of specific information sought. There should also be an exception for confidential information that cannot be shared due to other laws.
		Paragraph 3408.1(a) This paragraph would ask employers to provide social security numbers in some instances. In this age of identity theft, this information, in conjunction with the other data requested, could pose a rich target for identity thieves. *Recommendation* Under no circumstances should employers be required to provide social security numbers to the District government. An alternative method of identifying employees and potential government claimants should be explored.
		As drafted, Section 3408.1 of the Proposed Rule II provides covered employers will virtually no guidance on how to comply. For example, what does it mean for covered employers to affirmatively "*develop, maintain and make available* to DOES records related to the employee's activities related to the Act, including...*any circumstantial evidence regarding the employer's eligibility; and any other record requested by DOES"?* It appears as if Section 3408.1 imposes a requirement of clairvoyance on covered employers, by requiring a system of record keeping that is by definition arbitrary and undefined. How is a covered employer supposed to *develop and maintain* a records system based on what DOES might deem circumstantial evidence in the future, regarding an employee's eligibility? Worst yet, how is a covered employer supposed to *develop and maintain* a record system based on "any other record requested by DOES? in the future? Incredibly, the Proposed Rule II requires all covered employers to *develop and maintain* these and other records for three years! MLDC respectfully recommends that the Department require all covered employers to certify their quarterly filings under penalty of law and create a simpler set of record keeping requirements to ensure compliance with the Act.
3499	**DEFINITIONS**	
3499	Definitions	This section provides definitional guidance for interpreting the rules. As noted above, there are conflicts between some of the definitions in this section and how the UPLA was drafted. In particular, the definition of "employment" is only partially taken from UCA despite UPLA's specific reference. *Recommendation* These rules should adopt the full definition of employment pursuant to the UCA.

The regulations should establish a clear test for who is a "covered employee."

D.C. Code § 32-541.01(3) provides that in order to be a covered employee, an individual must either spend a majority or "a substantial amount" of their working time for a covered employer within the District. Yet neither the statute nor the regulations currently provide any clarification as to how the location of employees' work will be documented or tracked, what qualifies as "a substantial amount" or any other key details in applying this test. This standard determines not only which employees are eligible for benefits, but also the employees for which employers must remit contributions. Therefore, it is essential that both employers and employees be able to easily and reliably determine who does and does not qualify as a "covered employee."

We strongly urge the Department to adopt by regulation a clear, administrable test for determining which employees qualify as covered employees under UPLA. We have some specific suggestions as to what should be included in such a test.

First, we suggest that the Department adopt a presumption of coverage for all employees of District employers, unless the employer can prove that the employee does not meet the law's requirements regarding location of work. This will help meet the key goal of the law to ensure broad, inclusive coverage for District workers.

Second, the breakdown of employee's work locations should be evaluated on an annual, rather than quarterly basis when determining coverage. Given the prevalence of seasonal employment, as well as the fact that employees may work for the same employer in different locations over the course of a year, annual evaluation will better reflect the reality of employees' work experience. For example, a person who works for a landscaping company might do work in the District, Maryland and Virginia, but an evaluation of that person's work during the winter might misrepresent that person's actual experience, given the strongly seasonal nature of that work. Further examples of situations in which employers will need clarity and ambiguity in the law could complicate tax contribution compliance include:

- An individual who is paid by a temp agency based in D.C. but get assigned to projects around the region on a variety of short- and longer-term gigs.
- An individual who works for a D.C. based consulting group and is placed on a full-time assignment outside of D.C. for more than 6 months, but still maintains an office/desk in the District.
- An individual who works for a D.C.-based university and spends a semester or a year on loan to a university in another place.
- An individual who works for Cava, a local chain with a headquarters in D.C., and spends a majority of their time working at one D.C. storefront, but occasionally covers shifts as needed at other locations, including spending an entire quarter at the Alexandria location.

In addition, the Department should adopt clear record keeping requirements for employers with regards to an employee's work location. This requirements should specify both what documentation employers will need to provide to the Department on a regular basis and what records employers will need to keep on hand in the event of a dispute regarding an employee's status.

Consistent with these requirements, the Department should also engage in robust, independent review of the determinations made by employers regarding particular employees. This should include not only reviewing independent contractor/employee determinations, but also reviewing whether employers have correctly classified their employees as covered employees or uncovered employees.

Establishing a clear test for who is a "covered employee"

We urge the Department to adopt by regulation a clear, administrable test for determining which employees qualify as covered employees under D.C. Code § 32-541.01(3). In the statute, a covered employee must either spend more than 50% or a "substantial amount" of their working time for a covered employer within the District of Columbia. However, neither the statute nor the proposed regulations provide any clarification as to how the location of the employees' work will be documented or tracked, nor what qualifies as a "substantial amount" or any other key details in applying this test. This standard determines not only which employees are eligible for benefits, but also for which employees employers must remit contributions. Therefore, it is essential that both employers and employees be able to easily and reliably determine who does and does not qualify as a "covered employee."

First, we recommend the Department adopt a presumption of coverage for all employees of District employers, with employers needing to take proactive steps to identify employees who are not covered. This will help meet the key goal of the law to ensure broad and inclusive coverage for the District's workers.

Furthermore, we recommend the Department evaluate employees' work locations on an annual basis rather than a quarterly basis. This will better capture the reality of most workers' experiences since many work seasonal jobs or may work for the same employer in different locations over the course of a year.

The regulations should also require District employers to notify all workers about their status as covered or non-covered employees so that workers are aware whether they do or do not qualify for benefits. This should include clear, regular recordkeeping requirements for employers especially in regards to the employee's work location which can help settle potential disputes about an employee's status.

Establishing a clear test for who is a "covered employee" when they do not work full time in the District:

According to the Universal Paid Leave Amendment Act, a covered employee must either spend a majority or "a substantial amount" of that employee's time working within the District of Columbia. This language and definition of covered employee aligns with the District's minimum wage statue, however, neither that law, UPLA, or related regulations provide any guidance on how to interpret this categorization of a covered employee. For many employers, it will be obvious when their employees qualify for paid leave coverage but for District businesses that operate across neighboring jurisdictions, embrace teleworking, and/or require employees to travel frequently for work, more guidance is needed to know when taxes should be paid and reports should be filed for particular workers. The potential for open ended ambiguity in subsection (b) of the definition, "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," is likely to pose tax compliance challenges to employers, especially those who are not used to complying with the District's minimum wage statute due to higher earnings of their employees.

We strongly urge the Department to adopt by regulation a clear, administrable test for determining which employees qualify as covered employees under D.C. Code § 32-541.01(3). This test may also have salience in determining when a self-employed person has earned self-employment income for work performed more than 50% of the time in the District pursuant to D.C. Code § 32-541.01(6). We have some specific suggestions as to what should be included in such a test.

First, we suggest that the Department adopt a presumption of coverage for all employees of District employers and, relatedly, all their employees where Unemployment Insurance taxes are paid in DC, unless the employer can prove that the employee does not meet the law's requirements regarding location of work. Record keeping for such purposes should be reflected in Section 3408, and others, and the regulations should specifically explain what records employers will need to keep on hand in the event of a dispute regarding an employee's status. Further, we urge DOES to apply the definition's phrase "does not spend more than fifty percent (50%) of his or her work time for that covered employer in another jurisdiction" on an individual jurisdictional basis rather than cumulative. In other words, Arlington, Alexandria, Hyattsville, Bethesda, Los Angeles, Austin, etc are all separate and distinct jurisdictions; when an employee does work outside of DC, an employer should treat these jurisdictions separately and not aggregate an employee's annual work travel to for purposes of determining their coverage in this program. Only work done in the same jurisdiction on a continuous or intermittent basis that makes up more than 50% of an employee's work time annually should be considered to meet the threshold for non-coverage in the paid leave program. This interpretation of individualizing vs aggregating work in other jurisdictions would appear most consistent with the language in the statue and will help meet a key goal of the law in ensuring broad, inclusive coverage for District workers.

Second, the breakdown of an employee's work locations should be evaluated on an annual, rather than quarterly basis; determination of expected work should happen annually at the beginning of the calendar year in 2019 or at time of hire per employee in future years. Given the prevalence of seasonal employment, work travel, as well as the fact that employees may work for the same employer in different locations over the course of a year, annual evaluation will better reflect the reality of an employee's typical work experience. Yearly assessment will also simplify this process for employers.
Applying where an employee works on a quarterly basis would mean, for example, that an employee consulting on a project for two months out of the District would be temporarily removed from the paid leave program, even though an annual assessment would clearly demonstrate that this individual is a covered employee. Temporarily dropping an employee from coverage would be an unnecessary hassle for employers, employees, and OPFL, and could cause volatility to the paid leave fund.

Third, a clear test should be crafted in such a way as to include rather than exclude employees when there is ambiguity around where they spend a "substantial" amount of their time. More and reliable participation in social insurance programs increases solvency, whereas ambiguity in the law or regulations will obfuscate tax collections and reduce the pool of funds available for benefits. Based on extensive conversations with local employers (including self-employed individuals) and worker rights advocacy groups who have experience with employers exploiting ambiguity and loopholes in labor laws, we have identified a variety of common employment situations that should be kept in mind when designing an inclusive test for determining coverage:

	"**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.	● You work for a DC based company but telework on a regular basis at your discretion. This employee should be considered a covered employee. ● You work for a DC based company but work remotely on a permanent basis, a remote work arrangement was a part of your job contract. This employee would not be considered a covered employee. ● You work for FedEx or a similar delivery company and your deliveries are typically split 33% across DC, MD, and VA over the course of the year but any given month or quarter those percentage distributions may shift. If you pick up your truck and delivery assignments from a DC location, you would be a covered employee. If you pick up your truck and delivery routes from a Maryland address, you would not be considered a covered employee. ● You work for a DC law firm and have clients all over the country, spending more than 50% out of DC, including working remotely on cases for months at a time. This person should be a covered employee because annually they are not spending more than 50% of their time in any one other jurisdiction. ● You are contacted for work and paid by a temp agency based in DC but get assigned to projects around the region on a variety of short and long term gigs. The temp agency should consider you a covered employee if you had assignments in DC and did not have any one assignment that comprised more than 50% of your time outside of DC that past quarter (for contracted employees of temp agencies, a quarterly test for wage history might make sense given the short term nature of temp agency assignments). The temp agency should be the entity paying the tax for UPLA, not the client, as it is the temp agency that issues W-2s for individuals who use their work placement services ● You are an electrician working on a building project in the District but the subcontracting company that hired you is based in Baltimore. This individual should be considered a covered employee no matter the headquarter location of the contractor or subcontractor - if someone is working on a construction site in DC, they should be ● You work for Starbucks and primarily work at one location in DC but your store location assignments may vary week to week depending on the company's coverage needs. If this employee was hired to work at a particular DC store location, they should be considered a covered employee. The other store locations where this employee covers shifts should be assessed as separate individual jurisdictions based on mailing address, i.e. stores in Arlington should be seen as separate jurisdictions from stores in Alexandria which are separate from Bethesda store fronts. ● You work for a consulting firm based in Roslyn but have a full time assignment at a federal agency based in the District. This person should be considered a covered employee. ● You work for a DC based consulting group and are placed on a full-time assignment outside of DC for more than 6 months but still maintain an office/desk in the District. This employee would not be considered a covered employee unless their company requests to continue counting them as such. ● You work for a DC-based university and spend a semester on loan to a university in another place. This person should still be a covered employee. If the professor spends two or more semesters away from their DC university they should not be considered a covered employee unless their institution requests to continue counting them as such.

We encourage DOES to consider giving discretion to employers to cover employees who normally work in DC but have a t temporary assignment outside of DC, with a planned return date, even if that temporary assignment may last more than half of the year. It will likely be administratively easier for the employer to cover the employee during the temporary assignment. Whatever rules are set for defining covered employees, the regulations should require District employers to notify all workers about their status as a covered or non-covered employee. Workers need to be informed of whether they qualify for benefits. Further, workers should be able to contest non-coverage if they believe their employer is fraudulently failing to pay the appropriate tax on their behalf (either because of work location considerations, misclassification issues, or other). When bad actor employers fail to comply with the law they not only subvert the rights of their employees, they also jeopardize the solvency of the paid leave fund. DOES must aggressively, expeditiously, and publicly investigate cases of tax fraud when they are brought to light. They must also ensure that fraud on the part of an employer does not delay, deny, or diminish a worker's claim for paid leave benefits. By ensuring clarity and consistency in applying the definition of "covered employee," DOES will proactively reduce instances of tax fraud and equip employers with the information they need be and remain in compliance with the law. We are best able to support the wellbeing of our local families and businesses when everyone is held accountable for paying their fair share of contributions to the paid leave fund.

Establishing a clear test for who is a "covered employee" when workers do not work 100percent of the time in the District

UPLA states that employees are covered if they spend a majority or "a substantial amount" working in the District for a particular employer, without spending more than half of their time working for that employer outside of DC. Defining which employees are covered is a fundamentally important issue, and both employers and employees will need clear rules to determine who does and does not qualify as "covered employee." Yet the regulations currently do not provide clarity on what qualifies as "a substantial amount" of time working in the District or how to apply this test.

DCFPI strongly urges the Department to adopt by regulation a clear, administrable test for determining which employees qualify as covered employees under D.C. Code § 32-541.01(3). We have some specific suggestions as to what should be included in such a test.

First, we recommend that the regulations start with a presumption that all employees of covered District employers are considered covered employees, with employers needing to take proactive steps to identify employees who are not covered. This will help meet the key goal of the law to ensure broad, inclusive coverage for District workers.

Second, the regulations will need to define what it means to spend a "substantial amount" of time working in DC, and the regulation will likely need to specify a time period to use for determining this. For example, an employee who spends all of one week working for a District employer but outside DC certainly has worked more than 50percent of their time outside DC for that time period, but no reasonable person would conclude that the employee is not covered by UPLA that week, especially if they work every other week in the District. Alternatively, someone working on a two-year assignment in another city clearly is working more than 50percent of their time outside of DC.

DCFPI recommends that the regulations require employers to make the determination of the amount of work an employee conducts outside of DC at the beginning of each calendar year, with the determination made for the full calendar year, based on the expectations of each employee's likely work location(s) and durations that year. For employees hired after January 1 of a given year, their determination would be made at the time of hire, lasting until the next calendar year. Using an annual basis is important both for maintaining coverage for employees and for limiting the administrative burden on employers for determining covered employees. For example, an employee may have a three-month assignment outside DC but work the rest of the year in DC. That employee clearly works a "substantial amount" of time in DC and should not lose coverage even though they are out of DC for a full quarterly tax filing period. Annual determination also would mean that an employer would only need to go through this exercise once a year per employee.

Further examples of situations where employers will need clarity include:

• An employee works for a DC-based package delivery company and deliveries are equally spread among DC, Maryland, and Virginia, but the distribution of locations varies from week to week. **DCFPI believes that since the employee does not normally spend more than half of their time in a given location outside of DC, and works for a DC-based company, they should be considered a covered employee.**

• An employee for a DC law firm has clients all over the country and typically spends more than 50percent out of DC, although not all in one location. The employee does not have a regular assignment that will keep them in any one location for more than half the year. **DCFPI believes that since the employee does not spend more than half of their time in a given location outside DC, and works for a DC-based company, they should be considered a covered employee.**

• An employee for a DC-based consulting group is placed on a full-time assignment outside of DC for more than 6 months of a calendar year but still maintains an office/desk in the District. **DCFPI believes that this employee would not be covered, because they spend more than half of their year working in one location outside of DC.**

• A professor for a DC-based university and spend a semester or a year on loan to a university in another place. **DCFPI believes it is not clear if they are covered. It would depend on whether the leave covered more than half in a given calendar year.**

• An employee for Cava, a local chain with a headquarters in DC, spends a majority of time working at one DC storefront but occasionally cover shifts as needed at other locations, including spending an entire quarter at the Alexandria location. **DCFPI believes that since the employee does not spend more than half of their time in a given location outside DC, and works for a DC-based company, they should be considered a covered employee.**

• An employee for the Gap, a national chain, is based in a DC store but regularly gets asked to cover shifts at locations outside the District. **DCFPI believes that since the employee's typical time is substantially in DC and not more than 50percent in another jurisdiction, they should be considered a covered employee.**

DOES also should consider giving discretion to employers to cover employees who normally work in DC but have a temporary assignment outside of DC, with a planned return date, even if that temporary assignment may last more than half of the year. It may be administratively easier for the employer to cover the employee during the temporary assignment.

In addition, the Department should adopt clear recordkeeping requirements for employers with regards to employee's work location. This requirements should specify both what documentation employers will need to provide to DOES on a regular basis and what records employers will need to keep on hand in the event of a dispute regarding an employee's status. For example, job contracts and offer letters may offer this information.

Whatever rules are set for defining covered employees, the regulations should require District employers to notify all workers about their status as a covered or non-covered employee. Workers need to be informed of whether they qualify for benefits.

Establishing a clear test for who is a "covered employee"

By statute, a covered employee must either spend a majority or "a substantial amount" of that employee's working time for a particular employer within the District. Yet neither the statute nor the regulations currently provide any clarification as to how the location of employees' work will be documented or tracked, nor what qualifies as "a substantial amount" or any other key details in applying this test. This standard determines not only which employees are eligible for benefits, but also for which employees employers must remit contributions. Therefore, it is essential that both employers and employees be able to easily and reliably determine who does and does not qualify as a "covered employee."

We strongly urge the Department to adopt by regulation a clear, administrable test for determining which employees qualify as covered employees under D.C. Code § 32-541.01(3). We have some specific suggestions as to what should be included in such a test.

First, we suggest that the Department adopt a presumption of coverage for all employees of District employers, unless the employer can prove that the employee does not meet the law's requirements regarding location of work. This will help meet the key goal of the law to ensure broad, inclusive coverage for District workers.

Second, the breakdown of employees' work locations should be evaluated on an annual, rather than quarterly basis. Given the prevalence of seasonal employment, as well as the fact that employees may work for the same employer in different locations over the course of a year, annual evaluation will better reflect the reality of employees' work experience. For example, a person who works for a landscaping company might do work in the District, Maryland, and Virginia, but an evaluation of that person's work during the winter might misrepresent that person's actual experience, given the strongly seasonal nature of that work.

In addition, the Department should adopt clear recordkeeping requirements for employers with regards to employees' work location. These requirements should specify both what documentation employers will need to provide to DOES on a regular basis and what records employers will need to keep on hand in the event of a dispute regarding an employee's status.

Consistent with these requirements, the Department should also engage in robust, independent review of the determinations made by employers regarding particular employees. This should include not only reviewing independent contractor/employee determinations, but also reviewing whether employers have correctly classified their employees as covered employees or uncovered employees.

	Elaborate on the definition of "covered employee." I am concerned the regulations are silent about how to interpret the definition of covered employee with respect to calculating when an employee spends a substantial amount of their time in the District, and not more than 50% of their time in another jurisdiction (Section 3499: "Covered employee" (b)). As you know, many District businesses operate across neighboring jurisdictions, embrace teleworking, and/or require employees to travel for work. More guidance is needed in these situations, among others. I strongly encourage DOES to apply subsection (b) of the definition of covered employee on an annual basis per employee. Misapplying the 50% threshold on a quarterly basis would mean, for example, that an employee consulting on a project for two months out of state would be temporarily removed from the paid leave program. This would be an unnecessary hassle for employers, employees, and OPFL, and could cause volatility to the paid leave fund. Further, I hope guidance on how to accurately capture covered employees will be written to include more people in the program, as opposed to exclude them. More and reliable participation in social insurance programs increases solvency and reduces costs. Clarity around employee coverage and tax contribution expectations means everyone is held accountable for paying their fair share. Should bad actor employers seek to exploit loopholes and exclude workers from their contributions, DOES must not allow this tax fraud to delay or deny a worker's claim for paid leave benefits. I implore DOES to aggressively and publicly go after employers who fail to pay the proper taxes for all in their workforce. This approach to compliance will be appreciated not only by workers in need of paid leave benefits but also by high road employers who are otherwise, very literally, footing the bill of these bad actors.
"**Employment**" - (a) Means any localized services performed in the District of Columbia for a covered employer; and (a) Includes personal or domestic service in a private home, local college club, or a college fraternity or sorority for an employer who paid cash remuneration of five hundred dollars ($500) or more in any calendar quarter.	**Definitions to be removed.** – The definition of **"Employment"** is different than what is specified in the UPLA law. What are localized services? Additionally, since no definition like this or like "**personal or domestic service**" exists is in the law, there is no legislative authority to include a new definition in regulations. If the Council of the District of Columbia intended to include these definitions it would have been incorporated into the legislative language. As such, without explicit legislative language these sections should be removed, and the definitions as listed in the enacted law should be adopted in the regulations. Furthermore, the inclusion of personal or domestic service in a college or fraternity/sorority is also outside of the scope of the law and should be removed. Along those lines, we would request that DOES remove the definition of "personal or domestic service" as there is no authority to include it in the rulemaking.
	The definition of "Employment" in Section 3499 misnumbers the subsections of the definition. It should read (a) and (b).
	The Proposed Tax Rules add a new definition for "employment" in response to comments received from the first set of proposed rules. The Consortium had recommended that: 1) a definition for employment is necessary in order for employers to properly calculate wages, and 2) that this definition must be consistent with UCA's definition. DOES clearly heard this recommendation and has taken steps to address these concerns. However, the newly defined term "employment" adopts only two partial sections out of UCA's lengthy definition for "employment". In order to avoid confusion and ensure consistency with existing law, UCA's full definition of "employment" must be incorporated. If DOES only adopts a portion of the definition then this could interpreted as the agency's intent to define "employment" and "wages" in a way that is not consistent with the terms as used by UCA. As noted above, this would again cause confusion for all parties involved and conflict with the legislative intent to synchronize UPLA's definitions with UCA.

		The Employment and Training Administration of the U.S. Department of Labor has created a uniform definition of employment in terms of "localization of work," which includes the following factors: services localized, base of operations, direction and control, and residence. See the U.S. Department of Labor's *Manual of State Employment Security Legislation* , https://oui.doleta.gov/dmstree/pl/blue_book.pdf.
		The regulations should clarify the documentation of income for the self-employed. The current proposed regulations do not define how self-employed individuals should document their income to the Department for purposes of determining contributions. We recommend that the regulations provide flexibility in how the self-employed can document their income that allows the self-employed to choose among multiple types of documentation, including bank records, tax records, invoices, receipts, contracts, and personal logs. This follows the approach taken by proposed regulations in Washington State.
		3. Clarifying documentation of income The proposed regulations do not define how self-employed individuals should document their income to the Department for purposes of determining contributions. We recommend that the regulations provide flexibility in how the self-employed can document their income that allows the self-employed to choose among multiple types of documentation, including bank records, tax records, invoices, receipts, contracts, and personal logs. Washington state has used a similar approach in their proposed paid leave regulations. Additionally, the regulations should clarify how DOES will determine whether a self-employed person “earned self-employment income for work performed more than fifty percent of the time in the District of Columbia” and what information or documentation will self-employed people need to provide for this determination. Because only self-employed individuals who meet this requirement will be eligible for benefits, it is important that self-employed individuals be able to determine whether they will qualify before they opt in. We also recommend that the regulations state that a self-employed person meets the provision through documentation that shows the self-employment is attached to D.C., including but not limited to billings from or payments to a D.C. address (including electronic billings), contracts, tax documents, documents demonstrating work was performed at a specific site within D.C., or other documentation approved by the department. Alternatively, we recommend DOES allow self-employed people to meet this requirement by providing signed affirmations that they perform more than 50% of their work earning self-employment income within the District of Columbia.

	"**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.	Similar to our concerns with the definition of "covered employee," the regulations need to clarify how DOES will determine whether a self-employed person "earned self-employment income for work performed more than fifty percent of the time in the District of Columbia" and what documentation self-employed people will need to provide for this determination. Because only self-employed individuals who meet this requirement will be eligible for benefits, it is important that self-employed individuals be able to determine whether they will qualify for the program before they seek to opt in. We recommend that the regulations state that a self-employed person meets the provision through documentation that shows the self-employment is attached to D.C., including but not limited to billings from or payments to a D.C. address (including electronic billings), bank records contracts, invoices, tax documents, documents demonstrating work was performed at a specific site within D.C., personal logs, or other documentation approved by the department. This follows the approach taken by the proposed regulations drafted for self-employed coverage in Washington State's paid leave program. In addition, DOES should allow self-employed people to meet this requirement by providing signed affirmations that they perform more than 50% of their work within the District of Columbia. DOES should allow self-employed program participants to demonstrate that their work is performed a majority of the time in the District on an annual basis; documenting this point on a quarterly basis would be too restrictive when the underlying aspiration of program is to be universally inclusive.
		In addition, the regulations should clarify how DOES will determine whether a self-employed person "earned self-employment income for work performed more than 50 percent of the time in the District of Columbia" and what information or documentation will self-employed people need to provide for this determination. We recommend that DOES allow self-employed people to meet this requirement by providing signed affirmations that they perform more than 50 percent of their work earning self-employment income within the District of Columbia. Alternatively, we recommend that the regulations state that a self-employed person meets the provision through documentation that shows the self-employment is attached to D.C., including but not limited to billings from or payments to a D.C. address (including electronic billings), contracts, tax documents, documents demonstrating work was performed at a specific site within D.C., or other documentation approved by the department.
		In addition, the regulations should clarify how DOES will determine whether a self-employed person "earned self-employment income for work performed more than fifty percent of the time in the District of Columbia" and what information or documentation self-employed people will need to provide for this determination. Because only self-employed individuals who meet this requirement will be eligible for benefits, it is important that self-employed individuals be able to determine whether they will qualify before they opt in. We recommend that the regulations state that a self-employed person meets the provision through documentation that shows the self-employment is attached to D.C., including but not limited to billings from or payments to a D.C. address (including electronic billings), contracts, tax documents, documents demonstrating work was performed at a specific site within D.C., or other documentation approved by the Department. In addition, DOES should allow self-employed people to meet this requirement by providing signed affirmations that they perform more than 50% of their work earning self-employment income within the District of Columbia.

		Clarifying documentation of income for the self-employed The current proposed regulations do not define how self-employed individuals should document their income to the Department for purposes of determining contributions. We recommend that the regulations provide flexibility in how the self-employed can document their income that allows the self-employed to choose among multiple types of documentation, including bank records, tax records, invoices, receipts, contracts, and personal logs. This follows the approach taken by proposed regulations in Washington State.
		We also urge the Department to revise the definition of "self-employed individual" in section 3499 to remove the requirement that an individual either have such a license or be registered with the Office of Tax and Revenue in order to meet the definition. This language imposes a substantial additional limitation that is not based in the statute and should be removed. Finally, the Department has already shown a strong commitment to providing robust, independent analysis of whether workers are misclassified in the unemployment context. This commitment is evidenced by the clear and concise language used under the "Independent Contractor" section of the Unemployment Insurance Handbook for Employers. This language states that "DOES has the authority to determine employer/employee relationships and the classification of the worker's status as it relates to the designation of independent contractor. DOES' classification is independent from any other regulatory authority, such as the Internal Revenue Service (IRS), worker's compensation authorities, or wage and hour authorities." We urge the Department to continue this practice in the paid leave context. In particular, if workers who have been misclassified as independent contractors attempt to opt in to the paid leave program as self-employed individuals, the Department should take that opportunity to remedy their misclassification and ensure they are properly covered as employees.
		The misclassification of employees as independent contractors continues to be a growing problem in the District and across the county, not only hurting the misclassified workers, who are denied important benefits and labor protections, but also law-abiding employers and the regional economy. The Department has already shown a strong commitment to providing robust, independent analysis of whether workers are misclassified in the unemployment context. This commitment is evidenced by the clear and concise language used under the "Independent Contractor" section of the Unemployment Insurance Handbook for Employers. This language states that "DOES has the authority to determine employer/employee relationships and the classification of the worker's status as it relates to the designation of independent contractor. DOES' classification is independent from any other regulatory authority, such as the Internal Revenue Service (IRS), worker's compensation authorities, or wage and hour authorities." We urge the Department to continue this practice in the paid leave context. In particular, if workers who have been misclassified as independent contractors attempt to opt in to the paid leave program as self-employed individuals, DOES should take that opportunity to remedy their misclassification and ensure they are properly covered as employees. We further urge the Department to also engage in robust, independent review of the determinations made by employers regarding particular employees. This should include not only reviewing independent contractor/employee determinations, but also reviewing whether employers have correctly classified their employees as covered employees or uncovered employees.

	"**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. The individual shall have been registered with the Office of Tax and Revenue, been issued a business license by the District of Columbia Department of Consumer and Regulatory Affairs, or been otherwise licensed (e.g. occupational and professional licenses).	**Revising the definition "self-employed"** We appreciate that these updates tax regulations provide significant additional details regarding coverage of the self-employed. However, we are concerned that some of the requirements in these regulations contravene the statute and exclude self-employed individuals who were intended to be allowed to opt in the paid leave program. Self-employed individuals should not be required to have or produce a business or occupational license in order to opt in. The statute does not require that self-employed individuals have such a license in order to opt in and the regulations' definition of "self-employed" should not exclude people from obtaining paid leave coverage solely on this basis; the requirement to produce a license as part of the opt-in process in proposed Section 3401.3 should also be removed. Not all people earning self-employment income have a form of a business license. This is especially true of independent contractors, consultants, and people working as freelancers in the gig-economy, and doubly true for those earning small amounts of income from varying jobs or projects where income reporting forms for tax purposes are not typically issued. The District's paid leave program must plan proactively for the growth of the gig economy where more and more people will be earning some or all of their income as a non-standard employee. Millennials and the current generation of young people preparing to enter the workforce are the demographics most likely to be impacted by the evolution of the gig economy and, coincidentally, they are also the demographic most impacted by the immediate need for paid parental leave and longer term need for paid leave to provide elder care. The regulations should strike the requirement to either have a business license or be registered with the Office of Tax and Revenue in the definition of "self-employed individual" in Section 3499. This limitation is not grounded in the statute and places an undue burden on self-employed individuals wishing to participate in the paid leave program. We encourage DOES to accept a broader set of documents, including a sworn affirmation, to establish that someone meets the statutory qualifications of earning self-employment income in the District. If it is not possible to fully remove the requirement for self-employed people to produce a business license in order to opt-in, then we urge the Agency to allow self-employed individuals the flexibility to submit documentation showing a pending application for a business license when they apply to opt-in. DOES should work fellow District agencies to ensure a smooth and streamlined process between applying for a business license and opting into the paid leave program. Finally, the Department has already shown a strong commitment to providing robust, independent analysis of whether workers are misclassified in an unemployment context. This commitment is evidenced by the clear and concise language used under the "Independent Contractor" section of the Unemployment Insurance Handbook for Employers. This language states that "DOES has the authority to determine employer/employee relationships and the classification of the worker's status as it relates to the designation of independent contractor. DOES' classification is independent from any other regulatory authority, such as the Internal Revenue Service (IRS), worker's compensation authorities, or wage and hour authorities." We urge the Department to continue this practice in the paid leave context. In particular, if workers who have been misclassified as independent contractors attempt to opt in to the paid leave program as self-employed individuals, DOES should take that opportunity to remedy their misclassification and ensure they are properly covered as employees. We also urge the Department to remove the requirement to either have such a license or be registered with the Office of Tax and Revenue in the definition of "self-employed individual" in section 3499. In particular, the second sentence of the definition of self-employed individual, which imposes a substantial additional limitation not grounded in the statute, should be removed.

		We also urge the Department to remove the requirement to either have such a license or be registered with the Office of Tax and Revenue in the definition of "self-employed individual" in section 3499. In particular, the second sentence of the definition of self-employed individual, which imposes a substantial additional limitation not grounded in the statute, should be removed. Finally, the Department has already shown a strong commitment to providing robust, independent analysis of whether workers are misclassified in the unemployment context. This commitment is evidenced by the clear and concise language used under the "Independent Contractor" section of the Unemployment Insurance Handbook for Employers. This language states that "DOES has the authority to determine employer/employee relationships and the classification of the worker's status as it relates to the designation of independent contractor. DOES' classification is independent from any other regulatory authority, such as the Internal Revenue Service (IRS), worker's compensation authorities, or wage and hour authorities." We urge the Department to continue this practice in the paid leave context. In particular, if workers who have been misclassified as independent contractors attempt to opt in to the paid leave program as self-employed individuals, DOES should take that opportunity to remedy their misclassification and ensure they are properly covered as employees.
	"**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.	The definition of "Wages" in Section 3403.1 and 3499 should specifically state gratuities are considered covered wages per the definition in D.C. Code § 51-101(3). It is important to make this point 1000% clear to employers - and their employees - looking for guidance.
	OTHER	
	"Commencement of business"	**The regulations should define "commencement of business."** Under the law, self-employed individuals have the opportunity to opt in to coverage during "[t]he 60 days following the commencement of business in the District of Columbia." D.C. Code § 32-541.01(10)(b). However, at present, the proposed regulations do not define what constitutes the commencement of business. The final regulations should create a definition of "commencement of business" that allows self-employed people to establish and document the start of their business in a variety of ways as appropriate to their situation, including the date a business license or other relevant official documentation was issued, the date of incorporation, commencement of a lease or rental agreement, or other documentation that demonstrates when business operations began. The documentation needed to establish that a self-employed person earns their income for work performed in DC, referenced in the preceding paragraph, could also be used to establish the commencement of business when a business license is not present. Under the law, self-employed individuals have the opportunity to opt in to coverage during "[t]he 60 days following the commencement of business in the District of Columbia," D.C. Code § 32-541.01(10)(b). However, at present, the proposed regulations do not define what constitutes the commencement of business. The final regulations should create a definition of "commencement of business" that allows self-employed people to establish and document the start of their business in a variety of ways appropriate to their situation. The dates associated with the documentation above should be one way to do this in addition to relying on the date a business license or when other relevant official documentation was issued, the date of incorporation, commencement of a lease or rental agreement, or other documentation deemed appropriate by the Department. It will be important to make and publicize clear guidance to self-employed individuals about documentation necessary to establish proof of self-employment, where income is earned, and commencement of business well in advance of the start of the first open enrollment period so that self-employed people have the information and tools they need to make informed choices during this time-limited window.

		Defining "commencement of business" Under the law, self-employed individuals have the opportunity to opt into coverage during "[t]he 60 days following the commencement of business in the District of Columbia." D.C. Code § 32-541.01(10)(b). However, at present, the proposed regulations do not define what constitutes the commencement of business. The final regulations should create a definition of "commencement of business" that allows self-employed people to establish and document the start of their business in a variety of ways as appropriate to their situation, including the date a business license or other relevant official documentation was issued, the date of incorporation, commencement of a lease or rental agreement, or other documentation that demonstrates when business operations began.
	"Implementing paid leave insurance in employer-friendly ways"	Building upon JUFJ's comments submitted for the first round of proposed regulations and testimony delivered at DC Council oversight hearings, we continue to urge DOES to create an array of resources for employers, maximize interagency collaboration, establish an employer working group, and engage in proactive outreach to all members of the employer community. We look forward to partnering with the Office of Paid Family Leave on actualizing these recommendations.
		DOES should work with fellow District agencies to promote the forthcoming paid leave and medical leave program and, to the extent practicable, collaborate with them to reduce bureaucratic burdens placed on business operators. Business owners and self employed individuals are already accustomed to working with agencies such as the Department of Consumer and Regulatory Affairs, Office of Tax and Revenue, the Department of Small and Local Business Development, Alcoholic Beverage Regulation Administration, Health Benefit Exchange Authority, and more. All of the these agencies should be thoroughly briefed on DC's paid leave law so that agency representatives can inform business operators they engage with of the tax collection requirements that will begin next year. Business operators need as much time as possible to budget for these tax contributions and most are still unaware of the program. Businesses will be well served by DOES's proactive engagement of fellow District agencies in disseminating critical information about this new tax and labor policy. This interagency collaboration will be especially important for self-employed individuals starting new business operations because they will need to act expeditiously to enroll in the paid leave program - those first sixty days of starting your own business are a hectic time and receiving information about paid leave insurance from DCRA, OTR, and/or the Health Exchange, for example, will help ensure self-employed people are not inadvertently missing out on the coverage they may want. Additionally, the DC Office of Human Rights and the Office of the Attorney General should be key partners in educating businesses about and enforcing paid leave rights; business operations they have investigated for discrimination and/or wage theft should be specially engaged by DOES to ensure those companies are ethically participating in the District's paid leave program from the start. The Office of Paid Family Leave should also collaborate with DOES's Office of Wage Hour on this point to ensure the companies they have previously investigated for complaints are proactively operating above-board with respect to the paid leave program.

Other	"External Stakeholders"	We encourage DOES to also work with fellow District agencies to share relevant business and employee information in an effort to reduce duplicative paperwork requests of business operators. Sharing Unemployment Insurance wage history data is one example of streamlining paperwork requirements. DOES should also consider working with DCRA to share updates regarding business licensing. If a company is renewing their license with a new operating address, DCRA should be able to share that information with OPFL for online portal updates if the business approves such actions. When a self-employed person is applying for licenses, DCRA and/or OTR should inform that person about their ability to participate in the paid leave program and should also notify DOES about this business license application so that DOES can send detailed opt-in instructions to this individual. The more DOES can do to share information between agencies and reduce paperwork (physical or online) for business operators, the more successful the paid leave program will be from a user-experience perspective. Convening a working group of business leaders to discuss specific interagency bureaucratic challenges and problem solving solutions will provide important insight into ways to streamline paid leave operations. DOES should establish a working group that includes business leaders, self-employed individuals, and/or business associations with strong representation from business partners who have been supporting paid leave insurance in DC; this working group should be formed as soon as possible. Employers will be invaluable thought partners to DOES in accomplishing the tasks that lie ahead, including developing business and public outreach strategies, developing employer and employee notice forms, hosting webinars and town halls that inform businesses of the status of the law's implementation, and more. JUFJ representatives recently met with DC Health Exchange leadership to understand the keys to their successful public outreach campaign and they shared that creating an advisory group comprised of local business community leaders was one of their most important undertakings. We encourage DOES to similarly connect with the DC Health Exchange to glean important lessons for establishing an employer working group. It is also important to have self-employed business leaders represented in this working group to advise the Department on public outreach needs specific to this community. DOES must be diligent in developing and executing a comprehensive strategy for outreach to self-employed individuals to ensure they have a real opportunity to opt-in if they choose to do so. This short time frame for enrollment makes timely, effective, and proactive outreach to this community absolutely essential. Any outreach to the employer community that this working group engages in should be sure to incorporate a 'know your rights and responsibilities' component to their public education. Employers should be reminded of DC's annually adjusting minimum wage, the requirement to provide paid sick days, FMLA job protections, non-discrimination provisions in DC law, small business resources available from the DC Health Exchange, any updates to operating procedures at DOES or DCRA, and more. The rollout of the District's paid leave program is ideal opportunity for DOES to ensure employer compliance with local labor laws across the board. For self-employed individuals, it is essential that paid leave outreach and education include a discussion of misclassification related wage theft and DCRA requirements around business licensing. While compliance with labor laws are often thought to be exclusively a matter of worker rights, it is also in the interest of e employers to ensure our laws are being enforced and adhered to: when a company cheats their workers on pay or benefits, they wrongly undercut their competition. We should be promoting ethical business competitiveness as the only acceptable way to strengthen and sustain our vibrant economy.

		Maximize interagency collaboration. DOES should work with fellow District agencies (e.g. DCRA, DSLBD, OTR, etc.) to ensure entrepreneurs are notified about the option to participate in the District's paid leave program at every possible opportunity when starting their business. Similarly, to the extent practicable, I urge DOES to work with fellow agencies to share information about business licensing and other relevant operations to reduce duplicative paperwork requirements on self-employed business operators.
		Maximize interagency collaboration. DOES should work with fellow District agencies (e.g. DCRA, DSLBD, OTR, etc.) to ensure entrepreneurs are notified about the option to participate in the District's paid leave program at every possible opportunity when starting their business. Similarly, to the extent practicable, I urge DOES to work with fellow agencies to share information about business licensing and other relevant operations to reduce duplicative paperwork requirements on self-employed business operators.
		Maximize interagency collaboration. DOES should work with fellow District agencies (e.g. DCRA, DSLBD, OTR, etc.) to ensure entrepreneurs are notified about the option to participate in the District's paid leave program at every possible opportunity when starting their business. Similarly, to the extent practicable, I urge DOES to work with fellow agencies to share information about business licensing and other relevant operations to reduce duplicative paperwork requirements on self-employed business operators.
		Share information across agencies. To the extent practicable, I urge DOES to work with fellow District agencies to share information regarding business licensing, contact information, and other relevant operations to reduce duplicative paperwork requirements on business operators. I also encourage DOES, DCRA, DSLBD, OTR, and other relevant agencies to work collaboratively to educate business owners – current and new – about DC's paid leave program to ensure no one is caught unaware about taxation requirements, etc.