

# Universal Paid Leave Amendment Act of 2016 – Retaliation and Interference Claims Enforcement Guidance 24-02 Date: March 15, 2024



## Purpose

This is a guidance document provided by the D.C. Office of Human Rights (“OHR”) to help the public understand the benefits of the **Universal Paid Leave Amendment Act of 2016** (“UPL”)<sup>1</sup> and OHR’s enforcement role. This document is for educational purposes only and does not constitute legal advice as it applies to a particular situation. Any person or entity in need of legal advice should consult an attorney knowledgeable in this area of the law.

## General Information About the Law

Despite its name, UPL does not provide leave. Rather, it allows eligible private-sector employees in the District to receive **pay** for certain qualifying leave for family or medical purposes. For example, an employee eligible to take leave under the DC Family and Medical Leave Act may get paid during the leave under UPL. This benefit does NOT apply to District government employees as government employees are paid through a separate law.

## Terms to Know

- **Eligibility:** must have worked for a covered employer for some or all of the 52 weeks preceding the leave.
- **Qualifying Leave:** payments may be requested for the following types of leave - medical leave for yourself (the employee), family leave to take care of sick family member, or leave for the birth or placement of a child (i.e., adoption).

## Pay Benefits under UPL

- UPL applies to claims filed on or after **October 1, 2022**
- Pay benefits are as follows:
  - **Pay** for up to **12 workweeks** for parental leave, family leave, medical leave, and/or the birth or placement of a child.
  - Pregnant workers are eligible for **pay** for **2 additional weeks** of prenatal leave while pregnant.
  - The maximum amount of leave for any combination of parental, family, and/or medical leave is 12 weeks a year (or 14 weeks for pregnant women).
- To receive the pay, an individual must file a claim with the D.C. **Department of Employment Services** (DOES), not with OHR.

## How to File a Claim for Payment with the Department of Employment Services

The Department of Employment Services (DOES) administers the Act, including making eligibility and award determination. Appeals from DOES decisions are handled by the Office of Administrative Hearings (OAH).

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<sup>1</sup> D.C. Code § 32-541 *et seq.*

For more information or to apply for Universal Paid Leave benefits, please contact DOES by visiting [dcpaidfamilyleave.dc.gov](http://dcpaidfamilyleave.dc.gov), call 202-899-3700, or email [does.opfl@dc.gov](mailto:does.opfl@dc.gov).

### **OHR's Role**

OHR will accept “complaints other than claim determination”, like complaints of interference or retaliation because an individual sought payment under UPL. These claims are administratively enforced in the same manner with the same relief provided under the DCFMLA.<sup>2</sup>

Therefore, employees who believe that their employer has interfered with their right to the benefits provided under the UPL or who believe that their employer has retaliated against them for requesting, applying for, or using paid leave under the UPL have a right to file a complaint with OHR or file a civil action in court within **one year** or discovery thereof.

**Note:** OHR has no role in determining benefits or appealing benefit determination, as those decisions are handled by DOES and OAH, respectively (see the previous section above).

### **More Information on Complaints Other than Claim Determination**

In addition to the right to get paid for certain leave (which DOES administers), the law also prohibits retaliation and interference. For these two types of complaints, OHR provides an administrative process. See below for more information regarding each type of complaint:

#### **Retaliation**

UPL specifically defines “retaliation”<sup>3</sup> as:

- A. Subjecting an employee to intimidation, threat, reprisal, harassment, or discrimination;
- B. Subjecting an employee to an adverse employment action, absent a legitimate business reason, including discipline, discharge, suspension, transfer or assignment to a lesser position in terms of job classification, job security, or another term or condition of employment;
- C. Reducing the pay or hours of work of an employee or denying an employee additional hours of work, absent a legitimate business reason;
- D. Informing any prospective employer (whether nor not covered under the UPL) that the person has engaged in protected activity, absent a legitimate business reason;
- E. Reporting, or threatening to report, the actual or suspected citizenship or immigration status of an employee, former employee, or family member of employee or former employee, to a federal, state, or local agency; and/or
- F. Engaging in conduct which would reasonably have the effect of discouraging a reasonable employee from accessing paid-leave benefits, absent a legitimate business reason.

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<sup>2</sup> D.C. Code § 32-541.08(e).

<sup>3</sup> D.C. Code 32-541.01(18).

### Scenario

Linda is planning to use her UPL to get paid for the leave she plans on taking to care for her mother for six weeks. However, when she went on the leave and sought her UPL payment from DOES, while she did get paid, her employer got upset and told her pay would be reduced by the amount of the benefit she received and that after her leave ends, her employment would end. Linda can file a claim with OHR for retaliating against her for using UPL.

### **Interference**

Under UPL, it is also unlawful for an employer to interfere with, restrain, or deny the exercise of an employee attempting to use their paid leave benefit. Examples of impermissible interference include:

- Intimidating or threatening conduct intended to discourage an employee from accessing paid-leave benefits; or which as the effect of discouraging an employee from accessing paid-leave benefits;
- Providing false or misleading information intended to interfere with an employee's ability to access paid-leave benefits, or which has the effect of interfering with an employee's ability to access paid-leave benefits;
- Failing to provide the required UPL notices, where such failure has the effect of causing material harm to the employee, including the loss of paid-leave benefits;
- Failing to grant a leave request for a period of leave for which paid-leave benefits would be available, absent a legitimate business reason, where such denial of leave has the effect of causing material harm to the employee, including the loss of paid-leave benefits; and/or
- Failing to cooperate with DOES during the processing a request for paid-leave benefits or the processing of a UPL complaint with OHR

### Scenario

Thom wants to use his UPL to get paid for the leave he plans on taking to help prepare for the adoption of his new 3-year-old son. When he went on leave and sought payment from DOES, DOES informed him his claim could not be processed because his employer said he was not on eligible leave for UPL saying UPL is only for people who are giving birth in the hospital. Here, the employer would have been incorrect in taking this position. Thus, Thom can file a claim with OHR due to his employer's interference with his ability to receive his benefit under UPL and providing incorrect information to DOES.

### **Filing a Retaliation or Interference Complaint**

Retaliation and Interference complaints can be filed in court or with OHR. To start the OHR process, simply file an "Initial Intake Questionnaire" as follows:

- Online at [ohr.dc.gov](https://ohr.dc.gov)
- Email at [ohr.intake@dc.gov](mailto:ohr.intake@dc.gov); or
- In-Person/Mail at 441 4<sup>th</sup> St NW, Suite 570N, Washington, DC 20001

### **Questions**

- **Questions about your claims.** If you have any questions about how to file a claim for benefits, please feel free to contact DOES Office of Paid Family leave at 202-899-3700 or visit [dcpaidfamilyleave.dc.gov](https://dcpaidfamilyleave.dc.gov).
- **Questions about filing a retaliation or interference claims.** If you have questions because you believe your rights under the UPL have been interfered with or you have been retaliated against for asserting your rights under the UPL, please feel free to file a complaint with OHR.