



**STATEMENT OF SEEMA NANDA, EXECUTIVE VICE PRESIDENT AND COO OF
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS
DC COUNCIL PAID LEAVE HEARING
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My name is Seema Nanda and I am the executive vice president and COO of the Leadership Conference on Civil and Human Rights, a coalition of over 200 national organizations representing persons of color, women, children, organized labor, individuals with disabilities, older Americans, immigrants, major religious groups, gays and lesbians and civil liberties and human rights groups. We were founded 67 years ago and have coordinated national lobbying efforts on behalf of every major civil rights law since 1957.

Before working at the Leadership Conference, I was Chief of Staff to former U.S. Labor Secretary Tom Perez. Prior to serving at the U.S. Department of Labor, I headed the presently named Office of Immigrant and Employee Rights Section of the Justice Department's Civil Rights Division. It is a privilege to represent the civil rights community in addressing the Council today.

As you all know and have experienced in your own lives, nearly everyone will need to take time away from work at some point to care for a new child or a parent, or deal with a serious personal or family illness. The United States is the only industrialized nation that provides zero paid leave to new mothers, or even unpaid leave to all new parents. This is a hurdle towards opportunity that far too many working people face in our country. Today, however, the District of Columbia has a new law ready for implementation and the opportunity to do things differently, as a beacon of progress in our nation on this issue.

Paid leave is a fundamental building block of workplace policy that is essential to creating pathways to opportunity for all. Access to paid leave is important for all people, but the failure to provide paid leave has a disproportionate effect on the most vulnerable communities, including many of the communities represented by The Leadership Conference. The lowest wage workers who most need the safety net that paid family leave provides are the least likely to have it. While there are no statistics on the percentage of people of color with access to paid leave, we know that half of all White workers have access to some paid parental leave (which may include short-term disability insurance) while only 43 percent of African American workers and just 25 percent of Latino workers have access.ⁱ

That's why The Leadership Conference applauded the DC Council for passing the Universal Paid Leave Act, or UPLA.



The structure of the bill, which depends upon the creation of social insurance, is critical to the success of DC's paid leave program. We strongly support the social insurance components of the program, which create a pool that provides stability and solvency, adequately spreads risk, and is structured in a way to ease enforcement and disincentivize retaliation against workers for using their paid leave. We discourage the DC Council from enacting the various alternatives to social insurance that have been proposed because we believe they would hurt working families, communities of color, and the most vulnerable members of our society. Let me explain why.

The social insurance component has been critical to the success of state family and medical leave programs in California, New Jersey, and Rhode Island. Such plans spread risk among employers and help all employers weather different scenarios because they are paying insurance, not the full cost of an employee's leave. Allowing a significant number of employers to opt out of the social insurance program would shrink the pool and at the same time create an unwieldy program that may well undermine the key aspect of the bill, which is to spread risk over a significant number of employers and thus insure the financial stability of the program. Small businesses in particular would struggle with an employer mandate.

But of most significance to The Leadership Conference is the discriminatory and retaliatory effects that an opt-out employer mandate would create. An employer mandate program is only as good as its compliance rate. Employers under a mandate must cover the full cost of an individual employee's leave, and thus have incentives to discriminate in hiring and to retaliate against employees who take leave, or deny benefits to employees entitled to leave.

Structuring a paid leave policy in such a way that employers pay their own costs of paid leave, rather than through the insurance program, will likely result in significant discrimination against major subsets of vulnerable workers, particularly women of childbearing age and lower income individuals, who generally have less bargaining power in the workplace and knowledge of their rights. A 2016 study by Cynthia Thomas Calvert from the UC Hastings College of Law found that discrimination based on family responsibilities is rising faster—269 percent over the past decade—than other areas of employment discrimination.ⁱⁱ Because discrimination often begins when an employee changes supervisors, there is no way to control for “good” and “bad” employers. An employer mandate incentivizes employers to fire vulnerable workers or not to hire them at all.

Just as vulnerable workers need paid leave the most and are least likely to have it, young workers, women, people of color, and immigrants are more likely than other workers to experience workplace violations. For instance, a 2017 Economic Policy Institute Study found that low wage workers experience more wage violations than higher paid workers.ⁱⁱⁱ The District is no exception to this. In its recently released report on highlights of 2016, the D.C. Office of Human Rights reported that 85 percent of its docketed cases related to employment discrimination, with retaliation, sex, race, and disability the most prevalent bases for discrimination claims.



The social insurance program has several distinct benefits which will prevent against discrimination. The employer does not directly pay the cost of the family and medical leave; rather, they contribute to these costs through the social insurance pool. By creating a profit incentive to deny leave for workers, any program that includes an employer mandate will as a matter of fact result in more discriminatory behavior by employers. In addition, employees under UPLA would receive their benefits through the District, not through their employer, therefore removing their employer from the equation entirely of having **the potential** to discriminate against them by not providing benefits.

Employees in low wage jobs, who many employers often see as interchangeable, are likely to face denials or potential retaliation for using leave, which could take the form of reduced hours, worse schedules, or other more subtle forms of discrimination. And under some of the alternative proposals the Council is considering, only employees of employers with more than 20 employees would be protected from discrimination.

Second, under the mandate option, employees are in theory entitled to benefits after only a 7-day working period, and benefits are based on a lookback over 4 of the 5 previous quarters of any job. As a result, employers will likely be reluctant to cover an employee who was not employed with the employer for most of the period.

Because payment under an employer mandate would be made directly by the employer, enforcement would become a major task and would require significant funding in order to secure employer compliance. But employer compliance under a mandate will never be as effective as a social insurance program because of the incentives to deny coverage, and the most vulnerable workers – those who fear retaliation the most, and those with the most to lose – will be the biggest losers under an employer mandate program. While the present bill requires that payroll taxes help fund enforcement, international research shows that employers in countries with a mandate rather than a social insurance program tend to discriminate against workers they think are most likely to take leave, particularly women of child-bearing age.^{iv}

We recognize that the District faces complex issues. The DC unemployment rate is higher than the national average, with the rate troublingly high in Wards 7 and 8. But reducing unemployment and implementing paid leave are not mutually exclusive strategies, but rather, closely related policies that reinforce each other. Social insurance paid leave policies reduce disparities in leave-taking between the lowest paid workers, disproportionately women and people of color, and higher socioeconomic groups. Studies have shown that women with access to paid leave are more likely to return to the labor force, resulting in lower level of overall unemployment. Paid leave is not a fringe “nice to have” policy for poorer communities. It is a fundamental policy that reduces inequalities, reduces unemployment, and increases women’s labor force participation.



Thank you again on behalf of The Leadership Conference for this opportunity. We urge the D.C. Council to retain its original proposal, with its critical social insurance component, which will serve the needs of all of the District's residents, including the most vulnerable workers.

ⁱ http://www.clasp.org/resources-and-publications/publication-1/2014-04-09-Inequities-and-Paid-Leave-Brief_FINAL.pdf

ⁱⁱ <http://www.worklifelaw.org/pubs/FRDupdate2016.pdf>

ⁱⁱⁱ <http://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/>

^{iv} <https://www.americanprogress.org/issues/economy/reports/2015/11/19/125769/administering-paid-family-and-medical-leave/>