Chairman Mendelson, members of Council, I am Dr. John C. Cavanaugh, President and CEO of the Consortium of Universities of the Washington Metropolitan Area. Thank you for giving me this opportunity to appear before the Committee to speak on this issue of vital importance to District employers: their employees.

The Consortium is both a truly regional and diverse organization and is a critical asset to the District’s economy. In combination with our affiliated hospitals, universities are among the District’s largest private employers. This puts the Consortium in a position to consider the full implications of the proposed bills. Our membership includes nine (9) universities inside the District, five (5) universities in Maryland, and three (3) universities in Virginia. Included in these totals are three (3) federal universities that by law are prohibited from advocacy, so my comments do not reflect their opinions.

The Consortium member institutions have long supported paid leave programs, and have demonstrated that belief through an array of flexible leave programs for parents, family medical care, and self-care, among others. We testified¹ on December 2, 2015 in support of paid leave programs. We described how our employees have made good use of our programs. Our member institutions are justly proud of their effective and efficient processes for administering these

¹ The Consortium’s December 2, 2015 testimony may be accessed at https://static1.squarespace.com/static/54f72b94e4b05ca04000cf5c/t/59b7fa69d55b41ba35f2eb4c/1505229417966/Universal+Paid+Family+and+Medical+Leave+Testimony+2015-12-02.pdf.
programs. We also noted that our members have effective benefits education, communications systems, and support mechanisms in place to address employees’ questions and concerns.

While in support of paid leave, in our earlier testimony we voiced several concerns with the approach taken by the 2015 proposal. The most important concern we raised, and the one that continues to be central for us, is the articulation of the benefits the Council desired and subsequently adopted for all District employees (8 weeks parental leave, 6 weeks family leave, 2 weeks personal leave). These leave benefits were similar to those already being provided by many organizations, including our member institutions. In our earlier testimony, we asked for consideration by the Council for those employers that, like the Consortium member institutions, already had successful paid leave programs that employees used and trusted. We made the case that by working collaboratively with organizations already offering paid leave we all could achieve the goal of providing broader access to paid leave at the most affordable cost. We believed then, and still believe, that the Council should take advantage of the experience, infrastructure, and processes that already exist within most large District employers that already offer paid leave. That way, the District could focus most of its efforts and resources on employees who currently have no or limited access to paid leave, creating the universal access the Council envisions.

As described below, our concerns are for the most part addressed through these proposed amendments. Thus, we come here today to thank Council for listening to our concerns and to offer possible ways to incorporate appropriate changes into the law without compromising access to benefits for District employees who currently do not have access to paid leave benefits. We are especially pleased at the Council’s willingness to leverage the efforts of the many organizations that provide paid leave benefits to ensure access to benefits by all.

We also are grateful for the work that has been done to ensure that the Paid Leave Act implementation will be consistent with other key employment laws, including laws relating to unemployment compensation, wage theft, minimum wage, workers compensation, pregnancy protection laws, antidiscrimination laws, and so forth as they relate to the workplace.

The set of proposed paid leave bills put forward by Councilmembers are intended to amend the existing law, and are focused on two different issues: articulation of benefits and cost containment. In general, there are two main approaches in our view. For example, Bill 22-130, Bill 22-302, and Bill 22-334 provide avenues for organizations of a certain size to be subject to an employer mandates based upon the current law. One way that is presented, for instance in Bill 22-334, is for such organizations to self-insure, that is, to provide equivalent benefits through their respective organizations and still pay a lower payroll tax to help offset the costs of a District-run program. By creating pathways for organizations to provide benefits equivalent to the District’s program, this model explicitly recognizes and proposes ways to address the
articulation of benefits issue that is our top priority. Under Bill 22-334, organizations already offering paid leave could continue their programs with adjustments needed to comply with the base levels stipulated by the Universal Paid Leave Act requirements. Employees of these organizations would experience few, if any, changes to the leave programs they are accustomed to. Thus, our assessment of this model is that it addresses both benefits articulation and program affordability.

The bills focused on cost containment primarily, such as Bill 22-130, Bill 22-325, and Bill 22-334, offer a wide range of options. For example, Bill 22-325 is based on an employee cost-sharing model constructed on the presumption that such cost-share payments are fees and not a tax. However, this approach does not carry with it a self-insurance component along the lines discussed earlier, as it would still require all employers to participate in the District-run program. This would mean that employees of organizations that already offer paid leave would likely see dramatic changes in their benefits plans, at the least in terms of how they access them, and at the most in terms of the salary they would draw while on leave. Most of the other bills addressing cost do so through differential tax rates on those organizations already offering equivalent paid leave and those participating in the District-run program. One difference in Bill 22-334 is that even small organizations that already offer equivalent paid leave programs may continue to do so and pay the lower payroll tax.

As I noted earlier, the Consortium has been very consistent in its concerns about the paid leave programs from the time they were first proposed through today. Our highest concern remains the need preserve the ability of Consortium institutions to pay leave benefits equivalent to those in current law directly to their employees, without the need for an expensive government intermediary. This direct provision of leave benefits by employers who have a history of managing such benefits for their employees is the most efficient and cost effective way to meet the needs of many District employees. Remaining consistent, the Consortium urges the Council to adopt amendments to the Paid Leave Act that create avenues for organizations to self-insure so long as they offer equivalent paid leave programs as required by the existing law.

We also urge the Council to consider the fact that employers who do provide equivalent paid leave benefits programs are also absorbing the full cost of providing, tracking, and administering these programs. There will be no costs passed on to the District government. Consequently, these employers will be providing a major service to employees without District intercession, thereby saving the District millions in avoided costs. With that in mind, we ask the Council to consider eliminating, or at least further lowering, the payroll tax to be levied on self-insured employers.

Given these positions, we recognize the need for appropriate employer education, enforcement, and oversight processes. With respect to employer education, the District must establish a vigorous and universal education program for all District employers so that they fully understand
how to comply fully with the program. We strongly urge the Council to enact the appropriate oversight procedures for this education process and make the implementation of universal paid leave contingent on educating employers and employees on the program being implemented.

With respect to reporting, the District already has reporting timelines for other employment-related data, such as unemployment compensation. Perhaps the reporting timelines for paid leave could track those calendars for consistency.

Additionally, we urge the Council to closely examine the data that District government already collects from employers to ascertain its sufficiency for purposes of reporting under the Universal Paid Leave Act. We argue that additional data reporting requirements should only be imposed if they are directly linked to enforcement. For self-insured employers, enforcement should closely track the process used for unemployment insurance cases, rather than forcing the District government to establish a new, elaborate enforcement and tracking program. With respect to penalties for lack of compliance, two kinds of situations must be distinguished. On one hand, there is a possibility of an error committed in good faith, such as a simple reporting or mathematical error that is a one-time occurrence. On the other hand, there are situations in which an organization deliberately lies in reporting, denies access to benefits, fails to educate employees about benefits, or commits other flagrant and egregious violations. We do not believe the penalties in these two cases should be identical. In the former case, there should be an opportunity for the organization to correct the error, and to demonstrate that it is not a consistent pattern. In the latter case, we believe that significant penalties, including costly fines or removal of the ability to provide its own benefits program should be levied.

In closing, the Consortium expresses its appreciation to the Council for all of the work done to address concerns and to improve employees’ access to paid leave. We believe that the amendments offered, especially those that address both articulation of benefits and cost effectiveness, especially Bill 22-334, will achieve those improvements.