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CONSENT CALENDAR
 April 23rd, 2019

To: Honorable Mayor and Members of the City Council
From: Paid Family Leave Subcommittee; Councilmember Bartlett, Hahn, Harrison, and Davila
Subject: **Berkeley Paid Family Leave Policy**

TITLE

Paid Family Leave Policy in Berkeley to Supplement California Paid Family Leave Program

RECOMMENDATION

That the City Council adopt this policy and refer to the City Manager and City Attorney to amend the proposed ordinance based on the recommendations of the Paid Family Leave (PFL) Subcommittee and to conform to legal and code consistency requirements. Currently, California PFL compensates employees for only 60% to 70% of their regular salary. Berkeley PFL will obligate covered employers to supplement this compensation so that their covered employees can receive up to 100% of their gross weekly salary when taking time off, up to the State maximum weekly benefit amount:

- 1) To bond with a new child entering their life either by birth, adoption, or foster care placement
- 2) To care for an ailing family member including child, parent, sibling, spouse, grandparent, parent-in-law or domestic partner

Berkeley PFL will cover employees of:

- 1) Companies and organizations with more than 150 employees worldwide
- 2) Employers owning five or more owner-controlled franchise businesses worldwide
- 3) City of Berkeley non-benefited employees

These Employees at these will be eligible to utilize Berkeley PFL after 180 days of employment, and any employees utilizing Berkeley PFL will be protected from retaliation by their employer.

Two years after the effective date of the Berkeley PFL ordinance, staff shall prepare a report on the success and/or challenges of implementing Berkeley PFL and considering changes to the ordinance, including the possibility of lowering the threshold of applicability for employers, lowering the number of days before an employee is covered, conformance with new State law, if any, and any other changes staff may recommend.

In addition, the following specific changes are recommended:

Legislative Findings. REMOVE LEGISLATIVE FINDINGS FROM ORDINANCE, unless city attorney feels limited findings or purpose statement is required.

- Definitions: Look at definitions that are generic to BMC and make sure they conform to existing code, or remove them.

- Section .030 (B)(d)(i). In middle of paragraph, “for example” elements, remove from ordinance and include in implementation guidelines.
- .030(B)(d)(ii) “for example...” element, remove from ordinance and include in implementation guidelines.
- 030(B)(4): “unless covered employer...reason,” ADD “or reasons” after reason.
- 030(B)(5): “Unused Vacation Leave” change to “Unused Accrued Leave Benefit” whenever you see the first phrase replace it with the second throughout the document
- 060(D) change reason to “reason or reasons” ...Parallel to 030(B)(4)
- 070(A) strike everything after the 2nd sentence.
- 9.90.080

Refer to the City Manager to review in particular implementation and enforcement provisions to ensure conformity with existing implementation and enforcement of similar measures, except that the terms under 9.90.080(A)(1)(a) and (b) and (c) the fines shall remain as stated in the ordinance as proposed. Under A(2) the city may pursue administrative remedies in accordance with Section 1.28. Strike the remainder of 0802

Short term referral to direct City Manager to return within 90 days staffing implications for launch phase and long term administration of Berkeley PFL.

CURRENT SITUATION

The United States is the only industrialized nation that does not guarantee paid leave for new parents. Currently, California State law only replaces 60% to 70% of income for 6 weeks for parental leave, funded entirely by employee contributions. Numerous studies have linked longer parental leave to greater bonds with newborns, foster children, and adopted children, displaying a multitude of beneficial effects for both the child and the parents¹.

The United States also has no legislation guaranteeing employees paid leave when taking care of ailing family members. This forces a balancing act on workers of maintaining their financial stability and caring for a family member such as a parent. Under current laws, workers must take sick time, vacation, or unpaid time off to care for a family member, adding stress and uncertainty to their own lives.

BACKGROUND

Paid Family Leave assists and sometimes enables parents to bond with newborns. There is a multitude of research detailing how longer periods of leave from work lead to better health outcomes for newborns. A report published in the Journal of Delivery Science and Innovation in 2016 reviewed 20 years of data on the association between Paid Family Leave and health outcomes. Among the findings include:

¹ http://libres.uncg.edu/ir/uncg/f/C_Ruhm_Parental_2000.pdf,
https://moneydotcomvip.files.wordpress.com/2015/01/hipfactsheet_2011.pdf

“The United States has an infant mortality rate at least twice that of Sweden. About 39% of US excess infant mortality when compared to Sweden is due to our high preterm infant mortality rate. Lacking antenatal leave has been associated with a three-fold increase in risk of preterm delivery. Working longer into pregnancy has also been linked to delivery complications. Taking leave before the end of pregnancy has benefits to birthweight approaching the same magnitude as the harms seen in smoking during pregnancy. Examining 18 countries over more than 30 years, Tanaka found a statistically significant correlation between lower birthweight and lack of access to job-protected paid parental leave. Stearns found the treatment effects for even short maternity leaves meant a 12% reduction in LBW deliveries to mothers in the five American states with TDI programs. Rossin, examining the effects of unpaid leave for women believed most likely to take such leave, found a 47% reduction in the likelihood an infant born to one of these women died of an ‘ill-defined’ cause. SIDS, one of several causes of infant mortality in the ‘ill-defined’ category, makes up 21% of American infant mortality alone.”²

A 2012 survey by the US Department of Labor found that the main reason employees in the United States do not take unpaid leave under the federal Family Medical Leave Act is that they cannot afford to take it³. Further, studies show that low-wage workers in particular would benefit from expanded paid family leave policies. Giving employees the freedom to take leave has important effects on quality of life, especially for new mothers. Babies whose mothers work during the first three months of the baby’s life are less likely to be breastfed, taken to the doctor for well-baby visits, or be up to-date on immunizations⁴. According to a 2015 study, rates of breastfeeding through infancy in California increased by 10%-20% after California developed its Paid Family Leave program, which entitles employees to receive partial wage replacement while on leave⁵.

A Paid Family Leave program will also benefit caretakers and ailing family members. Giving employees the freedom to take leave to care for a sick family member has enormous implications for a large portion of our population. A 2012 survey of employees in the United States showed that 1.6% of all workers faced an unmet need for leave due to a parent’s, spouse’s, or child’s health condition⁶. The National Alliance for Caregiving (NAC) reports that there are at least 43.5 million unpaid family caregivers in the United States and that family caregivers provide an average of 20 hours of care per week. Moreover, caregiving often isn’t limited to a few months, or even a year — in fact, caregiving lasts an average of almost five years and 70% of all caregivers are working while caring for a loved one. Caregiving can cause significant financial, physical and emotional strain. NAC reports nearly 7 in 10 caregivers report having to make work accommodations while they are providing care to a loved one. Of caregivers who take time off to fulfill their responsibilities at home, 48% report losing income⁷. Of caregivers who leave the workforce, half (52%) said they did so because their jobs did not allow the flexibility they needed to work and provide elder care⁸. And caregiving takes more than a financial toll – It is widely documented that caregivers experience high levels of stress, depression, and suffer from higher rates of chronic disease, and diminished immune response. As our population ages and caregiving needs increase, paid leave will be even more critical to helping ensure working people can take care of their loved ones without risking their economic security.

² <http://www.nationalpartnership.org/our-work/workplace/paid-leave-resources.html#effect>

³ <https://www.dol.gov/asp/evaluation/fmla/fmla-2012-technical-report.pdf>

⁴ <http://cepr.net/documents/publications/paid-family-leave-1-2011.pdf>

⁵ <https://www.ncbi.nlm.nih.gov/pubmed/24508006>

⁶ <https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>

⁷ http://familiesandwork.org/site/research/reports/elder_care.pdf

⁸ <http://www.familiesandwork.org/downloads/2014-Older-Adult-Caregiver-Study.pdf>

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, LAWS

Currently, the State of California offers a 6 week Paid Family Leave plan that covers 60% to 70% of an employee's compensation based on their income. This amount is calculated using the highest quarterly earning for the employee during the previous year. An employee is eligible for California PFL only if they have paid more than \$300 to California Disability Insurance in the previous 12 months. California PFL covers the birth of a child or care for a seriously ill family member. California PFL lasts for a maximum of 6 weeks, and allows an employer to require the employee to use vacation or paid time off for 2 weeks before the benefits of California PFL begin.

ACTIONS/ALTERNATIVES CONSIDERED

Paid Family Leave policies from Washington State and San Francisco were both considered.

CONSULTATION/OUTREACH OVERVIEW AND RESULTS

The Ad-Hoc Subcommittee on Paid Family Leave has received proposals from the Commission on the Status of Women and the Commission on Labor.

RATIONALE FOR RECOMMENDATION

The goal is to ensure that concern over loss of income does not preclude Berkeley employees from bonding with their new child or taking care of a seriously ill family member. This item complements California's Paid Family Leave law to ensure that qualified employees can receive 100% compensation when taking paid family leave. This will provide Berkeley residents with more time to bond with their children or care for people close to them. We expect this to alleviate a number of social ailments.

FISCAL IMPACTS

Staff or contractor costs for the launch and ongoing administration of the program, for Outreach and education, enforcement, administration and analysis. Cost of covering currently unbenefitted city employees shall also be assessed, balanced against potential improvements in employee retention due to the added benefit.

ENVIRONMENTAL SUSTAINABILITY

No negative impact.

CONTACT PERSON

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ATTACHMENTS/SUPPORTING MATERIALS