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2 Councilmember Vincent Orange

_____ Chairman Phil Mendelson

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6 Councilmember Anita Bonds

_____ Councilmember Charles Allen

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10 Councilmember Brianne K. Nadeau

_____ Councilmember LaRuby May

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18 A BILL
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23 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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28 Chairman Mendelson and Councilmembers introduced the following bill which was
29 referred to the Committee _____.
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31 To establish a minimum work week for building service employees.
32

33 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That
34 this act may be cited as the “Building Service Employees Minimum Work Week Act of
35 2015”.

36 Sec. 2. Definitions.

37 For the purposes of this act, the term:

38 (1) “Covered employee” means any employee performing janitorial or building
39 maintenance services in or around a covered location in the District of Columbia.

40 (2) “Covered employer” means any individual, partnership, association, corporation,
41 business trust, or any person or group of persons that directly employs, contracts, or

42 subcontracts for the services of a covered employee; or owns or controls a covered location;
43 or leases any portion of a covered location and:

44 (A) Directly employs at least one covered employee; or

45 (B) Contracts or subcontracts for the services of at least one covered employee

46 (3) "Covered leave" means unpaid temporary leave voluntarily taken by a covered
47 employee pursuant to applicable federal or District law; a written employee handbook; or by
48 written request initiated by the covered employee.

49 (4) "Covered location" means an office building, a continuous and commonly owned
50 office park, or a group of office buildings with over 350,000 net rentable commercial office
51 square feet that have common ownership and management, and are contiguous or have
52 consecutive addresses.

53 (5) "Janitorial or building maintenance services" means work performed by a janitor,
54 building cleaner, porter, doorman, building superintendent, or handyman.

55 (6) "Minimum work week" means the minimum number of scheduled hours provided
56 to a covered employee in any work week, except for weeks in which the covered employee is
57 taking covered leave.

58 (7) "Week" means a period of one hundred sixty eight (168) hours or seven (7)
59 consecutive twenty four (24) hour periods.

60 Sec. 3. Minimum work week for building service employees.

61 The minimum work week for any covered employee shall be thirty (30) hours;
62 provided , that at each covered location with a certificate of occupancy issued on or before
63 July 1, 2016, up to twenty percent of work hours scheduled for employees engaged in
64 cleaning may be preserved for part-time employees with a minimum shift of four hours per
65 night and twenty hours per week per employee, for up to a total of ten such part-time
66 positions permitted per covered location.

67 Sec. 4. Prohibited Acts.

68 It is a violation of this act for any covered employer to:

69 (1) Fail to provide a minimum work week in accordance with the provisions of this
70 act or any of the provisions of any regulation issue pursuant to this act;

71 (2) Discharge or in any other manner discriminate against any covered employee
72 because that covered employee has filed a complaint or instituted or caused to be instituted
73 any proceeding under or related to this act, or has testified or is about to testify in any
74 proceeding related to this act;

75 (3) Hinder or delay the Mayor in the enforcement of this act, to refuse to admit the
76 Mayor to any covered location upon demand, or to refuse to make available to the Mayor
77 any record required for the enforcement of this act.

78 Sec. 5. Posting requirement.

79 (a) The Mayor shall prescribe and provide to covered employers, and a covered
80 employer shall post and maintain in a conspicuous place, a notice that sets forth excerpts
81 from or summaries of the pertinent provisions of this act and information that pertains to
82 the filing of a complaint under this act. The notice shall be published in all languages
83 spoken by 3% of or 500 individuals in the District of Columbia population.

84 (b)(1) A covered employer who willfully violates this section shall be assessed a civil
85 penalty not to exceed \$100 for each day that the employer fails to post the notice; provided,
86 that the total penalty shall not exceed \$500.

87 (2) No liability for failure to post the notice will arise under this section if the
88 mayor has failed to provide to the business the notice required by this section.

89 (c) A covered employer shall post the notice in English and all languages spoken by
90 employees with limited or no-English proficiency, as defined in Section 2 of the Language
91 Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167, D.C. Official Code § 2-1931).

92 (d) Upon request to the Mayor, a covered employer shall be furnished copies or
93 summaries of this act prepared by the Mayor.

94 Sec. 6. Enforcement, records, and subpoenas.

95 (a) The Mayor shall enforce and administer the provisions of this act.

96 (b) The Mayor shall have the authority to:

97 (1) Investigate and ascertain the minimum scheduled workweek of covered
98 employees;

99 (2) Enter and inspect the place of business of any covered employer in order
100 to:

101 (A) Examine and inspect any books, registers, payrolls, and other
102 records as the Mayor may deem necessary or appropriate; and

103 (B) Copy books, registers, payrolls, and other records as the Mayor
104 may deem necessary or appropriate; and

105 (C) Question a covered employee for the purpose of ascertaining
106 whether the provisions of the act and any orders and regulations issued pursuant to this act
107 have been and are being complied with

108 (3) Require from any covered employer full and correct statements in writing,
109 including sworn statements, with respect to wages, hours, names, addresses, and any other
110 information that pertains to the employment of a covered employee as the Mayor may deem
111 necessary or appropriate to carry out the purposes of this act.

112 (c) The Mayor shall have power to administer oaths and examine witnesses under
113 oath, issue subpoenas, compel the attendance of witnesses, and the production of papers,
114 books, accounts, records, payrolls, documents, and testimony and to take depositions and
115 affidavits in any proceedings before the Mayor.

116 (d) In case of failure of any person to comply with any subpoena lawfully issued, or
117 on the refusal of any witness to testify to any matter regarding which he may be lawfully
118 interrogated, it shall be the duty of the Superior Court of the District of Columbia or any
119 judge thereof, on application by the Mayor, to compel obedience by attachment proceedings
120 for contempt, as in the case of disobedience of the requirements of a subpoena issued from
121 such Court or a refusal to testify therein.

122 Sec. 7. Penalties.

123 (a) Any person who fails to comply with any of the provisions of this act shall be
124 subject to a fine of not more than \$5,000 for each violation. Each week of violation for each
125 employee shall constitute a separate violation. Each covered employer that is in violation of
126 the requirements of this Act shall be subject to a civil penalty of not more than \$5,000 for
127 each day the covered employer is in violation.

128 (b) In addition to and apart from the penalties or remedies provided for in this act,
129 the Mayor, taking into consideration factors including the history of violations by a covered
130 employer, the administrative costs of the proceeding to collect, and the size of the covered
131 employer's business, shall assess and collect administrative penalties as follows:

132 (1) For the first violation, up to a maximum fine of \$500; or

133 (2) For any subsequent violation, up to a maximum fine of \$1,000.

134 (c) No administrative penalty shall be collected unless the Mayor provides any
135 person alleged to have violated a provision of this act notification of the violation,
136 notification of the amount of the administrative penalty to be imposed, and an opportunity
137 to request an informal hearing. If an informal hearing is requested, the Mayor shall issue a
138 final order following the hearing containing a finding that a violation has or has not
139 occurred. If an informal hearing is not requested, the person to whom notification of

140 violation was provided shall transmit to the Mayor the amount of the penalty within 15
141 days following notification.

142 Sec. 8. Administrative actions.

143 (a) When a covered employee requests administrative enforcement of this act, the
144 Mayor shall investigate and make an initial determination regarding alleged violations. A
145 signed complaint for failure to provide a minimum work week shall be filed with the Mayor,
146 no later than 3 years after the last date upon which the violation of this act.

147 (b) If the alleged failure to provide a minimum work week violation is ongoing at the
148 time of the filing of the complaint, the complaint may also seek recovery of amounts that
149 accrue after the filing of the complaint. With regard to amounts that were due at the time
150 the complaint was filed, an aggrieved employee may recover only those amounts that
151 became lawfully due and payable within the 3-year period before the date the complaint
152 was filed. This period is tolled during any period that the employer fails to provide the
153 complainant with actual or constructive notice of the employee's rights or on other
154 equitable grounds.

155 (1) The complaint shall set forth the facts upon which it is based with
156 sufficient specificity to determine both that an allegation of failure to provide a minimum
157 work week has been made and that the other criteria stated in this section have been met.

158 (2) In addition to the other requirements of the complaint set forth in this
159 section, the complaint shall be sworn and shall include or attach the following information:

160 (A) The complainant's name, address, and telephone number (or
161 alternate address or telephone number if the complainant desires);

162 (B) Sufficient information to enable the Mayor to identify the
163 employer through District records, such as the employer's name, business address, license
164 plate number, or telephone number; and

165 (C) An explanation of the alleged violations, which may include the
166 approximate or actual dates the violations occurred, the estimated total dollar amount of
167 unpaid wages, and an explanation of how the total estimated amount of unpaid wages was
168 calculated.

169 (3) The Mayor shall request additional information from the complainant to:

170 (A) Amend a charge deemed insufficient;

171 (B) Cure technical defects or omissions;

172 (C) Clarify or amplify allegations; or

173 (D) Ensure that any violations related to or arising out of the subject
174 matter set forth or attempted to be set forth in the original charge are adequately alleged in
175 the complaint

176 (c)(1) The Mayor shall deliver the complaint and a written notice to each respondent
177 upon completion. The written notice shall set forth the damages, penalties and other costs
178 for which the respondent may be liable, the rights and obligations of the parties, and the
179 process for contesting the complaint.

180 (2) The Mayor shall also include an additional notice to employees stating
181 that an investigation is being conducted and providing information to employees on how
182 they may participate in the investigation. Upon receipt, the respondent shall post this
183 additional notice for a period of at least 30 days.

184 (3) Within 20 days of the date the complaint and written notice are mailed,
185 the respondent shall:

186 (A) Admit that the allegations in the complaint are true and pay to
187 complainant any unpaid wages or compensation and liquidated damages owed and pay to
188 the Mayor any fine or penalty assessed; or

189 (B) Deny the allegations in the complaint and request that the agency

190 make an initial determination regarding the allegations in the complaint.

191 (4) If a respondent admits the allegations, the Mayor shall issue an
192 administrative order requiring the respondent to pay any unpaid wages, compensation,
193 liquidated damages, and fine or penalty owed and requiring the respondent to cure any
194 violations. The Mayor may also proceed with any audit or subpoena to determine if the
195 rights of employees other than the complainant have also been violated.

196 (5) If a respondent denies the allegations, the respondent must notify the
197 Mayor of that decision and may provide any written supporting evidence within 20 days of
198 the date the complaint is mailed.

199 (6) If a respondent fails to respond to the allegations within 20 days of the
200 date the complaint is delivered, the allegations in the complaint shall be deemed admitted
201 and the Mayor shall issue an initial determination requiring the respondent to pay any
202 unpaid wages, compensation, liquidated damages, and fine or penalty owed and requiring
203 the respondent to cure any violations.

204 (7) The Mayor shall issue an initial determination within 60 days of the date
205 the complaint is delivered. The initial determination shall set forth a brief summary of the
206 evidence considered, the findings of fact, the conclusions of law, and an order detailing the
207 amount owed by the respondent or other relief deemed appropriate, if any. The initial
208 determination shall be provided to both parties and set forth the losing party's right to
209 appeal under this section or to seek other relief available under this chapter.

210 (8) In addition to determining whether the complainant has demonstrated
211 that the employer has violated one or more provisions of this act, the Mayor shall make an
212 initial determination of whether the complainant is entitled to additional unpaid earned
213 wages due to other District laws such as the Living Wage Act, the Sick and Safe Leave Act,
214 or the Minimum Wage Revision Act.

215 (9) If the Mayor fails to issue an initial determination within 60 days of the
216 filing of a complaint, the complainant shall have a right to request a formal hearing before
217 an administrative law judge.

218 (d)(1) The Mayor shall work with the parties in an attempt to conciliate. Any
219 conciliation agreement shall be between the respondent and the complainant and shall be
220 reduced to an administrative order requiring the respondent to pay any unpaid wages,
221 compensation, liquidated damages, and fine or penalty owed and requiring the respondent
222 to cure any violations.

223 (2) When an administrative order issued as a result of a conciliation
224 agreement is subsequently breached, the Mayor or the complainant may enforce the
225 administrative order pursuant to this section.

226 (e) (1) Within 30 days of the issuance of the initial determination or administrative
227 order, not issued as a result of conciliation, either party may file for a formal hearing before
228 an administrative law judge. If the initial determination was not issued within the 60-day
229 period specified in subsection (c)(7) of this section, a complainant may file for a formal
230 hearing before an administrative law judge. An administrative law judge shall conduct a
231 hearing to determine whether a violation of this act has occurred. The hearing shall be
232 scheduled within 30 days of a request, except that the administrative law judge shall issue
233 an order based on the findings from the hearing. The administrative law judge may grant
234 each party one discretionary continuance due to hardship or scheduling of up to 15 days.
235 The administrative law judge may grant any other request for continuance only for good
236 cause.

237 (2) The administrative law judge shall have the authority to administer
238 oaths, issue subpoenas, compel the production of evidence, receive evidence, and consolidate
239 2 or more complaints into a single hearing where such complaints involve sufficiently

240 similar allegations of fact to justify consolidation.

241 (3) All parties shall appear at the hearing, with or without counsel, and may
242 submit evidence, cross-examine witnesses, obtain issuance of subpoenas, and otherwise be
243 heard. Testimony taken at the hearing shall be under oath, and a transcript shall be made
244 available at cost to any individual unless the case is sealed. Testimony may also be given
245 and received by telephone.

246 (4) The burden of proof by a preponderance of the evidence shall rest upon
247 the complainant, but shall shift to the respondent when the following conditions are met:

248 (A) A respondent failed to keep records of a covered employee's
249 schedule of hours and hours worked, or records of compensation provided to an employee
250 are imprecise, inadequate, missing, fraudulently prepared or presented, or are
251 substantially incomplete; and

252 (B) A complainant presents evidence to show, as a matter of just and
253 reasonable inference, the hours he or she was scheduled and amount of work done or the
254 extent of work done or what compensation is due.

255 (5) Where the conditions in paragraph 4(A) and (B) of this subsection are met,
256 the respondent must present compelling evidence of an exemption from applicability of the
257 minimum weekly schedule requirements and compelling evidence to negate the
258 reasonableness of the inferences drawn from the complainant's evidence. If the respondent
259 fails to meet this burden, the administrative law judge shall award damages based on the
260 complainant's evidence and may award approximate damages where necessary.

261 (6) If a respondent does not appear after receiving notice of a hearing
262 pursuant to this section, the administrative law judge shall proceed to hear proof of the
263 complaint and render judgment accordingly. If, after receiving notice of a hearing pursuant

264 to this section, the complainant does not appear, the administrative law judge shall dismiss
265 the complaint without prejudice.

266 (f)(1) At the conclusion of the hearing, the administrative law judge shall issue a
267 decision setting forth a brief summary of the evidence considered, findings of fact and
268 conclusions of law, and an order detailing the relief determined appropriate to the parties
269 and their representatives within 30 days of the hearing.

270 (2) Appropriate relief may include any and all owed wages, reasonable
271 attorneys' fees and costs, pursuant to subsection (b) of this section, and any liquidated
272 damages.

273 (3) The decision and order shall be considered a final administrative ruling,
274 enforceable in a court of competent jurisdiction, and reviewable as provided by applicable
275 law.

276 (g)(1) Respondents shall comply with the provisions of any order or conciliation
277 agreement affording relief and shall furnish proof of compliance to the Mayor as specified in
278 the order. If the respondent refuses or fails to comply with the administrative order or
279 conciliation agreement, the Mayor or the complainant may record a lien and may sue in the
280 Superior Court of the District of Columbia for a remedy, enforcement, or assessment or
281 collection of a civil penalty.

282 (2) The Superior Court of the District of Columbia shall have no jurisdiction
283 to adjudicate the merits of the underlying claim, but is limited to enforcement of the
284 administrative order or conciliation agreement.

285 (3) The Mayor may, at the request of an employee, take an assignment in
286 trust for the assigning employee of such wages and join in a proceeding or action such
287 claims against the same employer as the Mayor considers appropriate, and the Mayor shall
288 have power to settle and adjust any such claim or claims on such terms the Mayor may

289 consider just; provided, that no settlement for an amount less than the amount awarded by
290 the administrative law judge shall be agreed to without the complainant's consent. The
291 Mayor shall maintain regular contact with the complainant concerning the procedural
292 status of any legal actions brought under the assignment and the complainant shall have
293 the right to inquire about and receive information regarding the status of the enforcement
294 action.

295 (h) If a respondent fails to timely comply with an administrative order or conciliation
296 agreement that has not been stayed, the Mayor shall:

297 (1) Assess an additional late fee equal to 10% of the total amount owed for
298 each month any portion of the award and any already accrued late penalty remains unpaid;

299 (2) Require the respondent to post public notice of their failure to comply in a
300 form determined by the Mayor; and

301 (3) Consider any unpaid amount to be owed the District as past due
302 restitution on behalf of an employee and suspend any licenses issued to do business in the
303 District as set forth in subsection (i) of this section. Penalty amounts, including civil
304 penalties and late fees, and any wages, damages, interest, costs, or fees awarded to an
305 employee or representative shall be a lien upon the real estate and personal property of the
306 person who owes them. The lien shall take effect by operation of law on the day
307 immediately following the due date for payment, and, unless dissolved by payment, shall as
308 of that date be considered a tax due and owing to the District, which may be enforced
309 through any and all procedures available for tax collection.

310 (i) The Mayor shall:

311 (1) Deny an application for any license to do business issued by the District if,
312 during the 3-year period before the date of the application, the applicant admitted guilt or
313 liability or has been found guilty or liable in any judicial or administrative proceeding of

314 committing or attempting to commit a willful violation of this act; and

315 (2) Suspend any license to do business issued by the District if the licensee
316 has failed to comply with an administrative order or conciliation agreement issued under
317 this section. Once alerted to an alleged lack of compliance, the Mayor shall notify the
318 business that its license will be suspended in 30 days until the business provides proof that
319 it is in full compliance with the administrative order or conciliation agreement, including
320 any requirements for accelerated payment, interest, or additional damages in the event of a
321 breach. Before the license suspension, the business will have an opportunity to request a
322 hearing to be held pursuant to the Administrative Procedure Act.

323 (j) Any person may be represented by counsel in any proceeding under this chapter.
324 Any party, including corporate entities, as an alternative to counsel, may be assisted by a
325 non-lawyer authorized by that party in accordance with 1 DCMR § 2835, except where such
326 representation is prohibited by law or disallowed by the administrative law judge for good
327 cause.

328 (l)(1) Any party may request that a subpoena be issued by the administrative law
329 judge. Witnesses summoned by subpoena shall be entitled to the same witness and mileage
330 fees as are witnesses in proceedings in the Superior Court of the District of Columbia. Fees
331 payable to a witness summoned by subpoena issued at the request of a party shall be paid
332 by that party.

333 (2) Within 10 days after service of a subpoena upon any person, the person
334 may petition the administrative law judge to quash or modify the subpoena. The
335 administrative law judge shall grant the petition if he or she finds that the subpoena:

336 (A) Requires appearance or attendance at an unreasonable time or
337 place;

338 (B) Requires production of evidence that does not relate to the matter;

339 or

340 (C) Does not describe with sufficient particularity the evidence to be
341 produced, that compliance would be unduly onerous, or for other good reason.

342 (3) In the case of refusal to obey a subpoena, the administrative law judge or
343 any party may seek enforcement of a subpoena issued under the authority of this chapter
344 by filing a petition for enforcement in a court of competent jurisdiction. In the enforcement
345 proceeding, the court may award to the party prevailing in the enforcement proceeding all
346 or part of the costs and attorney's fees incurred in obtaining the enforcement order.

347 (4) Any person who fails or neglects to attend and testify or to answer any
348 lawful inquiry or to produce records, documents, or other evidence, without good cause, may
349 be fined by a court of competent jurisdiction not more than the amount set forth in § 22-
350 3571.01 or imprisoned not more than 60 days, or both.

351 (5) Any person who makes or causes to be made any false entry or false
352 statement of fact in any report, account, record, or other document submitted to the
353 administrative law judge pursuant to its subpoena or other order, or who willfully
354 mutilates, alters, or by any other means falsifies any documentary evidence, may be fined
355 by a court of competent jurisdiction not more than the amount set forth in § 22-3571.01 or
356 imprisoned not more than 60 days, or both.

357 (m)(1) The administrative law judge, in any action brought under this section shall,
358 in addition to any administrative order awarded to the prevailing plaintiff, allow costs of
359 the action, including costs or fees of any nature, and reasonable attorney's fees, to be paid
360 by the defendant. In any administrative order in favor of any employee under this section,
361 and in any proceeding to enforce an administrative order, the court shall award to each
362 attorney for the employee an additional judgment for costs, including attorney's fees
363 computed pursuant to the matrix approved in *Salazar v. District of Columbia*, 123

364 F.Supp.2d 8 (D.D.C. 2000), and updated to account for the current market hourly rates for
365 attorney's services. The administrative law judge shall use the rates in effect at the time
366 the determination is made.

367 (2) If the fees remain unpaid to the attorney at the time of any subsequent
368 review, supplementation, or reconsideration of the fee award, the administrative law judge
369 shall update the award to reflect the hours actually expended and the market rates in effect
370 at that time. No reduction shall be made from this rate, or from the hours actually
371 expended, except upon clear and convincing evidence that the reduction will serve the
372 remedial purposes of this law.

373 (3) Costs shall also include expert witness fees, depositions fees, witness fees,
374 juror fees, filing fees, certification fees, the costs of collecting and presenting evidence, and
375 any other costs incurred in connection with obtaining, preserving, or enforcing the
376 administrative order.

377 (4) The Mayor shall not be required to pay the filing fee or other costs or fees
378 of any nature or to file bond or other security of any nature in connection with any action or
379 proceeding under this section.

380 Sec. 9. Civil Actions.

381 (a) After exhausting all administrative remedies under this act, any covered
382 employee aggrieved by a violation of this Chapter may bring an award in the Superior
383 Court of the District of Columbia and may be awarded such legal or equitable relief as may
384 be appropriate to effectuate the purposes of this act, including without limitation:

385 (1) Reinstatement;

386 (2) Payment of lost wages totaling not less than the hourly rate of pay due to
387 the covered but for violation of this act multiplied by the number of compensated hours

388 below the minimum work week the covered employee was provided each work week during
389 which a violation occurred;

390 (3) Actual medical costs incurred by the covered employee as a result of the
391 violation of this act;

392 (4) Liquidated damages in the amount of \$100 per day for each day the
393 violation continues; and

394 (5) Reasonable attorney's fees and costs of the action to be paid by the
395 defendant to the prevailing party.

396 (b) Action to recover damages sued for under this act may be maintained in the
397 Superior Court of the District of Columbia by any one or more covered employees aggrieved
398 by a violation of this act or on behalf of a covered employee or covered employees who are
399 similarly situated.

400 (c) Any action commenced on or after July 1, 2017 to enforce a cause of action for
401 violation of this act must be commenced within 3 years after the cause of action accrued, or
402 of the last occurrence if the cause of action is continuous, or the cause of action shall be
403 forever barred.

404 Sec. 10. Applicability.

405 This act shall apply as of July 1, 2017.

406 Sec. 11. Fiscal impact statement.

407 The Council adopts the fiscal impact statement in the committee report as the fiscal
408 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
409 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

410 Sec. 12. Effective date.

411 This act shall take effect following approval by the Mayor (or in the event of veto by
412 the Mayor, action by the Council to override the veto), a 30-day period of Congressional

413 review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved
414 December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the
415 District of Columbia Register.