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12 A BILL

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14 22-913
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16
17 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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22 To require the Mayor to create an easily accessible notice website that describes the various
23 District wage and hour and anti-discrimination laws and to require that the Mayor to
24 launch a public education campaign to raise awareness and educate the public about the
25 rights of tipped workers; mandates that business owners or operators who employ tipped
26 workers attend, at least once annually, as sexual harassment training and training on the
27 requirements under the District’s wage theft law, as well as indicates that managers who
28 are employed by an employer who employs tipped workers attend either an in-person or
29 web-based training, at least once annually, on sexual harassment and the requirements of
30 the District’s wage theft law, further dictates that employers of tipped workers provide
31 employees with the opportunity to attend sexual harassment training or training on the
32 requirements of the District’s wage theft law, and requires employers to certify to DOES
33 and the Office of Human Rights that such training requirements have been met; repeals
34 Initiative 77 – Minimum Wage Amendment Act of 2018; dictates that employers who
35 employ tipped workers must provide their employees with the employees tip out sheet
36 each pay period, must use a third-party to do payroll for the employer and mandates the
37 third-party to report certain wage data, including the employer’s tip out policy, to DOES
38 on a quarterly basis; indicates that the tip portal operated by the Mayor should be user-
39 friendly to enable an employee to report easily to the DOES Director an alleged theft
40 violation and that the tip portal must accept electronic spreadsheets with wage
41 information instead of requiring manual entry of such data; and creates the Tipped
42 Workers Coordinating Council.
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44 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
45 act may be cited as the “Tipped Wage Workers Fairness Amendment Act of 2018”.

46 Sec. 2. The Initiative No. 77 -- Minimum Wage Amendment Act of 2018, enacted on
47 June 29, 2018 (D.C. Act 22-396), is repealed.

48 Sec. 3. District of Columbia Labor Law Universal Notice Requirements.

49 (a)(1) The Mayor shall create and maintain an Internet website that states the rights and
50 benefits to which an individual is entitled under the following District of Columbia labor and
51 anti-discrimination laws:

52 (A) Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C.
53 Official Code §§ 2-220.01 *et seq.*);

54 (B) DC Human Rights Act, effective December 13, 1977 (D.C. Law 2-38; D.C.
55 Official Code §§ 2-1402.01 *et seq.*);

56 (C) District of Columbia Family and Medical Leave Act of 1990, effective
57 October 3, 1990 (D.C. Law 8-181; D.C. Official Code §§32-501 *et seq.*);

58 (D) District of Columbia Parental Leave Act of 1994, effective August 17, 1994
59 (D.C. Law 10-146; D.C. Official Code §§ 32-521.01 *et seq.*);

60 (E) Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C.
61 Law 17-152; D.C. Official Code §§ 32-531.01 *et seq.*);

62 (F) Universal Paid Leave Amendment Act of 2016, effective April 7, 2017
63 (D.C. Law 21-264; D.C. Official Code §§ 32-541.01 *et seq.*);

64 (G) Minimum Wage Revision Act of 1992, effective March 25, 1993 (D.C. Law
65 9-248; D.C. Official Code §§ 32-1001 *et seq.*);

66 (H) Building Services Employees Minimum Work Week Act of 2016, effective
67 October 8, 2016 (D.C. Law 21-157; D.C. Official Code §§ 32-1051.01 *et seq.*);

68 (I) Protecting Pregnant Workers Fairness Act of 2014, effective March 3, 2015
69 (D.C. Law 20-168; D.C. Official Code §§ 32-1231.01 *et seq.*);

70 (J) An Act To provide for the payment and collection of wages in the District of
71 Columbia, approved August 3, 1956 (70 Stat. 976; D.C. Official Code §§32-1301 *et seq.*); and

72 (K) District of Columbia Workers' Compensation Act of 1979, effective July 1,
73 1980 (D.C. Law 3-77; D.C. Official Code §§ 32-1501 *et seq.*).

74 (2) The internet website shall also contain the number of the tip line dedicated
75 to receiving wage theft complaints, as required by Section 6(a-1)(1) of An Act To provide for the
76 payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat.
77 976; D.C. Official Code §32-1306(a-1)(1)) and other information on how an individual may
78 submit a labor-related or anti-discrimination complaint to the Mayor and list resources that an
79 individual may consult if the individual believes his or her rights under one or more of the labor
80 and anti-discrimination laws listed in paragraph (1) of this subsection have been violated.

81 (3) The website shall be:

- 82 (A) easily accessible;
- 83 (B) user-friendly; and
- 84 (C) printer friendly.

85 (b)(1) The Mayor shall provide, or make available an electronic version that can be
86 printed and copied, to all private employers a clear and concise poster that states the website's
87 address and states that an employee may access information and obtain a description of his or her
88 rights under the District of Columbia labor and anti-discrimination laws listed in subsection (a)
89 of this section.

90 (2) The poster shall also contain an electronic or digital link that provides access
91 to the Internet website maintained pursuant to subsection (a) of this section. The electronic or
92 digital link shall:

- 93 (A) State "Scan here for more information regarding your employment
94 and labor rights";
- 95 (B) Not collect, analyze, or sell any personally identifiable information;
- 96 and
- 97 (C) Be of sufficient size to be easily and effectively scanned or read by a
98 digital device.

99 (3) The poster shall include a space where an employer shall print the physical
100 location of the printed material required to be provided by subsection (c) of this section.

101 (4) An employer shall post the poster in a conspicuous place accessible to all
102 employees in or about the premises of the employer. If there are one or more breakrooms or
103 time clocks on the premises, an employer shall post the poster at each such location.

104 (c)(1) In addition to the requirements in subsection (b), an employer shall print the
105 information posted on the website maintained pursuant to subsection (a) of this section and
106 compile it into a single source, such as a binder, that shall be made available to all employees by
107 placing it in a location that is accessible to all employees.

108 (2) An employer shall be responsible for ensuring at least monthly that the
109 information required to be printed and made available pursuant to paragraph (1) of this
110 subsection is up to date and identical to the information provided on the internet website
111 maintained pursuant to subsection (a) of this section.

112 (d) An employer that complies with its obligations as set forth in subsections (b) and (c)
113 of this section shall not be not be required to comply with the posting requirements set forth in
114 the following laws:

115 (1) Section 106 of the Living Wage Act of 2006, effective June 8, 2006 (D.C.
116 Law 16-118; D.C. Official Code § 2-220.06);

117 (2) Section 251 of the DC Human Rights Act, effective December 13, 1977
118 (D.C. Law 2-38; D.C. Official Code § 2-1402.51);

119 (3) Section 12 of the District of Columbia Family and Medical Leave Act of
120 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-511);

121 (4) Section 7 of the District of Columbia Parental Leave Act of 1994, effective
122 August 17, 1994 (D.C. Law 10-146; D.C. Official Code § 32-521.06);

123 (5) Section 10 of the Accrued Sick and Safe Leave Act of 2008, effective May
124 13, 2008 (D.C. Law 17-152; D.C. Official Code § 32-531.09);

125 (6) Section 106(i) of the Universal Paid Leave Amendment Act of 2016,
126 effective April 7, 2017 (D.C. Law 21-264; D.C. Official Code § 32-541.06(i));

127 (7) Section 10 of the Minimum Wage Revision Act of 1992, effective March 25,
128 1993 (D.C. Law 9-248; D.C. Official Code § 32-1009);

129 (8) Section 5 of the Building Services Employees Minimum Work Week Act of
130 2016, effective October 8, 2016 (D.C. Law 21-157; D.C. Official Code § 32-1051.04).

131 (9) Section 5 of the Protecting Pregnant Workers Fairness Act of 2014, effective
132 March 3, 2015 (D.C. Law 20-168; D.C. Official Code § 32-1231.04); and

133 (10) Section 37 of the District of Columbia Workers' Compensation Act of 1979,
134 effective July 1, 1980 (D.C. Law 3-77; D.C. Official Code § 32-1536).

135 (e) Subsection (d) of this section shall not be construed to mean the requirements of this
136 section are optional.

137 (f) The website required to be maintained pursuant to subsection (a) of this section, the
138 poster required to be provided and posted pursuant to subsection (b) of this section, and the
139 printed information required to be made available pursuant to subsection (c) of this section shall
140 comply with the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C.
141 Official Code § 2-1931 *et seq.*).

142 (g) The Mayor shall assess a \$100 fine for each day an employer fails to meet the
143 requirements of this section.

144 (h)(1) Within 180 days of the effective date of this act, the Mayor shall launch a public
145 education campaign to raise awareness and educate the public about the rights of tipped workers
146 pursuant to the Minimum Wage Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-
147 248; D.C. Official Code §§ 32-1001 *et seq.*) and An Act To provide for the payment and
148 collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat. 976; D.C.
149 Official Code §§32-1301 *et seq.*).

150 (2) The campaign shall include resources available to tipped workers and place a
151 particular emphasis on communities that are most at risk for wage and labor violations.

152 (3) The campaign shall comply with the Language Access Act of 2004, effective
153 June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931 *et seq.*).

154 Sec. 4. Mandatory Workplace Training

155 (a)(1) Each business owner or operator who employs an employee who is paid in
156 accordance with section 4(f) of the Minimum Wage Act Revision Act of 1992, effective March
157 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1003(f)) shall attend either in-person or
158 online, on a yearly basis, at least one sexual harassment training and at least one training on the
159 requirements under An Act To provide for the payment and collection of wages in the District of
160 Columbia, approved August 3, 1956 (70 Stat. 976; D.C. Official Code §32-1301 *et seq.*).

161 (2) Each manager who is employed by an employer who employs an employee
162 who is paid in accordance with section 4(f) of the Minimum Wage Act Revision Act of 1992,
163 effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1003(f)) shall attend an in-
164 person, on a yearly basis, at least one sexual harassment training and at least one training on the
165 requirements under An Act To provide for the payment and collection of wages in the District of
166 Columbia, approved August 3, 1956 (70 Stat. 976; D.C. Official Code §32-1301 *et seq.*).

167 (c) Each employer who employs an employee who is paid in accordance with section
168 4(f) of the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-
169 248 shall offer, at least once annually, his or her employees that opportunity to attend in-person
170 or to complete online at least one sexual harassment training and at least one training on the
171 requirements under An Act To provide for the payment and collection of wages in the District of
172 Columbia, approved August 3, 1956 (70 Stat. 976; D.C. Official Code §32-1301 *et seq.*).

173 (d) By December 31st of each year, each employer subject to the requirements of this
174 section shall provide certifications to the Department of Employment Services that all
175 requirements of this section have been fulfilled. The Department of Employment Services shall

176 make the certifications available to the Office of Human Rights.

177 Sec. 5. The Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C.
178 Law 9-248; DC Official Code § 32-1001 *et seq.*) is amended as follows:

179 (a) Section (3) (D.C. Official Code § 32-1002) is amended as follows:

180 (1) Paragraph (1) is redesignated as paragraph (1A).

181 (2) A new paragraph (1) is added to read as follows:

182 “(1) “Director” means the Director of the Department of Employment Services,
183 established by Reorganization Plan No. 1 of 1980, effective April 17, 1980.”.

184 (3) A new paragraph (4A) is added to read as follows:

185 “(4A) “Manager” means the person who oversees the employees in a food or
186 beverage establishment, such as the servers, bussers, bartenders, back waiters, hosts, and
187 hostesses, and the general operation of the establishment.”.

188 (4) New paragraphs (7B), (7C), and (7D) are added to read as follows:

189 “(7B) “Server” means the employee in a food or beverage establishment who
190 takes orders, and serves the food or drinks, or both.

191 “(7C) “Tip out” means the amount or percentage of server’s tips that the server
192 shares, either voluntarily or as mandated in a tip-sharing a tip-pooling agreement, with other
193 employees such as bussers, bartenders, back waiters, hosts, and hostesses.

194 “(7D) “Tip out sheet” means a printed form provided by an employer to an
195 employee that shows the amount of the tip out that the employee will share and the calculation
196 by which the amount was determined.”.

197 (b) Section 9 (D.C. Official Code § 32-1008) is amended as follows:

198 (1) A new subsection (a-1) is added to read as follows:

199 “(a-1) An employer who employs an employee who is paid in accordance with
200 section 4(f) shall use a third-party payroll business to prepare the payroll for the employer.”.

201 (2) Subsection (b) is amending by striking the phrase “hours worked during the

202 pay period, and” and inserting the phrase “hours worked during the pay period, the employee’s
203 tip out sheet for the pay period, and” in its place.

204 (3) Subsection (c) is amended by a new paragraph (4A) to read as follows”

205 “(4A) The employer’s tip out policy;”.

206 (4) Subsection (d)(1) is amended by adding a new subparagraph (C) to read as
207 follows:

208 “(C) Notwithstanding subparagraph (A) of this paragraph, if an employer revises
209 its tip out policy, the employer shall provide employees with the proposed new policy prior to
210 implementation of the revised tip out policy.”.

211 (c) Sections 10a(a) and 10a(b) (D.C. Official Code §§ 32-1009.01(a) and (b)) are
212 amended to read as follows:

213 “(a)(1) An employer’s third-party payroll company, required pursuant to section
214 9(a-1), shall submit to the Mayor a quarterly wage report within the 30 days of the end of the
215 quarter.

216 “(2) Each quarterly wage report prepared pursuant to this subsection shall include
217 and itemize the following information:

218 “(A) Name of each employee;

219 “(B) Number of hours each employee worked each week during
220 the quarter for which the report is being provided;

221 “(C) The total pay, including gratuities, received by each employee each
222 week during the quarter for which the report is being provided;

223 “(D) Average weekly wage for each employee during the quarter for
224 which the report is being provided; and

225 “(E) The employer’s current tip out policy that the employer supplied to
226 the third-party payroll company for calculation of wages during the quarter.”.

227 “(b)(1)(A) The Mayor shall create an Internet-based portal for online reporting of

228 the quarterly wage reports required by subsection (a).

229 “(B) The Internet-based portal created pursuant to subparagraph (A) of
230 this paragraph shall be user-friendly to enable an employee to report easily to the Director an
231 alleged wage theft violation or other violations of this act, including, if necessary, video tutorials
232 and shall allow reports to be made anonymously to the extent practicable.

233 “(C) Instructions on how to use the Internet-based portal shall comply
234 with the requirements of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law
235 15-167; D.C. Official Code § 2-1931 *et seq.*).

236 “(2)(A) Quarterly wage reports prepared pursuant to this section shall be
237 submitted online.

238 “(B) The quarterly report may be in an electronic spreadsheet format.

239 “(C) The electronic spreadsheet shall be able to be submitted through the
240 Internet-based portal without manual input by an individual of the information provided in the
241 electronic spreadsheet, to the extent practicable, or a paper copy of the electronic spreadsheet
242 may be submitted to the Department of Employment Services if so required by the Department.

243 “(3)(A) The Mayor shall provide in-person reporting requirements training to
244 educate third-party payroll companies about the reporting requirements and the use of the
245 Internet-based portal

246 (B) The in-person requirement in subparagraph (A) of this paragraph
247 Shall not preclude training from occurring.”.

248 (d) A new section (10b) is added to read as follows:

249 “Sec. 10b. Tipped Workers Coordinating Council.

250 “(a) There is established the Tipped Workers Coordinating Council.

251 “(b) The Coordinating Council shall be a partnership of tipped workers, employers, and
252 public agencies that coordinates a high-quality response to tipped worker cases, including issues
253 of wage theft and unfair labor practices.

254 “(c) Members on the Coordinating Council shall consist of the following persons:

255 “(1) The Director of the Department of Employment Services, or his or her
256 designee;

257 “(2) The Director of the Office of Nightlife and Culture, or his or her designee;

258 “(3) The Director of the Department of Consumer and Regulatory Affairs, or his
259 or her designee;

260 “(4) The Director of the Office of Human Rights, or his or her designee;

261 “(5) A representative from the Restaurant Association of Metropolitan
262 Washington;

263 “(6) A representative of the Hotel Association of Washington D.C.;

264 “(7) Two representatives, appointed by the Mayor, who are from District-based
265 organizations that engage in policy or advocacy for tipped workers; and

266 “(8) Three representatives, appointed by the Chairman of the Council.

267 “(A) Two representatives shall be from District-based organizations that
268 engage in policy or advocacy for tipped workers; and

269 “(B) One representative shall be an employer that is not part of the
270 restaurant or hotel industry.

271 “(d) The term of office for each member provided for in paragraphs (4) – (8) of
272 subsection (c) is 3 years, except that members first appointed to the Tipped Workers
273 Coordinating Council shall serve the following terms:

274 “(1) The representative from the Restaurant Association of Metropolitan
275 Washington, the representative from the Hotel Association of Washington D.C., and the
276 representative, appointed by the Chairman of the Council, that is an employer that is not a part of
277 the restaurant or hotel industry shall serve for 3 years;

278 “(2) One representative appointed by the Mayor that is from a District-based
279 organization that engages in policy or advocacy for tipped workers and one representative
280 appointed by the Chairman of the Council from a District-based organization that engages in

281 policy or advocacy for tipped workers shall serve for 2 years; and

282 “(3) One representative appointed by the Mayor that is from a District-based
283 organization that engages in policy or advocacy for tipped workers and one representative
284 appointed by the Chairman of the Council from a District-based organization that engages in
285 policy or advocacy for tipped workers shall serve for 1 year.

286 “(e) Representatives who are appointed to fill vacancies that occur before the expiration
287 of a representative’s full term shall serve only the unexpired portion of the term.

288 “(f)(1) The Coordinating Council shall hold its initial meeting within 90 days of the
289 effective date of this act.

290 “(2) At the initial meeting, one non-governmental member of the Coordinating
291 Council shall be elected as Chairperson by a majority of the Coordinating Council members.

292 “(g) The Coordinating Council shall establish its own procedures and requirements with
293 respect to the place and manner in which it will conduct its meetings.

294 “(h) The Coordinating Council shall:

295 “(1) Improve coordination and functioning of the wage policies for tipped
296 workers, investigations into wage theft by tipped workers, and reporting mechanisms for tipped
297 workers.

298 “(2) Conduct regular and anonymous case reviews of all parties involved into
299 claims of wage violations for tipped workers; and

300 “(3) Develop a protocol to ensure that feedback and recommendations from case
301 reviews are incorporated into the Department of Employment Services policies, procedures,
302 practices, training, and decisions to re-examine investigations, when applicable.”.

303 Sec. 6. Section 6(a-1) of An Act To provide for the payment and collection of wages in
304 the District of Columbia, approved August 3, 1956 (70 Stat. 976; D.C. Official Code §32-
305 1306(a-1)), is amended to read as follows:

306 “(a-1)(1) The Mayor shall establish a dedicated phone line for reporting of violations of

307 this act.

308 (2) The Mayor shall encourage reporting pursuant to this section by keeping
309 confidential, to the maximum extent permitted by applicable laws, the name and other
310 identifying information of the employee or other person reporting a violation during the course
311 of any investigation; provided, that with the authorization of such person, the Mayor may
312 disclose the employee or person's name and identifying information as necessary to conduct a
313 hearing and enforce this chapter or other employee protection laws, including the Living Wage
314 Act, the Minimum Wage Revision Act, or the Sick and Safe Leave Act.”.

315 Sec. 7. Applicability

316 Section 3 and amendatory sections 10a(b)(1)(B)-(C) within section 5(c), 10b(h) within
317 section 5(d), and 6(a-1)(1) shall apply upon the inclusion of its fiscal effect in an approved
318 budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of
319 the Council in a certification published by the Council in the District of Columbia Register.

320 Sec. 8. Fiscal impact statement.

321 The Council adopts the fiscal impact statement in the committee report as the fiscal
322 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
323 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

324 Sec. 9. Effective date.

325 This act shall take effect following approval by the Mayor (or in the event of veto by the
326 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
327 provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December
328 24, 1973 (87 Stat. 813; D.C. Official Code ' 1-206.02(c)(2)), and publication in the District of
329 Columbia Register.