


COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004

MEMORANDUM

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TO: Nyasha Smith, Secretary to the Council  
FROM: Phil Mendelson, Chairman   
DATE: December 14, 2020  
RE: **Notice of intent to move an amendment in the nature of a substitute at the December 15, 2020 Additional Legislative Meeting – Bill 23-965**

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This memorandum serves as notice that I will move an amendment in the nature of a substitute (ANS) for **Bill 23-965, the “Displaced Workers Right to Reinstatement and Retention Amendment Act of 2020”** at tomorrow’s Additional Legislative Meeting. The ANS makes several revisions and clarifying changes to the legislation, in addition to technical fixes, developed in concert with the Council’s Office of the General Counsel, the Restaurant Association of Metropolitan Washington, and UNITE HERE Local 25.

The ANS for Bill 23-965:

- Creates a time limit within which an individual must have been laid off in order to qualify for rights under the bill. For hotel workers, they must have been laid off between December 1, 2019 and the last day of the public health emergency (PHE) declared by Mayor’s Order in response to the COVID-19 pandemic, and for all other eligible individuals, they must have been laid off between March 1, 2020 and the last day of the PHE. This narrows the timeframe since this bill is intended to provide rights only to individuals who have been laid off related to the pandemic. Without this amendment, an individual who is laid off two years from now, for example, would have a right to reinstatement.
- Clarifies that the bill does not apply to individuals who received severance from his/her employer or contractor if the employer or contractor has written, verifiable proof of the severance.
- States that if an employer or contractor could have terminated an individual for a demonstrable cause when the individual previously worked for the employer or contractor, then the individual has no rights under the bill. This applies to situations where the employer or contractor had evidence before the individual was laid off, as well as to cases where the employer or contractor discovers evidence of the individual’s malfeasance after the individual was laid off.
- Reduces what small businesses are affected by this bill by increasing the threshold of minimum employees from 35 to 50. This accounts for small businesses that may have capacity issues, and thus trouble adhering to the requirements of the bill. Businesses with employees fewer than 50 as of March 1, 2020 (December 1, 2020 for hotels) will not be affected by this bill.

- Clarifies that an employer or contractor only has to offer an individual a job if the position would require the individual to perform the same or substantially similar duties that require essentially the same skills as the individual's previous position. Currently, the bill states "similar," but some might argue, for instance, that a restaurant has to offer a pastry chef position to a chef with no pastry experience; the individual may be a chef but does not have the requisite skills necessary.
- Allows an employer or contractor to deliver via same day delivery or text an offer of reinstatement to an individual.
- Lowers the deadline requirement from ten to three days from the day the offer is sent if the offer is made via email, text, or same day delivery. If the offer is made by registered mail, mail, or some other method that does not provide same day delivery, then an individual has to respond within three days of *receipt* of the offer of reinstatement.
- Requires individuals to report to work no later than 7 days after receiving the offer of reinstatement. However, the ANS does allow the employer to provide a later start date.
- Exempts restaurants, taverns, brew pubs, nightclubs, and clubs from Section 203 (change in controlling interest or identity of the employer) unless the change in controlling interest or identity has no demonstrable change in the restaurant's operations. This amendment is necessary because restaurants are overwhelmingly small businesses with a large amount of turnover, to be exacerbated by the pandemic, and there is large variability in the types of restaurants that operate in the city. So when one restaurant is sold to another, it is not the same as when one hotel is sold to another hotel. Little varies between hotels but there can be a large amount of difference between a French restaurant a pizza parlor. Yet if a restaurant is changing its identity or controlling interest solely to try and avoid the requirements of this bill, then Section 203 would apply.
- Allows for notice of a change in controlling interest to be sent via mail, email, or text in order to conform the methods of delivery with those allowed for in section 202 of the bill.
- Clarifies that the retaliation clause applies both to individuals who have been laid off but are eligible for reinstatement, and employees who currently work for the employer or contractor. Additionally, the ANS states that the employer or contractor has to have retaliated because the employee asserted rights under the title or participated in proceedings related to the title. As currently written, an individual who is guilty of theft, for example, would be protected if they assert rights under the title, and that's not the intent behind the retaliation clause.
- Amends the sunset provision to June 30, 2024 instead of December 31, 2024, but provides that the retaliation and enforcement provisions of the bill sunset a year after the rest of the bill. Without this change, if an employer retaliates within a year after this bill, an employee would have no recourse. Likewise, an employee would have no ability to enforce the bill after the sunset without that provision being given a later sunset date.
- Makes other minor, conforming, and technical changes

A copy of the proposed ANS is attached. Please contact me or Christina Setlow, Deputy Committee Director, at (202) 724-4865 if you have any questions.