


Chairman Phil Mendelson

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A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, the Displaced Workers Protection Act of 1994 to add a new Title II to provide eligible workers who have been displaced by COVID-19 the opportunity to be reinstated once their employer starts rehiring after the pandemic and to allow eligible employees to be reinstated and retained employees employed if there is a change in the ownership, controlling interest, or identify of their employer.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Displaced Workers Right to Reinstatement and Retention Emergency Amendment Act of 2020”.

Sec. 2. The Displaced Workers Protection Act of 1994, effective April 26, 1994 (D.C. Law 10-105; D.C. Official Code § 32-101 *et seq.*) is amended as follows:

(a) Add a new title heading to read as follows:

“Title I. Displaced Workers Protection.”

(b) Existing sections 2, 3, and 4 are redesignated as sections 101, 102, and 103, respectively.

(c) A new title II is added to read as follows:

“Title II. Protections for Workers Displaced by COVID-19.

36 “Sec. 201. Definitions.

37 “For the purposes of this title, the term:

38 “(1) “Change in controlling interest or identity of an employer” includes any
39 combination of the following events that causes either a change in the entity or entities holding a
40 controlling interest in an employer, or a change in the identity of an employer, after February 29,
41 2020; provided, that the business operations conducted by the new employer consist of the same
42 or similar operations as those conducted by the employer existing on or before February 29,
43 2020;

44 “(A) Any sale, assignment, transfer, contribution, or other disposition of a
45 controlling interest in an employer by consolidation, merger, or reorganization of the employer,
46 or of any entity or entities that maintains any ownership interest in the employer; or

47 “(B) Any purchase, sale, lease, reorganization or restructuring, or
48 relocation of the operation of an employer.

49 “(2) “Contractor” means an individual or company, other than an employer, that
50 employs 25 or more individuals and who has hired individuals to work as:

51 “(A) Food service workers in a hotel, restaurant, cafeteria, apartment
52 building, hospital, nursing care facility, or similar establishment;

53 “(B) Persons to perform janitorial or building maintenance services in an
54 office building, institution, or similar establishment;

55 “(C) Nonprofessional employees to perform health care or related services
56 in a hospital, nursing care facility, or similar establishment; or

57 “(D) Persons to perform security services in an office building, institution,
58 or similar establishment; provided that special police officers who are armed, and employees

59 hired to perform security services for District of Columbia Public Schools or a public charter
60 school shall not be included.

61 “(3) “Covered establishment” means any of the following businesses in the
62 District of Columbia, a:

63 “(A) Hotel;

64 “(B) Restaurant, as defined in § 25-101(43), and any other
65 establishments licensed by the District of Columbia in the business of preparing or serving food
66 to the public;

67 “(C) Tavern, as defined in § 25-101(52);

68 “(D) Brew pub, as defined in § 25-101(12)

69 “(E) Nightclub, as defined in § 25-101(33);

70 “(F) Club, as defined in § 25-101(15);

71 “(G) An event or entertainment establishment or venue at which live
72 performing arts, sporting, or other entertainment events are held; or

73 “(H) A business engaged in the sale of goods to consumers, but does not
74 include wholesalers.

75 “(4) “Eligible employee” means:

76 “(A) An individual who was employed to work at a covered establishment
77 or for a contractor, and who ceased working at the covered establishment or for the contractor for
78 reasons other than voluntary resignation or termination for cause t, and

79 (i) If the individual was a hotel worker, the individual’s last date of
80 employment for the employer was between December 1, 2019 and the last day of the public
81 health emergency declared by Mayor’s Order in response to the COVID-19 pandemic;

82 (ii) If the individual was not a hotel worker, the individual's last
83 date of employment for the contractor or employer was between March 1, 2020 and the last day
84 of the public health emergency declared by Mayor's Order in response to the COVID-19
85 pandemic; but

86 (B) Does not include an individual:

87 (i) Employed in an executive, administrative, or professional
88 capacity as defined by the Secretary of Labor under § 13(a)(1) of the Fair Labor Standards Act of
89 1938, as amended, (29 U.S.C. § 213(a)(1));

90 (ii) Who received severance from the individual's employer or
91 contractor when the individual's employment ceased and whose employer or contractor has
92 written, verifiable proof of the severance; or

93 (iii) Whose employer or contractor could have terminated the
94 individual for demonstrable just cause when the individual previously worked for the employer
95 or contractor.

96 (5) "Employer" means any entity, including but not limited to, a for-profit or
97 nonprofit firm, partnership, proprietorship, sole proprietorship, or limited liability company,
98 association, or corporation, or any receiver or trustee of an entity, including the legal
99 representative of a deceased individual or receiver or trustee of an individual, who directly or
100 indirectly or through an agent or any other person, including through the services of a temporary
101 services or staffing agency or similar entity:

102 (A) Employs or exercises control over the wages, hours, or working
103 conditions of an employee at a covered establishment;

104 (B) Is not a contractor;

105 “(C) If the entity operates a hotel, the entity employed 50 or more
106 individuals at a hotel on December 1, 2019; and

107 “(D) If the entity does not operate a hotel, the entity and employed 50 or more
108 individuals at a covered establishment other than a hotel on March 1, 2020.

109 “(6) “Hotel” means a hotel, motel, or similar establishment in the District of
110 Columbia, which provides lodging to transient guests.

111 “(7) “Hotel worker” means an individual who is employed by an employer or
112 to work at a hotel.

113 “(8) “New employer” means an employer created as a consequence of a change
114 in controlling interest or identity of an employer.

115 “(9) “Retained employee” means any individual, except individuals employed in
116 an executive, administrative, or professional capacity as defined by the Secretary of Labor under
117 § 13(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 213(a)(1)), who
118 was working for an employer at a covered establishment when a change in controlling interest or
119 identity of an employer occurred or when an employer was required to give notice of a change in
120 controlling interest or the identity of the employer pursuant to section 203(c)(4).

121 “Sec. 202. Right to reinstatement.

122 “(a)(1) Beginning February 1, 2021, as positions become available with the contractor or
123 in the employer’s operation at a covered establishment, the contractor or employer shall offer
124 each eligible employee reinstatement to the employee’s previous position or to a position
125 performing the same or substantially similar duties, and that requires essentially the same skills,
126 as those performed by the eligible employee before the eligible employee ceased working for the
127 contractor or at the covered establishment.

128 “(2)(A) A contractor or an employer shall make the offer of reinstatement in
129 writing, to the employee’s last known address by registered mail, or by email, text, or other
130 method that is documented and retained.

131 “(B) If the offer of reinstatement is made by email, text, or same-day
132 delivery, a contractor or employer shall give a deadline that is no less than 3 calendar days from
133 the date the offer of reinstatement is sent for an eligible employee to accept or decline the offer.

134 “(C) If the offer of reinstatement is made by registered mail, mail, or some
135 other method that does not provide for a same-day delivery, a contractor or employer shall give a
136 deadline that is no less than 3 calendar days from the date the offer of reinstatement is received
137 for an eligible employee to accept or decline the offer.

138 “(D) If the eligible employee accepts the offer of reinstatement, the
139 eligible employee shall report to work no later than 7 days, or later if requested by the employer,
140 from the date the offer of reinstatement is received.

141 “(3) If more than one eligible employee is entitled to reinstatement to a particular
142 position, the contractor or employer may make simultaneous, conditional offers of reinstatement
143 to eligible employees for the same position; provided, that the contractor or employer makes
144 offers of reinstatement based on seniority within job classifications, unless the employer is
145 offering reinstatement to positions at a restaurant, tavern, brew pub, nightclub, or club.

146 “(4) A contractor or employer shall not hire a new employee for a position until
147 all eligible employees have either not responded to an offer of reinstatement by the deadline
148 indicated in it or have declined the offer of reinstatement.

149 “Sec. 203. Changes in controlling interest or employer.

150 “(a) This section shall not apply to:

151 “(1) Eligible employees otherwise covered by section 102; or
152 “(2) Eligible or retained employees who work at restaurants, taverns, brew pubs,
153 nightclubs, or clubs unless the change in
154 controlling interest or identity of an employer would have no demonstrable change to its
155 operations.

156 “(b) Except as provided in subsection (a) of this section, the requirements of section 202
157 shall apply to a new employer.

158 “(c)(1) A new employer shall retain any:

159 “(A) Eligible employee reinstated pursuant to section 202 for a 90-day
160 transition period beginning on the date the eligible employee is reinstated; and

161 “(B) Retained employee who agrees to remain employed by the new
162 employer for a 90-day transition period beginning on the date of the change in controlling
163 interest or identity of the employer.

164 “(2) Except as provided in paragraph (5) of this subsection, the new employer
165 shall not discharge a retained employee or an eligible employee reinstated pursuant to section
166 202 during the 90-day transition period without cause.

167 “(3) At the end of the 90-day transition period, the new employer shall perform a
168 written performance evaluation for each retained employee and each eligible employee reinstated
169 pursuant to section 202, and if the retained employee’s or eligible employee’s performance
170 during the 90-day transition period was satisfactory, the new employer shall offer the retained
171 employee or eligible employee continued employment under the terms and conditions
172 established by the new employer.

173 “(4)(A) Beginning on February 1, 2021, an employer that anticipates a change in
174 controlling interest or the identity of the employer, must, no later than 15 calendar days before
175 the anticipated date of the change in controlling interest or the identity of the employer, provide
176 the following notice:

177 “(i) To all parties to the transaction that results in the change in
178 controlling interest or the identity of the employer, notice of the name, last known address, date
179 of hire, position, and text or telephone contact information of each eligible employee;

180 “(ii) To retained employees and eligible employees, notice that the
181 employer is experiencing or anticipates a change in controlling interest or identity of the
182 employer and of an employee’s right to reinstatement or retention under this section; and

183 “(iii) To any labor organization that represents the employer’s
184 retained employees or eligible employees, the notices specified in sub-subparagraphs (i) and (ii)
185 of this subparagraph.

186 “(B) The new employer shall provide the notice required pursuant to sub-
187 subparagraph (ii) of this paragraph by:

188 “(i) Posting the notice on the premises of the covered
189 establishment in the same place and manner as other statutorily-required notices, unless the
190 covered establishment is no longer operating; and

191 “(ii) By texting, emailing, or mailing to the last known address the
192 notice to all eligible employees.

193 “(5) If at any time, a new employer determines that fewer employees are required
194 to work at the covered establishment than the number required before the change in controlling
195 interest or identity of the employer, the new employer shall retain employees by seniority within

196 job classification; provided, that if the new employer is a restaurant, tavern, brew pub, nightclub,
197 or club, the new employer shall not be required to utilize seniority.

198 “Sec. 204. Retaliation prohibited.

199 “(a) No contractor or employer may terminate, refuse to reinstate or employ, or otherwise
200 take an adverse action against any eligible employee or retained employee because the eligible
201 employee or retained asserted rights under or participated in proceedings related to this title, or
202 because the eligible employee or retained opposed any practice the individual reasonably
203 believes, in good faith, to be proscribed by this title.

204 “(b) If it is established that an employee engaged in conduct protected by subsection (a)
205 of this section, and the contractor or employer thereafter terminated, refused to reinstate or
206 employ, or otherwise took adverse action against such person within 60 days after such protected
207 activity, then a rebuttable presumption shall arise that the contractor or employer’s action was
208 taken in violation of subsection (a) of this section. In such a case, the contractor or employer may
209 rebut the presumption by producing credible evidence that the sole reason for the adverse action
210 was a legitimate business reason. The contractor or employer’s asserted business reason may be
211 rebutted by a showing of pretext.

212 “Sec. 205. Enforcement.

213 “(a) An eligible employee or retained employee may, on behalf of themselves or on
214 behalf of other eligible employees or retained employees similarly situated, bring an action to
215 enforce this title in the Superior Court of the District of Columbia and shall be awarded upon
216 prevailing:

217 “(1) Back pay for each day the violation continues at a rate of compensation not
218 less than the higher of:

219 “(A) The average regular rate of pay received by the eligible employee or
220 retained employee during the last 3 years of the eligible employee or retained employee’s
221 employment in the same occupation classification, or

222 “(B) The final regular rate received by the eligible employee or retained
223 employee;

224 “(2) Costs of benefits the employer would have incurred for the eligible employee
225 or retained employee under the employer’s benefit plan;

226 “(3) If it is established that a contractor or employer violated this title with malice
227 or with reckless indifference, an affected eligible employee or retained employee shall be entitled
228 to treble damages, and, in addition, may be awarded compensatory or punitive damages; and

229 “(4) Reasonable attorney fees and costs of the suit, including expert witness fees.

230 “Sec. 206. Relationship to employment contracts and agreements.

231 “The requirements of this title shall not diminish the obligation of a contractor or an
232 employer to comply with the provisions of any contract, including but not limited to any
233 individual contractual arrangement or any collective bargaining agreement that provides greater
234 or equal rights to employees than the rights afforded under this title.

235 “Sec. 207. Applicability.

236 “(a) Except as provided in subsection (b), this title shall expire on June 30, 2024.

237 “(b) Sections 204 and 205 shall expire on June 30, 2025.

238 Sec. 4. Fiscal impact statement.

239 The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact
240 statement required by section 4a of the General Legislative Procedures Act of 1975, approved
241 October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

242 Sec. 5. Effective date.

243 This act shall take effect following approval by the Mayor (or in the event of veto by the
244 Mayor, action by the Council to override the veto), and shall remain in effect for no longer than
245 90 days, as provided for emergency acts of the Council of the District of Columbia in section
246 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;
247 D.C. Official Code § 1-204.12(a)).