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A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis due to congressional review, 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 Congressional Review Emergency Amendment Act of 2021”.

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) A new title heading is added to read as follows:

“TITLE I. DISPLACED WORKERS PROTECTION”

(b) Existing sections 2, 3, and 4 (D.C. Official Code §§ 32-101 through 32-103) are designated as Title I.

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

“TITLE II. PROTECTIONS FOR WORKERS DISPLACED BY COVID-19

“Sec. 201. Definitions.

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

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

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

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

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

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

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

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

56 “(D) Persons to perform security services in an office building, institution,
57 or similar establishment; provided that special police officers who are armed, and employees
58 hired to perform security services for District of Columbia Public Schools or a public charter
59 school shall not be included.

60 “(3) “Covered establishment” means any of the following businesses in the

61 District, a:

62 “(A) Hotel;

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

66 “(C) Tavern, as defined in D. C. Official Code § 25-101(52);

67 “(D) Brew pub, as defined in D. C. Official Code § 25-101(12)

68 “(E) Nightclub, as defined in D. C. Official Code § 25-101(33);

69 “(F) Club, as defined in D. C. Official Code § 25-101(15);

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

72 “(H) Business engaged in the sale of goods to consumers, but not
73 including wholesalers.

74 “(4)(A) “Eligible employee” means an individual who was employed to work at a
75 covered establishment or for a contractor, and who ceased working at the covered establishment
76 or for the contractor for reasons other than voluntary resignation or termination for cause, and

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

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

84 “(B) The term “eligible employee” does not include an individual:

85 “(i) Employed in an executive, administrative, or professional
86 capacity as defined by the Secretary of Labor under section 13(a)(1) of the Fair Labor Standards
87 Act of 1938, approved June 25, 1938 (52 Stat. 1067; 29 U.S.C. § 213(a)(1));

88 “(ii) Who received severance from the individual’s employer or
89 contractor when the individual’s employment ceased and whose employer or contractor has
90 written, verifiable proof of the severance; or

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

94 “(5) “Employer” means any entity, including a for-profit or nonprofit firm,
95 partnership, proprietorship, sole proprietorship, limited liability company, association,
96 corporation, or any receiver or trustee of an entity, including the legal representative of a
97 deceased individual or receiver or trustee of an individual, who directly or indirectly or through
98 an agent or any other person, including through the services of a temporary services or staffing
99 agency or similar entity:

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

102 “(B) Is not a contractor;

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

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

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

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

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

113 “(9) “Retained employee” means any individual, except individuals employed in
114 an executive, administrative, or professional capacity as defined by the Secretary of Labor under
115 section 13(a)(1) of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1067;
116 29 U.S.C. § 213(a)(1)), who was working for an employer at a covered establishment when a
117 change in controlling interest or identity of an employer occurred or when an employer was
118 required to give notice of a change in controlling interest or the identity of the employer pursuant
119 to section 203(c)(4).

120 “Sec. 202. Right to reinstatement.

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

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

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

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

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

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

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

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

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

150 “(1) Eligible employees otherwise covered by section 3 of Title I; or

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

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

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

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

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

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

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

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

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

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

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

184 “(B) The new employer shall provide the notice required pursuant to
185 subparagraph (A)(ii) of this paragraph by:

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

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

191 “(5) If at any time, a new employer determines that fewer employees are required
192 to work at the covered establishment than the number required before the change in controlling
193 interest or identity of the employer, the new employer shall retain employees by seniority within
194 job classification; provided, that if the new employer is a restaurant, tavern, brew pub, nightclub,
195 or club, the new employer shall not be required to utilize seniority.

196 “Sec. 204. Retaliation prohibited.

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

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

210 “Sec. 205. Enforcement.

211 “An eligible employee or retained employee may, on their own behalf or on behalf of
212 other eligible employees or retained employees similarly situated, bring an action to enforce this
213 title in the Superior Court of the District of Columbia and upon prevailing shall be awarded:

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

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

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

221 “(2) The costs of benefits the employer would have incurred for the eligible
222 employee or retained employee under the employer’s benefit plan;

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

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

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

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

232 “Sec. 207. Applicability.

233 “(a) Except as provided in subsection (b) of this section, this title shall expire on June 30,
234 2023.

235 “(b) Sections 204 and 205 shall expire on June 30, 2024.”.

236 Sec. 4. Applicability.

237 This act shall apply as of April 11, 2021.

238 Sec. 5. 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. 6. 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)).