

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

DRAFT

TO: All Councilmembers

FROM: Chairman Phil Mendelson
Committee of the Whole

DATE: December 1, 2020

SUBJECT: Report on Bill 23-965, “Displaced Workers Right to Reinstatement and Retention Amendment Act of 2020”

The Committee of the Whole, to which Bill 23-965, “Displaced Workers Right to Reinstatement and Retention Amendment Act of 2020” was referred, reports favorably thereon with amendments, and recommends approval by the Council.

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I. BACKGROUND AND NEED

The purpose of Bill 23-965 is to protect the workers most impacted by the COVID-18 pandemic. Specifically, the bill amends D.C. Law 10-105, the “Displaced Workers Protection Act of 1994,” and indicates that workers in the hospitality – hotels, restaurants, and entertainment and event – and retail industries, along with the contract workers already covered by D.C. Law 10-105 will have an opportunity to return to their jobs once the pandemic subsides and their industries, recover. Currently, many unionized workers who were displaced from their jobs due to the pandemic only have 18 months of job protection via their collective bargaining agreements (CBA), while non-unionized workers have none. Yet, it is anticipated that it will take years for the industries most devastated by the COVID-19 pandemic to recover – far longer than the protection offered in some CBAs. Thus, both unionized and non-unionized employees who have been the most affected by the COVID-19 pandemic need assurance that they can return to their jobs after the pandemic.

On March 11, 2020, Mayor Bowser issued Mayor's Order 2020-45, 2020-46, declaring a public emergency and a public health emergency in the District due to the imminent threat to the health, safety, and welfare of District residents posed by the spread of COVID-19. Since then, Mayor Bowser has extended the public health emergency, and it is still in effect to date. Additionally, on March 16, 2020, the Mayor issued Mayor's Order 2020-48, which limited mass gatherings of 50 or more individuals and suspended table seating in restaurants and taverns.¹ Due to the increasing number of COVID-19 cases in the District, on March 24, 2020, the Mayor ordered all non-essential businesses to cease operations.² As a result of these necessary actions, the District's hospitality and retail industries came to a halt and resulted in mass lay-offs. Moreover, the contract employees included in D.C. Law 10-105 – food service workers, janitorial and maintenance, nonprofessional healthcare, and security guards – have also been largely impacted as many businesses in the District have shut down in person operations.³

While limited operations have now resumed, many individuals are still out of work. According to John Boardman, Executive Secretary-Treasurer of UNITE HERE Local 25, his union is comprised of more than 7,000 hospitality workers who work in the District metropolitan area, many employed at hotels, and as of November 4, 2020, 90% of his union were still out of work.⁴ While his employees have a displacement clause in their CBA, it is only for 18 months from the time the individuals were laid off. Given that the lay-offs occurred in February and March 2020 and that the public health emergency is still in effect, 18 months will not be nearly long enough. In fact, it may take as long as five years for the hotel industry to recover fully.⁵

The restaurant industry has also taken a massive hit due to the COVID-19 pandemic. While restaurants were able to offer take-out or delivery services during the District's lockdown, it was not nearly enough to support an entire restaurant, so most restaurant staff were laid off. Recently, some restaurants have been able to offer outdoor dining and limited indoor dining, but their sales are only 30-50% of what they were in 2019.⁶ Sales are expected to decline further this winter, due to the colder weather and greater indoor dining restrictions.⁷ This will result in individuals being laid off once again.

Event and entertainment venues have also suffered, as many venues, like the Capital One Arena and the Walter E. Washington Convention Center, have remained closed. Thus, their employees have been laid off indefinitely. Only six live entertainment venues were allowed to open as part of the District's pilot in Fall 2020, and those venues were limited to 50 individuals at

¹ The District's Department of Health issued emergency rulemaking on March 13, 2020, which prohibited mass gatherings of 250 people. As COVID-19 cases continued to rise, the Mayor followed that rulemaking with Mayor's Order 2020-48.

² See Mayor's Order 2020-53.

³ See D.C. Official Code §32-101.

⁴ See John Boardman Nov. 4, 2020 written testimony

⁵ See <https://www.bizjournals.com/washington/news/2020/09/02/dc-tourism-industry-recovery-could-be-5-years.html>.

⁶ See <https://wamu.org/story/20/11/05/downtown-dc-economy-hit-hard-by-covid19/>.

⁷ https://mayor.dc.gov/sites/default/files/dc/sites/coronavirus/release_content/attachments/Situational-Update-Presentation_11-23-2020-v2.pdf, page 12 [hereinafter Mayor's 11.23.20 Presentation]. As of December 14, 2020, restaurant indoor seating capacity is being reduced from 50% to 25% due to the rising number of COVID-19 cases. *Id.*

one time.⁸ Moreover, because of the rising number of COVID-19 cases, as of November 23, 2020, that pilot has been suspended, and indoor gatherings may not exceed 10 individuals.⁹

Likewise, retailers have laid off a large portion of their workforce, as they were also closed for an extended period during the District's lockdown. While stores have opened since then, sales are only 40-60% of 2019 sales.¹⁰ Individuals have stopped shopping in-person, turning to online shopping due to safety concerns because of the COVID-19 pandemic. This translates to staff either being laid off or having their hours greatly reduced.

Further, due to the limitations on in-person gatherings and in order to keep individuals safe, many businesses are teleworking. Only about 10% of employees who work in downtown DC have returned to their offices,¹¹ which in turn affects the need for contract staff such as janitorial or security staff at these buildings. Food service contract workers have also been largely affected by the shutdowns with companies such as Aramark laying off over 800 employees until Capital One Arena and the Convention Center reopen.¹² Thus, all of these employees need reassurance that their jobs will be there when their businesses reopen and are back to full strength.

Although the District has a displaced workers law,¹³ it only provides protection to employees employed by a contractor in a limited set of circumstances – e.g. when a contractor at an establishment is replaced by another, the employees on the contract convey to the new contractor. It does not provide protections for any hospitality or retail workers or provide a right to reinstatement for the contract employees already covered by the law. Thus, Bill 23-965 seeks to provide those protections.

Given that the District's hospitality and retail industries have been hit the hardest due to the pandemic, Bill 23-965 applies to hotel, restaurant and similar establishments, event and entertainment, and retail businesses. Because the Committee recognizes the need to protect small businesses, many of whom are struggling to remain open, the Committee has tailored this bill to apply only to hotels, motels, or similar establishments with 35 or more employees on December 1, 2020, and all other hospitality and retail businesses with 35 or more employees on March 1, 2020. This bifurcation aligns with the employee applicability bifurcation discussed later in the report. Additionally, since the displaced workers law already covers a distinct set of contract employees and because the contract workers already included in the law have been disproportionately impacted by the pandemic, Bill 23-965 also extends the reinstatement protection to those contract employees. Notably, Bill 23-965 applies to contractors, including subcontractors, who have 25 or more employees, which maintains the same threshold for contractors as D.C. Law 10-105.

Bill 23-965 has two distinct protections – a right to reinstatement and a right for employees to convey to a new employer should there be a change in the controlling interest or employer. The

⁸ See <https://mayor.dc.gov/release/mayor-bowser-announces-phase-two-live-entertainment-pilot>.

⁹ See Mayor's 11.23.20 Presentation, *supra* note 7, at 11, 15.

¹⁰ See <https://wamu.org/story/20/11/05/downtown-dc-economy-hit-hard-by-covid19/>.

¹¹ See <https://wamu.org/story/20/11/05/downtown-dc-economy-hit-hard-by-covid19/>.

¹² *Id.*

¹³ D.C. Law 10-105, "Displaced Workers Protection Act of 1994," effective April 26, 1994.

right to reinstatement states that once an employer or contractor¹⁴ reopens and a job position is open, the employer or contractor shall offer that position to the employee who previously held it. The bill requires the offers to be in writing, and in order to lessen the burden on employers and contractors, Bill 23-965 allows for employers and contractors to send the written offer to their employees via registered mail, email, or another method that is documented and retained, such as a text message.

If there are more employees for a position than there are openings, then employers and contractors, except for employers in the restaurant/night club industry, shall be reinstated based on seniority. Because of the transient nature of restaurant/nightclub workers, Bill 23-965 allows restaurant/nightclub employers to determine what criteria they will use to reinstate their employees. If an employer or contractor has offered all of his or her employees the option to return to their previous positions but still has open positions, then he/she can offer new staff to fill those positions. Notably, Bill 23-965 does not require employers or contractors to hire back all of their employees regardless of the positions available or to find new positions for employees whose positions have been eliminated (i.e. if a restaurant employed someone as a hostess, the restaurant do not have to hire that person back to be a waitress if the restaurant eliminated the hostess position). Additionally, the bill is not retroactive but requires employers and contractors to comply with the bill as of February 1, 2021. The Committee chose this date because it balances the need for notice to employers and contractors and the need for individuals to have job protections as soon as possible.

While D.C. Law 10-105 protects certain contract employees when a contract is awarded to a new contractor, no such right exists for hospitality or retail workers. Thus, Bill 23-965 provides a similar conveyance protection to the hospitality workers. Given the financial troubles that some employers are facing as a result of the COVID-19 pandemic, it is highly probable that hospitality and retail businesses will change ownership over the next few years. Retail vacancy rates are the highest they have been in 10 years.¹⁵ To ensure that hospitality and retail workers, who have already suffered a great deal due to the COVID-19 pandemic, will not be dealt another severe blow because the ownership, controlling interest, or identity of their employer changes, Bill 23-965 states that employees will convey to the new employer or controlling interest and that the employees will have a 90-day review period.

Given that Bill 23-965 is designed to protect workers who have been impacted by the COVID-19 pandemic, for all workers, except hotel workers, the bill applies to individuals who have been laid off as of March 1, 2020. However, because some hotel workers were laid off in December 2019 or January 2020 due to the hotel industry's normal slow period and but for the COVID-19 pandemic would have been brought back by their hotel at the end of February, the bill covers hotel workers who were laid off as of December 1, 2019. Moreover, Bill 23-965 contains a sunset of December 31, 2024, as the Committee believes this will provide enough time for the majority of employers and contractors to reopen and to return to their pre-COVID status.

¹⁴ Only applies to contractors that employ food service workers, janitorial or building maintenance staff nonprofessional healthcare workers, and security guards. These are the same contract categories as those in in D.C. Code §32-101.

¹⁵ <https://www.downtowndc.org/wp-content/uploads/2020/11/Fall-2020-DowntownDC-Economy-Update-11-5-20-2PM-Final.pdf>

Additionally, Bill 23-965 prohibits retaliation for trying to exercise rights asserted under Bill 23-965 and provides for an enforcement section that applies only to the new title created by Bill 23-965. D.C. Law 10-105 contains an enforcement provision, but that provision is limited and does not allow for a third party to bring suit on behalf of an employee or class of employees. Thus, Bill 23-965 allows for third party enforcement when bringing suit to enforce the new title. It does not alter the enforcement provision for the underlying organic act.

Because the hospitality and retail industries have been the hardest hit and will probably take the longest to recover, Bill 23-965 focuses on those workers. Likewise, Bill 23-965 extends the right to reinstatement to the contract workers already provided for in D.C. Law 10-105. Both sets of employees need to know that when the pandemic ends and the District is able to resume normal operations, their jobs will be available. With so much uncertainty currently, the Committee seeks to provide workers with some assurance that they will be able to return to work and that if ownership changes in the next few years, there will still be stability. For these reasons, the Committee supports Bill 23-965 and recommends Council approval.

II. LEGISLATIVE CHRONOLOGY

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|------------------|---|
| October 5, 2020 | Bill 23-965, “Displaced Workers Right to Reinstatement and Retention Amendment Act of 2020,” is introduced by Chairman Mendelson. |
| October 6, 2020 | Bill 23-965 is “read” at a legislative meeting; on this date the referral of the bill to the Committee of the Whole is official. |
| October 8, 2020 | Notice of a Public Hearing on Bill 23-965 is published in the <i>District of Columbia Register</i> |
| October 9, 2020 | Notice of Intent to Act on Bill 23-965 is published in the <i>District of Columbia Register</i> . |
| November 4, 2020 | The Committee of the Whole holds a public hearing on Bill 23-965. |
| December 1, 2020 | The Committee of the Whole marks up Bill 23-965. |

III. POSITION OF THE EXECUTIVE

No one testified on behalf of the Mayor.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee received no testimony or comments from any Advisory Neighborhood Commission.

V. SUMMARY OF TESTIMONY

The Committee of the Whole held a public hearing on Bill 23-965 on November 4, 2020. The testimony from that hearing is summarized below. Copies of written testimony are attached to this report.

Nikko Bilitza, Organizer, DC Jobs with Justice, testified in support of Bill 23-965. Mr. Bilitza stated that the District needs to protect wages that workers need in order to be able to survive in the District. He also noted that black workers have been disproportionately disadvantaged due to the pandemic and that Bill 23-965 would help them.

Tracy Javiar, Member, UNITE HERE Local 25, testified in support of Bill 23-965. Ms. Javiar indicated that she works as a bartender at the W Hotel and that she supported Bill 23-965 because it seeks to ensure that hospitality workers' jobs still remain once the industry rebounds.

Nedra Ellsworth, Member, UNITE HERE Local 25, testified in support of Bill 23-965. Ms. Ellsworth stated that she was a housekeeper at the Marriott Wardman Park Hotel but was laid off in March due to the pandemic. She also testified that she is concerned that hotel owners are going to use the COVID-19 pandemic as a reason for eliminating unionized employees unless Bill 23-965 is passed.

Devi Virk, Outside Counsel, UNITE HERE Local 25, testified that she sees the bill as introduced as applying to all employees and that in order to survive federal preemption challenges, it is better for the bill to all workers across a broad set of industries.

John Boardman, Executive-Secretary-Treasurer, UNITE HERE Local 25, testified in support of Bill 23-965. Mr. Boardman described the dire impacts that COVID-19 has had on the District's hospitality industry. He also noted that when his union was bargaining their collective bargaining agreement (CBA) with employers, they never foresaw such a prolonged displacement, which is why their CBA only speaks to a 18-month displacement period.

Juan Belman, Public Witness, testified in support of Bill 23-965. Mr. Belman urged the Council to approve Bill 23-965, testifying that community members need and want their jobs back.

Gregory Allen, Public Witness, testified in support of Bill 23-965. Mr. Allen has been a hospitality professional for 13 years but was laid off back in March 2020 due to the pandemic. He stated that while restaurants are starting to hire back individuals, it's much less than before the pandemic. Additionally, Mr. Allen testified that he knows of restaurants who furloughed their employees due to the pandemic but have now hired brand new staff instead of offering the furloughed employees their jobs back first.

Clayton Sinyai, Executive Director, Catholic Labor Network, testified in support of Bill 23-965. Mr. Sinyai noted that every successful business is based on the relationship between employers and employees. He also explained that he believed that the employees who have helped to make a business successful should be taken care of by their employer.

The Committee also received a statement from *Jews United for Justice* expressing support for Bill 23-965. Additionally, the Committee did receive several statements from organizations such as the *DC Chamber of Commerce*, *DC Hospital Association*, *Apartment and Office Building Association of Metropolitan Washington*, *Hotel Association of Washington, D.C.*, and *Restaurant Association Metropolitan Washington* expressing concerns about the bill.

VI. IMPACT ON EXISTING LAW

Bill 23-965 amends D.C. Law 10-105, the “Displaced Workers Protection Act of 1994,” effective April 26, 1994 (D.C. Code §32-101 *et. seq*) to add a new title, Title II, that puts forth protections for workers who have lost their jobs as a result of the COVID-19 pandemic. Currently, the law only protects certain contract employees – food service workers, security guards, janitorial or building maintenance, or nonprofessional healthcare employees – from being displaced if a new contractor is awarded the contract instead of their current employer. Those provisions, including the enforcement mechanism provided for in D.C. Official Code §32-103, are redesignated and comprise Title I of the law. The new title requires employers that employ 35 or more individuals on either December 1, 2019¹⁶ or March 1, 2020,¹⁷ and contractors to comply beginning on February 1, 2021. Bill 23-965 also provides a right to reinstatement for those contract, restaurant, retail, and event or entertainment employees who were laid-off as of March 1, 2020 or later and provides a right of reinstatement for hotel workers who were laid-off as of December 1, 2019. Further, the bill provides a conveyance right to the hospitality – hotel, restaurant, and event or entertainment – and retail industry workers if their employer ownership, controlling interest, or identity changes after February 29, 2020. The bill also prohibits retaliation and provides an enforcement clause that applies only to Title II. Finally, Title II sunsets as of December 31, 2024.

VII. FISCAL IMPACT

According to a fiscal impact statement from the Chief Financial Officer

VIII. SECTION-BY-SECTION ANALYSIS

<u>Section 1</u>	States the short title of Bill 23-965.
<u>Section 2</u>	Creates two titles – Title 1 is comprised of the sections that were previously added in D.C. Law 10-105 and Title II contains the new provisions added through Bill 23-965, which employers and contractors must comply with beginning on February 1, 2021 – and redesignates sections 2, 3, and 4 of the

¹⁶ This date applies to hotels, motels, or other similar establishments in D.C, which provides lodging to transient guests.

¹⁷ This date applies to restaurants; taverns; brew pubs; nightclubs; clubs; any event or entertainment establishment or venue at which live performing arts, sports, or other entertainment events are held; and businesses engaged in the sale of goods to consumers, but does not include wholesalers.

organic act as sections 101, 102, and 103. Adds section 201, which provides the definitions that are applicable to Title II only; section 202, which provides a right of reinstatement for hospitality and retail industry workers, as well as for contract employees who were included in D.C. Law 10-105; section 203, which stipulates that hospitality and retail industry workers will have a conveyance right if their employers change ownership, controlling interest, or their identity; section 204, which prohibits retaliation; section 205, which provides an enforcement mechanism for Title II only and allows for third-parties to bring a suit on behalf of an individual or class of individuals; section 206, which clarifies that a contractor or employer shall still comply with a collective bargaining agreement and does not prohibit collective bargaining for rights that are greater than or equal to those provided for in Bill 23-965; and section 207, which states that Title II shall expire on December 31, 2024.

Section 3 Adopts the Fiscal Impact Statement

Section 4 Establishes the effective date by stating the standard 30-day Congressional review language.

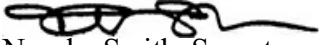
IX. COMMITTEE ACTION

X. ATTACHMENTS

1. Bill 23-965 as introduced.
2. Written Testimony.
3. Fiscal Impact Statement for Bill 23-965.
4. Legal Sufficiency Determination for Bill 23-965
5. Committee Print for Bill 23-965.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council
From :  Nyasha Smith, Secretary to the Council
Date : Monday, October 5, 2020
Subject : Referral of Proposed Legislation

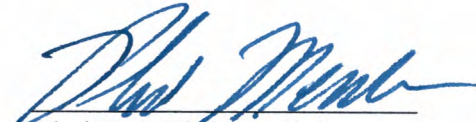
Notice is given that the attached proposed legislation was introduced in the Office of the Secretary on Monday, October 05, 2020. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Displaced Workers Right to Reinstatement and Retention Amendment Act of 2020", B23-0965

INTRODUCED BY: Chairman Mendelson

The Chairman is referring this legislation to Committee of the Whole.

Attachment
cc: General Counsel
Budget Director
Legislative Services


Chairman Phil Mendelson

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A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Displaced Workers Protection Act of 1994 to add a new section (4a) to provide eligible workers who have been displaced by COVID-19 the opportunity to be reinstated once their employer reopens after the pandemic.

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 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 to add a new section (4a) to read as follows:

“Sec. 4a. Right to Reinstatement.

“(a) For the purposes of this section, the term:

“(1) Change in controlling interest or identity of an employer” means any event or sequence of events in which the business operation conducted consists of the same or similar operation as before January 31, 2020, including any sale, assignment, transfer, contribution or other disposition of a controlling interest by consolidation, merger, or reorganization of the employer, or of any entity or entities that maintains any ownership interest in the employer; any

34 purchase, sale, lease, reorganization or restructuring, or relocation of the operation; or any
35 combination of such events, that causes either a change in the entity or entities holding a
36 controlling interest in the employer, or a change in the identity of the employer.

37 “(2) “Eligible employee” means any employee whose most recent separation from
38 employment occurred on or after February 1, 2020, and was not due to either voluntary
39 resignation without good cause or misconduct.

40 “(b)(1) Employers shall offer all eligible employees reinstatement to their previous
41 positions or to positions performing the same or similar duties, as those positions become
42 available in the operation.

43 “(2)(A) Offers shall be made in writing, by registered mail, to the eligible
44 employee’s last known physical address.

45 “(B) An employee who is offered reinstatement pursuant to this section
46 shall be given no less than ten days from the date of receipt of the mailed offer in which to accept
47 or decline the offer.

48 “(3) If more than one eligible employee is entitled to reinstatement to a particular
49 position, the employer may make simultaneous, conditional offers of reinstatement to eligible
50 employees for the same position, but shall reinstate eligible employees based on length of service
51 with the employer, beginning with eligible employees who have worked for the employer for the
52 greatest length of time.

53 “(4) An employer shall not hire a new employee for a position until all eligible
54 employees have declined offers of reinstatement.

55

56 “(c)(1) The requirements of this section shall also apply in the event one or more changes
57 in controlling interest or identity of the employer occurred after January 31, 2020.

58 “(2) If one or more changes in controlling interest or identity of the employer
59 occurs after January 31, 2020, the new employer shall offer employment to any eligible
60 employees pursuant to subsection (b) of this section, and shall retain any eligible employees
61 accepting reinstatement for a 90 day transition period.

62 “(3) Except as provided in paragraph (6) of this subsection, the new employer
63 shall not discharge an eligible employee retained pursuant to this section during the 90-day
64 transition period without cause.

65 “(4) At the end of the 90-day transition employment period, the new employer
66 shall perform a written performance evaluation for each employee retained pursuant to this
67 section, and if the employee’s performance during the 90-day transition employment period is
68 satisfactory, the new employer shall offer the employee continued employment under the terms
69 and conditions established by the new employer.

70 “(5) An employer that experiences or anticipates a change in controlling interest
71 or identity, where such change is anticipated to occur on or after the effective date of this law,
72 must, no later than 15 calendar days before the anticipated date of such event, provide notice as
73 follows:

74 “(A) Notice to all other parties to the event or transaction of the name, last
75 known address, date of hire, position, and text or telephone contact information of each eligible
76 employee; and

77 “(B) Notice to all eligible employees, either by posting in the business in

78 the same place and manner as other statutorily-required notices or, if the business is not
79 operating, by the means described in subparagraph (A) of this paragraph. Notice to eligible
80 employees shall state that the employer is experiencing or anticipates a change in controlling
81 interest or identity, and shall advise employees of their right to retention under this section.

82 “(C) If eligible employees are represented by a labor organization, the
83 notices specified in this paragraph must simultaneously be provided to the labor organization.

84 “(6) If at any time, a new employer determines that fewer employees are required
85 to perform the work of the operation, the new employer shall retain employees by seniority
86 within each position.”.

87 Sec. 4. Fiscal impact statement.

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

91 Sec. 5. Effective date.

92 This act shall take effect following approval of the Mayor (or in the event of veto by the
93 Mayor, action by the Council to override the veto), a 60-day period of congressional review as
94 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
95 24, 1973 (87 Stat. 813; D.C Official Code § 1-206.22(c)(1)), and publication in the District of
96 Columbia Register.

Hello and good morning council members, my name is Juan Luis Belman Guerrero I work at Georgetown University's Kalmanovitz Initiative for Labor and the Working Poor. I myself am a DACA Recipient and as an immigrant I know that there are very few safety nets that protect our immigrant community. I am here to speak on the importance of passing the Displaced Workers Right to Reinstatement and Retention Amendment Act of 2020.

As you all have seen, our community is suffering greatly. It is heart breaking to hear families were two working parents lost their jobs and are now scrambling to figure out how to even have enough food on their table. Our community members want and need their jobs back not only in hotels and restaurants, but in construction, retail, cleaning and a multitude of different fields. We need to make sure that when businesses have the opportunity to hire employees back that they prioritize those members that were working there before and are a part of our community. Not to think that bringing employees who already know the job will speed the economic recovery by not investing in retraining.

Let's invest in DC, in our community and in the hard workers that make DC a great city in which to live and work!

I conclude by urging the council to pass the Displaced Workers Right to Reinstatement and Retention Amendment Act of 2020.

Thank you for your time and I hope you have a wonderful day.



Chairman Mendelson and the members of the Committee of the Whole, I am Eric J. Jones, Vice President of Government Affairs, DC – Commercial appearing on behalf of the Apartment and Office Building Association of Metropolitan Washington (AOBA). AOBA is composed of organizations that own and/or manage commercial and multifamily residential properties as well as companies providing products and services to the real estate industry. Currently, the combined portfolio of AOBA’s membership is approximately 185 million square feet of commercial office space and more than 350,000 residential units in the District of Columbia, Maryland, and Virginia. Within the District, AOBA members own and/or manage nearly 140,000 apartment units, which comprises more than one-third of the District’s private rental housing stock; they also own and manage more than eighty million square feet of commercial space in the District, which constitutes two-thirds of the total private inventory.

On Wednesday, November 4th the Committee of the Whole held a hearing on Bill 23-0965, the “Displaced Workers Rights to Reinstatement and Retention Amendment Act of 2020”. As introduced, the legislation would expand the protections established under the Displaced Workers Protection Act of 1994 to cover employees directly impacted by the COVID-19 pandemic. While these changes would not have a direct impact on AOBA’s membership, we as an organization have a great deal of concerns about several recommendations made during the hearing. In particular, the recommendation by several witnesses to expand the aforementioned coverages to the majority of workers within the District.

As discussed during the hearing, both the original act and the new legislation were drafted in conjunction with UNITE Here Local 25 as a way to provide protections for employees within hospitality industry. More importantly, many of the nuanced issues that are directly and indirectly impacted by such changes are part of the collective bargaining agreements (CBAs) which govern the majority of these employees. This includes, but is not limited to issues related to work hours, scope of work, leave, seniority, pay scale, training, dispute resolution and mediation, etc. Expanding these protections beyond this group would not only create issues for businesses who were not part of either conversation, it would require businesses to make substantial changes in the way in which they run their businesses. Further, it would also potentially ignore the wishes of employees who may have decided against joining a trade union. Finally, the expansion of these changes beyond the scope of the law as introduced would place additional regulatory burdens and cost on businesses already struggling to keep their doors open. For the reasons listed above we implore the Committee of the Whole resist the calls to expand this legislation beyond its original scope.



Metropolitan Washington Council, AFL-CIO

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An AFL-CIO “Union City”

Executive Board

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Andrew Washington
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Jim Griffin (IBEW 1900)
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Dan Fields (SEIU 722)
Steven Frum (NNU)
Don Havard (IUOE 99)
Ann Hoffman (NOLSW, UAW 2320)
Roxie Mejia (Painters DC51)
Wanda Shelton-Martin (NUHHCE 1199DC)
Michael Spiller (OPEIU 2)
Gina Walton (AFGE 1975)

Trustees

Djawa Hall (1199 SEIU)
Robert Hollingsworth (AFSCME 2776)
Dave Richardson (AFGE 12)

COMMITTEE OF THE WHOLE PUBLIC HEARING ON

Bill 23-965, “Displaced Workers Right to Reinstatement and Retention
Amendment Act of 2020”

Written Testimony of Pres. Dyana Forester
Metropolitan Washington Council, AFL-CIO

Page 1 of 2

November 18, 2020

Chairman Mendelson,

On behalf of the 150,000 members affiliated with the Metropolitan Washington Council, I am writing to express our support for Bill 23-965, the “Displaced Workers Right to Reinstatement and Retention Amendment Act,” with UNITE HERE Local 25’s amendments.

The Metropolitan Washington Council, AFL-CIO is a union organization with nearly 200 union locals in D.C. and the Maryland suburbs covering virtually every professional skillset including workers in hospitality, entertainment, education, transit, sanitation, and healthcare.

The COVID-19 pandemic has had a tremendous impact on our members. Among our affiliate members, thousands of entertainment, hospitality workers, and skilled tradesmen have been devastated by job loss in the pandemic. Some union locals have seen as much as 98% of their membership out of work. That is why the Council needs to act urgently to meet the desperate need of some of our most impacted members so they will have jobs to return to once the pandemic begins to subside.

Unfortunately, this is not an issue our contracts could have possibly accounted for. None of us predicted that a global pandemic would wreak havoc in our industries and leave economic scars that may take years to heal. Absent any sign of imminent federal relief, workers across the District are looking to the DC Council to help keep them afloat. Our members deserve the peace of mind that comes with knowing that as the economy begins to recover, they can get back to work at jobs that pay good wages and provide strong benefits.

Bringing Labor Together Since 1896

www.dclabor.org

We also support the Bill's current formulation, which provides broad protection to workers across multiple sectors. It is important, for moral and legal reasons,

that this bill cover as many workers as possible. Legally, the legislation is more likely to survive court challenges if it covers a broader swath of workers. Morally, no worker, no matter where they work, should be punished simply because the pandemic threw them out of work.

We ask that you move this Bill forward – complete with its strong protections for a broad array of workers. Even if the business community protests, know that this legislation does nothing more than guarantee skilled, experienced workers a right to return to their jobs. It does not force businesses to create jobs that they do not have the resources to support. It is a simple but powerful proposition, and it will help ease the enormous burden on the hundreds of thousands of struggling workers in the District.

In Solidarity,

Dyana Forester
President



COMMITTEE OF THE WHOLE PUBLIC HEARING ON

Bill 23-965, “Displaced Workers Right to Reinstatement and Retention Amendment Act of 2020”

Written Testimony of Yemisrach Wolde, Community Building Manager, Ethiopian Community Center

Chairman Mendelson,

The Ethiopian Community Center’s (ECC) is a 501 (c)(3) community-based organization whose mission is to enhance the social and economic well-being of the African community in the Washington Metropolitan Area. Established in 1980, ECC has served as a vital community space for the last 39 years, providing a wide range of culturally and linguistically targeted programs and services. I am writing to express my support for Bill 23-965, the “Displaced Workers Right to Reinstatement and Retention Amendment Act,” with UNITE HERE Local 25’s amendments.

The COVID-19 pandemic has had a significant impact on our community. According to the Urban Institute, the economic and financial challenges surrounding the COVID-19 crisis are disproportionately affecting many immigrant workers and families across the US. An array of barriers, such as program eligibility rules particularly for undocumented workers and lack of language access, put federal, state, and local relief programs out of reach for many families. This rings true for the District as well where Community Based Organizations like ECC had no choice but to attempt to fill in this accessibility gap in assisting our members to process their unemployment insurance claims, acquire low cost healthcare benefits, refer them to mutual aid and communal food pantry resources, as well as bridge the linguistic gap in accessing critical public information and resources.

Due to a range of vulnerabilities within the Ethiopian/Eritrean and the larger African immigrant community such as higher incidence of poverty, overcrowded housing conditions, absence or inadequate health insurance and high concentration in jobs where physical distancing is difficult, these communities are at a much higher risk of COVID-19 infection. In addition to less stable employment conditions, the negative impact on these immigrant workers is increased still further by the fact that they are strongly overrepresented in those sectors most affected by the pandemic to date particularly, for instance, in the hard-hit hospitality and service industry. For our community members to face these challenges without stable income to support loved ones and their families, compounds the socio-economic crisis this pandemic has presented.

That is why the Council needs to act urgently to ensure that our community members have jobs to return to once the pandemic begins to subside.

Unfortunately, this is not an issue they could have possibly accounted for. None of us predicted that a global pandemic would wreak havoc in our industry and leave economic scars that may take years to heal. Absent any sign of imminent Federal relief, workers across the District are looking to the DC Council to help keep them afloat. Our members deserve the peace of mind that comes with knowing that as the economy begins to recover, they can get back to work at jobs that pay good wages and provide strong benefits.

We also support the Bill’s current formulation, which provides broad protections to workers across multiple sectors. It’s important, for moral and legal reasons, that this bill cover as many workers as



possible. Legally, the legislation is more likely to survive court challenges if it covers a broader swath of workers. Morally, no worker, no matter where they work, should be punished simply because the pandemic threw them out of work. The community we serve is overrepresented in sectors like, grocery and pharmacy retail, manufacturing, cleaning and janitorial services, food service and hospitality, private household work, health care and building services in DC.

As the District continues reopening we hope that the community we serve, through this Bill, will be granted the opportunity to go back to their jobs and positions they are already familiar with. The wages they get from these jobs will account for the main source of money to feed their families and loved ones, avoid evictions and pay for medical care.

We ask that you move this Bill forward – complete with its strong protections for a broad array of workers. Even if the business community protests, know that this legislation does nothing more than guaranteeing skilled, experienced workers a right to return to their jobs. It does not force businesses to create jobs that they do not have the resources to support. It is a simple but powerful proposition, and it will help ease the enormous burden on the hundreds of thousands of struggling workers in the District.



DC Chamber of Commerce Testimony for the Public Record
To
The Committee of the Whole
on
**B23-965, “The Displaced Workers Right to Reinstatement & Retention
Amendment Act of 2020”**
November 18, 2020

The D.C. Chamber of Commerce respectfully submits this statement for the record regarding **Bill 23-965, the Displaced Workers Right to Reinstatement & Retention Amendment Act of 2020**. As introduced, the bill before the committee would: 1. mandate the rehiring of eligible workers who have been displaced by the Coronavirus pandemic; and 2. expand the applicability of the current law to include all DC businesses. However, the legislation as proposed would, in many cases, undercut DC businesses’ existing policies and procedures and/or established labor agreements and would insert the DC government into the employer-employee relationship. As such, the DC Chamber of Commerce cannot support the introduced bill. Please direct your attention to the provisions that we have identified below with concerns as well as ways in which the proposal currently before you can be enhanced to ensure DC businesses maintain operational autonomy.

The D.C. Chamber of Commerce represents businesses large and small throughout the District of Columbia and region. At the D.C. Chamber, we work hard to make living, working, playing, and doing business in D.C. a much better proposition for all. And we, at the DC Chamber, support ensuring that the response to business needs during this pandemic is on target. Regrettably, however, expanding the scope of the Displaced Workers Protection Act of 1994 is not the vehicle in its current form to ensure that this important goal is met.

1. **Scope & Definitions Should Not Be Changed.** Currently, the Displaced Workers Protection statute and underlying law apply to hired contractors in specific industry sectors excluding those employed less than 15 hours per week and those persons employed in an executive, administrative, or professional capacity. However, as introduced and further discussed in the Committee’s public hearing, B23-965 applies to more than the existing covered employers and encompasses all workers, in all industry sectors. It would also cover businesses that change management, corporation structure, or controlling interest. While we support legislative efforts

aimed to support employees struggling during this economic downturn, we are gravely concerned about the expanding scope of this proposed bill and how it would remove operational autonomy from private sector employers. Limiting an employer's ability to respond to its own business needs, hire candidates based on performance, skills, and abilities, or to be flexible given the unique circumstances, makes it more difficult to do business in the District and further slows the recovery of our local economy. We strongly encourage the Committee to abstain from expanding the scope of the businesses and types of employees covered by the legislation.

2. **Safeguards Needed In Legislation: Inclusion of Sunset Clause & Removal of Notice & Retroactive Requirements.** For example, the committee, we want to ensure all legislation that is enacted is workable, however, the broadness of the proposed bill raises additional concerns that need to be addressed. The bill, as currently introduced, does not have a sunset clause and would be applicable until repealed. It is not necessary to have this policy in place when the District is not in a state of emergency related to the Coronavirus. Further, the bill requires employer notice when there is a change in the controlling interest or identity of a company. Such notice requirement may not be feasible and in some instances impossible to "anticipate" when there are business deals and acquisitions that are not publicly disclosed until a specified time under legal documents and agreements. Moreover, reorganizations and restructuring of non-profits particularly and for-profit entities occur quite frequently and are sometimes mandated by an organization's bylaws which may have nothing to do with the existing public health emergency. Such restructuring to align a company to its strategic or business plan should not trigger the mandate detailed under B23-965.

Lastly, because the bill would apply retroactively to the start of the public health emergency, the bill before the committee does not address all scenarios of the hiring and reopening process. The retroactive language should be removed due to the impracticality of such a requirement. For example, now that the District has entered phase 2 and some businesses are actively recruiting employees, the position that was once open may now be filled by the time B23-965 is enacted. Also, given that certain industries have more turnover than others, there is the scenario that a position may have been filled, subsequently vacant, and now is no longer open should this bill become law. Would a local employer be required to refill a position that a former furloughed employee quit? Would a local employer be required to present an offer to former employees once a position has been filled and is now in turnover? Without these changes to the bill, we cannot be supportive.

At the DC Chamber, we are dedicated to ensuring that our City continues to grow and prosper together and that mission includes rebuilding the private sector so that the District can rise out of this recession with a stable financial future and keep the engine of the economy – DC employers- running smoothly. However, such a mission cannot be fulfilled without the partnership and inclusion of the public sector and policymakers.

Thank you for the opportunity to comment on Bill 23-965. The DC Chamber looks forward to working with you to find optimal solutions to the challenges facing our city. Should you or your staff have questions or need additional information, please contact Ms. Erika Wadlington, Director of Public Policy & Programs at ewadlington@dcchamber.org or at (202) 624-0613.

DISTRICT of COLUMBIA
ASSOCIATION OF
BEVERAGE ALCOHOL
WHOLESALEERS

November 18, 2020

Testimony on B23-0965

Risa Hirao

President and General Counsel

District of Columbia Association of Beverage Alcohol Wholesalers
(DCABAW)

Submitted for the Record to the Committee of the Whole



Premium Distributors of Washington, D.C., LLC
A Reyes Holdings Company



My name is Risa Hirao. I am testifying in my role as the President and General Counsel of the District of Columbia Association of Beverage Alcohol Wholesalers—DCABAW.

Thank you for the opportunity to submit for the record the position of DCABAW on B23-0965 - Displaced Workers Right to Reinstatement and Retention Amendment Act of 2020.

DCABAW is the local industry association for the District's beer, wine and spirits distributors. Founded in 1985, DCABAW is comprised of fourteen member wholesalers, all operating in D.C.

The District's wholesalers are job creators, accounting for hundreds of good, local jobs. These jobs undergird key District industries and businesses such as beer, wine and spirits manufacturers, restaurants, bars, hotels, supermarkets, and local shops.

As has been the case for many local businesses, the economic impacts of the COVID-19 public health emergency have resulted in unprecedented reductions in the wholesale business.

Sales at restaurants, bars, nightclubs, concert venues, hotels, meeting venues, public and private events, sporting events and more have all come to a crashing halt or have been overwhelmingly reduced.

The result is that we are in an incredibly tenuous place as an industry and as employers. We applaud the work of the Council to support local workers and businesses through these unprecedented times. It is through leadership like this that we will emerge from the public health emergency a stronger and more prosperous city.

With respect to B23-0965, we urge the Council to exercise restraint in legislating in this area. As I stated above, employers are facing unprecedented challenges. The very fundamentals of our local

economy have been shaken by the public health emergency. We are very likely headed for what public health officials have referred to as a very “dark winter”.

Bill 23-965, as drafted, applies to contract workers in the restaurant, hotel, health, cafeteria, security services and building maintenance fields. Initially, this bill seeks to amend a statute governing periods for contractor transition employment (DC Code § 32-101, et seq) by mandating employers to reinstate those employees who have been furloughed or laid off as of February 1, 2020 “to their previous positions or to positions performing similar duties, as those positions become available.” Yet, during the November 4, 2020 public hearing, witnesses urged Council to broaden the covered employer to all District businesses and their successors.

It is that testimony that has compelled DCABAW to proffer its position on the bill to the Council - to address the harm businesses will face if such an expansive measure is enacted. Expanding Bill 23-0965 to all DC businesses and successors adds overwhelming regulatory liabilities to employers, small businesses, family-run firms at a time when businesses are struggling to stay open. This will not help our economy bounce back. This proposal fuels operational uncertainty that is inconsistent with the District’s goals to support businesses.

The devastation from COVID 19 pandemic is extensive and business owners have drastically modified operations in an effort to retain employees. The outcome of business survival has become increasingly dependent on business owners being able to make the best possible decisions to get them through this difficult period. Imposing a reinstatement program for all District businesses will be fatal to many struggling businesses.

An expanded version of the bill would present unworkable compliance challenges for employers. The employee separation and reinstatement procedures are vague. There is no guidance for resolving conflicts with an employee’s length of service, an important metric in the bill for reinstatement, when presented with a different calculation methodology relied upon by a business.

The bill also suffers from workability challenges with respect to reinstatement rights of employees who have entered into severance agreements with no rehire provisions. Businesses would similarly be put in a difficult position when business does improve. They would face, in effect, a new hire freeze which would only be lifted when “all eligible employees have declined offers of reinstatement.” The bill does not specify how long the business must wait to fill the position if it does not receive a response from a former employee. Given the fact that people often move to and from our city in search of new employment, there could be dozens, perhaps hundreds of jobs, then, that are held in limbo because of the vagaries of the bill. That means fewer District residents working, which is the complete opposite of the bill’s supposed intention.

While Bill 23-0965 is promoted as a COVID 19 relief measure, the bill does not tie eligibility to COVID 19 or DC’s public health emergency. The Bill requires that the job loss took place after February 1, 2020, that was not voluntary separation or “without good cause or misconduct.” There is also no sunset provision. This is a serious concern, especially with the broad implication of the covered employer proposal. Leaving an open-ended mandate reflects a fundamental lack of understanding of the struggle of businesses during this pandemic.

A number of witnesses at the hearing argued that broadening the measure to apply to all employers would help “sustain the legislation” should related provisions face legal challenges. Given the complexity of

employment law, we would argue that this is not a wise way to make public policy. The unintended consequences of such an action could indeed prove counterproductive. Such expansion proposals would amount to a massive change in public policy that should not be made until there is time for a substantial and broad engagement of the impacted stakeholders. We urge the Council to take a restrained and narrow path forward with the legislation.

The path to recovery should include support for businesses without weakening them at their time of need. DCABAW members share the Council's desire to ensure that the District recovers strong from the public health pandemic. Subjecting all DC businesses to the reinstatement provisions of B23-0956 and its various open-ended mandates would get us further from, not closer to, that goal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Risa Hirao', with a stylized flourish at the end.

Risa Hirao
President & General Counsel
District of Columbia Association of Beverage Alcohol Wholesalers

COMMITTEE OF THE WHOLE PUBLIC HEARING ON

Bill 23-965, "Displaced Workers Right to Reinstatement and Retention

Amendment Act of 2020"

Testimony of Jokebed Morinvil, Black Workers & Wellness Center Organizer

November 18th, 2020

Chairman Mendelson,

My name is Jokebed Morinvil and I am the Black Workers & Wellness Center organizer and Right to Income coordinator for ONE DC. ONE DC is a local grassroots organization that organizes with low-income residents and underserved communities for racial and economic equity in the city. I am writing to express my support for Bill 23-965, the "Displaced Workers Right to Reinstatement and Retention Amendment Act," with UNITE HERE Local 25's amendments.

The COVID-19 pandemic has had a significant impact on our members. In July, we sent out a survey to our members regarding the impact of the COVID pandemic on their employment. Through that survey we discovered that nearly 75% of our members have lost income as a result of the pandemic. Since then, many of our members are still unemployed and unsure if they will be able to find work again once the stay-at-home order is officially lifted. That is why the Council needs to act urgently to ensure that our members have jobs to return to once the pandemic begins to subside.

Unfortunately, this is not an issue our contracts could have possibly accounted for. None of us predicted that a global pandemic would wreak havoc in our industry and leave economic scars that may take years to heal. Absent any sign of imminent Federal relief, workers across the District are looking to the DC Council to help keep them afloat. Our members deserve the peace of mind that comes with knowing that as the economy begins to recover, they can get back to work at jobs that pay good wages and provide strong benefits.

We also support the Bill's current formulation, which provides broad protections to workers across multiple sectors. It's important, for moral and legal reasons, that this bill cover as many workers as possible. Legally, the legislation is more likely to survive court challenges if it covers a broader swath of workers. ONE DC members work in a variety of sectors. We have members who are daycare workers, line cooks, baristas, home health aides, registered nurses, social services workers, the list goes on. Morally, no worker, no matter where they work, should be punished simply because the pandemic threw them out of work.

We ask that you move this Bill forward – complete with its strong protections for a broad array of workers. Even if the business community protests, know that this legislation does nothing more than guaranteeing skilled, experienced workers a right to return to their jobs. It does not force businesses to create jobs that they do not have the resources to support. It is a simple but powerful proposition, and it will help ease the enormous burden on the hundreds of thousands of struggling workers in the District.



November 16, 2020

Chairman Phil Mendelson
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Suite 504
Washington, DC 20004

Re: Displaced Workers Right to Reinstatement and Retention Amendment Act of 2020

Dear Chairman Mendelson:

I write to you regarding Bill 23-965, the “Displaced Workers Right to Reinstatement and Retention Amendment Act of 2020,” which seeks to provide eligible workers who have been displaced by COVID-19 the opportunity to be reinstated once their employer reopens after the pandemic. Currently, the bill covers employees that are hired by contractors (1099 workers). Labor advocates are requesting that the bill be amended to expand to all employees in the hotel industry, regardless of their W-2 status. An expansion of this bill would place an undue burden on hotel employers, who are already struggling to keep afloat.

As you are aware, the hotel industry has been hit extremely hard by the pandemic. Seven months since the start of the pandemic, the hotel industry remains on the brink of collapse. Four out of ten hotel employees are still not working. Forty percent of hotels in the District remain closed, with several that have permanently shuttered their doors. We believe that this bill, if amended to apply to all employers/employees, and not just contractors/contractees, would exacerbate our industry’s already tenuous situation.

As you are aware, the pandemic has placed significant financial burdens on hotel owners and operators. With limited tourists coming to the District, some hotel owners are struggling to meet their debt obligations. Any additional financial obligations would be cumbersome.

Although hard hit by the pandemic, the hotel industry has worked tirelessly to make sure that hotels remain safe and open. In the event that they could not retain

November 16, 2020

employees, the industry has stepped up and maintained employee health and welfare benefits for employees no longer working. We have heard from several of our members who have tried to rehire employees that have been furloughed and some of our members have struggled to hire employees back. Giving these employees at least 10 days to decide whether they want to return to work, before offering the position to another ready to work employee, could delay the re-opening of a hotel; sidelining employees who are more eager and ready to work.

From a management perspective, it would obviously be easier to hire previous employees back due to lower training and human resources costs. However, it would be an unfair burden to mandate who hotel operators should hire, adding yet another encumbrance on struggling hotels. For these reasons, we are requesting that you do not amend the bill to expand the language to cover all employers/employees. Thank you for your attention to this matter and please do not hesitate to contact me should you have any questions.

Sincerely,



Solomon Keene, Jr.
President & CEO
Hotel Association of Washington, D.C.



COMMITTEE OF THE WHOLE PUBLIC HEARING ON

**Bill 23-965, “Displaced Workers Right to Reinstatement and Retention
Amendment Act of 2020”**

Written Testimony from Jews United for Justice, Submitted November 18, 2020

JUFJ is a local grassroots organization that organizes thousands of Jews and allies in DC to fight for social, racial, and economic justice in District policies. We are writing to express JUFJ’s support for Bill 23-965, the “Displaced Workers Right to Reinstatement and Retention Amendment Act,” with UNITE HERE Local 25’s recommended amendments as submitted for the record by John Boardman, Unite Here Local 25 Executive Secretary-Treasurer, during the committee hearing on November 4, 2020.

The COVID-19 pandemic has had a significant impact on the District’s workers and families, including members of the JUFJ community. In Jewish tradition, we are taught to extend our hands and give fully to those in need and, further, that among the most righteous acts of giving is giving in a way that empowers a person to provide for themselves. Maintaining a strong social safety net is a vital step to keeping people afloat during a period of global economic hardship, but a recovery that enables us to quickly emerge stronger requires us to ensure there are jobs and opportunity for workers to return to fuel a truly just recovery. That is why the Council needs to act urgently to pass Bill 23-965 so District workers can count on having jobs to return to once the pandemic begins to subside.

Unfortunately, this is not an issue union contracts could have possibly accounted for. No one could have predicted that a global pandemic would wreak havoc on dozens of industries essential to our local economy and leave economic scars that may take years to heal. Absent any sign of imminent federal relief, workers across the District are looking to the DC Council to help keep them afloat. District workers deserve the peace of mind that comes with knowing that as the economy begins to recover, they can get back to work at jobs that pay good wages, provide strong benefits, and that are well suited to match and harness their skillset.

We believe this legislation before the Council will be strongest and best able to protect workers and the economy if it provides the broadest possible protections to workers across multiple sectors. This is important for both moral and legal reasons. Legally, the legislation is more likely to survive court challenges if it covers a broader swath of workers. Morally, no worker, no matter where they work, should be punished simply because the pandemic threw them out of work. The Torah teaches that all people have inherent dignity and equal value, and that in a just world all people would have what the Torah calls *dei machsoro*, resources sufficient for their needs - access to employment is a key way to meet those needs. All workers, regardless of sector, deserve to return to their jobs and maintain their benefits and wages prior to the start of the pandemic, and the District has an obligation to help make this happen.

We ask that you move this bill forward expeditiously, complete with strong protections for a broad array of workers which we believe are further advanced by the Unite Here Local 25 suggested amendments. And, in anticipation of likely business community protests, we encourage you to remember that this legislation does nothing more than guarantee skilled, experienced workers a right to return to their jobs; it does not force businesses to create jobs that they do not have the resources to support. It is a simple but powerful proposition, and it will help ease the enormous burden on the hundreds of thousands of struggling workers in the District while also setting our businesses up for success by retaining their trained and talented workforce.

Since its founding more than two decades ago, JUFJ has stood in solidarity with marginalized workers and unions to help create an economy that works for working families. Unlike past recessions that have widened racial wealth gaps and exacerbated displacement of communities of color in DC, the Council must make better - intentional - choices about how it will achieve a just recovery that protects Black and Brown workers who earn low wages who have been the hardest hit by COVID-19, both physically and economically, and who were already struggling before the pandemic. The national call right now from Democratic party leaders is to “Build Back Better.” Bill 23-965, the “Displaced Workers Right to Reinstatement and Retention Amendment Act,” is part of how we lay the foundation to do just that. JUFJ encourages you to pass B23-965 with UNITE HERE Local 25’s recommended amendments. Thank you.

**Joint Testimony of
First Shift Justice Project and Legal Aid Society of the District of Columbia
in favor of
the Displaced Workers Right to Reinstatement and Retention Amendment Act
of 2020 (B23-0965)**

**Before the Committee of the Whole
Council of the District of Columbia**

November 18, 2020

First Shift Justice Project¹ and the Legal Aid Society of the District of Columbia² submit this joint written testimony in support of the “Displaced Workers Right to Reinstatement and Retention Amendment Act of 2020” (B23-965). This bill would extend the protections of the Displaced Worker Protection Act of 1994 to workers who have lost their jobs due to the COVID-19 public health emergency by providing some workers with a right to return to their jobs if they work for businesses of more than 25 employees in the food service, hotel, janitorial, health care, or security industries. This bill also provides these workers with a right to be laid off by seniority if businesses are not able to maintain pre-pandemic staffing levels and a right to be retained through at least the first 90 days after they return.

Giving hourly workers the right to return the jobs they have lost due to no

¹ First Shift Justice Project is a D.C. based organization founded in 2014 with a mission to help working mothers in low wage jobs assert their workplace rights to prevent job loss. More information can be found at <http://www.firstshift.org/>.

² The Legal Aid Society of the District of Columbia is the oldest and largest general civil legal services program in the District of Columbia. Over the last 88 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

fault of their own will serve the dual purpose of helping working families recover from this pandemic by aiding their transition from unemployed to back into the workforce and providing a modicum of job security, while bolstering the recovery of D.C. businesses by facilitating the return to work of experienced workers.

This legislation is needed to counter-balance the disproportionate impact of the pandemic on nonprofessional Black and Latinx workers in our community, many of whom are women and many of whom were already struggling to support their families.³ It will also reduce the potential for discrimination against workers based on age, gender, race, or disability in the re-hiring process, an issue which is exacerbated by the elevated vulnerability of older workers, pregnant workers, and workers of color to both contracting COVID and suffering from prolonged health complications as a result of the virus.

Low-wage workers of color, especially women, have suffered disproportionately from the negative economic consequences of COVID-19.

³ Jackson, Brandi and Pederson, Aderonke, “Facing Both COVID and Racism, Black Women are Carrying a Particularly Heavy Burden,” Washington Post (September 4, 2020) *available at* <

<https://www.washingtonpost.com/opinions/2020/09/04/facing-both-covid-19-racism-black-women-are-carrying-particularly-heavy-burden/>>. See also Long, Heather, “Virtual schooling has largely forced moms, not dads, to quit work. It will hurt the economy for years,” Washington Post (November 6, 2020) *available at* <
<https://www.washingtonpost.com/road-to-recovery/2020/11/06/women-workforce-jobs-report/>.

COVID-19 caused catastrophic job losses for District workers, but it did not affect everyone equally.⁴ Workers with lower-paying jobs⁵ and Black, Hispanic, and Asian workers⁶ were more likely to have lost work during the pandemic compared to their white counterparts.

Additionally, due to systemic racism and economic inequality, these same workers are much less likely than their white, middle-class peers to have the financial resources needed to avoid economic hardship.⁷ Our clients have recently described being unable to pay their rent, gas and electric bills, cell phone bills, and prescription drug copays. Nationwide, widespread delays in unemployment benefits have contributed to food insecurity, with hunger rising to twice its pre-pandemic rate for adults and even higher for children.⁸

The demographic that has suffered the brunt of this devastation, even among low-wage workers, is women. When the crisis hit, breadwinner mothers (which are a full 81.4% of all mothers in D.C. and 88% of Black mothers⁹) were hit the hardest:

⁴ Heather Long, et al, “The covid-19 recession is the most unequal in modern U.S. history,” Washington Post (September 30, 2020), *available at* < <https://www.washingtonpost.com/graphics/2020/business/coronavirus-recession-equality/>>.

⁵ Kinder, Molly and Ross, Martha, “Reopening America: Low-wage workers have suffered badly from COVID-19 so policymakers should focus on equity,” Brookings Institute (June 23, 2020), *available at* < <https://tinyurl.com/y3py6frr>>.

⁶ Marte, Jonnelle, “Gap in U.S. Black and white unemployment rates is widest in five years,” Reuters (July 2, 2020), *available at* <<https://tinyurl.com/y4a3fgrt>>.

⁷ Long, Heather and Van Dam, Andrew, “The black-white economic divide is as wide as it was in 1968,” Washington Post (June 4, 2020), *available at* < <https://www.washingtonpost.com/business/2020/06/04/economic-divide-black-households/>>.

⁸ DeParle, Jason, “Vast Federal Aid Has Capped Rise in Poverty,” New York Times (June 22, 2020), *available at* < <https://www.nytimes.com/2020/06/21/us/politics/coronavirus-poverty.html?searchResultPosition=1>>.

⁹ See Glynn, Sarah Jane, “Breadwinning Mothers Continue to be the U.S. Norm,” Center for American Progress (May 10, 2019).

almost overnight, they were either laid off or deemed essential workers and required to work, whatever the risk to themselves and their families, and regardless of whether they have childcare.¹⁰ Women – specifically, Black and Latina women – have seen the highest rate of job loss.¹¹ Moreover, this crisis hit the retail and service sectors first, including the food service, janitorial, and healthcare industries, in which women represent the highest number of workers.¹² This law would allow the mothers working in these industries to return to work and stabilize the economic security of their families, ultimately to the benefit of the whole community.

Older workers, women, and Black and Latinx workers will have more difficulty being re-hired because of COVID-related discrimination in hiring.

¹⁰ See Donner, Francesca, “How Women are Getting Squeezed by the Pandemic,” NY Times, May 20, 2020 (<https://www.nytimes.com/2020/05/20/us/women-economy-jobs-coronavirus-gender.html>). See also, Becker, Amanda, “The Pandemic Up-Ended Child Care. It Could Be Devastating for Women.” Washington Post, May 20, 2020 (<https://www.washingtonpost.com/politics/2020/05/20/pandemic-upended-child-care-it-could-be-devastating-working-women/>). See also, Elis, Niv, “Women Suffering Steeper Job Losses in COVID-19 Economy,” The Hill, May 25, 2020 (<https://thehill.com/policy/finance/499250-women-suffering-steeper-job-losses-in-covid-19-economy>). See also, Lewis, Helen, “The Coronavirus is a Disaster for Feminism,” The Atlantic, March 19, 2020 (<https://www.theatlantic.com/international/archive/2020/03/feminism-womens-rights-coronavirus-covid19/608302/>). See also, Kurtzleben, Danielle, “Women Bear the Brunt of Coronavirus Job Losses,” All Things Considered, NPR, May 9, 2020 (<https://www.npr.org/2020/05/09/853073274/women-bear-the-brunt-of-coronavirus-job-losses>).

¹¹ Id. See also, Mahajan, Deepa, et al., “Don’t Let the Pandemic Set Back Gender Equality,” Harvard Business Review, September 16, 2020 *available at* <<https://hbr.org/2020/09/dont-let-the-pandemic-set-back-gender-equality>>.

¹² See Elis, Niv, “Women Suffering Steeper Job Losses in COVID-19 Economy,” The Hill, May 25, 2020 (<https://thehill.com/policy/finance/499250-women-suffering-steeper-job-losses-in-covid-19-economy>).

If workers who were previously employed have the right to return to work, employers will have less of an opportunity to discriminate against them in the hiring process because of their vulnerability to COVID-19 or their status as a COVID survivor.

The First Shift Justice Project has already seen increased incidents of discrimination because of COVID among our client population: one First Shift client had been working for a chain restaurant in D.C. for 11 years when she was laid off because of the pandemic. When she tried to return to work, her employer terminated her because she had contracted COVID and because she was one of the higher paid employees due to her long tenure as an employee. Under this law, she would potentially have had a right to return and been protected from the discriminatory actions of her employer. Another client had been employed as a food service worker at a private political club for 17 years, contracted COVID, and was terminated.

As more information emerges about the nature of COVID-19, we are aware that, for many victims, especially those with pre-existing health conditions, there are long-term consequences of the virus.¹³ Employers who wish to avoid hiring an employee who may have long-term health problems that employers are worried may lead to excessive absences or limitations on their job duties/performance may deny employment to employees who are known to have had COVID-19 or are perceived to be more vulnerable. Although theoretically these employees who are denied employment may be able to assert a claim pursuant to the Americans with Disabilities Act (ADA), the coverage of a COVID survivor under the ADA is far from settled; moreover, there are challenges in proving hiring discrimination under any circumstances because of the lack of transparency in the hiring process and the lack of objective criteria involved in hiring unskilled, nonprofessional workers.

¹³ See “COVID-19 (coronavirus): Long-Term Effects,” Mayo Clinic Staff (November 17, 2020) available at <<https://www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/coronavirus-long-term-effects/art-20490351>>.

Finally, women who are pregnant are more likely to be discriminated against in hiring or being recalled to the workplace because they are also considered higher risk for COVID.¹⁴

The Equal Employment Opportunity Commission has recognized and anticipated the increased risk of employment discrimination because of the pandemic. Earlier in the public health emergency, it issued guidance for employers regarding how to navigate employment decisions during this time without violating federal anti-discrimination laws, which is continuously being updated as the situation evolves.¹⁵

If previously employed workers have a right to return to work when businesses reopen after the pandemic, employers will be legally compelled to re-hire them without regard to these potential vulnerabilities.

Conclusion

Thank you for the opportunity to submit this written joint testimony. We are confident that establishing the right of workers to return to their previous employment after the pandemic will not only have the practical benefit of returning experienced workers to the workforce but will also increase morale and optimism in the community with the hope that at least some of what has been lost during this pandemic can be restored.

¹⁴ See Practice Advisory regarding the Novel Coronavirus (COVID-19), American College of Obstetricians and Gynecologists (Last Updated November 6, 2020), available at <<https://www.acog.org/clinical/clinical-guidance/practice-advisory/articles/2020/03/novel-coronavirus-2019>>.

¹⁵ See “What You Should Know about COVID-19 and the ADA, the Rehabilitation Act, and other EEO Laws,” (Last Updated September 8, 2020) available at <<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>>. See also <<https://www.eeoc.gov/coronavirus>>.

**Public Hearing on November 4, 2020
Committee of the Whole**

**Bill 23-965, “Displaced Workers Right to Reinstatement
and Retention Amendment Act of 2020”**

**Testimony of Kathy E. Hollinger, President & CEO of
Restaurant Association Metropolitan Washington**

My name is Kathy Hollinger, and I am President and CEO of the Restaurant Association Metropolitan Washington (RAMW). The Restaurant Association Metropolitan Washington actively promotes the Washington, DC area foodservice industry on behalf of our 1,200 plus members, which include restaurant owners and operators, food distributors, and service providers. As the restaurant scene in DC continues to expand, so does our membership, which grows daily, and soundly represents the diversification of the industry in the District. Established in 1920, RAMW is an advocate, resource, and community for our members.

We have serious concerns about Bill 23-965, "Displaced Workers Right to Reinstatement and Retention Amendment Act of 2020", both procedurally and substantively. We read the bill as introduced and had few concerns with its provisions. Accordingly, we did not sign up to testify, nor did we alert our members as to the potentially negative impact on their businesses and their ability to survive these very difficult times for small businesses, as our nation and the District struggle to get through the health emergency brought on by COVID 19. Indeed, the bill, as drafted and introduced, applied only to contractors, not owners of small businesses which are the bulk of our membership.

The public hearing on the Bill, however, seemed to largely focus on a very different bill than the one introduced, a bill that apparently applies to every one of our members who have had to lay off workers because of the pandemic and the Mayor's Orders limiting business operations. We have not seen what was being discussed, so we are therefore not in a position to offer detailed comment or analysis, nor specifically articulate what concerns our members might have. From what we heard, however, the proposed law appears to severely burden our small business members with yet another set of requirements, even as they struggle to comply with a myriad of restrictions.

At this point, without further clarification and information, we express our opposition to this legislation. If it is to move forward, we respectfully request that an additional public hearing be scheduled on the legislation which was considered during the public hearing, which is different from that introduced and for which public notice was given. Another hearing will allow our members and others to properly weigh in on what is under consideration.

I am happy to answer any questions you may have and to work together.

Good morning Chairman Mendelson. I know we all are probably at our limits of stress especially after yesterday but I still hope to find you all in good spirits as we all can muster today.

My name is Tracy Javier and I have been a bartender at the W Hotel working at POV, their premiere rooftop lounge for the past 10 years.

The union has helped me maintain a living wage and secured me with benefits when we've been laid off.

With a Living wage, we are secured in competitive wages for an expensive city.

With inflation and the economy always bringing the cost of living to the sky, the union fights to ensure our wages reflect our surroundings. I wouldn't stand a fighting chance to be able to live where I do in DC without the help to negotiate competitive living wages.

2020 has been a difficult year for us in the hospitality industry. My hotel, as recently as the end of September, started bringing back minimal staff to open our restaurants. My outlet is running at less than 25% of our normal operating hours and staffing levels. Healthcare has been cut to those who have been laid off for the 6 plus months of this pandemic and I am one of the few lucky ones who have been able to hold on to it due to the fact that I have worked just 3 shifts in barely over a month. The union helped negotiate that we secured health insurance from March until October but now a lot of us have to readjust.

Readjusting and shifting is not only crucial to provide for our families and ourselves but also a must in accordance with the changing information of this deadly virus. It is stressful with no end in sight and if a vaccine happens soon, it's still months and maybe years in the least before we can even look to a brighter horizon. I worry that if things take a turn for the worse, I could be out of this job permanently.

Those who have held on to the hope of coming back to their hotel once it is safe to do so, should not have that hope snuffed out from under them because of the severity of this virus and the duration of the layoffs. We all have experienced the loss, whether it is with loved ones, the economy, our jobs, or the sense of normalcy. The union is fighting for us at least to make sure our jobs are available to go back to once we can resume a safe new normal life.

Lately I've been thinking about the 5 human truths I learned when first joining the W Team:

To belong

To feel special

To reach my potential.

To be in control

To be understood

Covid-19 has tested us as humans on these values. How can one seek these 5 truths while put under the economic, financial, health, and personal pressure? I hope with speaking to you all today, that you help us stay in these truths with the safety of our jobs and with the help of Local 25.

Thank you for your time, and your humanity.



Testimony of Victoria Leonard

Submitted to the Committee of the Whole on

Bill 23-965: Displaced Workers Right to Reinstatement and Retention Amendment Act of 2020

Chairman Mendelson and Members of the Committee of the Whole, thank you for the opportunity to submit written testimony on Bill 23-965.

My name is Victoria Leonard. I am the Political and Legislative Director for the Baltimore-Washington Laborers' District Council, an affiliate of the Laborers' International Union of North America, or LiUNA for short. We represent more than 7,500 construction workers and public employees across DC, Maryland, and Virginia—about a third of whom are District residents.

LiUNA fully supports Bill 23-965 and appreciates the Councils fast action on this matter. LiUNA also supports the amendments that UNITE HERE Local 25 has suggested. The amendments help protect workers by strengthening penalties that will deter employers from trying to skirt the law. The amendments also lay out a system for calling back workers, which will be vital when the economy turns around after a Covid-19 vaccine is approved and distributed.

Our 4,000 members who perform construction work are considered essential workers. Despite the Covid-19 pandemic, they leave their homes every day to go to work building the region's infrastructure projects, including big DC projects like the Northeast Boundary Tunnel and the South Capital Street Bridge, as well as ongoing projects like road repaving, and gas, water and sewer line replacements.

However, among our 3,500 members employed in the public service sector, many have suffered from layoffs and unemployment due to the Covid-19 pandemic. They include members employed as janitors and custodians. It will be important that these members of LiUNA have jobs they can return to once the pandemic is under control.

Bill 23-965 is critically important to the future of the District of Columbia and its workforce. It protects skilled, experienced workers by providing them with they right to return to their jobs. Without this bill, the District's family-supporting jobs in the service sector are likely to devolve into poverty level ones, which will lead to more income inequality and undermine the District's goal to create an equitable economy.

Thank you for the opportunity to present written testimony.



Testimony of Nikko Bilitza, Organizer, DC Jobs With Justice

Chairperson Mendelson, members of the Committee, thank you for the opportunity to testify. My name is Nikko Bilitza and I am an organizer with DC Jobs with Justice (DC JWWJ). DC JWWJ is a 70 plus member coalition made up of labor organizations, community groups, faith-based organizations, and student groups. Together, we are dedicated to protecting and advancing the rights of working people and supporting community struggles to build a more just society.

I am here today to express our support for the Displaced Workers Right to Reinstatement and Retention Amendment Act of 2020.

The COVID-19-induced recession has erased nearly seven years of private sector job growth in the District, eliminating 57,100 jobs.¹ Although the hospitality sector has been the hardest hit by COVID, other sectors have also seen large scale layoffs. Employees in administrative and support industries have lost 11,800 jobs.² Construction and building trades have also been impacted by COVID-induced job losses, a survey conducted by the Associated General Contractors of America (AGC) found that 30% of surveyed contractors had furloughed or terminated jobs.³

One component of an effective cross-sector response to this crisis is ensuring that the many District workers laid off for the past few months are given the opportunity to return to their original positions.

Beyond ensuring that workers would have more security and certainty about their job, a right to reinstatement would ensure that all workers would be able to participate in that recovery. Employers often use recessions and the availability of a large labor pool to pay less to new workers. By ensuring that workers are able to resume their pre-pandemic role this bill would protect the wages that allow workers to survive in an increasingly unaffordable city. Furthermore, Black workers have been disproportionately impacted by the pandemic induced job losses and would be greatly helped by a right to reinstatement. A Washington Post-Ipsos poll in May, 16 percent of Black workers reported having been laid off or furloughed since the pandemic. A right to reinstatement would help preserve the jobs of Black Washingtonians.

¹[2020 State of Business Report: Pivoting from Pandemic to Recovery](#)

² [2020 State of Business Report: Pivoting from Pandemic to Recovery](#)

³ [AGC Coronavirus Survey National Results](#)

Protecting workers is critical to our recovery and the long term economic security of DC residents. I urge the Council to vote yes on this legislation and demonstrate a commitment to workers who have already built a career in DC.

Thank you Chairman Mendelson for your leadership on this important issue and we look forward to working with you to pass this bill.

Testimony of Gregory Allen

Bill 23-965

November 4, 2020

Good morning, my name is Gregory Allen and I am a hospitality professional of 13 years and I live in Ward 1.

I am here to testify in support of the Displaced Workers Right to Reinstatement and Retention Amendment Act.

I along with thousands of Restaurant workers across DC were laid off back in March. Even though restaurants have been reopening for the past several months, they are only open at limited capacity, leaving so many of us still out of work. Additionally I have seen so many restaurants lay off their employees and then hire a brand new staff giving long term employees no chance to return to their old positions. Former employees should always be given first choice to return, which is why I am in support of this bill. I would also like to read a statement written by a colleague of mine who was directly impacted by this situation.

"My name is Nikola and I am a restaurant worker and Ward 4 resident. Before COVID19 I worked for the same restaurant for 6 years. Around mid March we all got furloughed due to the pandemic. Once the restaurants started reopening, many people including myself hoped that we were going to be called back to work. Only a handful of previous employees were called to come back. The rest of people were newly hired. While I was looking for another job, I saw online that my restaurant was looking for new employees for all positions, including mine. Many people are experiencing the same situation and many of them have families to feed. I think that many restaurants are abusing this situation and using this opportunity to reset their restaurant policies in the favor of the company and lower the hourly wage for new employees therefore having less expenses. We are not just numbers with the dollar signs, we are human beings that have families to support and we believe that hard work should be appreciated, which is why you need to pass this legislation."

Thank you for your time.

COMMITTEE OF THE WHOLE PUBLIC HEARING ON

Bill 23-965, “Displaced Workers Right to Reinstatement and Retention
Amendment Act of 2020”

Testimony of John Boardman
Executive Secretary-Treasurer, UNITE HERE Local 25
Tuesday, November 4, 2020

Good morning Mr. Chairman and members of the Council. It is a pleasure to appear before you this morning on this important issue. I am John Boardman, Executive Secretary-Treasurer of UNITE HERE Local 25, a union of more than 7,000 hospitality workers serving the nation’s capital region.

As you know, COVID-19 has had a significant impact on employment generally and the service sector specifically. For the hospitality industry it has been devastating with the crushing effect on employment expected to extend through 2021. In my union, 90% of our members remain out of work. They need your support for legislative protections that will allow them to return to their jobs when that work once again becomes available.

We are asking for your support of a very simple concept; that a worker who was thrown out of work, through no fault of their own, has a guaranteed right to return to his or her job when that job comes back. It would seem simple but there are those who wish to use this pandemic, this human tragedy, to gain advantage. A global pandemic is not something we could have predicted when we negotiated our contracts, nor is it something most workplaces will have built into their policies. That is why we are asking that you prevent further harm befalling District workers.

There are some that will claim that this puts businesses at a disadvantage? How? How is returning a skilled, experienced worker to the job they previously held a disadvantage? The legislation will not require that every worker be returned to work on a date certain. It will, however, give a worker the enforceable right to her or his job - *when it exists again*. Don’t fall for the specious arguments of those with nefarious intent. Workers have endured enough. You can relieve some of their stress as they wait for the economy to restart. Let them know they have their job and can get back to work.

I have taken the liberty of attaching a draft of amendments to the proposed legislation which we believe further clarifies the rights I noted above. We look forward to working with all of you to make this simple concept a reality.

I am happy to answer any questions you may have. Thank you.

###

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Displaced Workers Protection Act of 1994 to provide eligible workers who have been displaced by COVID-19 the opportunity to be reinstated once business operations resume.

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 Amendment Act of 2020”.

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

“Sec. 2. Covered employees – Contractors.

(a) This chapter shall apply to the following employees, except persons employed less than 15 hours per week and except persons employed in an executive, administrative, or professional capacity as defined by the Secretary of Labor under § 13(a)(1) of the Fair Labor Standards Act (29 U.S.C. § 213(a)(1)), or required by District of Columbia law in effect on April 26, 1994, to possess an occupational license:

(1) Employees hired by a contractor as food service workers in a hotel, restaurant, cafeteria, apartment building, hospital, nursing care facility, or similar establishment;

(2) Employees hired by a contractor to perform janitorial or building maintenance services in an office building, institution, or similar establishment;

(3) Nonprofessional employees hired by a contractor to perform health care or related support services in a hospital, nursing care facility, or similar establishment; and

(4) Employees hired by a contractor to perform security services in an office building, institution, or similar establishment; provided, that special police officers who are armed, and employees hired by a contractor to perform security services for the Board of Education or a public charter school shall not be included.

(b) For purposes of this chapter “contractor” includes a subcontractor and means an individual or company that employs 25 or more persons.

Sec. 3. Transition employment period for employees of contractors.

(a) The present contractor within a period of 10 days after the awarding of a contract shall make available to prospective contractors the names of all employees of the present contractor employed at the site or sites covered by the prospective contract, the date each employee was hired, and the employee’s occupation classification.

(b) A new contractor who is awarded a contract to provide similar covered services provided by the previous contractor shall retain, for a 90-day transition employment period, eligible employees who have been employed by the previous contractor for the preceding 8 months or longer at the site or sites covered by the contract.

(c) If at any time, the new contractor determines that fewer employees are required to perform the new contract than were required by the previous contractor, the new contractor shall retain employees by seniority within job classification.

(d) During the 90-day transition employment period, the new contractor shall maintain a preferential hiring list of covered employees not retained by the new contractor from which the new contractor may hire additional employees.

(e) Except as provided in subsection (c) of this section, the new contractor shall not discharge an employee retained pursuant to this chapter during the 90-day transition period without cause.

(f) At the end of the 90-day transition employment period, the new contractor shall perform a written performance evaluation for each employee retained pursuant to this chapter. If the employee's performance during the 90-day transition employment period is satisfactory, the new contractor shall offer the employee continued employment under the terms and conditions established by the new contractor.

(g) If a contractor's contract at an establishment in the District of Columbia is not renewed, and within 30 days the contractor is awarded a similar contract at another establishment in the District of Columbia, the contractor shall retain at least 50% of the employees from each establishment as needed to perform the contract.

Section 4. Right to Reinstatement and Retention

~~Section 4. Enforcement~~

(a) For purposes of this section, the term:
(1) "Employee" shall mean any individual employed by an employer, except (i) persons employed in an executive, administrative, or professional capacity as defined by the Secretary of Labor under § 13(a)(1) of the Fair Labor Standards Act (29 U.S.C. § 213(a)(1)), or required by District of Columbia law in effect on April 26, 1994, to possess an occupational license; (ii) any individual who, without payment and without expectation of any gain, directly or indirectly, volunteers to engage in the activities of an educational, charitable, religious, or nonprofit organization; (iii) any lay member elected or appointed to office within the discipline

of any religious organization and engaged in religious functions; or (iv) any individual employed as a casual babysitter, in or about the residence of the employer.

(2) “Employer” shall mean any entity (including but not limited to a for-profit or nonprofit firm, partnership, proprietorship, sole proprietorship, or limited liability company, association, or corporation), including any contractor, or any receiver or trustee of an entity (including the legal representative of a deceased individual or receiver or trustee of an individual), who directly or indirectly or through an agent or any other person, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of an employee.

(3) “Change in controlling interest or identity of an employer” means any event or sequence of events occurring on or after January 31, 2020, in which the business operation conducted consists of the same or similar operation as before January 31, 2020, including any sale, assignment, transfer, contribution or other disposition of a controlling interest by consolidation, merger, or reorganization of the employer, or of any entity that maintains any ownership interest in the employer; any purchase, sale, lease, reorganization or restructuring, or relocation of the operation; or any combination of such events, that causes either a change in the entity or entities holding a controlling interest in the employer, or a change in the identity of the employer.

(4) “Eligible employee” means any employee whose most recent separation from employment occurred on or after February 1, 2020, and was not due to either voluntary resignation without good cause or misconduct.

(b) (1) Employers shall offer all eligible employees reinstatement to their previous positions or to positions performing the same or similar duties, as those positions become available in the operation.

(2) (A) Offers shall be made in writing, by registered mail, to the eligible employee's last known physical address.

(B) An employee who ~~has been wrongfully discharged by~~ is offered reinstatement pursuant to this section shall be given no less than ten days from the date of receipt of the mailed offer in which to accept or decline the offer.

(3) If more than one eligible employee is entitled to reinstatement to a particular position, the employer may make simultaneous, conditional offers of reinstatement to eligible employees for the same position, but shall reinstate eligible employees based on seniority within job classification.

(4) An employer shall not hire a new ~~contractor~~ ~~may~~ employee for a position until all eligible employees have declined offers of reinstatement.

(c) (1) The requirements of this section shall also apply in the event of one or more changes in controlling interest or identity of the employer.

(2) In the event of one or more changes in controlling interest or identity of the employer, the new employer shall offer employment to any eligible employees pursuant to subsection (b) of this section, and shall retain any eligible employees accepting reinstatement for a 90 day transition employment period.

(3) Except as provided in paragraph (6) of this subsection, the new employer shall not discharge an eligible employee retained pursuant to this section during the 90-day transition employment period without cause.

(4) At the end of the 90-day transition employment period, the new employer shall perform a written performance evaluation for each employee retained pursuant to this section, and if the employee's performance during the 90-day transition employment period is satisfactory, the new employer shall offer the employee continued employment under the terms and conditions established by the new employer.

(5) An employer that experiences or anticipates a change in controlling interest or identity, where such change is anticipated to occur on or after the effective date of this law, must, no later than 15 calendar days before the anticipated date of such event, provide notice as follows:

(A) Notice to all other parties to the event or transaction of the name, last known address, date of hire, position, and text or telephone contact information of each eligible employee; and

(B) Notice to all eligible employees, either by posting in the business in the same place and manner as other statutorily-required notices or, if the business is not operating, by the means described in subparagraph (b)(2)(A) of this section. Notice to eligible employees shall state that the employer is experiencing or anticipates a change in controlling interest or identity, and shall advise employees of their right to retention under this section.

(C) If eligible employees are represented by a labor organization, the notices specified in this Section must simultaneously be provided to the labor organization.

(6) If at any time, a new employer determines that fewer employees are required to perform the work of the operation, the new employer shall retain employees by seniority within job classification.

Section 4. Enforcement.

(a) An employee or employees may, on behalf of themselves and/or on behalf of other employees similarly situated, bring an action in the Superior Court of the District of Columbia and may be awarded:

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

(A) The average regular rate of pay received by the employee during the last 3 years of the employee's employment in the same occupation classification, or

(B) The final regular rate received by the employee; and

(2) Costs of benefits the ~~new contractor~~employer would have incurred for the employee under the ~~new contractor's~~employer's benefit plan; and

(3) If it is established that an employer violated this Chapter with malice or with reckless indifference, the affected employee(s) shall be entitled to treble damages, and, in addition, may be awarded compensatory or punitive damages.

(b) (1) No employer may refuse to reinstate or employ, or terminate or otherwise take any adverse action against, any person who asserts rights under this Chapter, participates in

proceedings related to this Chapter, or opposes any practice they believe in good faith is proscribed by this Chapter.

(2) If it is established that a person engaged in conduct protected by subsection (b)(1) of this section, and an employer thereafter refused to reinstate or employ, terminated or otherwise took adverse action against such person within sixty (60) days after such conduct, then a rebuttable presumption shall arise that the employer's action was taken in violation of subsection (b)(1) of this section. In such a case, the employer must prove that the sole reason for the action was a legitimate business reason. The employer's asserted business reason may be rebutted by showing pretext.

(c) In any suit, the court shall allow ~~the~~ prevailing ~~party~~employee reasonable attorney's fees, and costs of suit (including expert witness fees) as part of the costs recoverable.

Section 5. Relationship to employment contracts and agreements.

The requirements of this Chapter shall not diminish the obligation of an employer to comply with the provisions of any contract, including but not limited to any individual contractual arrangement or any collective bargaining agreement, providing greater or equal rights to employees than are afforded under this law.

Good morning Chairman Mendelson and thank you for holding this hearing today. My name is Nedra Ellsworth and I am a housekeeper at the Marriott Wardman Park Hotel. I am also a member of Local 25 and a DC resident.

I want to talk about why my Union job is so important, and why this Recall Bill will make sure it does not disappear.

My job guarantees me things I could never dream of if I didn't have a Union contract, like regular wages and vacation pay. I have a pension, so I will be able to retire one day. My employer pays all of our healthcare costs when we are working, including dental and for an eye doctor. There are no non-Union jobs in the city that even come close.

But just as importantly, this job means I have power in my workplace. I once had a guest check out late who left me a tip. My manager went into the room before I had the chance to clean it and pocketed the tip for himself. Working with the Union rep, I was able to go to HR without fear of being punished by management. And that manager was reassigned to another building. This never would have happened without our contract.

But we are scared that hotel owners are going to use the pandemic as an excuse to get rid of Union jobs. I can't afford that. I'm a grandmother and a great-grandmother. I have a lot of family members who depend on me. If I lose this job I cannot provide things for my grandchildren or great-grandchildren, which is especially painful to think about with the Holidays around the corner.

I hope you can move this Bill forward and work with our Union to make sure it protects my job.

Thank you for your time.

COMMITTEE OF THE WHOLE PUBLIC HEARING ON

Bill 23-965, “Displaced Workers Right to Reinstatement and Retention

Amendment Act of 2020”

Written Testimony of Marlene Patrick-Cooper, President, UNITE HERE Local 23

November 16, 2020

Chairman Mendelson,

I am writing on behalf of the members of UNITE HERE Local 23, who work in the parking and food service industries throughout DC, including at Universities, government agencies, sports venues, and cultural institutions. I am writing to express my support for Bill 23-965, the “Displaced Workers Right to Reinstatement and Retention Amendment Act,” with UNITE HERE Local 25’s amendments.

The COVID-19 pandemic has had a significant impact on our members. Of our 7000 members—97% of whom were laid off in March—fewer than 1000 have had the opportunity to return to their jobs. Many office buildings are still closed and the Universities that planned to open for the Fall semester decided to implement remote classes instead. In addition, our members come from the Black and Brown communities in DC that have been disproportionately affected by the pandemic. That is why the Council needs to act urgently to ensure that our members have jobs to return to once the pandemic begins to subside.

Unfortunately, this is not an issue our contracts could have possibly accounted for. None of us predicted that a global pandemic would wreak havoc in our industry and leave economic scars that may take years to heal. Absent any sign of imminent Federal relief, workers across the District are looking to the DC Council to help keep them afloat. Our members deserve the peace of mind that comes with knowing that as the economy begins to recover, they can get back to work at jobs that pay good wages and provide strong benefits.

We also support the Bill’s current formulation, which provides broad protections to workers across multiple sectors. It’s important, for moral and legal reasons, that this bill cover as many workers as possible. Legally, the legislation is more likely to survive court challenges if it covers a broader swath of workers. Morally, no worker, no matter where they work, should be punished simply because the pandemic threw them out of work. Within the food service industry where the majority of our members are employed, there is no clear timeline for when business will return. Similarly, as business in the parking industry is determined by commuters and travelers to the city, it is impossible to know when those positions will return. In the meantime, workers are left wondering whether they will be able to go back to jobs that they have dedicated themselves to for years or decades.

We ask that you move this Bill forward – complete with its strong protections for a broad array of workers. Even if the business community protests, know that this legislation does nothing more than guaranteeing skilled, experienced workers a right to return to their jobs. It does not force businesses to create jobs that they do not have the resources to support. It is a simple but powerful proposition, and it will help ease the enormous burden on the hundreds of thousands of struggling workers in the District.

10 A BILL

11
12 23-965
13

14 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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16
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18

19 To amend the Displaced Workers Protection Act of 1994 to add a new Title II to provide eligible
20 workers who have been displaced by COVID-19 the opportunity to be reinstated once
21 their employer reopens after the pandemic.
22

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

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

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

29 “Title I. Displaced Workers Protection.”

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

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

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

34 “Sec. 201. Definitions.

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

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

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

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

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

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

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

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

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

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

59 “(3) “Covered establishment” means a:

60 “(A) Hotel, motel, or similar establishment in the District of Columbia,
61 which provides lodging to transient guests;

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

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

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

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

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

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

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

73 “(4) “Eligible employee” means:

74 “(A) An individual who was employed to work at a covered establishment
75 or for a contractor, and who ceased working at the covered establishment or for the contractor for
76 reasons other than voluntary resignation or termination for good cause or misconduct, and:

77 (i) If the individual was a hotel worker, the individual’s last date of
78 employment for the employer was December 1, 2019;

79 (ii) If the individual was not a hotel worker, the individual’s last
80 date of employment for the contractor or employer was March 1, 2020; but

81 “(B) Does not include individuals employed in an executive,
82 administrative, or professional capacity as defined by the Secretary of Labor under § 13(a)(1) of
83 the Fair Labor Standards Act (29 U.S.C. § 213(a)(1)).

84 “(5) “Employer” means any:

85 “(A)(i) Hotel, motel, or similar establishment in the District of Columbia,
86 which provides lodging to transient guests that, on December 1, 2020, employed 35 or more
87 individuals, including a for-profit or nonprofit firm, partnership, proprietorship, sole
88 proprietorship, or limited liability company, association, or corporation, or any receiver or trustee
89 of an entity, including the legal representative of a deceased individual or receiver or trustee of
90 an individual, who directly or indirectly or through an agent or any other person, including
91 through the services of a temporary services or staffing agency or similar entity, employs or
92 exercises control over the wages, hours, or working conditions of an employee; or

93 “(ii) Entity, except for a hotel, motel, or
94 similar establishment in the District of Columbia, which provides lodging to transient guests,
95 that, on March 1, 2020, employed 35 or more individuals at a covered establishment, including a
96 for-profit or nonprofit firm, partnership, proprietorship, sole proprietorship, or limited liability
97 company, association, or corporation, or any receiver or trustee of an entity, including the legal
98 representative of a deceased individual or receiver or trustee of an individual, who directly or
99 indirectly or through an agent or any other person, including through the services of a temporary
100 services or staffing agency or similar entity, employs or exercises control over the wages, hours,
101 or working conditions of an employee; but

102 “(B) Does, not include a
103 contractor.

104 “(6) “Hotel worker” means an individual who is employed by a hotel, motel, or
105 similar establishment in the District of Columbia, which provides lodging to transient guests.

106 “(7) “New employer” means an employer created as a consequence of a change
107 in controlling interest or identity of an employer.

108 “(8) “Retained employee” means any individual, except individuals employed in
109 an executive, administrative, or professional capacity as defined by the Secretary of Labor under
110 § 13(a)(1) of the Fair Labor Standards Act (29 U.S.C. § 213(a)(1)), who worked for an employer
111 at a covered establishment before a change in controlling interest or identity of an employer.

112 “Sec. 202. Right to reinstatement.

113 “(a)(1) Beginning February 1, 2021, as open positions become available with the
114 contractor or in the employer’s operation at a covered establishment, a contractor or employer
115 shall offer each eligible employee reinstatement to the employee’s previous position or to a
116 position performing the same or similar duties as those performed by the eligible employee
117 before the eligible employee ceased working for the contractor or at the covered establishment.

118 “(2)(A) A contractor or an employer shall make offers of reinstatement in writing,
119 by registered mail, email, or other method that is documented and retained.

120 “(B) In the offer of reinstatement, a contractor or employer shall give a
121 deadline, that is no less than 10 days from the date the offer of reinstatement is sent, for an
122 employee to accept or decline the offer.

123 “(3) If more than one eligible employee is entitled to reinstatement to a particular

124 position, the contractor or employer may make simultaneous, conditional offers of reinstatement
125 to eligible employees for the same position; provided, that the contractor or employer makes
126 offers of reinstatement based on seniority within job classifications, unless an employer is
127 offering reinstatement to positions at a restaurant, tavern, brew pub, nightclub, or club.

128 “(4) A contractor or employer shall not hire a new employee for a position until
129 all eligible employees have either not responded to an offer of reinstatement or declined offers of
130 reinstatement.

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

132 “(a) This section shall not apply to eligible employees otherwise covered by section 102.

133 “(b) The requirements of section 202 shall apply to a new employer.

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

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

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

140 “(2) Except as provided in paragraph (5) of this subsection, the new employer
141 shall not discharge a retained employee or an eligible employee reinstated pursuant to section
142 202 during the 90-day transition period without cause.

143 “(3) At the end of the 90-day transition period, the new employer shall perform a
144 written performance evaluation for each retained employee and each eligible employee reinstated
145 pursuant to section 202, and if the retained employee’s or eligible employee’s performance
146 during the 90-day transition period was satisfactory, the new employer shall offer the retained

147 employee or eligible employee continued employment under the terms and conditions
148 established by the new employer.

149 “(4)(A) After the effective date of this title, an employer that anticipates a change
150 in controlling interest or the identity of the employer, must, no later than 15 calendar days before
151 the anticipated date of the change in controlling interest or the identity of the employer, provide
152 the following notice:

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

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

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

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

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

167 “(ii) By mailing the notice to the last known address of all eligible
168 employees.

169 “(5) If at any time, a new employer determines that fewer employees are required

170 to work at the covered establishment than the number required before the change in controlling
171 interest or identity of the employer, the new employer shall retain employees by seniority within
172 each position; provided, that if the new employer is a restaurant, tavern, brew pub, nightclub, or
173 club, the new employer shall not be required to retain employees based on seniority within job
174 classification.

175 “Sec. 204. Retaliation prohibited.

176 “(a) No contractor or employer may refuse to reinstate or employ, terminate, or otherwise
177 take an adverse action against any employee who asserts rights under, participates in proceedings
178 related to, or opposes any practice the individual reasonably believes, in good faith, to be
179 proscribed by this title.

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

188 “Sec. 205. Enforcement.

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

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

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

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

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

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

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

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

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

211 “Sec. 207. Applicability.

212 “This title shall expire on December 31, 2024.”.

213 Sec. 4. Fiscal impact statement.

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

217 Sec. 5. Effective date.

218 This act shall take effect following approval of the Mayor (or in the event of veto by the
219 Mayor, action by the Council to override the veto), a 60-day period of congressional review as
220 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
221 24, 1973 (87 Stat. 813; D.C Official Code § 1-206.22(c)(1)), and publication in the District of
222 Columbia Register.