

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

A BILL
22-913

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To require the Mayor to create an easily accessible notice website that describes the various District wage and hour and anti-discrimination laws and to require that the Mayor to launch a public education campaign to raise awareness and educate the public about the rights of tipped workers; mandates that business owners or operators who employ tipped workers attend, at least once annually, as sexual harassment training and training on the requirements under the District’s wage theft law, as well as indicates that managers who are employed by an employer who employs tipped workers attend either an in-person or web-based training, at least once annually, on sexual harassment and the requirements of the District’s wage theft law, further dictates that employers of tipped workers provide employees with the opportunity to attend sexual harassment training or training on the requirements of the District’s wage theft law, and requires employers to certify to DOES and the Office of Human Rights that such training requirements have been met; repeals Initiative 77 – Minimum Wage Amendment Act of 2018; dictates that employers who employ tipped workers must provide their employees with the employees tip out sheet each pay period, must use a third-party to do payroll for the employer and mandates the third-party to report certain wage data, including the employer’s tip out policy, to DOES on a quarterly basis; indicates that the tip portal operated by the Mayor should be user-friendly to enable an employee to report easily to the DOES Director an alleged theft violation and that the tip portal must accept electronic spreadsheets with wage information instead of requiring manual entry of such data; and creates the Tipped Workers Coordinating Council.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Tipped Wage Workers Fairness Amendment Act of 2018”.

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 The Initiative No. 77 -- Minimum Wage Amendment Act of 2018, enacted on June 29, 2018 (D.C. Act 22-396), is repealed.

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

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

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

43 (B) DC Human Rights Act, effective December 13, 1977 (D.C. Law 2-
44 38; D.C. Official Code §§ 2-1402.01 *et seq.*);

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

47 (D) District of Columbia Parental Leave Act of 1994, effective August
48 17, 1994 (D.C. Law 10-146; D.C. Official Code §§ 32-521.01 *et seq.*);

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

51 (F) Universal Paid Leave Amendment Act of 2016, effective April 7,
52 2017 (D.C. Law 21-264; D.C. Official Code §§ 32-541.01 *et seq.*);

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

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

57 (I) Protecting Pregnant Workers Fairness Act of 2014, effective March
58 3, 2015 (D.C. Law 20-168; D.C. Official Code §§ 32-1231.01 *et seq.*);

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

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

64 (2) The internet website shall also:

65 (A) Contain the number of the tip line dedicated to receiving wage theft
66 complaints, as required by Section 6(a-1)(1) of An Act To provide for the payment and
67 collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat. 976; D.C.
68 Official Code §32-1306(a-1)(1));

69 (B) Contain other information on how an individual may submit a labor-
70 related or anti-discrimination complaint to the Mayor; and

71 (C) List resources that an individual may consult if the individual believes
72 his or her rights under one or more of the labor and anti-discrimination laws listed in paragraph
73 (1) of this subsection have been violated.

74 (3) The website shall be:

75 (A) easily accessible;

76 (B) user-friendly; and

77 (C) printer friendly.

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

83 (2) The poster shall also contain an electronic or digital link (such as a QR code)
84 that provides access to the Internet website maintained pursuant to subsection (a) of this section.
85 The electronic or digital link shall:

86 (A) State “Scan here for more information regarding your employment
87 and labor rights”;

88 (B) Not collect, analyze, or sell any personally identifiable information;
89 and

90 (C) Be of sufficient size to be easily and effectively scanned or read by a
91 digital device.

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

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

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

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

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

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

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

112 (3) Section 12 of the District of Columbia Family and Medical Leave Act of
113 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-511);

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

116 (5) Section 10 of the Accrued Sick and Safe Leave Act of 2008, effective May
117 13, 2008 (D.C. Law 17-152; D.C. Official Code § 32-531.09);

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

120 (7) Section 10 of the Minimum Wage Revision Act of 1992, effective March 25,
121 1993 (D.C. Law 9-248; D.C. Official Code § 32-1009);

122 (8) Section 5 of the Building Services Employees Minimum Work Week Act of
123 2016, effective October 8, 2016 (D.C. Law 21-157; D.C. Official Code § 32-1051.04).

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

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

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

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

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

137 (h)(1) Within 180 days of the effective date of this act, the Mayor shall launch a public
138 education campaign to raise awareness and educate the public about the rights of tipped workers
139 pursuant to the Minimum Wage Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-
140 248; D.C. Official Code §§ 32-1001 *et seq.*) and An Act To provide for the payment and
141 collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat. 976; D.C.
142 Official Code §§32-1301 *et seq.*).

143 (2) The campaign shall place a particular emphasis on communities that are most
144 at risk for wage and labor violations and shall publicize resources available to tipped workers to
145 protect against wage theft.

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

148 Sec. 4. Mandatory Workplace Training

149 (a)(1) Each business owner or operator who employs an employee who is paid in
150 accordance with section 4(f) of the Minimum Wage Act Revision Act of 1992, effective March
151 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1003(f)) shall attend either in-person or
152 online, on a yearly basis, at least one sexual harassment training and at least one training on the
153 requirements under An Act To provide for the payment and collection of wages in the District of
154 Columbia, approved August 3, 1956 (70 Stat. 976; D.C. Official Code §32-1301 *et seq.*).

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

161 (c) Each employer who employs an employee who is paid in accordance with section
162 4(f) of the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-
163 248) shall offer, at least once annually, his or her employees the opportunity to attend in-person
164 or to complete online at least one sexual harassment training and at least one training on the
165 requirements under An Act To provide for the payment and collection of wages in the District of
166 Columbia, approved August 3, 1956 (70 Stat. 976; D.C. Official Code §32-1301 *et seq.*).

167 (d) By December 31st of each year, each employer subject to the requirements of this
168 section shall provide certifications to the Department of Employment Services that all
169 requirements of this section have been fulfilled. The Department of Employment Services shall
170 make the certifications available to the Office of Human Rights.

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

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

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

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

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

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

179 “(4A) “Manager” means the person who oversees the employees in a food or
180 beverage establishment, such as the servers, bussers, bartenders, back waiters, hosts, and
181 hostesses, and the general operation of the establishment.”.

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

183 “(7B) “Server” means the employee in a food or beverage establishment who
184 takes orders, and serves the food or drinks, or both.

185 “(7C) “Tip out” means the amount or percentage of server’s tips that the server
186 shares, either voluntarily or as mandated in a tip-sharing a tip-pooling agreement, with other
187 employees such as bussers, bartenders, back waiters, hosts, and hostesses.

188 “(7D) “Tip out sheet” means a printed form provided by an employer to an
189 employee that shows the amount of the tip out that the employee will share and the calculation
190 by which the amount was determined.”.

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

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

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

195 (2) Subsection (b) is amended by striking the phrase “hours worked during the
196 pay period, and” and inserting the phrase “hours worked during the pay period, the employee’s
197 tip out sheet for the pay period, and” in its place.

198 (3) Subsection (c) is amended by a new paragraph (4A) to read as follows”
199 “(4A) The employer’s tip out policy;”.

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

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

205 (c) Section 10a (D.C. Official Code §§ 32-1009.01) is amended as follows:

206 (1) Subsection (a) is amended to read as follows:

207 “(a)(1) An employer’s third-party payroll company, required pursuant to section
208 9(a-1), shall submit to the Mayor a quarterly wage report within the 30 days of the end of the
209 quarter.

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

212 “(A) Name of each employee;

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

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

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

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

221 (2) Subsection (b) is amended to read as follows:

222 “(b)(1)(A) The Mayor shall create an Internet-based portal for online reporting of
223 the quarterly wage reports required by subsection (a).

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

228 “(C) Instructions on how to use the Internet-based portal shall comply
229 with the requirements of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law
230 15-167; D.C. Official Code § 2-1931 *et seq.*).

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

233 “(B)(i) The quarterly wage report may be in an electronic spreadsheet
234 format.

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

240 “(3)(A) The Mayor shall make available in-person reporting requirements training
241 to educate third-party payroll companies about the reporting requirements and the use of the
242 Internet-based portal.

243 (B) The in-person requirement in subparagraph (A) of this paragraph shall
244 not preclude training from occurring.”.

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

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

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

248 “(b) The Coordinating Council shall be a partnership of tipped workers, employers, and
249 public agencies that promotes a high-quality response to tipped worker cases of wage theft and
250 unfair labor practices.

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

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

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

255 “(3) The Director of the Department of Consumer and Regulatory Affairs, or his

256 or her designee;

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

258 “(5) A representative from the Restaurant Association of Metropolitan
259 Washington;

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

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

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

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

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

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

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

275 “(2) One representative appointed by the Mayor that is from a District-based
276 organization that engages in policy or advocacy for tipped workers and one representative

277 appointed by the Chairman of the Council from a District-based organization that engages in
278 policy or advocacy for tipped workers shall serve for 2 years; and

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

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

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

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

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

291 “(h) The Coordinating Council shall:

292 “(1) Improve coordination and functioning of the wage policies for tipped
293 workers, investigations into wage theft by tipped workers, and reporting mechanisms for tipped
294 workers;

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

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

300 Sec. 6. Section 6(a-1) of An Act To provide for the payment and collection of wages in
301 the District of Columbia, approved August 3, 1956 (70 Stat. 976; D.C. Official Code §32-
302 1306(a-1)), is amended to read as follows:

303 “(a-1)(1) The Mayor shall establish a dedicated phone line for reporting of violations of
304 this act.

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

312 Sec. 7. Applicability

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

317 Sec. 8. Fiscal impact statement.

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

321 Sec. 9. Effective date.

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